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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 011109274-1274-01; I.D. 102501B]

RIN 0648-AP06

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2002 Specifications

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes specifications for the 2002 summer flounder, scup, and black sea bass fisheries. The implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) require NMFS to publish specifications for the upcoming fishing year for each fishery and to provide an opportunity for public comment. NMFS requests comment on proposed management measures for the 2002 summer flounder, scup, and black sea bass fisheries. The intent of this action is to specify allowed harvest levels and other measures to address overfishing of the summer flounder, scup, and black sea bass resources.

**DATES:** Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on December 5, 2001.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA); and the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.nmfs.gov/ro/doc/nero.html>.

Written comments on the proposed specifications should be sent to Patricia

A. Kurkul at the same address. Mark on the outside of the envelope, "Comments—2002 Summer Flounder, Scup, and Black Sea Bass Specifications." Comments may also be sent via facsimile (fax) to (978) 281-9371. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Pearson, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135, e-mail [rick.a.pearson@noaa.gov](mailto:rick.a.pearson@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations implementing the FMP at 50 CFR part 648, subparts A, G, H, and I outline the process for specifying annually the catch limits for the summer flounder, scup and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions and area restrictions) for these fisheries. These measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as a fishing mortality rate (F) or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year).

The fisheries are managed cooperatively by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission). A Monitoring Committee (MC) for each species, made up of members from NMFS, the Commission, and both the Mid-Atlantic and New England Fishery Management Councils, is required to review available information and to recommend catch limits and other management measures necessary to achieve the target F or exploitation rate for each fishery, as specified in the FMP. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Monitoring Committee's recommendations and any public comment in making their recommendations. The Council and Board made their annual recommendations at a joint meeting held August 7-9, 2001. While the Board action is final, the Council recommendations must be reviewed by NMFS to assure that they comply with FMP objectives.

On August 10, 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow the specification of quota set-asides to be used for research purposes. For the 2002

specifications, the Council recommended that 2 percent of the Total Allowable Landings (TAL) for summer flounder, and 3 percent of the TAL for scup and black sea bass, be set aside for scientific research purposes. A Request for Proposals has been published to solicit research proposals for 2002 based on research priorities identified by the Council (66 FR 38636, July 25, 2001, and 66 FR 45668, August 29, 2001). The deadline for submission was September 14, 2001, and proposals are currently under review. For informational purposes, this proposed rule includes a statement indicating the amount of the research set-asides. The quota set-asides will be adjusted in the final rule establishing the annual specifications for the summer flounder, scup and black sea bass fisheries, consistent with projects forwarded to the NOAA Grants Office for award. If the total amount of the quota set-aside is not awarded, NMFS will publish a notice in the **Federal Register** to restore the unused set-aside amount to the TAL.

##### Summer Flounder

The FMP specifies a target F for 2002 of  $F_{MAX}$ —that is, the level of fishing that produces maximum yield per recruit. Best available data indicate that  $F_{MAX}$  is currently equal to 0.26 (equal to an exploitation rate of about a 22 percent from fishing). The total allowable landings (TAL) associated with the target F is allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is allocated to the coastal states based upon percentage shares specified in the FMP.

The status of the summer flounder stock is re-evaluated annually. The most recent assessment, updated by the Northeast Fisheries Science Center (NEFSC) Southern Demersal Working Group in June, 2001, indicated that the summer flounder stock is overfished and overfishing, as those terms are defined in the FMP, is occurring. This conclusion was derived from the fact that, in 2000, the estimated total stock biomass of 46,400 mt was below the biomass threshold of 53,200 mt under which the stock is considered overfished ( $\frac{1}{2} B_{msy}$ ), and the estimated F rate of 0.30 was 15-percent above the FMP overfishing definition of 0.26 ( $F_{MAX}$ ).

However, the F of 0.30 estimated for 2000 represents a significant decline since 1994, when F was estimated to be 1.31. Total stock biomass has increased substantially from 39.7 million lb (18 million kg) in 1991 to 102.3 mlb (46.4 million kg) in 2000. Spawning stock biomass (SSB) has also increased

steadily from 20.51 million lb (9.32 million kg) in 1993 to 81.68 million lb (37.05 million kg) in 2000, the highest value in the time series. Projections based on assumptions about future landings, discards, and recruitment to the stock, indicate that if the 2001 TAL is not exceeded, total stock biomass will exceed the biomass threshold (53,200 mt) under which the stock would be considered overfished in 2001. When the total stock biomass is above this overfishing definition threshold, the stock will no longer be considered overfished, although it will still be below the amount (106,400 mt) necessary to produce maximum sustainable yield ( $B_{msy}$ ). Because the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that stocks be rebuilt to a level that produces maximum sustainable yield (MSY), additional rebuilding of the stock will still be required.

The Summer Flounder MC reviewed the stock status and projections based on these data and made a TAL recommendation to achieve the target F. The Summer Flounder MC recommended a TAL of 24.3 million lb (11.02 million kg), which would be

allocated 14.58 million lb (6.61 million kg) to the commercial sector and 9.72 million lb (4.40 million kg) to the recreational sector. This TAL was determined to have a 50-percent probability of achieving an F target of 0.26, as specified in the FMP, if the 2001 TAL and assumed discard levels are not exceeded.

The Council and Board reviewed the Summer Flounder MC's recommendation and adopted it. The Council and Board also agreed to set aside 2 percent (485,943 lb (220,420 kg)) of the summer flounder TAL for research activities. After deducting the research set-aside, the TAL would be divided into a commercial quota of 14.29 million lb (6.48 million kg) and a recreational harvest limit of 9.52 million lb (4.32 million kg).

In addition, the Commission is expected to maintain the voluntary measures currently in place to reduce regulatory discards that occur as a result of landing limits established by the states. The Commission established a system whereby 15 percent of each state's quota would be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery has been closed. The

intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while also ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in any tables in this document because NMFS does not have authority to establish such subcategories.

