

Subpart RR—[Removed and Reserved]

- 57. Remove and reserve subpart RR, consisting of §§ 98.440 through 98.449.

Subpart SS—[Removed and Reserved]

- 58. Remove and reserve subpart SS, consisting of §§ 98.450 through 98.458.

Subpart TT—[Removed and Reserved]

- 59. Remove and reserve subpart TT, consisting of §§ 98.460 through 98.468 and table TT-1 to subpart TT of Part 98.

Subpart UU—[Removed and Reserved]

- 60. Remove and reserve subpart UU, consisting of §§ 98.470 through 98.478.

Subpart VV—[Removed and Reserved]

- 61. Remove and reserve subpart VV, consisting of §§ 98.480 through 98.489.

Subpart WW—[Removed and Reserved]

- 62. Remove and reserve subpart WW, consisting of §§ 98.490 through 98.498.

Subpart XX—[Removed and Reserved]

- 63. Remove and reserve subpart XX, consisting of §§ 98.500 through 98.508.

Subpart YY—[Removed and Reserved]

- 64. Remove and reserve subpart YY, consisting of §§ 98.510 through 98.518 and table YY-1 to subpart YY of Part 98.

Subpart ZZ—[Removed and Reserved]

- 65. Remove and reserve subpart ZZ, consisting of §§ 98.520 through 98.528 and table ZZ-1 to subpart ZZ of Part 98.

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DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
50 CFR Part 648

[Docket No. 250908-0149]

RIN 0648-BN55

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Framework Adjustment 18 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 18 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. This framework would modify exemptions to the minimum mesh size requirements in the commercial summer flounder fishery. The purpose of this action is to increase flexibility for the commercial fishing industry.

DATES: Comments must be received by October 16, 2025.

ADDRESSES: A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2025-0026>. You may submit comments on this document, identified by NOAA-NMFS-2025-0026, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Visit <https://www.regulations.gov> and type NOAA-NMFS-2025-0026 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on <https://www.regulations.gov> without change. All personal identifying information (e.g., name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the draft Framework Adjustment 18 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, including the Environmental Assessment and the Regulatory Impact Review (EA/RIR) prepared in support of this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The supporting documents are also accessible via the internet at: <https://www.mafmc.org/actions/summer-flounder-commercial-mesh-exemptions>.

FOR FURTHER INFORMATION CONTACT:

Laura Deighan, Fishery Policy Analyst, (978) 281-9184, or laura.deighan@noaa.gov.

SUPPLEMENTARY INFORMATION:
Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively develop management measures for the summer flounder, scup, and black sea bass fisheries in state and Federal waters. Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and Administrative Procedure Act, NMFS reviews and, after taking public comment, approves appropriate fishery management actions that apply in Federal waters.

The Council submitted draft Framework Adjustment 18 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) (Summer Flounder Commercial Mesh Exemption Framework Action) to NMFS for consideration of approval. The Summer Flounder Commercial Mesh Exemption Framework Action proposes changes to the two exemptions from the minimum mesh size requirements in the commercial summer flounder fishery. The goal of this framework is to modernize the exemptions to be consistent with current gear use and fishing practices, providing the industry with better access to the exemptions and greater flexibility. The proposed changes are consistent with the primary original objective of the minimum mesh size exemptions, which was to reduce summer flounder discards in other fisheries without increasing the catch of smaller summer flounder.

The implementing regulations for the FMP are found at 50 CFR part 648 subpart G. Pursuant to Magnuson-Stevens Act section 303(b)(4), the summer flounder regulations at § 648.108(a) specify the minimum allowable mesh size when using an otter trawl in the commercial summer flounder fishery. To protect smaller summer flounder, summer flounder permit holders may retain no more than 100 pounds (lb; 45 kilograms (kg)) of summer flounder from May to October and 200 lb (91 kg) from November to April when using otter trawls with mesh below the minimum size. The regulations at § 648.108(b) provide two exemptions from the minimum mesh size requirements: (1) The Small-Mesh Exemption Program (SMEP), which provides exemptions within a defined geographical area from November through April for vessels holding a Letter of Authorization (LOA); and (2) the flynet exemption, which allows exemptions for vessels using a specific net configuration. These two

exemptions were originally implemented in 1993 to allow summer flounder permit holders to retain some bycatch of summer flounder while operating in other small-mesh fisheries.

