

NMFS will proceed with preparation of a draft SEIS and proposed rule, incorporating comments received during the comment period associated with this NOI as appropriate. The draft EIS and proposed rule will include additional opportunities for public comment. NMFS anticipates completing this amendment and any related documents by June 1, 2004.

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

Dated: November 25, 2003.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 031119283-3283-01; I.D. 110703A]

RIN 0648-AQ80

#### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; 2004 Specifications; 2004 Research Set-Aside Projects

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes specifications for the 2004 summer flounder, scup, and black sea bass fisheries. The implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) require NMFS to publish specifications for the upcoming fishing year for each of the species and to provide an opportunity for public comment. NMFS requests comment on proposed management measures for the 2004 summer flounder, scup, and black sea bass fisheries. The intent of this action is to establish 2004 harvest levels and other measures to attain the target fishing mortality (F) or exploitation rates, as specified for these species in the FMP. In addition, NMFS has conditionally approved three research projects for the harvest of the quota that has been recommended by the Council to be set aside for research purposes. In anticipation of receiving applications for Experimental Fishing Permits (EFPs) to conduct this research, the Assistant

Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the activities authorized under the EFPs issued in response to the approved Research Set-Aside (RSA) projects would be consistent with the goals and objectives of the FMP. However, further review and consultation may be necessary before a final determination is made to issue any EFP.

**DATES:** Comments on this proposed rule must be received on or before December 15, 2003.

**ADDRESSES:** Copies of the specifications document, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and other supporting documents for the specifications 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>. Written comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments—2004 Summer Flounder, Scup, and Black Sea Bass Specifications." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

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

As required by the FMP, a Monitoring Committee for each species, made up of members from NMFS, the Commission, and both the Mid-Atlantic and New England Fishery Management Councils, is required to review annually the best available scientific information and to recommend catch limits and other management measures that will achieve the target F or exploitation rate for each fishery. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) then consider the Monitoring Committees' recommendations and any public comment and make their own recommendations. While the Board action is final, the Council's recommendations must be reviewed by NMFS to assure that they comply with FMP objectives. The Council and Board made their annual recommendations at a joint meeting held August 4-7, 2003.

##### Explanation of Research Set-Aside

In 2001, regulations were implemented under Framework Adjustment 1 to the FMP to allow up to 3 percent of the Total Allowable Landings (TAL) for each of the species to be set aside each year for scientific research purposes. For the 2004 fishing year, a Request for Proposals was published in January 2003 to solicit research proposals based upon the research priorities that were identified by the Council (68 FR 3864, January 27, 2003). The deadline for submission of proposals was March 28, 2003. Three applicants were notified in August 2003 that their research proposals had received favorable preliminary review. For informational purposes, this proposed rule includes a statement

indicating the amount of quota that has been preliminarily set aside for research purposes, as recommended by the Council and Board, and a brief description of the three RSA projects. The RSA amounts may be adjusted in the final rule establishing the annual specifications for the summer flounder, scup, and black sea bass fisheries or, if the total amount of the quota set-aside is not awarded, NMFS will publish a notice in the **Federal Register** to restore the unused RSA amount to the applicable TAL.

For 2004, three RSA projects have been conditionally approved by NMFS, and are currently awaiting award by the NOAA Grants Office. The total RSA quota, approved by the Council and Board, allocated for all three projects are: 174,750 lb (79 metric tons (mt)) of summer flounder; 160,000 lb (73 mt) of scup; 134,792 lb (61 mt) of black sea bass; 281,250 lb (128 mt) of *Loligo* squid; and 297,750 lb (135 mt) of bluefish.

The University of Rhode Island submitted a proposal to develop a fishery-independent scup survey that utilizes unvented fish traps fished on hard bottom areas in southern New England waters to characterize the size composition of the scup population. Survey activities would be conducted from May 1 through November 30, 2004, at six rocky bottom study sites located offshore, where there is a minimal scup pot fishery and no active trawl fishery. One vessel would conduct the project. Sampling would occur off the coasts of Rhode Island and southern Massachusetts. The RSA allocated for this project is 12,292 lb (5.6 mt) of black sea bass and 40,000 lb (18 mt) of scup.

