

(v) Gulf reef fish, combined, excluding those specified in paragraphs (b)(1)(i) through (iv) of this section—20.

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50 CFR Part 648

[Docket No. 960805216-6216-01; I.D. 071596E]

RIN 0648-AH06

Fisheries of the Northeastern United States; Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement those provisions of Amendment 9 to the Fishery Management Plan (FMP) for the Summer Flounder, Scup and Black Sea Bass Fisheries not initially disapproved. Amendment 9 would implement management measures for the black sea bass fishery in order to reduce fishing mortality and allow the stock to rebuild.

DATES: Public comments must be received on or before October 7, 1996.

ADDRESSES: Comments on the proposed rule or supporting documents should be sent to Dr. Andrew A. Rosenberg, Regional Director, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Black Sea Bass Fishery."

Comments regarding burden-hour estimates for collection-of-information requirements contained in this proposed rule should be sent to the Director, Northeast Region, NMFS, at the address above and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

Copies of Amendment 9, the final environmental impact statement (FEIS), the Mid-Atlantic Fishery Management Council's initial regulatory flexibility analysis, the regulatory impact review, and other supporting documents are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508-281-9221.

SUPPLEMENTARY INFORMATION:

Background

In 1978, the Mid-Atlantic Fishery Management Council (Council) began the development of an FMP for black sea bass pursuant to the Magnuson Fishery Management and Conservation Act, as amended (Magnuson Act). Although preliminary development work was done, the FMP was not completed. In January 1990, the Council and the Atlantic States Marine Fisheries Commission (Commission) began to develop an FMP for black sea bass as an amendment to the summer flounder FMP. However, its development was delayed by a series of amendments to address problems in the summer flounder fishery. Work on a separate black sea bass FMP was not resumed until 1993.

NMFS requested that the black sea bass regulations be incorporated into the summer flounder FMP, as an amendment, because black sea bass are usually harvested with summer flounder and scup and it is logical to manage these fisheries under one FMP. Furthermore, this combination will reduce the number of separate regulations issued by the Federal government. As a result, the measures were submitted as Amendment 9 to the Summer Flounder, Scup, and Black Sea Bass FMP. Amendment 9 was prepared jointly by the Council and Commission, in consultation with the New England and South Atlantic Fishery Management Councils, and adopted for NMFS review at the Council meeting in May 1996. Subsequently, as part of the President's Regulatory Reinvention Initiative, regulations implementing all fishery management plans for the marine fisheries of the Northeast region were consolidated into one new CFR part. This proposed rule would establish black sea bass measures at 50 CFR 648, subparts A and I.

A notice of availability for Amendment 9 was published in the Federal Register on July 24, 1996 (61 FR 38430). The amendment revises the summer flounder (*Paralichthys dentatus*) and scup (*Stenotomus chrysops*) FMP to include management measures for the black sea bass (*Centropristis striata*) fishery. The management unit for this fishery is black sea bass in U.S. waters of the western Atlantic Ocean from 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canadian border.

Status of the Stocks

Commercial landings of black sea bass have declined dramatically from the

peak landings of 22 million lb (9.98 mil kg) reported in the 1950's. In 1994, commercial landings were about 2.0 million lb (0.91 mil kg), or about 60 percent of the 1983-1994 average of 3.4 million lb (1.54 mil kg). Additionally, recreational landings were 2.9 million lb (1.32 mil kg) in 1994, lower than the 1983-94 average of 3.8 million lb (1.72 mil kg).

Landings-per-unit-effort (LPUE) from the Mid-Atlantic trawl fishery has been used as an index of abundance for black sea bass. Standardized LPUE, defined as metric tons (mt) per days fished for trips landing more than 25 percent black sea bass, peaked at 11.3 mt in 1984, and then declined to a low of 1.6 mt in 1992. Standardized LPUE increased slightly to 3.2 mt in 1993.

The Northeast Fisheries Science Center (NEFSC) has conducted a spring and autumn offshore survey for a number of species, including black sea bass, since 1972. The spring offshore survey has been used as an index for black sea bass recruits (fish longer than 20 cm standard length (SL)) and the autumn inshore survey data as an index of pre-recruits (fish less than 11 cm SL). The spring recruit index was generally high in the late 1970's, ranging from 2.0 to 6.09 fish per tow. The spring index declined from 6.09 fish per tow in 1977 to a low of 0.2 per tow in 1982. More recently the spring index was 0.87 in 1993 and declined to 0.28 in 1994. The fall pre-recruit indices show a similar trend (i.e., relatively low recent values compared to the mid-1970's).