The original SMEP was implemented based on data indicating that catch of smaller summer flounder was low in the SMEP area during the winter months. Under the SMEP, summer flounder permit holders may obtain an LOA that allows them to land more than 200 lb (91 kg) of summer flounder when fishing with mesh smaller than the minimum size east of 72°30' W longitude between November 1 and April 30. Vessels must hold the LOA for a minimum of 7 days and may not fish west of 72°30' W longitude while the LOA is active. The regulations authorize the Regional Administrator to terminate the SMEP for the remainder of a season if observer data indicate SMEP participants are discarding more than an average of 10 percent of their entire summer flounder catch per trip (by weight).

The flynet exemption allows vessels to retain more than the incidental limits of summer flounder when using a two-seam otter trawl flynet with: (1) Large mesh in the wings that measures 8 inches (20 centimeters (cm)) to 64 inches (163 cm), (2) a first body section (belly) of the net with 35 or more meshes that are at least 8 inches (20 cm), and (3) mesh that decreases in size throughout the body of the net to 2 inches (5 cm) or smaller towards the terminus of the net. The flynet definition was based on nets being used primarily to target bluefish and sciaenids between September and April from North Carolina to Cape Henlopen, Delaware. State data indicated summer flounder comprised only 1 to 3 percent of the total flynet trip catch, supporting the exemption.

The regulations at § 648.110 authorize the Council to recommend actions to adjust management measures, including gear restrictions and gear requirements, to meet or be consistent with the goals and objectives of the FMP through a framework action. Under the rulemaking authority of Magnuson-Stevens Act sections 303(c) and 304(b), this action proposes three modifications to the existing summer flounder minimum mesh size exemptions: (1) expand the geographical area of the SMEP, (2) revise the annual evaluation process for the SMEP, and (3) revise the definition of a flynet within the summer flounder regulations. These changes were recommended by the Council, and adopted by the Commission, in October 2024. Under the Secretarial rulemaking authority of Magnuson-Stevens Act

section 305(d), which authorizes NMFS to promulgate regulations necessary to carry out an FMP, this action also proposes three administrative changes related to the minimum mesh size exemptions: (1) allow for a minimum LOA period of less than 7 days to provide added flexibility to the industry, (2) implement the use of a flynet vessel trip reporting (VTR) code for ease of tracking fishing activity under the flynet exemption, and (3) revise the criterion used to evaluate termination of the flynet exemption to align with the original FMP amendment and the original objective of the action. These administrative changes support the implementation of the proposed framework, alleviate an administrative constraint that is no longer necessary, and correct an error in the regulations. While these changes were not part of the framework action, the Council expressed support for NMFS to make them.

Proposed Measures

SMEP: Area Expansion

This action proposes moving the western boundary of the SMEP area approximately 5 miles (8 kilometers (km)) west for the portion of the area south of Long Island Sound. The use of bottom-tending gear is prohibited in the Frank R. Lautenberg Deep-Sea Coral Protection Area, and this action would not modify the portion of the SMEP south of that area nor allow SMEP trips in the Coral Protection Area. The proposed western boundary would follow the existing boundary at 72°30' W longitude from the southern coast of Connecticut to Long Island, New York. South of Long Island, it would follow 72°37' W longitude south until it intersects with the northeast corner of the current scup Southern Gear Restricted Area (GRA) at 39°20' N latitude and 72°37' W longitude. It would then follow the eastern border of the scup Southern GRA to 37° N latitude, which would form the southern boundary of the SMEP until it intersects with the current SMEP boundary at 72°30' W longitude. It would then follow that longitude south to the boundary of the U.S. Exclusive Economic Zone (EEZ).

