Management section. This value will be furnished to the tester by the government at the time of the test. The course monitoring tires used in a test convoy must be no more than one year old at the commencement of the test and must be used within two months after removal from storage.

* * * * *

(F) Compute the grade (P) of the NHTSA nominal treadwear value for each candidate tire by using the following formula:

P = Projected mileage × base course wear $rate_n$/402

Where base course wear $rate_n$ = new base course wear rate, *i.e.,* average treadwear of the last 4 quarterly course monitoring tire tests conducted by NHTSA.

Round off the percentage to the nearest lower 20-point increment.

* * * * *

Issued on May 11, 2000.

**Rosalyn G. Millman,**

*Acting Administrator.*

[FR Doc. 00–12873 Filed 5–23–00; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 000119014–0137–02; I.D. No. 112399C]**

**RIN 0648–AM48**

## Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2000 Specifications

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

**ACTION:** Final rule, final specifications, and commercial quota adjustment for the 2000 summer flounder, scup, and black sea bass fisheries; notification of commercial quota harvest.

**SUMMARY:** NMFS issues the final specifications for the 2000 summer flounder, scup, and black sea bass fisheries. The annual specifications for the scup fishery include a new provision to restrict fishing in certain areas during certain time periods to reduce discards of scup in small-mesh fisheries. This action contains preliminary adjustments to the 2000 commercial quotas for the summer flounder, scup, and black sea bass fisheries. This action also prohibits federally permitted commercial vessels from landing summer flounder in the State of Delaware for the year 2000. The intent of this document is to comply with implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) that require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of these fisheries.

**DATES:** Effective 0001 hours, May 24, 2000, through 2400 hours, December 31, 2000.

**ADDRESSES:** Copies of the Environmental Assessment (EA)/Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), including the Essential Fish Habitat Assessment are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is accessible via the Internet at http://www.nero.gov/ro/doc/nr.htm.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Regina L. Spallone, Fishery Policy Analyst, (978)281–9221, fax (978)281–9135, e-mail regina.l.spallone@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

The 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°13.3' 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 Regional Administrator, Northeast Region, NMFS, (Regional Administrator) implements measures for the fishing year to assure that the target fishing mortality (F) or exploitation rate for each fishery, as specified in the FMP is not exceeded. The target F or exploitation rate and management measures are summarized below by species. Detailed background information regarding the development of the proposed specifications was provided in the proposed specifications for the 2000 summer flounder, scup and black sea bass fisheries (65 FR 4547, January 28, 2000), and is not repeated here. NMFS will publish a proposed and final rule for the 2000 recreational management measures for these fisheries in the **Federal Register** at a later date.

On April 25, 2000, during the last stages of review of this final rule, the United States Court of Appeals for the District of Columbia Circuit (Court) issued an opinion on a challenge to the 1999 summer flounder specifications by a number of environmental groups. The Court noted that the 1999 quota, when adopted, had only an 18-percent likelihood of meeting the conservation goals of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Court invalidated the 1999 quota and remanded the case to NMFS for further proceedings. The Court set a minimum standard for harvest quotas to comply with the Magnuson-Stevens Act, namely that quotas must have at least a 50-percent probability of achieving the target fishing mortality rate.

Given the timing of the opinion and the urgency of regulating the ongoing fishery that began in January, after careful consideration, NMFS has concluded that it must have some measures in place establishing quotas for these fisheries. Therefore, rather than leaving the fisheries unregulated while it addresses the Court's remand, NMFS is proceeding with publication of the rule as drafted at this time. In addition, the specifications for summer flounder are intimately linked to the specifications for the scup and black sea bass fisheries, which were not part of the litigation. All of these specifications must be in place immediately in order to manage effectively the recreational fishery, to monitor the state-by-state commercial quotas, and to restrict landings by Federal permit holders upon attainment of those quotas—measures necessary to control the overall mortality on the summer flounder stock.

NMFS considers it a matter of the highest urgency to address the remand of the Court and will work with its

partners in the Council and the Commission. NMFS intends to revise the 2000 summer flounder quota by August 1, 2000, to a level with at least a 50-percent chance of not exceeding the F target. State fisheries agencies and fishery participants are hereby notified that the specifications for the 2000 commercial and recreational summer flounder fisheries will be revised accordingly. Participants are also reminded that any quota overages in the 2000 commercial summer flounder fishery will be deducted from 2001 quotas, as provided under the FMP.

**Summer Flounder**

The FMP for summer flounder specifies a target F for 2000 of the level of fishing that produces maximum yield per recruit ($F_{MAX}$). Best available data indicate that $F_{MAX}$ is currently equal to 0.26. The total allowable landings (TAL) are allocated to the commercial (60 percent) and the recreational (40 percent) sectors in the proportion required by the FMP. The commercial sector's quota is allocated to the coastal states based on percentage shares specified in the FMP, and those allocations are detailed in this document.

A summer flounder stock assessment was completed by the Northeast Fisheries Science Center's (NEFSC) Southern Demersal Working Group in the Spring of 1999 and reviewed by the Council's Scientific and Statistical Committee in July 1999. This assessment is summarized in the EA/RIR/IRFA. The assessment was the basis of the Summer Flounder Monitoring Committee's (Monitoring Committee) recommendation of a TAL of 16.815 million lb (7.627 million kg). The Council and Commission (hereinafter, referred to as ''the Council'') reviewed this recommendation and did not adopt it. Instead, the Council recommended, and NMFS proposed, a 2000 TAL level of 18.518 million lb (8.4 million kg). Based on stochastic projection results, this TAL has a 25-percent probability of achieving (*i.e.,* not exceeding) the target F of 0.26 in 2000. NMFS notes that the Commission has measures in place to decrease discards of sublegal fish in the commercial fishery and reduce regulatory discards that occur as the result of landings limits in individual states. Specifically, the Commission has measures in place whereby 15 percent of each state's quota would be voluntarily set aside each year for vessels to land an incidental catch allowance (usually implemented as trip limits) after the directed fishery has closed. The intent of this voluntary incidental catch set-aside is to reduce discards by allowing fishermen to land a certain amount of summer flounder they catch incidentally after their state's fishery has closed, while trying to ensure that the state's overall quota is not exceeded. NMFS anticipates that these measures will improve the probability of not exceeding the target. Thus, this rule will implement the following summer flounder measures for 2000: (1) A TAL of 18.52 million lb (8.40 million kg); (2) a coastwide commercial quota of 11.11 million lb (5.039 million kg); and (3) a coastwide recreational harvest limit of 7.41 million lb (3.361 million kg).

The preliminary final commercial quotas by state for 2000 are presented in Table 1; the total quotas are divided into the recommended allocation between directed and incidental catch fisheries for purposes of illustration. These preliminary quotas are subject to downward adjustment dependant upon overages of a state's 1999 quota.

TABLE 1.—PRELIMINARY FINAL 2000 SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

| State | Percent share | Directed | | Recommended 15 percent as incidental catch | | Total | |
|---|---|---|---|---|---|---|---|
| | | Lb | Kg [1] | Lb | Kg [1] | Lb | Kg [1] |
| Maine | 0.04756 | 4,492 | 2,037 | 793 | 360 | 5,284 | 2,397 |
| New Hampshire | 0.00046 | 43 | 20 | 8 | 3 | 51 | 23 |
| Massachusetts | 6.82046 | 644,159 | 292,186 | 113,675 | 51,562 | 757,834 | 343,748 |
| Rhode Island | 15.68298 | 1,481,181 | 671,852 | 261,385 | 118,562 | 1,742,566 | 79,041 |
| Connecticut | 2.25708 | 213,170 | 96,692 | 37,618 | 17,063 | 250,788 | 113,756 |
| New York | 7.64699 | 722,221 | 327,594 | 127,451 | 57,811 | 849,672 | 385,405 |
| New Jersey | 16.72499 | 1,579,594 | 716,492 | 278,752 | 126,440 | 1,858,346 | 842,931 |
| Delaware | 0.01779 | 1,680 | 762 | 297 | 134 | 1,977 | 897 |
| Maryland | 2.03910 | 192,583 | 87,354 | 33,985 | 15,514 | 226,568 | 102,770 |
| Virginia | 21.31676 | 2,013,264 | 913,201 | 355,282 | 161,153 | 2,368,546 | 1,074,354 |
| North Carolina | 27.44584 | 2,592,126 | 1,175,768 | 457,434 | 207,489 | 3,049,560 | 1,383,257 |
| Total | 100.00000 | 9,444,512 | 4,283,959 | 1,666,679 | 755,993 | 11,111,192 | 5,039,951 |

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

Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year. This document contains: (1) Final specifications and (2) associated preliminary adjustments to each state's 2000 quotas as a result of known 1999 overages. The adjustment in this document is preliminary because it is likely that additional data will be received from the states that would alter the figures, including late landings reported from either federally permitted dealers or state statistical agencies reporting landings by non-federally permitted dealers. This document utilizes preliminary 1999 landings data that have been provided to NMFS through December 31, 1999.

