

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]

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**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

removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP. The management measures (e.g., commercial quotas, recreational harvest limits, minimum mesh requirements, minimum fish sizes, possession limits, and other gear restrictions) are summarized below, by species. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2003 specifications for these species was provided in the proposed specifications (67 FR 70904, November 27, 2002). That information is not repeated here. NMFS makes three corrections to the text published in the proposed 2003 specifications in this final rule. The term  $\frac{1}{2} B_{msy}$  used for summer flounder and scup indicates the biomass threshold below which the stock is considered overfished. This term was inadvertently published as  $B_{msy}$  in the proposed specifications ( $B_{msy}$  is the biomass level at which maximum sustainable yield (MSY) can be achieved), but because an accurate numeric range of yields at  $\frac{1}{2} B_{msy}$  was included, the information was not misleading. The 2003 commercial scup quotas by period (with research set-aside deducted) are corrected to reflect the percent share of the total quota less the research set-aside; the changes are slight, measuring less than one percent of the published figure in each case. Finally, as discussed in greater detail below, the cost to a fishing vessel of one at-sea observer day is estimated to be

approximately \$600, subject to finalization of observer program details, which would be paid by the vessel owner intending to fish in the scup Gear Restricted Areas (GRAs) under the scup GRA Exemption Program (see below for additional information).

NMFS will establish the 2003 recreational management measures for summer flounder, scup, and black sea bass by publishing a proposed and final rule in the **Federal Register** at a later date, following receipt of the Council's recommendations as specified in the FMP.

#### 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 Total Allowable Landings (TAL) associated with the target F is allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is allocated to the coastal states based upon percentage shares specified in the FMP. The recreational harvest limit is specified on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2003.

This final rule implements the specifications contained in the proposed rule. This implementation results in a 23.3-million lb (10,569-mt) summer flounder TAL, which is 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 Council's Summer Flounder Monitoring Committee (MC) to have at least a 50-percent probability of achieving the target F (0.26) that is specified in the FMP if the 2002 TAL and anticipated discard levels are not exceeded.

The proposed rule reflected the Council's and Board's recommendation to set aside 91,163 lb (41.4 mt) of the summer flounder TAL for research activities. The research set-aside process included the publication of a Request for Proposals that solicited proposals for 2003, based upon the research priorities identified by the Council (67 FR 13602, March 25, 2002). The deadline for submission of proposals was May 13, 2002. The Council recommended the approval of two research projects that would utilize the full summer flounder research quota. The summer flounder TAL having been adjusted to reflect this research set-aside, is 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). If any of these projects is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the summer flounder TAL through publication of a notice in the **Federal Register** by NMFS.

Table 1 presents the final 2002 commercial summer flounder quota for each state, the reported 2002 landings for each state through October 31, 2002, and the resultant 2002 quota overages.

TABLE 1.—SUMMER FLOUNDER PRELIMINARY COMMERCIAL 2002 LANDINGS BY STATE

State	2002 Quota <sup>1</sup>		Reported 2002 landings through 10/31/02		Preliminary 2002 overage	
	lb <sup>2</sup>	kg <sup>2,3</sup>	lb	kg <sup>3</sup>	lb	kg <sup>3</sup>
ME .....	(12,938)	(5,868)	575	261	13,513	6,129
NH .....	67	30	22	10	0	0
MA .....	938,765	425,817	981,263	445,098	42,498	19,277
RI .....	2,286,310	1,037,053	2,490,431	1,129,652	204,121	92,589
CT .....	329,044	149,252	342,227	155,233	13,183	5,980
NY .....	1,114,800	505,665	946,584	429,368	0	0
NJ .....	2,438,217	1,105,957	2,373,209	1,076,481	0	0
DE .....	(43,647)	(19,798)	4,439	2,014	48,086	21,812
MD .....	297,266	134,838	268,574	121,824	0	0
VA .....	3,107,619	1,409,592	3,183,643	1,444,091	76,024	34,484
NC .....	4,001,133	1,814,883	3,808,380	1,727,470	0	0
Total <sup>4</sup> .....	14,456,636	6,557,421	14,399,347	6,531,501	397,425	180,271

<sup>1</sup> Reflects quotas as published on December 26, 2001 (66 FR 66348).