The National Fisheries Institute and Rutgers University submitted a proposal to conduct a second year of work on the development/refinement of a commercial vessel-based survey program in the Mid-Atlantic region that tracks the migratory behavior of selected recreationally and commercially important species. Information gathered during this project would supplement the NMFS finfish survey databases and include development of ways to better evaluate how seasonal migration of fish in the Mid-Atlantic influences stock abundance estimates. One vessel would conduct research trawl survey work in the Mid-Atlantic along six offshore transects near Alvin, Hudson, Wilmington, Baltimore, and Washington Canyons. Up to 16, 2-hour tows would be conducted among 10 sites along each transect from 45 to 225 fathoms (82 to 411 meters). The Baltimore and Hudson Canyons transects would be surveyed in January and May and all six transects

would be surveyed in March.

Additional transects may be conducted if necessary. Approximately 20 vessels operating from Rhode Island to North Carolina would participate in the project over the period of January 1 through December 31, 2004. The RSA allocated for the project is 74,750 lb (40 mt) of summer flounder; 120,000 lb (54 mt) of scup; 281,250 lb (128 mt) of *Loligo* squid; 51,000 lb (23 mt) of black sea bass; and 104,816 lb (48 mt) of bluefish.

The Cornell Cooperative Extension of Suffolk County, New York, submitted a proposal to evaluate fish escapement from certain gear and fish behavior of black sea bass, and is intended to enhance fishery information relative to the black sea bass pot fishery in the Mid-Atlantic region. With the use of experimental pots and underwater video, various escape vent configurations would be investigated. The project would also explore black sea bass mortality in pots left fishing during closed periods. Additionally, a sea sampling and dockside sampling program for black sea bass that supplements the NMFS black sea bass tagging program would be implemented. One vessel would conduct the project, and sampling would occur off Long Island, New York, from April 1 through December 31, 2004. The RSA allocated for the project is 71,500 lb (32 mt) of black sea bass.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

#### Explanation of Quota Adjustments Due to Quota Overages

This proposed rule calculates commercial quotas based on the proposed TALs and Total Allowable Catches (TACs) and the formulas for allocation contained in the FMP. In 2002, NMFS published final regulations to implement a regulatory amendment (67 FR 6877, February 14, 2002) that revised the way in which the commercial quotas for summer flounder, scup, and black sea bass are adjusted if landings in any fishing year exceed the quota allocated (thus resulting in a quota overage). If NMFS approves a different TAL or TAC at the final rule stage, the commercial quotas will be recalculated based on the formulas in the FMP. Likewise, if new information indicates that overages have occurred and deductions are necessary, NMFS will publish notice of the adjusted quotas in the **Federal Register**.

NMFS anticipates that the information necessary to determine whether overage deductions are necessary will be available by time of publication of the final rule to implement these specifications. The commercial quotas contained in this proposed rule for summer flounder, scup, and black sea bass do not reflect any deductions for overages. The final rule, however, will contain quotas that have been adjusted consistent with the procedures described above and contained in the regulatory amendment. Accordingly, landings information will be based upon: (1) Landings reported for the period January 1–October 31, 2003; (2) landings from the period November 1–December 31, 2002; and (3) late reported landings for the period January 1–October 31, 2002.

#### Summer Flounder

The FMP specifies a target fishing mortality rate (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 status of the summer flounder stock is evaluated annually. The most recent stock assessment, updated by the Northeast Fisheries Science Center (NEFSC) Southern Demersal Working Group in June 2003, indicated that the summer flounder stock is not overfished and overfishing is not occurring, according to the definitions in the FMP. This conclusion was derived from the fact that, in 2002, the estimated total stock biomass of 124 million lb (56,246 mt) is 5 percent above the biomass threshold of 117.3 million lb (53,200 mt) under which the stock is considered overfished ( $\frac{1}{2}B_{msy}$ ), and the estimated F of 0.23 was below the FMP overfishing definition of  $F=F_{max}=0.26$ . In addition, spawning stock biomass (SSB) has increased steadily from 20.5 million lb (9,303 mt) in 1993 to 93 million lb (42,185 mt) in 2002, the highest value in the time series. Although the stock is no longer considered overfished, additional rebuilding is necessary because the Magnuson-Stevens Act requires that stocks be rebuilt to the level that produces maximum sustainable yield on a continuing basis, *i.e.*, 234.6 million lb (106,400 mt) for summer flounder.

