

**§ 52.16 What fees must the Director charge in connection with a commercial use authorization?**

The Director must charge a reasonable fee for a commercial use authorization, in addition to any application fee. The fee must at least be sufficient to recover the Director's costs associated with management and administration of the holder's activities under the authorization. The fee may also include the costs for the maintenance and repair of park area resources impacted by the holder's activities. If a holder is assigned the use of improvements within a park area, the fee must also include the fair value of the use of the assigned improvements.

**§ 52.17 How will the Director expend fees received from holders?**

All fees paid to the Director pursuant to commercial use authorizations shall be expended in the park area where collected to pay for management and administrative costs associated with commercial use authorizations and for other park area activities.

**Subpart D—Terms and Conditions of Commercial Use Authorizations**

**§ 52.18 What is the term of a commercial use authorization?**

A commercial use authorization must have a term of two years or less.

**§ 52.19 May a commercial use authorization be transferred?**

No. A commercial use authorization is not transferable. All commercial use authorizations must contain provisions prohibiting their sale or transfer.

**§ 52.20 May a commercial use authorization provide an exclusive right to provide commercial services in a park area?**

No. Commercial use authorizations may only authorize a non-exclusive right to provide commercial services in a park area.

**§ 52.21 May a commercial use authorization permit the construction of structures, fixtures, or improvements on lands located within the boundaries of a park area?**

No. A commercial use authorization may not authorize the construction of structures, fixtures or improvements on lands located within the boundaries of a park area. A commercial use authorization may assign a holder use of existing structures, fixtures or improvements when necessary to assist in providing services to visitors. An incumbent holder shall have no right or any form of preference to the continuing utilization of assigned structures, fixtures or improvements under the

terms of a subsequent commercial use authorization.

**§ 52.22 May the Director terminate a commercial use authorization?**

Yes. A commercial use authorization must contain appropriate provisions allowing the Director to terminate the authorization without liability at any time at the discretion of the Director.

**§ 52.23 What reporting requirements must a commercial use authorization contain?**

Commercial use authorizations must contain appropriate provisions requiring the permittee to provide the Director annually a statement of its gross receipts for the prior year's activities and any specific information related to the commercial use that the Director may request, including but not limited to, visitor use statistics and resource impact assessments. If a commercial use authorization authorizes the conduct of commercial services in more than one park area, gross receipts and other requested information and reports must be provided on an individual park area basis.

**§ 52.24 May incumbent holders obtain rights or a preference to the issuance of subsequent visitor use authorizations or to particular visitor use allocations?**

No. A commercial use authorization will not grant the holder a right or preferences of any form to the issuance of subsequent commercial use authorizations or to particular visitor use allocations.

**§ 52.25 What records must a holder maintain and what access does the Director have to these records?**

A commercial use authorization must contain appropriate provisions requiring the holder to maintain normal accounting books and records and granting the Director and the General Accounting Office access to such books and records at any time for the purpose of determining compliance with the terms of a commercial use service authorization and this part.

**§ 52.26 What other terms and conditions may or must a commercial use authorization contain?**

Commercial use authorizations must contain such provisions as are otherwise required by law and must contain such provisions as the Director determines are necessary and appropriate (1) to protect park area visitors; (2) to assure that holders provide appropriate services to visitors; and (3) to protect and properly manage the resources and values of the park area. Commercial use authorizations must also contain appropriate provisions strictly limiting the holder's conduct of services to the

services specified in the authorization issued.

Dated: November 13, 2002.

**Paul Hoffman,**

*Deputy Assistant Secretary, Fish and Wildlife and Parks.*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No.; I.D. 110602A]

**RIN 0648-AQ30**

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2003 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 2003 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 of the species and to provide an opportunity for public comment. NMFS requests comment on proposed management measures for the 2003 summer flounder, scup, and black sea bass fisheries. The intent of this action is to establish allowed 2003 harvest levels and other measures to attain the target fishing mortality (F) or exploitation rates, as specified for these species in the FMP.

**DATES:** Public comments must be received (see **ADDRESSES**) no later than 5 p.m. eastern standard time on December 12, 2002.

**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 also accessible via the Internet at <http://www.nero.nmfs.gov>.

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—2003 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:**

Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9104, fax (978) 281–9135, e-mail [sarah.mclaughlin@noaa.gov](mailto:sarah.mclaughlin@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

The regulations 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, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as an F rate or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP.

As required by the FMP, 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 annually the best available scientific information and to recommend catch limits and other management measures that will achieve the target F or exploitation rate for each fishery. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the MC's recommendations and any public comment and make their own recommendations. While the Board action is final, the Council's recommendations must be reviewed by NMFS to assure that they comply with FMP objectives. The Council and Board made their annual recommendations at a joint meeting held August 6–8, 2002.

**Explanation of Research Set-Asides**

In 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow up to 3 percent of the Total Allowable Landings (TAL) for each of the species to be set aside each year for scientific research purposes. For the 2003 fishing year, a Request for Proposals was published in March 2002 to solicit research proposals based upon the research priorities that were identified by the Council (67 FR 13602, March 25, 2002). The deadline for submission of proposals was May 13, 2002. Five applicants were notified in August 2002 that their research proposals had received favorable preliminary review. For informational purposes, this proposed rule includes a statement indicating the amount of quota that has been preliminarily set aside for research purposes. The quota set-asides may be adjusted in the final rule establishing the annual specifications for the summer flounder, scup, and black sea bass fisheries or, 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 research set-aside amount to the applicable TAL.

**Explanation of Quota Adjustments Due to Quota Overages**

In 2002, NMFS published final regulations to implement a regulatory amendment (67 FR 6877, February 14, 2002) that revised the way in which the commercial quotas for summer flounder, scup, and black sea bass are adjusted if landings in any fishing year exceed the quota allocated (thus resulting in a quota overage). The FMP previously required that any landings in excess of a commercial quota allocation for a state or period in one year must be deducted from that state's or period's annual quota allocation for the

following year. However, complete landings data for the year were not available until after the beginning of the subsequent fishing year. As a result, it was impossible to compile complete landings data for one fishing year, establish overages, and finalize adjustments for the following year prior to the start of the next fishing year on January 1. It was often necessary for NMFS to publish several quota adjustments over the course of the fishing year as additional landings data from the previous year became available. These frequent adjustments complicated the resource management efforts of state marine fisheries agencies and hampered efficient planning by commercial fishers.