<sup>2</sup> Parentheses indicate a negative number.

<sup>3</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.

<sup>4</sup> Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal the overage because they reflect positive quota balances in several states.

Based upon 2002 landings through October 31, 2002, NMFS adjusts the 2003 commercial quotas for 2002 quota overages. The commercial summer

flounder percent share, 2003 initial quota (with and without the research set-aside deduction), 2002 quota overages, and the adjusted quotas (with

and without the research set-aside deduction) for 2003, by state, are presented in Table 2.

TABLE 2.—FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2003

State	Percent share	2003 Initial quota		2003 Initial quota, less research set-aside		2002 Quota overages (through 10/31/02) <sup>2</sup>		Adjusted 2003 quota <sup>3</sup>		Adjusted 2003 quota, less research set-aside	
		lb	kg <sup>1</sup>	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
ME .....	0.04756	6,649	3,016	6,623	3,004	13,513	6,129	(6,864)	(3,113)	(6,890)	(3,125)
NH .....	0.00046	64	29	64	29	0	0	64	29	64	29
MA .....	6.82046	953,502	432,501	949,772	430,809	42,498	19,277	911,004	413,229	907,274	411,537
RI .....	15.68298	2,192,485	994,494	2,183,907	990,603	204,121	92,589	1,988,364	901,916	1,979,786	898,025
CT .....	2.25708	315,540	143,127	314,306	142,567	13,183	5,980	302,357	137,148	301,123	136,588
NY .....	7.64699	1,069,051	484,914	1,064,869	483,016	0	0	1,069,051	484,918	1,064,869	483,021
NJ .....	16.72499	2,338,158	1,060,571	2,329,010	1,056,421	0	0	2,338,158	1,060,582	2,329,010	1,056,432
DE .....	0.01779	2,487	1,128	2,477	1,124	48,086	21,812	(45,599)	(20,684)	(45,609)	(20,688)
MD .....	2.03910	285,067	129,304	283,951	128,798	0	0	285,067	129,306	283,951	128,799
VA .....	21.31676	2,980,089	1,351,746	2,968,429	1,346,457	76,024	34,484	2,904,065	1,317,275	2,892,405	1,311,986
NC .....	27.44584	3,836,936	1,740,405	3,821,924	1,733,596	0	0	3,836,936	1,740,423	3,821,924	1,733,613
Total <sup>4</sup> .....	100.00	13,980,028	6,341,235	13,925,332	6,316,424	397,425	180,271	13,582,603	6,161,029	13,527,907	6,136,218

<sup>1</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.  
<sup>2</sup> For Maine and Delaware, includes continued repayment of overharvest from 2001.  
<sup>3</sup> Parentheses indicate a negative number.  
<sup>4</sup> Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0).

The Commission has established a system whereby 15 percent of each state's quota may 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 ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in these 2003 final specifications because NMFS does not have authority to establish such subcategories.

**Maine and Delaware Summer Flounder Closures**

Table 2 above indicates that, for the States of Maine and Delaware, the amount of the 2002 summer flounder quota overage (inclusive of overharvest from 2001) is greater than the amount of commercial quota allocated to those states for 2003. As a result, there is no quota available for 2003 in either Maine or Delaware. The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of their permit, must not land summer flounder in any state that the Regional

Administrator has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2003, landings of summer flounder in Delaware and Maine by vessels holding commercial Federal fisheries permits are prohibited for the 2003 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Maine or Delaware for the 2003 calendar year, unless additional quota becomes available through a transfer.

**Scup**

The target exploitation rate for scup in 2003 is 21 percent. The FMP allocates 78 percent of the total allowable catch (TAC) associated with the exploitation rate to the commercial sector and 22 percent of the TAC to the recreational sector. Scup discard estimates are deducted from both sectors' TACs to establish TALs for each sector. 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 recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2003.