Based on dealer reports and other available information, NMFS has determined that the States of Maine, Massachusetts, New Jersey, Delaware, and Virginia exceeded their 1999 quotas. Thus far, the remaining States of New Hampshire, Rhode Island, Connecticut, New York, Maryland, and North Carolina are not known to have exceeded their 1999 quotas. The preliminary 1999 landings and resulting overages for all states are given in Table 2. The resulting adjusted 2000 commercial quota for each state is given in Table 3. In Table 4, the adjustment has been made to illustrate the voluntary incidental catch component of the commercial quota at 15 percent of the total, as recommended.

TABLE 2.—SUMMER FLOUNDER PRELIMINARY 1999 LANDINGS BY STATE

| State | 1999 Quota [1] | | Preliminary 1999 landings | | 1999 Overage | |
|---|---|---|---|---|---|---|
| | Lb | Kg [2] | Lb | Kg [2] | Lb | Kg [2] |
| Maine | 4,450 | 2,018 | 5,778 | 2,621 | 1,328 | 602 |
| New Hampshire | 51 | 23 | 0 | 0 | ..... | ..... |
| Massachusetts | 757,842 | 343,751 | 804,964 | 365,126 | 47,122 | 21,374 |
| Rhode Island | 1,742,583 | 790,422 | 1,636,528 | 742,317 | ..... | ..... |
| Connecticut | 238,516 | 108,189 | 232,047 | 105,255 | ..... | ..... |
| New York [3] | 860,006 | 390,099 | 793,287 | 359,829 | ..... | ..... |
| New Jersey | 1,853,926 | 840,927 | 1,897,952 | 860,897 | 44,026 | 19,970 |
| Delaware | [4] (25,739) | (11,675) | 7,976 | 3,618 | (33,715) | (15,293) |
| Maryland | 202,354 | 91,786 | 198,866 | 90,204 | ..... | ..... |
| Virginia | 2,120,696 | 961,932 | 2,130,553 | 966,403 | 9,857 | 4,471 |
| North Carolina [3] | 2,974,589 | 1,349,274 | 2,800,749 | 1,270,398 | ..... | ..... |
| Total [5] | 10,755,013 | 4,866,746 | 10,508,700 | 4,766,666 | ..... | ..... |

[1] Reflects quotas as published on August 26, 1999 (64 FR 46596), except as noted.
[2] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[3] Reflects quota transfer (64 FR 71687, December 22, 1999).
[4] Parentheses indicate a negative number.
[5] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal overage because they reflect positive quota balances in several states.

TABLE 3.—SUMMER FLOUNDER FINAL ADJUSTED QUOTAS

| State | 2000 Initial quota | | 2000 Adjusted quota | |
|---|---|---|---|---|
| | Lb | Kg [1] | Lb | Kg [1] |
| Maine | 5,284 | 2,397 | 3,956 | 1,794 |
| New Hampshire | 51 | 23 | 51 | 23 |
| Massachusetts | 757,834 | 343,748 | 710,712 | 322,374 |
| Rhode Island | 1,742,566 | 790,041 | 1,742,566 | 790,041 |
| Connecticut | 250,788 | 113,756 | 250,788 | 113,756 |
| New York | 849,672 | 385,405 | 849,672 | 385,405 |
| New Jersey | 1,858,346 | 842,931 | 1,814,320 | 822,962 |
| Delaware | 1,977 | 897 | [2] (31,738) | (14,396) |
| Maryland | 226,568 | 102,770 | 226,568 | 102,770 |
| Virginia | 2,368,546 | 1,074,354 | 2,358,689 | 1,069,883 |
| North Carolina | 3,049,560 | 1,383,257 | 3,049,560 | 1,383,257 |
| Total [3] | 11,109,214 | 5,039,055 | 11,006,882 | 4,992,638 |

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.
[3] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0).

TABLE 4.—FINAL SUMMER FLOUNDER 2000 STATE COMMERCIAL QUOTAS AND RECOMMENDED INCIDENTAL CATCH ALLOCATIONS

| State | Percent share | Directed | | Recommended 15 percent as incidental catch | | Total | |
|---|---|---|---|---|---|---|---|
| | | Lb | Kg [1] | Lb | Kg [1] | Lb | Kg [1] |
| Maine | 0.04756 | 3,363 | 1,525 | 593 | 269 | 3,956 | 1,794 |
| New Hampshire | 0.00046 | 43 | 19 | 8 | 4 | 51 | 23 |
| Massachusetts | 6.82046 | 604,105 | 274,017 | 106,607 | 48,356 | 710,712 | 322,374 |
| Rhode Island | 15.68298 | 1,481,181 | 671,852 | 261,385 | 118,562 | 1,742,566 | 790,041 |
| Connecticut | 2.25708 | 213,170 | 96,692 | 37,618 | 17,063 | 250,788 | 113,756 |
| New York | 7.64699 | 722,221 | 327,594 | 127,451 | 57,811 | 849,672 | 385,405 |
| New Jersey | 16.72499 | 1,542,172 | 699,517 | 272,148 | 123,444 | 1,814,320 | 822,962 |
| Delaware [2] | 0.01779 | 0 | 0 | 00 | ..... | [2] (31,738) | |
| (14,396) | | | | | | | |
| Maryland | 2.03910 | 192,583 | 87,354 | 33,985 | 15,415 | 226,568 | 102,770 |
| Virginia | 21.31676 | 2,004,886 | 909,401 | 353,803 | 160,482 | 2,358,689 | 1,069,883 |
| North Carolina | 27.44584 | 2,592,126 | 1,175,769 | 457,434 | 207,489 | 3,049,560 | 1,383,257 |
| Total [3] | 100.00000 | 9,355,850 | 4,243,742 | 1,651,032 | 748,896 | 11,006,882 | 4,992,638 |

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.
[2] A state with a negative number has an allocation of zero (0).
[3] Total includes recommended directed and incidental catch allocations as calculated from the total, and may not add.

**Delaware Closure**

In 1999, NMFS prohibited Federal permit holders from landing summer flounder in the State of Delaware in the light of deductions from the 1999 quota for overages in 1998 (64 FR 5196, February 3, 1999). As a result of those deductions and further quota reductions published in the **Federal Register** on August 26, 1999 (64 FR 46596), the 1999 quota allocation to the State of Delaware was −25,739 lb (−11,675 kg). An additional 7,976 lb (3,618 kg) of summer flounder were landed in Delaware in 1999. The 2000 quota for Delaware is not sufficient to offset this negative 2000 allocation and the additional landings in 1999. Consequently, Delaware has no commercial quota available for 2000. 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 for harvest. Therefore, effective 0001 hours, May 24, 2000, landings of summer flounder in Delaware by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 2000 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 2000 calendar year, or until additional quota becomes available through a transfer. If additional landings were to be reported for 1999, the commercial quota for the State of Delaware will be re-adjusted pursuant to § 648.100(d)(2).

**Scup**

The FMP established a target exploitation rate for scup in 2000 of 33 percent. The total allowable catch (TAC) associated with that rate is allocated 78 percent to the commercial sector and 22 percent to the recreational sector. Discard estimates are deducted from both TACs to establish TALs for both sectors. The commercial TAL is allocated to three different periods.