The Summer Flounder Monitoring Committee reviewed the stock status and recommended a TAL of 28.2 million lb (12,791 mt), an increase of 21 percent relative to the 2003 TAL. The Monitoring Committee determined that this TAL would have at least a 50-percent probability of achieving the

$F_{\text{target}}$  (0.26) that is specified in the FMP, if the 2003 TAL and assumed discard levels are not exceeded. The TAL associated with the target  $F$  is allocated 60 percent to the commercial sector and 40 percent to the recreational sector; therefore, the initial TAL would be allocated 16.92 million lb (7,675 mt) to the commercial sector and 11.28 million lb (5,117 mt) to the recreational sector. The commercial quota is then allocated to the coastal states based upon percentage shares specified in the FMP.

The Council and Board adopted the Summer Flounder Monitoring Committee's recommendation. The Council and Board also agreed to set aside 174,750 lb (79.3 mt) of the summer flounder TAL for research activities. After deducting the RSA, the TAL would be 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).

In addition, the Commission is expected to maintain the voluntary measures currently in place to reduce regulatory discards that occur as a result of landing limits established by the states. The Commission established a system whereby 15 percent of each state's quota would be voluntarily set aside each year to enable vessels to land an incidental catch allowance after the directed fishery 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 also ensuring that the state's overall quota is not exceeded. These Commission set-asides are not included in any tables in this document, because NMFS does not have authority to establish such subcategories.

NMFS proposes to implement the 28.2-million lb (12,791-mt) TAL with a 174,750-lb (79.3-mt) RSA, as recommended by the Council and Board. The 11.21-million lb (5,085-mt) recreational harvest limit would be allocated on a coastwide basis. The commercial quota would be allocated to the states as shown in Table 1. Table 1 presents the allocations by state, with and without the commercial portion of the 174,750-lb (79.3-mt) RSA deduction. These state quota allocations are preliminary and are subject to a reduction if there are overages of a state's 2003 quota (using the landings information and procedures described earlier). Any commercial quota adjustments will be published in the **Federal Register** in the final rule implementing these specifications.

TABLE 1.—2004 PROPOSED INITIAL SUMMER FLOUNDER STATE COMMERCIAL QUOTAS

State	Percent share	Commercial quota		Commercial quota less RSA	
		lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
ME .....	0.04756	8,047	3,650	7,997	3,628
NH .....	0.00046	78	35	77	35
MA .....	6.82046	1,154,022	523,461	1,146,871	520,217
RI .....	15.68298	2,653,560	1,203,647	2,637,117	1,196,188
CT .....	2.25708	381,898	173,228	379,531	172,154
NY .....	7.64699	1,293,871	586,896	1,285,853	583,259
NJ .....	16.72499	2,829,868	1,283,620	2,812,332	1,275,665
DE .....	0.01779	3,010	1,365	2,991	1,357
MD .....	2.03910	345,016	156,498	342,878	155,528
VA .....	21.31676	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
Total .....	100.00001	16,920,002	7,674,862	16,815,152	7,627,303

<sup>1</sup> Kilograms are as converted from pounds and do not add to the converted total due to rounding.

## Scup

Scup was most recently assessed at the 35th Northeast Regional Stock Assessment Review Committee (SARC 35) in June 2002. SARC 35 concluded that scup are no longer overfished, but stock status with respect to overfishing cannot currently be evaluated, due to a lack of reliable discard estimates and information regarding the length composition of scup landings and discards. Scup SSB is increasing. The NEFSC spring survey 3-year average (2001 through 2003) for scup SSB was 3.31 kg/tow, which is about 19 percent higher than the threshold that defines the stock as overfished (2.77 kg/tow).

