Dated: December 24, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.34, paragraph (l) is suspended and paragraph (m) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(m) *Closures of the commercial fishery for red snapper.* The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 15th of each month to noon on the first of each succeeding month. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), regardless of where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(vi) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1). However, when the recreational quota for red snapper has been reached and the bag and possession limit has been reduced to zero, such possession during a closed period is zero.

3. In § 622.39, paragraph (b)(1)(iii) is suspended and paragraph (b)(1)(vi) is added to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(vi) Red snapper—4.

* * * * *

[FR Doc. 98–34727 Filed 12–28–98; 4:34 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 101498B]

RIN 0648–AL74

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

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

ACTION: Final rule and final specifications for the 1999 summer flounder, scup, and black sea bass fisheries.

SUMMARY: NMFS issues the final specifications for the 1999 summer flounder, scup, and black sea bass fisheries. The intent of this document is to comply with implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) that require NMFS to publish measures for the upcoming year that will prevent overfishing of these fisheries. The annual specifications for the scup fishery include a provision to reduce the minimum mesh threshold that would be more restrictive than the current mesh provision.

DATES: The revision of § 648.123(a)(1) is effective February 1, 1999. The 1999 final specifications are effective January 1, 1999, through December 31, 1999.

ADDRESSES: Copies of the Environmental Assessment (EA)/Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA) are available from: Jon C. Rittgers, Acting Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Mary M. Grim, Fisheries Management Specialist, (978) 281–9326.

SUPPLEMENTARY INFORMATION:

Background

The FMP was developed jointly by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centopristis striata*) in U.S. water of the Atlantic Ocean from 35°13.3′ N. latitude (the latitude of Cape Hatteras Light, NC) northward to the U.S./Canada border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass).

Pursuant to §§ 648.100 (summer flounder), 648.120 (scup), and 648.140 (black sea bass), the Regional Administrator, Northeast Region, NMFS, implements measures for the fishing year to ensure achievement of the target fishing mortality (F) or exploitation rate for each fishery, as specified in the FMP. The FMP for summer flounder established a target F equal to that which results in the maximum yield per recruit (F_{max}). That target F for summer flounder in 1999 is 0.24; the target exploitation rate for scup in 1999 is 47 percent, the rate associated with an F of 0.72. For black sea bass, the FMP specifies a target exploitation rate for 1999 of 48 percent, the rate associated with an F of 0.73. The management measures are summarized below by species. Detailed background information regarding the development of this rule was provided in the proposed specifications for the 1999 summer flounder, scup, and black sea bass fisheries (63 FR 56135, October 21, 1998) and is not repeated here. NMFS will publish in the **Federal Register** at a later date the 1999 recreational management measures for the summer flounder, scup, and black sea bass fisheries.

Summer Flounder

The FMP for summer flounder established a target fishing mortality (F) equal to that which results in the maximum yield per recruit (F_{max}). For 1999, this target level of F is equal to 0.24. This target will be attained through the specification of a quota equivalent to a total allowable landings level (TAL), allocated to the commercial (60 percent) and the recreational (40 percent) sectors.

A stock assessment was not conducted for summer flounder in 1998. However, projection results based on the 25th Stock Assessment Workshop and 1997 survey indices and catch data indicated that a TAL of 14.97 million lb (6.79 million kg) has a 50-percent probability of attaining the target F for 1999. This projection was the basis of the Monitoring Committee recommendation for a TAL of 14.97 million lb (6.79 million kg). Despite this

recommendation, the Council and Commission recommended to NMFS a TAL of 20.20 million lb (9.16 million kg). After review of the Council's and Commission's recommendation, NMFS found it to be unnecessarily risk prone because the recommended TAL had only a 3-percent probability of achieving the target F. Because of these concerns, NMFS proposed a TAL of 18.52 million lb (8.40 million kg), which has an 18-percent probability of achieving the target F (it should be noted that this probability may decrease given recent increased projections of recreational landings). To improve the probability of achieving the target, additional measures were recommended to reduce the level of incidental catch.

This rule will implement the following summer flounder measures for 1999: (1) A TAL of 18.52 million lb (8.40 million kg); (2) a coastwide commercial quota of 11.11 million lb (5.039 million kg); and (3) a coastwide recreational harvest limit of 7.41 million lb (3.361 million kg).

While this TAL is the same level specified in 1998, NMFS recommends that the states implement two additional measures that will address discards in this fishery and further reduce the overall mortality. First, states should set the directed commercial fishery TAL to be equal to the commercial share (60 percent) of the Monitoring Committee's TAL recommendation of a 14.97 million lb (6.79 million kg) TAL, or 8.98 million lb (4.07 million kg). Fifteen percent of this allocation (1.51 million lb) should be set aside as an incidental catch allocation. This would result in a coastwide directed fishery of 7.47 million lb (3.39 million kg). Second, the states should allocate the poundage associated with the difference between the commercial share (8.98 million lb, 4.07 million kg) of the 14.97 million lb (6.79 million kg) TAL and the commercial share (11.11 million lb, 5.04 million kg) of the 18.52 million lb (8.40 million kg) TAL that is 2.13 million lb (0.97 million kg) to the incidental catch allocation. This would result in a coastwide incidental catch allocation of 3.6 million lb (1.63 million kg), or 32.7 percent of the total commercial TAL being set aside for incidental catch. As was proposed by the Council and Commission at the joint meeting held in August 1998, state incidental catch measures would specify (1) that the states must allocate a portion of the commercial quota to incidental catch resources and (2) that summer flounder caught incidentally may not exceed 10 percent by weight of all other species at the end of the trip. At the time the Council and Commission made their recommendation, it appeared the measures were Commission-compliance criteria. Since that time, the Commission has made these measures voluntary.

The commercial quotas by state for 1999 are presented in Table 1; the total quotas are divided into the recommended allocation between directed fishing and incidental catch for purposes of illustration:

TABLE 1.—1999 STATE COMMERCIAL QUOTAS

State	Percent share	Directed		Incidental catch		Total	
		Lb	KG [1]	Lb	KG [1]	Lb	KG [1]
ME	0.04756	3,552	1,611	1,733	786	5,285	2,397
NH	0.00046	34	15	17	8	51	23
MA	6.82046	509,427	231,072	248,414	112,678	757,842	343,751
RI	15.68298	1,171,379	53,133	571,204	259,094	1,741,583	789,968
CT	2.25708	168,584	76,468	82,207	37,288	250,791	113,757
NY	7.64699	571,162	259,075	278,518	126,334	849,680	385,408
NJ	16.72499	1,249,207	566,630	608,156	275,855	1,858,363	842,939
DE	0.01779	133	603	648	294	1,977	897
MD	2.03910	152,303	69,083	74,268	33,687	226,570	102,770
VA	21.31676	1,592,172	722,197	775,397	351,714	2,368,569	1,074,365
NC	27.44584	2,049,959	929,846	998,630	425,970	3,049,589	1,383,270
Total	100.00000	7,468,107	3,387,476	3,642,191	1,652,070	11,111,191	5,039,951

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Scup

The most recent assessment for scup, completed as part of the 27th Stock Assessment Workshop (SAW–27), indicated that scup are over-exploited and at a low biomass level. SAW–27 did not recommend a total allowable catch (TAC) for 1999, but it did recommend that the ''1999 TAC be less than the 1998 TAC to at least remain on the current fishing mortality reduction schedule.'' A relative exploitation index based on landings and the Northeast Fisheries Science Center (NEFSC) Spring Survey (spawning stock biomass 3 year average) was developed by Council staff to assess current levels of mortality and to determine the level of landings that would follow the SAW–27 advice. Based on this index, F in 1997 was estimated at 1.8 (an exploitation rate of 78 percent). Therefore, a 40-percent reduction from 1997 exploitation rates is needed to remain on the current mortality reduction schedule.

