

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 648**

[Docket No. 960520141-6277-04; I.D. 073096D]

RIN 0648-AH05

**Fisheries of the Northeastern United States; Amendment 8 to the Summer Flounder and Scup Fishery Management Plan; Resubmission of Disapproved Measures**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement three provisions of Amendment 8 to the Fishery Management Plan for the Summer Flounder and Scup Fisheries (FMP) that were initially disapproved, but that have been revised and resubmitted by the Mid-Atlantic Fishery Management Council (Council). These measures establish criteria under which vessels under construction or being rerigged for the scup fishery on January 26, 1993, can qualify for a moratorium permit; define scup pots and traps; and require the consideration of recreational landings in the process of setting annual recreational harvest limits. The intent of Amendment 8 is to reduce fishing mortality and to allow the stock to rebuild.

**EFFECTIVE DATE:** December 2, 1996.

**ADDRESSES:** Copies of Amendment 8, the final environmental impact statement, the regulatory impact review, and other supporting documents are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Dr. Andrew A. Rosenberg, Regional Administrator, One Blackburn Drive, Gloucester, MA 01930 and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** David M. Gouveia, Fishery Management Specialist, 508-281-9280.

**SUPPLEMENTARY INFORMATION:****Background**

The Council submitted Amendment 8 to the FMP on April 23, 1996. NMFS, on behalf of the Secretary of Commerce (Secretary), disapproved six measures proposed in Amendment 8 upon preliminary evaluation of the amendment as authorized under section 304(a)(1)(A)(ii) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The measures, which were found to be inconsistent with the national standards and other applicable law, would have: (1) Conferred moratorium permit eligibility upon vessels that were rerigging on January 26, 1993, and landed scup prior to the implementation of the FMP; (2) required vessels to keep scup catches of less than 4,000 lb (1,814 kg) (the level at which the minimum mesh requirement is triggered) in 100-lb (45.36 kg) boxes to enhance enforcement; (3) accepted state dealer permits in lieu of the required Federal permit; (4) denied access to the exclusive economic zone to vessels from states that do not implement recreational measures equivalent to those specified in the Federal plan; (5) used state regulations to define scup pots for the residents of that state; and (6) established annual recreational harvest limits and deducted catches in excess of those limits from the limits for the following year. The remainder of Amendment 8 was approved by NMFS on behalf of the Secretary on July 29, 1996. A final rule implementing the approved measures in Amendment 8 was published on August 23, 1996 (61 FR 43420). It was effective on September 23, 1996.

The Council and Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Board met on May 15, 1996, to review the disapproved measures and, pursuant to section 304(b)(3)(A) of the Magnuson Act, voted to resubmit three provisions: The rerigging measure, the scup pot and trap definition, and the annual recreational harvest limit. The remaining disapproved measures were not resubmitted.

**Resubmitted Measures**

For the purposes of moratorium eligibility, the resubmitted provision requires that a vessel under construction for, or being rerigged for, use in the directed fishery for scup on January 26, 1993, must have landed scup for sale by January 26, 1994. For the purpose of this paragraph, "under construction" means that the keel had been laid or the vessel was under written agreement for construction or the vessel was under

written contract for purchase. "Being rerigged" means physical alteration of the vessel or its gear has begun to transform the vessel into one capable of fishing commercially for scup.

Scup pots and traps are defined as pots or traps used in catching and retaining scup. Harvesters will be required to mark such gear with numbers assigned by the Regional Administrator, Northeast Region, NMFS (Regional Administrator) and/or identification markings as required by the vessel's home port state.

A coastwide harvest limit will be specified in the second year of implementation of the amendment at a level that will reduce the exploitation rate to the level specified in the rebuilding schedule. This harvest limit will be allocated 78 percent to the commercial fishery, via a coastwide commercial quota, and 22 percent to the recreational fishery, via a recreational harvest limit. The coastwide harvest limit will be set annually following the Monitoring Committee process set forth in the amendment. Any landings in excess of the commercial quota will be deducted from the following year's quota. Any landings in excess of the commercial quota would be deducted from the following year's quota. Any landings in excess of the target harvest level will be considered in the process of setting a recreational harvest limit in the following year.

