

deadlines; extends the expiration dates of valid or renewable open access permits for these fisheries; and extends the expiration date of the moratorium to account for the delay in implementation.

In order to comply with the procedural requirements of the Magnuson-Stevens Act as stated above, the entire amendment will be submitted for review by the Secretary of Commerce, even though only one specific section of the document will be substantively altered, and if approved, new regulations will be promulgated accordingly from the properly processed amendment. Portions of the document, specifically the environmental and economic analysis required pursuant to other laws, remain in the document to provide clarity for reviewers and facilitate meaningful public comment. These analyses were previously disseminated and subject to public comment in the original amendment package. The majority of the analyses remain valid and unaffected, given that most of the regulatory measures analyzed will be unaltered by the new amendment. As stated above, the changes to the original permit moratorium relate to a single eligibility criterion and the timing of implementation of the moratorium. Where substantive changes were made to the amendment, new analyses describing these effects were conducted for the RIR and IRFA. This information is provided in the RIR and a IRFA that is included as an attachment to the amendment.

In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to implement the corrected amendment to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by May 5, 2003, whether specifically directed to the FMP or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the FMP. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the FMP or the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: February 26, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021120279-3047-02 ; I.D. 102302B]

RIN 0648-AN12

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement approved measures contained in Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP, this final rule establishes an annual coastwide quota for black sea bass and allows vessels to fish under a Southeast Region Snapper/Grouper permit and to retain their Northeast Region Black Sea Bass Permit during a Federal fishery closure. Finally, this final rule requires that vessels issued a Federal moratorium permit for summer flounder, scup, and black sea bass be subject to the presumption that any fish of these species on board were harvested from the exclusive economic zone (EEZ).

DATES: The measures contained in the final rule are effective on March 31, 2003.

ADDRESSES: Copies of the FMP, Amendment 13, its Regulatory Impact Review (RIR) including the Final Regulatory Flexibility Analysis (FRFA), and the Final Environmental Impact Statement (FEIS) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 200 S. New Street, Dover, DE 19904-

6790. The FEIS/RIR/FRFA is also accessible via the Internet at <http://www.nero.nmfs.gov>.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135, e-mail sarah.mclaughlin@noaa.gov.

SUPPLEMENTARY INFORMATION: This final rule implements measures contained in Amendment 13, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on January 29, 2003. The purpose of Amendment 13 is to rectify problems in the black sea bass commercial fishery (specifically regarding the temporal and geographic distribution of landings and permit relinquishment requirements for certain vessels) and to consider management measures to minimize the adverse effects of fishing on essential fish habitat.

Details concerning the justification for and development of Amendment 13 and the implementing regulations were provided in the preamble to the proposed rule (67 FR 72131, December 4, 2002) and are not repeated here.

Approved Measures

To implement Amendment 13, this final rule: (1) establishes an annual (calendar year) coastwide quota for the commercial black sea bass fishery to replace the current quarterly quota allocation system; and (2) allows vessels to retain their Northeast Region Black Sea Bass Permit during a Federal fishery closure; previously, vessels issued both a Northeast Region Black Sea Bass Permit and a Southeast Region Snapper/Grouper Permit were required to relinquish their Northeast Black Sea Bass Permits for 6 months if they wanted to continue to fish for black sea bass south of Cape Hatteras under their Snapper/Grouper Permits during a Federal black sea bass fishery closure.

In addition, this final rule revises the presumptions in 50 CFR 648.14(x) for summer flounder, scup, and black sea bass. NMFS determined that § 648.14(x) erroneously omitted the presumption that summer flounder, scup, and black sea bass on board were caught in the EEZ for vessels issued moratorium permits under the three fisheries covered by the FMP. Therefore, this final rule adds the presumption that all summer flounder, scup, and black sea bass possessed on board a vessel issued a Federal permit under 50 CFR 648.4 are deemed to have been harvested from the EEZ within the management unit for the particular species. This presumption, as it pertains to black sea bass, does not apply to vessels issued a Southeast

Region Snapper/Grouper permit and a Northeast Black Sea Bass permit that are fishing for black sea bass south of Cape Hatteras during a closure of the black sea bass fishery for the area north of Cape Hatteras.

