

Dated: October 21, 1997.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340-7087-02; I.D. 121297A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic migratory group Spanish mackerel in or from the exclusive economic zone (EEZ) in the southern zone to 1,500 lb (680 kg) per day. This trip limit reduction is necessary to protect the Atlantic migratory group Spanish mackerel resource.

DATES: Effective 6:00 a.m., local time, December 16, 1997, through March 31, 1998, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-570-5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The Councils recommended and NMFS implemented an adjusted quota and commercial trip limits for Atlantic migratory group Spanish mackerel from the southern zone. As set forth at 50 CFR 622.44(b)(2), the adjusted quota is 3.25 million lb (1.47 million kg). In accordance with 50 CFR 622.44(b)(1)(ii)(C), after 75 percent of the adjusted quota of Atlantic migratory group Spanish mackerel from the

southern zone is taken until 100 percent of the adjusted quota is taken, Atlantic migratory group Spanish mackerel in or from the EEZ in the southern zone may not be possessed on board or landed from a vessel in a day in amounts exceeding 1,500 lb (680 kg). The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42'45.6" N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4' N. lat., which is a line directly east from the Dade/Monroe County, FL, boundary.

NMFS has determined that 75 percent of the adjusted quota for Atlantic migratory group Spanish mackerel from the southern zone was taken by December 15, 1997. Accordingly, the 1,500-lb (680-kg) per day commercial trip limit applies to Atlantic migratory group Spanish mackerel in or from the EEZ in the southern zone effective 6:00 a.m., local time, December 16, 1997, through March 31, 1998, unless changed by further notification in the **Federal Register**.

Classification

This action is taken under 50 CFR 622.44(b)(2) and is exempt from review under E.O. 12866.

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

Dated: December 15, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97-33099 Filed 12-15-97; 3:12 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246-7293-02; I.D. 100897D]

RIN 0648-AK44

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

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

ACTION: Final specifications for the 1998 summer flounder, scup, and black sea bass fisheries; final rule, technical amendment; notifications of commercial quota harvest.

SUMMARY: NMFS issues the final specifications for the 1998 summer flounder, scup, and black sea bass fisheries. The intent of this document is

to comply with implementing regulations for the summer flounder, scup, and black sea bass fisheries that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of these species. NMFS announces that no quota is available in several states for specified 1998 fisheries as follows: the State of Delaware is notified that no commercial summer flounder or Summer period commercial scup quotas are available in 1998; the State of New Hampshire is notified that no Summer period commercial scup quota is available for 1998. NMFS advises vessel and dealer permit holders that no commercial quotas are available for landing those species in those States during the specified time periods.

DATES: The amendments to §§ 648.14(u)(1), 648.100(a), 648.143(a), and § 648.144(a)(1)(i) are effective January 1, 1998. The final specifications for the 1998 summer flounder, scup, and black sea bass fisheries and notifications of commercial quota harvest are effective January 1, 1998, through December 31, 1998.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment (EA), Regulatory Impact Review, and the Final Regulatory Flexibility Analysis (FRFA) are available from: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, (978) 281-9221.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) was developed jointly 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°15.3' N. latitude, the latitude of Cape Hatteras Light, 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 certain measures for the fishing year to ensure achievement of the appropriate target fishing mortality (F) or exploitation rate for each fishery, as specified in the FMP. The management schedule adopted in Amendment 7 to the FMP for summer flounder established a target F equal to that which results in the maximum yield per recruit (F_{max}), currently 0.24, in 1998 and thereafter. The target exploitation rate for scup for 1998 is 47 percent, the rate corresponding to $F = 0.72$. For black sea bass, the FMP specifies a target exploitation rate for 1998 of 48 percent, corresponding to $F = 0.73$. The annual measures contained in this final rule are unchanged from the proposed 1998 specifications that were published in the **Federal Register** on October 20, 1997 (62 FR 54427). Some regulatory clarifications are described in the section Changes From the Proposed Rule of this document. The management measures are summarized below by species. Detailed background information regarding the development of this rule was provided in the proposed specifications for the 1998 summer flounder, scup, and black sea bass fisheries (October 20, 1997, 62 FR 54427), and is not repeated here. NMFS will publish in the **Federal Register** at a later date the 1998 recreational management measures for summer flounder, scup, and black sea bass.

