

potato, roots by revising the expiration date "12/31/03" to read "12/31/05".

§ 180.449 [Amended]

■ 5. In § 180.449, in the table to paragraph (b), amend the entries for avocado, basil, and spinach by revising the expiration dates "12/31/03" to read "12/31/06".

§ 180.472 [Amended]

■ 6. In § 180.472, in the table to paragraph (b), amend the entries for almond and almond hulls by revising the expiration dates "12/31/03" to read "12/31/05".

§ 180.482 [Amended]

■ 7. In § 180.482, in the table to paragraph (b), amend the entry for grape by revising the expiration date "12/31/03" to read "12/31/06".

§ 180.507 [Amended]

■ 8. In § 180.507, in the table to paragraph (b), amend the entry for head and stem (Brassica) subgroup by revising the expiration date "12/31/03" to read "12/31/06".

§ 180.535 [Amended]

■ 9. In § 180.535, in the table to paragraph (b), amend the entry for corn, field, forage; corn, field, grain; corn, field, stover, corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; and corn, sweet, stover; by revising the expiration date "12/31/03" to read "12/31/06".

[FR Doc. 04-554 Filed 1-13-04; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No 031119283-4001-02; I.D. 110703A]

RIN 0648-AQ80

50 CFR Part 648

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2004 Specifications

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

ACTION: Final rule; final 2004 specifications, and preliminary quota adjustment; notification of 2004 commercial summer flounder quota harvest for Delaware.

SUMMARY: NMFS issues final specifications for the 2004 summer flounder, scup, and black sea bass fisheries and makes preliminary adjustments to the 2004 commercial quotas for these fisheries. This final rule specifies allowed harvest limits for both commercial and recreational fisheries, including scup possession limits. This action also prohibits federally permitted commercial vessels from landing summer flounder in Delaware in 2004. Regulations governing the summer flounder fishery require publication of this notification to advise the State of Delaware, Federal vessel permit holders, and Federal dealer permit holders that no commercial quota is available for landing summer flounder in Delaware in 2004. The intent of this action is to establish allowed 2004 harvest levels and other measures to attain the target fishing mortality (F) or exploitation rates, as specified for these species in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

DATES: This rule is effective from January 14, 2004, through December 31, 2004.

ADDRESSES: Copies of the specifications document, including the Environmental Assessment, Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and other supporting documents for the specification are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901-6790. The specifications document is also accessible via the Internet at <http://www.mafmc.org>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281-9279, fax (978) 281-9135, e-mail sarah.mclaughlin@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively 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 (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropomus striata*) in U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, 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).

The regulations outline the process for specifying annually the catch limits for the summer flounder, scup, and black sea bass commercial and recreational fisheries, as well as other management measures (e.g., mesh requirements, minimum fish sizes, gear restrictions, possession restrictions, and area restrictions) for these fisheries. The measures are intended to achieve the annual targets set forth for each species in the FMP, specified either as an F rate or an exploitation rate (the proportion of fish available at the beginning of the year that are removed by fishing during the year). Once the catch limits are established, they are divided into quotas based on formulas contained in the FMP. Detailed background information regarding the status of the summer flounder, scup, and black sea bass stocks and the development of the 2004 specifications for these species was provided in the proposed specifications (68 FR 66784, November 28, 2003). That information is not repeated here. NMFS makes one correction to the text published in the proposed 2004 specifications in this final rule. The amount of the summer flounder Total Allowable Landings (TAL) set aside for research activities to be conducted by the National Fisheries Institute and Rutgers University is 174,750 lb (79.3 mt), rather than 74,750 lb (40 mt), which was a typographical error.

NMFS will establish the 2004 recreational management measures for summer flounder, scup, and black sea bass by publishing a proposed and final rule in the **Federal Register** at a later date, following receipt of the Council's recommendations as specified in the FMP.

Summer Flounder

The FMP specifies an F of F_{max} that is the level of fishing that produces maximum yield per recruit. The best available scientific information

indicates that, for 2004, F_{\max} for summer flounder is 0.26 (equal to an exploitation rate of about 22 percent from fishing). The TAL associated with the target F rate is allocated 60 percent to the commercial sector and 40 percent to the recreational sector. The commercial quota is allocated to the coastal states based upon percentage shares specified in the FMP. The recreational harvest limit is specified on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2004.

This final rule implements the specifications contained in the proposed

rule, i.e., a 28.2-million lb (12,791-mt) summer flounder TAL, which is allocated 16.92 million lb (7,675 mt) to the commercial sector and 11.28 million lb (5,117 mt) to the recreational sector. This TAL was determined by the Council's Summer Flounder Monitoring Committee to have at least a 50-percent probability of achieving the F_{\max} (0.26) that is specified in the FMP, if the 2003 TAL and assumed discard levels are not exceeded. One research project that would utilize the full summer flounder research set-aside (RSA), 174,750 lb (79.3 mt), has been recommended for approval. After deducting this RSA, the

TAL is divided into a commercial quota of 16.82 million lb (7,630 mt) and a recreational harvest limit of 11.21 million lb (5,085 mt). If this project is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal will be restored to the summer flounder TAL through publication of a notice in the **Federal Register** by NMFS.

