

(d) Butterfish—the catch associated with a fishing mortality rate of  $F_{MSY}$ .

3. In § 648.21, paragraph (c)(5) is revised to read as follows:

**§ 648.21 Procedures for determining initial annual amounts.**

\* \* \* \* \*

(c) \* \* \*

(5) Commercial seasonal quotas/closures for *Loligo* and *Illex*.

\* \* \* \* \*

4. In § 648.22, paragraphs (a) and (c) are revised to read as follows:

**§ 648.22 Closure of the fishery.**

(a) *General.* The Assistant Administrator shall close the directed mackerel fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Director projects that DAH will be attained for mackerel, the Assistant Administrator shall close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section will be prohibited. The Assistant Administrator shall close the directed fishery in the EEZ for *Loligo*, *Illex*, or butterfish when 95 percent of DAH has been harvested. The closure of the directed fishery shall be in effect for the remainder of the fishing year with incidental catches allowed as specified in paragraph (c) of this section.

\* \* \* \* \*

(c) *Incidental catches.* During the closure of the directed fishery for mackerel, the trip limit for mackerel is 10 percent by weight of the total amount of fish on board. During a period of closure of the directed fishery for *Loligo*, *Illex*, or butterfish, the trip limit for *Loligo* and butterfish is 2,500 lb (1.13 mt) each, and the trip limit for *Illex* is 5,000 lb (2.27 mt).

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**50 CFR Part 648**

[Docket No. 961129337-6337-01; I.D. 112096A]

RIN 0648-XX75

**Fisheries of the Northeastern United States; Summer Flounder, Scup and Black Sea Bass Fisheries; 1997 Scup Specifications**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed specifications for the 1997 scup fishery; request for comments.

**SUMMARY:** NMFS proposes specifications for the 1997 scup fishery that include commercial catch quotas and other restrictions. The implementing regulations for the fishery require NMFS to publish proposed specifications for the upcoming fishing year and provide an opportunity for the public to comment. The intent of these measures is to prevent overfishing of the scup resource.

**DATES:** Public comments must be received on or before January 6, 1997.

**ADDRESSES:** Copies of the Mid-Atlantic Fishery Management Council's analysis and recommendations are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. Comments on the proposed specifications should be sent to: Dr. Andrew A. Rosenberg, Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope, "Comments—1997 Scup Specifications."

**FOR FURTHER INFORMATION CONTACT:** Lucille L. Helvenston, Fishery Management Specialist, 508-281-9347.

**SUPPLEMENTARY INFORMATION:** Comprehensive measures enacted by Amendment 8 to the Summer Flounder and Scup Fishery Management Plan (FMP) were designed to rebuild the severely depleted scup stock. Amendment 8 established a Monitoring Committee that meets annually to review the best available scientific data and make recommendations regarding the catch quota and other management measures in the FMP. The Committee's recommendations are made to achieve the target exploitation rates established in the Amendment to reduce overfishing. The Committee bases its recommendations on: (1) Commercial and recreational catch data; (2) current estimates of fishing mortality; (3) stock status; (4) recent estimates of recruitment; (5) virtual population analysis (VPA); (6) levels of regulatory noncompliance by fishermen or individual states; (7) impact of fish size and net mesh regulations; (8) impact of gear other than other trawls on the mortality of scup; and (9) other relevant information.

Based on the recommendations of the Monitoring Committee, the Mid-Atlantic Council's Demersal Species Committee

makes a recommendation to the Council, which in turn makes a recommendation to the Regional Administrator. The Council recommended a commercial quota, recreational harvest limit, and changes in the minimum mesh regulations for 1997.