The proposed revision would add approximately 4,943 km² (1,441 nm²) of accessible waters to the SMEP area after excluding the deep-sea coral zone where bottom-tending gear is prohibited. Members of the industry requested this change to provide greater flexibility to those fishing in multiple fisheries. They noted that the SMEP has reduced summer flounder regulatory discards

and is critical for the economic stability of their businesses. The proposed expansion of the SMEP area is intended to allow for greater retention of summer flounder in areas where summer flounder permit holders are currently participating in other fisheries using mesh below the summer flounder minimum mesh size. The proposed change is not expected to pose a risk to the health of the summer flounder stock because (1) overall summer flounder landings are constrained by annual catch limits, (2) the summer flounder regulations prohibit the retention of undersized summer flounder, and (3) the regulations allow for the SMEP to be temporarily terminated if data indicate that SMEP participants are discarding summer flounder above a specified threshold.

SMEP: Discard Threshold Evaluation

This action proposes an update to the annual review criteria for the SMEP. The current regulations authorize the Regional Administrator to terminate the SMEP for the remainder of the season when a threshold of an average of 10 percent of summer flounder catch is discarded per SMEP trip (by weight). This action would increase the discard threshold to an average of 25 percent of the summer flounder catch per SMEP trip (by weight). This change is based on improved data quality and availability. Current data indicate a similar level of summer flounder discards per trip, regardless of SMEP participation, in the trawl fishery from November to April (*i.e.*, the SMEP season). On average, 24 percent of summer flounder catch is discarded per trip for both LOA and non-LOA trips during this period, and 25 percent for all trips year-round. Increasing the evaluation threshold to 25 percent is not expected to result in significant increases in summer flounder discards and would ensure that termination of the SMEP is considered when SMEP discards increase beyond what is considered normal relative to the summer flounder fishery as a whole.

This action also proposes that, when the discard threshold is reached, the Monitoring Committee would lead or review an analysis of SMEP discards before the Regional Administrator decides whether to temporarily revoke the SMEP. Implementing a Monitoring Committee-led review of SMEP discards would allow the Regional Administrator to consider other relevant information before deciding whether to temporarily revoke the SMEP. These changes are intended to prevent premature SMEP closures and unnecessary economic harm to permit holders who rely on the SMEP.

This action also proposes changes to the timing of the SMEP revocation, authorizing the Regional Administrator to terminate the exemption for the remainder of the current SMEP season or the following SMEP season. The current regulations allow the Regional Administrator to terminate the SMEP for only the remainder of the current season. This action would add an option to terminate the SMEP for the following SMEP season based on the lag in data availability and the timeline required to undertake an in-depth review of SMEP discards.

SMEP: LOA 7-Day Minimum

This action proposes a revision to the requirement that SMEP participants hold an SMEP LOA for a minimum of 7 days. The 7-day minimum was implemented due to the administrative burden of processing paper-based LOA applications and withdrawal requests. Regional NMFS staff are currently working on the development of paperless LOAs and their integration into the region's electronic permitting system. The updated system would automatically validate qualification criteria and issue LOAs for those with simple criteria, such as the SMEP LOA, eliminating the need for the 7-day minimum.

The SMEP regulations prevent permit holders from fishing outside of the SMEP area while holding a SMEP LOA, including with gear that complies with the summer flounder minimum mesh requirements. The 7-day minimum participation period limits the industry's ability to adjust its behavior based on real-time fishing conditions. This action proposes updating the SMEP participation period to allow for a minimum period of up to, but not more than, 7 days, as specified by the Regional Administrator. This administrative change would allow for the minimum participation period to be reduced when technology that enables faster LOA processing becomes available.

Flynet Exemption: Flynet Definition

This action proposes removing the number of seams and the maximum mesh size from the flynet definition within the summer flounder regulations (§ 648.108(b)(2)). The proposed changes are based on industry feedback that the current definition does not reflect modern net configurations and that similar nets that align with the original objective of the flynet exemption are used throughout the region. The updated definition would be “an otter trawl with: (1) Large mesh in the wings that measures 8 inches (20 cm) or

greater; (2) a first body (belly) section that has at least 280 inches (711 cm) of mesh behind the sweep where the mesh size is at least 8 inches (20 cm); and (3) mesh that decreases in size throughout the body of the net toward the codend.” These nets do not typically catch high amounts of summer flounder because the large mesh at the openings allows flatfish to escape. As with the proposed SMEP alterations, this proposed change is not expected to pose a risk to the health of the summer flounder stock, given the summer flounder annual catch limits, summer flounder minimum size requirements, and the Regional Administrator's authority to rescind the flynet exemption for the remainder of the year when a specific threshold is reached.