NMFS established a cut-off date of October 31 for landings data to be used in calculating quota overages and making the resultant adjustments to the quotas for the following fishing year. Any additional overages due to landings occurring after October 31, or landings reported late, will be deducted from a state's (or period's) quota allocation the next year (i.e., 2 years later). This proposed rule calculates commercial quotas based on the proposed TALs and TACs and the formulas for allocation contained in the FMP. If NMFS approves a different TAL or TAC at the final rule stage, the commercial quotas will be recalculated based on the formulas in the FMP. Likewise, if new information indicates that overages have occurred and deductions are necessary, NMFS will publish notice of the adjusted quotas in the **Federal Register**. NMFS anticipates that the information necessary to determine whether overage deductions are necessary will be available by time of publication of the final rule to implement these specifications. The commercial quotas contained in this proposed rule for summer flounder, scup, and black sea bass do not reflect any deductions for overages. The final rule, however, will contain quotas that have been adjusted consistent with the procedures described above and contained in the regulatory amendment. Accordingly, landings information will be based upon: (1) Landings reported for the period January 1–October 31, 2002; (2) landings from the period November 1–December 31, 2001; and (3) late reported landings for the period January 1–October 31, 2001.

**Summer Flounder**

The FMP specifies a target F for 2003 of  $F_{max}$ , that is, the level of fishing that produces maximum yield per recruit. The best available scientific information indicates that  $F_{max}$  is currently equal to

0.26 (equal to an exploitation rate of about 22 percent from fishing). The 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 2002, indicated that the summer flounder stock is overfished and overfishing is occurring, according to the definitions in the FMP. This conclusion was derived from the fact that, in 2001, the estimated total stock biomass of 94.6 million lb (42,900 metric tons (mt)) was below the biomass threshold of 117.3 million lb (53,200 mt) under which the stock is considered overfished ( $B_{msy}$ ), and the estimated F of 0.27 was marginally above the FMP overfishing definition of 0.26 ( $F_{max}$ ).

However, the F of 0.27 estimated for 2001 represents a significant decline since 1994, when F was estimated to be 1.32. Also, total stock biomass has increased substantially from below 39.7 million lb (18,008 mt) in 1989 to 94.6 million lb (42,900 mt) in 2001. Likewise, spawning stock biomass (SSB) has increased steadily from 20.51 million lb (9,303 mt) in 1993 to 84.21 million lb (38,192 mt) in 2001, the highest value in the time series. Projections based on assumptions about future landings, discards, and recruitment to the stock indicate that, if the 2002 TAL and projected discard level are not exceeded, total stock biomass will exceed, by December 31, 2002, the biomass threshold of 117.3 million lb (53,200 mt), below which the stock would be considered overfished. When the total stock biomass is above this biomass threshold, the stock will no

longer be considered overfished, although it will still be below the 234.6 million lb (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 the 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 the projections based upon these data and made a TAL recommendation to achieve the target F. The Summer Flounder MC recommended a TAL of 23.3 million lb (10,569 mt), which would be allocated 13.98 million lb (6,341 mt) to the commercial sector and 9.32 million lb (4,227 mt) to the recreational sector. This TAL was determined by the MC to have a 50-percent probability of achieving the F target (0.26) that is specified in the FMP, if the 2002 TAL and assumed discard levels are not exceeded. Biomass estimates for 2002 are lower than had previously been estimated, due to a combination of: recreational landings that have consistently exceeded the harvest targets, lower recruitment in recent years, and to a possible underestimation of discards in stock forecasts. Therefore, because the biomass estimate is smaller than previously estimated, the maximum TAL that has at least a 50-percent probability of achieving the target F is lower. It is important to emphasize that the recommended TAL for 2003 is still considerably larger than the average TAL from 1995–2001 of 18.5 million lb.

The Council and Board reviewed the Summer Flounder MC's recommendation and adopted it. The Council and Board also agreed to set aside 91,163 lb (41.4 mt) of the summer flounder TAL for research activities.

After deducting the research set-aside, the TAL would be divided into a commercial quota of 13.92 million lb (6,314 mt) and a recreational harvest limit of 9.28 million lb (4,209 mt).

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 23.3-million lb (10,569-mt) TAL with a 91,163-lb (41.4-mt) research set-aside, as recommended by the Council and Board. The 9.28-million lb (4,209-mt) recreational harvest limit is allocated on a coastwide basis. The commercial quota is allocated to the states as shown in Table 1. Table 1 presents the allocations by state, with and without the commercial portion of the 91,163-lb (41.4-mt) research set-aside deduction. These state quota allocations are preliminary and are subject to a reduction if there are overages of a state's 2002 quota (using the landings information and procedures described earlier). Any commercial quota adjustments will be published in the **Federal Register** in the final rule implementing these specifications.

TABLE 1. 2003 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent Share	Commercial Quota		Commercial Quota with Research Set-Aside	
		lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
ME	0.04756	6649	3,016	6,623	3,004
NH	0.00046	64	29	64	29
MA	6.82046	953,502	432,501	949,772	430,809
RI	15.68298	2,192,485	994,494	2,183,907	990,603
CT	2.25708	315,540	143,127	314,306	142,567
NY	7.64699	1,069,051	484,914	1,064,869	483,016
NJ	16.72499	2,338,158	1,060,571	2,329,010	1,056,421
DE	0.01779	2,487	1,128	2,477	1,124
MD	2.03910	285,067	129,304	283,951	128,798
VA	21.31676	2,980,089	1,351,746	2,968,429	1,346,457
NC	27.44584	3,836,936	1,740,405	3,821,924	1,733,596
Total	100.00	13,980,029	6,341,235	13,925,332	6,316,424

<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 35th Northeast Regional Stock Assessment Review Committee (SARC 35) in June 2002. SARC 35 concluded that scup are no longer overfished, but stock status with respect to overfishing cannot currently be evaluated. Scup SSB is increasing. The NEFSC spring survey 3-year average (2000 through 2002) for scup SSB was 3.20 kg/tow, which is about 15 percent higher than the threshold that defines the stock as overfished (2.77 kg/tow of SSB). SARC 35 noted that the change in stock status (from overfished to not overfished) was the result of an extremely high survey observation in 2002 (8.94 kg/tow of SSB) and its contribution to the calculation of the 3-year moving average. However, SARC 35 also cautioned that the spring survey index for 2002 is highly uncertain because the abundance of all age groups in the survey increased substantially as compared with the 2001 results.

SARC 35 indicated that relative exploitation rates on scup have declined in recent years, although the absolute value of  $F$  cannot be determined because of a lack of reliable discard estimates and information regarding the length composition of scup landings and discards. Overall, most recent scup survey observations indicate strong recruitment and some rebuilding of age structure. SARC 35 noted that the stock can likely sustain modest increases in catch, but that such increases should be taken with due consideration of the uncertainties associated with the stock status determination.

The target exploitation rate for scup in 2003 is 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 sectors' 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)--38.95 percent; and Winter II (November-December)--15.94 percent.

