

The meeting will provide an opportunity to review compliance with the operator qualification rule, to clarify operator qualification requirements, and to hear compliance issues from Federal and State pipeline safety personnel, industry, and the public. All persons attending the meeting will have an opportunity to comment on operator qualification compliance issues and to question the expert panel on the new operator qualification compliance protocols.

Issued in Washington, DC on December 13, 2002.

**Richard D. Huriaux,**

*Manager, Regulations, Office of Pipeline Safety.*

[FR Doc. 02-32270 Filed 12-27-02; 4:07 pm]

BILLING CODE 4910-60-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 219

[Docket No. 2001-11213, Notice No. 2]

RIN 2130-AA81

#### Alcohol and Drug Testing: Determination of Minimum Random Testing Rates for 2003

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of determination.

**SUMMARY:** Using data from Management Information System annual reports, FRA has determined that the 2001 rail industry random testing positive rate was 0.77 percent for drugs and 0.21 percent for alcohol. Since the industry-wide random drug testing positive rate continues to be below 1.0 percent, the Federal Railroad Administrator (Administrator) has determined that the minimum annual random drug testing rate for the period January 1, 2003 through December 31, 2003 will remain at 25 percent of covered railroad employees. Since the random alcohol testing violation rate has remained below 0.5 percent for the last two years, the Administrator has determined that the minimum random alcohol testing rate will remain at 10 percent of covered railroad employees for the period January 1, 2003 through December 31, 2003.

**DATES:** This notice of determination is effective upon publication.

**FOR FURTHER INFORMATION CONTACT:** Lamar Allen, Alcohol and Drug Program Manager, Office of Safety Enforcement, Mail Stop 25, Federal Railroad Administration, 1120 Vermont Avenue,

NW., Washington, DC 20005, (Telephone: (202) 493-6313).

#### SUPPLEMENTARY INFORMATION:

#### Administrator's Determination of 2003 Random Drug and Alcohol Testing Rates

In a final rule published on December 2, 1994 (59 FR 62218), FRA announced that it will set future minimum random drug and alcohol testing rates according to the rail industry's overall positive rate, which is determined using annual railroad drug and alcohol program data taken from FRA's Management Information System. Based on this data, the Administrator publishes a **Federal Register** notice each year, announcing the minimum random drug and alcohol testing rates for the following year (see 49 CFR 219.602, 608).

Under this performance-based system, FRA may lower the minimum random drug testing rate to 25 percent whenever the industry-wide random drug positive rate is less than 1.0 percent for two calendar years while testing at 50 percent. (For both drugs and alcohol, FRA reserves the right to consider other factors, such as the number of positives in its post-accident testing program, before deciding whether to lower annual minimum random testing rates). FRA will return the rate to 50 percent if the industry-wide random drug positive rate is 1.0 percent or higher in any subsequent calendar year.

In 1994, FRA set the 1995 minimum random drug testing rate at 25 percent because 1992 and 1993 industry drug testing data indicated a random drug testing positive rate below 1.0 percent; since then FRA has continued to set the minimum random drug testing rate at 25 percent as the industry positive rate has consistently remained below 1.0 percent. In this notice, FRA announces that the minimum random drug testing rate will remain at 25 percent of covered railroad employees for the period January 1, 2003 through December 31, 2003, since the industry random drug testing positive rate for 2001 was 0.77 percent.

FRA implemented a parallel performance-based system for random alcohol testing. Under this system, if the industry-wide violation rate is less than 1.0 percent but greater than 0.5 percent, the rate will be 25 percent. FRA will raise the rate to 50 percent if the industry-wide violation rate is 1.0 percent or higher in any subsequent calendar year. FRA may lower the minimum random alcohol testing rate to 10 percent whenever the industry-wide violation rate is less than 0.5 percent for two calendar years while testing at a higher rate. Since the industry-wide

violation rate for alcohol has remained below 0.5 percent for the last two years, FRA is maintaining the minimum random alcohol testing rate at 10 percent of covered railroad employees for the period January 1, 2003 through December 31, 2003.

This notice sets the minimum random testing rates required next year. Railroads remain free, as always, to conduct random testing at higher rates.

Issued in Washington, DC, on December 20, 2002.

**Alan Rutter,**

*Administrator.*

[FR Doc. 02-33108 Filed 12-31-02; 8:45 am]

BILLING CODE 4910-06-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 648

[Docket No. 021017239-2322-02 ; I.D. 091902F]

RIN 0648-AQ15

#### Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries

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

**ACTION:** Final rule and 2003 specifications.

**SUMMARY:** NMFS announces final initial specifications for the 2003 fishing year for Atlantic mackerel, squid, and butterfish (MSB); including an in-season adjustment provision for the 2003 mackerel joint venture processing (JVP) annual specification. This action also specifies a method for carrying over *Loligo* squid Quarter I underages into Quarter III. The intent of this final rule is to promote the development and conservation of the MSB resource.