NMFS proposes to implement the TAL recommended by the Council. The recreational harvest limit of 9.72 million lb (4.40 million kg) is allocated on a coastwide basis. The commercial quota of 14.58 million lb (6.61 million kg) is allocated to the states as shown in Table 1. Table 1 presents the allocations by state, with and without the 2-percent research set-aside deduction. These state quota allocations are preliminary and subject to a reduction if there are overages in a state's 2001 harvest. Any adjustments based upon known 2001 overages will be published in the **Federal Register** in the final rule implementing these specifications. These and additional adjustments will be necessary as 2001 landings data are finalized. NMFS will publish any such adjustments in the **Federal Register**.

TABLE 1.—2002 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent share	Commercial quota		Commercial quota with 2% research set-aside	
		lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
ME .....	0.04756	6,933	3,145	6,795	3,082
NH .....	0.00046	67	30	66	30
MA .....	6.82046	994,306	451,010	974,420	441,989
RI .....	15.68298	2,286,310	1,037,053	2,240,583	1,016,311
CT .....	2.25708	329,044	149,258	322,463	146,267
NY .....	7.64699	1,114,800	505,665	1,092,504	495,551
NJ .....	16.72499	2,438,217	1,105,957	2,389,452	1,083,837
DE .....	0.01779	2,593	1,176	2,542	1,153
MD .....	2.03910	297,266	134,838	291,320	132,140
VA .....	21.31676	3,107,619	1,409,592	3,045,466	1,381,400
NC .....	27.44584	4,001,133	1,814,883	3,921,110	1,778,586
Total .....	100.00	14,578,288	6,612,600	14,286,721	6,480,348

<sup>1</sup> Kilograms are as converted from pounds and do not add to the converted total due to rounding.

## Scup

Scup was most recently assessed at the 31st Northeast Regional Stock Assessment Review Committee (SARC 31) in June 2000. SARC 31 concluded that scup are overfished and that overfishing is occurring. Scup spawning stock biomass (SSB) is low. The Northeast Fisheries Science Center (NEFSC) spring survey 3-year average (1998 through 2000) for scup spawning stock biomass (SSB) was 0.10 SSB kg/tow, which is less than 5 percent of the index that defines the stock as

overfished (2.77 kg/tow; the maximum NEFSC spring survey 3-year average of SSB). SARC 31 noted that the overall stock has a highly truncated age structure (i.e., there are fewer older fish than there would be in a healthy stock), which likely reflects prolonged high fishing mortality rates. SARC 31 also noted that F should be reduced substantially and immediately, and that a reduction in F from discards would have the most impact on rebuilding the stock, especially considering the importance of allowing recent year

classes and all future good recruitment to contribute to rebuilding of the stock size and age structure.

Since the SARC 31 Report, the Commission's Technical Committee has updated the state and Federal survey indices for scup, as well as discard estimates from sea sample and Vessel Trip Report (VTR) data. The surveys indicate an increase in stock abundance in recent years. The NEFSC spring survey results indicate that spawning stock abundance has increased each year since 1998. In addition, the NEFSC

autumn survey results for 2000 are the highest in the time series since 1976. These survey results likely reflect the effects of a strong 1997 year class and moderate to strong 1999 and 2000 year classes.

The target exploitation rate for scup in 2001 was 33 percent. For 2002, the FMP established a target exploitation rate of 21 percent. The total allowable catch (TAC) associated with a given exploitation rate is allocated 78 percent to the commercial sector and 22 percent to the recreational sector by the FMP. Scup discard estimates are deducted from both sector's TACs to establish TALs for each sector (TAC less discards = TAL). The commercial TAL is then allocated on a percentage basis to three quota periods, as specified in the FMP—Winter I (January–April)—45.11 percent; Summer (May–October)—30.95 percent; and Winter II (Nov–December)—15.94 percent.

The proposed scup specifications for 2002 are based on the exploitation rate in the rebuilding schedule that was approved when scup was added to the FMP in 1996, prior to passage of the Sustainable Fisheries Act (SFA). Subsequently, to comply with the SFA amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Council prepared Amendment 12, which proposed to maintain the existing rebuilding schedule for scup established by Amendment 8. On April 28, 1999, NMFS disapproved that rebuilding plan for scup because it did not comply with the Magnuson-Stevens Act. NMFS advised the Council that the exploitation rate portion of the overfishing definition (converted to an F) was conceptually sound, though

somewhat risk-prone. However, given the abundance level of the stock, NMFS determined that the combination of the exploitation rates and the length of time to rebuilding made the degree of risk unacceptable that sufficient rebuilding would likely occur. Therefore, for the short term, the proposed scup specifications for 2002 are based on an exploitation rate that was found to be conceptually sound. NMFS believes that the long-term risks that were associated with the disapproved rebuilding plan do not apply to the proposed specifications since they apply only for 1 fishing year and will be reviewed, and modified as appropriate, by the Council and NMFS annually. Furthermore, setting the scup specifications using an exploitation rate of 21 percent is a much more risk averse approach to managing this resource than not setting any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that meets all Magnuson-Stevens Act requirements.

In making its recommendation to the Council, the Scup MC reviewed the available data and concluded that scup abundance is likely to increase in 2002. Council staff made deterministic projections to estimate future expected NEFSC spring survey indices. This projection indicates that the spawning stock biomass (SSB) 3-year average index could increase from 0.25 in 1998–2000 to 0.457 in 1999–2001 (using a fully recruited  $F = 1$ , and partial recruitment and maturity vectors utilized in SAW 27). Assuming an average value in 2002 that is at least equal to the 2001 estimated average value of 0.457, then the target scup exploitation rate of 21 percent could be achieved with a 2002 TAL of 10.77 million lb (4.88 million kg), which is the

level recommended by the Scup MC. Then, assuming the same level of discards as assumed for 2001 (2.15 million lb (0.97 million kg)), the Scup MC recommended a 2002 TAC of 12.92 million lb (5.86 million kg). Based on the sector allocation specified in the FMP (commercial—78 percent; recreational—22 percent), this results in a commercial TAC of 10.08 million lb (4.89 million kg) and a recreational TAC of 2.84 million lb (1.29 million kg). Using the same commercial and recreational discards used for the 2001 specifications (2.08 million lb (0.94 million kg) for the commercial sector, and 0.07 million lb (0.03 million kg) for the recreational sector), the Scup MC recommended a commercial TAL of 8.0 million lb (3.63 million kg) and a recreational harvest limit of 2.77 million lb (1.26 million kg).