SARC 35 indicated that relative exploitation rates on scup have declined in recent years, although the absolute value of  $F$  cannot be determined. Overall, most recent scup survey observations indicate strong recruitment and some rebuilding of age structure.

SARC 35 noted that the stock can likely sustain modest increases in catch, but that such increases should be taken with due consideration of the uncertainties associated with the stock status determination.

The target exploitation rate for scup for 2004 is 21 percent. The FMP specifies that the 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 proposed scup specifications for 2004 are based on an exploitation rate

in the rebuilding schedule that was approved when scup was added to the FMP in 1996, prior to passage of the Sustainable Fisheries Act (SFA). Subsequently, to comply with the SFA amendments to the Magnuson-Stevens Act, the Council prepared Amendment 12, which proposed to maintain the existing rebuilding schedule for scup established by Amendment 8. On April 28, 1999, NMFS disapproved that rebuilding plan for scup because the rebuilding schedule did not appear to be sufficiently risk-averse. NMFS advised the Council that the exploitation rate reflects the overfishing definition (converted to an  $F$  rate) which is conceptually sound and supported by NMFS. Therefore, for the short term, the proposed scup specifications for 2004 are based on an exploitation rate of 21 percent. NMFS believes that the long-term risks associated with the disapproved rebuilding plan are not

applicable to the proposed specifications since they apply only for one fishing year and will be reviewed, and modified as appropriate, by the Council and NMFS annually. The scup stock has shown signs of significant rebuilding and is no longer overfished. It is, therefore, not necessary for 2004 to deviate from the specified exploitation rate. Furthermore, setting the scup specifications using an exploitation rate of 21 percent is a more risk-averse approach to managing the resource than not setting any specifications until the Council submits, and NMFS approves, a revised rebuilding plan that complies with all Magnuson-Stevens Act requirements.

The Scup Monitoring Committee reviewed the available data in making its recommendation to the Council. The Scup Monitoring Committee recommended a scup TAC of 13.15 million lb (5,965 mt), and a TAL of 11.0 million lb (4,990 mt), *i.e.*, a 33-percent reduction from the 2003 TAL. The Council and Board rejected the Monitoring Committee's TAC and TAL recommendations, and instead adopted an 18.65-million lb (8,460-mt) TAC and a 16.5-million lb (7,484-mt) TAL (*i.e.*, the same amounts as implemented in 2003). The reduction proposed by the Monitoring Committee was in response to lower survey biomass index in the spring 2003 survey than in the spring 2002 survey. However, the reference point measure specified in the FMP is

a three-year moving average of the survey biomass index rather than a single index data point. The rationale of the Council and the Board for the rejection of the Monitoring Committee recommendation was based on a comparison of the three-year moving average biomass index calculated this year (3.31 kg/tow) compared with the index value calculated last year (3.30 kg/tow). Because the value for 2001 through 2003 is slightly higher than the value for 2000 through 2002, the Council did not support a recommendation for a 33-percent decrease in the scup quota. NMFS is proposing to implement the Council's and Board's TAC/TAL recommendation because it is considered likely to achieve the 21-percent exploitation rate that is required by the FMP.

Using the sector allocation specified in the FMP (commercial—78 percent; recreational—22 percent), the Council's recommendation would result in a commercial TAC of 14.55 million lb (6,600 mt) and a recreational TAC of 4.10 million lb (1,860 mt). Using the same commercial and recreational discard estimates used for the 2003 specifications (*i.e.*, 2.08 million lb (943 mt) for the commercial sector, and 70,000 lb (32 mt) for the recreational sector), the Scup MC recommendation would result in an initial commercial TAL of 12.47 million lb (5,656 mt) and recreational harvest limit of 4.03 million lb (1,828 mt). The Council and Board

also agreed to set aside 160,000 lb (73 mt) of the scup TAL for research activities. The TAL, after deducting the 160,000-lb (73-mt) RSA, would result in a commercial quota of 12.35 million lb (5,600 mt) and a recreational harvest limit of 3.99 million lb (1,812 mt).

