

revoke the tolerance if a comment was filed requesting that the tolerance be retained, EPA erred by immediately revoking the mushroom tolerance for diazinon notwithstanding AMI's comment expressing an interest in retaining the tolerance. However, EPA did not commit in the proposed rule to an indefinite retention of the tolerance. Accordingly, EPA, by this final rule, and pursuant to FFDCA section 408(g)(2)(C), is amending the diazinon tolerance in 40 CFR 180.153(a) to reflect that the tolerance for mushrooms at 0.75 ppm is reinstated and will remain in effect until September 10, 2010. This will allow a reasonable period of time for either a person to successfully apply for a registration to bring back the use in mushroom houses, or for some existing registrant to obtain an amendment to an existing registration to bring back this use. If EPA approves an application reinstating the mushroom house use before the expiration date of September 10, 2010, EPA will either amend the tolerance to remove the expiration date or promulgate a new tolerance as appropriate. If no such registration action has occurred prior to that date, the revocation of the tolerance on mushrooms will become effective on September 10, 2010.

**V. Conclusion**

Therefore, pursuant to FFDCA section 408(g)(2)(C), the tolerance for the residues of diazinon, (O, O-diethyl O-(6-methyl-2-(1-methylethyl)-4-pyrimidinyl)-phosphorothioate; CAS Reg. No. 333-41-5), in or on the food commodity mushroom at 0.75 ppm is reinstated until September 10, 2010.

**VI. Statutory and Executive Order Reviews**

EPA included the required statutory discussion in the September 10, 2008 final rule (72 FR 52607).

**VII. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 18, 2008.

**Martha Monell,**

*Acting Director, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.153, is amended by alphabetically adding the following entry and a footnote to the table in paragraph (a) to read as follows:

**§ 180.153 Diazinon; tolerances for residues.**

(a) General. \* \* \*

Commodity	Parts per million
* * * * *	*
Mushroom .....	0.75 <sup>2</sup>
* * * * *	*

<sup>1</sup> \* \* \*

<sup>2</sup>The expiration/revocation date for this tolerance is 9/10/2010.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 071030625-7696-02]

RIN 0648-XL95

**Fisheries of the Northeastern United States; Scup Fishery; Commercial Quota Harvested for 2008 Winter II Period**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces the closure of the scup commercial coastwide fishery from Maine through North Carolina for the Winter II Period. Regulations governing the scup fishery require publication of this notification to advise the coastal states from Maine

through North Carolina that this quota has been harvested and to advise Federal vessel permit holders and Federal dealer permit holders that no commercial quota is available for landing scup in these states. Federally permitted commercial vessels may not land scup in these states for the remainder of the 2008 Winter II quota period (through December 31, 2008).

**DATES:** Effective 0001 hours on November 24, 2008, through December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Emily Bryant, Fishery Management Specialist, (978) 281-9244.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the scup fishery are found at 50 CFR part 648. The regulations at § 648.121 require the Regional Administrator to monitor the commercial scup quota for each quota period and, based upon dealer reports, state data, and other available information, to determine when the commercial quota for a period has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the scup commercial quota has been harvested and no commercial quota is available for landing scup for the remainder of the Winter II Period. Based upon recent projections, the Regional Administrator has determined that the Federal commercial quota of 940,948 lb (427 mt) for the 2008 Winter II Period will be fully harvested on or before December 31, 2008. To maintain the integrity of the 2009 Winter II Period quota by avoiding or minimizing quota overages, the commercial scup fishery will close for the remainder of the Winter II Period (through December 31, 2008) in Federal waters, effective as of the date specified above (see **DATES**).

Section 648.4(b) provides that Federal scup moratorium permit holders agree, as a condition of the permit, not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for scup is available. Therefore, effective 0001 hours on November 24, 2008, further landings of scup by vessels holding Federal scup moratorium permits are prohibited through December 31, 2008. Effective 0001 hours on November 24, 2008, federally permitted dealers are also advised that they may not purchase scup from federally permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the Winter II Period

(through December 31, 2008). The Winter I Period for commercial scup harvest will open on January 1, 2009.

#### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 20, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E8-28165 Filed 11-21-08; 4:15 pm]

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 648

[Docket No. 071030625-7696-02]

RIN 0648-XL93

##### Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for the State of New Jersey

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the 2008 summer flounder commercial quota allocated to the State of New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New Jersey for the remainder of calendar year 2008, unless additional quota becomes available through a transfer from another state. Regulations governing the summer flounder fishery require publication of this notification to advise New Jersey that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New Jersey. **DATES:** Effective 0001 hours, November 23, 2008, through 2400 hours, December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Emily Bryant, Fishery Management Specialist, (978) 281-9244.

#### SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis

among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2008 calendar year was set equal to 9,462,001 lb (4,292 mt) (72 FR 74197, December 31, 2007). The percent allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, resulting in a commercial quota of 1,582,519 lb (718 mt). The 2008 allocation was reduced to 1,559,118 lb (707 mt) when research set-aside was deducted.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that New Jersey has harvested its quota for 2008.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, November 23, 2008, further landings of summer flounder in New Jersey by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2008 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, November 23, 2008, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in New Jersey for the remainder of the calendar year, or until additional quota becomes available through a transfer from another state.

#### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: November 20, 2008.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E8-28116 Filed 11-21-08; 4:15 pm]

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 679

[Docket No. 071106673-8011-02]

ID 112108B

##### Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Participating in the Amendment 80 Limited Access Fishery in Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is closing directed fishing for yellowfin sole by vessels participating in the Amendment 80 limited access fishery in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2008 halibut bycatch allowance specified for the trawl yellowfin sole fishery category by vessels participating in the Amendment 80 limited access fishery in the BSAI. **DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), November 22, 2008, through 2400 hrs, A.l.t., December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 halibut bycatch allowance specified for the trawl yellowfin sole fishery category by vessels participating in the Amendment 80 limited access fishery for the yellowfin sole fishery category in the BSAI is 363 metric tons as established by the 2008 and 2009