The Council and Board reviewed the Scup MC's recommendation and adopted it. The Council and Board also agreed to set aside 3-percent (323,100 lb (146,556 kg)) of the scup TAL for research activities. The TAL, after deducting the 3-percent research set-aside, would result in a commercial quota of 7.76 million lb (3.52 million kg) and a recreational harvest limit of 2.69 million lb (1.22 million kg).

The 2002 commercial allocation recommended by the Council is shown, by period, in Table 2. Table 2 presents the allocations with, and without, the 3-percent research set-aside deduction. These 2002 allocations are preliminary and would be subject to downward adjustment, as required by the FMP, for any landings in excess of quota allocation in 2001 that are found when final 2001 data are available (a quota overage).

TABLE 2.—2002 PROPOSED INITIAL COMMERCIAL SCUP QUOTA AND POSSESSION LIMITS

Period	Percent	TAC <sup>1</sup>	Discards <sup>2</sup>	Commercial quota		Possession limits	
				W/O 3% set-aside	With 3% set-aside	Lb	Kg
Winter I .....	45.11	4,546,735 (2,062,364)	936,935 (424,987)	3,608,800 (1,636,924)	3,500,536 (1,587,816)	10,000 <sup>3</sup>	4,536
Summer .....	38.95	3,924,991 (1,780,346)	808,991	3,116,000 (1,413,394)	3,022,520 (1,370,992)	n/a*	.....
Winter II .....	15.94	1,606,274 (728,594)	331,074 (150,173)	1,275,200 (578,421)	1,236,944 (561,068)	2,000	907
Total <sup>4</sup> .....	100.00	10,077,600 (4,571,122)	2,077,600 (942,383)	8,000,000 (3,628,739)	7,760,000 (3,519,877)	.....	.....

<sup>1</sup> Total allowable catch, in pounds (kilograms in parentheses).

<sup>2</sup> Discard estimates, in pounds (kilograms in parentheses).

<sup>3</sup> The Winter I landing limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of the seasonal allocation.

<sup>4</sup> Totals subject to rounding error.

\* n/a—Not applicable

To achieve the commercial quotas, the Council and Board recommended maintaining the Winter I (January–April) possession limit at 10,000 lb (4,536 kg) and the Winter II period (November–December) possession limit at 2,000 lb (907 kg). The Council and Board further recommended that the Winter I possession limit would be reduced to 1,000 lb (453.6 kg) when 80 percent of the commercial quota is attained. The current regulations require a reduction of the Winter I possession limit when 75 percent of the quota is attained.

A modification of the existing minimum mesh size requirements for the directed scup trawl fishery was also recommended by the Council and the Board to protect recent strong scup year classes. The recommendation was as follows: For large nets, no more than 25 meshes of 4.5-inch (11.43-cm) mesh in the codend with at least 100 meshes of 5.0-inch (12.70-cm) mesh forward of the 4.5-inch (11.43-cm) mesh; and for small nets, 4.5-inch (11.43-cm) mesh or larger throughout. Small nets are defined as those having codends with less than 125 meshes.

#### Scup Disapproved Measure

As noted previously, SARC 31 emphasized the need to reduce scup fishing mortality that results from discards. Gear Restricted Areas (GRAs) were established in 2000 (65 FR 33486, May 24, 2000, and 65 FR 81761, Dec. 27, 2000) and 2001 (66 FR 12902, March 1, 2001) to reduce scup discard mortality in small-mesh fisheries. The GRAs prohibit trawl vessels from fishing for, or possessing, certain non-exempt species (*Loligo* squid, black sea bass and silver hake (whiting)) when fishing with mesh smaller than that required to fish for scup. For the 2002 fishing year, the Scup MC considered the results from a research project that developed and analyzed specially-modified trawls for the purpose of reducing scup bycatch in Mid-Atlantic small-mesh fisheries and, possibly, eliminating the need for GRAs in the Mid-Atlantic Bight. Upon reviewing the draft final report of the research project, the Scup MC passed a motion recommending that GRAs continue for another year, due to the preliminary nature of the gear research. However, based upon the preliminary results of the gear research and the need to gather additional information, the Scup MC recommended that trawl vessels be allowed into the GRAs, provided that vessels utilize the modified trawl nets (possessing an escapement extension of 45 meshes of 5.5-inch (13.97-cm) square mesh between the body of the net and the

codend), and provided the vessels had a NMFS-certified observer onboard to collect data from tows using the modified net.

The Council and the Board did not accept the Scup MC's advice regarding the preliminary nature of the gear research and the recommendation to gather more information on the modified gear through use of observers. Instead, the Council and the Board recommended that vessels using small mesh be allowed into the GRAs without NMFS-certified observers, provided they use modified trawl nets with an escapement extension (as described above).

NMFS proposes to disapprove the Council and Board recommendation that would allow vessels to fish for non-exempt species with small mesh in the GRAs, provided they use the modified trawl gear, as described earlier. NMFS agrees with the Scup MC that the research upon which the Council's recommendation is based is too preliminary to simply exempt vessels fishing with the modified gear from the GRA requirements. Only 17 alternate hauls were analyzed using the 5.5-inch (13.97-cm) square mesh extension. The sample size is not large enough to draw a definitive conclusion regarding the effectiveness of the gear modifications. Also, the sea trials were conducted outside of the GRAs, primarily in water depths less than 25 fathoms, whereas the actual GRAs range in depth from approximately 60 fathoms to 120 fathoms. The draft report upon which the Council's recommendation is based acknowledges that although, "the results presented here indicate a strategy that may be useful in reducing scup bycatch, it does not necessarily follow that this solution will work for vessels of all sizes, in all areas or at all times." NMFS agrees. The research is too preliminary to universally exempt all vessels deploying the modified gear from the GRA requirements. Therefore, NMFS is disapproving the proposed exemption for the modified gear in the GRAs. However, NMFS believes that the gear modifications are a potential solution to the scup bycatch problem, and that additional work must be done to obtain information on the most appropriate gear modifications over a larger area and time.

