

recording and reporting of workplace deaths, injuries and illnesses, which appeared in the Federal Register on February 2, 1996 (61 FR 4030). At the request of stakeholders, OSHA is extending the end of the public comment period through July 1, 1996.

DATES: Written comments on the NPRM must be postmarked on or before July 1, 1996.

ADDRESSES: Written comments should be submitted in quadruplicate or one original (hardcopy) and 1 disk (5¼ or 3½) in Wordperfect 5.0, 5.1, 6.0 or ASCII to: Docket Officer, Docket No. R-02, Occupational Safety and Health Administration, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C. 20210, telephone (202) 219-7894. Comments of 10 pages or less may be transmitted by facsimile to (202) 219-5046 provided the original and 4 copies of the comment are sent to the Docket Officer thereafter.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Cyr, U.S. Department of Labor, OSHA, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210, (202) 219-8148.

SUPPLEMENTARY INFORMATION: OSHA published a Notice of Proposed Rulemaking covering the recording and reporting of workplace deaths, injuries and illnesses along with announcing a public meeting which was held March 26-29, which appeared in the Federal Register on February 2, 1996 (61 FR 4030). OSHA published a second notice to provide the public with additional information regarding the economic analysis of the proposed rule in the Federal Register on February 29, 1996 (61 FR 7758-7760). OSHA published a third notice to announce a second public meeting and an extension of the comment period on April 8, 1996 (61 FR 15435). The second public meeting was held April 30 and May 1 to give the public another opportunity to provide OSHA with information on the proposed rule. The transcript of that meeting, along with additional material, has been placed in the docket by OSHA. The additional material consists of the following documents:

1. "Subcontractor Safety as Influenced by General Contractors on Small and Medium Sized Projects". University of Washington, Jimmie Hinze and Lori A. Figone, October 1988.

2. "Assuring Accuracy in Employer Injury and Illness Records", U.S. General Accounting Office (HRD-89-23), December 1988.

3. Various materials relating to OSHA inspection activity for significant occupational injury and illness recordkeeping cases.

4. Various OSHA and BLS letters to the public interpreting OSHA's occupational injury and illness recording and reporting regulations.

5. Various letters and documents describing OSHA's collection of 1995 workplace injury and illness information.

6. Documents relating to a pilot program to evaluate the accuracy of workplace injury and illness records, including "Evaluating Workplace Injury and Illness Records; Testing a Procedure" Monthly Labor Review, April 1988.

7. A July 21, 1978 Federal Register Notice announcing rule changes for "Access to the Log of Occupational Injuries and Illnesses to Employees and their Representatives" (43 FR 31324).

8. A December 28, 1982 Federal Register Notice announcing rule changes for "Exemption From Requirements for Recording Occupational Injuries and Illnesses" (47 FR 57699).

The transcripts of both public meetings, comments from the public and documentary evidence are available from the OSHA Docket Office (see Addresses) Docket No. R-02.

Signed in Washington, DC, this 29th day of May, 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 96-13836 Filed 5-30-96; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF DEFENSE

48 CFR Parts 45 and 52

Federal Acquisition Regulation; Government Property

AGENCY: Department of Defense.

ACTION: Notice of public meetings.

SUMMARY: The next public meetings of the Government Property Rewrite Team are scheduled for June 19 and 20, 1996 (and might continue on June 21, 1996, if necessary). Discussion will focus on a draft revision of FAR Part 45—Government Property and associated contract clauses.

DATES: *Public Meetings:* The public meetings will be conducted at the address shown below from 9:30 a.m. to 5:00 p.m., local time, on June 19, 20, and, if necessary, June 21, 1996.

ADDRESSES: *Public Meetings:* The public meetings will be held in the 4th floor conference room, VSE Corporation, 2550 Huntington Ave., Alexandria, VA 22303.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy, by telephone at (703) 695-1097/1098, or by FAX at (703) 695-7596.

SUPPLEMENTARY INFORMATION:

Draft Materials

Drafts of the materials to be discussed at the public meetings are available electronically in Microsoft Word 6.0 and ASCII text formats at the Major Policy Initiatives Internet Office Home Page—<http://www.acq.osd.mil/dp/mpi/>

Obtain paper copies from Ms. Angelena Moy, PDUSD (A&T) DP/MPI, Room 3C128, The Pentagon, Washington DC 20301-3060.

Background

The Director, Defense Procurement, is leading an Inter-Agency team that is considering revisions to the Federal Acquisition Regulation (FAR) Part 45, Government Property, which will reduce administrative burdens imposed by Part 45 on contractors and government personnel and improve government property management and disposal business processes. The Director, Defense Procurement, is providing a forum for an exchange of ideas and information with government and industry personnel by holding public meetings, soliciting public comments, and publishing notices of the public meetings in the Federal Register. The June 1996 public meetings are intended to obtain comments or suggestions regarding the current draft FAR Part 45 which includes new and revised material recommended by public and government sources during and subsequent to the November 1995 public meetings.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulation Council.

[FR Doc. 96-13805 Filed 5-31-96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 960520141-6141-01; I.D. 042696A]

RIN 0648-AH05

Summer Flounder and Scup Fisheries; Amendment 8

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule and request for comments to

implement those provisions of Amendment 8 to the Fishery Management Plan (FMP) for the Summer Flounder and Scup Fisheries not initially disapproved. The amendment would implement management measures for the scup fishery in order to reduce fishing mortality and to allow the stock to rebuild.

DATES: Public comments must be received on or before July 18, 1996.

ADDRESSES: Comments on this proposed rule should be sent to Dr. Andrew A. Rosenberg, Director, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Summer Flounder and Scup Plan."

Comments regarding burden-hour estimates for collection-of-information requirements contained in this proposed rule should be sent to the Northeast Regional Director at the address above and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

Copies of Amendment 8, the final environmental impact statement (FEIS), the initial regulatory flexibility analysis (IRFA), the regulatory impact review, and other supporting documents are available upon request from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508-281-9221.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) began the development of an FMP for scup in 1978. Although preliminary development work was done, the plan was not completed. In January 1990, the Council and the Atlantic States Marine Fisheries Commission (Commission) began to develop a management plan for scup as an amendment to the summer flounder FMP. However, its development was delayed by a series of amendments to the FMP, and work on a separate scup plan was not resumed until 1993.

The Council accelerated its work on scup measures after the release in March 1995 of the Plenary Report of the 19th Stock Assessment Workshop (19th SAW). The 19th SAW report established that the scup spawning stock biomass was at a record low level and warned that recruitment failure in a single year

could collapse the fishery. The Council and the Commission adopted a scup FMP for NMFS review at their meeting in November 1995. Subsequently, NMFS requested that the scup regulations be incorporated into the Summer Flounder FMP, as an amendment, to reduce the number of separate regulations issued by the Federal government. As a result, scup management measures are submitted as Amendment 8 to the Summer Flounder and Scup FMP.

At that same November meeting, the Council also voted to request emergency implementation on January 1, 1996, of some of the management measures contained in the proposed scup FMP to provide some immediate protection to the stock. The efforts of the Council and NMFS to prepare and review the required documents associated with emergency action were delayed by the government shutdown from December 21, 1995, through January 7, 1996, and by additional shutdowns due to severe winter weather. An emergency interim rule implemented regulations on March 22, 1996 (March 27, 1996, 61 FR 13452) that imposed minimum fish size requirements of 9 inches (22.9 cm) total length (TL) for the commercial fishery, and 7 inches (17.8 cm) TL for the recreational fishery, and a minimum codend mesh size of 4 inches (10.2 cm) diameter for trawl vessels possessing 4,000 or more lb (1,814 or more kg) of scup. These emergency regulations remain in effect through June 25, 1996, at which time they would be extended for an additional 90 days at the request of the Council.