Table 1 presents the final 2003 commercial summer flounder quota for each state, the reported 2003 landings for each state through October 31, 2003, and the resultant 2003 quota overages.

TABLE 1. SUMMER FLOUNDER PRELIMINARY COMMERCIAL 2003 LANDINGS BY STATE

| State | 2003 Quota ¹ | | Reported 2003 Landings through 10/31/03 | | Preliminary 2003 Overage | |
|--------------------|-------------------------|-----------------|---|-----------------|--------------------------|-----------------|
| | lb ² | kg ² | lb | kg ³ | lb | kg ³ |
| ME | (6,980) | (3,125) | 0 | 0 | 6,890 | 3,125 |
| NH | 64 | 29 | 0 | 0 | 0 | 0 |
| MA | 907,274 | 411,537 | 926,149 | 420,098 | 18,875 | 8,562 |
| RI | 2,183,907 | 990,614 | 1,993,084 | 904,057 | 0 | 0 |
| CT | 314,306 | 142,568 | 355,413 | 161,214 | 41,107 | 18,646 |
| NY | 1,064,869 | 483,021 | 988,645 | 448,446 | 0 | 0 |
| NJ | 2,329,010 | 1,056,432 | 2,280,738 | 1,034,536 | 0 | 0 |
| DE | (45,609) | (20,688) | 4,479 | 2,032 | 50,088 | 22,720 |
| MD | 283,951 | 128,799 | 357,248 | 162,047 | 73,297 | 33,247 |
| VA | 2,968,429 | 1,346,471 | 2,931,066 | 1,329,523 | 0 | 0 |
| NC | 3,821,924 | 1,733,613 | 4,273,519 | 1,938,456 | 451,595 | 204,842 |
| Total ³ | 13,873,734 | 6,293,084 | 14,110,341 | 6,400,409 | 641,852 | 291,142 |

¹ Reflects quotas as published on March 3, 2003 (68 FR9905)

² Parentheses indicate a negative number.

³ Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Total quota and total landings do not equal the overage because they reflect positive quota balances in several states.

Based upon 2003 landings through October 31, 2003, NMFS adjusts the 2004 commercial quotas for 2003 quota overages. The commercial summer flounder percent share, 2004 initial quota (with and without the research set-aside deduction), 2003 quota overages, and the adjusted quotas (with and without the research set-aside deduction) for 2004, by state, are presented in Table 2.

The FMP does not allocate Pennsylvania a share of the annual summer flounder quota. However, in

June 2003, 6,880 lb (3,125 kg) of summer flounder were landed in Pennsylvania; these landings are under investigation by the NMFS Office of Law Enforcement. The Federal regulations regarding summer flounder quotas do not address the incidence of summer landings in a state that does not have a quota allocation, or the accounting of such landings against the commercial quota. NMFS does not anticipate that the amount of summer flounder landings in Pennsylvania, which is negligible relative to the

overall 2003 commercial quota, will affect the upcoming annual stock assessment for the purpose of recommending a TAL for the 2005 fishing year. NMFS and the Commission are concerned that the landing of summer flounder in states without an allocation undermines the Interstate and Federal FMPs for summer flounder, scup, and black sea bass. NMFS intends to work with the Commission to further address this issue.

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TABLE 2. FINAL STATE-BY-STATE COMMERCIAL SUMMER FLOUNDER ALLOCATIONS FOR 2004