NMFS is proposing to retain the current Winter period possession limits of 15,000 lb (6.8 mt) for Winter I (January–April), with a reduction to 1,000 lb (454 kg) when 80 percent of the Winter I quota is projected to be harvested, and 1,500 lb (680 kg) for Winter II (November–December). Public comments are requested on these proposed measures.

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 2.

TABLE 2.—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
1,500 .....	680	0–499,999	0–227	0	0	1,500	680
1,500 .....	680	500,000–999,999	227–454	500	227	2,000	907
1,500 .....	680	1,000,000–1,499,999	454–680	1,000	454	2,500	1134
1,500 .....	680	1,500,000–1,999,999	680–907	1,500	680	3,000	1361
1,500 .....	680	2,000,000–2,500,000	907–1,134	2,000	907	3,500	1587

Table 3 presents the 2004 commercial allocation recommended by the Council with, and without, the 160,000-lb (73-mt) RSA deduction. These 2004

allocations are preliminary and may be subject to downward adjustment due to 2003 overages in the final rule implementing these specifications,

using the procedures for calculating overages described earlier.

TABLE 3.—2004 PROPOSED INITIAL TOTAL ALLOWABLE CATCH, COMMERCIAL SCUP QUOTA, AND POSSESSION LIMITS, IN LB (KG)

Period	Percent	TAC	Discards	Commercial quota	Commercial quotas less RSA	Possession limits
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)	<sup>1</sup> 15,0001 (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)	( <sup>3</sup> ) .....

TABLE 3.—2004 PROPOSED INITIAL TOTAL ALLOWABLE CATCH, COMMERCIAL SCUP QUOTA, AND POSSESSION LIMITS, IN LB (KG)—Continued

Period	Percent	TAC	Discards	Commercial quota	Commercial quotas less RSA	Possession limits
Winter II .....	15.94	2,319,270 (1,052,014)	331,522 (150,391)	1,987,718 (901,623)	1,967,825 (892,600)	1,500 (680)
Total <sup>2</sup> ....	100.00	14,550,000 (6,599,837)	2,080,000 (943,482)	12,470,000 (5,656,355)	12,345,200 (5,599,745)	..... .....

<sup>1</sup> The Winter I landing limit would drop to 1,000 lb (454 kg) upon attainment of 80 percent of the seasonal allocation.

<sup>2</sup> Totals subject to rounding error.

<sup>3</sup> Not applicable.

The Council and Board did not recommend any other changes to the existing commercial minimum mesh size, minimum mesh threshold possession limit, or the commercial minimum fish size. Therefore, these management measures are proposed to remain unchanged.

#### Scup Gear Restricted Areas (GRAs)—Request for Comments

In 2000, the 31st Stock Assessment Review Committee (SARC 31) emphasized the need to reduce scup mortality resulting from discards in the scup fishery and in other fisheries. In response to that recommendation, GRAs were established during the 2000 fishing year (65 FR 33486, May 24, 2000, and 65 FR 81761, Dec. 27, 2000) and modified for the 2001 fishing year (66 FR 12902, March 1, 2001). The GRAs prohibit trawl vessels from fishing for, or possessing, certain non-exempt species (*Loligo* squid, black sea bass, and silver hake (whiting)) when fishing with mesh smaller than that required to fish for scup during the effective periods (January 1 through March 15 for the Southern GRA, and November 1 through December 31 for the Northern GRA).

For 2003, the Council recommended allowing vessels to fish for non-exempt species with small mesh in the GRAs, provided they use specially modified trawl nets, and carry observers, consistent with Atlantic Coastal Cooperative Statistics Program observer standards. Instead, NMFS implemented an alternative program (the GRA Exemption Program), requiring 100-percent observer coverage for all vessels fishing with small mesh for non-exempt species in the GRAs, using the modified gear. This alternative imposed significantly fewer administrative and enforcement complexities, and was intended to provide more data to evaluate the effectiveness of the gear modifications (68 FR 60, January 2, 2003).