Amendment 8 was prepared by the Council and Commission, in consultation with the New England and South Atlantic Fishery Management Councils. A notice of availability for the proposed amendment was published in the Federal Register on May 7, 1996. Copies of Amendment 8 are available from the Council upon request (see **ADDRESSES**). The amendment revises the summer flounder (*Paralichthys dentatus*) FMP to include management measures for the scup fishery pursuant to the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act).

The management unit for this fishery is scup (*Stenotomus chrysops*) in U.S. waters of the western Atlantic Ocean from 35°15.3' N. latitude, the latitude of Cape Hatteras Light, NC, northward to the U.S.-Canadian border. Implementing regulations are authorized by the Magnuson Act and are found at 50 CFR part 625, subparts C and D.

Status of the Stocks

Scup are currently overexploited and at a low biomass level. The status of this stock is fully explained in the emergency interim rule (March 27, 1996, 61 FR 13452) and, for the sake of brevity, is not repeated here. Overfishing for scup in Amendment 8 is defined in the FMP as fishing in excess of F_{max} . F_{max} is the biological reference point corresponding to an exploitation rate of 19 percent, and the level of fishing mortality (F) that produces maximum yield per recruit.

Disapproved Measures

NMFS, on behalf of the Secretary of Commerce, disapproved six measures proposed in Amendment 8 upon preliminary evaluation of the amendment as authorized in section 304(a)(1)(A)(ii) of the Magnuson Act. Thus, they are not included in this proposed rule. These provisions would have conferred moratorium permit eligibility upon vessels that were re-rigging on January 26, 1993, and landed scup prior to the implementation of Amendment 8; require vessels to keep scup catches of less than 4,000 lb (1,814 kg) (the level at which the minimum codend mesh requirement is triggered) in 100-lb (45.4-kg) containers to enhance enforcement; require NMFS to accept state dealer permits in lieu of the required Federal permit; require NMFS to deny access to the exclusive economic zone (EEZ) to vessels from states that do not implement recreational measures equivalent to those specified in Amendment 8; defer to state regulations to define scup pot requirements for the residents of that state; and require any landings in excess of the recreational harvest limit to be subtracted from the harvest limit of the following year. These provisions have been determined to be inconsistent with the national standards of the Magnuson Act or other applicable law.

As worded, the open-ended moratorium eligibility criterion would allow any vessel that could demonstrate "re-rigging"—i.e., being made "capable of catching scup"—on January 26, 1993, to qualify for a moratorium permit if it could demonstrate a landing of scup prior to the implementation date of this amendment. While the re-rigging provision reasonably addresses a fairness issue, the protracted aspect of the landing requirement is inconsistent with national standard 4. The landing requirement of this criterion allows a re-rigging vessel over 3 years to land scup in order to qualify for a moratorium permit. This fact is not reasonably calculated to promote conservation in

light of the severely overfished nature of the stock, and would allow more vessels into the fishery than would otherwise enter if a vessel owner were forced to demonstrate an intent to participate in the fishery by landing scup within a more reasonable time frame after re-rigging occurs.

The provision that would require fishing vessels using small mesh to box scup catches of less than 4,000 lb (1,814 kg) in standard 100-lb (45.4-kg) totes was proposed to facilitate enforcement of the mesh provisions. Potentially, a vessel could have up to 40 of these containers on board, while vessels possessing over 4,000 lb (1,814 kg) would not have to box their catch. Boxing up to 40 totes could prove infeasible for small vessels. There is nothing in the administrative record regarding the impact of this measure on the industry. This measure could be challenged as being arbitrary and capricious, and, therefore, may violate the Administrative Procedure Act (APA).

The measure that would require NMFS to recognize state dealer permits in lieu of Federal dealer permits, if the permits contain the necessary information and are forwarded to NMFS by the appropriate state, was proposed as a way of easing the administrative burden on dealers. However, as proposed, this measure could not be implemented effectively without imposing significant costs. The measure would require changes to state dealer permit requirements, and extensive modifications to both the state and Federal computer systems, to make them comparable in order for the measure to be implemented in a manner that would not undermine the data collection system in the Northeast Region. Thus, at this time, the measure is not consistent with national standard 7.

The provision that would require NMFS to prohibit the landing of scup from the EEZ by recreational vessels (party, charter, and private) of any state not in compliance with the recreational possession limit, size limits, and season was disapproved, because it discriminates between residents of different states and is inconsistent with national standard 4. The measure would penalize recreational harvesters by denying them access to fish in any portion of the EEZ based on the inaction of their state of residency.

The provision that would adopt the definition of scup pot or trap in the state regulations that apply to a vessel's principal port of landing is problematic from a number of perspectives. First, not all coastal states have a definition of a

scup pot or trap. As the specified escape vent requirement is dependent upon a defined pot or trap, some fishermen would be subject to the escape vent requirement, while others landing principally in a state without a defined pot or trap would not. This inequitable provision is thus inconsistent with national standard 4, and is also not in accordance with the amendment's objective to reduce fishing mortality on immature scup.

Second, the administrative record provides no rationale for using the definition of scup pot or trap at a vessel's principal port of landing, as opposed to its home port, as a basis for imposing an escape vent requirement. Significant enforcement concerns arise from this provision and should have been addressed in the administrative record. For example, traps pulled, or vessels boarded, at sea to monitor compliance with the escape vent requirement would not identify a principal port of landing with the certainty necessary to prosecute an alleged violation. The FMP contains no definition of principal port of landing and even if the term were defined, verification of the principal port of landing would be unreasonably cumbersome. Therefore, the failure of the administrative record to discuss the rationale for the definition could cause adoption of this provision to violate the APA.

The provision that would deduct the annual recreational harvest in excess of the specified limit from the limit for the following year would base the deductions on the results of the Marine Recreational Fishery Statistics Survey (MRFSS). This measure impacts the annual allocation of the recreational sector of the fishery with no clear conservation benefit, in violation of national standard 4. The MRFSS is an excellent fishery management tool for the purpose for which it was designed, that is, giving an overall projection of recreational catch from the recreational fishery from Maine to Texas. However, the survey was not intended to be used as a basis for calculating an overage in the recreational fishery that would then be deducted from the quota established for the subsequent year. The survey variability becomes problematic, and this problem is further exacerbated if the fishery is managed on a regional quota basis as is a possibility in the scup fishery. In addition, the survey variability could affect residents of different states unevenly with respect to quota overages. These problems make the provision inconsistent with national standard 4.

Likewise, because the survey is based on contacts with recreational fishermen, it reflects a sampling variability in addition to variations in the stock. The effects of this sampling variability render its use to calculate overages inconsistent with national standard 6. In failing to account for these variations, the use of the survey affects the overall ability of the entire scup quota management process to achieve on a continuing basis, the optimum yield from this fishery. This raises concern regarding its consistency with national standard 1. Finally, it would take a significant expenditure of funds to reduce the survey variability, especially as the geographic area for which estimates are made is reduced, to render it consistent with national standard 2. This conflicts with national standard 7.

The Council may resubmit proposed measures under section 304(b)(3)(A) of the Magnuson Act that NMFS disapproved during preliminary evaluation. Such measures should address the deficiencies described by NMFS.