**DATES:** Effective February 3, 2003.

**ADDRESSES:** Copies of supporting documents used by the Mid-Atlantic Fishery Management Council, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR), Final Regulatory Flexibility Analysis (FRFA), are available from: Patricia A. Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/FRFA is accessible via the Internet at <http://www.nero.nmfs.gov>.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, 978-

281-9273, fax 978-281-9135, e-mail paul.h.jones@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

Regulations implementing the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP) require NMFS to publish annual initial specifications for maximum optimum yield (Max OY), allowable biological catch (ABC), initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual

processing (DAP), JVP, and total allowable level of foreign fishing (TALFF) for the species managed under the FMP. In addition, regulations implemented under Framework Adjustment 1 to the FMP allow the specification of quota set-asides to be used for research purposes.

Proposed 2003 initial specifications were published on October 29, 2002 (67 FR 65934). Public comments were accepted through November 27, 2002.

The final specifications are unchanged from those that were proposed. A complete discussion of the development of the specifications appears in the preamble to the proposed rule and is not repeated here.

**2003 Final Initial Specifications**

The following table contains the final initial specifications and research set-aside (RSA) for the 2003 MSB fisheries.

TABLE 1. FINAL INITIAL ANNUAL SPECIFICATIONS AND RSA, IN METRIC TONS (MT), FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2003

Specifications	Squid		Atlantic	h
	<i>Loligo</i>	<i>Illex</i>	Mackerel	Butterfish
Max OY	26,000	24,000	N/A <sup>1</sup>	16,000
ABC	17,000	24,000	347,000	7,200
IOY	16,872.5 <sup>5</sup>	24,000	175,000 <sup>2</sup>	5,900
DAH	16,872.5	24,000	175,000 <sup>3</sup>	5,900
DAP	16,872.5	24,000	150,000	5,900
JVP	0	0	10,000 <sup>4</sup>	0
TALFF	0	0	0	0
RSA	127.5	0	0	0

<sup>1</sup> Not applicable.

<sup>2</sup> IOY may be increased during the year, but the total ABC will not exceed 347,000 mt.

<sup>3</sup> Includes 15,000 mt of Atlantic mackerel recreational allocation.

<sup>4</sup> JVP may be increased up to 20,000 mt at discretion of Regional Administrator.

<sup>5</sup> Excludes 127.5 mt for RSA.

**2003 Final Specifications**

*Atlantic Mackerel*

This final rule specifies an Atlantic mackerel JVP of 10,000 mt for the 2003 fishery, with a possible increase of up to 10,000 mt (for a total JVP of up to 20,000 mt) later in the fishing year, should additional applications for JVP be received. This adjustment would be made by NMFS, in consultation with the Council, through publication of notification in the **Federal Register**. The action also specifies an Atlantic mackerel DAP of 150,000 mt and a DAH of 175,000 mt, which includes a 15,000-mt recreational component.

Four special conditions recommended by the Council and imposed by NMFS in previous years continue to apply to the 2003 Atlantic mackerel fishery, as follows: (1) JVPs would be allowed south of 37[deg]30' N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Administrator, Northeast Region, NMFS (Regional Administrator) should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel optimum yield (OY) may be increased during the year, but it should

not exceed 347,000 mt; and (4) applications from a particular nation for an Atlantic mackerel JVP allocation for 2003 may be based on an evaluation by the Regional Administrator of that nation's performances relative to purchase obligations for previous years.

**Atlantic Squids**

*Loligo*

This final rule specifies a *Loligo* squid IOY of 16,898 mt, which is equal to ABC minus the RSA, and subdivides the annual quota into quarterly periods. The 2003 quarterly allocations are as follows:

Quarter	h	Per-cent	Metric Tons <sup>1</sup>	Re-search Set-aside
I	(Jan-Mar) .....	33.23	5,606.7	N/A
II	(Apr-Jun) .....	17.61	2,971.3	N/A
III	(Jul-Sep) .....	17.3	2,918.9	N/A
IV	(Oct-Dec) .....	31.86	5,375.6	N/A
Total	.....	100	16,872.5	127.5

<sup>1</sup> Quarterly allocations after 127.5 mt RSA deduction.

