

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 194

[Docket No. RSPA-03-16560; Amdt. No. 194-5]

RIN 2137-AC30

Pipeline Safety: Response Plans for Onshore Transportation-Related Oil Pipelines

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: On February 23, 2005, the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety (OPS) issued a final rule adopting as a final rule, the interim final rule which was issued on January 5, 1993. This final rule also made minor amendments to some of the regulations in Part 194 in response to public comments and the experience that OPS gained in implementing the interim final rule, leading spill response exercises, and responding to actual spills. The amendments were generally

technical in nature and did not involve additional costs to pipeline operators or the public.

In issuing the final rule, a table was inadvertently misprinted. This table in § 194.105(b)(3) specifies the potential spill volume reduction credits operators may use when they have secondary containment and other spill prevention measures on breakout tanks. These spill reduction credits are used when calculating the worst case discharge volume.

This correction replaces the incorrect table with the correct table.

DATES: This Final Rule correction is effective March 25, 2005.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366-5523, U.S.

Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Room 2103, 400 Seventh Street, SW., Washington, DC 20590-0001, on the contents of this final rule, or the Dockets Facility, <http://dms.dot.gov>, (202) 366-1918, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001, for copies of this final rule or other information in the docket. General information about OPS programs is on the Internet home page at <http://ops.dot.gov>. For information on the Oil Pollution Act of

1990 (OPA 90), first click on the "Initiatives," then on "OPA Initiatives."

List of Subjects in 49 CFR Part 194

Environmental protection, Hazardous materials transportation, Oil pollution, Petroleum, Pipeline safety, Pipelines, Reporting and recordkeeping requirements, Transportation, Water pollution control.

Accordingly, the Final Rule, which was published at (70 FR 8734) February 23, 2005, is corrected as follows:

PART 194—RESPONSE PLANS FOR ONSHORE OIL PIPELINES

1. The authority citation for part 194 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), and (j)(6); sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.53.

2. Amend § 194.105 by revising paragraph (b)(4) and its table to read as follows:

§ 194.105 Worst case discharge.

* * * * *

(b) * * *

(4) Operators may claim prevention credits for breakout tank secondary containment and other specific spill prevention measures as follows:

Prevention measure	Standard	Credit (percent)
Secondary containment > 100%	NFPA 30	50
Built/repared to API standards	API STD 620/650/653	10
Overfill protection standards	API RP 2350	5
Testing/cathodic protection	API STD 650/651/653	5
Tertiary containment/drainage/treatment	NFPA 30	5
Maximum allowable credit		75

* * * * *

Issued in Washington, DC, on June 2, 2005.

Joy Kadnar,

Acting Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05-11444 Filed 6-15-05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050304059-5146-02; I.D. 022805D]

RIN 0648-AS21

Fisheries of the Northeastern United States; Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2005

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement recreational management measures for the 2005 summer flounder, scup, and black sea bass fisheries. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Effective July 18, 2005, except for the amendment to § 648.107(a) introductory text, which is effective June 16, 2005.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees and of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South

Street, Dover, DE 19901-6790. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov/ro/doc/com.htm>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298.

FOR FURTHER INFORMATION CONTACT:

Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135, e-mail

sarah.mclaughlin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations, which are found at 50 CFR part 648, subparts A (general

provisions), G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational management measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 miles of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

The 2005 coastwide recreational harvest limits are 11.98 million lb (5,434 mt) for summer flounder, 3.96 million lb (1,796 mt) for scup, and 4.13 million lb (1,873 mt) for black sea bass. The 2005 quota specifications, inclusive of the recreational harvest limits, were determined to be consistent with the 2005 target fishing mortality rate (F) for summer flounder and the target exploitation rates for scup and black sea bass.

The proposed rule to implement annual Federal recreational measures for the 2005 summer flounder, scup, and black sea bass fisheries was published on March 15, 2005 (70 FR 12639), and contained management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. A complete discussion of

the development of the recreational management measures appeared in the preamble of the proposed rule and is not repeated here. All minimum fish sizes discussed below are total length measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. All possession limits discussed below are per person.

Based on the recommendation of the Commission, the Regional Administrator finds that the recreational summer flounder fishing measures proposed to be implemented by the states of Massachusetts through North Carolina for 2005 are the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. According to the regulation at § 648.107(a)(1), vessels subject to the recreational fishing measures of this part, landing summer flounder in a state with an approved conservation equivalency program shall not be subject to the more restrictive Federal measures, and shall instead be subject to the recreational fishing measures implemented by the state in which they land. Section 648.107(a) has been amended accordingly. The management measures will vary according to the state of landing, as specified in the following table.