Flynet Exemption: Termination Evaluation

This action proposes a revision to the evaluation criterion used to determine whether the termination of the flynet exemption may be warranted. In Amendment 2 to the FMP, the Council recommended that the Regional Administrator consider terminating the flynet exemption when the annual average summer flounder catch exceeds 1 percent of the total catch in the flynet fishery. However, the regulations provide a criterion of summer flounder discards greater than 1 percent of summer flounder catch in the flynet fishery. The record for that amendment does not indicate that NMFS rejected the Council's recommendation nor does it provide a rationale for such a change. Rather, the difference between the FMP and regulations likely results from an administrative error. This action proposes updating the regulations to align with the original FMP amendment. The original criterion is more consistent with the objective of the flynet exemption, which was implemented because summer flounder catch is low in flynet gear.

Flynet Exemption: Vessel Trip Reporting

Currently, evaluation of the flynet exemption relies on the vessel operator self-reporting the net type during observed trips. Given the limited number of observed trips and the variation in net terminology throughout the region, accurate identification of flynet trips has been challenging. This action proposes the implementation of a flynet gear code to identify trips taken under the flynet exemption more accurately through VTRs. This change would support improved monitoring of the flynet exemption, which will result in improved decision making regarding

termination of, or any future modifications to, the exemption.

Classification

Pursuant to sections 304(b)(1)(A), 304(c), and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. NMFS is issuing this rule pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, which provide specific authority for implementing this action. Section 304(b) of the Magnuson-Stevens Act authorizes NMFS to review and, if warranted, approve and implement rules and regulations deemed necessary by the Council. Pursuant to section 305(d) of the Magnuson-Stevens Act, this action is necessary to carry out the Summer Flounder, Scup, and Black Sea Bass FMP because the administrative changes proposed under this authority support implementation of the Council's proposed changes, alleviate an administrative constraint that is no longer necessary, and correct an error in the regulations.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

This proposed rule is not an Executive Order 14192 regulatory action because this rule is not significant under Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The entities (*i.e.*, the small and large businesses) that may be affected by this action include fishing operations with Federal moratorium (commercial) permits for summer flounder. Vessels may hold multiple fishing permits, and some entities own multiple vessels and/or permits. According to the Northeast Fisheries Science Center commercial ownership database, 719 vessels held Federal summer flounder moratorium permits in 2023. Ownership data collected from permit holders indicate that 416 unique business entities held at least one summer flounder permit. Of these, 363 were classified as commercial fishing businesses, with 355 (*i.e.*, 98 percent) of them classified as small businesses and 8 (*i.e.*, 2 percent) classified as large businesses. On average, summer flounder accounted for

\$54,751 of the \$1.42 million average total revenue (*i.e.*, 4 percent) for the small businesses. It accounted for an average of \$292,749 of the \$19.1 million average total revenue (*i.e.*, 1.5 percent) for the large businesses.

The expansion of the geographical area of the SMEP is intended to allow summer flounder permit holders using small mesh in other fisheries to retain summer flounder that they would otherwise be required to discard. Vessels operating in the expanded area would be expected to retain an additional 5,000 lb (2.27 mt) to 15,000 lb (6.8 mt) of legal-sized summer flounder annually, which would result in approximately \$12,500 to \$37,500 of additional revenue per year across participating vessels. The proposed changes to the SMEP evaluation and termination criteria are intended to prevent a premature closure and unnecessary economic harm to permit holders who rely on the SMEP, which is expected to have an unquantifiable, slight positive economic impact on summer flounder permit holders. The proposed changes to the definition of a flynet would allow summer flounder permit holders using small mesh in other fisheries to retain summer flounder that they would otherwise be required to discard. Vessels do not report detailed gear configuration information for every trip, and it is not possible to identify the number of vessels or trips taken with gear that would meet the revised flynet definition. However, the proposed changes are expected to allow a small increase in summer flounder landings for a small number of vessels, resulting in a small increase in revenue. The other changes proposed in the action are administrative.