Scup was most recently assessed at the 27th Northeast Regional Stock Assessment Workshop in June 1998 (SAW 27). This assessment indicates that scup are overexploited and at a record low biomass level. SAW 27 concluded that spawning stock biomass is less than one-tenth of the biomass threshold—the maximum NEFSC indices of spawning stock biomass observed, or 2.77 kg/tow during 1977–1979. The assessment is summarized in the EA/RIR/IRFA.

NMFS disapproved both the rebuilding schedule and the bycatch provision for scup in Amendment 12 to the FMP. Despite that, for the reasons explained in the proposed rule, these final specifications for fishing year 2000 are based on the current exploitation rate associated with the overfishing definition, pending submission and approval of a rebuilding schedule that complies with the Magnuson-Stevens Act. The disapproval of the bycatch provision is discussed in ''Gear Restricted Areas.'' Failure to take any action at all pending the submission of the revised rebuilding schedule could imperil the stock.

The Monitoring Committee reviewed available data and assumed the 1999 exploitation target of 47 percent would be achieved. The Monitoring Committee recommended that the TAC be reduced in proportion to the reduction in exploitation rates from 1999 to 2000, *i.e.,* a 30-percent reduction. As such, the Monitoring Committee recommended a TAC for 2000 of 4.15 million lb (1.88 million kg) resulting in a 3.243 million-lb (1.47 million-kg) commercial TAC, and a 0.915 million-lb (0.415 million-kg) recreational TAC.

The Monitoring Committee also noted the need to reduce discards in the commercial fishery. Specifically, SAW 27 noted that F should be reduced ''substantially and immediately'' and that, while estimates are uncertain, most mortality in recent years was ''clearly attributable to discards, particularly when incoming recruitment is strong.'' The report noted that reductions ''in discards from small-mesh fisheries'' would be particularly effective for this stock. Thus, the Monitoring Committee recommended that the Council implement regulations to close areas to fishing by trawl gear with codend mesh sizes less than 4.5 inches (11.43 cm) to reduce discards of scup.

In preparing data for the Monitoring Committee deliberations, Council staff cited data indicating that, based on the average biomass estimates for 1998 and 1999, the 1999 exploitation rate could be well below its target of 47 percent. Specifically, the staff felt that it was possible that exploitation in 1999 could be as low as 30 percent, provided certain assumptions were met regarding biomass estimates. A 30-percent exploitation rate is equal to the target in 2000. Thus, the staff recommended maintaining the TAC as the status quo level.

The Council reviewed the recommendations and adopted its staff's recommendation, a TAC of 5.922 million lb (2.686 million kg) for 2000. Discard estimates for the commercial and recreational sectors are subtracted from the commercial (4,619,160 lb (2,095,215 kg)) and recreational (1,302,840 lb (590,958 kg)) TACs, respectively, to derive the commercial quota and the recreational harvest limit for the year. Assuming the same proportion of discards to catch in 2000 as 1997 (45.1 percent), the commercial discards would be 2.085 million lb (0.946 million kg), and the quota would be 2.534 million lb (1.149 million kg). Based on the proportion of recreational discards to catch in 1997 (4.96 percent), the recreational discards would be 0.065 million lb (0.029 million kg) and the harvest limit would be 1.238 million lb (0.562 million kg). The commercial allocation is shown in Table 5. As with summer flounder, these allocations are preliminary and are subject to a downward adjustment for any overages in a period's harvest in 1999. Preliminary data indicate that the Winter I and Summer period allocations have been exceeded in 1999, which requires a corresponding reduction in those periods in 2000. The resulting adjusted 2000 commercial quota for each period is given in Table 7.

TABLE 5.—PERCENT ALLOCATIONS OF COMMERCIAL SCUP QUOTA

| Period | Percent | TAC [1] | Discards [2] | Quota Allocation | | Landing limits | |
|---|---|---|---|---|---|---|---|
| | | | | Lb | Kg [3] | Lb | Kg |
| Winter I | 45.11 | 2,083,703 | 940,543 | 1,143,160 | 518,529 | [4]10,000 | 4,536 |
| | | (945,168) | (426,630) | | | | |
| Summer | 38.95 | 1,799,163 | 812,108 | 987,055 | 447,721 | *n/a | |
| | | (816,100) | (368,372) | | | | |
| Winter II | 15.94 | 736,294 | 332,349 | 403,945 | 183,226 | 4,000 | 1,814 |

TABLE 5.—PERCENT ALLOCATIONS OF COMMERCIAL SCUP QUOTA—Continued

| Period | Percent | TAC [1] | Discards [2] | Quota Allocation | | Landing limits | |
|---|---|---|---|---|---|---|---|
| | | | | Lb | Kg [3] | Lb | Kg |
| | ..... | (333,983) | (150,754) | ..... | ..... | ..... | ..... |
| Total[5] ..... | 100.00 | 4,619,160 | 2,085,000 | 2,534,160 | 1,149,476 | ..... | ..... |
| | ..... | (2,095,215) | (945,740) | ..... | ..... | ..... | ..... |

[1] Total allowable catch, in pounds (kilograms in parentheses).
[2] Discard estimates, in pounds (kilograms in parentheses).
[3] Kilograms are as converted from pounds and may not add to converted total due to rounding.
[4] The Winter I landing limit will drop to 1,000 pounds (454 kg) upon attainment of 85 percent of the seasonal allocation.
[5] Totals subjects to rounding error.
n/a—Not applicable.

TABLE 6.—SCUP PRELIMINARY 1999 LANDINGS BY PERIOD

| Period | 1999 Quota | | 1999 Landings | | 1999 Overages | |
|---|---|---|---|---|---|---|
| | Lb | Kg [1] | Lb | Kg [1] | Lb | Kg [1] |
| Winter I ..... | 1,143,160 | 518,529 | 1,249,234 | 566,643 | 106,174 | 48,114 |
| Summer ..... | 987,055 | 447,721 | 1,288,482 | 584,446 | 301,427 | 136,725 |
| Winter II ..... | 403,945 | 183,226 | 700,907 | 317,926 | 296,962 | 134,700 |
| Total ..... | 2,534,160 | 1,149,476 | 3,238,623 | 1,469,015 | ..... | ..... |

[1] Kilograms are as converted from pounds and may not add to converted total due to rounding.

TABLE 7.—SCUP FINAL ADJUSTED QUOTAS

| Period | 2000 Initial quota | | 2000 Adjusted quota[1] | |
|---|---|---|---|---|
| | Lb | Kg [1] | Lb | Kg [2] |
| Winter I ..... | 1,143,160 | 518,529 | 1,037,986 | 470,369 |
| Summer ..... | 987,055 | 447,721 | 685,628 | 310,996 |
| Winter II ..... | 403,945 | 183,226 | 106,983 | 48,527 |
| Total ..... | 2,534,160 | 1,149,476 | 1,830,597 | 830,345 |

[1] Trip limits specified in Table 5 are unchanged.
[2] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

To achieve the commercial quotas, the Council recommended a landing limit of 10,000 lb (4,536 kg), with a reduction to 1,000 lb (454 kg) when 85 percent of the quota allocation is harvested for Winter I (January-April). A 4,000-lb (1,814-kg) landing limit will be in place for the entire Winter II (November-December) period.

**Gear Restricted Areas (GRAs)**

The Council noted NMFS's disapproval of the scup bycatch provision and rebuilding schedule in Amendment 12 to the FMP and heeded the advice of the Monitoring Committee and SAW 27 that scup discards must be decreased. To reduce discards of small scup, the Council voted to recommend seasonal GRAs in which commercial vessels would be prohibited from fishing with midwater trawl or other trawl gear with codend nets of mesh size less than 4.5 inches (11.3 cm), unless they were participating in an exempted fishery (identified by the Council to have less than a 10-percent bycatch of scup). The Council proposed GRAs that were identified by an ad hoc advisory panel consisting of Council and Commission members, industry advisors, and the public. The areas comprise a series of small restricted areas, each approximately 2-weeks in duration, within Northeast statistical areas 537, 539, 613, 616, and 622.