**Comments and Responses**

The proposed rule was published on August 26, 1996 (61 FR 43725), and provided a comment period that concluded on September 16, 1996. No comments were received on the proposed rule.

**Changes in the Final Rule from the Proposed Rule**

This final rule implements provisions of Amendment 8 by amending 50 CFR part 648, Fisheries of the Northeastern United States. The proposed rule would have amended 50 CFR part 625, the Summer Flounder Fishery, which, as part of the President's Regulatory Reinvention Initiative, was consolidated into part 648. As a result of this regulatory consolidation, and to clarify the intent of this rule, the final rule does not use the same regulatory language as the proposed rule, but the measures are substantively the same. In some cases, fisheries in addition to scup that are managed under part 648 may be referenced in the regulatory language. The regulations governing these other fisheries have not been amended here. Their mention in the regulatory

language is merely to reduce confusion for the reader.

In 648.2, a change has been made to the language of the definition for "scup pot or trap" in the proposed rule. The words "used in" have been inserted to emphasize that the vent size requirements and other gear restrictions implemented for the directed scup pot fishery would pertain only to pots used in that fishery. In addition, a definition for "under construction" has been added to the regulatory text.

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated, to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the Federal Register.

**Classification**

The Regional Administrator has determined that this final rule is necessary for the conservation and management of the scup fishery and that it is consistent with the Magnuson Act and other applicable law.

This action has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This collection-of-information requirement has been approved by OMB. The requirement to mark traps and pots has been approved under OMB Control Number 0648-0305. The marking of traps and pots is estimated to take 1 minute per trap or pot.

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

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The reasons were discussed in the proposed rule

published in the Federal Register on August 26, 1996 (61 FR 43725). No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

**List of Subjects**

**50 CFR Part 902**

Reporting and recordkeeping requirements.

**50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 25, 1996.

Nancy Foster,

*Acting Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration.*

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

**15 CFR CHAPTER IX**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENT UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In §902.1, in paragraph (b), the table is amended by adding, in numerical order, the following entry is added to read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

CFR part section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
* * * * *	
(b) * * *	

**50 CFR**

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<b>§ 648.123</b>	-0305
* * * * *	

**50 CFR CHAPTER VI**

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

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

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

4. In §648.2, the definitions for "Scup pot or trap" and "Under construction" are added in alphabetical order to read as follows:

**§ 648.2 Definitions.**

\* \* \* \* \*

*Scup pot or trap* means a pot or trap used in catching and retaining scup.

\* \* \* \* \*

*Under construction* means that the keel had been laid or the vessel was under written agreement for construction or the vessel was under written contract for purchase.

\* \* \* \* \*

5. In §648.4, paragraph (a)(6)(i)(A)(3) is added to read as follows:

**§ 648.4 Vessel Permits.**

(a) \* \* \*

(6) \* \* \*

(i) \* \* \*

(A) \* \* \*

(3) The vessel was under construction for, or was being reregged for, use in the directed fishery for scup on January 26, 1993, provided the vessel landed scup for sale by January 26, 1994.

\* \* \* \* \*

6. In §648.14, paragraph (k)(12) is added to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(k) \* \* \*

(12) Use a scup trap or pot that is not marked in accordance with §648.123(b)(3).

\* \* \* \* \*

7. In §648.123, paragraph (b)(3) is added to read as follows:

**§ 648.123 Gear restrictions.**

\* \* \* \* \*

(b) \* \* \*

(3) *Pot and trap identification.* Pots or traps used in fishing for scup must be marked with a code of identification that may be the number assigned by the Regional Director and/or the identification marking as required by the vessel's home port state.

\* \* \* \* \*

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**SOCIAL SECURITY ADMINISTRATION**

**20 CFR Parts 404 and 410**

RIN 0960-AD99

**Overpayment Appeal and Waiver Rights**

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rules.

**SUMMARY:** In these final regulations we address the rights of individuals regarding overpayment and waiver