than the scup minimum mesh size (4.5–in (11.4–cm) diamond mesh in the codend). Those other fisheries target herring, Atlantic mackerel, black sea bass, and whiting. The Council also recommended allowing the continuation of fisheries that do not exceed a 10–percent scup bycatch. Further discussion on the development of the Council alternatives is provided to the public through the proposed rule to implement 2000 specifications for the summer flounder, scup, and black sea bass fisheries, published elsewhere in this issue of the **Federal Register**.

Given the fact that similar measures for scup are in the proposed 2000 specifications, NMFS is denying this petition for rulemaking. Implementing these controversial measures through emergency or other interim Secretarial action would not afford an opportunity for public comment prior to implementation. NMFS prefers that they undergo full public review and comment, within the context of the annual specifications process for scup.

In the proposed specifications, NMFS is not proposing the selected restricted mesh areas recommended by the Council because NMFS considers them to be inadequate in size and duration to reduce bycatch and be enforceable. However, NMFS is proposing one of the Council's non-selected alternatives. The areas in the proposed alternative are more extensive in both size and time than the Council's recommended areas and, thus, more enforceable. The areas are not as extensive, however, as those recommended by the Petitioners or the Monitoring Committee. The large areas recommended by the Petitioners and Monitoring Committee included areas of few scup discards and did not include some areas of high scup discards. Additional discussion of the rationale for the proposed restricted mesh areas can be found in the proposed specifications for the scup fishery published elsewhere in this issue of the **Federal Register**.

In addition, NMFS believes the implementation of ''adequate enforcement mechanisms,'' such as a VMS requirement or a bycatch quota monitored by at-sea observers, as requested by the Petitioners, would be better handled through the fishery management plan amendment process. Further, the Petitioners' request that, for 2001, NMFS and the Council oversee the development, testing, and implementation of appropriately modified gear as an effective and equitable means of reducing scup bycatch is already possible under the Experimental Fishery Permit process and therefore does not require additional rulemaking. (See also response to Comment 2.)

The proposed 2000 specifications for scup, summer flounder, and black sea bass are being published concurrently in the **Federal Register** with this notice of finding on the petition to enable the Petitioners and the public to observe the relationship between these two actions. In addition, the public will now have an opportunity to review the proposed measures and submit comments that will be considered in the establishment of the final specifications.

Comments and Responses

Five comment letters, including four from commercial fishing industry groups and one from the Commonwealth of Massachusetts, Division of Marine Fisheries, were received during the comment period for this action, which ended on November 15, 1999. All five letters supported the petition. Several of the letters contained comments or suggestions for management actions that were not within the scope of the petition. Only comments relevant to the proposed petition for rulemaking that were received by NMFS prior to the close of business on November 15, 1999, were considered for this action.

Comment 1: While supporting adoption of the regulated areas in concept, several of the commenters supported alternative areas not considered within the petition. In addition, the commenters supported complete, seasonal closures (to all gear types) if the seasonal gear restrictions were found to be not feasible in terms of enforcement and compliance.

Response: NMFS notes the support for action to reduce the discards of scup. NMFS also notes that seasonal closures of specific areas to all gear types would be a management alternative beyond the scope of this petition.

Comment 2: Four of the commenters supported gear modifications to minimize bycatch as well as impacts on fishermen and industry infrastructure. The commenters also supported the use of sea samplers (observers) to monitor experimental small-mesh fisheries, the *Loligo* squid fishery, and bycatch quotas.

Response: NMFS agrees that sea sampling is important, although it notes that funding is currently inadequate to support all of the sea sampling needs identified. NMFS agrees that gear modifications to minimize bycatch, as developed through experimental fisheries, could offer another alternative to area restrictions. The Council is working with industry members who have volunteered to identify modifications that could reduce catch of scup in small-mesh fisheries for squid. In addition, the Council is considering a proposal that would allow vessels with experimental exempted fishing permits to conduct experiments to assess the efficacy of trawl gear modifications to reduce discards. This proposal would rely on NMFS-certified sea samplers to collect valid data on scup discards in these fisheries.