#### Black Sea Bass

Black sea bass was last assessed by the 27th Northeast Regional Stock Assessment Review Committee (SARC 27), with results published December 1998. SARC 27 indicated that black sea bass are over-exploited and at a low biomass level. However, relative

exploitation rates, based on the total commercial and recreational landings and the moving average of the log-transformed spring survey index (an index based on scientific sampling of the distribution and relative abundance), indicate a significant reduction in mortality from 1998 through 2000 relative to 1996 and 1997 levels.

Results of the spring trawl survey conducted by the NEFSC indicate that stock size of black sea bass has increased in recent years. The 3-year moving average of the log-transformed spring survey index for 1999 through 2001 is 45 percent higher than the value for 1998 through 2000. In addition, black sea bass recruitment indices (fish  $\leq 14$  cm) for 1999 and 2000 indicate that very large year classes were produced in those years. The 1999 recruitment index (0.700) is about three times the average for the period 1968 through 1998, and the fourth largest value in the time series. The 2000 index (2.782) is, by far, the highest in the time series. Preliminary results from the 2001 NEFSC spring survey indicate that the 2001 year class was poor.

The FMP specifies a target exploitation rate of 37 percent for 2002. Although the exploitation rate for 2001 is uncertain, relative exploitation indices since 1998 are significantly lower than in the years before 1998. Based on length frequencies from the spring survey, and assuming a length at full recruitment of 25 cm, the estimated F was 0.75 (48-percent exploitation rate) in 1998. If the 2002 NEFSC spring survey biomass index is at least equal to 0.3 kg/tow, and assuming an exploitation rate of 48 percent in 1998, the Black Sea Bass MC determined that the 2002 TAL could remain the same as the 2001 TAL (6.173 million lb (2.80 million kg)) and the exploitation rate could drop to 37 percent, the exploitation rate target specified in the FMP for 2002.

The Black Sea Bass MC recommended that the 2002 TAL remain the same as in 2001—6.173 million lb (2.80 million kg). Other MC recommendations included: A reduction of the threshold triggering the minimum mesh-size requirement from 1,000 lb (453.6 kg) to 500 lb (226.8 kg) for Quarter 1 (Jan. through March), and to 100 lb (45.3 kg) for Quarters 2 through 4 (April through Dec.); a change in the minimum black sea bass mesh size to be compatible with the scup minimum mesh size; and an increase in the minimum escape vent size for black sea bass pots and traps. In addition, the Black Sea Bass MC recommended that the black sea bass possession limits be reduced to 7,000 lb

(3,175 kg) in Quarter 1; 1,000 lb (453.6 kg) in Quarter 2; 500 lb (226.8 kg) in Quarter 3; and 750 lb (340.2 kg) in Quarter 4. The Black Sea Bass MC did not recommend an increase in the black sea bass minimum commercial fish size.

At their August 2001 meeting, the Council and Board adopted the MC's recommended change to the minimum mesh threshold catch level to 500 lb (226.8 kg) from January through March, and to 100 lb (45.3 kg) from April through December. The Council and the Board also adopted the MC's recommended escape vent sizes for pots (2 and 3/8-inch circular, 2-inch square), and traps (1 and 3/8-inch x 5 and 3/4-inch rectangle). The Council and Board recommended a slightly different trawl net minimum mesh size. The recommendation was that large trawl nets be required to have a minimum of 75 meshes of 4.5-inch (11.43-cm) diamond mesh in the codend, or that small nets possess at least 4.5-inch (11.43-cm) diamond mesh throughout. Importantly, the Council and Board also recommended an increase in the minimum commercial fish size from 10

inches (25.4 cm) to 11 inches (27.9 cm). These measures were recommended by the Council and the Board to protect the very strong 1999 and 2000 black sea bass year classes. The increase in minimum fish size will allow smaller fish to escape, grow, and reproduce. The increase in the minimum trawl net mesh size and in the size of escape vents in pots and traps will allow for greater escapement of sublegal fish from commercial gears.

The Council and Board did not adopt the Black Sea Bass MC's TAL recommendation. Rather, the Council and Board recommended a TAL of 6.8 million lb (3.08 million kg). Based upon this TAL, the commercial quota would be 3.33 million lb (1.51 million kg) and the recreational harvest limit would be 3.47 million lb (1.57 million kg). The rationale for this higher TAL is based upon the Council's and Board's recommendation to increase the black sea bass commercial minimum fish size from 10 inches (25.4 cm) to 11 inches (27.9 cm), and to increase the black sea bass trawl net minimum mesh size and the minimum escape vent size for pots

and traps. Although unquantifiable, the Council and Board stated that this combination of an increased minimum fish size and minimum net mesh size in 2002 will provide additional protection to recent strong year classes and, therefore, provide for an increase in exploitable biomass (an increase in TAL) in 2002, and beyond.

The Council and Board recommended black sea bass possession limits of 7,000 lb (3175 kg) for Quarter 1, and 2,000 lb (907 kg) for Quarters 2 through 4. The Council and Board also recommended a black sea bass research TAL set-aside of 3 percent (204,000 lb (92,533 kg)).

The proposed initial 2002 black sea bass commercial quota and corresponding possession limits are shown in Table 3. Table 3 presents the allocations with, and without, the 3-percent research set-aside deduction. These allocations are preliminary and would be subject to downward adjustment, as required by the FMP, for any landings in excess of a period's quota allocation in 2001 that are found when final 2001 data are available (a quota overage).