To achieve this goal, this rule will implement the following measures recommended by the Council and Commission for scup in 1999: (1) A total allowable catch (TAC) of 5.92 million lb (2.69 million kg); (2) a commercial TAC of 4.61 million lb (2.09 million kg); (3) a commercial discard estimate of 2.09 million lb (0.95 million kg); (4) a commercial quota of 2.53 million lb (1.15 million kg); (5) a recreational TAC of 1.30 million lb (0.59 million kg); (6) a recreational discard estimate of 0.065 million lb (0.003 million kg); and (7) a recreational harvest limit of 1.24 million lb (0.562 million kg). To achieve the commercial quotas, the trip limits will be 12,000 lb (5,443 kg). They will drop to 1,000 lb (453.6 kg) for Winter I (January–March), after 85 percent of the quota for that period is harvested and to 4,000 lb (1814.4 kg) for Winter II (November–December).

Further, this rule also implements a 200-lb (90.7-kg) and 100-lb (45.4-kg) seasonal (winter/summer) threshold for minimum mesh size. Specifically, fishers must use 4.5-inch mesh in the codend when 200 lb (90.7 kg) and 100 lb (45.5 kg) of scup are on board during the winter (November-March) or summer (April-October), respectively. This minimum mesh threshold will allow the landing of the incidental catch

of legal-sized scup harvested in small mesh fisheries, up to the seasonal threshold amount. At the same time, the reduction in the threshold level from 1998 will address concerns that the threshold was sufficiently high to encourage the use of small mesh to target scup, causing discard of undersized scup retained in the small mesh. Some incidental catch allowance is necessary in order that fish that might otherwise be discarded dead would instead be landed and applied to the commercial quota, increasing the probability that the target exploitation rate will be met.

The quota and period allocations are shown in Table 2:

TABLE 2.—PERCENT ALLOCATIONS OF COMMERCIAL SCUP QUOTA

Period	Percent	TAC[1]	Discards[2]	Quota allocation	
				Lb	KG[3]
Winter I	45.11	2,083,630	940,543	1,143,087	518,496
Summer	38.95	1,799,100	812,108	986,993	447,692
Winter II	15.94	736,569	332.7,349	403,920	183,215
Total	100.00	4,619,000	2,085,000	2,534,000	1,149,403

[1] Total allowable catch, in pounds.
[2] Discard estimates, in pounds.
[3] Kilograms are as converted from pounds.

Black Sea Bass

The FMP specifies a target exploitation rate of 48 percent for 1999, equivalent to an F of 0.73. This target is to be attained through specification of a TAL level that is allocated 49 percent to the commercial fishery and 51 percent to the recreational fishery. The commercial quota is specified on a coastwide basis by quarter. The most recent assessment on black sea bass, completed in June 1998 (SAW–27), indicates that black sea bass are over-exploited and at a low biomass level. The SAW concluded that the input data for black sea bass were inadequate to develop an analytical assessment. Fishing mortality for 1997, based on length-based methods, was 0.73. Because this estimate of F was the same as the target F for 1999, the Stock Assessment Review Committee recommended that the FMP exploitation schedule be maintained and that no changes from the 1998 TAL be required.

To achieve that goal, this rule implements the following specifications that were recommended by the Council and Commission for black sea bass in 1999: (1) A TAL for 1999 of 6.17 million lb (2.79 million kg); (2) a commercial quota of 3.02 million lb (1.37 million kg); and (3) a recreational harvest limit of 3.14 million lb (1.42 million kg). The specifications are the same as those implemented for the 1998 fishing year.

The black sea bass coastwide commercial quotas by quarter for 1999 are presented in Table 3:

TABLE 3.—1999 BLACK SEA BASS QUARTERLY COASTWIDE COMMERCIAL QUOTAS AND QUARTERLY TRIP LIMITS

Trip limits	Quarter	Percent	Lb	(Kg)[1]	
				Lb	(Kg)[1]
1 (Jan-Mar)	38.64	1,168,860	530,186	11,000	4,990
2 (Apr-Jun)	29.26	885,115	401,481	7,000	3,175
3 (Jul-Sep)	12.33	372,983	169,182	3,000	1,361
4 (Oct-Dec)	19.77	598,043	271,268	4,000	1,814
Total	100.00	3,025,000	1,372,117		

[1] Kilograms are as converted from pounds and do not add to the converted total due to rounding.

Changes From the Proposed Rule

In the proposed rule, NMFS recommended that states implement an incidental catch trip limit for summer flounder so that summer flounder does not exceed 10 percent by weight of all other species on board for any trip under the incidental catch allocation. Based on comments received from the State of New Jersey and an industry member (see comment 23), NMFS has revised this recommendation. NMFS recommends that states implement an incidental catch trip limit so that summer flounder does not exceed 10 percent by weight of all other species landed at the end of a trip for any trip under the incidental catch allocation. NMFS feels that this modification, slightly different from the one recommended by the State of New Jersey, would be more enforceable than the original recommendation or the New Jersey recommendation, and thus more effective.

Comments and Responses

Seventeen sets of comments were received expressing concern about the measures proposed by NMFS. Critical comments were received from Congressman Saxton (NJ), two industry members, the Atlantic State Marine Fisheries Commission, the North Carolina Department of Environment and Natural Resources, the Massachusetts Department of Marine Resources, the Virginia Marine Resources Commission, the New Jersey Department of Environmental Resources, the New York Department of Environmental Conservation, the Connecticut Department of Environmental Protection, the Maryland Department of Natural Resources, three fisheries associations (the New Jersey Marine Fisheries Council, the North Carolina Fisheries Association, Inc., and the United National Fishermen Association), and from the Natural Resources Defense Council, the Center for Marine Conservation, and the Environmental Defense Fund, jointly. Specific comments on the proposed

annual specifications for the 1999 summer flounder, scup, and black sea bass fisheries are discussed and responded to below.

Comment 1: Congressman Saxton expressed concern that the quota level recommended by NMFS would require the recreational fishery to be closed during the summer months, with devastating economic impacts. He urged NMFS to reconsider the Council/Commission recommendation for a TAL of 20.2 million lb (9.16 million kg) and resultant recreational harvest limit of 8.1 million lb 3.67 million kg).

Response: NMFS carefully reviewed the Council's and Commission's recommendation and found it unacceptable due to the low probability it would achieve the FMP target fishing mortality rate. NMFS notes that the recreational sector of the fishery exceeded its harvest limit for the past two years (1996, 1997) and appears likely to do so again in 1998. As a result, NMFS agrees with the Congressman that maintaining the recreational harvest limit at the status quo level is likely to require additional restrictions on the recreational fishing sector. The Council and Commission recommended measures for the recreational fishery at a meeting December 15–17, 1998. NMFS encouraged adoption of measures that would allow the recreational sector to attain, but not exceed, its harvest limit, while minimizing adverse economic impacts to the industry. NMFS has informed the Council and Commission that the impacts of the recreational management measures must be evaluated in an Initial Regulatory Flexibility Analysis, which will then be available early in 1999 for public comment along with the proposed measures.