This final rule implements the annual quota specifications contained in the proposed rule. This implementation results in a 18.65-million lb (8,459-mt) scup TAC and in a 16.5-million lb (7,484-mt) TAL. Three research projects that would utilize the full scup research quota, 66,650 lb (30.2 mt), have been recommended for approval. The scup TAL, having been adjusted to reflect this research set-aside, is divided into a commercial quota of 12.42 million lb (5,634 mt) and a recreational harvest limit of 4.01 million lb (1,819 mt). If any of these projects is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the scup TAL through publication of a notice in the **Federal Register** by NMFS.

Table 3 presents the final 2002 commercial scup quota for each period, the reported 2002 landings for the 2002 Winter I and Summer periods, and the resultant 2002 quota overages.

TABLE 3.—SCUP PRELIMINARY 2002 COMMERCIAL LANDINGS BY QUOTA PERIOD AND 2002 OVERAGES

Quota period	2002 Quota <sup>1</sup>		Reported 2002 landings through 10/31/02		Preliminary overages as of 10/31/02	
	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
Winter I .....	3,517,300	1,595,420	3,159,999	1,433,366	0	0
Summer .....	2,556,595	1,159,652	2,959,349	1,342,352	402,754	182,688

TABLE 3.—SCUP PRELIMINARY 2002 COMMERCIAL LANDINGS BY QUOTA PERIOD AND 2002 OVERAGES—Continued

Quota period	2002 Quota <sup>1</sup>		Reported 2002 landings through 10/31/02		Preliminary overages as of 10/31/02	
	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
Winter II .....	1,179,502	535,019	n/a <sup>3</sup>	n/a <sup>3</sup>	n/a <sup>3</sup>	n/a <sup>3</sup>
Total .....	7,253,397	3,290,091	6,119,351	2,775,723	.....	.....

<sup>1</sup> Winter I and Summer Quotas as published on December 26, 2001 (66 FR 66348); Winter II quota as published on July 31, 2002 (67 FR 49621).

<sup>2</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.

<sup>3</sup> Not applicable.

Table 4 presents the commercial scup percent share, 2003 TAC, projected discards, 2003 initial quota (with and without the research set-aside deduction), and possession limits. To achieve the commercial quotas, this final rule implements a Winter I period (January–April) per trip possession limit of 15,000 lb (6.8 mt), and a Winter II period (November–December) per trip possession limit of 1,500 lb (680 kg). The Winter I per trip possession limit will be reduced to 1,000 lb (454 kg) when 80 percent of the commercial quota allocated to that period is projected to be harvested. See Response to Comment 1 (below) for additional information about the Winter I possession limit.

TABLE 4.—INITIAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2003 BY QUOTA PERIOD

Period	Percent share	Total allowable catch		Discards		Initial quota w/o research set-aside		Initial quota, less research set-aside		Possession limits (per trip) <sup>2</sup>	
		lb	kg <sup>1</sup>	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
Winter I .....	45.11	6,562,152	2,976,542	936,935	424,987	5,625,217	2,551,555	5,602,495	2,541,275	15,000	6,804
Summer .....	38.95	5,666,056	2,570,080	808,991	366,952	4,857,065	2,203,128	4,837,445	2,194,251	n/a <sup>3</sup>	n/a <sup>3</sup>
Winter II .....	15.94	2,318,792	1,051,786	331,074	150,173	1,987,718	901,614	1,979,689	897,981	1,500	680
Total .....	100.00	14,547,000	6,598,408	2,077,000	942,111	12,470,000	5,656,297	12,419,629	5,633,507	.....	.....

<sup>1</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.

<sup>2</sup> The Winter I landing limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation.

<sup>3</sup> Not applicable.

Table 5 presents the initial 2003 commercial scup quota allocations (with the research set-aside deductions), 2002 commercial quota overages for Winter I and Summer periods, as of October 31, 2002, and the adjusted 2003 commercial scup quotas, by period.