Analyses conducted by the NEFSC indicate a strong correlation between the fall pre-recruit index and commercial catch per unit effort in the trawl fishery. The index for pre-recruits indicated that above-average year classes were produced in 1977, 1982, and 1986. Recruitment for 1992 and 1993, based on this index, was well below average. Recruitment was above average in 1994. Despite this above average recruitment in 1994, available information still indicate that black sea bass are overexploited.

Overfishing for black sea bass is defined in Amendment 9 as fishing in excess of F_{max} . F_{max} is the biological reference point corresponding to an exploitation rate of 23 percent (i.e., the proportion of the population removed during a time period), and the level of fishing mortality (F) that produces maximum yield per recruit. Based on current conditions in the fishery, F_{max} for black sea bass is 0.29. The results of a virtual population analysis—an analysis of catches from a given year class over its life in the fishery—indicate that the fishing mortality rate in

1993 was 1.05 (an annual exploitation rate of 60 percent). This rate, coupled with the above information—that is, the decline in landings, reduced LPUE, and low survey indices—indicate that black sea bass are overexploited.

Disapproved Measures

NMFS, on behalf of the Secretary of Commerce, disapproved the commercial quota mechanism proposed in Amendment 9 based upon a preliminary evaluation of Amendment 9, as authorized under section 304(a)(1)(A)(ii) of the Magnuson Act. Thus, this provision is not included in this proposed rule. This provision would have specified an annual commercial quota apportioned among the states from North Carolina, northward from Cape Hatteras, through Maine, unless some other alternative was developed to take its place. This provision was determined to be inconsistent with national standard 7 of the Magnuson Act because it is not a viable management measure. Amendment 9 failed to address adequately how a commercial quota that bifurcates the State of North Carolina at Cape Hatteras would be implemented, given the fact that the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region imposes management measures to the south for an actively fished stock of black sea bass. The quota monitoring system proposed by the Council would impose significant administrative and enforcement costs on NMFS and/or the State of North Carolina. The cost of law enforcement would significantly outweigh any benefits to the stock, especially in the initial years of quota management, given the amendment's protracted rebuilding schedule.

NMFS believes that the commercial quota is one of the primary mechanisms to reduce overfishing in this fishery, and without it there is no mechanism to attain the reductions in exploitation necessary to achieve the amendment's goals. Amendment 9 must represent a complete management program to satisfy the national standards and other applicable law. Final approval of the remaining measures of Amendment 9, therefore, will be contingent upon the resubmission of a commercial quota measure that rehabilitates the deficiencies of the disapproved measure. In order for NMFS to determine that Amendment 9 is a complete, approvable management program for black sea bass, a resubmission that revises the quota measure must be received by NMFS in sufficient time for NMFS to conduct its review of the measure, including the

consideration of public comments received during the public comment period, by the Day 95 statutory decision deadline for Amendment 9 (October 17, 1996).

Proposed Measures

Vessel, Dealer, and Operator Permits

The Council proposes to establish a moratorium on commercial vessel permits for the directed fishery for black sea bass. Any owner or operator of a vessel desiring to fish for black sea bass within the exclusive economic zone (EEZ) for sale, or transport, or delivery for sale, would have to obtain a permit from NMFS for that purpose. Vessel owners would be required to demonstrate past participation in the fishery to obtain a commercial moratorium permit. The Council proposes to limit moratorium permits to vessels with documented landings of black sea bass for sale between January 26, 1988, and January 26, 1993. Vessels that were under construction for, or being rigged for, use in the directed fishery for black sea bass on January 26, 1993, would be eligible for a moratorium permit provided they landed black sea bass for sale prior to January 26, 1994.

The owner or operator of a party or charter boat (vessel for hire) desiring to fish for black sea bass within the EEZ would have to obtain a charter/party boat permit from NMFS for that purpose. A party or charter boat could have both a charter/party boat permit and a commercial moratorium permit if, in addition to meeting the charter/party boat criteria, the vessel meets the commercial vessel qualification requirements set forth in Amendment 9. However, such a vessel would have to fish under any existing recreational rules if it were carrying passengers for a fee. A vessel may replace a vessel, with substantially similar harvesting capacity that initially qualified for a moratorium permit, but both vessels must be owned by the same person. Vessel permits issued to vessels that leave the fishery may not be combined to create larger replacement vessels.

An operator of a vessel with any permit issued under Amendment 9 would be required to have a Federal operator permit. The operator permits issued to operators in the Northeast multispecies, American lobster, Atlantic sea scallops and/or Atlantic mackerel, squid, and butterfish fisheries would satisfy this requirement. The operator would be held accountable for violations of the fishing regulations and could be subject to a permit sanction. During the permit sanction period, the

operator could not work in any capacity aboard a federally permitted fishing vessel.