Comment 2: The three conservation groups stated that they think the proposed TAL is unacceptably risky for several reasons and note that some of these reasons were the same as those NMFS relied upon to reject the Council's recommendation, that is: the quota has a low (15 percent) probability of achieving the target F and has a 50 percent probability of achieving F=0.32, which is significantly higher than the target; caution is merited due to a retrospective pattern in the assessment that has in the past resulted in revisions to the estimates of stock size and fishing mortality rates in the last year of the assessment; and in past years, the management agencies, including NMFS, have failed to specify a harvest level that attains the annual target F.

Response: NMFS believes that the specification addresses many of these concerns. Even without additional measures, the TAL of 18.52 million lb (8.40 million kg) has a higher probability of meeting the target F than the Council's and Commission's recommendation. To increase further the probability of achieving the target F, NMFS recommends that the directed commercial fishery allocation should be set equal to 7.47 million lb (3.39 million kg). This level is 15 percent lower than the level recommended by the Monitoring Committee, increasing the probability of meeting the target F. NMFS recognized that by setting the directed commercial fishery at this level, the level of regulatory discard of summer flounder is likely to increase, thus reducing the probability of achieving the target. To mitigate this effect, 32.7 percent of the directed commercial quota would be set aside for incidental catch. This recommendation, if followed, would increase the probability of meeting the target F, and address concerns often noted by industry that quota management is causing regulatory discard. NMFS believes that this recommendation course would improve the likelihood that the target fishing mortality rate would be attained.

Comment 3: The three conservation groups commented that there are still significant causes for concern about the summer flounder stock. These include an NEFSC analysis that indicates that the overall discard rate in 1997 was almost 30 percent; trawl surveys indicating that the 1996 and 1997 year classes were extremely poor; and the fact that TAL in recent years has been exceeded and likely will be exceeded in 1998 as well.

Response: NMFS agrees that there are reasons to be concerned about the summer flounder stock. The NMFS recommendation for the commercial fishery would reduce the amount available for the directed fishery. This reduction would speed stock rebuilding, which would improve stock resilience when there are poor year classes. NMFS shares the concern about discard levels in the commercial fishery. Industry commenters have expressed frequent concerns about regulatory discards that occur as a side effect of state quota management measures such as trip limits. The recommendation to set aside 32.7 percent of the commercial quota for incidental catch allowances is intended to address these concerns and reduce discards, and, thus, reduce the overall fishing mortality rate.

Comment 4: The State of Maryland and one fisheries association commented that there is no known basis to support the NMFS position that incidental catch constitutes 32.7 percent of the annual catch and no scientific basis for the 32.7 percent allocation.

Response: An analysis of incidental landings has been done to determine the level of incidental catch for most states (Section 6.1.1.3 of the FRFA). This analysis was done by defining an incidental trip for summer flounder as any trip where summer flounder made up 10 percent or less, by weight, of the total weight of fish landed. The analysis found that such trips comprise a large percentage of total trips in many states. In every year since 1995, the States of Rhode Island (15.68298 percent allocation of TAL), North Carolina (27.44584 percent allocation of TAL), Massachusetts (6.82046 percent allocation of TAL), New Jersey (16.72499 percent allocation of TAL), and New York (7.64699 percent allocation of TAL) had landings of incidentally harvested summer flounder in excess of 32.7 percent of the total summer flounder landings. The level in the State of Virginia has varied, though on average, an incidental catch of summer flounder has represented 36.4 percent of the total summer flounder landings in that state.

Comment 5: The State of Maryland commented that NMFS'' proposal requires states to reserve 32.7 percent of the quota as incidental catch until the directed quota is reached in November or December, and that it would be impossible then to catch the 32.7 percent under incidental catch rules. The State of Maryland notes that most states carefully monitor landings within specified quota limits.

Response: NMFS recommends that the states continue to monitor carefully their summer flounder landings to stay within their allocation of commercial quota. The NMFS recommendation is not that a state must fully utilize the directed fishery allocation before allocating the incidental catch provision to the fishery. States retain the flexibility to enact the recommendation in a manner that suits the characteristics of their specific fisheries.

Comment 6: The State of Maryland commented that the proposed summer flounder specifications reduce the total allowable catch, and that is not consistent with the provisions of the FMP.

Response: The specifications do not reduce total allowable summer flounder catch. That level remains at 18.52 million lb (8.40 million kg). NMFS recommends reducing the amount allocated to the directed fishery, for the reasons noted in previous responses to comments. The commenter is incorrect in assuming that a reduction in TAL would be inconsistent with the FMP.

The FMP requires that specifications are to be set to achieve a target F (currently 0.24). If F can be achieved only with a reduction in the TAL, then overall landings (i.e., the quota) must be reduced. The current commercial quota recommendation is a mechanism for use by the states to increase the probability that 18.52 million lb (8.40 million kg) will achieve the target F.

Comment 7: The State of North Carolina and one fisheries association commented that the proposed summer flounder specifications violate National Standard 1 because they do not allow the fishery to be harvested at optimum yield (OY).

Response: OY is defined in Amendment 2 as all summer flounder harvested pursuant to the FMP, so any specifications consistent with the FMP framework will result in the achievement of OY. The commenters' true concern seems to be that the state commercial quota cannot be reached if the state must set aside 32.7 percent of the quota for incidental catch. See responses to comments 5 and 6. It should be noted that the level of incidentally caught summer flounder in North Carolina has exceeded 32.7 percent.

Comment 8: The State of North Carolina and one fisheries association stated that the proposed summer flounder measures violate National Standard 2 because there was not a stock assessment in 1998, so they are not based upon the best scientific information available. In addition, the recommendation does not rely on industry knowledge about the true status of the summer flounder stock. The 32.7 percent incidental catch allocation is not based on scientific information. Further, there is no information indicating that the 11.11 million lb (5.04 million kg) commercial quota specified in 1998 was excessive. It is a violation of National Standard 2 to set the quota artificially high with the intent that some undeterminable amount of the quota will not be fished.

Response: The last peer-reviewed stock assessment for summer flounder was conducted in 1997, and NMFS recognized that the Council and the Commission required updated information to set catch quotas for 1999. Thus, NMFS updated the results of the 1997 assessment in order to provide the necessary catch and stock size projections for 1999. The virtual population analysis (VPA) performed in June 1997 (SAW–25) was re-run using updated catch statistics and 1997 survey indices. The fishing mortality rate in 1997 and the stock size at age at the beginning of 1998 were estimated using the stock size at age at the beginning of 1997 from the re-run VPA and reported landings and estimated discards in 1997. The fishing mortality in 1998 and stock size at age at the beginning of 1999 were estimated, assuming that the 1998 commercial quota and recreational harvest limit would be taken. Finally, the calculated options for catch in 1999 and stock size in 2000 under various fishing mortality levels in 1999 were also estimated. This analysis was provided to the Council and Commission.

NMFS anticipates performing such annual updated assessments for all stocks under management. New analytical ''benchmark'' assessments need not be conducted annually to comply with National Standard 2. The updated assessments will be done by individual scientists, with peer reviews performed by the Council's Scientific and Statistical Committee, and management advice prepared by the Council Monitoring Committees. Consequently, the NEFSC Stock Assessment Workshop (SAW) process will handle only ''benchmark'' assessments. Benchmark assessments will be done for each stock every 3–4 years, utilizing multiple years of new input and considering new analytical methods. All SAW committee meetings, as well as the Council and Commission meetings, are open to the public to incorporate comments from commercial and recreational fishermen.