Comment 3: Several commenters supported the idea of bycatch quotas of scup and experimental fisheries, provided they receive rigorous review, as have other experimental fisheries.

Response: NMFS believes this is an appropriate approach. At its August 1999 meeting, the Council voted to initiate a framework action to consider quota set-asides for scientific research in the scup and other fisheries. Since NMFS has decided not to implement a bycatch quota by way of interim action through this petition, the Council would need to adopt an appropriate framework as a mechanism to provide a bycatch quota for NMFS approval and implementation.

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

Dated: January 21, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–1989 Filed 1–24–00; 4:47 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000119014–0014–01; I.D. No. 112399C]

RIN 0648–AM48

Fishers 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: Proposed rule; request for comments.

SUMMARY: NMFS proposes specifications for the 2000 summer flounder, scup, and black sea bass fisheries. The implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) require NMFS to publish specifications for the upcoming

fishing year for each fishery and to provide an opportunity for public comment. The intent of these measures is to address overfishing of the summer flounder, scup, and black sea bass resources.

DATE: Public comments must be received, at the appropriate address or fax number (see **ADDRESSES**), not later than 5 p.m. eastern standard time on February 28, 2000.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committees; the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IREA); and 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.*

Written comments on the proposed specifications should be sent to Patricia A. Kurkul at the same address. Mark on the outside of the envelope, ''Comments—2000 Summer Flounder, Scup, and Black Sea Bass Specifications.'' Comments may also be sent via facsimile (fax) to (978) 281–9371. Comments will not be accepted if submitted via e-mail or the Internet.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Regional Administrator and 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.1.spallone@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the FMP outlined the process for specifying annually the catch limits for the commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, season, and area restrictions) for these fisheries. These measures are intended to achieve the annual targets (either a fishing mortality rate (F) or an exploitation rate) set forth for each species in the FMP.

A Monitoring Committee for each species, made up of members from NMFS, the Atlantic States Marine Fisheries Commission (Commission), and both the Mid-Atlantic and New England Fishery Management Councils, is required to review available information and to recommend catch limits and other management measures necessary to achieve the target F or exploitation rate for each fishery, as specified in the FMP. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Monitoring Committee's recommendations and any public comment in making their recommendations. The Mid-Atlantic Fishery Management Council (Council) and Board made their annual recommendations at a joint meeting held August 9–12, 1999.

This rulemaking contains proposed gear restricted areas for the protection of scup. NMFS received a petition for rulemaking requesting implementation of gear restricted areas and other measures (see 64 FR 55688, October 14, 1999). A separate ''notice of finding'' denying the petition, including responses to comments received concerning the petition, is published in this issue of the **Federal Register** in the Final Rules section.

Summer Flounder

The FMP specifies a target F for 2000 of F_{MAX}—that is, the level of fishing that produces maximum yield per recruit. Best available data indicate that F_{MAX} is currently equal to 0.26. The FMP allocates the total allowable landing (TAL) associated with the target F 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial allocation is further allocated to the coastal states based on percentage shares specified in the FMP.

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 (S&S) Committee in July 1999. The reviewed assessment, including the recommendations of the S&S Committee, was made available to the Summer Flounder Monitoring Committee. This assessment is summarized in the EA/RIR/IRFA.

The Summer Flounder Monitoring Committee reviewed the stock status and projections based on these data and made recommendations to achieve the target F. The Monitoring Committee recommended a TAL limit of 16.815 million lb (7.627 million kg), which would be divided 10.089 million lb (4.576 million kg) to the commercial sector and 6.726 million lb (3.051 million kg) to the recreational sector.

The Council and Board (hereinafter, referred to as ''the Council'') reviewed this recommendation and did not adopt it. Instead, the Council recommended a 2000 TAL level of 18.518 million lb (8.4 million kg). At this level 11,111,298 lb (5,040,000 kg) would be allocated to the commercial fishery and 7,407,532 lb (3,360,000 kg) to the recreational fishery. The FMP requires state commercial quota allocations for the year 2000 to be adjusted downward if there are landings in excess of the states' 1999 allocations.