| State | Percent Share | 2004 Initial Quota | | 2004 Initial Quota, less Research Set-Aside | | 2003 Quota Overages (through 10/31/03) ¹ | | Adjusted 2004 Quota ² | | Adjusted 2004 Quota, less Research Set-Aside | |
|--------------------|---------------|--------------------|-----------|---|-----------|---|---------|----------------------------------|-----------|--|-----------|
| | | lb | kg | lb | kg | lb | kg | lb | kg | lb | kg |
| ME | 0.04756 | 8,047 | 3,650 | 7,997 | 3,628 | 6,890 | 3,125 | 1,157 | 525 | 1,107 | 502 |
| NH | 0.00046 | 78 | 35 | 77 | 35 | 0 | 0 | 78 | 35 | 77 | 35 |
| MA | 6.82046 | 1,154,022 | 523,461 | 1,146,871 | 520,217 | 18,875 | 8,562 | 1,135,147 | 514,899 | 1,127,996 | 511,655 |
| RI | 15.68298 | 2,653,560 | 1,203,647 | 2,637,117 | 1,196,188 | 0 | 0 | 2,653,560 | 1,203,647 | 2,637,117 | 1,196,188 |
| CT | 2.25708 | 381,898 | 173,228 | 379,531 | 172,154 | 41,107 | 18,646 | 340,791 | 154,582 | 338,424 | 153,508 |
| NY | 7.64699 | 1,293,871 | 586,896 | 1,285,853 | 583,259 | 0 | 0 | 1,293,871 | 586,896 | 1,285,853 | 583,259 |
| NJ | 16.72499 | 2,829,868 | 1,283,620 | 2,812,332 | 1,275,655 | 0 | 0 | 2,829,868 | 1,283,620 | 2,812,332 | 1,275,655 |
| DE | 0.01779 | 3,010 | 1,365 | 2,991 | 1,357 | 50,088 | 22,720 | (47,078) | (21,354) | (47,097) | (21,363) |
| MD | 2.03910 | 345,016 | 156,498 | 342,878 | 155,528 | 73,297 | 33,247 | 271,719 | 123,251 | 269,581 | 122,281 |
| VA | 21.31676 | 3,606,796 | 1,636,032 | 3,584,445 | 1,625,894 | 0 | 0 | 3,606,796 | 1,636,032 | 3,584,445 | 1,625,894 |
| NC | 27.44584 | 4,643,836 | 2,106,430 | 4,615,059 | 2,093,377 | 451,595 | 204,842 | 4,192,241 | 1,901,588 | 4,163,464 | 1,888,535 |
| Total ³ | 100.00 | 16,920,000 | 7,674,862 | 16,815,150 | 7,627,302 | 641,852 | 291,142 | 16,325,228 | 7,405,075 | 16,220,396 | 7,357,523 |

¹ For Delaware, includes continued repayment of overharvest from 2002² Parentheses indicate a negative number.³ Total quota is the sum of all states having allocation. A state with a negative number has an allocation of zero (0). Kilograms are as converted from pounds and may not necessarily add due to rounding

The Commission has established a system whereby 15 percent of each state's quota may be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery in a state has been closed. The intent of the incidental catch set-aside is to reduce discards by allowing fishermen to land summer flounder caught incidentally in other fisheries during the year, while ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in these 2004 final specifications because NMFS does not have authority to establish such subcategories.

Delaware Summer Flounder Closure

Table 2 above indicates that, for Delaware, the amount of the 2003 summer flounder quota overage (inclusive of overharvest from 2002) is greater than the amount of commercial quota allocated to Delaware for 2004. As a result, there is no quota available for 2004 in Delaware. The regulations at § 648.4(b) provide that Federal permit holders, as a condition of their permit, must not land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available for harvest. Therefore, effective January 1, 2004, landings of summer flounder in Delaware by vessels holding commercial

Federal fisheries permits are prohibited for the 2004 calendar year, unless additional quota becomes available through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the 2004 calendar year, unless additional quota becomes available through a transfer, as mentioned above.

Scup

The target exploitation rate for scup for 2004 is 21 percent. The FMP specifies that the Total Allowable Catch (TAC) associated with a given exploitation rate be allocated 78 percent to the commercial sector and 22 percent to the recreational sector. Scup discard estimates are deducted from both sectors' TACs to establish TALs for each sector (TAC less discards = TAL). The commercial TAL is then allocated on a percentage basis to three quota periods, as specified in the FMP: Winter I (January-April)--45.11 percent; Summer (May-October)--38.95 percent; and Winter II (November-December)--15.94 percent. The recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2004.

This final rule implements the specifications contained in the proposed

rule, i.e., an 18.65-million lb (8,460-mt) scup TAC and a 16.5-million lb (7,484-mt) scup TAL. Two research projects that would utilize the full scup RSA, 160,000 lb (73 mt), have been recommended for approval. After deducting this RSA, the TAL is divided into a commercial quota of 12.35 million lb (5,600 mt) and a recreational harvest limit of 3.99 million lb (1,812 mt). If either of these projects is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the scup TAL through publication of a notice in the **Federal Register** by NMFS.

Table 3 presents the final 2003 commercial scup quota for each period and the reported 2003 landings for the 2003 Winter I and Summer periods; there was no overage of the Winter I or Summer quota. On November 3, 2003 (68 FR 62250), NMFS published the final rule to implement Framework 3 to the FMP, and announced a transfer of quota from Winter I to Winter II 2003. Per the quota counting procedures, after June 30, 2004, NMFS will compile all available landings data for Winter II 2003 and compare the landings to the Winter II 2003 allocation, as adjusted. Any overages will be determined and required deductions will be made to the Winter II 2004 allocation.