National Standard 2 requires the use of the best available scientific information. It does not impose a burden on the agency to develop new scientific information through any particular method (i.e., annual stock assessment workshop) before undertaking action. Industry knowledge about the fishery, while useful, is not necessarily the best scientific information available.

NMFS did not set the quota artificially high, presuming that the entire quota would not be harvested. Industry members have frequently expressed concern about high levels of regulatory discards of summer flounder, and further, have commented publicly that they are not reporting all discards in the vessel trip reports because they fear that the information will be used to further restrict the fishery. The recommended allocation for incidental catch is intended to address this concern. The 32.7 percent incidental catch recommendation is a risk-averse measure based on known discard rates that are probably underestimated, given the fact that some industry members are not reporting the total amount of discards.

Comment 9: Three fisheries associations commented that the proposed summer flounder measures violate National Standard 3 because they do not manage the stock as a unit throughout its range, in that the commercial and recreational sectors are managed differently.

Response: The FMP does manage the stock throughout its range through the specification of an annual harvest level to meet specific mortality reduction targets. This harvest level applies to both the commercial and recreational sectors of the fishery. Differing management measures are applied to each sector because they do not operate in the same fashion. This does not undermine the FMP's consistency with National Standard 3.

The FMP specified different management approaches for the commercial and recreational sectors when the comprehensive management measures were initially enacted by Amendment 2 to the FMP in 1993. These differences were due to differences in the data available for monitoring the two sectors of the fishery. The commercial fishery mandatory reporting system provides data that can be used to monitor quotas and close the fishery. The recreational fishery landings are compiled through a survey; data are not available in a timely fashion to close the fishery when the harvest limit is attained. NMFS believes that the recreational sector can be constrained to its harvest limit through the specification of appropriately restrictive annual measures (possession limits, minimum fish size, and seasonal restrictions).

Comment 10: The State of North Carolina and one fisheries association stated that the proposed summer flounder measures violate National Standard 4 because they discriminate between residents of different states. The incidental catch measure will have different impacts upon states that typically have minimal incidental catch levels.

Response: National Standard 4 does not require that the impacts of management measures be the same in all states. In fact, this would not be possible, given the wide variations in state fisheries. The FRFA demonstrates that the measures may have different impacts on participants, depending on the level of participation in the summer flounder fishery. The states are free to implement the incidental catch recommendation in the manner that best meets the characteristics of their fisheries.

Comment 11: The State of North Carolina and one fisheries association

stated that the recommended summer flounder measures violate National Standard 5, which requires measures to consider efficiency in utilization but not to have economic allocation as their sole purpose, because excessive recreational landings have not been addressed.

Response: The measures specified here promote efficiency through the recommended harvest level that will promote the rebuilding of the stock. The recommendation regarding the incidental catch allocation is intended to reduce waste caused by discards. The recreational fishing harvest limit is specified in this action. The recreational measures to constrain anglers to this harvest limit are not part of this action. NMFS shares the commenters' concern that the recreational fishery has exceeded its target harvest limit for the past several years. The Council and Commission recently took action to address this for 1999 and the measures they adopted at the Council's December 1998 meeting are now under consideration by NMFS.

Comment 12: The State of North Carolina and one fisheries association commented that the summer flounder measures violate National Standard 6, which requires measures to take into account variations in fisheries. The commenters say the measures do not account for the fact that the summer flounder fishery is the most important fishery in North Carolina from November through February. They also note that the discard allocation does not account for the fact that discard levels vary by gear type, with sea scallop dredge gear accounting for most discards. They believe the application of the incidental catch measure to all gears fails to account for variation in the fishery.

Response: The only measures specified by this action are the annual quota and its components. The specification of the annual quota takes into account the variations and contingencies of the summer flounder stock through the various considerations prescribed in 50 CFR 648.100. These regulations also contain a measure that allows for the imposition of restrictions on gear other than otter trawls through the annual specification process. Discard estimation has been frustrated in part by under-reporting of discards by some industry members who are fearful of responsive management actions. The total discards in the otter trawl fleet may well exceed that of the smaller scallop fleet, particularly since our reports evidence increasing regulatory discards due to the increased abundance of summer flounder. The recommendation regarding the incidental catch allocation, while not mandatory as originally proposed, is intended to address this very contingency regarding the summer flounder fishery.

Despite the commenters' claim that summer flounder is the most important species landed for the months of November through February, NMFS landings data suggest that substantial amounts of dogfish, croaker, bluefish, and kingfish are also landed in North Carolina fisheries during this time period.

Comment 13: The State of North Carolina and a fisheries association commented that the summer flounder specifications are in violation of National Standard 7, which requires that measures minimize costs and avoid unnecessary duplication.

Response: National Standard 7 requires that the benefits of the fishery management program should outweigh the costs of compliance, and that unnecessary duplication should be avoided. The analysis contained in the FRFA shows that the benefits of the rebuilding program outweigh the immediate costs associated with the annual specifications.

Comment 14: The State of North Carolina and a fisheries association stated that the recommended summer flounder measures violate National Standard 8, which requires management measures to take into account the importance of fisheries resources to fishing communities. They believe the proposed measures do not consider the importance of the fishery to fishing communities, and focused their comments on communities in North Carolina.

Response: NMFS prepared an FRFA, as required by the Regulatory Flexibility Act, to analyze the economic impacts of the 1999 specifications, including the measures for summer flounder. This FRFA included an analysis of the impacts upon communities. A review of impacts upon North Carolina across the range of alternatives reveals that, not only is North Carolina not projected to experience significant economic impacts as a result of this rule, but even the most restrictive allocation did not have any significant impacts upon a large number of North Carolina vessels.

Comment 15: A fisheries association commented that, though the proposed summer flounder specifications may not violate National Standard 9 on its face, it is inconsistent with Congressional intent because the incidental catch allocation has the effect of reducing North Carolina's commercial quota by almost 1 million lb (0.45 million kg). The State of North Carolina believes that the measures violate National Standard 9 and that the reduction in the directed fishing component of the commercial allocation will increase bycatch. The State of North Carolina stated that the primary reason for discards given in the sea sampling data is undersized fish, and that the incidental catch allocation will not address that source of discard.

Response: The overall quota allocated to North Carolina is the same as the initial quota allocated in 1998. However, NMFS is recommending that the amount allocated to the directed fishery should be reduced as a result of the allocation of 32.7 percent to an incidental catch allocation. NMFS believes that it is likely that the reduction in the directed fishing allocation will result in an increase in retained incidental catch for North Carolina vessels as well as those from other states. NMFS notes that in its comment, the State of North Carolina agrees that the reduction in the directed fishing allocation will increase retained incidental catches.

NMFS agrees with the commenter that the incidental catch allocation will not reduce the amount of discards due to undersized fish. The minimum mesh provision is intended to address this type of discarding. The 5.5 inch (13.97 cm) minimum mesh throughout the net has not been in operation long enough to determine if an adjustment to the mesh size is warranted. An analysis of discards on trips carrying observers showed that the major reason for discards was undersized fish (59.7 percent), but the second most frequent reason was quotas or trip limits (27.6 percent). The incidental catch allocation is intended to address the latter cause of discards.

Comment 16: One association commented that the proposed summer flounder measures violate National Standard 10, which requires safety of human life at sea to be promoted to the extent practicable.