The modifications to the summer flounder commercial minimum mesh exemptions proposed in this rule are expected to result in negligible to moderate positive socioeconomic impacts for commercial fishery participants because they would allow for additional flexibility for fishing vessels to retain incidental catch of summer flounder while targeting other species. Therefore, this action would be expected to increase revenues. In sum, if finalized as proposed, this action would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required, and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 8, 2025.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 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 § 648.4, revise paragraph (a)(3)(iii) to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(3) * * *

(iii) *Exemption permits.* Owners of summer flounder vessels seeking an exemption from the minimum mesh requirement under the provisions of § 648.108(b)(1) must request a letter of authorization (LOA) from the Regional Administrator. Vessels must be enrolled in the exemption program for a minimum period, specified by the Regional Administrator, of up to 7 days. The Regional Administrator may impose temporary additional procedural requirements by publishing a notification in the **Federal Register**. If a summer flounder charter or party requirement of this part differs from a summer flounder charter or party management measure required by a state, any vessel owners or operators fishing under the terms of a summer flounder charter/party vessel permit in the EEZ for summer flounder must comply with the more restrictive requirement while fishing in state waters, unless otherwise authorized under § 648.107.

* * * * *

■ 3. In § 648.14, revise paragraphs (n)(2)(iii)(B) and (C) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(n) * * *

(2) * * *

(iii) * * *

(B) Fish with or possess nets or netting that are modified, obstructed, or constricted, if fishing with an exempted net described in § 648.108, unless the nets or netting are stowed in accordance with § 648.108(e).

(C) Fish outside of the area specified in § 648.108(b)(1)(i) if exempted from

the minimum mesh requirement specified in § 648.108 by a summer flounder Small-Mesh Exemption Program letter of authorization.

* * * * *

■ 4. In § 648.102, revise paragraph (a)(5) to read as follows:

§ 648.102 Summer flounder specifications.

(a) * * *

(5) Adjustments to the exempted area boundary and season specified in § 648.108(b)(1), based on data reviewed by the Summer Flounder Monitoring Committee during the specification process, to prevent discarding of more than an average of 25 percent of the summer flounder catch per trip, by weight, from all SMEP trips.

* * * * *

■ 5. In § 648.106, revise paragraph (d) to read as follows:

§ 648.106 Summer flounder possession restrictions.

* * * * *

(d) *Commercially permitted vessel possession limits.* Owners and operators of otter trawl vessels issued a permit under § 648.4(a)(3) that fish with or possess nets or pieces of net on board that do not meet the minimum mesh requirements and that are not stowed in accordance with § 648.108(e), may not retain 100 lb (45.4 kg) or more of summer flounder from May 1 through October 31, or 200 lb (90.7 kg) or more of summer flounder from November 1 through April 30, unless the vessel is fishing under an exemption, as specified in § 648.108(b). Summer flounder on board these vessels must be stored so as to be readily available for inspection in standard 100-lb (45.3-kg) totes or fish boxes having a liquid capacity of 18.2 gal (70 L), or a volume of not more than 4,320 in³ (2.5 ft³ or 70.79 cm³).

■ 6. In § 648.108, revise paragraph (b) to read as follows:

§ 648.108 Summer flounder gear restrictions.