Additional Concerns

NMFS has concerns about the enforceability of the 4,000-lb (1,814-kg) threshold for triggering the minimum mesh requirement. The public is encouraged to submit comments about the feasibility of determining whether catches exceed the threshold level. NMFS is also concerned about the proposed minimum sizes for escape vents in scup pots or traps. The Council specified a minimum size of 3.1 inches (7.9 cm) in diameter for circular vents, a minimum size of 2.25 inches (5.7 cm) on each side for square vents, and an "equivalent" minimum size for rectangular vents. NMFS seeks public comments on the proposed minimum size specification for rectangular vents because the meaning of "equivalent" is unclear.

Proposed Measures

Vessel, Dealer, and Operator Permits

The Council proposes to establish a moratorium on commercial vessel permits for the directed fishery for scup. Any owner or operator of a vessel desiring to fish for scup within the EEZ for sale, or transport, or delivery for sale, of any scup taken within the EEZ would have to obtain a permit from NMFS for that purpose. Vessel owners would be required to demonstrate past participation in the fishery to obtain a commercial moratorium permit. The Council proposes to limit moratorium permits to vessels with documented

landings of scup for sale between January 26, 1988, and January 26, 1993.

The owner or operator of a party or charter boat (vessel for hire) desiring to fish for scup within the EEZ would have to obtain a charter/party boat permit from NMFS for that purpose. A party or charter boat could have both a charter/party boat permit and a commercial moratorium permit to catch and sell if the vessel meets the commercial vessel qualification requirements set forth in Amendment 8. However, such a vessel could not fish under any existing commercial rules if it were carrying passengers for a fee.

An operator of a vessel with any permit issued under this FMP would be required to have a Federal operator permit. The operator permits issued to operators in the Northeast multispecies, American lobster, Atlantic sea scallops and/or Atlantic mackerel, squids, and butterfish fisheries, would satisfy this requirement. The operator would be held accountable for violations of the fishing regulations and could be subject to a permit sanction. During the permit sanction period, the operator could not work in any capacity aboard a federally permitted fishing vessel.

Any dealer of scup would be required to have a NMFS dealer permit under the FMP. A dealer of scup would be defined as a person or firm that receives scup for a commercial purpose from the owner or operator of a vessel issued a moratorium permit pursuant to this FMP, other than solely for transport on land.

Reporting and Recordkeeping

The Council intends to institute recordkeeping and reporting requirements for scup that are identical to those required by the Atlantic Mackerel, Squid, and Butterfish, the Summer Flounder, the Northeast Multispecies, and the Atlantic Sea Scallop Fishery Management Plans. The logbooks in use for those fisheries would be used to meet this requirement, so vessels or dealers reporting under those FMPs would not be subject to any additional reporting burdens, if a given vessel also harvested scup.

Commercial logbooks would be submitted on a monthly basis by Federal moratorium and charter/party boat permit holders in order to monitor the fishery.

Dealers with permits issued pursuant to the FMP would submit weekly reports showing all species purchased in pounds, and the name and permit number of the vessels from which the species were purchased. Buyers that do not purchase directly from vessels

would not be required to submit reports under this provision.

Minimum Fish Sizes

Amendment 8 would establish minimum fish sizes that could be adjusted annually by the FMP Monitoring Committee (Monitoring Committee). The initial minimum fish sizes would be 9 inches (22.9 cm) TL for the commercial fishery and 7 inches (17.8 cm) TL for the recreational fishery.

Minimum Mesh Size

The minimum mesh-size requirement for otter trawl vessels possessing a threshold catch of 4,000 lb or more (1,814 kg or more) of scup would be a minimum codend mesh size of 4.0 inches (10.2 cm) diamond mesh, inside measure, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net or, if the net is not long enough for such a measurement, the terminal $\frac{1}{3}$ of the net, measured from the terminus of the codend to the head rope. The minimum net mesh size and the threshold level could be adjusted annually, following the Monitoring Committee process set forth in the amendment.

Maximum Roller Size

Amendment 8 would prohibit owners or operators of vessels issued moratorium permits from using roller rig trawl gear equipped with rollers greater than 18 inches (45.7 cm) in diameter. Maximum roller size could be changed annually following the Monitoring Committee process set forth in the amendment.

Pot and Trap Gear Requirements

Scup pots and traps would be required to have a circular escape vent with a minimum diameter of 3.1 inches (7.9 cm) or a square escape vent with a minimum of 2.25 inches (5.7 cm) for each side (or an equivalent rectangular escape vent). The escape vent provision would be implemented at the start of the first calendar year following approval of Amendment 8, so that fishermen would not be required to pull their pots and add vents in the middle of the season. Scup pots and traps would be required to have hinges and fasteners on one panel or door made of degradable materials.

The escape vent requirement could be adjusted annually following the Monitoring Committee process set forth in the amendment.

Seasonal and Area Closures

Gear-specific seasonal and area closures could be implemented upon the recommendation of the Monitoring

Committee, if required to reduce discards in the commercial fishery and prevent quota overruns.

Commercial Quota and Recreational Harvest Limit

In the second year of implementation of the amendment, a coastwide harvest limit would be specified at a level that would reduce the exploitation rate to the level specified in the rebuilding schedule. This harvest limit would be allocated 78 percent to the commercial fishery, via a coastwide commercial quota, and 22 percent to the recreational fishery, via a recreational harvest limit. The coastwide harvest limit will be set annually following the Monitoring Committee process set forth in the amendment.

The Council and the Commission may, in the future, alter the system to distribute and manage the annual commercial quota. Coastwide, regional, and state-by-state quotas may be considered in combination with different fractions of the fishing year.

Recreational Measures

Beginning in the second year of implementation of the amendment, recreational landings would be compared to annual target harvest levels to determine if modifications to the recreational season, possession limit, and minimum size limit are required in the following year in order for the fishery to remain within specified harvest limits.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish regulations proposed by a Council within 15 days of receipt of the amendment and proposed regulations. At this time, NMFS has not determined whether the measures in Amendment 8 that these rules would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views, and comments received during the comment period.

The Council prepared an FEIS for Amendment 8, a copy of which may be obtained from the Council (see ADDRESSES). The Council has determined that this rule, if implemented, would be consistent to the maximum extent practicable with the approved coastal management programs of the Atlantic states. New Hampshire, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Delaware, and North Carolina agreed with this determination.

Maine, New York, and Virginia did not respond, and their concurrence is inferred.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Amendment 8, as indicated in the regulatory impact review prepared by the Council, may reduce gross revenues of some vessels by more than 5 percent, or increase operating costs by more than 5 percent as a result of increases in compliance costs. However, it is unlikely that these impacts would affect more than 20 percent of the small entities engaged in this fishery because of the large assortment of other species also harvested by most vessels that harvest scup. In addition, most of the industry already use the proposed 4-inch (10.2-cm) mesh size and would not be affected by the regulation. Therefore, this rule would not have a significant impact on a substantial number of small entities.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). Mandatory dealer reporting and the reporting of annual employment data under the Annual Processed Products Reports have been approved by OMB under control numbers 0648-0229, and 0648-0018, respectively. Dealer reporting responses are estimated to take 2 minutes and employment data responses 6 minutes. The proposed rule also contains new requirements that have been submitted to OMB for approval. These requirements and their estimated response times are: Vessel permits and permit appeals at 30 minutes per response, operator permits at 1 hour per response, observer notification requirement at 2 minutes per response, vessel marking (3 locations) at 15 minutes per marking, and requests for an experimental fishing exemption at 1.9 hours.