Response: NMFS recommends that the states allocate 32.7 percent of their commercial to incidental catch and use the incidental catch allocation to allow vessels to land incidentally caught summer flounder up to 10 percent by weight of other species on board at the end of a trip. The states have the authority to implement a system that will best allow them to utilize this allocation. NMFS hopes that the states will enact systems that will not encourage carrying loads that threaten vessel stability. It is not NMFS' intent for these measures to result in this type of risky behavior. However, because the authority to implement such measures lies with the states, NMFS can only recommend that the states consider

safety at sea when they establish their incidental catch measures.

Comment 17: The State of North Carolina commented that the proposed summer flounder measures violate the requirements of the Regulatory Flexibility Act (RFA) because of the impacts it believes the measures will have on North Carolina vessels, and because NMFS did not agree with the State's suggestion that states should be allowed to redirect any unused portion of the incidental catch allowance to the directed fishery. An association notes that the port and community descriptions in the NMFS analysis are insufficient to satisfy the intent of Congress for analysis of impacts under RFA, and notes that they disagree with the seasonal characterization of the North Carolina fishing activity in one study cited (Griffith, 1996). The association commented that they do not intend to criticize the conclusions of the researcher, but they do criticize NMFS' use of the study.

Response: NMFS fully analyzed the impacts of the proposed measures on the participants in the fishery, all of whom are classed as small business entities for the purposes of the RFA. NMFS did not find the significant impacts in North Carolina that are anticipated by the State of North Carolina and the association. The findings differ due to different assumptions concerning whether the North Carolina participants will land the entire quota allocated to the state. North Carolina claims that there are no other directed fisheries during the winter months, so the allocation for incidental catch will not be fully utilized by their vessels. However, NMFS notes that the State's fishery operated on a bycatch basis for roughly eight months during 1998. The trip limit during this time period was 100 lb (45.4 kg). The incidental catch allocation allows for landing in excess of this trip limit. An analysis of impacts of the summer flounder quota, including the recommended 32.7 percent incidental catch allocation, shows that no actively participating vessels from the State of North Carolina would suffer greater than a 5 percent loss of revenue, and that 59 of the 125 actively participating vessels would have an increase in revenue.

The association points out that the Griffith report erroneously characterizes the summer flounder fishery in North Carolina. Despite the claim that summer flounder is the only species landed during the winter months in North Carolina, NMFS notes that substantial amounts of dogfish, croaker, bluefish, and kingfish are also landed in North Carolina fisheries during this time period.

Comment 18: One association commented that the NMFS analysis of social impacts did not assess the fact that increasing fishing restrictions are making it difficult for industry participants to obtain bank loans.

Response: Business entities, such as banks, set their own criteria for making loans and conducting other financial transactions. The commenter is implying that restrictions should be set to allow all entities to prosper, which is beyond the scope of the FMP.

Comment 19: The State of North Carolina commented that the summer flounder measures recommended by NMFS violate the Administrative Procedure Act because they are arbitrary; capricious; an abuse of discretion; not in accordance with law; in excess of NMFS statutory jurisdiction, authority and limitation, and short of its statutory right; unsupported by substantial evidence; and unwarranted by the facts.

Response: NMFS based its summer flounder recommendation upon the stock assessment information and the discussions by the Council and Commission at their August 1998 meeting. The intent of the measures is to end overfishing and to address the concerns expressed by industry, the Council, and the Commission about the level of incidental catch and regulatory discards. NMFS made every effort to incorporate the comments from industry, Council, and Commission, as well as the scientific data on the status of the stock, when making this recommendation. The annual measures have been set as specified in the FMP; the process is in compliance with the Administrative Procedure Act. The incidental catch recommendation is the same as that specified by the Council and Commission, differing only in the amount of incidental catch.

Comment 20: The States of Connecticut and Virginia and the Commission stated the proposed set-aside of the summer flounder quota for the incidental catch fishery will prevent fishers from landing the quota share allocated to the states under the Summer Flounder FMP.

Response: See responses to comments 5 and 6.

Incidental catch in the State of Virginia has been 36.4 percent, on average, of the total state summer flounder landings. Since, on average, 36.4 percent of the summer flounder currently landed in this State is incidentally caught with other species, the recommended incidental catch allocation should not prevent the State from landing its entire quota. Data are not available from the State of Connecticut.

Comment 21: The States of Virginia, New York, and Connecticut and the Commission questioned how the summer flounder incidental catch proposal will be monitored and believe that it will add significant quota monitoring burden to the states.

Response: Most states already have a mechanism to monitor the landings relative to the overall quota. Monitoring the incidental-catch landings would not be a substantial additional burden.

Comment 22: The States of New York and Connecticut and the Commission stated that it is beyond the authority of NMFS to allocate the TAL for each state between a directed and an incidental catch allocation.

Response: NMFS does not claim to have the authority to make an allocation to an incidental catch fishery. Rather, it makes this recommendation to the states to establish such allocation. This recommendation to divide the TAL between a directed and an incidental catch allocation is based upon the Council and Commission recommendation adopted by those bodies at the August 1998 meeting. That recommendation advocated the same allocation system with different levels of landings from those recommended by NMFS.

NMFS supports the Council's and Commission's recommendation to allocate a portion of the TAL to an incidental catch fishery, in part because of the concerns from industry that a high level of mortality is occurring due to regulatory discards of incidental catch. The 32.7 percent incidental catch allocation would address this concern over discards and would allow fishers to continue to land and to sell summer flounder caught as incidental catch in other fisheries. This would help address the concerns often expressed by industry about regulatory discards, as well as prevent any further increases in incidental catch that may occur as a result of the decrease in the directed fishery allocation and increased stock biomass. While this allocation system would result in a reduction in the directed fishery, it would allow summer flounder to be landed and sold up to a landings level equal to last year's directed fishery, therefore avoiding negative economic impacts.

Comment 23: The State of New Jersey and an industry member recommended the summer flounder incidental catch wording be modified as follows: that summer flounder may be caught and possessed only if the summer flounder on board a vessel does not exceed 10

percent by weight of the total weight of all other species landed and sold.

Response: The manner in which states choose to word their incidental catch allocation is within their discretion. NMFS notes that requiring law enforcement personnel to prove that summer flounder are landed and sold before subjecting a vessel operator to the 10 percent restriction may be problematic.

Comment 24: The State of New Jersey recommended the proposed set-aside of 32.7 percent of the summer flounder quota for the incidental catch fishery be modified as follows: a 15 percent set-aside, with 10 percent specified as incidental catch for the directed fishery and 5 percent for incidental catch in the non-directed fishery.

Response: NMFS notes the State of New Jersey's comments, but disagrees with its recommendation. NMFS recommended the voluntary incidental catch allocation because it addresses the concerns about discard mortality and increases the probability of achieving the target F. Setting the incidental catch fishery at 15 percent would reduce the probability of achieving the target F. In addition, dividing the incidental catch allocation between the directed and non-directed fisheries would add monitoring and enforcement requirements beyond those currently required by the 1998 specifications.

Comment 25: One association commented that, while it would prefer the Council's and Commission's recommendation to specify a 1999 summer flounder TAL of 20.20 million lb (9.16 million kg), it would support the 18.52 million lb (8.40 million kg) TAL.

Response: The comments have been noted and the proposed TAL of 18.518 million lb (8.40 million kg) for the 1999 summer flounder fishery is implemented by this rule.

Comment 26: The Commonwealth of Massachusetts and three conservation groups stated the proposed TAL of 18.52 million lb (8.40 million kg) for the 1999 summer flounder fishery is no less risk-prone than the 20.20 million lb (9.16 million kg) proposed by the Council and Commission.