TABLE 5.—FINAL 2003 COMMERCIAL SCUP QUOTA ALLOCATIONS BY PERIOD

Quota period	2003 initial quota, less research set-aside		2002 quota overages through 10/31/02		2003 Adjusted quota	
	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
Winter I .....	5,602,495	2,541,275	0	0	5,602,495	2,541,275
Summer .....	4,837,445	2,194,251	402,754	182,688	4,434,691	2,011,563
Winter II .....	1,979,689	897,981	<sup>2</sup> n/a	<sup>2</sup> n/a	1,979,689	897,981
Total .....	12,419,629	5,633,507	402,754	182,688	12,016,875	5,450,819

<sup>1</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.

<sup>2</sup> Not applicable.

**Scup Gear Restricted Areas (GRAs)**

In the preamble to the proposed rule, NMFS explained the reasons for its disapproval of the Council's recommendation to allow vessels to fish for non-exempt species with small mesh in the GRAs, provided that they use modified trawl nets and carry observers, consistent with Atlantic Coastal Cooperative Statistics Program (ACCSP) observer standards. That rationale continues to apply and is not repeated here. In the proposed rule, NMFS requested comment on an alternative whereby all 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 also would be required to carry a NMFS-certified observer. The alternative would require an initial enrollment be made through a phone call and that NMFS issue a Letter of

Authorization to each participating vessel. Obtaining and paying for the observer would be the responsibility of the participating vessel. NMFS clarifies in this final rule that the cost to the fishing vessel of one at-sea observer day is estimated to be approximately \$600, subject to finalization of observer program details, which would be paid by the vessel owner intending to fish in the GRAs. The proposed rule indicated an estimate of \$1,150 per observer day, but this figure reflected the total program costs

per at-sea observer day, including administrative and other costs associated with the observer program that will be paid for by NMFS.

**Black Sea Bass**

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  $F_{max}$  (0.32). The FMP allocates 49 percent of the TAL associated with the exploitation rate to the commercial sector and 51 percent of the TAL to the

recreational sector. The commercial TAL then is divided on a coastwide basis into four quarterly periods: Quarter 1 (January–March)—38.64 percent; Quarter 2 (April–June)—29.26 percent; Quarter 3 (July–September)—12.33 percent; and Quarter 4 (October–December)—19.77 percent. The recreational TAL is specified as a coastwide harvest limit. Recreational measures will be the subject of a separate rulemaking early in 2003.

This final rule implements the specifications contained in the proposed rule. This implementation results in a TAL of 6.8 million lb (3,084 mt). Three research projects that would utilize the full black sea bass research quota have

been recommended for approval by the Council. The black sea bass TAL, having been adjusted to reflect this research set-aside, is divided into a commercial quota of 3.3 million lb (1,496 mt) and a recreational harvest limit of 3.43 million lb (1,557 mt). If any of these projects is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the black sea bass TAL through publication of a notice in the **Federal Register** by NMFS.

Table 6 presents the final 2002 commercial black sea bass quota for each quarter, the reported 2002 landings for Quarters 1 through 3, and the resultant 2002 quota overages.

TABLE 6.—BLACK SEA BASS PRELIMINARY 2002 COMMERCIAL LANDINGS BY QUARTER AND 2002 OVERAGES

Quarter	2002 Quota <sup>1</sup>		Reported 2002 landings through 10/31/02		2002 overages as of 10/31/02	
	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
Quarter 1 .....	1,220,052	553,406	1,297,059	588,342	77,007	34,930
Quarter 2 .....	856,208	388,369	1,070,546	485,596	214,338	97,223
Quarter 3 .....	400,101	181,483	405,560	183,961	5,459	2,476
Quarter 4 .....	656,274	297,681	<sup>3</sup> n/a	<sup>3</sup> n/a	<sup>3</sup> n/a	<sup>3</sup> n/a
Total .....	3,132,635	1,420,939	2,773,165	1,257,899	.....	.....