**Carry-over of Quarterly Quota Underages**

In 2002, by default, quarterly underages from Quarters II and III carried over into Quarter IV, because

Quarter IV does not close until 95 percent of the total annual quota has been harvested. Additionally, if the Quarter I landings for *Loligo* squid were less than 70 percent of the Quarter I

allocation, the underage below 70 percent was to be applied to the Quarter III allocation. For 2003, the Council recommended that, in the event that the Quarter I landings for *Loligo* squid are

less than 80 percent of the Quarter I allocation, the underage below 80 percent should be added to the Quarter III allocation. In a November 20, 2002, letter to NMFS, the Council confirmed its intent relative to the transfer of underage of *Loligo* squid in Quarter I to Quarter III. The Council believes the proposed rule accurately reflected the intent of the Council with regard to this issue. Therefore, this final rule modifies the allocation method such that, if the Quarter I landings of *Loligo* squid are less than 80 percent of the Quarter I allocation, the underage below 80 percent will be added to the Quarter III allocation.

### Comments and Responses

Three commenters commented on a total of two issues in the proposed specifications.

*Comment 1:* Three commenters expressed support for the proposed zero allocation of Atlantic mackerel TALFF.

*Response 1:* This final rule implements the proposed zero allocation of Atlantic mackerel TALFF.

*Comment 2:* Two commenters opposed the proposed Atlantic mackerel JVP specification of 10,000 mt because they believe shore-based processors would be negatively affected by foreign joint ventures that would compete with the U.S. domestic mackerel harvest.

*Response 2:* The Council relied on testimony presented by domestic processors during its May 2, 2002, meeting concerning their current and projected shoreside processing capacity for Atlantic mackerel in 2003. While domestic processing capacity is increasing, the Council believes, based on the best data available, that the capacity of the domestic fleet to harvest mackerel still exceeds the domestic processors' capacity to process mackerel. As a result, the Council recommended, and NMFS is implementing, the 10,000-mt JVP allocation to provide additional opportunity for U.S. vessels to sell mackerel.

### Classification

This final rule has been determined to be not significant for purposes of E. O. 12866.

NMFS prepared a FRFA for this action. The FRFA includes a summary of the analyses done in support of these specifications. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

The reasons why this action is being taken by the agency, and the objectives of this final rule are explained in the preamble to the proposed rule and are not repeated here. This action does not

contain any collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648.

Three comments were submitted on the proposed rule, but none of them were specific to the initial regulatory flexibility analysis. However, two individuals commented on the economic impacts of the measures on the fishing industry; NMFS has responded to those comments (Comment 2) in the Comments and Responses section of the preamble to this final rule. No changes were made to the final rule as a result of the comments received.

The numbers of potential fishing vessels in the 2003 fisheries are 384 for *Loligo* squid/butterfish, 73 for *Illex* squid, 2,242 for Atlantic mackerel, and 1,828 vessels with incidental catch permits for squid/butterfish. All of the vessels are considered small entities. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The final DAH specifications of 175,000 mt for Atlantic mackerel, 24,000 mt for *Illex* squid, and 5,900 mt for butterfish represent no constraint on vessels in these fisheries. The level of landings allowed under the final specifications for 2003 has not been achieved by vessels in these fisheries in recent years. Absent such a constraint, no impacts on revenues are expected as a result of the final action.

From 1997–2001, *Loligo* squid landings averaged 16,771 mt annually. If the 2003 final DAH specification of 16,872.5 mt for *Loligo* squid is achieved, there would be an increase in catch and revenue in the *Loligo* squid fishery relative to the average landings from 1997–2001. One alternative would have set ABC, DAH, DAP, and IOY at 18,300 mt. Under this alternative, the quota would be specified at a level that is 1,300 mt higher than is specified by the overfishing definition control rule in the FMP. Since the stock would not be protected from overfishing under this alternative, some negative economic and social impacts could be expected from this alternative in the long term, if the stock did become overfished. The vessel owners, crews, dealers, processors and fishing communities associated with these ports would be expected to be affected the most by this alternative when compared to the final 2003 annual specifications for *Loligo*. This action also modifies the provision for carrying over Quarter I *Loligo* squid underages.

Under the new measure, *Loligo* squid Quarter I underages less than 80 percent of the Quarter I allocation would be applied to Quarter III. Currently, all underages from Quarter I less than 70 percent are applied to the Quarter III allocation. By making the increased underage available during Quarter III, *Loligo* squid permit holders could continue to fish during a time when that quarter may have otherwise been closed. This could provide an added economic benefit to fishers during Quarter III. However, because this provision would only shift a limited amount of quota from one period to another, and does not modify the *Loligo* squid annual quota, no overall change in revenue is expected.