Response: The TAL of 18.52 million lb (8.40 million kg) has a higher probability of meeting the target F than the Council's and Commission's recommendation. This probability is increased by the recommendation to address the incidental catch mortality in the commercial fishery, which was also identified as a major concern by the Council and industry. Further, the recommended 32.7-percent incidental catch allocation would result in a directed commercial quota 15 percent less than the Monitoring Committee's recommendation, and would increase the probability of meeting the target F, while reducing the regulatory discards that would otherwise occur as a result of the reduction in the directed fishery.

Comment 27: The Commonwealth of Massachusetts urges NMFS to set the summer flounder TAL for 1999 at 20.20 million lb (9.16 million kg) and to continue the 15 percent allocation for incidental catch.

Response: NMFS revised the Council's and Commission's recommendation of 20.20 million lb (9.16 million kg), because it had only a 3-percent probability of achieving the target F of 0.24. Given this low probability of achieving the target and the fact that the target F has never been achieved in this fishery, NMFS felt that the 20.20-million lb (9.16-million kg) TAL was unnecessarily risk-prone. NMFS specified the 18.52-million lb (8.04-million kg) TAL because it has a higher probability of achieving the target F. In addition, NMFS recommends that the states implement additional measures to address incidental catch of summer flounder. Implementation of these measures would increase the probability of achieving the target in 1999 to greater than 18 percent. Additionally, these measures would allocate 6.47 million lb (2.93 million kg) to the directed commercial quota, which is less than the commercial quota recommended by the Monitoring Committee. It should be noted that the Monitoring Committee's recommended TAL had a 50-percent probability of achieving the target F for 1999.

Comment 28: The Commission and the States of Connecticut and New York stated that the Commission compliance criteria do not require states to implement a set-aside of their summer flounder allocations specifically for incidental catch fisheries. The Commission's summer flounder FMP requires the voluntary cooperation of the states in order to be effective.

Response: The Council and Commission voted on a motion at the August 1998 meeting to ''provide for additional incidental catch reserves.'' Discussion at the meeting indicated that the 1998 compliance criteria, requiring an incidental catch allocation of 15 percent, would be maintained for 1999. In addition, the Council and Commission recommended that additional poundage be allocated to incidental catch, bringing the incidental catch allocation to 22 percent. The recommended incidental catch allocation is based on this very system, only using the 18.52 million lb (8.4 million kg) TAL. At the time NMFS made its recommendation and at the time of the proposed rule, a document dated October 1997 stated that these criteria were mandatory. Since then, these criteria have been revised by the Commission and are now voluntary. NMFS will encourage the Commission to re-evaluate the revision, since the incidental catch allocation relies upon the states for effective implementation.

Comment 29: The Commission stated that the analysis concerning the likelihood of achieving the target fishing mortality for proposed annual specifications for the 1999 summer flounder fishery is weak.

Response: It is not clear from the comment what analysis the Commission feels should be done. The updated stock assessment was used to make projections and indicated that the TAL of 18.52 million lb (8.40 million kg) has a higher probability of meeting the target F than the Council's and Commission's recommendation. To increase further the probability of achieving the target F, the directed commercial fishery is recommended to be set lower than the directed commercial fishery allocation associated with the 14.965 million lb (6.79 million kg) TAL recommended by the Monitoring Committee, with the remaining commercial quota set aside for incidental catch. The Monitoring Committee's recommendation had a 50-percent probability of meeting the target F. NMFS expects that by setting the directed commercial fishery at this level, the level of incidental catch of summer flounder will increase, thus reducing the probability of achieving the target. To mitigate this effect, 32.7 percent of the commercial quota is set aside for incidental catch. This increases the probability of meeting the target F, while reducing the regulatory discards that would otherwise occur.

Comment 30: The Commission and the State of Connecticut commented that the proposed summer flounder measures may result in an increase in discard mortality.

Response: NMFS acknowledges that a decrease in the directed commercial quota may result in an increase in the incidental catch of summer flounder when directed quota is not available. To mitigate this effect, 32.7 percent of the commercial quota is recommended to be allocated to incidental catch. This will allow those summer flounder harvested in other fisheries to be landed and sold, with the intent of reducing regulatory discards and their associated mortality.

Comment 31: The Commission stated the proposed annual specifications for the 1999 summer flounder fishery do not ensure that Federal and state regulations are compatible. The comment notes that Board action is final and that the NMFS revision of the Council recommendation poses an implementation problem to the states.

Response: The method of setting the annual specifications for summer flounder were reviewed and approved by the Council, Commission, and NMFS during the review and approval of Amendment 2 to the Summer Flounder FMP. This process requires the Council and Commission to make a recommendation to NMFS during the fall of the year. NMFS is then required to review the measures to ensure they meet the FMP objectives. If NMFS finds that they do not, the Regional Administrator must propose measures that will ensure the FMP objectives are attained. Clearly the Board's final action is a recommendation to the Regional Administrator. The FMP does not contemplate a separate action on the part of the Board that the states must implement.

Comment 32: The State of New Jersey and one fisheries association commented that the measures should allow the states to reallocate summer flounder incidental catch to directed fishing if necessary to attain the total allocation.

Response: NMFS' recommendation to allocate the commercial quota to an incidental fishery is identical to the measure adopted by the Council and Commission at their August 1998 meeting. The Council and Commission system would have allocated 22 percent of the commercial quota to incidental catch, and, as written, would not have allowed that allocation to be reallocated to the directed fishery. NMFS has adopted the recommendation with a lower TAL. The recommendation is not intended to prevent any state from harvesting its assigned allocation. While it would result in a lower directed fishery, a state has the authority to implement an incidental catch fishery that would result in the entire incidental catch allocation being landed up to that state's annual quota.

Comment 33: One fisheries association recommended that the 32.7 percent incidental catch allocation of the summer flounder quota for the incidental catch fishery should be replaced by an allocation of 10 percent of the coastwide commercial quota.

Response: NMFS has recommended the 32.7-percent incidental catch allocation because it would result in a higher probability of achieving while not exceeding the target F than a 10-percent allocation would. A 10-percent allocation would be lower than the level of incidental catch allocated in 1998 or recommended by the Council and Commission for 1999. A 10-percent incidental catch allocation in combination with the 18.52-million lb (8.40-million kg) TAL would result in a less than 18-percent probability of achieving the target F and, therefore, is a less desirable option than the NMFS recommendation.

Comment 34: One fisheries association supported the proposed 1999 summer flounder recreational harvest of 7.41 million lb (3.36 million kg).

Response: The association's comments are noted and the measure is implemented by this rule.

Comment 35: One individual stated the proposed 1999 specifications for the summer flounder fishery should be replaced with a 7,500-lb (3,402-kg) trip limit per week.

Response: The FMP does not currently authorize NMFS to specify a coastwide trip limit. The Council and Commission have submitted for Secretarial review Amendment 12 to the FMP, which would allow the Council and Commission to develop such a measure through a proposed framework process if Amendment 12 were approved.

Comment 36: One individual stated the proposed 1999 specifications for the summer flounder, scup, and black sea bass fishery will not ensure the greatest benefit to the nation.

Response: NMFS conducted a Regulatory Impact Review (RIR) as part of the review of the 1999 summer flounder, scup, and black sea bass specifications. This RIR is part of the process of preparing and reviewing regulatory actions and provides a comprehensive review of the changes in net economic benefits to society associated with those actions. This analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems. The purpose of this analysis is to ensure that the regulatory agency systematically and comprehensively consider all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way. This RIR addresses many items in the regulatory philosophy and principles of Executive Order (E.O.) 12866.