<sup>1</sup> Quarter 1 through 3 quotas as published on December 26, 2001 (66 FR 66348); Adjusted Quarter 4 quota as published on September 3, 2002 (67 FR 56229).

<sup>2</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.

<sup>3</sup> Not applicable.

Table 7 presents the initial 2003 commercial black sea bass quota

allocations, with and without the research set-aside deduction, and the

commercial possession limits being implemented through this final rule.

TABLE 7.—INITIAL COMMERCIAL BLACK SEA BASS QUOTA ALLOCATIONS AND POSSESSION LIMITS FOR 2003 BY QUARTER

Quarter	Percent share	Commercial quota w/o research set-aside		Commercial quota, less research set-aside		Possession limits	
		lb	kg <sup>1</sup>	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
1 .....	38.64	1,287,485	583,993	1,274,671	578,181	7,000	3,175
2 .....	29.26	974,943	442,227	965,240	437,826	5,000	2,268
3 .....	12.33	410,836	186,352	406,747	184,497	5,000	2,268
4 .....	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> Kilograms are as converted from pounds and may not necessarily add due to rounding.

Table 8 presents the initial 2003 commercial black sea bass quota allocations (with the research set-aside

deductions), 2002 commercial quota overages for Quarters 1–3 as of October 31, 2002, and the adjusted 2003

commercial black sea bass quotas, by period.

TABLE 8.—FINAL 2003 COMMERCIAL BLACK SEA BASS QUOTA ALLOCATIONS BY PERIOD

Quarter	2003 Initial quota, less research set-aside		2002 Quota Overages through 10/31/02		2003 Adjusted quota	
	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
Quarter 1 .....	1,274,671	578,181	77,007	34,930	1,197,664	543,257
Quarter 2 .....	965,240	437,826	214,338	97,223	750,902	340,607
Quarter 3 .....	406,747	184,497	5,459	2,476	401,288	182,023
Quarter 4 .....	652,180	295,824	n/a <sup>2</sup>	n/a <sup>2</sup>	652,180	295,824

TABLE 8.—FINAL 2003 COMMERCIAL BLACK SEA BASS QUOTA ALLOCATIONS BY PERIOD—Continued

Quarter	2003 Initial quota, less research set-aside		2002 Quota Overages through 10/31/02		2003 Adjusted quota	
	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
Total .....	3,298,838	1,496,328	.....	.....	3,002,034	1,361,711

<sup>1</sup> Kilograms are as converted from pounds and may not necessarily add due to rounding.

<sup>2</sup> Not applicable.

### Changes From Proposed Rule

For the Winter I scup fishery, NMFS is implementing a possession limit of 15,000 lb (6.8 mt) per trip rather than a possession limit of 10,000 lb (4.5 mt) per trip as originally proposed. This final rule includes the final adjusted commercial quotas for 2003, after accounting for overages in 2002 (through October 31, 2002).

### Comments and Responses

Comments were received on the proposed measures from an organization representing the commercial fishing industry and a state marine fisheries agency.

*Comment 1:* Both commenters expressed concern with NMFS' disapproval of the Council's and Board's recommendation for a 15,000-lb (6.8-mt) per week landing limit for the scup Winter I period (January-April). The commenters indicated that several states are in the process of amending their regulations to implement a weekly limit and that, if NMFS implements the 10,000-lb (4.5-mt) per trip possession limit, the quota would be exhausted quickly and there would be confusion in the commercial fishery regarding compliance. The commenters indicated that the majority of the states are willing and able to share the enforcement burden associated with monitoring a weekly landing limit, and encouraged NMFS to implement the measure for the 2003 season and later assess whether additional enforcement efforts are required, should there be infractions. The commenters stressed that the commercial scup industry has requested the weekly limit to assure availability of quota throughout the fishing year and that its members will comply with the measure, as it is in their own interest to do so. The industry group comment states that the adoption of the weekly limit would also reduce regulatory discards associated with the final tow of each fishing trip (made to fill the limit).