Under Amendment 9, any dealer of black sea bass would be required to have a NMFS dealer permit. A dealer of black sea bass would be defined as a person or firm that receives black sea bass for a commercial purpose from the owner or operator of a vessel issued a moratorium permit pursuant to Amendment 9, other than solely for transport on land.

Reporting and Recordkeeping

The Council intends to institute recordkeeping and reporting requirements for black sea bass that are identical to those required by the Atlantic Mackerel, Squid, and Butterfish, the Summer Flounder, the Northeast Multispecies, and the Atlantic Sea Scallop Fishery Management Plans. The logbooks in use for those fisheries would be used to meet this requirement. These vessels currently must report all species caught and dealers must report all species purchased. Thus, vessels or dealers reporting under those FMPs would not be subject to any additional reporting burdens as a result of the black sea bass requirements.

Commercial logbooks would be submitted on a monthly basis by Federal moratorium and charter/party boat permit holders in order to monitor the fishery.

Dealers with permits issued pursuant to Amendment 9 would submit weekly reports showing all species purchased in pounds, and the name and permit number of the vessels from which the species were purchased. Buyers that do not purchase directly from vessels would not be required to submit reports under this provision.

Minimum Fish Sizes

Amendment 9 would establish minimum fish sizes that could be adjusted annually by the Black Sea Bass Monitoring Committee (Monitoring Committee). The initial minimum fish size would be 9 inches (22.9 cm) total length for both the commercial and recreational fisheries.

Minimum Mesh Size

The minimum mesh-size requirement for otter trawl vessels possessing a threshold catch of 100 lb or more (45.4 kg or more) of black sea bass would be a minimum codend mesh size of 4.0 inches (10.2 cm) diamond mesh or 3.5 inches (8.9 cm) square mesh, inside measure, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net or, if the net is not long enough for such a

measurement, the terminal one-third of the net, measured from the terminus of the codend to the center of the head rope. The minimum net mesh size and the threshold level could be adjusted annually by the Monitoring Committee.

Maximum Roller Size

Amendment 9 would prohibit owners or operators of vessels issued moratorium permits from using roller rig trawl gear equipped with rollers greater than 18 inches (45.7 cm) in diameter.

Pot and Trap Gear Requirements

Black sea bass pots and traps would be required to have a minimum escape vent of 1 - 1/8 inches x 5 3/4 inches (2.86 cm x 14.61 cm), 2.0 inches (5.1 cm) in diameter, or 1.5 inches (3.81 cm) square (inside measure). Compliance with the escape vent provision would be required at the start of the first calendar year following approval of Amendment 9, so that harvesters would not be required to pull their pots and add vents in the middle of the season. Black sea bass pots and traps would be required to have hinges and fasteners on one panel or door made of degradable materials. The opening in the pot or trap covered by the panel affixed to the trap with degradable fasteners would have to be at least 3 inches x 6 inches (7.62 cm x 15.24 cm).

The escape vent requirement could be adjusted annually by the Monitoring Committee.

Harvest Limit

In 1998, a coastwide harvest limit would be specified at a level that would reduce the exploitation rate to the level specified in the rebuilding schedule. This harvest limit would be allocated 49 percent to the commercial fishery, and 51 percent to the recreational fishery, via a recreational harvest limit. The coastwide harvest limit will be set annually by the Monitoring Committee.

Recreational Measures

Beginning in 1997, recreational landings would be compared to annual target harvest levels to determine if modifications to the recreational season, possession limit, and minimum size limit are required in the following year in order for the fishery to remain within specified harvest limits.

Special Management Zones

An individual issued a permit by the Corps of Engineers for an artificial reef (permittee) may make a request to the Council that the artificial reef, and appropriate surrounding area of the artificial reef, fish attraction device, or

other modification of habitat for the purpose of fishing, be designated as a special management zone (SMZ). The SMZ would prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the permittee for the artificial reef or habitat modification. The establishment of an SMZ would be done by regulatory amendment involving full public participation.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the amendment and proposed regulations. At this time, NMFS has not determined whether the measures in Amendment 9 that these rules would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an FEIS for Amendment 9, a copy of which may be obtained from the Council (see ADDRESSES).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Amendment 9 would implement management measures for the black sea bass fishery where none had previously existed. The economic analysis contained in Amendment 9 indicates that it is unlikely that the measures that would be implemented by this action would increase or decrease ex-vessel revenues by more than 5 percent for more than 20 percent of the small entities engaged in the black sea bass fishery. Based on the available information, many fishery participants are already in compliance with the measures proposed to be implemented (including a maximum diameter for roller gear and minimum mesh size requirements for the otter trawl fishery, and fish size requirements). Black sea bass fishery participants generally land scup, summer flounder, squid, dogfish, and other species with black sea bass. Sixty percent of the trips landing black sea bass are otter trawl trips. Based on 1992 data for otter trawl trips landing over 100 pounds of black sea bass, *Loligo*, scup, and summer flounder comprise approximately 34, 12 and 11 percent by weight, respectively, of the