TABLE 3.—2002 PROPOSED INITIAL BLACK SEA BASS QUARTERLY COASTWIDE COMMERCIAL QUOTAS AND POSSESSION LIMITS

Quarter	Percent	W/O 3% Set-Aside <sup>1</sup>	With 3% Set-Aside <sup>1</sup>	Possession limits	
				Lb	kg
1 (Jan–Mar) .....	38.64	1,287,485 (583,993)	1,248,860 (566,473)	7,000 3,175	
2 (Apr–Jun) .....	29.26	974,943 (442,227)	945,695 (428,960)	2,000 907	
3 (Jul–Sep) .....	12.33	410,836 (186,352)	398,511 (180,761)	2,000 907	
4 (Oct–Dec) .....	19.77	658,736 (298,798)	638,974 (289,834)	2,000 907	
Total .....	100.00	3,332,000 (1,511,370)	3,232,040 (1,466,029)		

<sup>1</sup> Commercial Quotas in pounds (kilograms in parentheses).

### Measure of Particular Concern

At the August, 2001 Council and board meeting, there was considerable debate about appropriate escape vent sizes for an 11-inch minimum black sea bass fish size. NMFS is specifically seeking industry comment on this subject through this proposed rule.

### Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no new reporting or recordkeeping requirements contained in the Preferred Alternative or any of the alternatives considered for this action. A copy of the complete IRFA can be obtained from the Northeast Regional Office of NMFS (*see ADDRESSES*) or via the Internet at <http://www.nero.nmfs.gov>. A summary of the analysis follows.

Table 4 provides a summary of the unadjusted 2002 alternatives for the coastwide commercial quotas with the unadjusted 2001 quotas. Alternative 1

analyzed the economic impacts of the harvest limits proposed by the Council and Board for summer flounder, scup, and black sea bass on vessels that are permitted to catch any of these three species. Alternative 2 analyzed the economic impacts if the harvest limits remained the same as in 2001 (status quo)—this is the most restrictive alternative and would result in the greatest reductions in landings, relative to 2000 (the last year for which complete landing data is available), for all species. Alternative 3 analyzed the economic impacts of increased harvest levels—those that would result in the greatest increases in landings for all species. Alternative 3 resulted in the highest possible landings for 2002,

although it would likely exceed the biological targets specified in the FMP.

TABLE 4.—COMPARISON OF THE ALTERNATIVES OF COASTWIDE COMMERCIAL QUOTA COMBINATIONS REVIEWED—“FLK” IS SUMMER FLOUNDER

	Commercial quota	Quota specification as a proportion of the 2001 quotas (not adjusted)	Percent change
<b>Quota Alternative 1 (Preferred Alternative)</b>			
FLK Preferred Alternative .....	14,578,288	1.356	34.64
Scup Preferred Alternative .....	8,000,000	1.799	79.99
Black Sea Bass Preferred Alternative .....	3,332,000	1.101	10.15
<b>Quota Alternative 2 (Status Quo, Most Restrictive)</b>			
FLK Status Quo .....	10,747,535	1	0
Scup Status Quo .....	4,444,600	1	0
Black Sea Bass Status Quo .....	3,024,770	1	0
<b>Quota Alternative 3 (Least Restrictive)</b>			
FLK Non-Selected Alternative 3 .....	20,878,658	1.942	94.26
Scup Non-Selected Alternative 3 .....	9,530,000	2.144	114.41
Black Sea Bass Non-Selected Alternative 3 .....	3,970,960	1.312	31.28

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in state waters. The Council estimates that the proposed 2002 quotas could affect 1,969 vessels with a Federal summer flounder, scup, and/or black sea bass permit, as of September 5, 2000. However, the more immediate impact of this rule will likely be felt by the 1,038 vessels that actively participated (*i.e.*, landed these species) in these fisheries in 2000, including vessels holding only state permits.

The Council's analysis of the harvest limits in Alternative 1 (Preferred Alternative) indicated that these harvest levels would produce a revenue increase for any of the 1,038 commercial vessels expected to be impacted by this rule. All 1,038 vessels expected to be impacted by this rule were projected to incur a revenue increase under Alternative 1.

The Council also analyzed changes in total gross revenue that would occur as a result of the quota alternatives. Assuming 2000 ex-vessel prices (summer flounder—\$1.65/lb; scup—\$1.25/lb; and black sea bass—\$1.79/lb) and the effect of potential changes in prices due to changes in landings in 2002 versus 2001, the 2002 quotas in Preferred Alternative 1 (after overages have been applied) would increase summer flounder, scup, and black sea

bass ex-vessel revenues by approximately \$5.4 million, \$6.2 million, and \$0.9 million, respectively, relative to 2000 revenues for a total revenue increase of \$12.5 million.

If the increase in summer flounder total gross revenue associated with the Preferred Alternative is distributed equally between the 795 vessels that landed summer flounder in 2000, the average increase in gross revenue associated with the summer flounder quota in the Preferred Alternative is \$6,792 per vessel. If the increase in scup total gross revenue associated with the Preferred Alternative is distributed equally between the 425 vessels that landed scup in 2000, the average increase in gross revenue associated with the scup quota in the Preferred Alternative is \$14,588 per vessel and, similarly, if the increase in black sea bass total gross revenue associated with the Preferred Alternative is distributed equally between the 723 vessels that landed black sea bass in 2000, the average increase in gross revenue associated with the black sea bass quota in the Preferred Alternative is \$1,245 per vessel.

The Council's analysis of Alternative 2 (status quo—most restrictive harvest limits) indicated that these harvest limits would not produce a revenue loss for most of the 1,038 commercial vessels expected to be impacted by this rule. Twenty-nine of the 1,038 commercial vessels expected to be impacted by this rule would experience a minimal

revenue loss. Twenty-seven of the vessels with projected revenue losses landed black sea bass only, one vessel landed black sea bass and summer flounder, and one vessel landed summer flounder, scup and black sea bass. Five vessels would experience no change in revenue under Alternative 2, while 1,004 vessels would experience an increase in revenue.