*Response:* In the proposed rule, NMFS articulated its concern regarding the increased resources required to monitor and enforce a weekly limit. However, NMFS recognizes the efforts of industry to extend fishing

opportunities, improve market conditions in the scup fishery, and to reduce regulatory discards, as well as the intent of the majority of the affected states to enforce a 15,000-lb (6.8-mt) per week landing limit. Therefore, based on comments received and on discussions with the states, NMFS has determined that implementation of a 15,000-lb (6.8-mt) possession limit per trip would be compatible with the states' 15,000-lb (6.8-mt) weekly landing limits, would be enforceable, and would benefit the industry. Landings will continue to be constrained by the Winter I quota, so overall landings and effects on the resource will not change.

In cases where state regulations regarding trip limits are more restrictive than this 15,000-lb (6.8-mt) trip limit, the state regulations would apply. That is, vessels landing scup in states with more restrictive possession limits may need to make more than one trip to reach the weekly limit, if that state is enforcing a 15,000-lb (6.8-mt) weekly landing limit.

*Comment 2:* A commercial fishing industry group indicated that a recent study demonstrated that the discard of scup in the *Loligo* fishery was less than 1 percent of the *Loligo* catch. The commenter stated that, as the small mesh *Loligo* fishery is not responsible for a significant portion of the scup discard problem, the fishery should be exempted from the GRA restrictions. The commenter further suggested that GRAs should be ended as a management tool for all small mesh fisheries. Until such time, the group suggested that NMFS require the use of 5.5-inch (13.97-cm) escapement panels in the GRAs and allow vessels using the gear access to the GRAs.

*Response:* NMFS supports the use of gear modifications for bycatch reduction as a potential replacement for area-based restrictions; however, at this time, the use of 5.5-inch (13.97-cm) escapement panels has not been demonstrated to reduce the bycatch of scup relative to the catch of non-exempt species, including *Loligo*. Until such time as gear modifications, or other suitable measures, are demonstrated to reduce sufficiently the bycatch of scup

in the fisheries for non-exempt species, the GRAs will be considered to be a necessary measure. NMFS recognizes the need to collect information to clarify this issue and is implementing the Scup GRA Exemption Program in order to facilitate the collection of information necessary to evaluate the effectiveness of the 5.5-inch (13.97-cm) escapement panel in reducing the bycatch of scup in the fisheries for non-exempt species.

*Comment 3:* The same commenter opposed the proposed 100-percent observer coverage requirement in the scup GRAs because too large of a portion of the vessel's gross revenues per trip would be required to pay for the observer. The group also indicated that the \$1,150 per day cost is not consistent with observer costs in other fisheries, such as the scallop fishery (\$590/day) or the Northeast distant water longline experimental fishery (\$800/day), and is not justifiable. The commenter suggested that NMFS provide observers at no cost to the vessels fishing in the GRAs using the Congressional funds allocated to the NMFS observer program, and that 5–10 percent coverage be implemented.

*Response:* NMFS explained in the proposed rule that implementation of 100-percent observer coverage would impose significantly fewer administrative and enforcement complexities, and provide more data to evaluate the effectiveness of the gear modifications than a lower level of observer coverage would. NMFS has clarified in the preamble of this final rule that the cost to a fishing vessel of one at-sea observer day is estimated to be approximately \$600, subject to finalization of observer program details, and which would be paid by the vessel owner intending to fish in the GRAs. This program, which was requested by the industry to provide NMFS more complete data to evaluate the effectiveness of gear modifications in reducing discards, is dependent on observer coverage. The provision that vessels pay for observers was discussed at the August 2002 Council meeting.

*Comment 4:* The same commenter requested that NMFS increase the scup research set-aside to 3 percent of the

TAL or, at the minimum, to the full amount of the group's initial request.