TABLE 1—2005 STATE RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

State	Minimum Fish Size	Possession Limit	Fishing Season
MA	17 inches (43.2 cm)	7 fish	January 1 through December 31
RI	17.5 inches (44.5 cm)	7 fish	April 1 through December 31
CT	17.5 inches (44.5 cm)	6 fish	April 30 through December 31
NY	17.5 inches (44.5 cm)	5 fish	April 29 through October 31
NJ	16.5 inches (41.9 cm)	8 fish	May 7 through October 10
DE	17.5 inches (44.5 cm)	4 fish	January 1 through December 31
MD*	15.5 inches (39.4 cm)	4 fish	January 1 through December 31
VA	16.5 inches (41.9 cm)	6 fish	January 1 through December 31
NC	14 inches (35.6 cm)	8 fish	January 1 through December 31

*Measures for the ocean waters off MD in the Atlantic Ocean and coastal bays; for the Chesapeake Bay, a 15-inch (38.1-cm) minimum fish size, a 2-fish possession limit, and a fishing season of January 1 through December 31 applies.

Table 2 contains the coastwide Federal measures for scup and black sea bass that are being implemented. These

measures are unchanged from those published in the proposed rule.

TABLE 2—2005 SCUP AND BLACK SEA BASS RECREATIONAL MANAGEMENT MEASURES

Fishery	Minimum Fish Size		Possession Limit	Fishing Season
	inches	cm		
Scup	10	25.4	50 fish	January 1 through last day of February, and September 18 through November 30
Black Sea Bass	12	30.5	25 fish	January 1 through December 31

In the proposed rule, NMFS indicated that a 9-percent reduction in scup landings would be necessary to achieve the 2005 scup recreational target. NMFS disapproved the Council's scup recommendation (Scup Alternative 1), which would maintain the status quo coastwide management measures of a 10-inch (25.4-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 28, and September 7 through November 30, on the basis that maintaining the existing regulations would not achieve of the 2005 scup recreational target. NMFS requested comment on the following two alternatives presented by the Council that are expected to reduce recreational landings by the required 9 percent: A 10-inch (25.4-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 28, and September 18 through November 30 (Scup Alternative 2); and a 10-inch (25.4-cm) minimum fish size, a 50-fish possession limit, and open seasons of January 1 through February 28, and September 12 through September 30 (Scup Alternative 3). No comments were received specifically regarding these two alternatives. Upon further analysis following publication of the proposed rule, NMFS has determined that the fishing season presented in Scup Alternative 3 was intended to be January 1 through February 28, and September 12 through October 31, i.e., it is the opening of the fishery for these periods that would effect a 9-percent reduction. As presented in the proposed rule, Scup Alternative 3 would achieve a 34-percent reduction. Council staff have verified that the use of September 30 in the alternative was a recording error. Taking into account input regarding the Mid-Atlantic party/charter sector from the Council's Scup Industry Advisory Panel that a fall fishing season of September 18 through November 30 would be preferable to September 12 through October 31, this final rule implements Scup Alternative 2.

As in the past 3 years, the scup fishery in state waters will be managed under a regional conservation equivalency system developed through

the Commission. Because the Federal FMP does not contain provisions for conservation equivalency, and states may adopt their own unique measures, the Federal and state recreational scup management measures will differ for the 2005 season.

Corrections to the Summer Flounder and Scup Regulations

This final rule also makes two corrections to the regulations at §§ 648.104 and 648.123, respectively. In the final rule to implement measures contained in Framework Adjustment 5 to the FMP (69 FR 62818, October 28, 2004, FR Doc. 04-24107), the paragraph referring to the requirements of the summer flounder small-mesh exemption area letter of authorization was inadvertently published as § 648.104(b)(1)(I) rather than § 648.104(b)(1)(i). This final rule corrects that reference to be § 648.104(b)(1)(i). In the final rule to implement the 2005 annual summer flounder, scup, and black sea bass specifications, and other commercial scup measures (70 FR 303, January 4, 2005, FR Doc. 04-28752), the threshold level to trigger the scup minimum mesh size requirement for otter trawl vessels during the scup Summer period (May 1 through October 31) was increased from 100 lb (45.4 kg) to 200 lb (90.7 kg). This change should also have been reflected in § 648.123(e), the paragraph regarding stowage of nets by trawl vessels fishing for scup. This final rule makes that change to be consistent with the threshold level listed in the minimum mesh size regulations.

Comments and Responses

Two comment letters were received regarding the proposed recreational management measures (70 FR 12639, March 15, 2005).