total catch, whereas black sea bass comprises approximately only 2.5 percent. This 2.5 percent by weight comprises only 3.6 percent of the value of the total catch. For the years 1983 to 1992 combined, nearly 60 percent of the trips landing black sea bass used otter trawl gear.

Minimum fish size regulations (see above) for black sea bass contained in this amendment may reduce total pounds landed in 8 of the 13 states that do not currently have minimum fish size requirements for this species, because fishermen may no longer land fish smaller than the minimum size. However, based on the available data, the amount of reduction of landings is not expected to be significant. For example, even if size restrictions were to reduce coastwide otter trawl landings by 10 percent (a worse case assumption from the point of adverse economic impact), impact on otter trawl vessels would be marginal because of the low proportion of black sea bass in the total catch, as noted above. It is anticipated that the minimum fish size would have similarly insignificant impacts on the remaining gear types, which comprise the remaining 40 percent of all black sea bass landings. Therefore, this rule most likely would not have a significant impact on a substantial number of small entities.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The proposed rule contains new requirements that have been submitted to OMB for approval. These requirements and their estimated response times are: Mandatory dealer reporting at 2 minutes per response, annual employment data at 6 minutes per response, vessel reporting requirements at 5 minutes per response, vessel permits and permit appeals at 30 minutes per response, operator permits at 1 hour per response, observer notification requirement at 2 minutes per response, vessel marking (3 locations) at 15 minutes per marking, gear identification requirements at 1 minute per response, and requests for an experimental fishing exemption at 1.9 hours.

The response estimates shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding any of these burden estimates or any other aspect of the collection of information to NMFS and OMB (see ADDRESSES).

Notwithstanding any other provision of the law, no person is required to

respond to, nor shall any person be subject to a 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: August 14, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

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

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

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

2. In § 648.1, paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMP) for the Atlantic mackerel, squid, and butterfly fisheries (Atlantic Mackerel, Squid, and Butterfly FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP (Scallop FMP)); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies fishery (NE Multispecies FMP); and the summer flounder, scup and the black sea bass fisheries (Summer Flounder, Scup and Black Sea Bass FMP). These FMPs and the regulations in this part govern the conservation and management of fisheries of the northeastern United States.

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3. In § 648.2, the definitions for "Black Sea Bass Monitoring Committee," "Black sea bass pot or black sea bass trap," are added, in alphabetical order, and the definition for "Council" is revised to read as follows:

* * * * *

Black Sea Bass Monitoring Committee means a committee made up of staff representatives of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the Northeast Regional Office of NMFS, the Northeast Fisheries Science Center, and Commission representatives. The Council Executive Director or his designee chairs the Committee.

Black sea bass pot or black sea bass trap means any such gear used to catch and retain black sea bass.

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Council means the New England Fishery Management Council (NEFMC)

for the Atlantic sea scallop and the NE multispecies fisheries, or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; and the summer flounder, scup and black sea bass fisheries.

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4. In § 648.4, paragraph (a)(6) is added and reserved, paragraph (a)(7) is added, and paragraph (b) is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(7) *Black sea bass vessels.* Beginning 90 days following the effective date of these regulations, any vessel of the United States that fishes for or retains black sea bass in or from the EEZ north of 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC, must have been issued and carry on board a valid black sea bass moratorium permit, except for vessels other than party or charter vessels that observe the possession limit established pursuant to § 648.145.

(i) *Moratorium permits—(A)*

Eligibility. A vessel is eligible to receive a permit to fish for and retain black sea bass in excess of the possession limit established pursuant to § 648.145 in the EEZ north of 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC, if it meets any of the following criteria:

(1) The vessel landed and sold black sea bass between January 26, 1988, and January 26, 1993; or

(2) The vessel was under construction for, or was being rigged for, use in the directed fishery for black sea bass on January 26, 1993, provided the vessel landed black sea bass for sale prior to January 26, 1994.