An analysis of changes in total gross revenue associated with Alternative 2 indicated that the 2002 quotas would increase summer flounder, scup, and black sea bass ex-vessel revenues by approximately \$0.9 million, \$1.7 million, and \$0.4 million, respectively, relative to 2000 revenues for a total revenue increase of \$3.0 million.

If the increase in total gross revenue associated with the summer flounder quota in Alternative 2 is distributed equally between the 795 vessels that landed summer flounder in 2000, the average increase in gross revenue associated with the summer flounder quota in Alternative 2 is \$1,132 per vessel. If the increase in total gross revenue associated with the scup quota in Alternative 2 is distributed equally between the 425 vessels that landed scup in 2000, the average increase in gross revenue associated with the scup quota in Alternative 2 is \$4,000 per vessel and, similarly, if the increase in black sea bass total gross revenue associated with Alternative 2 is distributed equally between the 723 vessels that landed black sea bass in

2000, the average increase in gross revenue associated with the black sea bass quota in Alternative 2 is \$553 per vessel.

The Council's analysis of Alternative 3 (least restrictive harvest limits) indicated that these harvest levels would produce a revenue increase for any of the 1,038 commercial vessels expected to be impacted by this rule.

An analysis of changes in total gross revenue associated with Alternative 3 indicated that the 2002 quotas (after overages have been applied) would increase summer flounder, scup, and black sea bass ex-vessel revenues by approximately \$15.8 million, \$8.1 million, and \$2.1 million, respectively, relative to 2000 revenues for a total revenue increase of \$26.0 million.

If the increase in summer flounder total gross revenue associated with Alternative 3 is distributed equally between the 795 vessels that landed summer flounder in 2000, the average increase in gross revenue associated with the summer flounder quota in Alternative 3 is \$19,874 per vessel. If the increase in scup total gross revenue is distributed equally between the 425 vessels that landed scup in 2000, the average increase in gross revenue associated with the scup quota in Alternative 3 is \$19,059 per vessel. Similarly, if the increase in total gross revenue associated with the black sea bass quota in Alternative 3 is distributed equally between the 723 vessels that landed black sea bass in 2000, the average increase in gross revenue associated with the black sea bass quota in Alternative 3 is \$2,905 per vessel.

The Council also prepared an analysis of the alternative recreational harvest limits. The 2002 recreational harvest limits were compared with previous years through 2000, the most recent year with complete recreational data.

Landing statistics from the last several years show that recreational summer flounder landings have generally exceeded the recreational harvest limits, ranging from 5 percent in 1993 to 221 percent in 2000. In 2000, the recreational landings were 15.82 million lb (7.17 million kg) compared to a harvest limit of 7.16 million lb.

For summer flounder, the 2002 preferred recreational harvest limit of 9.72 million lb (4.41 million kg) in Alternative 1 is greater than the recreational harvest limits for the years 1995 through 2001. However, the 2002 recreational harvest limit in Preferred Alternative 1 would be a decrease of about 38 percent from 2000 recreational landings. Alternative 2 recreational harvest limit of 7.16 million lb (3.25 million kg) in 2002 would be the same

harvest level that was implemented in 2001. It is approximately 8.66 million lb (3.93 million kg) less than estimated recreational landings for 2000.

Alternative 3 recreational harvest limit of 13.90 million lb (6.30 million kg) in 2002 is 1.92 million lb (0.87 million kg) below estimated 2000 recreational landings. If either Alternative 1, 2, or 3 is chosen, it is possible that more restrictive management measures may be required to prevent anglers from exceeding the 2002 recreational harvest limit, depending upon the effectiveness of the 2001 recreational management measures. More restrictive regulations could affect demand for party/charter boat trips. However, party/charter activity in the 1990s has remained relatively stable, so the effects may be minimal. The effect of greater recreational restrictions is not known at this time. The Council intends to recommend specific measures to attain the 2002 summer flounder recreational harvest limit in December 2001, and will provide additional analysis of the measures upon submission of its recommendations early in 2002.

Scup recreational landings declined over 89 percent for the period 1991 to 1998, then increased by 448 percent from 1998 to 2000. In 2000, recreational landings were 5.18 million lb (2.35 million kg). Under Preferred Alternative 1, the scup recreational harvest limit for 2002 would be 2.77 million lb (1.26 million kg). This is a 46 percent decrease from 2000 recreational landings. However, it is about 52 percent higher than the scup recreational harvest limit in 2001.

Alternative 2 recreational harvest limit of 1.77 million lb (0.80 million kg) in 2002 would be the same harvest level that was implemented in 2001. It is a decrease of about 3.41 million lb (1.54 million kg) from 2000 estimated recreational landings. Alternative 3 scup recreational harvest limit of 3.2 million lb (1.45 million kg) in 2002 is 1.43 million lb (0.65 million kg) higher than the 2001 recreational harvest limit for 2001, and 1.98 million lb (0.90 million kg) below 2000 recreational landings. With either Alternative 1, 2 or 3, it is possible that more restrictive management measures may be required to prevent anglers from exceeding the 2002 recreational harvest limit, depending upon the effectiveness of the 2001 recreational management measures. The effect of greater restrictions on scup party/charter boats is unknown at this time. The Council intends to recommend specific measures to attain the 2002 scup recreational harvest limit in December

2001, and will provide additional analysis of the measures upon submission of its recommendations early in 2002.

Black sea bass recreational landings increased slightly from 1991 to 1995. Landings decreased considerably from 1996 to 1999, and then substantially increased in 2000. In 2000, recreational landings were 3.62 million lb. For the recreational fishery, the 2002 harvest limit under Alternative 1 is 3.47 million lb (1.57 million kg). This is nearly identical to the 2000 recreational landings estimate. Therefore, it is not expected to result in negative economic impacts on the recreational fishery. Under Alternative 2 (3.15 million lb (1.43 million kg)), recreational landings would be 0.5 million lb (0.23 million kg) lower than the 2000 landings estimate. As such, this alternative could cause some negative economic impacts, depending upon the effectiveness of the 2001 recreational black sea bass measures. The recreational harvest limit under Alternative 3 (4.13 million lb (1.87 million kg)) is 14-percent higher than the 2000 recreational landings estimate. Alternative 3 would likely result in positive economic impacts on the recreational fishery. The Council intends to recommend specific measures to attain the 2002 black sea bass recreational harvest limit in December 2001, and will provide additional analysis of the measures upon submission of its recommendations early in 2002.