TABLE 3.—SCUP PRELIMINARY 2003 COMMERCIAL LANDINGS BY QUOTA PERIOD

| Quota Period | 2003 Quota ¹ | | Reported 2003 Landings through 10/31/03 | | Preliminary Overages as of 10/31/03 | |
|--------------|-------------------------|-----------|---|------------------|-------------------------------------|------------------|
| | lb | kg | lb | kg | lb | kg |
| Winter I | 5,602,495 | 2,541,275 | 3,730,118 | 1,691,970 | 0 | 0 |
| Summer | 4,521,879 | 2,051,111 | 4,467,940 | 2,026,644 | 0 | 0 |
| Winter II | 1,979,689 | 897,981 | n/a ² | n/a ² | n/a ² | n/a ² |
| Total | 12,104,063 | 5,490,367 | 8,198,058 | 3,718,614 | | |

¹ Reflects quotas as published on March 3, 2003 (68 FR 9905).

² Not applicable.

Table 4 presents the commercial scup percent share, 2004 TAC, projected discards, 2004 initial quota (with and without the research set-aside deduction), and possession limits, by quota period. To achieve the

commercial quotas, this final rule implements a Winter I period (January-April) per trip possession limit of 15,000 lb (6.8 mt), and a Winter II period (November-December) per trip possession limit of 1,500 lb (680 kg).

The Winter I per trip possession limit will be reduced to 1,000 lb (454 kg) when 80 percent of the commercial quota allocated to that period is projected to be harvested.

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Table 4. INITIAL COMMERCIAL SCUP QUOTA ALLOCATIONS FOR 2004 BY QUOTA PERIOD

| Period | Percent Share | Total Allowable Catch | | Discards | | Initial Quota w/o Research Set-Aside | | Initial Quota, less Research Set-Aside | | Possession Limits (Per Trip) ² | |
|-----------|---------------|-----------------------|-----------------|-----------|---------|---|-----------|---|-----------|--|------------------|
| | | lb | kg ¹ | lb | kg | lb | kg | lb | kg | lb | kg |
| Winter I | 45.11 | 6,563,505 | 2,977,186 | 938,288 | 425,605 | 5,625,217 | 2,551,582 | 5,568,920 | 2,526,045 | 15,000 | 6,804 |
| Summer | 38.95 | 5,667,225 | 2,570,636 | 810,160 | 367,486 | 4,857,065 | 2,203,150 | 4,808,455 | 2,181,101 | n/a ³ | n/a ³ |
| Winter II | 15.94 | 2,319,270 | 1,052,014 | 331,552 | 150,391 | 1,987,718 | 901,623 | 1,967,825 | 892,600 | 1,500 | 680 |
| Total | 100.00 | 14,550,000 | 6,599,837 | 2,080,000 | 943,482 | 12,470,000 | 5,656,355 | 12,345,200 | 5,599,746 | | |

¹ Kilograms are as converted from pounds and may not necessarily add due to rounding.

²The Winter I landing limit will drop to 1,000 lb (454 kg) upon attainment of 80 percent of that period's allocation.

³ Not applicable.

The final rule to implement Framework 3 to the FMP (68 FR 62250, November 3, 2003) implemented a process, for years in which the full Winter I commercial scup quota is not harvested, to allow unused quota from the Winter I period to be rolled over to

the quota for the Winter II period. In any year that NMFS determines that the landings of scup during Winter I are less than the Winter I quota for that year, NMFS will, through a notification in the **Federal Register**, increase the Winter II quota for that year by the amount of the

Winter I underharvest, and adjust the Winter II possession limits consistent with the amount of the quota increase, based on the possession limits presented in Table 5.

TABLE 5. POTENTIAL INCREASE IN WINTER II POSSESSION LIMITS BASED ON THE AMOUNT OF SCUP ROLLED OVER FROM WINTER I TO WINTER II PERIOD

| Initial Winter II Possession Limit | | Rollover from Winter I to Winter II | | Increase in Initial Winter II Possession Limit | | Final Winter II Possession Limit after Rollover from Winter I to Winter II | |
|------------------------------------|-----|-------------------------------------|-----------|--|-----|--|------|
| lb | kg | lb | mt | lb | kg | lb | kg |
| 1500 | 680 | 0–499,999 | 0–227 | 0 | 0 | 1500 | 680 |
| 1500 | 680 | 500,000–999,999 | 227–454 | 500 | 227 | 2000 | 907 |
| 1500 | 680 | 1,000,000–1,499,999 | 454–680 | 1000 | 454 | 2500 | 1134 |
| 1500 | 680 | 1,500,000–1,999,999 | 680–907 | 1500 | 680 | 3000 | 1361 |
| 1500 | 680 | 2,000,000–2,500,000 | 907–1,134 | 2000 | 907 | 3500 | 1587 |

Black Sea Bass

For 2004, the target exploitation rate for black sea bass is 25 percent. The FMP specifies that the TAL associated with a given exploitation rate be allocated 49 percent to the commercial sector and 51 percent to the recreational sector. The recreational harvest limit is allocated on a coastwide basis. Recreational measures will be the subject of a separate rulemaking early in 2004.