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 PRA unless that collection of information displays a currently valid OMB control number.

The response estimates shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding any of these

burden estimates or any other aspect of the collection of information to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 625

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 28, 1996.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 625 is proposed to be amended as follows:

PART 625—SUMMER FLOUNDER AND SCUP FISHERIES

1. The authority citation for part 625 continues to read as follows:

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

2. The part heading is revised as set forth above and the headings for subparts A and B are revised to read, "Subpart A—General Provisions, Summer Flounder", and "Subpart B—Management Measures, Summer Flounder", respectively.

3. Subparts C and D, are revised to read as follows:

Subpart C—General Provisions, Scup

Sec.

625.31 Purpose and scope.

625.32 Definitions.

625.33 Relation to other laws. 625.34 Vessel permits.

625.35 Operator permit.

625.36 Dealer permit.

625.37 Recordkeeping and reporting requirements.

625.38 Vessel identification.

625.39 Prohibitions.

625.40 Facilitation of enforcement.

625.41 Penalties.

Subpart C—General Provisions, Scup

§ 625.31 Purpose and scope.

The regulations in this part govern the conservation and management of scup in U.S. waters north of 35°15.3' N. lat., (Cape Hatteras Light, NC), to the U.S./Canadian border.

§ 625.32 Definitions.

In addition to the definitions in the Magnuson Act and § 620.2 of this chapter, the terms used in this part have the following meanings:

Dealer means any person who receives scup for a commercial purpose from the owner or operator of a vessel issued a moratorium permit under § 625.33 other than solely for transport on land.

Fishery Management Plan (FMP) means the Fishery Management Plan for the Summer Flounder and Scup Fisheries and any amendments thereto.

Fishing commercially means retaining scup in excess of the possession limit specified in § 625.54.

Fishing year means the 12-month period beginning on January 1, and ending on December 31.

Scup means the species *Stenotomus chrysops*.

Scup Monitoring Committee (Monitoring Committee) means a committee made up of staff representatives of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, the Northeast Regional Office of NMFS, the Northeast Fisheries Science Center, and Commission representatives. The Council Executive Director or a designee chairs the Committee.

Total length (TL) means the straight-line distance from the tip of the snout to the end of the tail (caudal fin) while the fish is lying on its side.

§ 625.33 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraph (b) of this section.

(b) Nothing in these regulations supersedes more restrictive state management measures.

(c) Additional regulations governing fishing for scup by foreign vessels in the EEZ are set forth in 50 CFR Part 611, subparts A and C.

§ 625.34 Vessel permits.

(a) *General*—(1) *Requirement*. Subject to the eligibility requirements specified in paragraphs (b) and (c) of this section, the owner of a vessel of the United States, including a party or charter vessel, must obtain a permit issued under this part to fish for or retain scup in the EEZ.

(2) *Exemption*. Any vessel, other than a party or charter boat, that observes the possession limit, multiplied by the number of persons on board, in § 625.55 is exempt from the permit requirement.

(3) *Condition*. Vessel owners who apply for a fishing vessel permit under this section must agree, as a condition of the permit, that the vessel's fishing activities, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed) will be subject to all requirements of this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. If a requirement of this part differs from a management measure required by state law, any vessel owner permitted to fish in the EEZ must comply with the more restrictive

requirement. Owners and operators of vessels fishing under the terms of a moratorium permit issued pursuant to paragraph (b) of this section must also agree, as a condition of the permit, not to land scup in any state if the Regional Director has determined there is no longer commercial quota available.

(b) *Moratorium permit.* (1) A vessel is eligible for a moratorium permit to fish for and retain scup in excess of the possession limit in § 625.55 if it meets any of the following criteria:

(i) The vessel landed and sold scup between January 26, 1988, and January 26, 1993; or

(ii) The vessel is replacing a vessel of substantially similar harvesting capacity that involuntarily left the scup fishery during the moratorium, and both the entering and replaced vessels are owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

(iii) Vessels that are judged unseaworthy by the U.S. Coast Guard for reasons other than lack of maintenance may be replaced by a vessel of substantially similar harvesting capacity.

(2) *Restriction.* No one may apply for the permit specified in paragraph (b)(1) of this section more than 12 months after the effective date of these regulations, or the events specified under paragraphs (h)(1) and (2) of this section. This section does not affect annual permit renewals.

(3) *Appeal of denial of permit.* (i) Any applicant denied a moratorium permit may appeal to the Regional Director within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Director erred in concluding that the vessel did not meet the criteria in paragraph (b)(1)(i) of this section. The appeal shall set forth the basis for the applicant's belief that the Regional Director's decision was made in error.

(ii) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Director.

(iii) The hearing officer shall make a recommendation to the Regional Director.

(iv) The decision on the appeal by the Regional Director is the final decision of the Department of Commerce.

(c) *Party and charter boat permit.* Any party or charter boat is eligible for a permit to fish, other than a moratorium permit, if it is carrying passengers for hire, and is then subject to the possession limits specified in § 625.56.

(d) *Vessel Permit Application.* (1) An application for a permit under this

section must be submitted and signed by the owner of the vessel on an appropriate form obtained from the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned. Applicants for moratorium permits shall provide information with the application sufficient for the Regional Director to determine if the vessel meets the eligibility requirements. Dealer weighout forms and notarized statements from marine architects or surveyors or shipyard officials will be considered acceptable forms of proof.

(2) *Information requirements.* In addition to applicable information required to be provided by paragraph (d)(1) of this section, an application for a permit under this section must contain at least the following information, and any other information required by the Regional Director: Vessel name; owner name, mailing address, and telephone number; U.S. Coast Guard documentation number and a valid copy of the vessel's U.S. Coast Guard documentation or, if undocumented, the vessel's state registration number and a copy of the current state registration; home port and principal port of landing; overall length; gross tonnage; net tonnage; engine horsepower; year the vessel was built; type of construction and type of propulsion; approximate fish hold capacity; type of fishing gear used by the vessel; number of crew; permit category; if the owner is a corporation, a copy of the Certificate of Incorporation and the names and addresses of all shareholders owning 25 percent or more of the corporation's shares; if the owner is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners; if there is more than one owner, names of all owners having owned more than a 25-percent interest; the name and signature of the owner or the owner's authorized representative; permit number of any current or, if expired, previous Federal fishery permit issued to the vessel; a copy of charter/party boat license and number of passengers the vessel is licensed to carry (charter and party boats); and any other information required by the Regional Director to manage the fishery.

(e) *Fees.* The Regional Director may charge a fee to recover administrative expenses of issuing a permit required under this section. The amount of the

fee is calculated in accordance with the procedures of the NOAA Finance Handbook (available from the Regional Director) for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (g) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(f) *Issuance.* (1) Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit under this section within 30 days of receipt of the application unless:

(i) The applicant has failed to submit a complete application as described in paragraph (f) of this section. An application is complete when all requested forms, information, documentation, and fees, if applicable, have been received;

(ii) The application was not received by the Regional Director by the deadlines set forth in paragraph (b)(3) of this section; or

(iii) The applicant has failed to comply with all applicable reporting requirements of § 625.37 during the 12 months immediately preceding the date of application.

(2) Upon receipt of an incomplete application, or an application from a person who has not complied with all applicable reporting requirements of § 625.37(b) during the 12 months immediately preceding the application, the Regional Director will notify the applicant of the deficiency. If the applicant fails to correct the deficiency within 30 days of the Regional Director's notification, the application will be considered abandoned.