NMFS believes that the adoption of GRAs is a critical measure to ensure the attainment of the target exploitation rate and to rehabilitate the deficiencies in the FMP with respect to bycatch provisions as noted in the disapproval of Amendment 12. For the reasons noted in the proposed rule, NMFS did not support the areas and times identified in the Council's alternative. Instead, NMFS proposed an alternative analyzed by the Council that would have established larger GRAs that would remain closed to small-mesh fisheries for longer periods of time (see Alternative 6, as described in the EA/RIR/IRFA). This action would have established two GRAs, a Southern and a Northern GRA. The Southern GRA, defined as Federal waters off New Jersey and Delaware, would have restricted fishing with small mesh from January 1 through April 30. The Northern Gear Restricted Area, defined as Federal waters off Massachusetts, Rhode Island, and New York, would have restricted fishing with small mesh from November 1 through December 31. In light of public comments received on the GRAs, the Southern area has been modified in this final rule. The area has been reduced by moving the Eastern (seaward) boundary inshore to approximate the 100-fathom line. The modified area better incorporates areas in which scup are generally found (depths of 40–100 fathoms), as noted in the FMP's Essential Fish Habitat Source Document (NOAA Technical Memorandum. In press, September, 1999). Specific public comments related to these, and other, measures, are responded to in the ''Comments and

Responses'' section of this final rule. Both of these areas encompass the areas proposed by the ad hoc advisory panel.

During the time periods implementing both GRAs, midwater trawl and other trawl gear fishing vessels with nets on board that have a mesh size less than a 4.5-inch (11.3-cm) diamond mesh in the codend would be prohibited from fishing for, or possessing black sea bass, *Loligo* squid, mackerel, and silver hake when in the Southern GRA. The fishery for Atlantic herring has been determined to be exempt from both restricted areas. Copies of a chart depicting these areas are available in the EA/RIR/IRFA and from the Regional Administrator upon request (see **ADDRESSES**).

The modification of the area will not substantially alter the impact on scup harvest or discards, because scup are not found outside the 100-fathom (183-m) curve to any great extent. However, this modification will substantially reduce the impact on other small-mesh fisheries that are prosecuted outside the 100-fathom (183-m) curve. Analyses indicate that this revision will reduce economic losses in exvessel revenue by an estimated 20–33 percent from the original proposed alternative. This change responds to public comments expressing concern about the size of the proposed GRA, and also incorporates the points on enforceability raised by the U.S. Coast Guard (USCG). The areas will be in place until revised by the Council.

Lastly, vessels with exempted experimental fishing permits will be allowed to conduct experiments with small-mesh gear in the regulated areas. The Council is working with industry members to identify gear modifications that would reduce the catch of scup in small-mesh fisheries for squid. Once this experimental work is completed and an effective gear design is identified, NMFS may authorize its use in the regulated mesh areas, provided other experimental fishery requirements are met.

**Black Sea Bass**

The FMP specifies a target exploitation rate of 48 percent for 2000. This target is to be attained through specification of a TAL level that is allocated to the commercial (49 percent) and recreational (51 percent) fisheries. The commercial quota is specified on a coastwide basis, by quarter. The most recent assessment on black sea bass, SAW 27, indicates that black sea bass are over-exploited and at a low biomass level. Although data limitations make this estimate uncertain, F for 1998 may be equal to, or even less than, the target (48-percent exploitation). The NEFSC Spring Survey results for 1998 and 1999 indicate that there may have been a significant increase in black sea bass biomass in 1999 (although the 1999 index is high mainly because of a single tow). This assessment is summarized in the EA/RIR/FRFA.

To achieve the goals for 2000, this final rule implements a black sea bass TAL equal to the 1999 level and reduces the quarterly trip limits as recommended by the Council. The commercial quota and corresponding trip limits are shown in Table 8. The Council had recommended that trip limits be reduced in an attempt to prevent overages in each of the quarters from reoccurring. Preliminary data indicate overages occurred in Quarters 2, 3, and 4 (See, Table 9), which requires a corresponding reduction in those quarters in 2000. The resulting adjusted 2000 commercial quota for each quarter is given in Table 10. Status quo is retained on other related management measures, such as the minimum fish size and possession limit.

TABLE 8.—2000 BLACK SEA BASS QUARTERLY COASTWIDE COMMERCIAL QUOTAS AND QUARTERLY TRIP LIMITS

| Quarter | Percent | Lb | Kg [1] | Trip limits | |
|---|---|---|---|---|---|
| | | | | Lb | Kg [1] |
| 1 (Jan–Mar) | 38.64 | 1,168,760 | 530,141 | 9,000 | 4,082 |
| 2 (Apr–Jun) | 29.26 | 885,040 | 401,447 | 3,000 | 1,361 |
| 3 (Jul–Sep) | 12.33 | 372,951 | 169,168 | 2,000 | 907 |
| 4 (Oct–Dec) | 19.77 | 597,991 | 271,244 | 3,000 | 1,361 |
| Total | 100.00 | 3,024,742 | 1,372,000 | ..... | ..... |

[1] Subject to rounding error.

TABLE 9.—BLACK SEA BASS PRELIMINARY 1999 LANDINGS BY QUARTER

| Quarter | 1999 quota [1] | | Preliminary 1999 landings | | 1999 overage | |
|---|---|---|---|---|---|---|
| | Lb | Kg [2] | Lb | Kg [1] | Lb | Kg [2] |
| 1 | 1,168,860 | 530,186 | 708,235 | 321,250 | ..... | ..... |
| 2 | 885,115 | 401,481 | 1,031,318 | 467,798 | 146,203 | 66,317 |
| 3 | 372,983 | 169,182 | 472,779 | 214,449 | 99,796 | 45,267 |
| 4 | 598,043 | 271,268 | 655,864 | 297,495 | 57,821 | 26,227 |
| Total [3] | 3,025,000 | 1,372,117 | 2,868,196 | 1,300,992 | ..... | ..... |

[1] Reflects quotas as published on August 26, 1999 (64 FR 46596).
[2] Kilograms are as converted from pounds, and may not necessarily add due to rounding
[3] Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal overage because they reflect positive quota balances in several states.

TABLE 10.—BLACK SEA BASS FINAL ADJUSTED QUOTAS

[Trip limits specified in Table 8 are not changed.]

| Quarter | 2000 Initial quota | | 2000 adjusted quota | |
|---|---|---|---|---|
| | Lb | Kg [1] | Lb | Kg [1] |
| 1 | 1,168,760 | 530,141 | 1,168,760 | 530,141 |
| 2 | 885,040 | 401,447 | 738,837 | 335,131 |
| 3 | 372,951 | 169,168 | 273,155 | 123,901 |
| 4 | 597,991 | 271,244 | 540,170 | 245,017 |
| Total [3] | 3,024,742 | 1,372,000 | 2,720,922 | 1,234,189 |

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.

**Changes From the Proposed Rule**

In an Opinion and Order, dated June 24, 1998, the U.S. District Court for the District of Massachusetts voided the portion of the scup regulations found at §§ 648.120 and 648.121 implementing a state-by-state allocation of the commercial scup fishing quota during the summer period. NMFS is prohibited from enforcing the voided portion of the regulations, including the calculation of overages. While NMFS has complied with the order and has not enforced the regulations, the codified language has remained intact. To make clear that NMFS has, in fact, complied with the order, NMFS by this final rule suspends regulations relative to the state-by-state management of the scup summer quota period. As a result, language in §§ 648.120 and 648.121 has been removed. The summer period will continue to be managed under a coastwide quota until such time that new regulations are promulgated that are consistent with the order.

In § 648.122(a)(1), the parenthetical phrase regarding availability of a map of the Southern GRA is corrected to indicate that a chart of the area is available. In that same section, a typographical error indicating the latitude of point SGA2 is corrected, and the points describing the eastern boundary of the area are revised to reflect the modification as previously described in the preamble.

In § 648.122(b)(1), the parenthetical phrase regarding availability of a map of the Northern GRA is corrected to indicate that a chart of the area is available. In that same section, points NGA2 through NGA6 are revised to reflect that Federal permit holders are bound by the northern GRA surrounding Block Island, RI, up to and including state waters. Subsequent points are renumbered, the northernmost latitude of the GRA is revised to read 41°10′ so that the northern boundary of the GRA lies south of Nantucket Island, MA.