*Response:* The overall proportion of the scup TAL to be set aside for research was determined by the Council, and specific amounts to be awarded for individual projects were recommended by the Council's Ecosystems Planning Committee and subsequently approved by the Regional Administrator. Initiation of research activities is ultimately contingent on the issuance of an award by the NOAA Grants Management Division. The Director of the NMFS Northeast Region State, Federal, and Constituent Programs Office has previously indicated in a letter to the commenter that estimated research set-aside values for the project appeared to far exceed research costs, and that approval of the project would be contingent upon reduction of the amount of the set-aside to a level commensurate with overall research costs.

During the comment period, NMFS also received a petition for rulemaking in a letter cosigned by the United Boatmen of New Jersey and New York, New York Fishing Tackle Trade Association, and Cape May Party and Charter Boat Association. The petition is for NMFS to recalculate the 2003 summer flounder, scup, and black sea bass quotas in light of the discovery of problems with trawl survey equipment on the NOAA R/V Albatross IV. Currently, NMFS does not have complete information regarding the effect of the trawl warp calibration issue on the stock assessments of Mid-Atlantic species under Council management. NMFS intends to evaluate all possible impacts of trawl gear warp offsets on the last 2 years of summer flounder, scup, and black sea bass surveys as soon as possible. NMFS intends to address this issue prior to preparing the summer flounder, scup, and black sea bass quota specifications for the 2004 fishing year. In the meantime, NMFS is considering the petition for rulemaking, and may publish a notice of receipt of the petition in the **Federal Register**, if appropriate, as a separate action.

#### Classification

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

This action establishes annual quotas and related management measures for the summer flounder, scup, and black sea bass fisheries. If implementation of the quota provisions and other management measures is delayed, NMFS will be prevented from carrying out its function of preventing

overfishing of these three species. The fisheries covered by this action will begin making landings on January 1, 2003. If a delay in effectiveness is required, and a quota were to be harvested during a delayed effectiveness period, the lack of effective quota specifications would prevent NMFS from closing the fishery. The scup and black sea bass fisheries are expected to be active during the first few months of 2003, especially following a long period of closure for black sea bass during Quarter 4 of 2002. In addition, the States of Maine and Delaware would be open for summer flounder fishing but in a negative quota situation. These factors would likely result in large overages that would have distributional effects on other quota periods and might potentially disadvantage some gear sectors. Therefore, with the exception of the sections pertaining to gear modifications, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the quotas and other management measures, and for the closures of the fisheries in the States of Maine and Delaware.

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 rule making process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of Federal permits issued for the summer flounder, scup, and black sea bass fisheries. The guide will be available on the Internet at <http://www.nero.noaa.gov>. Copies of the guide can also be obtained from the Regional Administrator (*see ADDRESSES*).

The Council and NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action. The FRFA includes a summary of the analysis done in support of these specifications. A copy of the analysis is available from the Regional Administrator (*see ADDRESSES*). The preamble to the proposed rule included a detailed summary of the analysis contained in the IRFA, and that discussion is not repeated in its entirety here. A summary of the FRFA follows:

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here. This final rule does not duplicate, overlap, or conflict with any other Federal rules.

#### Public Comments

Two comments were received on the measures contained in the proposed rule. Comments did not refer specifically to the IRFA, but were related to economic impacts on small entities, especially as they relate to scup observer coverage and trip limits. NMFS clarifies in this final rule the cost to the fishing vessel of one at-sea observer day, and, in order to implement a measure that would be compatible with the states' 15,000-lb (6.8-mt) weekly landing limits, would be enforceable, and would benefit the industry, is implementing a 15,000-lb (6.8-mt) possession limit per trip.

#### Number of Small Entities

The Council estimates that the proposed 2003 quotas and management measures 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.

#### Minimizing Significant Economic Impact on Small Entities

In the FRFA, NMFS analyzed the measures being implemented in this action. Economic impacts are being minimized to the extent practicable with the measures being implemented in this final rule, while being consistent with the target fishing mortality rates or target exploitation rates specified in the FMP.

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 quotas). 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 Fishery Conservation and Management 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 it is not analyzed in the EA/RIR/FRFA.

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.