This final rule implements the specifications contained in the proposed rule, i.e., an 8-million lb (3,629-mt) black sea bass TAL. Three research projects that would utilize the full black sea bass RSA, 134,792 lb (61 mt), have

been recommended for approval by the Council. The black sea bass TAL, having been adjusted to reflect this RSA, is divided into a commercial quota of 3.86 million lb (1,751 mt) and a recreational harvest limit of 4.01 million lb (1,819 mt). If any of these projects is not approved by the NOAA Grants Office, the research quota associated with the disapproved proposal(s) will be restored to the black sea bass TAL through publication of a notice in the **Federal Register** by NMFS.

The final rule to implement Amendment 13 to the FMP (68 FR 10181, March 4, 2003) established an annual (calendar year) coastwide quota for the commercial black sea bass fishery to replace the quarterly quota

allocation system. The quota counting procedures were accordingly revised to specify that landings in excess of the annual coastwide quota are to be deducted from the quota allocation for the following year based on landings for the current year through September 30, and landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual coastwide quota for the current year. Table 6 presents the initial 2004 commercial quota, the 2004 commercial quota less the research set-aside, the 2003 quota overage calculated as described above, and the resulting final adjusted 2004 commercial quota.

TABLE 6. FINAL BLACK SEA BASS COMMERCIAL QUOTA ALLOCATIONS FOR 2004

| 2004 Initial Quota | | 2004 Quota Less Research Set-aside | | Quota Overages (through 09/30/03) | | Final (Adjusted) 2004 Quota | |
|--------------------|-----------|------------------------------------|-----------|-----------------------------------|--------|-----------------------------|-----------|
| (lb) | (kg) | (lb) | (kg) | (lb) | (kg) | (lb) | (kg) |
| 3,920,000 | 1,778,100 | 3,853,951 | 1,748,141 | 85,376 | 38,726 | 3,768,575 | 1,709,414 |

Changes From Proposed Rule

In the proposed rule for the 2004 specifications (68 FR 66784), NMFS proposed to implement the Council's recommendations regarding access to the Gear Restricted Areas (GRAs), with some exceptions, i.e., most notably that the Scup GRA Exemption Program (as implemented in 2003 (68 FR 12814, March 18, 2003)) would not resume once a discard trigger is met, and that GRA monitors would be placed on 100 percent of participating vessels.

NMFS has consistently supported the concept of gear modifications to reduce scup discards, if such measures can be

justified on the basis of sound scientific review. However, many concerns remain about the Scup GRA Access Program that was recommended by the Council in 2003 and described in the proposed rule. First, the recommended amounts of scup discards to trigger closure of the GRAs could easily be reached in just a few (i.e., less than 10) small-mesh fishing trips, given known co-occurrence levels of Loligo and scup. Even with the recommendation of the Northeast Fisheries Science Center (Center) for 100-percent coverage (whether by monitors or observers), effective closure of the Scup GRA

Access Program without significant risk of exceeding the trigger amounts may not be possible. Second, in order to ensure consistency and reliability of data collected on participating vessels, the use of NMFS-certified observers is preferable to the use of non-NMFS-certified GRA monitors. Third, the current regulations are intended to provide sufficient data to evaluate the effectiveness of modified gear in the GRAs. Industry representatives have repeatedly commented that, if the effectiveness of modified gear in reducing scup discards can be demonstrated, the GRAs should be

eliminated or modified to be less restrictive. As proposed, the Scup GRA Access Program would not require the use of modified gear and would not provide the related collection of information regarding fishing practices and results. In January 2004, the Center will begin a quantitative assessment of the effectiveness of a 5 3/4-inch (14.6-cm) square mesh cylinder, installed as an extension of a *Loligo* squid net, in reducing scup bycatch and in retaining commercial quantities of *Loligo*. Until gear modifications, or other suitable measures, are demonstrated to reduce sufficiently the bycatch of scup in the fisheries for non-exempt species, NMFS considers the GRAs to be necessary. Lastly, there has not been sufficient technical analysis of the Scup GRA Access Program, as proposed. The Council's recommended trigger amounts, 50,000 lb (22.68 mt) and 70,000 lb (31.75 mt) in the Northern and Southern GRAs, respectively, were not based on science, and may not be appropriate trigger levels, either from a management/implementation perspective, or from a biological perspective.