Summer Flounder

This rule will implement the following measures for summer flounder in 1998: (1) Total Allowable Landings (TAL) of 18.52 million lb (8.40 million kg); (2) a coastwide commercial quota of 11.11 million lb (5.04 million kg); and (3) a coastwide recreational harvest limit of 7.41 million lb (3.36

million kg). The TAL is unchanged from 1997, despite the most recent assessment for summer flounder (Stock Assessment Workshop (SAW) 25, August 1997) that indicates that the FMP measures have yet to reduce F below 1.0. However, the allocation of the TAL has been revised.

SAW-25 recommended that additional measures should be considered to minimize commercial and recreational discard mortality. To address these concerns, this rule specifies that 15 percent of a state's commercial quota allocation must be set aside for a bycatch fishery and that a state must implement trip limits with the objective of keeping its fishery open all year. Since the FMP does not specifically include a provision for a bycatch allocation, the measure must be enacted by the states. Therefore, this provision was made mandatory under the Atlantic Coastal Fishery Cooperative Management Act (Atlantic Coastal Act) and was adopted as a compliance criterion by the Commission's Summer Flounder, Scup, and Black Sea Bass Board. The commercial quota is allocated among the states based on historical catch shares specified in the FMP.

The bycatch allocation is effectively a 15-percent reduction in the commercial quota for the directed summer flounder fishery. The bycatch quota allocation will extend the season and will reduce discard waste in the fishery. When combined with anticipated commercial quota deductions due to overages in the 1997 fishing year, this provision will increase the probability of achieving F_{max} . Based on commercial landings as of November 8, 1997, there will be an estimated quota overage in 1997 of 273,156 lb (123,901 kg) (3.3 percent) if there are no further late reports during 1997 and all states are closed with no additional overages. Recent approval of Amendment 10 to the FMP (62 FR 63872, December 3, 1997) means that a minimum mesh size requirement throughout the net will be implemented effective on June 3, 1998, further reducing F on sublegal fish.

In 1997, the State of Delaware was closed to the landing of summer flounder by Federal permit holders as a result of deductions to the 1997 quota for quota overages in 1996 (62 FR 10473, March 7, 1997). As a result of those deductions and further quota reductions as published in the **Federal Register** on July 15, 1997 (62 FR 37741), the 1997 commercial quota allocation to the State of Delaware was -5,662 lb (-2,568 kg). The final 1998 quota for Delaware, when added to its 1997 quota, is not sufficient to offset this negative allocation. Consequently, Delaware will have no commercial quota for 1998. To prevent landings in Delaware by Federal permit holders, the State is closed to the landing of summer flounder by Federal permit holders for 1998. The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of their permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours January 1, 1998, landings of summer flounder in Delaware by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1998 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are also advised that they may not purchase summer flounder from Federally permitted vessels that land in Delaware for the remainder of the calendar year, or until additional quota becomes available through a transfer. No landings of summer flounder in Delaware have been reported for 1997 by Federally permitted dealers or by the State of Delaware. If landings should be reported for 1997, the commercial quota for the State of Delaware will be adjusted pursuant to § 648.100(d)(2).

The commercial quotas for all coastal states for 1998 are presented in Table 1. These quota figures are preliminary and will be adjusted for overages in the 1997 fishing year, as required by § 648.100(d)(2).

TABLE 1.—1998 STATE SUMMER FLOUNDER COMMERCIAL QUOTAS

| State | Share (%) | 1998 quota (pounds) | 1998 quota (kg) ¹ |
|----------|-----------|----------------------|------------------------------|
| ME | 0.04756 | 5,284 | 2,397 |
| NH | 0.00046 | 51 | 23 |
| MA | 6.82046 | 757,841 | 343,751 |
| RI | 15.68298 | 1,742,583 | 790,422 |
| CT | 2.25708 | 250,791 | 113,757 |
| NY | 7.64699 | 849,680 | 385,408 |
| NJ | 16.72499 | 1,858,363 | 842,939 |
| DE | 0.01779 | ² (3,685) | (1,671) |
| MD | 2.03910 | 226,570 | 102,770 |