Classification

The Administrator, Northeast Region, NMFS, determined that Amendment 13, which this final rule implements, is necessary for the conservation and management of the black sea bass fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

A final environmental impact statement was prepared for Amendment 13; a notice of availability was published on October 30, 2002 (67 FR 66103). NMFS determined, upon review of the Amendment/FEIS and public comments, that approval and implementation of Amendment 13 is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to mitigate, to the extent possible, all possible social and economic adverse effects while minimizing risks to the resource and its environment.

An FRFA was completed for this action that contains the items specified in 5 U.S.C. 604(a). The FRFA supplements the IRFA and contains a summary of the analyses completed in support of this action. A copy of the analyses is available from the Council (see ADDRESSES). A description of the action, a discussion of why it is being considered, and its legal basis are also contained in the preamble to the proposed rule and are not repeated here. The summary of the analyses of the potential impacts of the management alternatives considered in the FMP are provided in the Classification section of the proposed rule and are not repeated here. The items specified in 5 U.S.C. 604(a) are summarized as follows:

Public Comments

No comments were received on the IRFA, or on the measures contained in the proposed rule. Comments received in response to the Notice of Availability for the amendment pertained to issues other than economic impacts of the action.

Number of Small Entities

The IRFA identified 727 individual vessels that were active in the black sea bass fishery in 2000, all of which appear to be small entities.

Permits and Reporting Requirements

No additional reporting requirements are included in this final rule.

Minimizing Significant Economic Impacts on Small Entities

The Council analyzed several quota program alternatives and selected the alternative (Federal coastwide quota) that provides the most flexibility to the states in managing their fisheries under the state-by-state quota program approved by the Commission. This alternative, relative to the others considered, is the one most beneficial for fishermen as it does not affect adversely the distribution of fishing opportunities from state to state, reduces uncertainty regarding availability of quota, and allows for more traditional fishing and trip planning. Regulations implemented by the states under the Commission's Fishery Management Plan for black sea bass, which include state-by-state quota allocations, would overlap, but would not duplicate or conflict with the Federal coastwide quota program proposed in this action. Any unavoidable adverse effects of the quota program should be minimized due to the compatibility of the Federal coastwide annual quota program and the Commission's FMP.

Although NMFS was unable to conduct analyses on the disproportionality or profitability of the regulations as part of the overall economic analysis due to a lack of quantifiable data, NMFS did project changes to gross revenues for vessels. According to both the Northeast and Southeast Region databases, allowing vessels issued both a Northeast Region Black Sea Bass Permit and a Southeast Region Snapper/Grouper Permit to keep their Northeast Region Black Sea Bass Permit during a fishery closure north of Cape Hatteras if they want to continue fishing for black sea bass south of Cape Hatteras under their Southeast Region Snapper/Grouper Permit would affect five vessels. Because the action would allow vessels to continue fishing south of Cape Hatteras, it would have no negative impacts on the five affected vessels, or any other vessels that in the future may be affected by the proposed elimination of the restriction. In comparison, continuation of the status quo, or requiring vessels to relinquish their Northeast Region Black Sea Bass Permit during a closure, could contribute to revenue losses for vessels that would lose fishing time north of Cape Hatteras when the fishery reopened. However, as noted, this would

affect only 5 of the 727 vessels considered in the IRFA.

For a description of the alternatives considered but rejected, see the IRFA discussion in the Classification section of the proposed rule (67 FR 72131).

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rule making process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of Federal permits issued for the black sea bass fishery. In addition, copies of this final rule and guide are available from the Regional Administrator (see ADDRESSES) and on the Internet at <http://www.nero.noaa.gov>.

This final rule contains no collection-of-information requirements.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: February 26, 2003.