In § 648.122(b)(2), Atlantic herring is removed from the list of non-exempt species. It was incorrectly placed on the list in the proposed rule. Historical sea sample data from the EA indicate that the herring fishery qualifies for exempted status under both the GRAs.

In § 648.122, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added. The new paragraph includes the process by which additional fisheries could be made exempt from the GRAs, which was inadvertently omitted from the proposed rule.

**Comments and Responses**

Twelve comments were received on the proposed specifications from the public during the comment period that ended on February 28, 2000. Specific comments related to the proposed annual specifications and the EA/RIR/IRFA for the 2000 summer flounder, scup, and black sea bass fisheries are discussed and responded to as follows.

Scup GRAs (GRAs)

*Comment 1:* Three commenters do not support the scup GRAs because of the negative impact the areas would have on industry, the contention that the underlying data are outdated, and the belief that current data indicate that there is no need to reduce incidental catch of scup in small-mesh fisheries. Two of these commenters feel NMFS ''callously rejected'' and ''discarded'' the advice of industry. One questions the rationale for the areas.

*Response 1:* NMFS values the hard work of industry in developing advice for the Council's recommendation. The advice of the ad hoc working group that developed those areas is clearly reflected in the adopted GRAs, particularly where industry members noted the prevalence of Loligo and scup interactions in Northeast Statistical area 537 (south of Nantucket and Martha's Vineyard Islands, MA). In addition, NMFS acknowledges the impacts that these areas may have on industry and has taken action to mitigate these impacts by modifying the southern GRA to resemble more closely the working group's recommendations. To the extent practicable and consistent with the goals of the GRAs, the revisions modify the seaward border of the Southern GRA to better approximate the 100-fathom (183-m) line. These modifications should minimize impacts on industry by affording industry more areas in which to conduct fisheries. The northern GRA has also been revised slightly to increase enforceability as discussed in the preamble. NMFS anticipates that these revisions will better comply with the guidance of national standard 9, as well as incorporate important enforcement concerns. In light of the disapproval of the scup rebuilding and bycatch provisions in Amendment 12 to the FMP, it is incumbent upon NMFS to meet its statutory requirements to reduce discards and to rebuild the fishery. NMFS cannot ignore its obligations to both the FMP and the Magnuson-Stevens Act.

In reviewing the latest scientific information, the Monitoring Committee recommended that the Council implement a scup discard rate of 90 percent in 2000, unless some other measures, such as time and area closures for the scup fishery, were implemented. The discard rate would be applied to the commercial TAC in setting the TAL (that is, 90 percent of the commercial TAC would be allocated to discards, and the remaining 10 percent would be available as landings). The Council rejected the 90-percent estimate and passed a motion to accept the recommendation as GRAs beginning in the year 2000, with the inclusion of the development of an exempted fishery program to allow fisheries to continue that do not exceed a 10-percent scup bycatch. Adoption of these GRAs allowed the Council to estimate discards at 45 percent. In developing alternatives to the recommendation, the Council analyzed the best available data, 1997 and 1998 vessel trip report (VTR) data

and January 1989-April 1999 NMFS sea sample data. The limitations of these data were thoroughly described in the EA. If additional data are made available that would revise the need for, or the specific boundaries of, the GRAs (either spatially or temporally) the Council may implement such changes by way of the annual specifications or framework adjustment processes.

*Comment 2:* Two commenters, although not specifically supporting or opposing the GRAs, questioned the data used, specifically the data that did not exempt the *Loligo* fishery. One commenter stated that recent data show there is no scup discard problem in the *Loligo* fishery, and another commenter wished to have these data incorporated into the development of the areas.

*Response 2:* The *Loligo* fishery has long been identified as a primary source of scup discards. However, the magnitude of the discards is unknown. Assuming that the areas and times in which scup and *Loligo* are caught together are probably also the areas and times in which scup discards occur, the Council examined 1997 VTR data to determine possible times and locations for scup/*Loligo* overlap. The Council further analyzed NMFS sea sample data from January 1989 through April 1999 to assess the level of scup discarding in other small-mesh fisheries. These best available data indicate that the scup discards in the November through December *Loligo* fishery were 48 percent, by weight, of total catch, and in the January through April period were 78 percent. Consequently, the *Loligo* fishery does not qualify for exempted status in these areas and time periods. An exemption for *Loligo* may be added in the future if sufficient data or new information become available to result in an estimation that the amount of scup bycatch is less than 10 percent, by weight, of the total catch, and if the Regional Administrator, after consultation with the Council, determines that the percentage of scup caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. NMFS recommends that the commenters work with the Council to exempt this fishery through the existing mechanisms in the regulations.

*Comment 3:* Two commenters support the GRAs, believing that the areas will greatly reduce scup discards, thereby reducing scup mortality. One of these commenters did not support any modification to the areas.

*Response 3:* NMFS agrees that these areas will greatly reduce scup discards. The need for measures in the FMP to reduce discards in the scup fishery was stressed in the disapproval of the bycatch provision in Amendment 12 to the FMP. Current measures in the FMP do not adequately reduce bycatch (including discards, as stated in the Magnuson-Stevens Act) or minimize bycatch mortality. Consequently, measures such as these GRAs will begin to rehabilitate the deficiencies in the FMP and will encourage the Council to address this issue in a more comprehensive way, e.g., either through closed/restricted areas or gear modifications. The rationale for modifications to the GRAs described in the proposed rule is further explained in the response to Comment 1.

*Comment 4:* One commenter questioned the process and use of the proposed rule and specifications as a vehicle for implementation of such measures as GRAs.

*Response 4:* NMFS is confident that these specifications are an appropriate vehicle to implement these measures. The regulations implementing the FMP contemplates a broad range of action for annual specifications. The regulations at § 648.120(b) specifically provide that the Council may recommend the following measures for the commercial fishery to assure that the specified exploitation rate will not be exceeded: (1) A commercial quota allocated into three periods, (2) landing limits for the Winter I and Winter II periods, (3) the percent of landings attained at which the landing limit for the Winter I period will be reduced, (4) commercial minimum fish size, (5) minimum mesh size, (6) restrictions on gear, and (7) season and area closures in the commercial fishery. The regulations also contemplate a range of opportunities to receive public input on the proposed measures.

*Comment 5:* Two commenters had questions related to the 10-percent threshold used to exempt fisheries from the GRA regulations. Specifically, the commenters wanted to know how the threshold is determined (i.e., how a fishery is to be exempted, by one trip or many), why a 5-percent threshold was not used as in the case in the Northeast Multispecies FMP, and what would be the observer coverage. An additional commenter supported the 10 percent exemption threshold and wanted to know why the threshold was not proposed by NMFS.

*Response 5:* The threshold to exempt fisheries was determined by a Council motion to include a process for exempting fisheries within the GRAs. The exempted fishery program will allow fisheries to continue that do not exceed a 10 percent, by weight, of total catch as long as such exemptions will not jeopardize fishing mortality objectives. An exemption based on a 10-percent bycatch criteria was selected because that percentage threshold is the one used in the summer flounder small-mesh exemption program. This precedent, then, exists in the FMP for the establishment of that percentage for exempting a fishery. The exemption is based on the all available data. No observer coverage is required, although it is strongly encouraged and supported by NMFS. This exemption program was included in the proposed rule. However, the process by which the Council could add or eliminate exemptions was inadvertently omitted from the proposed regulatory language. This oversight is corrected in this final rule.

*Comment 6:* Three commenters noted that, based on data presented in the EA/RIR/IRFA, the Atlantic herring fishery should be exempt from the GRAs for both periods and in both areas.

*Response 6:* NMFS agrees. NMFS proposed to exempt Atlantic herring from the Southern GRA. An error in the interpretation of the data presented in the EA/RIR/IRFA resulted in the herring fishery being added to the list of non-exempt species for the Northern GRA. Based on public comments and a reexamination of sea sample data, NMFS notes that the herring fishery does qualify for an exemption under both GRAs. The regulations in § 648.122(b)(2) have been revised to account for that correction.

*Comment 7:* Two commenters supported exempting Atlantic mackerel from the GRAs as data become available.