TABLE 1.—1998 STATE SUMMER FLOUNDER COMMERCIAL QUOTAS—Continued

| State | Share (%) | 1998 quota (pounds) | 1998 quota (kg) ¹ |
|-------------|-----------|---------------------|------------------------------|
| VA | 21.31676 | 2,368,569 | 1,074,365 |
| NC | 27.44584 | 3,049,589 | 1,383,270 |
| Total | | 11,105,636 | 5,037,432 |

¹ Any differences expressed in the conversion of pounds to kilograms are due to rounding.² Numbers in parentheses are negative.**Scup**

The most recent assessment for scup (SAW-25, August 1997) indicates that F has been above 1.0 for the period 1984–96. SAW-25 examined 1996 total catch and estimated that a 34-percent reduction from that exploitation level would result in a Total Allowable Catch (TAC) of 7.275 million lb (3.3 million kg) and would likely reduce F to below 1.0. The TAC is allocated to the commercial (78 percent) and recreational (22 percent) sectors. Then,

a discard estimate is deducted from each TAC to establish the allowed harvest. This rule establishes for 1998 (1) a coastwide TAC of 7.275 million lb (3.3 million kg), (2) a commercial TAC of 5.675 million lb (2.6 million kg), (3) a commercial discard estimate of 1.103 million lb (0.50 million kg), (4) a commercial quota of 4.572 million lb (2.07 million kg), (5) a recreational TAC of 1.6 million lb (0.73 million kg), (6) a recreational discard estimate of 0.048 million lb (0.02 million kg), and (7) a recreational harvest limit of 1.553

million lb (0.70 million kg). This rule also implements a 20,000 lb (9,072 kg) commercial trip limit for the Winter I season, which is to decrease to 1,000 lb (453.6 kg) when 85 percent of the Winter I quota is harvested, and an 8,000 lb (3628.7 kg) trip limit in Winter II, with no decrease. The commercial quota represents a 24-percent reduction from the 1997 quota of 6.0 million lb (2.7 million kg). The commercial quota, allocated to the seasonal periods as specified in the FMP, is shown in Table 2:

TABLE 2.—PERIOD ALLOCATIONS OF COMMERCIAL SCUP QUOTA

| Period | Percent | TAC ¹ | Discards ² | Quota allocation | |
|-----------------|---------|------------------|-----------------------|------------------|-------------------|
| | | | | (LB) | (KG) ³ |
| WINTER I | 45.11 | 2,559,992 | 497,563 | 2,062,429 | 935,502 |
| SUMMER | 38.95 | 2,210,413 | 429,619 | 1,780,794 | 807,755 |
| WINTER II | 15.94 | 904,595 | 175,818 | 728,777 | 330,568 |
| TOTAL | 100.00 | 5,675,000 | 1,103,000 | 4,572,000 | 2,073,824 |

¹ Total Allowable Catch, in pounds.² Discard estimates, in pounds.³ Kilograms are as converted from pounds.

The 1998 commercial quota for the Summer period (1,780,794 lb; 807,755 kg), apportioned among the states according to the percentage shares

specified in § 648.120(d)(3), is presented in Table 3. The quota figures for both the Winter and Summer periods are preliminary and will be adjusted for

overages in 1997, as required by § 648.120(d) (5) and (6).

TABLE 3.—SUMMER PERIOD (MAY–OCTOBER) COMMERCIAL SCUP QUOTA SHARES

| State | Share (percent) | 1998 allocation | |
|----------------------|-----------------|-----------------|-------------------|
| | | (LB) | (KG) ¹ |
| Maine | 0.13042 | 2,322 | 1,053 |
| New Hampshire | 0.00004 | 1 | 0 |
| Massachusetts | 15.49117 | 275,866 | 125,131 |
| Rhode Island | 60.56588 | 1,078,554 | 489,224 |
| Connecticut | 3.39884 | 60,526 | 27,454 |
| New York | 17.05295 | 303,678 | 137,746 |
| New Jersey | 3.14307 | 55,972 | 25,388 |
| Delaware | 0.00000 | 0 | 0 |
| Maryland | 0.01288 | 229 | 104 |
| Virginia | 0.17787 | 3,167 | 1,437 |
| North Carolina | 0.02688 | 479 | 217 |
| Total | 100.00000 | 1,780,794 | 807,755 |