(g) *Expiration.* Except as provided in paragraph (b)(1)(ii) of this section, a permit expires:

(1) When the owner retires the vessel from the fishery;

(2) Upon the renewal date specified on the permit; or

(3) When the ownership of the vessel changes. However, the Regional Director may authorize the continuation of a moratorium permit for the scup fishery if the new owner so requests. Applications for permit continuations must be addressed to the Regional Director.

(h) *Duration.* A permit is valid until it is revoked, suspended, or modified under 15 CFR Part 904, or until it otherwise expires or ownership changes or the applicant has failed to report any

change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits for an otherwise valid permit may be issued by the Regional Director when requested in writing by the owner or authorized representative, stating the need for replacement, the name of the vessel, and the Federal fisheries permit number assigned. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged for issuance of the replacement permit.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit will be valid only for the fishing vessel and owner for which it is issued.

(k) *Change in application information.* Any change in the information specified in paragraph (d)(2) of this section must be submitted by the applicant in writing to the Regional Director within 15 days of the change. If the written notice of the change in information is not received by the Regional Director within 15 days, the permit is null and void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* The permit must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at Subpart D of 15 CFR part 904.

§ 625.35 Operator permit.

(a) *General.* Any operator of a vessel issued a valid Federal scup permit under this part, or any operator of a vessel fishing for scup in the EEZ or in possession of scup in or harvested from the EEZ, must have and carry on board a valid operator's permit issued under this part. An operator permit issued pursuant to parts 649, 650, 651, or 655 shall satisfy the permitting requirements of this section.

(b) *Operator permit application.* Applicants for a permit under this section must submit a completed permit application on an appropriate form obtained from the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Condition.* Vessel operators who apply for an operator's permit under

this section must agree as a condition of this permit that the operator and vessel's fishing, catch, and pertinent gear (without regard to whether such fishing occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken, or landed), are subject to all requirements of this part while fishing in the EEZ or aboard a vessel permitted under § 625.34. The vessel and all such fishing, catch, and gear will remain subject to all applicable state or local requirements. Further, such operators must agree as a condition of this permit that, if the permit is suspended or revoked pursuant to 15 CFR part 904, the operator cannot be aboard any fishing vessel issued a Federal Fisheries Permit or any vessel subject to Federal fishing regulations while the vessel is at sea or engaged in offloading. If a requirement of this part and a management measure required by state or local law differ, any operator issued a permit under this part must comply with the more restrictive requirement.

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Director: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; social security number (optional) and signature of the applicant. The applicant must also provide two recent (no more than 1 year old) color passport-size photographs.

(e) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining the administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (f) of the section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(f) *Issuance.* Except as provided in Subpart D of 15 CFR part 904, the Regional Director shall issue an operator's permit within 30 days of receipt of a completed application if the criteria specified herein are met. Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the

applicant fails to correct the deficiency within 30 days following the date of notification, the application will be considered abandoned.

(g) *Expiration.* A Federal operator permit will expire upon the renewal date specified in the permit.

(h) *Duration.* A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or the applicant has failed to report a change in the information on the permit application to the Regional Director as specified in paragraph (k) of this section.

(i) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal operator permit number assigned. An applicant for a replacement permit must also provide two recent color passport-size photos of the applicant. An application for a replacement permit will not be considered a new application. An appropriate fee may be charged.

(j) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom it is issued.

(k) *Change in application information.* Notice of a change in the permit holder's name, address, or telephone number must be submitted in writing to, and received by, the Regional Director within 15 days of the change in information. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(l) *Alteration.* Any permit that has been altered, erased, or mutilated is invalid.

(m) *Display.* Any permit issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(n) *Sanctions.* Vessel operators with suspended or revoked permits may not be aboard a federally permitted fishing vessel in any capacity while the vessel is at sea or engaged in offloading. Procedures governing enforcement-related permit sanctions and denials are found at Subpart D of 15 CFR part 904.

(o) *Vessel owner responsibility.* Vessel owners are responsible for ensuring that their vessels are operated by an individual with a valid operator's permit issued under this section.

§ 625.36 Dealer permit.

(a) *General.* Any dealer must have a valid permit issued under this part in their possession.

(b) *Dealer application.* Applicants for a permit under this section must submit

a completed application on an appropriate form provided by the Regional Director. The application must be signed by the applicant and submitted to the Regional Director at least 30 days before the date upon which the applicant desires to have the permit made effective. The Regional Director will notify the applicant of any deficiency in the application pursuant to this section.

(c) *Information requirements.*

Applications must contain at least the following information and any other information required by the Regional Director: Company name, place(s) of business, mailing address(es) and telephone number(s); owner's name; dealer permit number (if a renewal); and name and signature of the person responsible for the truth and accuracy of the report. If the dealer is a corporation, a copy of the Certificate of Incorporation must be included with the application. If the dealer is a partnership, a copy of the Partnership Agreement and the names and addresses of all partners must be included with the application.

(d) *Fees.* The Regional Director may charge a fee to recover the administrative expense of issuing a permit required under this section. The amount of the fee is calculated in accordance with the procedures of the NOAA Finance Handbook for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified with each application form. The appropriate fee must accompany each application; if it does not, the application will be considered incomplete for purposes of paragraph (b)(3) of this section. Any fee paid by an insufficiently funded commercial instrument shall render any permit issued on the basis thereof null and void.

(e) *Issuance.* Except as provided in subpart D of 15 CFR part 904, the Regional Director will issue a permit at any time during the fishing year to an applicant unless the applicant has failed to submit a completed application. An application is complete when all requested forms, information, and documentation have been received and the applicant has submitted all applicable reports specified in § 625.37(a). Upon receipt of an incomplete or improperly executed application, the Regional Director will notify the applicant of the deficiency in the application. If the applicant fails to correct the deficiency within 30 days following the date of notification, the application will be deemed abandoned.

(f) *Expiration.* A permit will expire upon the renewal date specified in the permit.

(g) *Duration.* A permit is valid until it is revoked, suspended or modified under 15 CFR part 904, or otherwise expires, or ownership changes, or the applicant has failed to report any change in the information on the permit application to the Regional Director.

(h) *Replacement.* Replacement permits, for otherwise valid permits, may be issued by the Regional Director when requested in writing by the applicant, stating the need for replacement and the Federal dealer permit number assigned. An application for a replacement permit shall not be considered a new permit. An appropriate fee may be charged.

(i) *Transfer.* Permits issued under this part are not transferable or assignable. A permit is valid only for the person to whom, or other business entity to which, it is issued.

(j) *Change in application information.* Within 15 days after a change in the information contained in an application submitted under this section, a written report of the change must be submitted to, and received by, the Regional Director. If written notice of the change in information is not received by the Regional Director within 15 days, the permit is void.

(k) *Alteration.* Any permit that is altered, erased, or mutilated is invalid.

(l) *Display.* Any permit, or valid duplicate thereof, issued under this part must be maintained in legible condition and displayed for inspection upon request by any authorized officer.

(m) *Federal versus state requirements.* If a requirement of this part differs from a fisheries management measure required by state law, any dealer issued a Federal dealer permit must comply with the more restrictive requirement.

(n) *Sanctions.* Procedures governing enforcement-related permit sanctions and denials are found at subpart D of 15 CFR Part 904.

§ 625.37 Recordkeeping and reporting requirements.