Therefore, for the reasons stated above, NMFS has disapproved the Scup GRA Access Program. This final rule maintains the Scup GRA Exemption Program, as established in the 2003 final rule. The cost of each at-sea observer day to each participating vessel will be \$1,150. The \$1,150 per day cost accounts for the total program costs per at-sea observer day, including administrative and other costs associated with the observer program.

Comments and Responses

Seven comments were received from commercial *Loligo* industry participants and/or representatives, and one comment was received from the Council, regarding the proposed measures.

Comment 1: Two of the commenters support the proposed summer flounder TAL, but disagree with the stock level estimated by NMFS to produce the maximum sustainable yield (MSY) on a continuing basis (234.6 million lb), based on the argument that it is not an observed value and, therefore, may not be a valid target. The commenters add that industry representatives and scientists have raised concerns on several occasions regarding the stock's density-dependent responses, and request that the stock size assumptions to achieve MSY be re-evaluated as soon as possible. The commenters also urge NMFS and the Council to initiate changes to the regulations to allow for recreational overharvest from the

current year to be deducted from the quota for the following year.

Response: The Overfishing Definition Review Panel recommended that the Council base MSY proxy reference points on yield-per-recruit analysis, and this recommendation was adopted in formulating the FMP Amendment 12 overfishing definition, based on the 1999 assessment. The median number of summer flounder recruits was estimated from the 1999 Virtual Population Analysis for the 1982–1998 period, and MSY was estimated based on this information. As a result of the Council's Science and Statistical Committee (SSC) peer review, the reference points were retained in the 2001 stock assessment. In the review of the 2002 stock assessment, the 35th Northeast Regional Stock Assessment Review Committee (SARC 35) concluded that revision of the reference points was not warranted at that time due to the continuing stability of the input data and resulting reference point estimates. These reference points were retained in the 2003 assessment, as well. The Stock Assessment Workshop Southern Demersal Working Group, the scientific body responsible for the summer flounder assessment, has continued to monitor the biological characteristics of the stock in accordance with SARC and SSC recommendations. The biological reference points will continue to be updated and potential revisions would be subject to peer review as part of the continuing assessment process. The next assessment update for summer flounder is scheduled for review by the Council's Monitoring Committee during the summer of 2004. The next review of the summer flounder assessment by the SARC is scheduled for the summer of 2005.

The Council has considered the issue regarding recreational overages on several occasions without identifying an alternative method of calculating recreational landings or an appropriate means of using the Marine Recreational Fisheries Statistical Survey (MRFSS) data to calculate overages. The fact that commercial and recreational fisheries are inherently different is the basis for their differing regulatory requirements. Overages in the commercial fishery, which are easily calculated, are deducted from the appropriate states' quotas the following year. Recreational catches, which are estimated based upon the MRFSS methodology, are used as a basis to formulate recreational management measures (minimum fish size, individual possession limits, and fishing seasons) to constrain the recreational catch to the harvest limit set for the following year. This is done

in part because recreational data are substantially incomplete at the time the recreational harvest limit must be specified by the Council. The procedures used by the Council and NMFS since quota management was established in 1993 has never compensated in subsequent years for recreational landings in excess of the recreational harvest limit.

Comment 2: Three of the commenters support a shift of the inside and outside, i.e., shoreward and seaward, boundaries of the Southern GRA by 2 minutes (1.75 miles (3.2 km)) west to allow the *Loligo* fleet greater fishing opportunities and to demonstrate that the gear modifications and fishing practices of the *Loligo* fleet over the past 3–4 years (not including use of an escapement panel) can result in a directed *Loligo* fishery with little bycatch of scup. The commenters also requested that NMFS determine how many observer trips in the area that would be opened to the east of the adjusted Southern GRA would be needed to provide adequate scup discard estimates in order to support this modification.

Response: In response to a previous request by the commercial *Loligo* industry to move the boundaries of the Southern GRA, the Council evaluated distributional data from the Northeast Fisheries Science Center's Winter and Spring trawl surveys and did not support the change. In a July 2003 report, the Council stated that the Southern GRA encompasses the geographic range occupied by *Loligo* and scup during the effective period, and that the portion of the Southern GRA that would be open to small-mesh trawls if the boundaries were shifted coincides with both recent survey catches of scup and with scup-*Loligo* overlap. The suggestion to move the boundaries 2 minutes to the west was recently directed by the commenter to the Council and Center for their consideration, but was not supported. Because of the spatial resolution of catch data, it is difficult to justify the suggested shift of the boundaries. Further, in the case of a shoreward shift of the southern GRA, 100-percent observer coverage would be required to account for the discards of scup in the area that would be opened to the east, due to the inter-annual and spatial variability in the co-occurrence of the two species. Should changes to the Northern or Southern GRA be determined to be appropriate, i.e., supported by the available data, they should be initiated by the Council through the framework adjustment process.