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

Section 648.121(b) requires the Regional Administrator to monitor the Summer period state commercial quotas and determine the date when a state's commercial quota is harvested. NMFS is required to publish notification in the **Federal Register** advising a state and notifying vessel and dealer permit holders that, effective upon a specific date, a state's Summer period commercial quota has been harvested and that no Summer period commercial quota is available for landing scup in that state for the remainder of the period. The amount of commercial quota that is allocated for the Summer period to the State of New Hampshire is 1 lb (less than 1 kg) and to the State of Delaware is 0 lb (0 kg). Therefore, the Regional Administrator has determined that no commercial quota is available for landings in those states for the Summer period. The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of their permit, not to land scup in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours May 01, 1998, until 2400 hours, October 31, 1998, landings of scup in New Hampshire or Delaware by vessels holding commercial Federal fisheries permits are prohibited, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are also

advised that they may not purchase scup from Federally permitted vessels that land in New Hampshire or Delaware for the Summer period, or until additional quota becomes available through a transfer.

Black Sea Bass

The most recent assessment for black sea bass (SAW-25, August 1997) estimated that F has generally exceeded 1.0 for the period 1984-96. SAW-25 examined 1996 total catch and estimated that a 33-percent reduction in landings from the 1996 level (9.0 million lb; 4.1 million kg) would be necessary to reduce F below 1.0. As a result, this rule would implement the following specifications: (1) A commercial quota of 3.025 million lb (1.4 million kg) and (2) a recreational harvest limit of 3.148 million lb (1.43 million kg). This rule will also increase the minimum commercial fish size to 10 inches (25.4 cm), consistent with measures being implemented by the Commission and proposed by the South Atlantic Fishery Management Council in the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP). Additionally, the catch threshold level that would trigger the minimum mesh size requirement will increase from 100 to 1,000 lb (45.4 to 453.6 kg).

This rule also implements trip limits for all commercial gear types for each of the four quarterly quotas. In Quarter 1

(Q1), the trip limit will be 11,000 lb (4,990 kg); in Q2, 7,000 lb (3,175 kg); in Q3, 3,000 lb (1,361 kg), and in Q4, 4,000 lb (1,814 kg). While the trip limits could, in theory, prevent quarterly closures, the limits impact only approximately 5 percent of the trips in this fishery. NMFS remains concerned about the cost of enforcement compared to the effectiveness of these trip limits. However, no change to the trip limits are made at this time since the states are implementing these limits for January 1, 1998, as compliance criteria under the Commission requirements. Changes at this time would result in differing limits for state-permitted and Federally-permitted vessels, compounding the concerns about the measure. Such an inconsistency would be confusing to the industry and would prevent effective enforcement. NMFS recommends continued oversight of these trip limits to monitor their enforceability, their impact on the fishery and their effectiveness at achieving the conservation goals of the FMP. NMFS expects that the Council will carefully examine the impacts of these trip limits as part of the annual specification process for 1999.

The 1998 commercial quota, apportioned by quarter according to the percentage shares specified in § 648.140(d)(1), and the trip limits associated with those quarters are presented in Table 4:

TABLE 4.—1998 BLACK SEA BASS QUARTERLY COASTWIDE QUOTAS AND QUARTERLY TRIP LIMITS

| Quarter | Percent | Pounds | (kg) ¹ | Trip limits | |
|--------------------|---------|-----------|-------------------|-------------|-------|
| | | | | lbs | (kg) |
| 1. (Jan-Mar) | 38.64 | 2,385,247 | 1,081,930 | 11,000 | 4,990 |
| 2. (Apr-Jun) | 29.26 | 1,806,220 | 819,288 | 7,000 | 3,175 |
| 3. (Jul-Sep) | 12.33 | 761,131 | 345,243 | 3,000 | 1,361 |
| 4. (Oct-Dec) | 19.77 | 1,220,402 | 553,565 | 4,000 | 1,814 |
| Total | 100.00 | 6,173,000 | 2,800,026 | | |

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

Changes From the Proposed Rule

In the proposed rule, Table 4 specified the quarterly coastwide allocations and trip limits for the commercial black sea bass fishery. The table erroneously identified Quarter 2 as comprising the months of April through May. Instead, Quarter 2 comprises the months of April through June, and the table is corrected to read as such in this final rule.