Since the final rule for the 2003 fishing year, the Council has reviewed a number of analyses conducted by

Council staff and others and noted that in some years the distribution of *Loligo* squid and scup overlapped, increasing the potential for scup discards. However, they were concerned that *Loligo* squid fishermen would be restricted from areas and during times when *Loligo* squid and scup did not co-occur. As such, the Council recommended a GRA Access Program, patterned after the program used to provide access to sea scallops in the groundfish closed areas in 1999 through 2001, that would allow small mesh fisheries to occur in the GRAs until a pre-determined level of scup discards was reached to trigger a closure to small mesh gear. The triggers for the Northern and Southern GRA would be 50,000 lb (22.68 mt) and 70,000 lb (31.75 mt) of scup discards, respectively. These were chosen by the Council as appropriate levels to indicate that discards had become significant and that the areas should be closed to small mesh fisheries. The Council recommended that the NMFS Northeast Fisheries Science Center determine the level of observer coverage necessary to provide an accurate estimate of scup discards with a high confidence level.

The Council recommended the following requirements of the GRA Access Program:

(1) All qualified vessels that wish to participate in the GRA Exemption Program must enroll in the program and obtain a Letter of Authorization from the Regional Administrator;

(2) All participating vessels must have installed on board an operational vessel monitoring system (VMS) unit;

(3) A vessel planning to fish in the GRAs must submit a report through the VMS e-mail messaging system of its intention to fish in the GRA prior to the 25th of the month before the month in which the anticipated trip(s) are to be taken. The report must include the following information: Vessel name and permit number; owner and operator's names; owner and operator's phone numbers; and number of trips

anticipated in the GRA during the month;

(4) In addition to the above advance notice for accessing the GRA, for the purpose of randomly selecting vessels to carry a NMFS-certified observer, a vessel must notify NMFS of its intention to fish in the GRA at least 5 working days prior to the date it intends to depart on each trip into a GRA. For each of these reports, vessels must submit the following information: Vessel name and permit number; owner and operator's names; owner and operator's phone numbers; date and time of departure; port of departure; and the specific GRA to be fished;

(5) A vessel which does not have a valid Coast Guard Inspection Sticker is deemed inadequate or unsafe for purposes of carrying a NMFS-certified observer and will be prohibited from participating in the Area Access Program until the vessel is inspected by the Coast Guard and receives its inspection sticker;

(6) On the day that the vessel leaves port to fish under the GRA Access Program, the vessel owner or operator must declare the vessel into the GRA Access Program through the VMS prior to leaving port;

(7) The vessel owner will be responsible for paying the cost of the observer; and

(8) The GRA Access Program for each area would end when the discard of scup was projected to be 50,000 lb (22.68 mt) for the Northern GRA and 70,000 lb (31.75 mt) for the Southern GRA. Termination of the GRA Access Program for each area will be made through notification in the **Federal Register**.

The Council recommended that once the triggers are reached and the GRAs are closed to small mesh fishermen, the existing GRA Exemption Program (described at 68 FR 60) resume.

NMFS proposes to implement the Council's recommendations regarding access to the GRAs as described above, with the exception of the resumption of the GRA Exemption program once a

discard trigger is met, the requirement to notify NMFS of the intention to fish in the GRA the month before the month in which the anticipated trip(s) are to be taken, and the random selection of vessels to carry a NMFS-certified observer. NMFS maintains that the purpose of the GRA Access Program should be to record data regarding the use and effectiveness of gear modifications employed by the participating vessels in attempts to reduce scup bycatch, and also to monitor scup discards so that the GRA Access Program can be discontinued when the trigger is reached. Also, because the trigger amount involves only scup that are discarded, only limited information must be collected under the GRA Access Program. The Northeast Fisheries Science Center has recommended that NMFS utilize individuals to serve as "scup GRA monitors," rather than NMFS-certified observers as required under the current regulations, to collect data on scup discards. A similar system exists for monitoring in the Atlantic sea scallop fishery. NMFS proposes that approved scup GRA monitors be placed on 100 percent of the vessels that participate in the GRA Access program. NMFS is seeking comment on the implementation of the proposed GRA Access Program and the use of NMFS-approved scup GRA monitors.