The recommended actions are necessary to advance the recovery of these stocks, and to establish the harvest of these species at sustainable levels. The recommended action benefits in a material way the economy, productivity, competition, and jobs. The recommended action will not adversely affect, in the long-term, competition, jobs, the environment, public health or safety, or state, local, or tribal governments, or communities. Based on this review, NMFS has concluded that the measures will result in a net benefit to the nation.

Comment 37: One individual proposed a 32.7-percent allocation as the summer flounder incidental catch quota for the recreational fishery.

Response: The Council and Commission made recommendations for the recreational sector of the 1999 fishery at their December meeting. Such measures must ensure that the recreational fishery comply with the harvest level specified, though the tools available in the FMP are limited to specification of individual possession limits, minimum fish size, and fishing seasons.

Comment 38: The State of Connecticut agreed with NMFS that the summer flounder TAL for 1999 should remain at 18.52 million lb (8.40 million kg).

Response: The comment has been noted and the 18.52 million lb (8.40 million kg) TAL is implemented by this rule.

Comment 39: The State of Connecticut stated the incidental catch limit for summer flounder will create a system that is impossible to enforce at sea and would be difficult to enforce at dockside prior to offloading.

Response: Under the current specifications, many states implement a trip limit to manage their commercial quota. Since those states have implemented such provisions, they must have established enforcement mechanisms that can be used for the 1999 fishery.

Comment 40: The State of Connecticut stated that it was never the intent of the Council and the Commission to have 22 percent of the summer flounder TAL allocated to the incidental catch fishery.

Response: The Council and the Commission clearly recommended that 22 percent of the commercial quota would be allocated to incidental catch fisheries. The motion made at the August 1999 Council and Commission meeting reads as follows: ''I move we specify a TAL of 20.20 million lb (9.16 million kg) and indicate that the commercial quota increase should be used by states to provide for additional bycatch reserves * * *.'' When the percentage incidental catch allocation is calculated, based on this motion, it is 22 percent of the commercial quota. Given this motion, NMFS believes it is clear that the Council's intent was to allocate 22 percent to an incidental catch fishery. The Council staff clearly agreed, as indicated in their submission to NMFS.

Comment 41: The States of New York and North Carolina commented that the term bycatch was used inappropriately in the proposed rule, given the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Response: NMFS acknowledges that the term ''bycatch'' was not properly used in the proposed rule, because under the Magnuson-Stevens Act, it means fish caught but not sold. To correct for this error, the word ''bycatch'' is replaced by the phrase ''incidental catch.''

Comment 42: The State of New York and the Commission commented that they support the proposed specifications for the 1999 scup and black sea bass fisheries.

Response: The comments have been noted and the specifications for the 1999 scup and black sea bass fisheries are unchanged from the proposed rule.

Comment 43: The Commonwealth of Massachusetts stated that it continues to feel unfairly and inequitably treated by the scup management plan because the measures do not address the high level of scup discard mortality attributed to other small-mesh fisheries.

Response: The Council and Commission, as well as NMFS, share the State of Massachusetts' concern about the level of scup discard occurring in small mesh fisheries. To address this issue, the 1999 scup specifications include two measures to account for incidental catch of scup. First, a discard estimate is subtracted from the commercial quota to account for the mortality that occurs due to discards. Second, the minimum mesh threshold is reduced to allow for the landing of incidentally caught scup while at the same time discouraging the use of small-mesh by directed scup fishermen. Some incidental catch allowance is necessary in order that fish that might otherwise be discarded dead would instead be landed and apply to the commercial quota, increasing the probability that the target exploitation rate will be met.

Comment 44: The Commonwealth of Massachusetts stated that there are no analyses to support NMFS' contention that by dropping the threshold trigger from 4,000 lb (1,814 kg) to 200 lb (90.7 kg) (winter) and from 1,000 lb (454 kg) to 100 lb (45.4 kg) (summer), discards of only 2.085 million lb (0.946 kg) of scup will occur.

Response: The 1997 level of discards, 3.95 million lb (1.79 million kg), occurred with seasonal mesh thresholds of 4,000 lb (1,814 kg) and 1,000 lb (454 kg). The reduction of the minimum mesh threshold will allow for some incidental catch of legal-sized scup harvested in small-mesh fisheries to be landed. At the same time, the low amount allowed will discourage the use of small mesh by vessels to target scup by eliminating the incentive the large threshold amount may have provided. As such, this threshold would reduce the amount of discards of fish harvested in the small-mesh fisheries for other species. The reduced incidental catch allowance is necessary so that fish that might otherwise be discarded dead would now be landed and apply to the commercial quota, increasing the probability that the target exploitation rate will be met.

Classification

This action is authorized by 50 CFR part 648 and complies with the National Environmental Policy Act.

These specifications have been determined to be not significant for purposes of E.O. 12866.

This final rule implements the 1999 measures for the summer flounder, scup, and black sea bass fisheries. NMFS prepared an FRFA for this final rule, pursuant to 5 U.S.C. 603. A copy of the FRFA can be obtained from the Acting Regional Administrator (see **ADDRESSES**). A summary of the FRFA follows.

Summary of FRFA

This rule would apply to the following small entities: Actively participating summer flounder, scup, and black sea bass commercial vessels (990 vessels). While they are not actively participating, this rule would also apply to all vessels currently permitted for summer flounder, scup, and black sea bass. This rule would apply more indirectly to other, related segments of the industry, including—but not limited to—dealers and processors.

This rule does not implement new reporting or recordkeeping measures. There are no changes to existing reporting requirements. Currently, all summer flounder, scup and/or black sea bass federally-permitted dealers must submit weekly interactive voice response reports of fish purchases. The owner or operator of any vessel issued a moratorium vessel permit for summer flounder, scup, black sea bass, 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. The owner of any party or charter boat issued a summer flounder or scup permit other than a moratorium permit and carrying passengers for hire shall maintain on board the vessel, and submit, an accurate daily fishing log report for each charter or party fishing trip that lands summer flounder or scup, unless such a vessel is also issued another permit that requires regular reporting, in which case a fishing log report is required for each trip regardless of species retained. These reporting requirements are critical for monitoring the harvest level of these fisheries.

The FRFA examines five scenarios. Each was examined for impacts on all vessels permitted to fish for these species since that represents the universe of potentially impacted small entities. Each was also examined for impacts on vessels that landed any of those species in 1997, the last full year for which there is landings data. The subset was examined to determine the impacts on currently active participants in the fishery. Table 4 summarizes the scenarios analyzed in the FRFA.

TABLE 4.—COMPARISON (IN POUNDS) OF THE SCENARIOS OF QUOTA COMBINATIONS REVIEWED

	Commercial quota	Percent of 1997 landings [1]	Percent change
Quota Scenario 1:			
Fluke NMFS Preferred Alternative	11,111,298	123.82	23.82
Scup Preferred Alternative	2,534,160	52.42	−47.58
Black Sea Bass Preferred Alternative	3,024,742	114.66	14.66
Quota Scenario 2:			
Fluke Council Preferred Alternative	12,120,000	135.06	35.06
Scup Preferred Alternative	2,534,160	52.42	−47.58
Black Sea Bass Preferred Alternative	3,024,742	114.66	14.66
Quota Scenario 3:			
Fluke Technical Recommendation	8,787,000	97.92	−2.08
Scup Preferred Alternative	2,534,160	52.42	−47.58
Black Sea Bass Preferred Alternative	3,024,742	114.66	14.66
Quota Scenario 4 (Least restrictive):			
Fluke Council Preferred Alternative	12,120,000	135.06	35.06
Scup Non-Selected Alternative 2	3,510,000	72.61	−27.39
Black Sea Bass Non-Selected Alternative 2	4,710,000	171.33	71.33
Quota Scenario 5 (Most restrictive):			
Fluke Technical Recommendation	8,787,000	97.92	−2.08
Scup Non-Selected Alternative 1	670,000	13.86	−86.14
Black Sea Bass Non-Selected Alternative 1	1,400,000	53.07	−46.93

[1] It is important to note that, while the total allowable catch in 1999 is proposed to be the same as in 1997, the 1997 commercial quota was reduced substantially due to significant overages in the 1996 fishing year.