This document corrects the language specified in § 648.100(a), established by the final rule implementing Amendment 7 to the FMP, that set the target F for

summer flounder for 1998 and beyond as $F = 0.23$ and specified that the allowable levels of fishing in 1996 and 1997 may not exceed 18,518,830 lb (8.4 million kg), unless such fishing levels have an associated F of 0.23. The stated management strategy of Amendments 2 and 7 to the FMP defines overfishing for summer flounder as fishing in excess of F_{\max} level. F_{\max} is a biological reference point that corresponds to the level of F that produces the maximum yield per recruit. As a reference point, F_{\max} may change based on changes in the summer flounder stock. Although F_{\max} corresponded with an F of 0.23 when

the final rules implementing Amendments 2 and 7 to the FMP were developed, F_{\max} is currently 0.24. As a result, while $F = 0.23$ was F_{\max} at that time, the section must be corrected to implement the intent of the Council in Amendments 2 and 7 that the target is F_{\max} , and not 0.23. Thus, the final rule, technical amendment contained in this action changes the wording of the target F for 1998 and beyond for summer flounder to be the fishing mortality rate that yields the maximum yield per recruit (F_{\max}), rather than a numerical term that varies slightly over time.

Comments and Responses

A total of 24 letters from the public, one (1) letter from the Commonwealth of Massachusetts, Division of Marine Fisheries (MA-DMF), and one (1) letter from the Commonwealth of Massachusetts, Marine Fisheries Commission (MA-MFC) were received during the comment period for this action, which ended on November 17, 1997. Three form letters were submitted by several individuals. Several of the letters contained comments on the FMP in general or offered suggestions for future management that are not within the scope of this action. Only comments relevant to the proposed specifications that were received by NMFS prior to the close of business on the date specified as the close of comments were considered for this rulemaking.

Summer Flounder

Comment: One letter from the public and two form letters signed by 15 people supported a commercial quota of 19 million lb (8.6 million kg) for the 1998 summer flounder fishery. They noted that this quota was examined under Option 4 in the 1997 stock assessment (SAW-25) report.

Response: SAW-25 examined a range of landings projections, including Option 4, which was examined at the request of industry participants. Option 4 projected a TAL of 31.7 million lb (14.4 million kg) and a commercial quota of 19 million lb (8.6 million kg), as noted by the commenters. This option provides a median F of 0.65 for 1998, indicating that this option has over 96 percent probability of resulting in F that will be in excess of F_{\max} for summer flounder in 1998. Both the Council and NMFS found that a TAL of this level does not have a reasonable likelihood of achieving the target F for 1998 and is not in compliance with the FMP or with NMFS policy, which is to be cautious in the face of uncertainty.

Comment: One letter from the public and one form letter signed by 8 individuals stated that the 15-percent bycatch provision should be in addition to the recommended quota, not included within the recommended amount.

Response: The TAL for summer flounder specified by this rule has a 50-percent probability of achieving $F = 0.35$. The target F for 1998 is 0.24. The most recent assessment for summer flounder (SAW-25) noted that F for summer flounder has not yet been reduced below 1.0. As a consequence, SAW-25 recommended a reduction in the TAL to 13.889 million lb (6.30 million kg). SAW-25 also noted the

need to reduce discard and discard mortality in both the commercial and recreational fisheries. The provision to include a 15 percent bycatch fishery within the TAL of 18.518 million lb (8.40 million kg) is both a serious attempt to address discards, and, in effect, a 15-percent reduction in the commercial quota allocated to the directed fishery. The bycatch quota allocation will extend the season and reduce waste due to discards following the end of the directed fishery. The inclusion of the 15-percent bycatch provision within the TAL is one of the factors that provide a reasonable likelihood that the TAL will achieve the F rate specified in the FMP. To add the 15 percent to the present quota would merely create additional landings, and hence additional mortality on the stock, and lessen the likelihood that the TAL will achieve the target F .

Comment: One comment letter signed by 7 individuals stated that 15 percent of any other catch should be allowed for summer flounder bycatch, so that scallop, squid, croaker, dogfish and other fisheries could land a bycatch and not throw the summer flounder overboard. This summer flounder should not be counted against the quota.

Response: This suggestion would violate several provisions of the FMP and would undermine the integrity of the commercial quota. The regulations governing summer flounder at § 648.100(d)(2) specifically state that all summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Additionally, in the EEZ, any fishery participant, regardless of the species targeted, may land summer flounder for sale provided that the participant complies with the requirements of the FMP, including, but not limited to, the possession of a vessel moratorium permit. Most states also have vessel permit requirements.