Based on stochastic projection results, the recommended TAL of 18.518 million lb has a 25-percent probability of achieving the target F of 0.26 in 2000. The Council believes that this level of probability is reasonable as it believes that the stock size projected for 2000 based on the current assessment is underestimated. The Council notes that analyses of previous assessment results indicate a retrospective pattern in which estimates of stock size were underestimated and the fishing mortality rate overestimated. The Council believes that this is the case for the 1998 estimates of stock size and F. A greater stock size estimate for 1998 would increase the projected stock size in 2000 and increase the probability that a TAL of 18.518 million lb would achieve the target F in 2000.

In addition, the Council noted that the projections were very dependent on the recruitment level estimated for 1997 and 1998. Although virtual population analysis results indicate that recruitment for 1997 and 1998 may be poor (23 and 26 million fish compared with an average of 40 million fish), these estimates are the most uncertain in the series. It is possible that the size of the year class is underestimated. For example, previous assessment results indicated that the 1996 year class was poor (23 million fish). The latest assessment indicates that the size of the 1996 year class was 40 million fish. Such an underestimation may be the case for the 1997 and 1998 year classes. A larger year class size would allow for a larger stock size and a greater likelihood that the target F would be achieved in 2000.

Currently, the Commission has measures in place to decrease discards of sublegal fish in the commercial fishery as well as reduce regulatory discards that occur as the result of landing limits in the states. Specifically, the Commission established a system 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 object 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 is closed, while also trying to ensure that the state's overall quota is not exceeded.

NMFS proposes to implement the Council recommendations for summer flounder, although NMFS does not necessarily ascribe the same confidence to the elements of the Council's rationale. Specifically, while the Council's rationale may likely be valid, NMFS does not necessarily presume that estimates of recruitment are low or that the retrospective pattern has necessarily repeated to the extent that the Council asserts these events will result in the attainment of the F target. In addition, NMFS notes that both the Summer Flounder Monitoring Committee and the Council made their recommendations without considering the Commission's state incidental catch set-aside in terms of total mortality reduction. NMFS does believe that a decrease in the amount of discards would decrease overall mortality, and, thus, increase the likelihood of achieving the target F in 2000.

The commercial quotas by state for 2000 are presented in Table 1. Although NMFS has no authority to establish an incidental catch allocation, for the convenience of the reader Table 1 presents the total allocation broken down into both directed and incidental catch fisheries. These quotas are preliminary and subject to downward adjustment if there are overages in a state's 1999 harvest.

TABLE 1.—2000 SUMMER FLOUNDER STATE COMMERCIAL QUOTES

State	Percent share	Directed		15 Percent as incidental catch		Total	
		Lb	Kg [1]	Lb	Kg [1]	Lb	Kg [1]
ME	0.04756	4,492	2,037	793	360	5,284	2,397
NH	0.00046	43	20	8	3	51	23
MA	6.82046	644,159	292,186	113,675	51,562	757,834	343,748
RI	15.68298	1,481,181	671,852	261,385	118,562	1,742,566	79,041
CT	2.25708	213,170	96,692	37,618	17,063	250,788	113,756
NY	7.64699	722,221	327,594	127,451	57,811	849,672	385,405
NJ	16.72499	1,579,594	716,492	278,752	126,440	1,858,346	842,931
DE	0.01779	1,680	762	297	134	1,977	897
MD	2.03910	192,583	87,354	33,985	15,514	226,568	102,770
VA	21.31676	2,013,264	913,201	355,282	161,153	2,368,546	1,074,354
NC	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	11,111,191	5,039,951

[1] Subject to rounding error.

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.