(a) *Dealers—(1) Weekly report.* Dealers must send by mail to the Regional Director, or official designee, on a weekly basis on forms supplied by or approved by the Regional Director, a report of fish purchases. If authorized in writing by the Regional Director, dealers may submit reports electronically or through other media. The following information and any other information required by the Regional Director, must be provided in the report: Name and mailing address of dealer; dealer number; name and permit number of the

vessels from which fish are landed or received; dates of purchases; pounds by species; price by species; and port landed. If no fish are purchased during the week, a report so stating must be submitted. All report forms must be signed by the dealer or other authorized individual.

(2) *Annual report.* All persons required to submit reports under paragraph (a)(1) of this section are required to complete the "Employment Data" section of the Annual Processed Products Reports; completion of the other sections on that form is voluntary. Reports must be submitted to the address supplied by the Regional Director.

(3) *Inspection.* Upon the request of an authorized officer, or by an employee of NMFS designated by the Regional Director to make such inspections, the dealer must make immediately available for inspection copies of the required reports that have been submitted, or should have been submitted, and the records upon which the reports were based.

(4) *Record retention.* Copies of reports, and records upon which the reports were based, must be retained and be available for review for 1 year after the date of the last entry on the report. The dealer must retain such reports and records at his/her principal place of business.

(5) *Submitting reports.* Reports must be received, or postmarked if mailed, within 3 days after the end of each reporting week. Each dealer will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a dealer permit.

(6) *At-sea activities.* All persons purchasing, receiving, or processing any scup at sea, harvested in or from the EEZ, for landing at any port of the United States must submit information identical to that required by paragraphs (a)(1) and (2) of this section and provide those reports to the Regional Director or designee on the same frequency basis.

(b) *Vessel owners—(1) Fishing log reports.* The owner of any vessel issued a Federal scup permit under § 625.34 must maintain on board the vessel, and submit, an accurate daily fishing log report for all fishing trips regardless of species fished for or taken, on forms supplied by or approved by the Regional Director. If authorized in writing by the Regional Director, vessel owners may submit reports electronically. At least the following information, and any other information required by the Regional Director, must be provided: Vessel name, U.S. Coast Guard documentation number (or state registration number if undocumented);

permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party trip); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species of all species landed or discarded; dealer permit number (if a commercial trip); dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator permit number.

(2) *When to fill in the log.* Fishing log reports must be filled in, except for information required but not yet ascertainable, before offloading has begun. All information in paragraph (b)(1) of this section must be filled in for each fishing trip before starting the next fishing trip.

(3) *Inspection.* Upon the request of an authorized officer or an employee of NMFS designated by the Regional Director to make such inspections, at any time during or after a trip, owners and operators must make immediately available for inspection the fishing log reports currently in use or to be submitted.

(4) *Record retention.* Copies of the fishing log reports must be retained and available for review for 1 year after the date of the last entry on the report.

(5) *Submitting reports.* Fishing log reports must be received or postmarked, if mailed, within 15 days after the end of the reporting month. Each owner will be sent forms and instructions, including the address to which to submit reports, shortly after receipt of a Federal Fisheries Permit. If no fishing trip is made during a month, a report so stating must be submitted.

§ 625.38 Vessel identification.

(a) *Vessel name.* Each fishing vessel owner subject to this part must affix permanently the vessel's name on the port and starboard sides of the bow and, if possible, on its stern if the vessel is over 25 feet (7.6 m) in length.

(b) *Official number.* Each fishing vessel owner subject to this section must display its official number on the port and starboard sides of the vessel's deckhouse or hull, and on an appropriate weather deck, so as to be visible from above by enforcement vessels and aircraft if the vessel is over 25 feet (7.6 m) in registered length. The official number is the U.S. Coast Guard documentation number, or the vessel's state registration number for vessel not required to be documented under title 46 of the United States Code.

(c) *Numerals.* Except as provided in paragraph (e) of this section, the official

number must be permanently affixed in block arabic numerals in contrasting color at least 18 inches (45.7 cm) in height for fishing vessels over 65 feet (19.8 m) in length, and at least 10 inches (25.4 cm) in height for all other vessels over 25 feet (7.6 m) in length.

(d) *Duties of owner.* Any vessel owner subject to this part will:

(1) Keep the vessel's name and official number clearly legible and in good repair.

(2) Ensure that no part of the vessel, its rigging, its fishing gear, or any other object obstructs the view of the official number from any enforcement vessel or aircraft.

(e) *Nonpermanent marking.* Vessels carrying recreational fishing parties on a per capita basis or by charter must use markings that meet the above requirements, except for the requirement that they be affixed permanently to the vessel. The nonpermanent markings must be displayed in conformity with the above requirements when the vessel is fishing for scup.

§ 625.39 Prohibitions.

(a) In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid Federal scup permit under § 625.34, or issued an operator permit under § 625.35, to do any of the following:

(1) Land or possess at sea any scup, or parts thereof, that fail to meet the minimum fish size specified in § 625.54.

(2) Fail to affix and maintain markings as required by § 625.38;

(3) Possess scup in excess of the threshold amount specified in § 625.53, unless the vessel meets the minimum mesh requirement specified in § 625.53(a);

(4) Fail to keep scup separate from other species if fishing with nets having mesh that does not meet the minimum mesh-size requirement specified in § 625.53(a);

(5) Land scup for sale in any state after the effective date published in the Federal Register notifying permit holders that commercial quota is no longer available;

(6) Possess nets or netting that do not meet the minimum mesh requirement or that are modified, obstructed or constricted, if subject to the minimum mesh requirement specified in § 625.53(a), unless the nets or netting are stowed in accordance with § 625.53;

(7) Fish with nets or netting that do not meet the minimum mesh requirement or that are modified, obstructed or constricted while in

possession of scup in excess of the threshold amount specified in § 625.53;

(8) Sell or transfer to another person for a commercial purpose, other than transport on land, any scup, unless the transferee has a dealer permit issued under § 625.36;

(9) Carry passengers for hire, or carry more than three crew members for a charter boat or five crew members for a party boat, while fishing commercially pursuant to a moratorium permit issued pursuant to § 625.34;

(10) Refuse to embark a sea sampler if requested by the Regional Director;

(11) Sell any scup that fail to meet the minimum fish size specified in § 625.54(a);

(12) Use a scup pot or trap that does not have the hinges and fasteners made of degradable materials as specified in § 625.53;

(13) Use a scup trap or pot that does not have a minimum escape vent of the size specified in § 625.53;

(14) Use roller rig trawl gear equipped with rollers greater than the size specified in § 625.53; or

(15) Possess scup in, or harvested from the EEZ in an area closed, or before or after a season established under § 625.53.

(b) It is unlawful for the owner or operator of a party or charter boat issued a permit (including a moratorium permit) pursuant to § 625.34, when the boat is carrying passengers for hire or carrying more than three crew members if a charter boat or more than five members if a party boat, to:

(1) Possess scup in excess of the possession limit established pursuant to § 625.55;

(2) Possess scup smaller than the minimum size limit for recreational fishermen established pursuant to § 625.54(b);

(3) Fish for scup other than during a season specified pursuant to § 625.53;

(4) Refuse to embark a sea sampler if requested by the Regional Director; or

(5) Sell scup or transfer scup to another person for a commercial purpose.