Comment: The MA-DMF and MA-MFC question whether a 15-percent bycatch provision will result in a reduction in discards and waste sufficient to compensate for the fact that the adopted TAL is 4.63 million lb (2.1 million kg) in excess of a TAL of 13.889 million lb (6.30 million kg), the level specified by SAW-25 as having a 50-percent probability of achieving F 0.24 in 1998.

Response: The 15-percent bycatch provision is not the only measure that increases the likelihood that the TAL of 18.518 million lb (8.4 million kg) will achieve F_{\max} in 1998. Anticipated deductions due to overages in the 1997 fishing year will also increase the

probability of achieving F_{\max} . Based on commercial landings to date, there will be an estimated quota overage in 1997 of 273,156 lb (123,901 kg) (3.3 percent) if there are no further late reports during 1997 and all states are closed with no additional overages. On June 3, 1998, the measure requiring a minimum mesh size throughout the net approved as part of Amendment 10 will become effective thereby further reducing F on sublegal fish.

SAW-25 notes that, in the retrospective analysis of the summer flounder virtual population analysis (VPA) for terminal catch years 1990–1996, the pattern of estimation of F for 1994–1995 alters the pattern noted in the last assessment. The last assessment noted that F was underestimated in the terminal catch years 1991–1993. SAW-25 concluded that the reversal in terminal year F estimates may be due to improved accuracy of catch estimates in 1995 and 1996, more accurate indices of stock size due to revised aging, and improved monitoring and estimation of discards. NMFS agrees that there have been substantive improvements in quota monitoring and prevention of quota overages over the past year. Since there is no reason to expect that these factors will change, this pattern could likely hold for the 1997 stock estimates. A greater stock size in 1997 would increase the projected stock size in 1998, which means more fish being available for harvest at a given F . This, in turn, increases the probability that the proposed TAL of 18.518 million lb (8.4 million kg) would achieve F_{\max} in 1998.

Scup

Comment: One comment letter signed by 7 individuals states that scup landings have already been reduced by the 5.5 inch (14.0 cm) mesh size requirement in summer flounder and by the 6 inch (15.2 cm) mesh size requirement in the multispecies fisheries, and therefore, it is wrong that these scup, when caught in these nets, must be discarded.

Response: Any vessel fishing with a net that meets or exceeds the 4.5 inch (11.4 cm) diamond minimum mesh requirement for the scup fishery and is issued a valid scup moratorium permit may retain all scup of legal size. Other provisions may limit fishing activity, for instance, if landings are prohibited due to quota attainment. Data do not indicate that scup landings have decreased due to the 1993 (Federal) implementation of the summer flounder minimum mesh size.

Comment: MA-DMF and MA-MFC comment that the minimum mesh size

should be required throughout the net, so that the scup requirement is consistent with the summer flounder requirement in Amendment 10.

Response: Amendment 8 to the FMP, which implemented comprehensive management measures for the scup fishery, authorizes the Council to recommend to the Regional Administrator measures necessary to assure that the specified exploitation rate will not be exceeded. Among the measures the Council may recommend is a minimum mesh size. However, this mesh may be applied to the codend of the net only. There is no mechanism in the scup regulations by which the Council, or NMFS, could implement mesh throughout the net for scup. Such a mechanism would have to be established through an amendment to the FMP.

Comment: MA-DMF and MA-MFC commented on concerns expressed in SAW-25 concerning the inadequacy of the input data. Specifically, exploratory VPA estimates of fishing mortality in 1996 were used to set a TAC for 1998, an approach which these agencies feel is inappropriate. The comments state it is unjustifiable to cut landings when the target F may have been achieved in 1997. MA-MFC urged a "different approach" to management other than just cutting landings. Further, the agencies maintain that discard levels of scup are high in the offshore small mesh (squid) fishery and that measures must be implemented to reduce them prior to quota reductions.

Response: SAW-25 utilized the best available data to complete an assessment of the scup stock. There were concerns about the data that SAW-25 noted, and NMFS believes that these concerns should not logically be interpreted that landings cannot be reduced. Although the agency is concerned about the issue of discards, SAW-25 notes that there are serious limitations in the data used to estimate and characterize commercial discards and landings and that there is not an obvious solution. The commenter did not elaborate what "different approach" to management might be appropriate for this fishery, so NMFS cannot respond further.