The proposed scup specifications for 2003 are based on an 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 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 the rebuilding schedule did not appear to be sufficiently risk-averse. NMFS advised the Council that the exploitation rate reflects the overfishing definition (converted to an  $F$  rate) which is conceptually sound and supported by NMFS. Therefore, for the short term, the proposed scup specifications for 2003 are based on an exploitation rate of 21 percent which was found to be conceptually sound. NMFS believes that the long-term risks associated with the disapproved rebuilding plan are not applicable 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. The scup stock has shown signs of significant rebuilding and is no longer overfished. It is, therefore, not necessary for 2003 to deviate from the specified exploitation rate. Furthermore, setting the scup specifications using an exploitation rate of 21 percent is a more risk-averse approach to managing the resource than not setting any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that complies with all Magnuson-Stevens Act requirements.

The Scup MC reviewed the available data in making its recommendation to the Council. Given the uncertainty associated with the spring survey, the Scup MC used a new approach to develop a TAC recommendation. The stock is just above the overfished threshold and this indicates that it is at approximately  $B_{msy}$ . Although MSY has not been calculated for scup, long-term potential catch (LTPC) has been used as a proxy. The NEFSC has indicated that the LTPC ranges from 22–33 million lb (9,979–14,969 mt), based upon historical catches. These results were corroborated with yield per recruit analysis indicating that the long-term average yield would be approximately 31 million lb (14,061 mt). If these MSY proxies are accurate, then yields at  $B_{msy}$  could range from approximately 11–16.5 million lb (4,990–7,484 mt). SARC 35 indicated that the scup stock "can likely sustain modest increases in catches, but managers should do so with consideration of high uncertainty in stock status determination." Given this advice, the Scup MC recommended that the TAL for 2003 be 13.5 million lb (6,123 mt), a value that is 25 percent above the 2002 TAL, yet within the range of yields that could be expected at  $B_{msy}$ , as discussed above. Assuming

the same level of discards in 2003 as used in 2002 (2.15 million lb (975 mt)), the Scup MC recommended a TAC of 15.65 million lb (7,099 mt).

Using the sector allocation specified in the FMP (commercial 78 percent; recreational—22 percent), the MC's recommendation would result in a commercial TAC of 10.08 million lb (4,572 mt) and a recreational TAC of 2.84 million lb (1,288 mt). Using the same commercial and recreational discard estimates used for the 2001 specifications (i.e., 2.08 million lb (943 mt) for the commercial sector, and 0.07 million lb (32 mt) for the recreational sector), the Scup MC recommendation would result in a commercial TAL of 8.0 million lb (3,629 mt) and a recreational harvest limit of 2.77 million lb (1,256 mt).

The Council and Board reviewed the Scup MC's recommendation, but did not adopt it. Instead, the Council and Board adopted an 18.65-million lb (8,459-mt) TAC and a 16.5-million lb (7,484-mt) TAL. This recommendation is 53 percent higher than the 2002 TAL. The Council and Board justified their recommendation by stating that, if scup biomass is approximately equal to  $B_{msy}$ , then a 16.5-million lb (7,484-mt) TAL corresponds to 50 percent of the upper estimate of the scup LTPC, which is estimated to be 33 million lb (14,969 mt). This TAL recommendation is the upper limit of the range of yields that would be expected at  $B_{msy}$ , the level at which the fishery is no longer considered overfished. The Council and Board also agreed to set aside 66,650 lb (30.2 mt) of the scup TAL for research activities. The TAL, after deducting the 66,650-lb (30.2-mt) research set-aside, would result in a commercial quota of 12.42 million lb (5,634 mt) and a recreational harvest limit of 4.01 million lb (1,819 mt).

NMFS is proposing to implement the Council's and Board's TAC and TAL recommendation because it is within the range of yields that could be expected at  $B_{msy}$ . Given the lack of information regarding the status of the stock (i.e., status based solely upon the survey indices), this method of determining the TAC/TAL is reasonable. Traditional methods would have resulted in a much higher TAC/TAL. If scup abundance is increasing, as preliminarily signals indicate, the Council's TAC/TAL recommendation is likely to achieve the 21-percent exploitation rate that is required by the FMP.

### Disapproval of Recommended Scup Winter I Possession Limit

To achieve the commercial quotas, the Council and Board recommended a 15,000–lb (6.8–mt) per week (Sunday through Saturday) landing limit for the scup Winter I quota period (January–April). NMFS is disapproving the Council's recommendation to implement a 15,000–lb (6.8–mt) per week landing limit for the Winter I quota period. NMFS' Office of Law Enforcement has indicated that a weekly landing limit would complicate, and possibly compromise, effective dockside monitoring and enforcement. With a weekly landing limit, multiple landings would have to be monitored for each vessel on a weekly basis. This would be an inefficient use of limited law enforcement resources and could

jeopardize the effectiveness of the limit by eliminating the ability to assess dockside violations at the time of landing. The current possession limit provision is effective primarily because enforcement officers need only be present for one landing to assess a violation.

For the Winter I period, NMFS is proposing to retain the current 10,000–lb (4.5–mt) possession limit, with a reduction to 1,000 lb (454 kg) when 80 percent of the period's quota is projected to be harvested. Public comments are requested on this proposed measure.

For the Winter II quota period (November–December), the Council and Board recommended a 1,500–lb (680–kg) possession limit. NMFS is proposing to implement the recommended 1,500–lb (680–kg) Winter II possession limit.

The Council and Board did not recommend any other changes to the existing commercial minimum mesh size, minimum mesh threshold possession limit, or the commercial minimum fish size. Therefore, these management measures are proposed to remain unchanged.

The 2003 commercial allocation recommended by the Council is shown, by period, in Table 2. Table 2 presents the allocations with, and without, the 66,650–lb (30.2–mt) research set-aside deduction. These 2003 allocations are preliminary and may be subject to downward adjustment due to 2002 overages in the final rule implementing these specifications, using the procedures for calculating overages described earlier.

TABLE 2. 2003 PROPOSED INITIAL COMMERCIAL SCUP QUOTA AND POSSESSION LIMITS

Period	Percent	TAC <sup>1</sup>	Discards <sup>2</sup>	Commerical Quota		Possession Lb	Limits Kg
				W/O Research Set-Aside	With Research Set-Aside		
Winter I	45.11	6,562,152 (2,976,542)	936,935 (424,987)	5,625,217 (2,551,555)	5,601,766 (2,540,918)	10,000 <sup>3</sup>	4,536
Summer	38.95	5,666,056 (2,570,080)	808,991 (366,952)	4,857,065 (2,203,128)	4,836,816 (2,193,943)	na*	na*
Winter II	15.94	2,318,792 (1,051,786)	331,074 (150,173)	1,987,718 (901,614)	1,979,431 (897,855)	1,500	680
Total <sup>4</sup>	100.00	14,547,000 (6,598,408)	2,077,000 (942,111)	12,470,000 (5,656,297)	12,418,013 (5,632,716)		

<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 would 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.