(c) It is unlawful for any person to do any of the following:

(1) Possess scup in or harvested from the EEZ either in excess of the possession limit specified under § 625.55 or before or after the time period specified under § 625.53, unless the person is operating a vessel issued a moratorium permit under § 625.34, and the moratorium permit is on board the vessel and has not been surrendered, revoked, or suspended;

(2) Possess scup in or harvested from the EEZ in an area closed, or before or after a season established under § 625.53;

(3) Possess in or harvest from the EEZ scup that do not meet the minimum size specified in § 625.54(b);

(4) If subject to the permitting requirements in §§ 625.34, 625.35 or 625.36, to offload, cause to be offloaded, sell or buy any scup, whether on land or at sea, as an owner, operator, dealer, buyer or receiver in the scup fishery, without accurately preparing and submitting in a timely fashion the documents required by § 625.37;

(5) Purchase or otherwise receive, except for transport, scup from the owner or operator of a vessel issued a moratorium permit under § 625.34 unless in possession of a valid permit issued under § 625.36;

(6) If subject to the permitting requirements of § 625.36, to purchase or otherwise receive for commercial purposes scup caught by other than a vessel with a moratorium permit, unless the vessel has not been issued a permit under this part and is fishing exclusively within the waters under the jurisdiction of any state;

(7) If subject to the permitting requirements of § 625.36, to purchase or otherwise receive for a commercial purpose scup landed in any state after the effective date published in the Federal Register notifying permit holders that commercial quota is no longer available in that state;

(8) Make any false statement, oral or written, to an authorized officer, concerning the catching, taking, harvesting, landing, purchase, sale, possession, or transfer of any scup;

(9) Fail to report to the Regional Director within 15 days any change in the information contained in a permit application;

(10) Assault, resist, oppose, impede, harass, intimidate, or interfere with or bar by command, impediment, threat, coercion or refusal of reasonable assistance of an observer or sea sampler conducting his or her duties aboard a vessel; or

(11) Violate any other provision of this part, the Magnuson Act, or any regulation or permit issued under the Magnuson Act.

(d) All scup possessed on board a party or charter boat issued a permit under § 625.34(c) are deemed to have been harvested from the EEZ.

(e) It is unlawful for any person to violate any terms of a letter authorizing experimental fishing pursuant to § 625.57 or to fail to keep such letter on board the vessel during the time period of the experimental fishing.

§ 625.40 Facilitation of enforcement

See § 620.8 of this chapter.

§ 625.41 Penalties.

See § 620.9 of this chapter.

Subpart D—Management Measures, Scup

- 625.50 Catch quotas and other restrictions.
- 625.51 Closure.
- 625.52 Season and area restrictions.
- 625.53 Gear restrictions.
- 625.54 Minimum fish sizes.
- 625.55 Possession limit.
- 625.56 At-sea observer coverage.
- 625.57 Experimental fishery.
- 625.58 Protection of threatened and endangered sea turtles.

Subpart D—Management Measures, Scup

§ 625.50 Catch quotas and other restrictions.

(a) *Annual review.* The Scup Monitoring Committee will review the following data on or before August 15 of each year to determine the allowable levels of fishing and other restrictions necessary to result in an exploitation rate of 47 percent in the second, third, and fourth years following Amendment 8 implementation, 33 percent in the fifth and sixth years following Amendment 8 implementation, and 19 percent in the seventh year following Amendment 8 implementation and thereafter.

(1) As a basis for establishing these specifications and restrictions, the Monitoring Committee will review available data pertaining to the following:

- (i) Commercial and recreational catch data.
- (ii) Current estimates of fishing mortality.
- (iii) Stock status.
- (iv) Recent estimates of recruitment.
- (v) Virtual population analysis results.
- (vi) Levels of noncompliance by fishermen or individual states.
- (vii) Impact of size/mesh regulations.
- (viii) Sea sampling and winter trawl survey data, or, if sea sampling data are unavailable, length frequency information from the winter trawl survey and mesh selectivity analyses.
- (ix) Impact of gear other than otter trawls on the mortality of scup.
- (x) Any other relevant information.

(b) *Recommended measures.* Based on this review, the Monitoring Committee will recommend to the Demersal Species Committee of the Council and the Commission the following measures it determines are necessary to assure that the exploitation rate specified in paragraph (a) of this section is not exceeded:

(1) The coastwide commercial quota will be set from a range of 0 to the maximum allowed to achieve the

exploitation rate specified in paragraph (a) of this section.

(2) Commercial minimum fish size.

(3) Minimum mesh size.

(4) The recreational possession limit will be set from a range of 0 to 50 scup to achieve the exploitation rate specified in paragraph (a) of this section.

(5) The recreational minimum fish size will be set from a range of 7 inches (17.8 cm) total length to 10 inches (25.4 cm) total length.

(6) Recreational season.

(7) Restrictions on gear other than otter trawls.

(8) Season and area closures in the commercial fishery.

(c) *Annual fishing measures.* The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council; the Council shall review these recommendations. Based on these recommendations, and any public comment, the Council shall make recommendations to the Regional Director with respect to the measures necessary to assure that the exploitation rates specified in paragraph (a) of this section are not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action. The Regional Director will review these recommendations and any recommendations of the Commission. After such review, the Regional Director will publish in the Federal Register a proposed rule on or before October 15 to implement a coastwide commercial quota and recreational harvest limit and additional management measures for the commercial fishery, and will publish in the Federal Register a proposed rule on or before February 15 to implement additional management measures for the recreational fishery, if he/she determines that these measures are necessary to assure that the exploitation rates specified in paragraph (a) of this section are not exceeded. After considering public comment on each proposed rule, the Regional Director will publish a final rule in the Federal Register to implement the annual measures.

(d) *Additional quota measures.* The commercial quota will be implemented as a coastwide quota. The Council and Commission may revise the system to distribute and manage the annual commercial quota allocations in accordance with the procedures set forth in this section. Vessel trip limits,

as well as coastwide, regional and state-by-state quotas may be considered in combination with different fractions of the fishing year. Any modification to the coastwide quota system shall be published as a proposed rule with a 45-day public comment period in the Federal Register. After considering public comment on the proposed rule, a final rule shall be published in the Federal Register to implement the modification.

§ 625.51 Closure.

(a) *EEZ Closure.* The Regional Director will monitor the coastwide commercial quota based on dealer reports, state data, and other available information and shall determine the date when the commercial quota is harvested. The Regional Director shall close the EEZ to fishing for scup by commercial vessels for the remainder of the calendar year by publishing an announcement in the Federal Register advising that, effective upon a specific date, the commercial quota has been harvested, and notifying vessel and dealer permit holders that no commercial quota is available for landing scup.

§ 625.52 Season and area restrictions.

If the Council determines through its annual review process that seasonal restrictions or area closures are necessary for the commercial or recreational sectors to achieve the exploitation rate specified or to attain other FMP objectives, such measures will be enacted through the procedure specified in § 625.50.

§ 625.53 Gear restrictions.

(a) *Trawl vessel gear restrictions.* (1) Otter trawlers whose owners are issued a scup moratorium permit under § 625.34 and that possess 4,000 or more lb (1,814 or more kg) of scup, must fish with nets that have a minimum mesh size of 4 inches (10.2 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.

(2) Owners or operators of otter trawlers issued a scup moratorium permit under § 625.34 and fishing with, or possessing on board, nets or pieces of net that do not meet the minimum mesh requirements and that are not stowed in accordance with this section, may not retain 4,000 or more lb (1,814 or more kg) of scup. Scup on board these vessels

shall be stored separately and kept readily available for inspection.

(3) *Mesh-size measurement.* Mesh sizes are measured by a wedge-shaped gauge having a taper of 2 cm to 8 cm and a thickness of 2.3 millimeters inserted into the meshes under a pressure or pull of 5 kilograms. The mesh size will be the average of the measurement of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net will be measured at least five meshes away from the lacings, running parallel to the long axis of the net.