*Response 7:* NMFS agrees that, if data become available to support such an exemption, Atlantic mackerel could be listed as exempt from these GRAs following the procedures outlined in the regulations.

*Comment 8:* The Council recommended that NMFS postpone implementation of any GRAs to work on perfecting the modified areas that the Council included as part of its comment. This comment was supported by one other commenter. However, two other commenters did not support the modified areas and instead indicated that such a change should be considered under a separate rulemaking.

*Response 8:* NMFS feels that implementation of the GRAs is consistent with the mandate of national standard 9 to reduce discards. In addition, since the Council's proposal is not perfected and does not have widespread industry support and input, it is better dealt with in a separate rulemaking. NMFS encourages such action. Note that implementation of the

Council's alternative differs from the action taken by NMFS to modify the proposed GRAs in this final rule. This modification represents a revision to the proposed measure based, in part, on public comments. The modified GRAs proposed by the Council represent substantially different areas and times, which require further public examination and analysis. Further, since the GRAs were proposed by the Council as part of the 2000 specifications for scup, and given the conservation imperative to effect needed reductions in scup discard, NMFS feels it would be inappropriate to delay implementation. NMFS notes that the decision to deny a petition for rulemaking to implement measures to reduce scup discard was based on the inclusion of these provisions in the 2000 specifications for summer flounder, scup and black sea bass (65 FR 4546, January 28, 2000).

*Comment 9:* One commenter questioned why the possession of *Loligo* is prohibited in GRAs, even if harvested with 4.5-inch (11.4-cm) mesh.

*Response 9:* The regulations prohibit permit holders to fish for, possess, or land *Loligo* squid, silver hake, black sea bass or Atlantic mackerel in or from the GRAs during the appropriate time periods when in possession of midwater trawl or other trawl nets or netting that do not meet the minimum mesh restrictions. However, a vessel *may* fish for, possess, or land those species in or from the GRAs when in possession of nets that do meet the minimum mesh requirements. These vessels may have nets or nettings on board that do not meet the minimum size, if those nets or netting are stowed in accordance with the regulations. Harvest Levels

*Comment 10:* One commenter did not support the summer flounder TAL and instead recommended that the Summer Flounder Monitoring Committee's recommendation of 16.815 million lb (7.627 million kg) be implemented. The commenter stated that this lower TAL has a higher probability of achieving the target (50 percent, versus the 25-percent estimate of the adopted TAL) and that NMFS should set a TAL that has ''a 50/50 chance of meeting the target.'' The commenter also believes that the stock rebuilding schedule is inadequate, because the 1999 stock assessment indicates the stock won't rebuild until 2017.

*Response 10:* NMFS approved the Council recommendation that the 2000 TAL be 18.518 million lb (8.4 million kg). Based on stochastic projection results, this TAL has a 25-percent probability of achieving the target F of 0.26 in 2000 and a 50-percent probability of achieving F = 0.29. These same stochastic projections indicate that the current rebuilding plan is on target, and this rebuilding plan was approved by NMFS under Amendment 12 to the FMP. NMFS also notes that the Commission has recommended that states implement measures to reduce incidental catch and regulatory discards that occur as the result of commercial landings limits in individual states. Specifically, the Commission has instituted voluntary management measures whereby 15 percent of each state's quota would be set aside each year for vessels to land an incidental catch allowance (usually implemented as trip limits) after the directed fishery has closed. The intent of this incidental catch set-aside is to reduce discards by allowing fishermen to land a certain amount of summer flounder they catch incidentally after their state's fishery has closed, while trying to ensure that the state's overall quota is not exceeded. It is anticipated that these measures will improve the probability of achieving the target. This measure is also consistent with a state-by-state quota system which allows states the flexibility to manage their individual allocations to best reflect their industry. This allows the states to more tightly control their fishery and prevent overfishing. Consequently, it may be expected that individual states would implement slightly different programs.

The recent assessment for summer flounder notes that ''[b]ecause the effects of density dependence, future environmental conditions, and expansion of stock age structure on growth and recruitment at higher stock sizes are unknown, these projected levels of stock biomass and landings should be considered with caution.'' If recent low levels of recruitment persist, the projections may be optimistic. Conversely, if recruitment is underestimated or improves, the projections may be conservative. These projections are updated with the best scientific information available each time the an assessment is made on the fishery.

In addition, the BMSY target noted is subject to revision based on changes in the input data that change the partial recruitment pattern for the fishery. That is to say, the rebuilding target is BMSY, not necessarily 106,000 mt. Such changes to the partial recruitment would be influenced by changes in future management action, including minimum sizes and seasonal landing patterns in the fishery.

*Comment 11:* Two commenters did not support the scup harvest levels. One supported a reduction of the discard estimate to eliminate overages and increase the commercial quota, and the other expressed concern that the proposed TAC is too high in light of the record low biomass level.

*Response 11:* In making its recommendation to NMFS, the Council considered a recommendation by the Monitoring Committee to use a 90-percent discard-to-landings ratio in establishing the TAL. The Committee noted that the discard-to-landings ratio had doubled in recent years (1998 versus 1997), based on the limited data available, including survey, VTR, and sea sampling. Such a recommendation, if adopted, would have, for all intents and purposes, eliminated the commercial fishery for 2000, particularly after deduction for overages in the 1999 quota periods. The Council, however, assumed the same proportion of discards to catch in 2000 as 1997 (45.1 percent), and recommended a lower discard estimate—coupled with the GRAs. Such a measure would achieve the goals of the FMP while maintaining some economic opportunity for the industry participants. NMFS agrees with this approach.

*Comment 12:* One commenter did not support the black sea bass trip limits, and specifically requested an 11,000-pound (4,990-kg) trip limit in Quarter 1 (Jan–Mar).

*Response 12:* The reduced trip limits are an attempt to prevent overages in each of the quarters from occurring or reoccurring. These reductions are particularly relevant in light of the fact that deductions are made for 1999 overages in this final rule, thus reducing the overall quota per quarter.

*Comment 13:* One commenter objected to the late publication date of the proposed rule, saying it rendered portions of the 2000 specifications ''meaningless.'' The commenter questioned whether NMFS provided meaningful opportunity to comment on the proposed regulations, as they would already be ''in effect on the water.''

*Response 13:* NMFS agrees that the late publication of this final rule is problematic. This delay will prevent several regulatory provisions from being implemented. However, since this is a joint FMP, states have already implemented several provisions of the recommendations under compliance criteria specified in the Commission's FMP. That fact, of course, did not preclude due consideration of public comments on the proposed measures. In fact, several changes have been made in direct response to comments. In addition, since certain provisions of the specifications are regulatory in nature (such as the reduction of future quotas

due to overages), states must implement any changes to the quotas identified in this final rule. States routinely make such changes in response to quota adjustments which, because of the publication delay, are presented in this final rule. In previous years, this adjustment had been published as a separate action. EA/RIR/IRFA

*Comment 14:* One commenter felt that the EA for summer flounder falls short of National Environmental Policy Act (NEPA) requirements in that it does not provide adequate discussion of impacts, there are no long-term or cumulative impacts (of continued summer flounder overfishing) examined, and no explanation of why any of the alternatives were accepted or rejected.

*Response 14:* NMFS determined that the EA fully and adequately analyzes impacts of the alternatives considered. Still, NMFS realizes that there may be cumulative impacts as a result of annual specifications. Although overall impacts of the management programs were examined in detail as part of the environmental impact statements (EISs) prepared for each of the three fisheries (Amendment 2 for summer flounder (1992), Amendment 8 for scup (1996), and Amendment 9 for black sea bass (1997)), NMFS revised the EA for the 2000 specifications to more fully discuss potential cumulative impacts of the annual specifications.

*Comment 15:* One commenter felt that the EA/RIR/IRFA is ''flawed'' due to the failure to consider the full range of economic benefits and costs associated with the summer flounder quota specifications. The commenter stated that the ''errors in the analysis * * * incorrectly bias the analysis in favor of higher quotas at the expense of rebuilding * * *''

*Response 15:* NMFS disagrees. The economic analysis conducted for this action responded to the requirements of the National Environmental Policy Act, E.O. 12866, and the Regulatory Flexibility Act. The economic analysis performed used the best scientific information available in describing the expected economic impacts for each quota specification option as required by law.

