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#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

#### **§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Huron, Channel 252A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 961129337-7040-02; 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:** Final rule and final specifications for the 1997 scup fishery.

**SUMMARY:** NMFS issues the final specifications for the 1997 scup fishery that include a commercial catch quota, a recreational harvest limit, and other management measures. The intent of these measures is to prevent overfishing of the scup resource.

**DATES:** The amendment to § 648.123(a)(1) is effective April 14, 1997. The final 1997 scup specifications

are effective March 11, 1997 through December 31, 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.

**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, Scup, and Black Sea Bass 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 otter 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 Administrator, Northeast Region, NMFS. The Council recommended a commercial quota, recreational harvest limit, and changes in the minimum mesh regulations for 1997.

The measures contained in this final action are unchanged from those in the proposed rule published December 9, 1996, (61 FR 64854) and are: (1) A coastwide commercial quota of 6.0 million lb (2.7 million kg); (2) a recreational harvest limit of 1.947 million lb (0.88 million kg); (3) an increase in the minimum codend mesh size from 4.0 inches (10.21 cm) to 4.5 inches (11.43 cm) and (4) 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). Detailed background information concerning these measures is provided in the proposed rule and is not repeated here.

The coastwide quota is for the 1997 fishing year, January 1, 1997, through December 31, 1997. However, the Council has proposed a regulatory change in a separation action that would divide the quota into three seasons: Winter 1 (January—April), Summer (May—October) and Winter 2 (November—December). The winter quota would be coastwide. The summer quota would be allocated on a state-by-state basis. Trip limits would be imposed in the winter periods. If this proposal is approved, it would be implemented about mid-1997.

#### **Comments and Responses**

The Mid-Atlantic Fishery Management Council (Council) submitted a comment in support of the 1997 specifications for the scup fishery. The Department of Marine Fisheries of the Commonwealth of Massachusetts (MADMF) and an individual submitted comments in opposition to the proposed 1997 specifications for the scup fishery.

*Comment:* Both MADMF and the individual commenter believe the NMFS should not implement the 1997 coastwide commercial quota for several reasons. The individual commenter asserts that the absence of any constraints on the harvest of the coastwide quota allows the winter offshore fishery to catch all of the quota and discriminates against inshore harvesters. The MADMF states that, without the proposed regulatory change to the quota system, the quota will be harvested early in the year and there will be negative impacts from the resulting fishery closure. MADMF also notes that quota monitoring should be improved prior to implementation.

*Response:* The FMP requires NMFS to implement a coastwide commercial quota for 1997. NMFS has no legal authority to defer implementation of the quota until the regulatory amendment is approved. While NMFS is actively involved in the ongoing efforts to improve quota monitoring, particularly for state fisheries, NMFS disagrees with the implication that the existing monitoring system is inadequate for scup quota management. Further, NMFS disagrees with the contention that the quota is discriminatory. The quota in and of itself is not discriminatory. Although these measures may have negative impacts on different sectors of the fishery because of the distance from areas in which scup are available, the regulatory measures are not in and of themselves discriminatory. The review

of the amendment concluded that it was consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act and with other applicable law. NMFS notes that the amendment applies to the coastwide fishery rather than just to the Massachusetts industry, which the amendment shows has historically accounted for only 7 percent of the coastwide scup landings.

*Comment:* MADMF comments that the implementation of the quota and the anticipated fishery closure will not prevent regulatory discards in the small mesh fisheries, particularly the squid fishery. MADMF proposes that, if the quota is implemented for 1997, NMFS should revise the manner in which discards are accounted for in calculating the quota. MADMF proposes that discards should only be considered if they occur in fisheries that are directed towards scup.

*Response:* The minimum mesh requirement and the associated catch threshold are intended to discourage vessel operators using small mesh for other species from continuing to fish when they encounter large amounts of scup that they would be required to sort out from other species and discard. The FMP also specifies that the annual total allowable catch (TAC) will be set to attain the target exploitation rates specified in the plan. Because the TAC represents the sum of discards and quota, there is an incentive for the industry to reduce discards in order to increase quotas. NMFS cannot modify the FMP as suggested by MADMF to change the manner in which discards are deducted from the TAC.

NMFS notes that if these measures do not have the desired effects on discard levels, the FMP provides the Council with the option of specifying season and area closures in the future if necessary to address such concerns.

*Comment:* The individual commenter stated that fishermen from Massachusetts were not represented in the scup management process and were unfairly impacted.