(4) *Net modification.* The owner or operator of a fishing vessel subject to this part 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. However, one splitting strap and one bull rope (if present), consisting of line or rope no more than 3 inches (7.2 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along each of the following: The top, bottom, and each side of the net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net. A vessel shall not use any means or mesh configuration on the top of the regulated portion of the net, as defined in § 625.53(e), if it obstructs the meshes of the net or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum specified in § 625.53(a).

(5) Mesh obstruction or constriction.

(i) The owner or operator of a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (3) of this section, if it obstructs the meshes of the net in any manner.

(ii) No owner or operator of a fishing vessel may use a net capable of catching scup in which the bars entering or exiting the knots twist around each other.

(6) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 4,000 or more lb (1,814 or more kg) of scup and subject to the minimum mesh requirement 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. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use:"

(i) A net stowed below deck, provided:

(A) It is located below the main working deck from which the net is deployed and retrieved.

(B) The towing wires, including the "leg" wires, are detached from the net.

(C) It is fan-folded (flaked) and bound around its circumference.

(ii) A net stowed and lashed down on deck, provided:

(A) It is fan-folded (flaked) and bound around its circumference.

(B) It is securely fastened to the deck or rail of the vessel.

(C) The towing wires, including the leg wires, are detached from the net.

(iii) A net that is on a reel and is covered and secured, provided:

(A) The entire surface of the net is covered with canvas or other similar material that is securely bound.

(B) The towing wires, including the leg wires, are detached from the net.

(C) The codend is removed from the net and stored below deck.

(iv) Nets that are secured in a manner approved by the Regional Director, provided that the Regional Director has reviewed the alternative manner of securing nets and has published that alternative in the Federal Register.

(7) The minimum net mesh set forth in paragraph (a)(1) of this section may be changed following the procedures in § 625.50.

(b) *Scup pots or traps restrictions—(1) Degradable hinges.* The owner or operator of fishing vessels issued a scup moratorium permit under § 625.34 that are fishing with scup pots or traps, must fish with traps or pots that have degradable hinges and fasteners made of one of the following degradable materials:

(i) Untreated hemp, jute, or cotton string of $\frac{3}{16}$ inches (4.8 mm) diameter or smaller;

(ii) Magnesium alloy, timed float releases (pop-up devices) or similar magnesium alloy fasteners; or

(iii) Ungalvanized or uncoated iron wire of 0.094 inches (2.4 mm) diameter or smaller.

(2) *Escape Vents.* (i) The owners or operators of fishing vessels issued a scup moratorium permit under § 625.34 that are fishing with scup pots or traps, must fish with traps or pots that have a circular escape vent with a minimum of 3.1 inches (7.9 cm) in diameter, or a square escape vent with a minimum of 2.25 inches (5.7 cm) for each side, or an equivalent rectangular escape vent.

(ii) The minimum escape vent size set forth in paragraph (b)(2) of this section may be revised following the procedures in § 625.50.

§ 625.54 Minimum fish sizes.

(a) The minimum size for scup is 9 inches (22.9 cm) TL for all vessels issued a moratorium permit under § 625.34; if such a vessel is also issued a charter and party boat permit and is carrying passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat, then the minimum size specified in paragraph (b) of this section applies.

(b) The minimum size for scup is 7 inches (17.8 cm) TL for all vessels that do not qualify for a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

(c) The minimum size applies to whole fish or any part of a fish found in possession, e.g., fillets. These minimum sizes may be adjusted pursuant to the procedures in § 625.50.

§ 625.55 Possession limit.

(a) Pursuant to the procedures in § 625.50, the Regional Director may limit the number of scup that may be possessed in or harvested from the EEZ by persons aboard vessels that have not been issued a valid moratorium permit.

(b) If whole scup are processed into fillets, an authorized officer will convert the number of fillets to whole scup at the place of landing by dividing fillet number by 2. If scup are filleted into a single (butterfly) fillet, such fillet shall be deemed to be from one whole scup.

(c) Scup harvested by vessels subject to the possession limit with more than one person aboard may be pooled in one or more containers. Compliance with the daily possession limit will be determined by dividing the number of scup aboard by the number of persons on board other than the captain and crew. If there is a violation of the possession limit on board a vessel carrying more than one person, the violation shall be deemed to have been committed by the owner and operator.

§ 625.56 At-sea observer coverage.

(a) The Regional Director may require observers for any vessel holding a permit issued under § 625.34.

(b) Owners of vessels selected for observer coverage must notify the appropriate Regional Director or Center Director, as specified by the Regional Director, before commencing any fishing trip that may result in the harvest of scup. Notification procedures will be specified in selection letters to vessel owners.

(c) An owner or operator of a vessel on which a NMFS-approved observer is embarked must:

(1) Provide accommodations and food that are equivalent to those provided to the crew.

(2) Allow the observer access to and use of the vessel's communications equipment and personnel upon request for the transmission and receipt of messages related to the observer's duties.

(3) Allow the observer access to and use of the vessel's navigation equipment and personnel upon request to determine the vessel's position.

(4) Allow the observer free and unobstructed access to the vessel's bridge, working decks, holding bins, weight scales, holds, and any other space used to hold, process, weigh, or store fish.

(5) Allow the observer to inspect and copy any records associated with the catch and distribution of fish for that trip.

§ 625.57 Experimental fishery.

(a) The Regional Director, in consultation with the Executive Director of the Council, may exempt any person or vessel from the requirements of this part for the conduct of experimental fishing beneficial to the management of the scup resource or fishery.

(b) The Regional Director may not grant such exemption unless he/she determines that the purpose, design, and administration of the exemption is consistent with the objectives of the FMP, the provisions of the Magnuson Act, and other applicable law, and that granting the exemption will not:

(1) Have a detrimental effect on the scup resource and fishery;

(2) Cause any quota to be exceeded; or

(3) Create significant enforcement problems.

(c) Each vessel participating in any exempted experimental fishing activity is subject to all provisions of this FMP except those necessarily relating to the purpose and nature of the exemption. The exemption will be specified in a letter issued by the Regional Director to each vessel participating in the

exempted activity. This letter must be carried on board the vessel seeking the benefit of such exemption.

§ 625.58 Protection of threatened and endangered sea turtles.

This section supplements existing regulations issued to regulate incidental take of sea turtles under authority of the Endangered Species Act under 50 CFR parts 217 and 227. In addition to the measures required under those parts NMFS will investigate the extent of take in flynet gear and if deemed appropriate, may develop and certify a Turtle Excluder Device (TED) for that gear.

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50 CFR Parts 650 and 651

[I.D. 052296A]

New England Fishery Management Council; Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will begin on Wednesday, June 5, 1996, at 10 a.m. and on Thursday, June 6, 1996, at 8:30 a.m.

ADDRESSES: The meeting will be held at the King's Grant Inn, Route 128 and Trask Lane, Danvers, MA; telephone (508) 774-6800. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097; telephone: (617) 231-0422.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617) 231-0422.

SUPPLEMENTARY INFORMATION:

June 5, 1996

After introductions, the June 5 session will begin with the Groundfish Committee Report. Issues associated with the implementation of Amendment 7 to the Council's Northeast Multispecies Fishery Management Plan (Multispecies FMP) will be discussed along with amendment measures disapproved by the Secretary of Commerce. The committee also will provide an update on several pending framework adjustments to the plan, including possible modification of