### Scup Gear Restricted Areas (GRAs)—Request for Comments

In 2000, the 31st Stock Assessment Review Committee (SARC 31) emphasized the need to reduce scup mortality resulting from discards in the scup fishery and in other fisheries. In response to that recommendation, GRAs were established during the 2000 fishing year (65 FR 33486, May 24, 2000, and 65 FR 81761, Dec. 27, 2000) and modified for the 2001 fishing year (66 FR 12902, March 1, 2001). 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.

In the proposed rule for the 2002 fishing year specifications (66 FR 58097, November 20, 2001), NMFS disapproved a Council recommendation that would have allowed small-mesh vessels to fish for non-exempt species in

the GRAs, if they used specially 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). NMFS disapproved the recommendation because the supporting research regarding the effectiveness of the modified trawl gear was not complete.

For the 2003 fishing year, the Council has again recommended allowing vessels to fish for non-exempt species with small mesh in the GRAs, provided they use specially modified trawl nets. In addition, however, the Council has recommended requiring vessels to carry observers, consistent with Atlantic Coastal Cooperative Statistics Program (ACCSP) observer standards.

NMFS has previously indicated that gear modifications are a potential solution to the scup bycatch problem, but that additional work is needed to obtain more information regarding the

effectiveness of the modifications. Observed trips on vessels using modified trawl gear could provide such information. The ACCSP observer standards specify a certain level of observer coverage, generally less than 100 percent. To implement such a program, NMFS would likely need to require: (1) Pre-enrollment of all vessels intending to make trips into the GRAs; (2) declaration of the intended number of trips into the GRAs by each vessel; (3) notification from the vessels owner 5 days prior to the start of a trip; (4) issuance of waivers for trips not requiring an observer; and, possibly, (5) vessel monitoring systems (VMS) on board all participating vessels. These administrative and enforcement requirements preclude further consideration of this alternative at this time. Rather, NMFS proposes to implement an alternative requiring 100–percent observer coverage for all vessels fishing with small mesh for non-exempt

species in the GRAs, using the modified gear. This proposed alternative would impose significantly fewer administrative and enforcement complexities, and provide more data to evaluate the effectiveness of the gear modifications.

Specifically, NMFS is seeking comment through this proposed rule on an alternative whereby vessels fishing for non-exempt species (*Loligo* squid, black sea bass, and silver hake (whiting)) with mesh less than the minimum mesh size required to fish for scup (specified at § 648.123) in the GRAs (described at § 648.122) for any portion of a trip would be required to use modified trawl gear (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 would also be required to carry a NMFS-certified observer. An initial enrollment would be required through a phone call, and NMFS would issue a Letter of Authorization to each participating vessel. Obtaining and paying for the observer would be the responsibility of the participating vessel.

Implementation of the proposed alternative is contingent upon the availability of NMFS-trained and certified observers. Therefore, NMFS is currently working to ensure that a sufficient number of observers will be trained, certified, and available prior to the start of the GRAs on January 1, 2003. However, it is possible that all of the necessary components to implement successfully the proposed observer program may not be in place prior to the start of 2003. If implemented, NMFS intends to commence with the proposed Scup GRA Access Program as soon as practicable.

#### **Black Sea Bass**

Black sea bass was last assessed by the 27<sup>th</sup> Northeast Regional Stock Assessment Review Committee (SARC 27), with results published in December 1998. SARC 27 indicated that black sea bass are overfished and at a low level of abundance. 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 2001 relative to 1996 and 1997 levels.

Results of the spring trawl surveys conducted by the NEFSC indicate that the black sea bass stock size has increased in recent years. The 3-year moving average of exploitable biomass recorded by the NEFSC spring trawl survey for 2000 through 2002 (0.59 kg/tow) is 64 percent higher than the value recorded for 1999 through 2001 (0.36 kg/tow). The stock is currently at approximately 2/3 the level of abundance that defines an overfished stock (1977–1979 average of 0.9 kg/tow of exploitable biomass). In addition, black sea bass recruitment indices (fish  $\leq$  14 cm) indicate that the stock size is likely to continue growing due to several large year classes that have been produced in recent years. The 2000 recruitment index (2.782 fish/tow) remains, by far, the highest in the time series. The 1999 and 2002 indices (0.700 fish/tow and 0.718 fish/tow, respectively) are more than twice as large as the average for the period 1968 through 1998, and are the fifth and sixth largest values in the time series. The 2001 year class was the only below average year class within the past 4 years, according to the NEFSC spring survey recruitment index.

Amendment 9 to the FMP, which was approved in 1996, established a recovery schedule to reduce overfishing on black sea bass over an 8-year timeframe. In 2003, the target exploitation rate is scheduled to drop from 37 percent to 25 percent, which is the exploitation rate associated with Fax (0.32).

The 2003 TAL recommendation is contingent upon assumptions regarding the black sea bass stock size in 2003. If the 2003 NEFSC spring survey biomass index is at least equal to 0.52 kg/tow (the estimate derived for 2003 using a regression through the 1999–2001 survey points), and if an exploitation rate of 48 percent is assumed for 1998, then the TAL associated with a 25-percent exploitation rate would be 7.2 million lb (3,266 mt). Alternatively, if the 2003 spring survey equals 0.44 (the

average of the 2001 and 2002 survey points) and if an exploitation rate of 48 percent is assumed for 1998, the TAL associated with a 25-percent exploitation rate would be 6.0 million lb (2,722 mt). The Black Sea Bass MC indicated that the stock size was likely to continue to increase, and determined that the 2003 TAL could remain the same as the 2002 TAL (6.8 million lb (3,084 mt)) and achieve a 25-percent exploitation rate, as required by the FMP for 2003. The Black Sea Bass MC also recommended that all other management measures remain unchanged for 2003.

At their August 2002 meeting, the Council and Board adopted the MC's recommendation for a status-quo 6.8 million-lb (3,084-mt) TAL for the 2003 fishing year, with a research set-aside of 67,676 lb (30.7 mt) for 2003. Additionally, the Council voted to retain a 7,000-lb (3.2-mt) possession limit for Quarter 1, and to increase the Quarters 2–4 possession limits from 2,000 lb (907 kg) to 5,000 lb (2.3 mt). Until Amendment 13 is implemented, a quarterly system will remain in effect for Federal waters; the states, through ASMFC, would manage the resource using a state-by-state quota system. Therefore, the Council recommended the higher possession limits for Quarters 2–4 so as not to constrain Federal permit holders from landing black sea bass in states with different landing limits.