The proposed action would set the coastwide commercial quota at 6.0 million lb (2.7 million kg). The recreational harvest limit would be 1.947 million lb (0.88 million kg). These values are derived by the following process: (1) The TAC (9.11 million lb) (4.1 million kg) was divided into two allocations of 78 percent for the commercial quota and 22 percent for the recreational harvest limit, and (2) discard estimates for each sector were deducted from each allocation to establish commercial quota and recreational harvest limits. The commercial quota of 6.0 million lb (2.7 million kg) is derived by subtracting an estimated 1997 discard of 1.103 million lb (0.5 million kg) from the 7.103 million lb (3.2 million kg) allocated to the commercial sector. The recreational harvest limit of 1.947 million lb (0.88 million kg) was derived by subtracting the estimated 1997 discard of 0.060 million lb (0.03 million kg) from the 2.007 million lb (0.9 million kg) allocated to the recreational sector. Based on stochastic projections, this proposed catch level has a 50 percent probability of achieving the target exploitation rate (47 percent) in 1997. Current exploitation rates on this stock are approximately 67 percent.

Amendment 8 contains provisions that allow for annual changes in the minimum fish size and minimum otter trawl mesh requirement. Current regulations require a 9-inch (22.9-cm) total length (TL) minimum fish size in the commercial fishery and a 4-inch (10.2-cm) minimum mesh in the codend of the net for vessels possessing in excess of a 4,000-lb (1,814-kg) threshold level of scup. The proposed action does not change the minimum fish size, but would increase the minimum mesh size to 4.5 inches (11.43 cm). The proposed action would also implement seasonal minimum mesh threshold levels of 4,000 lb (1,814 kg) in the winter months (November–April) and 1,000 lb (453 kg) in the summer months (May–October).

The coastwide quota would be implemented January 1, 1997. However, the Council has proposed a regulatory change in a separate action that would divide the quota into three seasons with landing limits: Winter 1 (January–April), Summer (May–October) and Winter 2 (November–December). The summer quota would be allocated on a

state-by-state basis. If this proposal is approved, it would be implemented about mid-1997.

#### Classification

This action is authorized by 50 CFR Part 648, and has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act will not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would implement an allocation of 6 million pounds for the annual commercial quota, and 1.947 million pounds for the recreational harvest limit, increase the minimum mesh size from 4.0 inches to 4.5 inches, and change the catch threshold that triggers the mesh requirement to 4,000 pounds in November through April, and 1,000 pounds from May through October.

This action includes a measure that would divide the 1997 Total Allowable Catch (TAC) of 9.11 million pounds into allocations for the commercial and the recreational sectors of the fishery. After subtracting an estimate of discards for each sector from the respective allocations, the proposed commercial quota is 6 million pounds and the proposed recreational harvest limit is 1.947 million pounds. The effect of this quota on participants is expected to be minimal, as

it will not differ significantly from the amount of commercial catch from 1995. In 1995, the last year for which data are available, commercial landings equaled 5.9 million pounds, with an ex-vessel value of \$0.85/pound. The 1995 catch levels represent a decrease relative to landings in 1994, but an increase in ex-vessel revenue (versus \$0.66/pound in 1994). The Mid-Atlantic Fishery Management Council (Council) concluded that, based on historical data, ex-vessel revenues often increase when scup are less available.

Other measures include increasing the mesh size from 4.0 inches to 4.5 inches and establishing a variable threshold catch level that triggers the minimum mesh requirement (4,000 pounds from November through April and 1,000 pounds from May through October). Comments received at Council meetings indicated that 4.5-inch mesh is currently being used to catch 9-inch fish by many members of the industry. Therefore, most industry members will not be required to invest in additional gear if they intend to direct on the scup fishery. In addition, the retail price for a 4.5-inch mesh codend is estimated to account for between 0.5 percent and 1.69 percent of total estimated costs for an otter trawl vessel.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 29, 1996.

Gary C. Matlock,

*Acting Assistant 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 § 648.123, paragraph (a)(1) is revised to read as follows:

#### § 648.123 Gear restrictions.

(a) *Trawl vessel gear restrictions—(1) Minimum mesh size.* The owners or operators of otter trawlers issued a scup moratorium permit, and that possess 4,000 lb or more (1,814 kg or more) of scup from November 1 through April 30 or 1,000 lb or more (454 kg or more) of scup from May 1 through October 31, must fish with nets that have a minimum mesh size of 4.5 inches (11.4 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with less 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. Scup on board these vessels shall be stored separately and kept readily available for inspection.

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