(3) The vessel is replacing a vessel of substantially similar harvesting capacity that qualifies under the criteria of paragraph (a)(7)(i)(A)(1) or (a)(7)(i)(A)(2) of this section, and both the entering and replaced vessels are owned by the same person. Vessel permits issued to vessels that leave the fishery may not be combined to create larger replacement vessels.

(B) *Application/renewal restrictions.* No one may apply for an initial black sea bass moratorium permit after:

(1) [Insert date 12 months after the effective date of the final rule]; or

(2) The owner retires the vessel from the fishery.

(C) *Qualification restriction.* Unless the Regional Director determines to the contrary, no more than one vessel may qualify at any one time for a black sea bass moratorium permit based on that or another vessel's fishing and permit history. If more than one vessel owner

claims eligibility for a black sea bass moratorium permit based on one vessel's fishing and permit history, the Regional Director will determine who is entitled to qualify for the permit according to paragraph (D) of this section.

(D) *Change in ownership.* The fishing and permit history of a vessel is presumed to transfer with the vessel whenever it is bought, sold, or otherwise transferred, unless there is a written agreement, signed by the transferor/seller and transferee/buyer, or other credible written evidence, verifying that the transferor/seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel. If the fishing and permit history of the vessel is transferred, the transferee/buyer must comply with the requirements of § 648.4(h) for the continuation of a moratorium permit for his or her benefit.

(E) *Replacement vessels.* To be eligible for a moratorium permit under this section, the replacement vessel must be of substantially similar harvesting capacity as the vessel that initially qualified for the moratorium permit, and both vessels must be owned by the same person. Vessel permits issued to vessels that leave the fishery may not be combined to create larger replacement vessels.

(F) *Appeal of denial of permit.* (1) Any applicant denied a moratorium permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (a)(7)(i)(A)(1) or (a)(7)(i)(A)(2) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Director's decision was made in error.

(2) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(3) The hearing officer shall make a recommendation to the Regional Director.

(4) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

(ii) *Party and charter boat permit.* The owner of any party or charter boat must obtain a permit to fish for or retain black sea bass in or from the EEZ while carrying passengers for hire.

(b) *Permit conditions.* Vessel owners who apply for a fishing vessel permit under this section must agree as a condition of the permit that the vessel and vessel's fishing activity, catch, and pertinent gear (without regard to

whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and pertinent gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium or black sea bass permit must also agree, as a condition of the permit, not to land summer flounder or black sea bass in any state, or part thereof, that the Regional Director has determined no longer has commercial quota available. A state, or part thereof, not receiving an allocation of summer flounder or black sea bass is deemed to have no commercial quota available. Owners or operators fishing for surf clams and ocean quahogs within waters under the jurisdiction of any state that requires cage tags are not subject to any conflicting Federal minimum size or tagging requirements. If a surf clam and ocean quahog requirement of this part differs from a surf clam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owner or operator permitted to fish in the EEZ for surf clams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surf clam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Director allows an individual to comply with the less restrictive state minimum size requirement, so long as fishing is conducted exclusively within state waters.

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5. In § 648.5, paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, Atlantic mackerel, squid, and butterfish, and; as of 90 days following the effective date of the regulations, black sea bass; harvested in or from the EEZ, or issued a permit for these species under this part, must have and carry on board a valid operator's permit issued under this section. An operator permit issued pursuant to part

649 shall satisfy the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

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6. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, sea scallop, summer flounder, surf clam and ocean quahog dealers, and surf clam and ocean quahog processors must have been issued and have in their possession a permit for such species issued under this section. As of January 1, 1997, all Atlantic mackerel, squid, and butterfish dealers, and, as of [insert date 90 days after the effective date of the final rule], all black sea bass dealers must have been issued and have in their possession a valid dealers permit for those species.

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7. In § 648.7, paragraphs (a)(1)(i), (a)(2)(i), (b)(1)(i), (b)(1)(iii) the first sentence, and (f)(3) are revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(i) Summer flounder, scallop, NE multispecies, Atlantic mackerel, squid and butterfish, and, as of [insert date 90 days after the effective date of the final rule], black sea bass dealers, must provide: Name and mailing address of dealer, dealer number, name and permit number of the vessels from which fish are landed or received, dates of purchases, pounds by species, price by species, and port landed. If no fish are purchased during the week, a report so stating must be submitted. All report forms must be signed by the dealer or other authorized individual.

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(2) * * *

(i) Summer flounder, scallop, NE multispecies, Atlantic mackerel, squid, and butterfish, and, as of [insert date 90 days after the effective date of the final rule], black sea bass dealers must complete the "Employment Data" section of the Annual Processed Products Reports; completion of the other sections of that form is voluntary. Reports must be submitted to the address supplied by the Regional Director.