This rule proposes to implement the Council's recommended TAL of 6.8 million lb (3,084 mt), with a 67,676-lb (30.7-mt) research set-aside, and possession limits of 7,000 lb (3.2 mt) for Quarter 1 and 5,000 lb (2.3 mt) for Quarters 2–4.

The proposed initial 2003 black sea bass commercial quota and corresponding possession limits are shown in Table 3. Table 3 presents the quarterly quota allocations with, and without, the 67,676-lb (30.7-mt) research set-aside deduction. These 2003 allocations are preliminary and may be subject to downward adjustment, as required by the FMP, in the final rule implementing these specifications, according to the procedures for calculating averages described earlier.

TABLE 3. 2003 PROPOSED INITIAL BLACK SEA BASS QUARTERLY COASTWIDE COMMERCIAL QUOTAS AND POSSESSION LIMITS

Quarter	Per- cent	W/O Research Set-Aside <sup>1</sup>	With Research Set-Aside <sup>1</sup>	Possession Limits	Kg
				Lb	
1 (Jan—Mar)	38.64	1,287,485 (583,993)	1,274,671 (578,181)	7,000	3,175
2 (Apr—Jun)	29.26	974,943 (442,227)	965,240 (437,826)	5,000	2,268
3 (Jul—Sep)	12.33	410,836 (186,352)	406,747 (184,497)	5,000	2,268
4 (Oct—Dec)	19.77	658,736 (298,798)	652,180 (295,824)	5,000	2,268
Total	100.00	3,332,000 (1,511,370)	3,298,838 (1,496,328)		

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

### 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. 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.

The economic analysis assessed the impacts of the various management alternatives. In the EA, the no action alternative is defined as follows: (1) no proposed specifications for the 2003 summer flounder, scup, and black sea

bass fisheries would be published; (2) the indefinite management measures (minimum sizes, bag limits, possession limits, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2003; and (4) there would be no specific cap on the allowable annual landings in these fisheries (i.e., there would be no quota). Because implementation of the no action alternative would be inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Act, would substantially complicate the approved management program for these fisheries, and would very likely result in overfishing of the resources, the no action alternative is not considered to be a reasonable alternative to the preferred action and is not analyzed in the EA/RIR/IRFA.

Alternative 1 consists of the harvest limits proposed by the Council and Board for summer flounder, scup, and

black sea bass. Alternative 2 consists of the most restrictive quotas (i.e., lowest landings) considered by the Council and the Board for all of the species.

Alternative 3 consists of the least restrictive quotas (i.e., highest landings) considered by the Council and Board for all three species. Although Alternative 3 would result in higher landings for 2003, it would also likely exceed the biological targets specified in the FMP.

First, a preliminary adjusted quota was calculated by deducting the research set-aside from the TAL. Then, the preliminary commercial quota overages for the 2002 fishing year were deducted from the initial 2003 quota alternatives. The quota overages were calculated according to the procedures described earlier, using available data as of September 2002. The resulting preliminary adjusted commercial quotas alternatives presented in Table 4 are provisional and may be further adjusted in the final rule implementing the 2003 specifications.

TABLE 4. COMPARISON (IN MILLION LB) OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED ("FLK" IS SUMMER FLOUNDER)

	2003 Initial TAL	2003 Re- search Set- Aside	2002 Com- mercial Quota Over- age	2003 Preliminary Adjusted Commercial Quota*	2003 Preliminary Recreational Har- vest Limit
Quota Alternative 1 (Preferred)					
FLK Preferred Alternative	23.30	0.09	0.06	13.87	9.28
Scup Preferred Alternative	16.50	0.07	0.00	12.42	4.01
Black Sea Bass Preferred Alternative (Status quo)	6.80	0.07	0.17	3.13	3.43
Quota Alternative 2 (More Restrictive)					
FLK Preferred Alternative 2	21.50	0.09	0.06	12.79	8.56
Scup Alternative 2 (Status Quo)	10.77	0.07	0.00	7.95	2.75
Black Sea Bass Alternative 2	4.60	0.07	0.17	2.05	2.31
Quota Alternative 3 (Least Restrictive)					
FLK Preferred Alternative 3 (Status Quo)	24.30	0.09	0.06	14.47	9.68
Scup Alternative 3	22.00	0.07	0.00	16.71	5.22

TABLE 4. COMPARISON (IN MILLION LB) OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED ("FLK" IS SUMMER FLOUNDER)—Continued

	2003 Initial TAL	2003 Re-search Set-Aside	2002 Commercial Quota Over-age	2003 Preliminary Adjusted Commercial Quota*	2003 Preliminary Rec-reational Harvest Limit
Quota Alternative 3 (Least Restrictive)					
Black Sea Bass Alternative 3	7.20	0.07	0.17	3.32	3.64

\* Note that preliminary quotas are provisional and may change to account for overages of the 2002 quotas.

Table 5 presents the percent change associated with each of commercial quota alternatives (adjusted for overages and research set-aside) compared to the final adjusted quotas for 2002.

TABLE 5. PERCENT CHANGE ASSOCIATED WITH ADJUSTED COMMERCIAL QUOTA ALTERNATIVES COMPARED TO 2002 ADJUSTED QUOTA

	Total Changes Including Overages and RSA	Quota Alternative 2 (Most Restrictive)	Quota Alternative 3 (Least Restrictive)
		Quota Alternative 1 (Preferred)	
Summer Flounder			
Aggregate Change	-4.48%	-11.92%	-0.34%*
Scup			
Aggregate Change	+71.22%	+9.61%	+130.36%
Black Sea Bass			
Aggregate Change	-0.10%	-34.51%	+6.16%

\* Denotes status quo management measures. The status quo or "no action" measure for summer flounder, scup, and black sea bass refers to what most likely will occur in the absence of implementing the proposed regulation.

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 2003 quotas could affect 1,830 vessels with a Federal summer flounder, scup, and/or black sea bass permit, as of July 15, 2002. However, the more immediate impact of this rule will likely be felt by the 1,073 vessels that actively participated (i.e., landed these species) in these fisheries in 2001, including vessels holding only state permits.