One alternative considered for the Atlantic mackerel fishery was to set the 2003 specifications at the same level as 2002 (ABC = 347,000 mt, IOY = 85,000 mt, DAH = 85,000 mt, DAP = 50,000 mt, JVP = 20,000 mt and TALFF = 0 mt). This alternative would have increased JVP by 10,000 mt and decreased DAP by 100,000 mt. This alternative was rejected because of concerns associated with the potential for rapid expansion of the shoreside processing sector of this industry in 2003. If rapid expansion of the processing sector did occur early in 2003, and landings exceeded 85,000 mt, an inseason adjustment to IOY would be necessary. However, the majority of mackerel landings occur from January through March, and it is unlikely that an inseason adjustment could be made in time for quota to be available to the industry for that period. The result would be the unnecessary closure of the fishery that could result in negative economic and/or social impacts to the U.S. mackerel industry. Some or all of the vessel owners, crews, dealers, processors or fishing communities associated with the Atlantic mackerel fishery could be adversely affected by maintaining the 2002 annual specifications for Atlantic mackerel in 2003.

For *Illex* squid, one alternative considered would have set Max OY, ABC, IOY, DAH, and DAP at 30,000 mt. This specification would be far in excess of recent landings in this fishery. Therefore, there would be no constraints and, thus, no revenue reductions, associated with these specifications. However, the alternative was found unacceptable because an ABC specification of 30,000 mt may not prevent overfishing in years of moderate to low abundance of *Illex* squid.

For butterfish, the Council considered two alternatives; the first set a Max OY of 16,000 mt and an ABC, IOY, DAH, and DAP of 7,200 mt, and the second set

a Max OY of 16,000 mt and a ABC, IOY, DAH, and DAP at 10,000 mt. These specifications far exceed recent harvests in the butterfish fishery and would not constrain or impact the industry; however, they could lead to overfishing of the stock and, thus, were rejected.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as the small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits issued for the mackerel, squid, and butterfish fisheries. The guide and this final rule will be available upon request (see ADDRESSES).

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 24, 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 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 § 648.21, paragraph (f)(3) is revised to read as follows:

**§ 648.21 Procedures for determining initial annual amounts.**

\* \* \* \* \*

(f) \* \* \*

(3) Beginning January 1, 2003, if commercial landings in Quarter I are determined to be less than 80 percent of the Quarter I quota allocation, any remaining Quarter I quota that is less than 80 percent will be reallocated to Quarter III (e.g., if the Quarter I quota was 100,000 lb (220,462 kg) and 50,000 lb (110,231 kg) was landed, then the remaining Quarter I quota, up to 80 percent, or 30,000 lb (66,139 kg), would be reallocated to Quarter III. A balance

of 20 percent, or 20,000 lb (44,092 kg), would remain in Quarter I).

\* \* \* \* \*

[FR Doc. 02-33038 Filed 12-31-02; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 021122284-2323-02; 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:** Final rule, final 2003 specifications, and preliminary commercial quota adjustment; notification of 2003 commercial summer flounder quota harvest for the states of Maine and Delaware.

**SUMMARY:** NMFS issues final specifications for the 2003 summer flounder, scup, and black sea bass fisheries and makes preliminary adjustments to the 2003 commercial quotas for these fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, as well as other commercial management measures, including scup and black sea bass possession limits and scup observer coverage. This action also prohibits federally permitted commercial vessels from landing summer flounder in the States of Maine and Delaware in 2003. Regulations governing the summer flounder fishery require publication of this notification to advise these states, Federal vessel permit holders, and Federal dealer permit holders that no commercial quota is available for landing summer flounder in Maine and Delaware in 2003. The intent of this action is to establish allowed 2003 harvest levels and other measures to attain the target fishing mortality or exploitation rates, as specified for these species in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

**DATES:** The 2003 final specifications are effective from January 2, 2003 through December 31, 2003. The prohibition on landings of summer flounder in Maine and Delaware by Federal permit holders

is effective 0001 hours January 1, 2003, through 2400 hours December 31, 2003. Amendments to sections 648.14(a)(122), 648.14(a)(127), 648.122(a), 648.122(b), and 648.122(d) require approval by the Office of Management and Budget (OMB) under the Paperwork reduction Act (PRA). When OMB approval is received, the effective date will be announced in the **Federal Register**.

**ADDRESSES:** Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Environmental Assessment, Regulatory Impact Review, Final Regulatory Flexibility Analysis (EA/RIR/FRFA); 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/FRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279, 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[deg]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).

Pursuant to §§ 648.100 (summer flounder), 648.120 (scup), and 648.140 (black sea bass), the Administrator, Northeast Region, NMFS, (Regional Administrator) implements measures for the fishing year intended to achieve the annual targets set forth for each species in the FMP, specified either as a fishing mortality rate (F) or as an exploitation rate (the proportion of fish available at the beginning of the year that are