These proposed scup specifications for fishing year 2000 are based on an exploitation rate used in the rebuilding schedule that was approved when the species was added to the FMP in 1996, prior to passage of the Sustainable Fisheries Act (SFA). Subsequently, the Council resubmitted that rebuilding plan for scup as part of Amendment 12. Amendment 12 was intended to bring the FMP into compliance with the provisions of the SFA. On April 28, 1999, NMFS disapproved the rebuilding plan for scup because it did not comply with the SFA. Although the exploitation rate portion of the overfishing definition (converted to a fishing mortality rate), by itself, was conceptually sound, albeit somewhat risk-prone, NMFS determined that the combination of that exploitation rate and the general decline of the stock made the risk that the rebuilding plan would not achieve stock rebuilding goals in the long term unacceptable. The scup specifications for fishing year 2000 are based on the exploitation rate found to be conceptually sound. NMFS believes that the annual specifications do not necessarily result in long-term risks to the stock associated with the disapproved rebuilding plan. The specifications are annual measures that will be reviewed, and modified as appropriate, by the Council and NMFS for fishing year 2001. Furthermore, setting the scup specifications using the 2000 exploitation rate is a more cautious approach to managing this overfished resource than a failure to set any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that meets the SFA requirements.

The Monitoring Committee reviewed available data and projected that 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, outlined in the rebuilding plan. 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 Council reviewed 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 Council concluded that the data suggested it is possible that exploitation in 1999 was as low as 30 percent, provided certain assumptions were met regarding biomass estimates. A 30-percent exploitation rate is equal to the rebuilding plan's target for 2000. Thus,

the Council recommended, and NMFS proposes, to maintain the TAC for 2000 at the 1999 level, namely, 5.922 million lb (2.686 million kg).

Allocating the 5.922 million lb (2.686 million kg) TAC between the commercial and recreational sectors based on a 78 and 22 percent division, respectively, results in a commercial TAC of 4,619,160 lb (2,095,215 kg) and a recreational TAC of 1,302,840 lb (590,958 kg). 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 proposed commercial allocation is shown in Table 2. 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 would require a corresponding reduction in those periods in 2000. Since the data collection for all periods in 1999 has not yet been finalized, this table shows the allocations prior to any deductions.

TABLE 2.—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 (945,168)	940,543 (426,630)	1,143,160	518,529	[4] 10,000	4,536
Summer	38.95	1,799,163 (816,100)	812,108 (368,372)	987,055	447,721	* n/a	
Winter II	15.94	736,294 (333,983)	332,349 (150,754)	403,945	183,226	4,000	1,814
Total [5]	100.00	4,619,160 (2,095,215)	2,085,000 (945,740)	2,534,160	1,149,476	.....	.....

[1] Total allowable catch, in pounds (kilograms in parentheses).
[2] Discard estimates, in pounds (kilograms in parentheses).
[3] Subject to rounding error.
[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 subject to rounding error.
* n/a—Not applicable.

To achieve the commercial quotas, the Council recommended, and NMFS proposes, 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 also would be in place for the entire Winter II (November–December) period.

Gear Restricted Areas

The Monitoring Committee noted the need to reduce discards in the commercial scup 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 in (11.43 cm) to reduce discards of scup.

The Council noted NMFS' 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 gear restricted areas in which commercial vessels would be prohibited from fishing with trawl or midwater trawl gear with codend nets of mesh size less than 4.5 in (11.4 cm), unless they were participating in an exempted fishery (a fisher that has been identified by the Council to have less than a 10-percent bycatch of scup). The Council recommended areas that were identified by an *ad hoc* advisory panel consisting of Council and Board members, industry advisors, and the public. The gear restricted areas, each lasting approximately 2 weeks, would be located within parts of statistical areas 537, 539, 613, 615, 616, 621, 622, and 623.

NMFS believes that the adoption of gear restricted areas is a critical measure to assure the attainment of the target exploitation rate and to provide sorely needed reductions in discards for this fishery. However, NMFS does not support the areas and times identified in the Council's recommendation. The Council's recommended areas and times are extremely small and short in duration. An analysis of the Vessel Trip Report (VTR) and sea sample data used to help identify these areas shows that it is unlikely that the small, 2-week restricted gear areas identified in the Council's recommendation would coincide with the seasonal migration of scup.

Generally, scup are present inshore off southern New England during the summer spawning months, and migrate to more southern offshore waters in the fall. However, scup migration is dependent on water temperature and can vary from one year to the next. The small areas recommended by the Council would present a considerable enforcement burden with limited conservation benefits. It is likely that harvesters would easily shift fishing operations to nearby unrestricted areas where high discard rates are likely. The Council's recommended gear restricted areas and associated time periods do not necessarily correspond to the areas and time periods with the highest scup discards (areas with discards greater than 10 percent by weight of the scup retained, based on sea sample data) for each statistical area during the time periods recommended. Consequently, NMFS does not propose these particular areas and times for gear restrictions.