Comment 3: Four of the commenters support the Scup GRA Access program as proposed, with the exception of the requirement for GRA monitors to be carried by 100 percent of participating vessels, as this level exceeds observer requirements used by NMFS to monitor fishing activities in other regions, exceeds the Atlantic Coastal Cooperative Statistics Program (ACCSP) standards, and may result in a significant economic burden on the industry. The comment from the Council contains a request for 20-percent coverage. Two of these four commenters also express concern that if there are not enough GRA monitors available to meet the potential demand, NMFS may deny access to qualified vessels to the GRAs. Another commenter supports the proposed rule but provided recommendations regarding the administration of the Scup GRA Access Program, including the process of placing monitors on vessels, Vessel Monitoring System (VMS) reporting requirements, and action to be taken by NMFS when the discard triggers are met.

Response: The Scup GRA Access Program, both as recommended by the Council, and as proposed, has been disapproved. Under the existing 100-percent observer coverage program, a maximum of 72 vessels are expected to apply for an authorization letter (based on the average number of vessels making directed *Loligo* trips from 1996 through 1999) and the maximum number of trips would be 209. The actual total number of trips required to carry an observer under the existing program would vary, depending upon the individual decisions of vessel owners regarding the potentially increased profitability of fishing in the GRAs versus additional observer costs. NMFS anticipates that the Scup GRA Exemption Program, in combination with the Center's upcoming study on 5 3/4-inch (14.6-cm) square mesh cylinders described above, will facilitate the collection of information necessary to evaluate the effectiveness of gear modifications in reducing scup bycatch in the fisheries for non-exempt species (*Loligo*, black sea bass, and silver hake (whiting)).

Comment 4: Four of the commenters express opposition to the requirement for each participating vessel to pay for the full cost of carrying a GRA monitor or observer. Two of the four commenters included the recommendation that if NMFS does not pay the costs of monitors, NMFS should devise a method to spread the cost of GRA monitor coverage equally among all vessels participating in the GRAs. The

other two commenters state that they could support a nominal fee to cover the costs of Scup GRA monitors if the amount is reasonable for the services provided, and if the required number of observed trips is the number necessary to generate a statistically sound estimate of scup discards.

Response: The Scup GRA Exemption Program, which was requested by the industry to provide NMFS more complete data to evaluate the effectiveness of gear modifications in reducing discards, is dependent on observer coverage. The provision that vessels pay for observers was discussed at the August 2002 Council meeting.

As indicated above, the cost of one at-sea observer day would be \$1,150. This cost would apply to all participating vessels, so a cost-sharing arrangement would not be appropriate. The \$1,150 per day cost accounts for the total program costs per at-sea observer day, including administrative and other costs associated with the observer program. The Center has recommended 100-percent observer coverage due to the inter-annual and spatial variability in the co-occurrence of scup and *Loligo*.

Classification

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

This action establishes annual quotas for the summer flounder, scup, and black sea bass fisheries and possession limits for the commercial scup fishery. If implementation of the specifications is delayed, NMFS will be prevented from carrying out its function of preventing overfishing of these three species. The fisheries covered by this action will begin making landings on January 1, 2004. If a delay in effectiveness is required, and a quota were to be harvested during a delayed effectiveness period, the lack of effective quota specifications would prevent NMFS from closing the fishery. The scup and black sea bass fisheries are expected to be active at the start of the fishing season in 2004. In addition, the Delaware summer flounder fishery would be open for fishing but in a negative quota situation. This likely would result in large overages that would have distributional effects on other quota periods and might potentially disadvantage some gear sectors. Therefore, the Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for this rule.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a).

The FRFA incorporates the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Eight comments were received on the measures contained in the proposed rule. The commenters did not refer specifically to the IRFA, but five of the commenters discussed the economic impacts on small entities, especially as they relate to scup observer coverage. NMFS has disapproved the Scup GRA Access Program and instead maintains the Scup GRA Exemption Program as implemented in 2003. No changes to the proposed rule were required to be made as a result of public comments. For a summary of the comments received, refer to the section above titled "Comments and Responses."

Description and Estimate of Number of Small Entities to which Rule Will Apply

The categories of small entities likely to be affected by this action include commercial and charter/party vessel owners holding an active Federal permit for summer flounder, scup, or black sea bass, as well as owners of vessels that fish for any of these species in state waters. The Council estimates that the 2004 quotas could affect 2,122 vessels that held a Federal summer flounder, scup, and/or black sea bass permit in 2002. However, the more immediate impact of this rule will likely be felt by the 1,041 vessels that actively participated (i.e., landed these species) in these fisheries in 2002.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