*Response:* The process to adopt and implement the amendment involved public hearings where members of the industry among other members of the public were allowed to comment on the proposed measures. NMFS notes that in 1995, hearings were held in New Bedford, MA, and Newport, RI, on July 18th and July 17th, respectively. The proposed rule also solicited comments from the public that were considered by NMFS in the review of the amendment. Therefore, NMFS concludes that Massachusetts industry participants were given several opportunities to be

represented in the scup management process.

*Comment:* MADMF suggested that the 4,000-lb (1,814-kg) threshold that will trigger the minimum mesh requirement should be decreased to 100 lb (45 kg). MADMF proposes that this decrease will lessen the discards of small juvenile scup.

*Response:* The 4,000-lb (1,814-kg) threshold that will trigger the minimum mesh requirement was set in response to analysis of scientific data and public comment. The amendment showed that in 1992 and 1993, a large share of the total scup landings (80 percent) was comprised of landings in excess of 4,000 lb (1,814 kg). Therefore, the threshold was set at 4,000 lb (1,814 kg) to target the majority of vessels landing scup. A much lower threshold would penalize a large number of vessels that catch small amounts of scup as a catch in various mixed trawl fisheries. These vessels will be forced to discard legal size scup if they are caught while fishing for other species with mesh smaller than the scup minimum size. The cost that would be borne by the industry as the result of a drastic reduction in the threshold greatly outweighs the benefits that would accrue to the stock. The 4,000-lb (1,814-kg) threshold allows vessel operators to retain and land legal size scup that will be counted toward the quota.

*Comment:* MADMF and the individual commenter both disagree with NMFS' conclusion in the preamble of the proposed rule that the proposed measures will not have a significant economic impact on a substantial number of small entities. MADMF notes that NMFS concluded that the effect of the quota will be minimal because the 1997 quota level is not significantly lower than the commercial landings in 1995, the most recent year for which data are available. MADMF states that the scup landings data for the Massachusetts fishery are incomplete. Therefore, the effect of the quota will not be minimal for the State's industry. MADMF also asks why the commercial quota is not reduced from the 1995 level if the scup stock is severely depleted.

*Response:* NMFS disagrees with MADMF and the individual commenter that the incomplete data from the State of Massachusetts would alter the conclusion that there are no significant impacts on the industry. While NMFS accepts that MADMF may well be correct in stating that these data are incomplete for Massachusetts, NMFS cannot conclude that there is a significant impact on industry based solely on such a statement. NMFS based its conclusions concerning the

economic impacts of these measures on the best available data. NMFS notes that the regulatory amendment for the scup fishery, currently under review, invites state fisheries agencies to update the landings data for their states in order to make future adjustments to the summer state quota shares. NMFS encourages MADMF to take such action if the regulatory amendment is approved.

NMFS believes that these annual specifications address the depleted nature of the scup stock. The 1997 reductions in exploitation are anticipated to be realized due to a reduction in discards rather than a reduction in landings. The Council selected a TAC level of 9.11 million lb (4.13 million kg) as having a 50 percent probability of achieving the target exploitation rate of 47 percent for 1997. The TAC was then divided between the commercial and recreational sectors of the fishery in the shares specified in the FMP (78 percent commercial and 22 percent recreational). The specifications of 6.0 million lb (2.7 million kg) for the commercial quota and 1.947 million lb (0.88 million kg) for the recreational harvest limit were derived from the respective TACs by subtracting the expected discards for 1997 (97 percent of the discards are allocated to the commercial fishery and 3 percent are allocated to the recreational fishery). The amount subtracted from the commercial TAC was reduced to account for an anticipated decrease in discards due to the implementation of minimum mesh size and fish size restrictions in 1996 and 1997.

*Comment:* MADMF expresses concern that the quota will alter fishermen's behavior and anticipates a change in the fishery for summer flounder (fluke).

*Response:* It is unclear from the comment what change MADMF anticipates or what action it is advocating. NMFS cannot respond other than to agree that the imposition of management measures on a fishery that was not previously regulated is intended to alter fishing behavior to the benefit of the stock and to the long-term benefit of the industry.

*Comment:* A comment from the Council supports the 1997 specifications for the scup fishery.

*Response:* NMFS notes the Council's support of the 1997 specifications for the scup fishery.

#### Classification

This action is authorized by 50 CFR part 648 and has been determined not to be 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 rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA). The reasons for the finding of no significant economic impact under the RFA were discussed in the proposed rule published in the Federal Register on December 9, 1996 (61 FR 64854), and are not repeated here. NMFS received several comments, which are addressed above, regarding this certification. These comments did not cause NMFS to change its determination regarding the certification. As a result, no regulatory flexibility analysis was prepared.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 10, 1997.  
Rolland A. Schmitten,  
*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR Part 648 is amended to read 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) *Travel 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 (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with 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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