*Comment 16:* One commenter felt that the IRFA fails to consider economic benefits to scup fishermen from reduced discards in small-mesh fisheries, and resultant stock recovery; and does not analyze costs saved for trips not taken in the GRAs.

*Response 16:* NMFS feels that the IRFA addresses adequately the economic impacts of the scup specifications. The economic benefits of reduced discards and resultant stock recovery are addressed in the EIS for Amendment 8 to the FMP, which implemented management measures for scup. As these specifications are not expected to result in the immediate recovery of the stock, it would be inappropriate for this final rule to analyze such impacts. Ultimately, a recovered stock would have obvious benefits to industry in a more balanced age structure of the scup stock, increased spawning stock, and increased yield as fish are allowed to grow larger before harvest.

*Comment 17:* One commenter felt that the use of a relative performance index (RPI) misleads one to believe that the proposed GRA alternative is least efficient. The commenter felt that the analysis should instead take the difference between the benefits and costs (rather than divide, as the RPI did) to determine net benefits. Under that calculation, the proposed alternative would have the greatest net benefits.

*Response 17:* The RPI provides a relative comparison among the various proposed alternatives and is used as a mechanism to rank them. The commenter appears to have incorrectly characterized the RPI as a benefit/cost ratio. The index was never intended to be, nor was it purported to be, a measure of benefits and costs. The RPI simply provides a ranking mechanism to show how the various proposed alternatives compare in terms of percent reduction in scup discards to reduction in gross revenues.

*Comment 18:* One commenter stated that the revenue reductions in the scup GRA analysis failed to account for the proposed significant reductions in the 2000 *Loligo* quota. The commenter felt that reductions in revenues in the *Loligo* fishery, therefore, were not solely associated with the GRAs.

*Response 18:* NMFS notes that impacts associated with the *Loligo* reductions were fully and adequately considered in the specifications for that fishery. An analysis of that action (See proposed initial specifications for the Atlantic mackerel, squid and butterfish fisheries, 65 FR 431, January 5, 2000) indicated that the *Loligo* quota represents an 18-percent reduction in landings compared to the average last 3 (1996–98) years, and may result in a 5- to 10-percent revenue reduction (all species combined) for 121 of 443 vessels that reported landing Loligo in 1997. The remaining vessels (322) are expected to experience a reduction of less than 5 percent. Since trimester management of the *Loligo* specifications is newly implemented in 2000, the EA/RIR/IRFA for scup, then, examines to the extent practicable, estimated impacts of the GRAs based on historical performance of the *Loligo* fleet, and assumes that the *Loligo* quota would not have been fully harvested and would continue unrestrained by other actions. Such assumptions in the document are credible. If the *Loligo* quota were harvested, of course, then actual impacts may vary significantly from the estimated—either towards greater impacts, or lesser. A closure may result in those vessels ceasing fishing, eliminating impacts of the GRAs on their activity.

*Comment 19:* Three commenters noted that, based on data presented in the EA/RIR/IRFA, the Atlantic herring fishery should be exempt from the GRAs for both periods, and in both areas.

*Response 19:* This comment was addressed in the response to Comment 6.

Enforceability

*Comment 20:* The USCG submitted a comment expressing its preference for closed areas with no exemptions, as opposed to GRAs, which require boardings for compliance checks. The USCG feels GRAs are ''an enforcement compromise.'' The USCG agreed with NMFS's contention that the Council's preferred areas were too small and too short in duration, but notes that the NMFS proposed areas were large and equally burdensome to enforce, since they allow entry by exempted vessels. The USCG recommended that, for law enforcement purposes only, areas be restricted for a minimum of 60 days, and be plainly shaped squares or rectangles whose sides conform to a minimum 30 minutes of latitude or longitude on a side. The USCG also supports the national vessel monitoring systems for all vessels within the GRAs to help the USCG locate them to see if they are complying with the regulations.

*Response 20:* NMFS understands the USCG comments. Partially in response to this comment, these areas have been modified in shape. The areas conform to the USCG request in that they are restricted for a minimum of 60 days and have plainly shaped sides. At its narrowest points, the Southern area is approximately 20 nautical miles wide and the Northern area 15 nautical miles wide. Both of these sections of area are narrower than ideal for enforcement purposes. However, given the expected interaction of scup with small-mesh species (including *Loligo*, Atlantic mackerel, whiting, and black sea bass) in the vicinity of those areas at those times, and given industry testimony to that effect, these areas are, to the extent practicable, the most workable compromise.

**Classification**

This action is authorized by 50 CFR part 648.

These specifications have been determined to be not significant for purposes of E.O. 12866.

Because §§ 648.120 and 648.121 pertaining to the scup summer period state-by-state quota allocation are contravened by judicial order, providing prior notice and opportunity for public comment on their removal from the regulations would serve no useful purpose and is therefore unnecessary. Accordingly, the Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice and opportunity for public comment. Likewise, providing a 30-day delay in effective date would be inconsistent with the intent of the judicial order and is unnecessary. The AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period.

This action establishes annual quotas and related management measures for the summer flounder, scup, and black sea bass fisheries which are used to control harvest of these fisheries and to restrict landings when their quotas are harvested. Action to restrict landings must be taken immediately upon attainment of the quota to conserve fishery resources. The State of Delaware's summer flounder allocation has been harvested. It would be contrary to the public interest to provide prior notice to implement these restrictions, since the allocations have already been harvested and the regulations require the publication of this action. Failure to implement this provision would result in overfishing. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice and opportunity for public comment. Likewise, because the remaining quota provisions reduce overfishing of the summer flounder, scup, and black sea bass resources in the remaining states and periods, it would be impracticable and contrary to the public interest to delay implementation of the remaining quota provisions. Therefore, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for both the quotas and related management measures, including the landings restrictions.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). The request for an experimental fishing exemption has been approved by the Office of Management and Budget under Control Number 0648–0309. Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, must be sent to NMFS and OMB (see **ADDRESSES**).

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

NMFS completed a final regulatory flexibility analysis (FRFA) that contains the items specified in 5 U.S.C. 604(a) as follows:

**Final Regulatory Flexibility Analysis for Summer Flounder, Scup, and Black Sea Bass 2000 Specifications**

*Need for and Objectives of the Rule*

This final rule is necessary to establish annual specifications for the summer flounder, scup, and black sea bass fisheries. The intent of this final rule is to comply with the regulations for summer flounder, scup, and black sea bass that require NMFS to publish specifications for each fishing year to conserve and manage the resources in compliance with the regulations, the fishery management plan (FMP), and the Magnuson-Stevens Fishery Conservation and Management Act.

*Public Comments*

There were three (3) public comments submitted in response to the initial regulatory flexibility analysis (IRFA). NMFS responded to these comments in the Comments and Responses section to this final rule. No comments were submitted specifically on the Item of Particular Concern noted in the proposed rule. As a result of these comments, changes were made to the rule regarding the exemption for the herring fishery from requirements of the gear restricted areas (GRAs), the size and location of the GRAs, and methods for exempting species from the GRA restrictions. These changes are noted in the responses to comments as well as in the preamble to this final rule.

*Number of Small Entities*

In 1998, a total of 1056 permitted vessels landed summer flounder, scup, and/or black sea bass and would be impacted by the quota specifications. Those most likely to be impacted by the GRAs would be those vessels permitted under several different FMPs, including the Northeast Multispecies FMP (whiting), the Atlantic Mackerel, Squid and Butterfish FMP (Loligo squid, Atlantic mackerel), and the Summer Flounder, Scup and Black Sea Bass FMP (black sea bass), and fishing with trawl gear with codend mesh less than 4.5 inches (11.3 cm) in the GRAs. An analysis of these areas indicates that 59 vessels used small mesh gear that would be restricted in the northern GRA. The total prohibited trips were valued at $0.8 million. In the southern GRA, 116 vessel would be impacted by the GRAs. The total value of these restricted trips were valued at $9.7 million. All of these vessels readily fall within the definition of a small business.

*Cost of Compliance*

No additional costs of compliance including those associated with recordkeeping and reporting would result from the implementation of this final rule.