Instead, NMFS proposes an alternative analyzed by the Council that would establish larger gear restricted

areas that would remain closed to small-mesh fisheries for longer periods of time (see Alternative 6, as described in the EA/RIR/IRFA). This proposed rule would restrict fishing in two areas, a Southern Gear Restricted Area and a Northern Gear Restricted Area. In the Southern Gear Restricted Area, comprised of parts of statistical areas 533, 537, 615, 616, 621, 622, and 623 in Federal waters off New Jersey and Delaware, vessels could not fish with codend mesh smaller than 4.5 in (11.4 cm) from January 1 through April 30. In the Northern Gear Restricted Area, comprised of parts of statistical areas 537, 539, and 613 in Federal waters off Massachusetts, Rhode Island, and New York, vessels could not fish with codend mesh smaller than 4.5 in (11.4 cm) from November 1 through December 31. Both of these areas incorporate the areas recommended by the *ad hoc* advisory panel.

During the time periods previously mentioned, vessels with midwater trawl or other trawl nets or netting that have less than a 4.5-in (11.4-cm) diamond mesh in the codend would be prohibited from fishing for or possessing black sea bass, *Loligo* squid, Atlantic mackerel, and silver hake when in the Southern Gear restricted area. Vessels with midwater trawl or other trawl nets or netting that have less than 4.5 in (11.4 cm) diamond mesh in the codend would be prohibited from fishing for or possessing black sea bass, Atlantic herring, *Loligo* squid, Atlantic mackerel, and silver hake when in the Northern Gear restricted area. Copies of a chart depicting these areas are available in the EA/RIR/IRFA and from the Regional Administrator upon request (see **ADDRESSES**.

Analyses indicate that the proposed gear restricted areas would achieve a substantial reduction of scup discards in the small-mesh fisheries (58 percent), as compared with the Council's preferred alternative (34 percent). Such a significant reduction is needed because, while data are imprecise, SAW 27 notes that the majority of the scup fishing mortality is ''clearly attributable to discards'' and that discards of age 0 to 3 fish in both the directed and non-directed fisheries ''are a significant component of the current estimates of catch at age.'' SAW 27 estimates that discards may be several times higher than the Council's estimates. For instance, the 1997 TAC estimated discards at 1.1 million 1b (0.5 million kg), whereas SAW 27 estimated discards at 4.0 million lb (1.8 million kg), approximately 3.6 times the Council's estimate. Thus, in order not to exceed the Council's 2000 estimate of discards of 2 million lb (0.4 million kg), discards must be significantly reduced. Therefore, the proposed reduction is consistent with the SAW 27 advice indicating that F should be reduced ''substantially and immediately'' and ''that reducing discards (especially in small mesh fisheries) would have the most impact in that regard.'' Further, because the areas NMFS proposes are larger and restricted for a longer period of time, this option is likely to be much more enforceable and effective when compared with the Council's recommendation.

The small size and short duration of the gear restricted areas in the Council's recommendation overestimate the conservation benefits of the measure, because fishermen could easily continue to fish in adjacent areas with high concentrations of scup and, therefore, potentially discard large amounts of sublegal scup. The larger areas of the proposed alternative incorporate identified ''hot spots'' to a greater extent than the Council's preferred alternative, and would allow fishing with small-mesh nets only in areas with potentially lower scup discards.

The data that identify with a high level of certainty the primary areas with high levels of discards are limited. The *ad hoc* advisory panel raised concerns about these data limitations and questioned the extent of the discard problem. In light of the SAW 27 advice, however, the precautionary approach to developing measures to reduce discards consistent with the requirements of the Magnuson-Stevens Act requires that action be taken on this severely overfished stock.