The Council estimated the total revenues derived from all species landed by each vessel during calendar year 2001 to determine a vessel's dependence and revenue derived from a particular species. This estimate provided the base from which to compare the effects of the proposed quota changes from 2002 to 2003. For example, if 90 percent of a vessel's 2001 revenue was derived from summer

flounder, then a small decrease in the summer flounder quota from 2002 to 2003 would be expected to have a large proportional reduction in the revenue of that vessel. Conversely, because that vessel did not derive a large percent of its revenue from scup in 2001, a large increase in the scup quota from 2002 to 2003 would not be expected to produce a large proportional increase in the revenue of that vessel. Generally, the percent of a vessel's revenue reduction depends upon the permits it holds and the species it lands. Diversity in landings helps to balance losses in one fishery with revenue generated from other fisheries. The Council's analysis of the harvest limits in Alternative 1 (Preferred Alternative) indicated that these harvest levels would produce a revenue increase for 321 commercial vessels that are expected to be impacted by this rule. The remaining 752 vessels were projected to incur small revenue losses (i.e., <5 percent) under Alternative 1. The small revenue losses were attributed to a decrease in the

summer flounder quota and a decrease in the adjusted black sea bass quota.

The Council also analyzed changes in total gross revenue that would occur as a result of the quota alternatives. Assuming 2001 ex-vessel prices (summer flounder -- \$1.62/lb; scup -- \$0.84/lb; and black sea bass -- \$1.55/lb), the 2003 quotas in Preferred Alternative 1 (after overages have been applied) would decrease total summer flounder revenues by approximately \$1.1 million, increase total scup revenues by \$4.3 million, and decrease total black sea bass ex-vessel revenues by less than \$5,000 relative to 2002 revenues.

If the decrease in summer flounder total ex-vessel gross revenue associated with the Preferred Alternative is distributed equally between the 795 vessels that landed summer flounder in 2001, the average decrease in gross revenue associated with the summer flounder quota in the Preferred Alternative would be \$1,324 per vessel. If the increase in scup total gross revenue associated with the Preferred Alternative is distributed equally

between the 483 vessels that landed scup in 2001, the average increase in gross revenue associated with the scup quota in the Preferred Alternative would be \$8,984 per vessel and, similarly, if the decrease in black sea bass total gross revenue associated with the Preferred Alternative is distributed equally between the 740 vessels that landed black sea bass in 2001, the average decrease in gross revenue associated with the black sea bass quota in the Preferred Alternative would be \$7 per vessel.

The overall increase in gross revenue associated with the three species combined in 2003 compared to 2002 is approximately \$3.3 million (assuming 2001 ex-vessel prices) under the Preferred Alternative. If this is distributed among the 1,073 vessels that landed summer flounder, scup, and/or black sea bass in 2001, the average increase in revenue would be \$3,058 per vessel.

The Council's analysis of Alternative 2 (i.e., most restrictive harvest limits) indicated that these harvest limits would produce a revenue loss for most of the 1,073 commercial vessels expected to be impacted by this rule. Only 64 commercial vessels expected to be impacted by this rule would experience a revenue increase under Alternative 2, primarily because a large proportion of their revenues were derived from scup.

An analysis of changes in total gross revenue associated with Alternative 2 indicated that the 2003 quotas would decrease summer flounder ex-vessel revenues by \$2.8 million, increase scup ex-vessel revenues by \$0.6 million, and decrease black sea bass ex-vessel revenues by approximately \$1.7 million, relative to 2002 revenues.

If the decrease 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 2001, the average decrease in gross revenue associated with the summer flounder quota in Alternative 2 would be \$3,525 per vessel. If the increase in total gross revenue associated with the scup quota in Alternative 2 is distributed equally between the 483 vessels that landed scup in 2001, the average increase in gross revenue associated with the scup quota in Alternative 2 would be \$1,212 per vessel and, similarly, if the decrease in black sea bass total gross revenue associated with Alternative 2 is distributed equally between the 740 vessels that landed black sea bass in 2001, the average decrease in gross revenue associated with the black sea

bass quota in Alternative 2 would be \$2,264 per vessel.

Under Alternative 2, the overall decrease in gross revenue associated with the three species combined in 2003 compared to 2002 is approximately \$3.9 million (assuming 2001 ex-vessel prices). If this is distributed among the 1,073 vessels that landed summer flounder, scup, and black sea bass in 2001, the average decrease in revenue would be \$3,635 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 1,073 commercial vessels expected to be impacted by this rule.

An analysis of changes in total gross revenue associated with Alternative 3 indicated that the 2003 quotas (after overages have been applied) would decrease summer flounder ex-vessel revenues by \$81,000, and increase scup and black sea bass ex-vessel revenues by approximately \$7.9 million, and \$0.3 million, respectively, relative to 2002 revenues.

If the decrease in summer flounder total gross revenue associated with Alternative 3 is distributed equally between the 795 vessels that landed summer flounder in 2001, the average decrease in gross revenue associated with the summer flounder quota in Alternative 3 would be \$101 per vessel. If the increase in scup total gross revenue is distributed equally between the 483 vessels that landed scup in 2001, the average increase in gross revenue associated with the scup quota in Alternative 3 would be \$16,444 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 740 vessels that landed black sea bass in 2001, the average increase in gross revenue associated with the black sea bass quota in Alternative 3 would be \$402 per vessel.

The overall change in gross revenue associated with the three species combined in 2003 compared to 2002 would be approximately \$8.2 million (assuming 2001 ex-vessel prices) under Alternative 3. If this is distributed among the 1,073 vessels that landed summer flounder, scup, and/or black sea bass in 2001, the average increase in revenue would be \$7,642 per vessel.

The Council also prepared an analysis of the alternative recreational harvest limits. The 2003 recreational harvest limits were compared with previous years through 2001, 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 a 5-percent overage in 1993 to a 122-percent overage in 2000. In 2001, summer flounder recreational landings were 11.64 million lb (5,280 mt), exceeding the harvest limit of 7.16 million lb (3,248 mt) by 63 percent.

For summer flounder, the adjusted 2003 preferred recreational harvest limit of 9.28 million lb (4,209 mt) in Alternative 1 is greater than the recreational harvest limits for the years 1995 through 2001. However, it is approximately 5 percent lower than the 2002 recreational harvest limit, and it would be a decrease of approximately 20 percent from 2001 recreational summer flounder landings. The adjusted summer flounder Alternative 2 recreational harvest limit of 8.56 million lb (3,882 mt) in 2003 would be a 12-percent decrease from the 2002 recreational harvest limit, and a 26-percent decrease from 2001 recreational summer flounder landings. The adjusted Alternative 3 recreational harvest limit is 9.68 million lb (4,391 mt). This is the status quo alternative. It is less than 1 percent lower than the 2002 recreational harvest limit, and represents a 17-percent decrease from 2001 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 2003 recreational harvest limit, depending upon the effectiveness of the 2002 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 2003 summer flounder recreational harvest limit in December 2002, and will provide additional analysis of the measures upon submission of its recommendations in early 2003.