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(b) *Vessel owners—(1) Fishing Vessel Log Reports—(i) Owners of vessels issued summer flounder moratorium, scallop, multispecies, mackerel, squid, and butterfish, or black sea bass*

moratorium permits. The owner or operator of any vessel issued a vessel permit for summer flounder moratorium, scallops, NE multispecies, or, as of January 1, 1997, an Atlantic mackerel, squid, or butterfish vessel permit, or, as of [insert date 90 days after the effective date of the final rule], a black sea bass moratorium permit, must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. * * *

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(iii) *Owners of party and charter boats.* The owner of any party or charter boat issued a summer flounder permit other than a moratorium permit and carrying passengers for hire shall maintain on board the vessel, and submit, an accurate daily fishing log report for each charter or party fishing trip that lands summer flounder, unless such a vessel is also issued a summer flounder moratorium permit, a sea scallop permit, a multispecies permit, or, as of January 1, 1997, a mackerel, squid or butterfish permit, or, as of [insert date 90 days after the effective date of the final rule], a black sea bass permit, in which case a fishing log report is required for each trip regardless of species retained. * * *

* * * * *

(f) * * *

(3) *At-sea purchasers, receivers, or processors.* All persons purchasing, receiving, or processing any summer flounder, Atlantic mackerel, squid, butterfish or, as of [insert date 90 days after effective date of the final rule], black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1) or (a)(2) of this section, as applicable, and provide those reports to the Regional Director or designee on the same frequency basis.

8. In § 648.11, paragraphs (a) and (e) introductory text are revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Director may request any vessel holding a permit for the Atlantic mackerel, squid, and butterfish; sea scallop; NE multispecies; summer flounder, or, as of [insert date 90 days after the effective date of the final rule], black sea bass fisheries to carry a NMFS-approved sea sampler/observer. If requested by the Regional Director to carry an observer or sea sampler, a vessel may not engage in any fishing operations in the respective fishery unless an observer or sea sampler is

aboard, or unless the requirement is waived.

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit or, as of [insert date 90 days after the effective date of the final rule], a black sea bass moratorium permit, if requested by the sea sampler/observer also must:

* * * * *

9. Section 648.12 is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Director may exempt any person or vessel from the requirements of subparts B (Atlantic mackerel, squid, and butterfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies), G (summer flounder), or I (black sea bass), of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Director shall consult with the Executive Director of the Council regarding such exemptions for the Atlantic mackerel, squid, and butterfish, the summer flounder and the black sea bass fisheries.

10. In § 648.14, paragraph (a)(8) is revised, paragraphs (a)(80), (a)(81), and (a)(82) are added, paragraph (t) is redesignated as paragraph (v), and new paragraph (t), and paragraphs (u) and (v)(6) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(8) Assault, resist, oppose, impede, harass, intimidate, interfere with or bar by command, impediment, threat, or coercion either a NMFS-approved observer, sea sampler, or other NMFS-authorized employee aboard a vessel or in a dealer/processor establishment, conducting his or her duties aboard a vessel or in a dealer/processor establishment, or an authorized officer conducting any search, inspection, investigation, or seizure in connection with enforcement of this part.

* * * * *

(80) Possess in or harvest from the EEZ black sea bass either in excess of the possession limit established pursuant to § 648.145 or before or after the time period established pursuant to § 648.142, unless the person is operating a vessel issued a moratorium permit under § 648.4 and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended.

(81) Possess nets or netting with mesh not meeting the minimum mesh

requirement of § 648.144 if the person possesses black sea bass harvested in or from the EEZ in excess of the threshold limit established pursuant to § 648.144(a).

(82) Purchase or otherwise receive for commercial purposes black sea bass caught by other than a vessel with a moratorium permit not subject to the possession limit established pursuant to § 648.145 unless the vessel has not been issued a permit under this part and is fishing exclusively within the waters under the jurisdiction of any state.

* * * * *

(t) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a black sea bass permit (including a moratorium permit) to do any of the following:

(1) Possess 100 lb (45.4 kg) or more of black sea bass, unless the vessel meets the minimum mesh requirement specified in § 648.144(a).

(2) Possess black sea bass in other than a box specified in § 648.145(c) if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 648.144(a).

(3) Land black sea bass for sale in any state, or part thereof, in which commercial quota is no longer available.

(4) Fish with or possess nets or netting that do not meet the minimum mesh requirement, or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 648.144, unless the nets or netting are stowed in accordance with § 648.23(b).

(5) Fish with or possess rollers used in roller rig or rock hopper trawl gear that do not meet the requirements specified in § 648.144(a)(5).