*Minimizing Significant Economic Impact on Small Entities*

An analysis of the harvest level alternatives indicated that the levels adopted in this final rule minimized significant economic impacts while achieving the stated objectives of the FMP. No other alternative considered met the objectives while minimizing significant economic impacts on small entities. Although one alternative resulted in less impact on small entities, the harvest level proposed under it was found inconsistent with the requirements to end overfishing and rebuild the stocks. Other alternatives had higher probabilities of achieving the rebuilding goals of the FMP.

A review of the impacts of the proposed GRA alternative, as well as the comments received, indicated that impacts could be minimized while still accomplishing the stated objectives of the measures. Consequently, NMFS modified the proposed GRAs by reducing the size of the Southern GRA. This modification will (1) Provide for increase fishing opportunities for vessels otherwise restricted under the proposed alternative, (2) better accommodate seasonal variations in the migrations of scup, (3) reflect information on areas of noted scup/Loligo interaction, and (4) maintain or increase enforceability. The other significant alternatives to the GRAs were rejected as each did not provide for enforceable conservation benefits.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 18, 2000.

**Bruce C. Morehead,**

*Acting 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, paragraphs (a)(122) and (a)(123) are added to read as follows:

### § 648.14 Prohibitions.

(a) * * *

(122) Fish for, possess or land *Loligo* squid, silver hake, black sea bass or Atlantic mackerel in or from the area, and during the time period, described in § 648.122(a) while in possession of midwater trawl or other trawl nets or netting that do not meet the minimum mesh restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh requirements specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

(123) Fish for, possess or land *Loligo* squid, silver hake, black sea bass, or Atlantic mackerel in or from the area, and during the time period, described in § 648.122(b), while in possession of midwater trawl or other trawl nets or netting that do not meet the minimum mesh restrictions or that are modified, obstructed or constricted, if subject to the minimum mesh requirements specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b).

* * * * *

3. In § 648.120, paragraphs (d)(2), (d)(4) and (d)(6) are revised to read as follows, paragraph (d)(3) is removed and reserved, and paragraphs (d)(7) and (e) are removed.

### § 648.120 Catch quotas and other restrictions.

* * * * *

(d) * * *

(2) The commercial quotas for each period will each be distributed to the coastal states from Maine through North Carolina on a coastwide basis.

(3) [Reserved]

(4) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested.

* * * * *

(6) Any overages of the commercial quota landed during the Summer period will be deducted from that period's allocation for the following year. Any overages of the commercial quota landed in any Winter period will be subtracted from the period's allocation for the following year.

4. In § 648.121, paragraph (a) is revised to read as follows, and paragraph (b) is removed and reserved.

### § 648.121 Closures.

(a) *Period closures.* The Regional Administrator will monitor the harvest of commercial quota for each quota period based on dealer reports, state data, and other available information and shall determine the date when the commercial quota for a period will be harvested. NMFS shall close the EEZ to fishing for scup by commercial vessels for the remainder of the indicated period by publishing notification in the **Federal Register** advising that, effective upon a specific date, the commercial quota for that period has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup for the remainder of the period.

(b) [Reserved]

5. Section 648.122 is revised to read as follows:

### § 648.122 Season and area restrictions.

(a) *Southern Gear Restricted Area.* (1) From January 1 through April 30, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer 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 head rope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

| Point | N. Lat. | W. Long. |
|---|---|---|
| SGA1 | 38°00′ | 74°20′ |
| SGA2 | 38°40′ | 74°00′ |
| SGA3 | 40°00′ | 72°30′ |
| SGA4 | 40°00′ | 71°20′ |
| SGA5 | 39°10′ | 72°47′ |
| SGA6 | 38°00′ | 73°55′ |
| SGA7 | 38°00′ | 74°20′ |

(2) *Non-exempt species.* Unless otherwise specified in paragraph (c) of this section, the restrictions specified in paragraph (a)(1) of this section apply to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: Black sea bass, *Loligo* squid, Atlantic mackerel, and silver hake (whiting). Vessels fishing for or in possession of all other species of fish and shellfish are exempt from these restrictions.

(b) *Northern Gear Restricted Area.* (1) From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer 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 head rope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

NORTHERN GEAR RESTRICTED AREA

| Point | N. Lat. | W. Long. |
|---|---|---|
| NGA1 | 40°00′ | 72°50′ |
| NGA2 | 41°10′ | 71°40′ |
| NGA3 | 41°10′ | 70°00′ |
| NGA4 | 41°00′ | 70°00′ |
| NGA5 | 41°00′ | 70°40′ |
| NGA6 | 40°00′ | 71°30′ |
| NGA7 | 40°00′ | 72°50′ |

(2) *Non-exempt species.* Unless otherwise specified in paragraphs (c) of this section, the restrictions specified in paragraph (b)(1) of this section apply to vessels in the Northern Gear Restricted Area that are fishing for, or in possession of, the following non-exempt species: Black sea bass, *Loligo* squid, Atlantic mackerel, and silver hake (whiting). Vessels fishing for or in

possession of all other species of fish and shellfish are exempt from these restrictions.

(c) *Transiting.* Vessels that are subject to the provisions of the Southern and Northern GRAs, as specified in paragraphs (a) and (b) of this section, respectively, may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a) and (b) of this section are not available for immediate use and are stowed in accordance with the provisions of § 648.23(b).

(d) *Addition or deletion of exemptions.* (1) An exemption may be added in an existing fishery for which there is sufficient information to ascertain the amount of scup bycatch, if the Regional Administrator, after consultation with the MAFMC, determines that the percentage of scup caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives for scup, the Regional Administrator may take into consideration factors such as, but not limited to, juvenile mortality. A fishery may be restricted or exempted by area, gear, season, or other means determined to be appropriate to reduce bycatch of scup. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of scup is equal to or greater than 10 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the **Federal Register**.

(2) The MAFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.108(a), additions or deletions to exemptions for fisheries other than scup.

(e) *Exempted experimental fishing.* The Regional Administrator may issue an exempted experimental fishing permit (EFP) under the provisions of § 600.745(b), consistent with paragraph (d)(2) of this section, to allow any vessel participating in a scup discard mitigation research project to engage in any of the following activities: Fish in the applicable gear restriction area, use fishing gear that does not conform to the regulations, possess non-exempt species specified in paragraphs (a)(2) and (b)(2) of this section, or engage in any other activity necessary to project operations for which an exemption from regulatory provision is required. Vessels issued an EFP must comply with all conditions and restrictions specified in the EFP.

(1) A vessel participating in an exempted experimental fishery in the Scup Gear Restriction Area(s) must carry an EFP authorizing the activity and any required Federal fishery permit on board.

(2) The Regional Administrator may not issue an EFP unless s/he determines that issuance is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law and will not:

(i) Have a detrimental effect on the scup resource and fishery;

(ii) Cause the quotas for any species of fish for any quota period to be exceeded;

(iii) Create significant enforcement problems; or

(iv) Have a detrimental effect on the scup discard mitigation research project.

6. In § 648.123, the first sentence of paragraph (a)(3), paragraph (a)(4), and the first sentence of paragraph (a)(5) are revised to read as follows:

**§ 648.123 Gear restrictions.**

(a) * * *

(3) *Net modification.* The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.122 and paragraph (a)(1) of this section shall not use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net.* * *

(4) *Mesh obstruction or constriction.* (i) The owner or operator of a fishing vessel subject to the minimum mesh restrictions in § 648.122 and in paragraph (a)(1) of this section shall not use any mesh construction, mesh configuration, or other means on, in, or attached to the top of the regulated portion of the net, as defined in paragraph (a)(3) of this section, if it obstructs or constricts the meshes of the net in any manner.

(ii) The owner or operator of a fishing vessel subject to the minimum mesh requirements in § 648.122 and in paragraph (a)(1) of this section may not use a net capable of catching scup if the bars entering or exiting the knots twist around each other.

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 4,000 lb or more (1,814 kg or more) of scup and subject to the minimum mesh requirement in paragraph (a)(1) of this section, and the owner or operator of a midwater trawl or other trawl vessel subject to the minimum mesh 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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