Economic impacts are being minimized to the extent practicable with the quota specifications being implemented in this final rule, while being consistent with the target fishing mortality rates or target exploitation rates specified in the FMP. Specification of commercial quotas and possession limits is constrained by the conservation objectives of the FMP, and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The economic analysis assessed the impacts of the various management alternatives. In the Environmental Assessment (EA), the no action alternative is defined as follows: (1) No proposed specifications for the 2004 summer flounder, scup, and black sea

bass fisheries would be published; (2) the indefinite management measures (minimum sizes, bag limits, possession limits, permit and reporting requirements, etc.) would remain unchanged; (3) there would be no quota set-aside allocated to research in 2004; (4) the existing GRA regulations would remain in place for 2004; and (5) there would be no specific cap on the allowable annual landings in these fisheries (i.e., there would be no quota). Implementation of the no action alternative would be inconsistent with the goals and objectives of the FMP, its implementing regulations, and the Magnuson-Stevens Act. In addition, the no action alternative would substantially complicate the approved management program for these fisheries, and would very likely result in overfishing of the resources. Therefore, the no action alternative is not considered to be a reasonable alternative

to the preferred action and is not analyzed in the EA/RIR/IRFA/FRFA.

Alternative 1 (preferred) consists of the harvest limits proposed by the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) for summer flounder, scup, and black sea bass. Alternative 2 consists of the most restrictive quotas (i.e., lowest landings) considered by the Council and the Board for all of the species. Alternative 3 consists of the least restrictive quotas (i.e., highest landings) considered by the Council and Board for all three species. Although Alternative 3 would result in higher landings for 2004, it would also likely exceed the biological targets specified in the FMP.

Table 7 evaluates three alternative combinations of summer flounder, scup, and black sea bass landings (commercial and recreational).

TABLE 7. COMPARISON (IN MILLION LB) OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED

| | 2004 Initial TAL | 2004 RSA | 2003 Commercial Quota Overage | 2004 Final Adjusted Commercial Quota | 2004 Preliminary Recreational Harvest Limit |
|--|------------------|----------|-------------------------------|--------------------------------------|---|
| Quota Alternative 1 (Preferred) | | | | | |
| Summer Flounder Preferred Alternative | 28.20 | 0.17 | 0.64 | 16.22 | 11.21 |
| Scup Preferred Alternative (Status quo) | 16.50 | 0.16 | 0.00 | 12.35 | 3.99 |
| Black Sea Bass Preferred Alternative | 8.00 | 0.13 | 0.09 | 3.77 | 4.01 |
| Quota Alternative 2 (Most Restrictive Preferred) | | | | | |
| Summer Flounder Alternative 2 (Status Quo) | 23.30 | 0.17 | 0.64 | 13.28 | 9.25 |
| Scup Alternative 2 | 11.00 | 0.16 | 0.00 | 8.06 | 2.78 |
| Black Sea Bass Alternative 2 (Status Quo) | 6.80 | 0.13 | 0.09 | 3.18 | 3.40 |
| Quota Alternative 3 (Least Restrictive) | | | | | |
| Summer Flounder Alternative 3 | 30.10 | 0.17 | 0.05 | 17.36 | 11.97 |
| Scup Alternative 3 | 22.00 | 0.16 | 0.00 | 16.64 | 5.20 |
| Black Sea Bass Alternative 3 | 8.90 | 0.13 | 0.09 | 4.21 | 4.47 |

In summary, the 2004 commercial quotas and recreational harvest limits contained in the Preferred Alternative would result in substantial increases in the summer flounder and black sea bass landings and a small increase in scup landings, relative to 2003; percentage changes associated with each alternative are discussed in the proposed rule. The measures contained in the Preferred Alternative were chosen because they provide for the maximum level of landings that still achieve the fishing mortality and exploitation targets specified in the FMP. While the commercial quotas and recreational harvest limits specified in Alternative 3 would provide for even larger increases in landings and revenues, they would not achieve the fishing mortality and exploitation targets specified in the FMP.

The possession limits for scup were chosen in part because they are intended to provide for economically viable fishing trips that will be equitably distributed over the entire quota period.

The economic effects of the existing GRAs will not change as a result of this final rule. As indicated in the 2003 final rule to implement the Scup GRA Exemption Program, it is expected that individual vessels will assess changes in costs and revenues to their operations before they participate in this program. The increase in the cost of an at-sea observer day, as noted above, will understandably be a factor in a vessel owner's decision to participate in the Scup GRA Exemption Program.

Finally, the revenue decreases associated with the RSA program are expected to be minimal, and are expected to yield important long-term benefits associated with improved

fisheries data. It should also be noted that fish harvested under the RSAs would be sold, and the profits would be used to offset the costs of research. As such, total gross revenue to the industry would not decrease substantially if the RSAs are utilized.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 8, 2004.

Rebecca Lent,

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

[FR Doc. 04-807 Filed 1-9-04; 4:16 pm]

BILLING CODE 3510-22-S