The number of vessels impacted was assessed for 7 classes of vessels, based on either the combinations of species permits or by species landings. An analysis of Scenario I (the harvest limits implemented by this rule) indicates that these levels will result in greater than a 5 percent revenue loss to 191 actively participating commercial vessels. However, this analysis did not consider the 32.7-percent allocation for incidental catch, which is the likely result of states implementing recommended incidental catch measures. When that allocation was factored into the analysis, 62 vessels were found to have a greater than 5-percent revenue loss. Impacts on these 62 vessels varied. No vessels landing combinations of summer flounder or black sea bass were in this group, while 31 vessels landing all three species were. When all currently permitted vessels were examined, 194 vessels were found to have greater than a 5-percent revenue loss under these measures. The vessel class with the largest number of affected vessels were vessels permitted for scup, black sea bass, and summer flounder (114 vessels were impacted by a greater than 5 percent revenue loss).

Scenario I was selected as the preferred alternative to be implemented by this rule because it has the greatest probability of achieving the FMP's targets. It also has measures to address concerns about incidental catch in the summer flounder and scup fisheries. While some impacts would be realized by vessels landing scup as a result of the reduction in the scup TAC, those impacts should be reduced for vessels that would benefit from increases in the summer flounder and black sea bass allocations for 1999, when compared to 1997.

An analysis of the harvest limits in Scenario II indicates that these levels would result in a negative economic impact to 65 of the actively participating vessels. Impacts on these 65 vessels varied. No vessels landing combinations of summer flounder or black sea bass were in this group, while 34 vessels landing all three species were. When additional analyses were conducted to account for a 22-percent incidental catch allocation, 59 actively participating vessels would have greater than a 5-percent revenue loss. When all currently permitted vessels were examined, 56 vessels were found to have greater than a 5 percent revenue loss under these measures. The vessel class with the largest number of affected vessels were vessels permitted for all three fisheries: Scup, black sea bass, and summer flounder (27 vessels were impacted by a greater than 5-percent revenue loss). NMFS did not select this alternative because it had only a 3-percent probability of achieving the target F for summer flounder in 1999.

An analysis of the harvest limits in Scenario III indicates that these harvest levels would result in a negative economic impact to 122 of the actively participating vessels. Impacts on these 122 vessels varied. No vessels landing black sea bass only were in this group while 71 vessels landing all three species were. When all currently permitted vessels were examined, 122 vessels were found to have greater than a 5-percent revenue loss under these measures. The vessel class with the largest number of affected vessels were vessels permitted for all three fisheries: Scup, black sea bass, and summer flounder (74 vessels were impacted by a greater than 5 percent revenue loss). NMFS did not select this scenario because despite the increased probability that the summer flounder target F would be achieved, no measures exist to address the concerns about incidental catch in this fishery. Under this scenario, the commercial quota would be reduced, likely resulting in an increase in the discards of summer flounder.

An analysis of the harvest limits in Scenario IV indicates that these levels would result in a negative economic impact to 23 of the actively participating vessels. Impacts on these 23 vessels varied. No vessels landing combinations of summer flounder or black sea bass or landing scup and summer flounder were in this group while 10 vessels landing all scup and black sea bass were. When all currently permitted vessels were examined, 18 vessels were found to have greater than a 5-percent revenue loss under these measures. The vessel class with the largest number of affected vessels were vessels permitted for scup and black sea bass (9 vessels were impacted by a greater than 5 percent revenue loss). NMFS rejected this scenario because it had a low probability of achieving the target F's for the summer flounder and scup fisheries.

An analysis of the harvest limits in Scenario V indicates that these levels would result in a negative economic impact to 290 actively participating commercial vessels with impacts on vessels landing all species combinations. Impacts on these 290 vessels ranged from 4 vessels landing scup only to 147 vessels landing all three. When all currently permitted vessels were examined, 272 vessels were found to have greater than a 5 percent revenue loss under these measures. The vessel class with the largest number of affected vessels were vessels permitted for all three fisheries: Scup, black sea bass, and summer flounder (138 vessels were impacted by a greater than 5 percent revenue loss). NMFS did not select this scenario because, despite the increased probability that the summer flounder target F would be achieved, no measures exist to address the concerns about incidental catch in this fishery. Under this scenario, the commercial quota would be reduced, likely resulting in an increase in the incidental catch of summer flounder. In addition, the reduction of the black sea bass TAL under this scenario would result in an F rate that would accelerate stock rebuilding; however, it would also result in significant impacts on the commercial fishery while not being necessary to meet the FMP requirements.

Comments on the IRFA were received from the State of North Carolina. Those comments expressed concerns about the adequacy of the analysis done for operating out of the State of North Carolina. The basic analytical method was unchanged from the IRFA as the result of comments, though NMFS did additional analysis to clarify some points, including an expanded analysis of the incidental catch provision. NMFS completed these analyses to ensure that all aspects of the measures and of the summer flounder, scup, and black sea bass fisheries have been examined. (End of summary of FRFA.)

This action implements 1999 specifications for the summer flounder, scup, and black sea bass fisheries. This action does not significantly revise management measures in a manner that would require time to plan or prepare for those revisions. This action establishes annual quotas which are used to control the harvest of these fisheries. Closures must be implemented immediately to conserve fishery resources when a quota is attained. This action recommends allocation of a summer flounder incidental catch to be utilized in accordance with incidental catch measures approved by the Council and Commission at their August 1998 meeting. Since these measures were approved by the Council and Commission, the states should be taking action to implement them by January 1, 1999. Because of the need to implement these measures in a timely manner to address overfishing of summer flounder, scup, and black sea bass, the Assistant Administrator for Fisheries, NOAA, has determined, under 5 U.S.C. 553(d)(3), that to delay for 30 days the effectiveness of these measures would be contrary to the public interest. Accordingly, they are being made effective January 1, 1999. The annual specifications for the scup fishery include a provision to reduce the minimum mesh threshold (§ 648.123(a)(1)) that would be more restrictive than the current mesh provision. In order to allow the fishery time to come into compliance with this provision, it will not become effective until February 1, 1999.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 23, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.123, paragraph (a)(1) is revised to read as follows:

§ 648.123 Gear restrictions.

(a) *Trawl vessel gear restrictions*—(1) *Minimum mesh size.* The owners or operators of otter trawlers who are issued a scup moratorium permit and who possess 200 lb or more (90.7 kg or more) of scup from November 1 through April 30 or 100 lb or more (45.4 kg or more) of scup from May 1 through October 31, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the head rope, excluding any turtle excluder device extension. Scup on board these vessels shall be stored separately and kept readily available for inspection.

* * * * *

[FR Doc. 98–34511 Filed 12–30–98; 8:45 am]

BILLING CODE 3510–22–P