Black Sea Bass

Comment: One comment letter signed by 7 individuals states that black sea bass landings have already been reduced by the 5.5 inch (14.0 cm) mesh requirement in summer flounder and by the 6 inch (15.2 cm) mesh requirement in the multispecies fisheries, and, therefore, it is wrong that these fish,

when caught in that net, must be discarded.

Response: Any vessel fishing with a net that meets or exceeds the 3.5 inch (8.9 cm) diamond or the 4.0 inch (10.2 cm) square minimum mesh requirement for the black sea bass fishery and being issued a valid black sea bass moratorium permit may retain all black sea bass of legal size. Other provisions may limit fishing activity, for instance if landings are prohibited due to quota attainment. Data do not indicate that black sea bass landings have decreased due to the 1993 (Federal) implementation of the summer flounder minimum mesh size.

Comment: One member of the public and the MA-MFC advocated a 12-inch (30.5 cm) minimum fish size for black sea bass, instead of the 10-inch (25.4 cm) minimum fish size.

Response: A 12-inch (30.5 cm) minimum fish size for black sea bass would certainly compound any benefits to the resource and stock rebuilding, and NMFS commends any state, such as Massachusetts, that implements that minimum size. However, both the Commission and the South Atlantic Fisheries Management Council (by way of the Snapper/Grouper FMP) voted to increase the minimum black sea bass size to 10 inches (25.4 cm). There are benefits associated with consistency for both industry participants and law enforcement. Additionally, length frequency data from the NMFS weighout data (Maine to Virginia) and the North Carolina winter trawl fishery data indicate that a 12-inch (30.5 cm) minimum fish size would decrease dramatically the amount of fish that could be legally landed. This decrease in landings would increase discards unless gear restrictions were also modified. Gear modifications were not considered by the Council.

Comment: One member of the public supports the 1,000 lb (454 kg) threshold for triggering minimum mesh size in the black sea bass fishery because it will require the directed black sea bass fishery to use appropriate gear and still allow an incidental catch to be harvested from other fisheries.

Response: NMFS agrees.

Comment: One member of the public supports black sea bass trip limits as a method to extend a quota. MA-DMF and MA-MFC feel that the trip limit for the second quarter is too high and advocate a 2,000 lb (907.2 kg) trip limit instead.

Response: NMFS agrees that trip limits could, in theory, extend a quota and prevent quarterly closures. However, NMFS remains concerned about the adopted limits since they

impact only approximately 5 percent of the trips in this fishery. NMFS' primary concern focuses on the cost of enforcement compared to the effectiveness of these trip limits. NMFS determined to make no changes to the trip limits at this time since the states are implementing these limits by January 1, 1998, as Commission compliance criteria. Changes at this time would result in differing limits for state and Federal vessels, compounding agency enforcement concerns.

Classification

These proposed specifications have been determined to be non-significant for purposes of E.O. 12866.

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 the proposed rule would not have a significant economic impact on a substantial number of small entities. The reasons for this certification are based on an assessment of this action under NMFS's long standing Regulatory Flexibility Act guidelines discussed in the proposed rule. Although not required to do so, because a full examination of the economic impact of this rule is important, NMFS prepared an IRFA. NMFS received no comments on the IRFA or the determination that would result in a change to the finding of no significant impact. Editorial corrections were made to the IRFA at the request of Council staff. Therefore, the IRFA is adopted as final with these corrections.

NMFS considered several alternatives in the development of the specifications contained in this rule. Two other alternatives were considered for the 1998 summer flounder specifications: a TAL of 13.889 million lb (6.30 million kg), and a TAL 22.046 million lb (10.00 million kg). For the first alternative, landings would be substantially reduced in 1998 without significant long-term benefit to either the commercial or recreational fishing industries or the stock. The second non-preferred alternative (22.046 million lb/10 million kg TAL) represents an increase of almost 19 percent from the 1997 level. Based on stochastic projections, this alternative would have a 1 percent probability of achieving the target F of 0.24 in 1998. Thus, while this alternative would minimize significant economic impacts on small entities, it would not accomplish the stock rebuilding objectives of the FMP.