To the extent practicable, the proposed restrictions seek to balance needed reductions in scup discards while maintaining viable fishing opportunities for other species. The proposed areas allow vessels to fish in areas in which scup discards are not expected to be a problem. The Council's recommended measure would allow vessels to fish in areas in which scup discards are expected to be a problem. Sea sample data indicate incidents of high discards within sub-areas of the Northeast statistical areas that are adjacent to the Council's recommended gear restricted areas.

Lastly, vessels with exempted experimental fishing permits would be allowed to conduct exempted fishing activities with small-mesh gear in the gear restricted areas. The Council is working with industry members to identify gear modifications that would reduce catch of scup in small-mesh fisheries for squid. Once this experimental work is completed and an effective gear design is identified, the Council could authorize its use in the gear restricted areas.

Black Sea Bass

The FMP specifies a target exploitation rate of 48 percent for 2000, equivalent to F=0.73. 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 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, fishing mortality in 1998 may have been 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/IRFA.

The Black Seas Bass Monitoring Committee reviewed this information and recommended that the 2000 TAL remain the same as 1999, that is, 6.17 million lb (2.80 million kg). That TAL would result in allocations of 3.02 million lb (1.37 million kg) to the commercial quota and of 3.15 million lb (1.43 million kg) to the recreational harvest limit. Because of the uncertainty of the data, the Monitoring Committee recommended that the threshold level triggering the minimum mesh requirement should be reduced from 1,000 lb (454 kg) to 100 lb (45.4 kg). Further, as a means to allow the fishery to stay open longer during each quarter, the Monitoring Committee also recommended that the trip limits for each quarter be reduced.

Upon review of the recommendations, the Council agreed to maintain the black sea bass TAL at the 1999 level and to reduce the quarterly trip limits, as recommended by the Black Sea Bass Monitoring Committee. The Council recommended that trip limits be reduced in an attempt to prevent overages in each of the quarters from recurring. Preliminary data indicate that, in 1999, the quotas for Quarters II and III were exceeded, which requires a corresponding reduction in those quarters in 2000. Status quo was retained on other related management measures, such as minimum fish size and possession limits. NMFS proposes to implement the Council recommendations. The proposed commercial quota and corresponding

trip limits are shown in Table 3. Since the data collection for all quarters in 1999 has not yet been finalized, this table shows the allocations prior to any deductions.

TABLE 3.—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[1]	100.00	3,024,742	1,372,000	.....	.....

[1]Subject to rounding error.

Classification

This action is authorized by 50 CFR part 648.

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

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 Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA. The request for an experimental fishing exemption has been approved by OMB 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 this data needed, and completing and reviewing the collection of information. Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

The Council prepared an IRFA in section 3.0 of the RIR that describes the economic impacts this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the SUMMARY section of the preamble. A description of the recordkeeping and reporting requirements of this proposed rule is provided in the PRA discussion of this section. A summary of the analysis follows:

The categories of small entities likely to be affected by this action are commercial vessel owners with vessels permitted to harvest summer flounder, scup, or black sea bass. The IRFA estimates that the proposed 2000 quotas are expected to affect 1,899 vessels with a summer flounder, scup, and/or black sea bass permit. Of these, 1,056 vessels are actively participating (i.e., landed catch in 1998) in the fisheries. In addition, the IRFA estimates that 172 of these vessels would be affected by the proposed gear restricted areas.

The IRFA examines four scenarios: Scenario I analyzes the cumulative impacts of the harvest limits proposed by the Council and Board for summer flounder, scup, and black sea bass on vessels that are permitted to catch any of these three species. Scenario II differs from Scenario I in that its analysis of cumulative impacts includes the summer flounder harvest limits proposed by the Monitoring Committee. Scenario III analyzes the cumulative impacts of the least restrictive possible harvest limits—those that would result in the smallest reductions (or greatest increases) in landings (relative to 1998) for all species. These harvest limits resulted in the highest possible landings for 2000, regardless of their probability of achieving the biological targets. Scenario IV analyzes the cumulative impacts of the most restrictive possible harvest limits—those that would result in the greatest reductions in landings (relative to 1998) for all species.