Comment 1: One commenter did not specify the fishery for which he made comments, but NMFS understands the comments to pertain to scup. The commenter, a CT recreational angler, would prefer a minimum fish size of 9 inches (22.9 cm), a possession limit of 40 fish, and a fishing season of July 1

through October 31, to reduce the number of injured fish being returned to the water and to allow for a longer fishing season.

Response: The implementation of the recreational scup management measures suggested by the commenter would result in a substantial increase in landings. Although a reduction in landings would be expected from the implementation of a 9-inch (22.9-cm) minimum fish size and a possession limit of 40 fish, it is far too small to offset the increase in landings that would result from the suggested fishing season, which spans the months of July through October. To achieve the 2005 scup recreational harvest limit, consistent with the mortality objectives of the FMP, NMFS considered only alternatives expected to reduce landings in 2005 by at least 9 percent or more. As indicated above, NMFS selected Scup Alternative 2, which would allow the recreational scup fishery to remain open for substantially more days during the fall period than would Scup Alternative 3, as clarified.

Comment 2: The other commenter indicated support for shorter fishing seasons, marine protected areas, and reduction of fishing quotas in general.

Response: This rule implements management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. As described in the proposed rule, the FMP established Monitoring Committees (Committees) for the summer flounder, scup, and black sea bass fisheries, consisting of representatives from the Commission, the Mid-Atlantic, New England, and South Atlantic Councils, and NMFS. The FMP and its implementing regulations require the Committees to review scientific and other relevant information annually and to recommend management measures (i.e., minimum fish size, possession limit, and fishing season) necessary to achieve the recreational harvest limits established for each of the three fisheries for the upcoming fishing year. While NMFS acknowledges that consideration of marine protected areas

and quotas is important, this rule is not the proper mechanism to address these general issues.

Classification

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

The Assistant Administrator for Fisheries, NOAA, finds, for the summer flounder recreational measures contained in this rule (§ 648.107(a)), good cause pursuant to 5 U.S.C. 553(d)(3) to make that portion of this rule effective immediately, thereby waiving the 30-day delayed effectiveness date required by 5 U.S.C. 553. The linchpin of NMFS's decision whether to proceed with the coastwide measures or to give effect to the conservation equivalent measures is advice from the Commission as to the results of its review of the plans of the individual states. This advice has only recently been received via a letter dated April 21, 2005. During the pendency of the Commission's process and subsequent preparation of this rule by NMFS, the recreational fisheries for these three species have commenced. The party and charter boats from the various states are by far the largest component of the recreational fishery that fish in the EEZ. The Federal coastwide regulatory measures for the three species that were codified last year remain in effect. The Federal coastwide measures for the summer flounder fishery are more restrictive than the measures adopted by the states and approved by the Commission as conservation equivalents, and implemented by NMFS in this rule. Federally permitted recreational vessels subject to these more restrictive measures are currently operating at a disadvantage since non-federally permitted recreational vessels can fish in state waters under more liberal measures.

In addition, NMFS faced an unavoidable delay in the implementation of this rule as a result of delayed submission of the Council's Coastal Zone Management Act consistency determination letters for review by the responsible state agencies (ME to NC). Because these letters were not issued until March 30, 2005, agency action cannot be taken until May 30, 2005, unless responses from the states are received earlier. Because implementation of summer flounder conservation equivalent measures would be preferable to the coastwide measures that will remain in place until publication of this final rule, the states have agreed to expedite their responses

and have concurred with the consistency determination.

Because implementation of the proposed scup and black sea bass measures is not as time sensitive, since the proposed changes to the current scup and black sea bass affect the fall fishery, the waiver of the 30-day delay in effectiveness is for the recreational summer flounder measures only.

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts summarized in the IRFA, the comments on, and responses to, the proposed rule, and the analyses completed in support of this action. A copy of the EA/RIR/IRFA is available from the Council (see **ADDRESSES**).

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

The two comment letters received on the proposed rule did not specifically address the potential economic impact of the rule. No changes to the proposed rule were required to be made as a result of the public comments. For a summary of the comments received, and the responses thereto, refer to the "Comments and Responses" section of this preamble.

Description and Estimate of Number of Small Entities to Which This Rule Will Apply

The Council estimated that the proposed measures could affect any of the 777 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2003, the most recent year for which complete permit data are available. However, only 337 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2003.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Under the conservation equivalency approach, each state may implement unique management measures appropriate to that state to achieve state-specific harvest limits, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures developed to achieve the annual recreational harvest limit. The conservation equivalency approach allows states flexibility in the specification of management measures, unlike the application of one set of coastwide measures. It is not possible to further mitigate economic impacts on small entities because the specification of the recreational management measures (minimum fish size, possession limits, and fishing seasons) contained in this final rule is constrained by the conservation objectives of the FMP.