For scup, two alternatives, other than the preferred alternative, were considered for the 1998 specifications

using varying discard estimates: commercial quotas of 3.626 million lb (1.64 million kg) and 5.675 million lb (2.57 million kg). The recreational harvest limit was 1.553 million lb (0.70 million kg) for each alternative. The first alternative assigns 2.049 million lb (0.929 million kg) to the discard estimate, and would set the coastwide commercial quota at 3.626 million lb (1.64 million kg). This alternative implies that the effects of the mesh and minimum size regulations are minimal or nonexistent, and assigns a larger percentage of the TAC to discards. To minimize significant economic impacts on small entities, the Council did not adopt this alternative. Conversely, the second alternative sets a discard level of 0 lb (0 kg) and a commercial quota of 5.675 million lb (2.57 million kg). This assumption is unrealistic given the nature of the scup fishery. As such, this alternative would not accomplish the stock rebuilding objectives of the FMP.

In black sea bass, two alternative TALs were considered. The first is a TAL of 4.519 million lb (2.05 million kg). This alternative would accelerate stock rebuilding, but at the expense of the commercial and recreational fishing industries. The second alternative considered would set the TAL equal to the total landings for 1996. This landing limit has no probability of achieving the target in 1998 set forth in Amendment 9 to the FMP. Therefore, it would not accomplish the stock rebuilding objectives of the FMP. The Council also considered other management measures for black sea bass. For further information on these alternatives, please consult the FRFA. Copies of the FRFA are available (see ADDRESSES).

This action adopts final 1998 specifications for the summer flounder, scup, and black sea bass fisheries and implements associated management measures. Generally, this action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. This action establishes year-long quotas which are used to close the fishery when a quota is harvested. Closures must be taken immediately to conserve fishery resources. The minimum fish size requirement for black sea bass implements a measure for Federal permit holders that has been adopted by the Commission as a compliance criteria with an effective date of January 1, 1998. Since this measure has already been adopted by the states for an effective date of January 1, 1998, it is not practical to delay the effectiveness beyond that. The change in the possession limit that triggers the minimum net mesh size requirement

relieves a restriction by allowing a bycatch fishery to be prosecuted that would otherwise be restricted by the requirement to change to a larger mesh at a lower threshold. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA), under 5 U.S.C. 553(d)(1), waives the 30-day delayed effectiveness period with respect to such provisions. For the technical regulatory change, the AA finds good cause to waive prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B). The technical change corrects the regulation's wording of the target F for summer flounder for 1998 and beyond to reflect accurately the stated management strategy of the FMP which defines overfishing for summer flounder as fishing in excess of F_{max} level. As such, the AA finds that prior notice and comment are unnecessary. Further, there is no requirement to delay the effective date of this technical change under 5 U.S.C. 553(d) as it is not a substantive rule.

List of Subjects in 50 CFR Part 648

Fisheries, Reporting and record keeping requirements.

Dated: December 12, 1997.

David L. Evans,
Deputy Assistant Administrator for Fisheries,
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 (u)(1) is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(u) * * *
(1) Possess 1,000 lb (453.6 kg) or more of black sea bass, unless the vessel meets the minimum mesh requirement specified in Sec. 648.144(a).

* * * * *

3. In § 648.100, paragraph (a) is revised to read as follows:

§ 648.100 Catch quotas and other restrictions.

(a) *Annual review.* The Summer Flounder Monitoring Committee shall review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to achieve a fishing mortality rate (F) of 0.30 in 1997, and the F that produces the maximum

yield per recruit (F_{max}) in 1998 and thereafter, provided the allowable levels of fishing in 1997 may not exceed 18,518,830 lb (8,400 mt), unless such fishing levels have an associated F of F_{max} : 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 on the mortality of summer flounder; and any other relevant information.

* * * * *

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

§ 648.143 Minimum sizes.

(a) The minimum size for black sea bass is 10 inches (25.4 cm) total length for all vessels issued a moratorium permit under § 648.4(a)(7) which fish for or retain black sea bass in or from U.S. waters of the western Atlantic Ocean from 35°15.3' N. Lat., the latitude of Cape Hatteras Light, North Carolina, northward to the U.S.-Canada border.

* * * * *

5. In § 648.144, paragraph (a)(1)(i) is revised to read as follows:

§ 648.144 Gear restrictions.

(a) * * *

(1) * * * (i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 1,000 lb or more (453.6 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.

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