An analysis of the proposed harvest limits indicates that these limits will result in revenue loss of 5 percent or greater to 115 of the 1,056 commercial vessels subject to this rule. Those experiencing such reductions varied from 2 vessels landing only scup to 35 vessels landing only black sea bass. No change in revenue would be experienced by 264 vessels, while 677 vessels would experience losses of less than 5 percent. Of the 115 vessels with revenue losses of 5 percent or greater, 46 vessels would experience a 5 to 9 percent revenue loss, 67 vessels would experience 10 to 29 percent revenue loss, and 2 vessels would experience a 30 to 39 percent revenue loss.

An analysis of the Monitoring Committees' recommendations (Scenario II) indicates that these limits would result in a revenue loss of 5 percent or greater to 231 of the commercial vessels subject to this rule. Vessels with reductions in revenue of 5 percent or greater varied from 2 vessels landing only scup to 93 vessels landing all three species. No change in revenue would be experienced by 54 vessels, while 771 vessels would have revenue losses less than 5 percent. An analysis of the least restrictive harvest limits (Scenario III) indicates that none of the vessels would suffer revenue losses of 5 percent or greater, and all would receive increases in revenue. An analysis of the most restrictive harvest limits (Scenario IV) indites that these limits would result in revenue loss of 5 percent or greater for 510 commercial vessels, with 546 vessels having revenue loss less than 5 percent. Vessels with reductions in revenue of 5 percent or greater would be felt by anywhere from 3 vessels landing only scup to 278 vessels landing all three species.

The IRFA also examined six gear restricted areas to reduce the discards of small scup: The first alternative includes the Council's preferred alternative, as recommended by the *ad*

hoc advisory panel, of small areas within statistical areas 537, 539, 613, 615, 616, 621, 622, and 623. The second alternative includes those same sub-areas, but with the northern areas closed from November 1 through December 31 and the southern areas closed from January 1 through April 30 (the times recommended by the Scup Monitoring Committee with the areas recommended by the *ad hoc* advisory panel). The third alternative includes restrictions in statistical areas 537, 539, and 613 from November 1 through December 31, and statistical areas 616 and 622 from January 1 through April 30 (the Scup Monitoring Committee's recommendation). The fourth alternative includes the areas described in the third alternative and a series of approximately 2-week rolling restrictions from November 1 through April 30 (the areas recommended by Scup Monitoring Committee and time periods recommended by the *ad hoc* advisory panel). The fifth alternative includes a series of small 10-minute square sub-areas within statistical areas 537, 539, 613, 616, and 622 that correspond to the 10-minute squares of the highest scup discards (areas with discards greater than 10 percent of the total scup discards for the area) for each statistical area and the November 1 through December 31 and January 1 through April 30 time periods recommended by the Scup Monitoring Committee. The sixth alternative (NMFS' proposed alternative) analyzes areas that intersect statistical areas 537, 539, and 613, from November 1 through December 31, and statistical areas 533, 537, 615, 616, 621, 622, and 623, from January 1 through April 30. These areas both overlap the areas described in the first alternative (the Council's preferred alternative) and include the 10-minute squares identified by Council staff as having high scup discards (the fifth alternative), using January 1989 through April 1999 sea sample data.

All alternatives considered in the analysis would reduce landings and revenue of Atlantic herring, Atlantic mackerel, black sea bass, whiting, and *Loligo*. According to 1998 VTR data, it is estimated that approximately 172 vessels would be affected by any of the gear restriction alternatives. These vessels are identified as those vessels that fished with otter trawl gear with codend mesh less than 4.5 in (11.4 cm) in gear restricted mesh areas, specifically, those specified under Alternatives 3 and 4 since those areas incorporate full statistical areas. Since VTR data specify neither the 10-minute square level nor the complete longitude and latitude information, it is not possible to identify the number of vessels that would be affected by the remaining alternatives. However, Alternatives 3 and 4 represent the most restrictive temporal-spatial limitations of all the alternatives evaluated. Thus, it is possible that these alternatives represent the upper limit of the number of affected vessels under any specific alternative.