The economic analysis conducted in support of this action assessed the impacts of the various management alternatives. In the EA, the no action alternative for each species is defined as the continuation of the management measures as codified for the 2004 fishing season. In consideration of the Council-recommended recreational harvest limits established for the 2005 fishing year, implementation of the same recreational measures established for the 2004 fishing year would be inconsistent with the goals and objectives of the FMP and its implementing regulations, and, because it could result in overfishing of the scup fishery, would be inconsistent with National Standard 1 of the Magnuson-Stevens Act. Therefore, the no action alternatives for each fishery were not considered to be reasonable alternatives to the preferred actions for each fishery and their collective impacts were not analyzed in the EA/RIR/IRFA. The no action measures were analyzed in Summer Flounder Alternative 2, Scup Alternative 1, and Black Sea Bass Alternative 2.

At this time, it is not possible to determine the economic impact of summer flounder conservation equivalency on each state. However, it is likely to be proportional to the level of landings reductions required. If the conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Under § 648.107,

vessels landing summer flounder in any state that does not implement conservation equivalent measures are subject to the precautionary default measures, consisting of an 18-inch (45.7-cm) minimum fish size, a possession limit of one fish, and no closed season. The suites of conservation equivalent measures proposed by each state are less restrictive than the precautionary default measures. Therefore, because states have a choice as to the specific measures to apply to landings in each state, it is more rational for the states to adopt conservation equivalent measures that result in fewer adverse economic impacts than to adopt the more restrictive measures contained in the precautionary default alternative.

For the proposed rule, average party/charter losses for each of the 18 potential combinations of alternatives were estimated for federally permitted vessels by multiplying the number of potentially affected trips in 2005 in each state by the estimated average access fee paid by party/charter anglers in the Northeast Region in 2004. Predicted average losses for NY were presented as an example, and ranged from \$1,917 per vessel under the combined effects of Summer Flounder Alternative 2, Scup Alternative 1, and Black Sea Bass Alternative 1, to \$8,817 per vessel under the combined effects of the summer flounder precautionary default (considered in Summer Flounder Alternative 1), Scup Alternative 3, and Black Sea Bass Alternative 2 or 3 (assuming a 25-percent reduction in effort for affected trips). Analyses for the combinations including Scup Alternative 3 have been repeated using the revised fishing season of January 1 through February 28, and September 18 through November 30. The result is that predicted average losses for NY range from \$1,917 per vessel under the combined effects of Summer Flounder Alternative 2, Scup Alternative 1, and Black Sea Bass Alternative 1, to \$8,732 per vessel under the combined effects of the summer flounder precautionary default (considered in Summer Flounder Alternative 1), Scup Alternative 3, and either Black Sea Bass Alternative 2 or 3.

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 rulemaking process, a small entity compliance guide will be sent to all holders of Federal party/charter permits issued for the summer flounder, scup, and black sea bass fisheries. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following website: <http://www.nero.noaa.gov>.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 9, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. In § 648.104, the first sentence of paragraph (b)(1) is revised to read as follows:

§ 648.104 Gear restrictions.

* * * * *

(b) * * *

(1) Vessels issued a summer flounder moratorium permit, a summer flounder small-mesh exemption area letter of authorization (LOA), required under paragraph (b)(1)(i) of this section, and fishing from November 1 through April 30 in the exemption area, which is east of the line that follows 72°30.0' W. long. until it intersects the outer boundary of the EEZ (copies of a map depicting the area are available upon request from the Regional Administrator). * * *

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■ 3. In § 648.107, paragraph (a) introductory text is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2005 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), respectively. This determination is based on a recommendation from the

Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

■ 4. In § 648.122, paragraph (g) is revised to read as follows:

§ 648.122 Season and area restrictions.

* * * * *

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit, may not possess scup, except from January 1 through the last day of February, and from September 18 through November 30. This time period may be adjusted pursuant to the procedures in § 648.120.

■ 5. In § 648.123, the first sentence of paragraph (a)(5) is revised to read as follows:

§ 648.123 Gear restrictions.

(a) * * *

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 200 lb (90.7 kg) or more of scup from May 1 through October 31, and subject to the minimum mesh requirements in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum size requirement in § 648.122, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. * * *

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■ 6. Section 648.142 is revised to read as follows:

§ 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 possess black sea bass from January 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.140.

[FR Doc. 05-11837 Filed 6-15-05; 8:45 am]

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