* * * * *

(b) *Exemptions.* Unless otherwise restricted by this part, the minimum mesh-size requirements specified in paragraph (a)(1) of this section do not apply to: (1) A vessel issued a summer flounder moratorium permit that meets the requirements of paragraph (b)(1)(ii) of this section, fishing from November 1 through April 30 in the Small-Mesh Exemption Area, as defined in paragraph (b)(1)(i) of this section. (i) *Small-Mesh Exemption Area.* The Small-Mesh Exemption Area is the area east or north, as appropriate, of a line that follows 72°30' W from the coast of Connecticut south to 40°50.24' N

latitude and then follows straight lines connecting the following points in the order stated until it intersects with the outer boundary of the U.S. EEZ (copies of a map depicting the area are available upon request from the Regional Administrator):

TABLE 1 TO PARAGRAPH (b)(1)(i)

Point	Latitude	Longitude
SMEA1	40°50.24' N	72°30' W
SMEA2	40°48.04' N	72°37' W
SMEA3	39°20' N	72°37' W
SMEA4	39°4.38' N	72°47.22' W
SMEA5	38°28.65' N	73°29.37' W
SMEA6	38°29.72' N	73°30.65' W
SMEA7	38°26.32' N	73°33.44' W
SMEA8	38°13.15' N	73°49.77' W
SMEA9	38°13.74' N	73°50.73' W
SMEA10	38°11.98' N	73°52.65' W
SMEA11	37°29.53' N	74°29.95' W
SMEA12	37°29.43' N	74°30.29' W
SMEA13	37°6.97' N	74°40.8' W
SMEA14	37°5.83' N	74°45.57' W
SMEA15	37°4.43' N	74°41.03' W
SMEA16	37°3.5' N	74°40.39' W
SMEA17	37° N	74°43' W
SMEA18	37° N	72°30' W
SMEA19	(^a)	72°30' W

^aU.S. EEZ longitude, approximately 33°1.30' N.

(ii) *Requirements.*

(A) A vessel fishing in the Summer Flounder Small-Mesh Exemption Area under this exemption must have on board a valid LOA issued by the Regional Administrator.

(B) The vessel must be enrolled in the exemption program for a minimum period, specified by the Regional Administrator, of up to 7 days.

(C) The vessel may not fish for any species outside of the Small-Mesh

Exemption Area, as described in paragraph (b)(1)(i) of this section, during the time the LOA is effective. Vessels may resume fishing outside the Small-Mesh Exemption Area once the LOA has expired. Vessels may withdraw from the SMEP before the LOA expiration date in accordance with the terms outlined in the LOA. Vessels participating in the Small-Mesh Exemption Program in accordance with this section and § 648.4(a)(3)(iii) may transit the area west or south of the Small-Mesh Exemption Area if the vessel's fishing gear is stowed in a manner prescribed under § 648.108(e), so that it is not "available for immediate use" outside the exemption area.

(iii) *Evaluation and Termination.* If data indicate that vessels fishing under the Small-Mesh Exemption Program are discarding more than an average of 25 percent, by weight, of their entire catch of summer flounder per Small-Mesh Exemption Program trip, the Monitoring Committee shall coordinate or conduct a review of the exemption program. The review shall be completed no later than the next series of specifications setting or review meetings and presented to the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and MAFMC. After considering the Monitoring Committee's review and the recommendations of the Board and Council, the Regional Administrator may terminate the exemption for the remainder of the season or for the following exemption season. If the Regional Administrator makes such a determination, he/she shall publish notification of the termination in the **Federal Register**, in compliance with

the requirements of the Administrative Procedure Act.

(2) A vessel fishing with an otter trawl fly net with the following configuration is exempt from the summer flounder minimum mesh size requirements, provided the vessel documents use of a flynet on its Vessel Trip Report (VTR) and has no other nets or netting with mesh smaller than 5.5 inches (14.0 cm) on board:

(i) *Configuration.*

(A) The net has large mesh in the wings that measures 8 inches (20.3 cm) or greater.

(B) The first body section (belly) of the net has at least 280 inches (711.2 cm) of mesh behind the sweep where the mesh size is at least 8 inches (20.3 cm).

(C) The mesh decreases in size throughout the body of the net toward the codend.

(ii) *Evaluation and Termination.* The Regional Administrator may terminate this exemption if he/she determines, after a review of relevant data, that the annual average summer flounder catch exceeds 1 percent of the annual average total catch from all vessels fishing under the exemption. If the Regional Administrator makes such a determination, he/she shall publish notification in the **Federal Register**, in compliance with the requirements of the Administrative Procedure Act, terminating the exemption for the remainder of the calendar year.

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