The effects of the existing GRAs are fully described in the proposed rule (65 FR 71046, November 28, 2000) and the final rule (66 FR 12910, March 1, 2001) implementing the 2001 specifications. Those impacts are not repeated here. The impacts of the GRAs are expected to remain unchanged in 2002 with disapproval of the Council's recommendation to allow vessels using small-mesh to fish for non-exempt species in the GRAs provided the vessels use a 5.5-inch (13.97-cm) square mesh extension between the body and codend of the trawl net.

The 80-percent landing trigger proposed for the scup Winter I period would decrease the landing limit from 10,000 lb (4,536 kg) to 1,000 lb (453 kg) per trip. A 75-percent trigger was used in 2001. The 80-percent trigger is expected to decrease landings early enough in the period to allow for the equitable distribution of the quota over the Winter I period. This measure is not expected to have a major negative effect on landings during the period, because it is not a major change from the 2001 measure.

Current scup minimum mesh regulations require the use of 4.5-inch (11.43-cm) mesh in the codend of the net for vessels possessing more than the threshold amount of scup (500 lbs (226.8 kg) from November through April; 100 lbs (45.3 kg) from May through October). For 2002, this action proposes that the threshold amount remain unchanged, but that the scup net provisions be modified to require large nets to have no more than 25 meshes of 4.5-inch (11.43-cm) mesh in the codend with at least 100 meshes of 5.0-inch (12.7-cm) mesh forward of the 4.5-inch (11.43-cm) mesh and small nets to have at least 4.5-inch (11.43-cm) mesh throughout. The 5.0-inch (12.7-cm) mesh forward of the 4.5-inch (11.43-cm) mesh is expected to allow for additional escapement of undersized scup, that would otherwise be discarded, to escape, and provide for a future increase in exploitable biomass. This measure is, therefore, not expected to reduce landings of scup or revenues derived from scup. The costs associated with gear conversion are expected to range from \$775.00 to \$1,354.00 per net.

In 2001, the black sea bass trip limits were 9,000 lb (4082.3 kg); 1,500 lb (680.4 kg); 1,000 lb (453.6 kg); and 2,000 lb (907.2 kg) for Quarters 1 through 4, respectively. For 2002, this action proposes to change the trip limits to 7,000 lb (3,175.1 kg) for Quarter 1; and 2,000 lb (907.2 kg) for Quarters 2, 3, and 4. The change proposed for Quarter 1 is the only change that lowers the possession limit from 2001. It is not expected to have a negative impact, because only one vessel is reported to have landed more than 7,000 lb in one trip during the 2000 fishing year. Raising the possession limit in Quarters 2 and 3 may cause the quarterly quota to be landed sooner, thereby closing the black sea bass fishery for a longer period of time. The possession limits were chosen as an appropriate balance between the economic concerns of the industry (e.g., landing enough fish to make the trip economically viable) and the need to ensure an equitable distribution of the quota over the entire period.

This action proposes an increase of the minimum black sea bass fish size in the commercial fishery, from 10 inches (25.4 cm) to 11 inches (27.9 cm). The bulk of the black sea bass landed in 2000 corresponded to the medium and large size categories. A change in the black sea bass size limit would reduce landings of small fish, thus, shifting a portion of the black sea bass landings from small size category fish to medium size category. Price differentials in 2000 were substantial between small (\$1.05)

and medium (\$1.47) black sea bass. Therefore, if 2000 price patterns continue in 2002, fishermen will benefit from this change.

This action also proposes changes in trawl minimum mesh size and escape vent sizes for pots and traps. In addition, a threshold of 500 pounds (226.8 kg) from January through March, and 100 pounds (45.3 kg) from April through December to trigger the minimum mesh size is proposed. The costs associated with black sea bass gear conversion are expected to range from \$775.00 to \$1,354.00 per net. The cost of replacing escape vents is expected to be minimal. According to anecdotal evidence, some commercial pot and trap black sea bass fishermen are already using these size escape vents.

The impacts of the summer flounder research set-aside in the Preferred Alternative are expected to be as follows. The set-aside could be worth as much as \$801,900 dockside based on a 2000 price of \$1.65 per pound. Assuming an equal reduction amongst all active vessels (i.e., 795 vessels that landed summer flounder in 2000), this could mean a reduction of about \$1,000 per individual vessel. Changes in the summer flounder recreational harvest limit as a result of the 2-percent research set-aside are not expected to be significant. The research set-aside would reduce the recreational harvest limit from 9.718 million lb (4.41 million kg) to 9.524 million lb (4.32 million kg), representing a 2-percent decrease, if 2-percent of the TAL is used for research. It is unlikely that the recreational possession, size or seasonal limits would change as the result of the research set-aside. Overall, long term benefits are expected as a result of the research set-aside due to improved summer flounder data.

The impacts of the scup research set-aside on the preferred Alternative are expected to be as follows. The set-aside could be worth as much as \$403,875 dockside based on a 2000 price of \$1.25 per pound. Assuming an equal reduction for all active commercial vessels (i.e., 425 vessels that landed scup in 2000), this could mean a reduction of about \$950 per vessel. Changes in the scup recreational harvest limit would be insignificant. The 3-percent research set-aside would reduce the scup recreational harvest limit from 2.770 million lb (1.26 million kg) to 2.687 million lb (1.22 million kg), a 3-percent decrease, if 3-percent of the TAL is used for the research set-aside. It is unlikely that scup recreational possession, size or seasonal limits would change as the result of the research set-aside. Overall, long term

benefits are expected as a result of the research set-aside due to improved scup data.