Table 9 evaluates three alternative combinations of summer flounder, scup, and black sea bass landings (commercial and recreational).

TABLE 9.—COMPARISON OF THE ALTERNATIVES OF COASTWIDE COMMERCIAL QUOTA AND RECREATIONAL HARVEST LIMITS REVIEWED, UNADJUSTED FOR RESEARCH SET-ASIDE OR 2002 OVERTAGES. ("FLK" IS SUMMER FLOUNDER)

	Commercial quota		Recreational harvest limit	
	million lb	metric tons	million lb	metric tons
<b>Quota Alternative 1 (Preferred Alternative):</b>				
FLK Preferred Alternative .....	13.98	6,341	9.32	4,227
Scup Preferred Alternative .....	12.47	5,656	4.03	1,828
Black Sea Bass Preferred Alternative .....	3.33	1,510	3.47	1,574
<b>Quota Alternative 2 (Most Restrictive):</b>				
FLK Non-Selected Alternative 2 .....	12.9	5,851	8.6	3,907
Scup Non-Selected Alternative 2 .....	8.0	3,629	2.77	1,256
Black Sea Bass Non-Selected Alternative 2 .....	2.25	1,021	2.35	1,066
<b>Quota Alternative 3 (Least Restrictive):</b>				
FLK Non-Selected Alternative 3 .....	14.58	6,613	9.72	4,409
Scup Non-Selected Alternative 3 .....	16.76	7,602	5.24	2,377
Black Sea Bass Non-Selected Alternative 3 .....	3.53	1,601	3.67	1,665

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 provide for the maximum level of landings that 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 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 final rule. The alternative to allow small-mesh vessels to fish voluntarily for non-exempt species in the GRAs if they deploy modified trawl gear and carry a NMFS-certified observer is being implemented 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 Exemption 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 Exemption 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. In fact, because participants may have the ability to harvest and sell research set-aside catches when the season is otherwise closed to the rest of the fishery, they may obtain higher prices, which would increase the gross revenue to the industry.

This final 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 vessel (twice a year), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. When OMB approves the new collection-of-information requirement, NMFS will issue a notification in the **Federal Register**.

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: December 27, 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 § 648.14, paragraph (a)(122) is revised, and paragraph (a)(127) is added, 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 Exemption Program requirements specified at § 648.122(d).

\* \* \*

(127) Fail to comply with the terms of the Gear Restricted Area Exemption Program requirements specified at § 648.122(d), if subject to the provisions of the Southern and Northern Gear Restricted Areas at § 648.122, (a) and (b).

3. In § 648.122, paragraphs (a)(1), (b)(1) are revised and paragraph (d) 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 Exemption 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[deg]20'	72[deg]50'
SGA2 .....	39[deg]20'	72[deg]25'
SGA3 .....	38[deg]00'	73[deg]55'
SGA4 .....	37[deg]00'	74[deg]40'
SGA5 .....	36[deg]30'	74[deg]40'
SGA6 .....	36[deg]30'	75[deg]00'
SGA7 .....	37[deg]00'	75[deg]00'
SGA8 .....	38[deg]00'	74[deg]20'
SGA1 .....	39[deg]20'	72[deg]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 Exemption 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 I**

Point	N. lat.	W. long.
NGA1 .....	41[deg]00'	71[deg]00'
NGA2 .....	41[deg]00'	71[deg]30'
NGA3 .....	40[deg]00'	72[deg]40'
NGA4 .....	40[deg]00'	72[deg]05'
NGA1 .....	41[deg]00'	71[deg]00'

\* \* \* \* \*

(d) *Gear Restricted Area Exemption 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 the following requirements are met:

(1) The vessel carries on board all required Federal fishery permits and a Scup GRA Exemption Program Authorization issued by the Regional Administrator, Northeast Region;

(2) The vessel carries a NMFS-certified observer on board if any portion of the trip will be, or is, in a GRA; and, (3) The vessel fishes in a GRA only with a specially modified trawl net that has an escapement extension consisting of a minimum 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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