The reductions in landings would cause decreases in ex-vessel revenues as follows: $1.96 million for Alternative 1, $4.5 million for Alternative 2, $12.1 million for Alternative 3, $9.8 million for Alternative 4, $2.2 million for Alternative 5, and $13.0 million for Alternative 6. However, the loss of revenues form the various alternatives are likely to be overestimated because closing an area for a specific time would not necessarily prevent trawling effort, rather it would often redirect it to other open areas. The larger areas of NMFS' proposed alternative incorporate identified ''hot spots'' to a greater extent than the Council's preferred alternative, and would, thus, move participating vessels into areas with potentially lower scup discards. Any economic impacts of a reduction in landings inside the gear restricted areas would be moderated by an increase in landings outside the gear restricted area. Meanwhile, discards outside the gear restricted area for the proposed alternative are expected to be less than the amount that would have occurred inside the gear restricted area. However, other impacts to profitability are possible; for instance, costs, due to vessel operation could increase due to displacing effort.

Item of Particular Concern

Based on guidance from the Council, NMFS proposes to prohibit the use of any trawl gear with a codend mech of less than 4.5 in (11.4 cm) in the gear restricted areas during the specified times. Such a prohibition would include restrictions on otter trawls, Scottish seines, midwater trawls, and any other trawl gear as defined in § 648.2 of the regulations. This prohibition would be consistent with similar measures found in the Northeast multispecies regulations addressing regulated mesh areas and restrictions on gear and methods of fishing at § 648.80 and with recommendations regarding enforceability. However, this clarification to the restriction came after the Council had completed the initial regulatory flexibility analysis (IRFA), which specifically notes the impacts relative to ''otter trawl'' vessels only.

NMFS is confident that the universe of impacted entities analyzed in the IRFA is still appropriate, because vessels using midwater and other trawls generally also use otter trawls, and would thus have been captured in the identification of vessels in the IRFA. Otter trawls were used on approximately 99 percent of all identified trips in the database. NMFS is interested, however, in making sure that the analysis adequately describes the economic impacts of the gear restricted areas on vessels conducting individual trips using trawl gear other than otter trawls. The economic impacts on these vessels may be slightly underestimated by the IRFA. However, preliminary analysis indicates that vessels conducting trips during the gear restriction time frames using different types of trawl gears is very small; only five vessels have been identified as fishing both with an otter trawl and another type of trawl during the proposed restricted periods.

NMFS is seeking public comment on potential impacts of the proposed restrictions on trawl vessels, other than those using otter trawls exclusively, that would be impacted by these regulations. NMFS will consider these comments, as well as the results of further analyses of the existing database, in making the final decision whether or not to adopt the proposed gear restricted areas.

Regarding sec. 603(b)(3) of the Regulatory Flexibility Act, this proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of the complete IRFA can be obtained from the Northeast Regional Office of NMFS (see ADDRESSES) or via the Internet at http://www.nero.nmfs.gov/ro/doc/nr.htm.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 21, 2000.

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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)(121) and (a)(122) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(121) 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).

(122) Fish for, possess or land *Loligo* squid, silver hake, black sea bass, Atlantic herring 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. 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 in (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 map 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°00′	74°00′
SGA3	40°00′	72°30′
SGA4	40°00′	71°20′
SGA5	38°00′	73°30′
SGA6	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 in (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 map 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′	72°40.8′ [1]
NGA3	([2])	
NGA4	41°10′	71°28.6′ [3]
NGA5	41°15′	71°00′
NGA6	41°15′	70°00′
NGA7	41°00′	70°00′
NGA8	41°00′	70°40′
NGA9	40°00′	71°30′
NGA10	40°00′	72°50′

[1] The intersection of the latitude point at the 3 nautical mile line west of Block Island, RI.

[2] Thence southerly, thence easterly thence northerly along the southern diameter of the 3 nautical mile line surrounding Block Island, RI.

[3] The intersection of the latitude point at the 3 nautical mile line east of Block Island, RI.

(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: Atlantic herring, 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 Gear Restricted Areas, 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) *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 restricted area, use fishing gear that does not conform to the regulations, possess non-exempt species specified in paragraphs (a)(2) and 9b)(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 Southern or Northern Gear Restricted Area specified in paragraphs (a) or (b) of this section, respectively, 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 the Regional Administrator 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.

4. 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 subparagraph (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 existing 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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