(6) Fish with or possess pots or traps that do not meet the requirements specified in § 648.144(b).

(7) Sell or transfer to another person for a commercial purpose, other than transport, any black sea bass, unless the transferee has a valid black sea bass dealer permit.

(8) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a black sea bass moratorium permit.

(u) It is unlawful for the owner and operator of a party or charter boat issued a black sea bass permit (including a moratorium permit), when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess black sea bass in excess of the possession limit established pursuant to § 648.145.

(2) Fish for black sea bass other than during a season specified pursuant to § 648.142.

(3) Sell black sea bass or transfer black sea bass to another person for a commercial purpose.

(v) * * *

(6) *Black sea bass.* All black sea bass possessed on board a party or charter boat issued a permit under § 648.4(6)(ii) are deemed to have been harvested from the EEZ.

11. Subpart I is added to read as follows:

Subpart I—Management Measures for the Black Sea Bass Fishery

Sec.

648.140	Catch quotas and other restrictions.
648.141	Closure.
648.142	Time restrictions.
648.143	Minimum sizes.
648.144	Gear restrictions.
648.145	Possession limit.
648.146	Special management zones.

Subpart I—Management Measures for the Black Sea Bass Fishery

§ 648.140 Catch quotas and other restrictions.

(a) *Annual review.* The Black Sea Bass Monitoring Committee will review the following data, subject to availability, on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to result in a target exploitation rate of 48 percent for black sea bass in 1998, 1999 and 2000; a target exploitation rate of 37 percent in 2001 and 2002; and a target exploitation rate of 29 percent (based on F_{max}) in 2003 and subsequent years: Commercial and recreational catch data; current estimates of fishing mortality; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling and winter trawl survey data, or if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses; impact of gear other than otter trawls, pots and traps on the mortality of black sea bass; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Black Sea Bass Monitoring Committee will recommend to the Demersal Species Committee of the Council and the Commission the following measures to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded:

(1) Commercial minimum fish size.

(2) Minimum mesh size in the codend or throughout the net and the catch threshold that would require compliance with the minimum mesh requirement.

(3) Escape vent size.

(4) A recreational possession limit set from a range of (0) to the maximum allowed to achieve the target exploitation rate specified in paragraph (a) of this section. Implementation of this measure will begin in 1998.

(5) Recreational minimum fish size.

(6) Implementation of this measure will begin in 1998.

(7) Restrictions on gear other than otter trawls and pots or traps.

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Black Sea Bass Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with respect to the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section are not exceeded. The Council shall review these recommendations and, based on the recommendations and public comment, make recommendations to the Regional Director with respect to the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action. The Regional Director will review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish a proposed rule in the Federal Register October 15 to implement a harvest limit, and additional management measures for the commercial fishery, and will publish a proposed rule in the Federal Register by February 15 to implement additional management measures for the recreational fishery, if he/she determines that such measures are necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. After considering public comment, the Regional Director will publish a final rule in the *Federal Register* to implement the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded.

§ 648.141 Closure.

EEZ closure. The Regional Director shall close the EEZ to fishing for black sea bass by commercial vessels for the remainder of the calendar year by publishing notification in the Federal Register if he or she determines that the inaction of one or more states will cause the applicable target exploitation rate specified in § 648.140(a) to be exceeded. The Regional Director may reopen the EEZ if earlier inaction by a state has been remedied by that state without causing the applicable specified target exploitation rate to be exceeded.

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7) and fishermen subject to the possession limit may fish for black sea bass from January 1 through December 31. Beginning in 1998, this time period may be adjusted pursuant to the procedures in § 648.140.

§ 648.143 Minimum sizes.

(a) The minimum size for black sea bass is 9 inches (22.9 cm) total length for all vessels issued a permit under § 648.4(a)(7) and for all other vessels which fish for or retain black sea bass in or from the EEZ. The minimum size may be adjusted for commercial and/or recreational vessels pursuant to the procedures in § 648.140.

(b) The minimum size in this section applies to the whole fish or any part of a fish found in possession (e.g., fillets), except that party or charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if skin remains on the fillet and all other state requirements are met.

§ 648.144 Gear restrictions.

(a) *Trawl gear restrictions—(1) General.* (i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 100 lb or more (45.4 kg or more) of black sea bass per trip, must fish with nets that have a minimum mesh size of 4.0 inches (10.2 cm) diamond or 3.5 inches (8.9 cm) square (inside measure) mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or, for codends with less than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the center of the head rope, excluding any turtle excluder device extension.

(ii) Mesh sizes shall be measured pursuant to the procedure specified in § 648.104(a)(2).