Scup recreational landings declined over 89 percent for the period 1991 to 1998, then increased by 500 percent from 1998 to 2000. In 2001, recreational landings were 4.26 million lb (1,932 mt). Under Preferred Alternative 1, the adjusted scup recreational harvest limit for 2003 would be 4.01 million lb (1,819 mt). This is a 6-percent decrease from 2001 recreational landings. However, it is approximately 48 percent higher than the scup recreational harvest limit in 2002. The Alternative 2 scup recreational harvest limit of 2.75 million lb (1,247 mt) in 2003 would be the same recreational harvest level that was

implemented in 2002. It is a decrease of 1.51 million lb (685 mt), or 35 percent, from 2001 estimated recreational landings. The Alternative 3 scup recreational harvest limit of 5.22 million lb (2,368 mt) in 2003 is 2.47 million lb (1,120 mt) higher than the 2002 recreational harvest limit, and 0.96 million lb (435 mt) above 2001 recreational landings. With Alternative 2, and possibly Alternative 1, more restrictive management measures might be required to prevent anglers from exceeding the 2003 recreational harvest limit, depending largely upon the effectiveness of the 2002 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 2003 scup recreational harvest limit in December 2002, and will provide additional analysis of the measures upon submission of its recommendations early in 2003.

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 2001, recreational landings were 3.42 million lb (1,551 mt). For the recreational fishery, the adjusted 2003 harvest limit under Alternative 1 is 3.43 million lb (1,558 mt). This is nearly identical to the 2001 recreational landings estimate and the 2002 recreational harvest limit. Therefore, it is not expected to result in negative economic impacts on the recreational fishery. Under Alternative 2, the 2003 recreational harvest limit would be 2.32 million lb (1,052 mt). This level would represent a 32 percent decrease from 2001 recreational landings and from the 2002 recreational harvest limit. As such, this alternative could cause some negative economic impacts, depending upon the effectiveness of the 2002 recreational black sea bass measures. The 2003 recreational harvest limit under Alternative 3 would be 3.64 million lb (1,651 mt). This is 6 percent higher than the 2001 recreational landings estimate and the 2002 recreational harvest limit. Alternative 3 would likely result in positive economic impacts on the recreational fishery. The Council intends to recommend specific measures to attain the 2003 black sea bass recreational harvest limit in December 2002, and will provide additional analysis of the measures upon submission of its recommendations early in 2003.

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 2003. However, the Council's recommendation to allow vessels carrying observers (consistent with ACCSP protocol) and using small-mesh to fish for non-exempt species in the GRAs if they utilize a 5.5-inch (13.97-cm) square mesh extension between the body and codend of the trawl net will also have economic impacts. Similarly, the NMFS proposal to require 100-percent observer coverage for vessels participating in the Scup GRA Access Program will have economic impacts.

The Scup GRA Access Program would not be mandatory. If a vessel owner chooses to participate in the program, it is likely that the additional costs of carrying an observer and using the modified gear would be offset by increased landings of non-exempt species (*Loligo* squid, silver hake (whiting), and black sea bass). As such, an increase in *Loligo* landings relative to 2002 would have positive economic impacts on the *Loligo* fishery, relative to the status quo. However, it is not possible to assess the exact monetary value associated with the additional harvest because quantitative data on these nets are limited.

The actual net modifications are inexpensive and can be incorporated into existing nets with minimal labor. For vessels operating in the inshore fishery, compliance costs are estimated to be approximately \$775 per vessel, and for vessels operating in the offshore fishery, costs are estimated at approximately \$1,354 per vessel.

The cost of one at-sea observer day is approximately \$1,150, which would be paid by the vessel owner intending to fish in the GRAs. Fishing trips to the Southern GRA are expected to last approximately 4 days, and trips to the Northern GRA are expected to last approximately 3 days. Therefore, the total observer costs are estimated to be \$4,600 and \$3,450 for trips in the Southern and Northern GRAs, respectively. The observer costs would be in addition to operating costs. A survey of small Northeast fishing vessels (<65 ft (19.8 m) in length) whose primary gear was otter trawl and who reported landings in New England indicated that average total operating cost per trip for small trawlers in 1996 was \$267. A survey of large Northeast fishing vessels (>65 ft (19.8 m) in length) whose primary gear was otter trawl and who reported landings in New England in 1997 indicated that the average total operating cost per trip for

large trawlers in 1997 was \$2,608. The average ex-vessel value (1996–1999) of *Loligo* in directed trips in the Southern GRA is \$24,013 and in the Northern GRA was \$4,456. These values are based on the average landings of *Loligo* from 1996–1999 in the GRAs, and the average ex-vessel value (1996–1999) of *Loligo*, adjusted to 2001 dollars. Therefore, the requirement to carry at-sea observers would increase vessel operating costs. However, larger vessels fishing in the southern area would be most likely to recoup any increased operating costs. The observer requirement is anticipated to impose a larger negative impact on the profits of vessels fishing in the northern area. Individual vessels would need to assess changes in costs and revenues upon their operations before participating in the non-mandatory Scup GRA Access Program.

An analysis of Vessel Trip Report (VTR) data (1996–1999) indicates that, on average, 72 vessels had directed *Loligo* trips (>50% of the total landings were *Loligo*) in the GRAs, for a total of 209 trips. Assuming that all of these vessels choose to fish the same number of trips in the GRAs, a 5-percent observer requirement (Council recommendation) would mean that approximately 11 trips would have to carry observers in the GRAs. A 100-percent observer requirement (NMFS proposal) would mean that approximately 209 trips would be required to carry observers in the GRAs. The actual total number of trips required to carry an observer would vary, depending upon the individual decisions of vessel owners regarding the potentially increased profitability of fishing in the GRAs versus additional observer costs.

In 2002, the black sea bass possession limits were 7,000 lb (3.2 mt) for Quarter 1, and 2,000 lb (907 kg) for Quarters 2 through 4. For 2003, the Commission adopted state-specific allocations for 2003. If Amendment 13 to the FMP is approved by January 1, 2003, a Federal coastwide quota will go into effect to facilitate the state quotas and there would be no Federal possession limits. Until Amendment 13 is implemented, a quarterly system will remain in effect for Federal permit holders. Because state-by-state measures were approved by the Board, and there is the possibility that Federal implementation will not occur by January 1, 2003, the Council adopted liberal possession limits of 5,000 lb (2.3 mt) for Quarters 2–4, so as not to constrain Federal permit holders from landing in states with different landings limits. The possession limits in Quarters 2–4 are not expected to result in an overharvest of the black sea bass

commercial quota, since states' management measures will control landings. Because of the states' ability to tailor management measures to the needs of their fisheries, the more liberal possession limits in Quarters 2-4 are expected to result in positive social and economic impacts relative to the status quo.