William T. Hogarth,

*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 § 648.4, paragraph (b) is revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree, as a condition of the permit, that the vessel and the 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 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 except tilefish managed under this part must comply with the more restrictive requirement. 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 tilefish management unit for tilefish 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, scup moratorium, or black sea bass moratorium, or a spiny dogfish, or bluefish, commercial vessel permit must also agree not to land summer flounder, scup, black sea bass, spiny dogfish, or bluefish, respectively, in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. A state not receiving an allocation of summer flounder, scup, black sea bass, or bluefish, either directly or through a coast-wide allocation, is deemed to have no commercial quota available. Owners and operators of vessels fishing under the terms of the tilefish limited access permit must agree not to land tilefish after NMFS has published a notification in the **Federal Register** stating that the quota for the tilefish limited access category under which a vessel is fishing has been harvested. Owners or operators fishing for surfclams 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 surfclam and ocean quahog requirement of this part differs from a surfclam and ocean quahog management measure required by a state that does not require cage tagging, any vessel owners or operators permitted to fish in the EEZ for surfclams and ocean quahogs must comply with the more restrictive requirement while fishing in state waters. However, surrender of a surfclam and ocean quahog vessel permit by the owner by certified mail addressed to the Regional Administrator allows an individual to comply with the less restrictive state minimum size requirement, as long as fishing is

conducted exclusively within state waters.

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3. In § 648.14, paragraphs (a)(96), (u)(3), (u)(11), (x)(3), (x)(6), and (x)(7) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(96) Purchase or otherwise receive for commercial purposes black sea bass landed for sale by a moratorium vessel in any state, or part thereof, north of 35°15.3' N. lat., after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

* * * * *

(u) * * *

(3) Land black sea bass for sale in any state, or part thereof, north of 35°15.3' N. lat. after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass.

* * * * *

(11) Possess black sea bass after the effective date of the notification published in the **Federal Register** stating that the commercial annual quota has been harvested and the EEZ is closed to the harvest of black sea bass, unless the vessel has been issued a Southeast Region Snapper/Grouper Permit and fishes for and possess black sea bass south of 35°15.3' N. lat.

* * * * *

(x) * * *

(3) *Summer flounder.* All summer flounder retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

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(6) *Scup.* All scup retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ.

(7) *Black sea bass.* All black sea bass retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested in the EEZ, unless the vessel also has been issued a Southeast Region Snapper/Grouper permit and fishes for, retains, or possesses black sea bass south of 35°15.3' N. lat.

* * * * *

4. In § 648.140, paragraphs (b)(1), (b)(2), and (d) are revised to read as follows:

§ 648.140 Catch quotas and other restrictions.

* * * * *

(b) * * *

(1) A commercial quota allocated annually, set from a range of zero to the maximum allowed to achieve the specified target exploitation rate, set after the deduction for research quota.

(2) A commercial possession limit for all moratorium vessels may be set from a range of zero to the maximum allowed to assure that the annual coastwide quota is not exceeded, with the provision that these quantities be the maximum allowed to be landed within a 24-hour period (calendar day).

* * * * *

(d) *Distribution of annual quota.* (1) Beginning on March 31, 2003, a commercial annual coastwide quota will be allocated to the commercial black sea bass fishery.

(2) All black sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) shall be applied against the commercial annual coastwide quota, regardless of where the black sea bass were harvested. All black sea bass harvested north of 35°15.3' N. lat., and landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters will be counted against the quota by the state in which it is landed, pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission. The Regional Administrator will determine the date on which the annual coastwide quota will have been harvested; beginning on that date and through the end of the calendar year, the EEZ north of 35°15.3' N. lat. will be closed to the possession of black sea bass. The Regional Administrator will publish notification in the **Federal Register** advising that, upon, and after, that date, no vessel may possess black sea bass in the EEZ north of 35°15.3' N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure, pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission.

(3) Landings in excess of the annual coastwide quota will be deducted from the quota allocation for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30, and

landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual coastwide quota for the current year. If the Regional Administrator determines during the fishing year that any part of

an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the appropriate quota allocation. The Regional Administrator will publish

notification in the **Federal Register** announcing the restoration.

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