(2) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net; except that, one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.6 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

(3) *Mesh obstruction or constriction.*

(i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(2) of this section, that obstructs the meshes of the net in any manner, or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum established pursuant to § 648.144(a)(1)(i).

(ii) No person on any vessel may possess or fish with a net capable of catching black sea bass in which the bars entering or exiting the knots twist around each other.

(4) *Stowage of nets.* Otter trawl vessels subject to the minimum mesh-size requirement of paragraph (a)(1)(i) of this section may not have "available for immediate use" any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. A net that is stowed in conformance with one of the methods specified in § 648.23(b) and that can be shown not to have been in recent use, is considered to be not "available for immediate use."

(5) *Roller gear.* Rollers used in roller rig or rock hopper trawl gear shall be no larger than 18 inches (45.7 cm) in diameter.

(b) *Pot and trap gear restrictions—(1) Escape vents.* All black sea bass traps or pots must have an escape vent placed in a lower corner of the parlor portion of the pot or trap which complies with one

of the following minimum sizes: 1.125 inches (2.86 cm) by 5.75 inches (14.61 cm); or a circular vent 2 inches (5.08 cm) in diameter; or a square vent with sides of 1.5 inches (3.81 cm), inside measure. These dimensions may be adjusted pursuant to the procedures in § 648.140.

(2) *Gear marking.* The owner of a vessel issued a black sea bass moratorium permit must mark all black sea bass pots or traps with the vessel's USCG documentation number or state registration number.

(3) *Degradable panels.* Black sea bass pots or traps must have the hinges and fasteners of one panel or door made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of 3/16 inches (4.8 mm) diameter or smaller; or

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

(4) *Ghost panels.* Black sea bass traps or pots must contain a panel affixed to the trap or pot with degradable fasteners as specified in § 648.144(b)(3) and which measures at least 3.0 inches (7.62 cm) by 6.0 inches (15.24 cm).

(5) *Lathes spacing.* Pots or traps constructed of wooden lathes must have spacing of at least 1.125 inches (2.8575 cm) between one set of lathes in the parlor portion of the trap.

§ 648.145 Possession limit.

A possession limit will be established pursuant to the procedures in § 648.140 to assure that the recreational harvest limit is not exceeded.

(a) If whole black sea bass are processed into fillets, an authorized officer will convert the number of fillets to whole black sea bass at the place of landing by dividing fillet number by two. If black sea bass are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole black sea bass.

(b) Black sea bass harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of black sea bass on board by the number of persons aboard, other than the captain and the crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

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

§ 648.146 Special management zones.

The recipient of a Corps of Engineers permit for an artificial reef, fish attraction device, or other modification of habitat for purposes of fishing may request that an area surrounding and including the site be designated by the Council as a Special Management Zone (SMZ). The SMZ would prohibit or restrain the use of specific types of fishing gear that are not compatible with the intent of the artificial reef or fish attraction device or other habitat modification. The establishment of an SMZ would be effected by a regulatory amendment pursuant to the following procedure:

(a) A SMZ monitoring team comprised of members of staff from the MAFMC, NMFS Northeast Region, and NMFS Northeast Fisheries Science Center will evaluate the request in the form of a written report considering the following criteria:

- (1) Fairness and equity.
- (2) Promotion of conservation.

(3) Avoidance of excessive shares.

(4) Consistency with the objectives of Amendment 9 to the Fishery Management Plan for the Summer Flounder, Scup and Black Sea Bass fisheries, the Magnuson Act, and other applicable law.

(5) The natural bottom in and surrounding potential SMZs.

(6) Impacts on historical uses.

(b) The Council Chairman may schedule meetings of Industry Advisors and/or the Scientific and Statistical Committee to review the report and associated documents and to advise the Council. The Council Chairman may also schedule public hearings.

(c) The Council, following review of the SMZ monitoring teams's report, supporting data, public comments, and other relevant information, may recommend to the Regional Director that a SMZ be approved. Such a recommendation would be accompanied by all relevant background information.

(d) The Regional Director will review the Council's recommendation. If the Regional Director concurs in the recommendation, he or she will publish a proposed rule in the Federal Register in accordance with the recommendations. If the Regional Director rejects the Council's recommendation, he or she shall advise the Council in writing of the basis for the rejection.

(e) The proposed rule shall afford a reasonable period for public comment. Following a review of public comments and any information or data not previously available, the Regional Director will publish a final rule if he or she determines that the establishment of the SMZ is supported by the substantial weight of evidence in the administrative record and consistent with the Magnuson Act and other applicable law.

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