The current regulations for scup specify a 10,000-lb (4,536-kg) possession limit for Winter I and a 2,000-lb (907-kg) possession limit for Winter II. For 2003, the alternative adopted by the Council and Board includes a limit of 15,000 lb/week (6.8 mt/week) for Winter I and a possession limit of 1,500 lb (680 kg) for Winter II. The reduced possession limits are expected to constrain commercial landings to the commercial TAL and to distribute landings equitably throughout the periods to avoid derby-style fishing effort and associated market gluts. The Council and Board are recommending weekly possession limits for Winter I to allow fishermen to determine the best time for them to fish and to help avoid market gluts and unsafe fishing practices. These possession limits were chosen as an appropriate balance between the economic concerns of the industry (e.g., landing enough scup to make the trip economically viable) and the need to ensure the equitable distribution of the quota over the period. As such, the possession limits would be expected to result in positive social and economic impacts. However, due to serious enforcement concerns, NMFS is proposing to disapprove the recommendation for weekly possession limits and to retain the status-quo 10,000-lb (4,536 kg) possession limit for Winter I. This possession limit was successful at keeping the fishery open for the duration of the 2002 Winter I quota period, while nearly achieving the entire quota.

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 \$147,684 dockside, based on a 2001 ex-vessel price of \$1.62 per pound. Assuming an equal reduction among all active vessels (i.e., 795 vessels that landed summer flounder in 2001), this could mean a reduction of about \$186 per individual vessel. Changes in the summer flounder recreational harvest limit as a result of the 91,163-lb (43,619-kg) research set-aside are not expected to be significant. The research set-aside would reduce the recreational harvest limit from 9.32 million lb (4,227 mt) to 9.28 million lb (4,209 mt). 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 in the Preferred Alternative are expected to be as follows. The set-aside could be worth as much as \$55,986 dockside, based on a 2001 ex-vessel price of \$0.84 per pound. Assuming an equal reduction for all active commercial vessels (i.e., 483 vessels that landed scup in 2001), this could mean a reduction of about \$116 per vessel. Changes in the scup recreational harvest limit would be insignificant. The 66,650-lb (30,232-kg) research set-aside would reduce the scup recreational harvest limit from 4.03 million lb (1,828 mt) to 4.01 million lb (1,819 mt). 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 \$104,898 dockside, based on a 2001 ex-vessel price of \$1.55 per pound. Assuming an equal reduction for all active commercial vessels (i.e., 740 vessels that caught black sea bass in 2001), this could mean a reduction of about \$142 per vessel. Changes in the black sea bass recreational harvest limit would be minimal. The research set-aside would reduce the black sea bass recreational harvest limit from 3.46 million lb (1.57 million kg) to 3.43 million lb (1.55 million kg). 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.

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.

In summary, the 2003 commercial quotas and recreational harvest limits contained in the Preferred Alternative would result in small decreases in summer flounder and black sea bass landings and substantially higher scup landings, relative to 2002. The proposed specifications contained in the Preferred Alternative were chosen because they allow for the maximum level of landings, 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 because they are enforceable and are intended to provide for economically viable fishing trips that will be equitably distributed over the entire quota period.

The economic effects of the existing GRAs will not change as a result of this proposed rule. The alternative to allow small-mesh vessels to voluntarily fish for non-exempt species in the GRAs if they deploy modified trawl gear and carry a NMFS-certified observer is being proposed to give vessels an opportunity to fish with small-mesh trawl gear in the GRAs while providing much-needed data on the selectivity of the modified trawl gear. Although the Scup GRA Access Program does impose additional voluntary compliance and operating costs, this alternative is expected to minimize both the reporting burden on small entities and the administrative support required of NMFS to oversee the program. The Scup GRA Access Program will keep intact the scup conservation benefits associated with the GRAs, but provide important selectivity information that can be evaluated in future management decisions regarding the GRAs.

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.

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average approximately 2 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Patricia A. Kurkul (see ADDRESSES), and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 22, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, 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, paragraph (a)(122) is revised to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(122) Fish for, catch, possess, retain or land *Loligo* squid, silver hake, or black sea bass in or from the areas and during the time periods described in § 648.122(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b), or unless the vessel is in compliance with the Gear Restricted Area Access Program requirements specified at § 648.122(d).

3. In § 648.122, paragraphs (a)(1) and (b)(1) are revised, and paragraph (d)(1) is added to read as follows:

**§ 648.122 Season and area restrictions.**

(a) \* \* \*

(1) *Restrictions.* From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section, except for vessels participating in the Gear Restricted Area Access Program that are fishing with modified trawl gear and carrying a NMFS-certified observer as specified in paragraph (d) of this section, 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. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

**SOUTHERN GEAR RESTRICTED AREA**

Point	N. Lat.	W. Long.
SGA1	39°20'	72°50'
SGA2	39°20'	72°50'
SGA3	38°00'	73°55'
SGA4	37°00'	74°40'
SGA5	36°30'	74°40'
SGA6	36°30'	75°00'
SGA7	37°00'	75°00'
SGA8	38°00'	74°20'
SGA1	39°20'	72°50'

(b) \* \* \*

(1) *Restrictions.* From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section, except for vessels participating in the Gear Restricted Area Access Program that are fishing with modified trawl gear and carrying a NMFS-certified observer as specified in paragraph (d) of this section, 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. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area I is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

**NORTHERN GEAR RESTRICTED AREA 1**

Point	N. Lat.	W. Long.
NGA1	41°00'	71°00'
NGA2	41°00'	71°30'
NGA3	40°00'	72°40'
NGA4	40°00'	72°05'
NGA1	41°00'	71°00'

\* \* \* \* \*

(d) *Gear Restricted Area Access Program*—Vessels that are subject to the provisions of the Southern and Northern Gear Restricted Areas, as specified in paragraphs (a) and (b) of this section, respectively, may fish for, or possess, non-exempt species using trawl nets having a minimum mesh size less than that specified in paragraphs (a) and (b) of this section, provided that:

(1) The vessel possesses on board all required Federal fishery permits and a Scup GRA Access Program Exemption Authorization issued by the Regional Administrator, Northeast Region, and is in compliance with all conditions and restrictions specified in the Scup GRA Access Program Exemption Authorization;

(2) The vessel must carry a NMFS-approved observer on board if any portion of the trip will be, or is, in a GRA; and,

(3) While fishing in a GRA, the vessel must fish only with a specially modified trawl net that has an escapement extension consisting of 45 meshes of 5.5-inch (13.97-cm) square mesh that is positioned behind the body of the net and in front of the codend.

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