The impacts of the black sea bass research set-aside are expected to be as follows. The set-aside could be worth as much as \$365,160 dockside based on a 2000 price of \$1.79 per pound. Assuming an equal reduction for all active commercial vessels (i.e., 723 vessels that caught black sea bass in 2000), this could mean a reduction of about \$505 per vessel. Changes in the black sea bass recreational harvest limit would be minimal. The 3-percent research set-aside would reduce the black sea bass recreational harvest limit from 3.468 million lb (1.57 million kg) to 3.364 million lb (1.52 million kg), a 3-percent decrease, if 3 percent of the TAL is used for research. It is unlikely that the black sea bass possession, size or seasonal limits would change as the result of this research set aside. Overall, long term benefits are expected as a result of the research set-aside due to improved black sea bass data.

Regarding the research set-asides for summer flounder, scup, and black sea bass, it should again be noted that if the total amount of quota set-aside is not awarded for any of the three fisheries, the unused set-aside amount will be restored to the appropriate fishery's TAL. Also, participants having access to the quota set asides will be able to sell their catch. Therefore, total revenues in any of the three given fisheries should be the same or nearly so, whether or not research set-asides are awarded.

In summary, the commercial quotas and recreational harvest limits contained in the Preferred Alternatives would result in increases in landings and revenues for each of the species, most notably for summer flounder and scup, yet still achieve the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP. The proposed possession limits for scup and black sea bass were chosen to balance the need to provide for economically viable fishing trips with the need to ensure an equitable distribution of the quota over the entire period. The proposed gear modifications in the black sea bass fishery (increased minimum trawl mesh size and pot/trap escape vents) will impose initial compliance costs, but they were deemed necessary to complement the increase in minimum commercial fish size and an increase in the black sea bass TAL.

Similarly, the proposed modification to scup trawl nets will impose initial compliance costs, but will allow for additional escapement of undersized fish and provide for future increases in exploitable biomass. The economic effects of the existing GRAs will not change as a result of this proposed rule. The alternative that would allow small-mesh vessels to fish for non-exempt species in the GRAs was not selected because the research supporting the alternative was deemed by NMFS to be too preliminary, and therefore, causative of an unacceptable risk to increased juvenile scup mortality. Finally, the revenue decreases associated with the research set-asides are expected to be minimal, and are expected to yield important long-term benefits associated with improved data. It should also be noted that fish harvested under the research set-asides would be sold. As such, total gross revenue to the industry would not decrease if the research set asides are utilized.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 14, 2001.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraphs (a)(92) and (u)(1) are revised to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(92) Fish for, catch, possess, land, or retain black sea bass in or from the EEZ north of 35°15.3' N. lat. (the latitude of Cape Hatteras Light, NC, to the U.S.-Canadian border) in excess of the amount specified in § 648.145(a).

\* \* \* \* \*

(u) \* \* \*

(1) Fish for, catch, possess, land, or retain black sea bass in excess of the amount specified in § 648.144(a)(1)(i)

(i.e. 500 lb (226.8 kg) from January 1 through March 31, or 100 lb (45.4 kg) from April 1 through December 31), unless the vessel meets the minimum mesh requirement specified in § 648.144(a).

\* \* \* \* \*

3. In § 648.123, paragraphs (a)(1) is revised to read as follows:

**§ 648.123 Gear restrictions.**

(a) \* \* \*

(1) *Minimum mesh size.* The owners or operators of otter trawlers who are issued a scup moratorium permit and who possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 100 lb (45.4 kg) or more of scup from May 1 through October 31, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh for no more than 25 continuous meshes forward of the terminus of the codend, and with at least 100 continuous meshes of 5.0-inch (12.7-cm) mesh forward of the 4.5-inch (11.43-cm) mesh. For trawl nets with codends (including an extension) less than 125 meshes, the entire trawl net must have a minimum mesh size of 4.5 inches (11.43 cm) throughout the net. Scup on board these vessels shall be stored separately and kept readily available for inspection.

\* \* \* \* \*

4. In § 648.143, paragraph (a) is revised to read as follows:

**§ 648.143 Minimum sizes.**

(a) The minimum size for black sea bass is 11 inches (27.94 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) that fish for, possess, land or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35 deg. 15.3' N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canadian border. The minimum size may be adjusted for commercial vessels pursuant to the procedures in § 648.140.

\* \* \* \* \*

5. In § 648.144, paragraph (a)(1)(i) and (b)(2) are revised to read as follows:

**§ 648.144 Gear restrictions.**

(a) \* \* \*

(1) \* \* \*

(i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 500 lb

(226.8 kg) or more of black sea bass from January 1 through March 31, or 100 lb (45.4 kg) or more of black sea bass from April 1 through December 31, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with less than 75 meshes, the entire net must have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh throughout.

\* \* \* \* \*

(b) \* \* \*

(2) All black sea bass traps or pots must have an escape vent placed in a lower corner of the parlor portion of the pot or trap which complies with one of the following minimum sizes: 1.375 inches (3.49 cm) by 5.75 inches (14.61 cm); or a circular vent 2.375 inches (6.03 cm) in diameter; or a square vent with sides of 2 inches (5.08 cm), inside measure; however, black sea bass traps constructed or wooden lathes may have instead an escape vent constructed by leaving a space of at least 1.125 inches (2.86 cm) between one set of lathes in the parlor portion of the trap. These dimensions for escape vents and lathe spacing may be adjusted pursuant to the procedures in § 648.140.

\* \* \* \* \*

6. In § 648.145, paragraph (d) is revised to read as follows:

**§ 648.145 Possession limit.**

\* \* \* \* \*

(d) Owners or operators of otter trawl vessels issued a moratorium permit under § 648.4(a)(7) and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements specified in § 648.144(a) and that are not stowed in accordance with § 648.144(a)(4), may not retain more than 500 lb (226.8 kg) of black sea bass from January 1 through March 31, or more than 100 lb (45.4 kg) of black sea bass from April 1 through December 31. Black sea bass on board these vessels shall be stored so as to be readily available for inspection in a standard 100-lb (45.4 kg) tote.

\* \* \* \* \*

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