#### Black Sea Bass

Black sea bass was last assessed in June 1998 at SARC 27, which indicated that the species was overexploited and at a low biomass level. However, the best available current information on stock status indicates that the stock has increased in recent years and is no longer overfished. The SSB estimate for 2003 (using a 3-year moving average of 2001–2003) is 0.509 kg/tow, about 30 percent higher than the 2000–2002 average of 0.391 kg/tow.

For 2004, the target exploitation rate for black sea bass is 25 percent. The Black Sea Bass Monitoring Committee reviewed the stock status and the projections based upon these data and recommended that the TAL for 2004 be set at 8 million lb (3,629 mt), an

increase of almost 18 percent relative to the 2003 TAL. 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; therefore, the initial TAL would be allocated 3.92 million lb (1,778 mt) to the commercial sector and 4.08 million lb (1,851 mt) to the recreational sector. The Council and Board adopted this TAL, indicating that it would achieve the 25-percent exploitation rate, and agreed to set aside 134,792 lb (61 mt) for research activities. After deducting the RSA, the TAL would be 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). The Council and Board recommended that all other measures remain unchanged. NMFS proposes to implement the 8.0-million lb (3,629-mt) TAL with a 134,792-lb (61-mt) RSA, as recommended by the Council and Board. 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.

#### Classification

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

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble to this rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. A copy of the complete IRFA can be obtained from the Northeast Regional Office of NMFS (see ADDRESSES) or via the Internet at <http://www.nero.nmfs.gov>. A summary of the analysis follows.

The economic analysis assessed the impacts of the various management alternatives. In the 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.

Alternative 1 consists of the harvest limits proposed by the Council and 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.

First, a preliminary adjusted quota was calculated by deducting the RSA from the TAL. Then, the preliminary commercial quota overages for the 2003 fishing year were deducted from the initial 2004 quota alternatives. The quota overages were calculated according to the procedures described earlier, using available data as of September 2003. The resulting preliminary adjusted commercial quotas alternatives presented in Table 4 are provisional and may be further adjusted in the final rule implementing the 2004 specifications.

TABLE 4.—COMPARISON OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED  
[In million lb]

	2004 initial TAL	2004 RSA	2003 Commercial quota overage	2004 Preliminary adjusted com- mercial quota*	2004 Preliminary recreational harvest limit
<b>Quota Alternative 1 (Preferred)</b>					
Summer Flounder Preferred Alternative .....	*28.20	0.17	0.05	16.77	11.21
Scup Preferred Alternative (Status quo) .....	16.50	0.16	0.00	12.35	3.99

TABLE 4.—COMPARISON OF THE ALTERNATIVES OF QUOTA COMBINATIONS REVIEWED—Continued  
[In million lb]

	2004 initial TAL	2004 RSA	2003 Commercial quota overage	2004 Preliminary adjusted com- mercial quota*	2004 Preliminary recreational harvest limit
Black Sea Bass Preferred Alternative .....	8.00	0.13	0.00	3.86	4.01
<b>Quota Alternative 2 (Most Restrictive)</b>					
Summer Flounder .....	23.30	0.17	0.05	13.83	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	0.00	3.27	3.40
<b>Quota Alternative 3 (Least Restrictive)</b>					
Summer Flounder Alternative 3 .....	30.10	0.17	0.05	17.91	11.97
Scup Alternative 3 .....	22.00	0.16	0.00	16.64	5.20
Black Sea Bass Alternative 3 .....	8.90	0.13	0.00	4.30	4.47

\* Note that preliminary quotas are provisional and may change to account for overage of the 2003 quotas.

Table 5 presents the percent change associated with each of commercial quota alternatives (adjusted for overages and RSA) compared to the final adjusted quotas for 2003.

TABLE 5.—PERCENT CHANGE ASSOCIATED WITH ADJUSTED COMMERCIAL QUOTA ALTERNATIVES COMPARED TO 2003 ADJUSTED QUOTA

	Total changes including overages and RSA		
	Quota alternative 1 (preferred)	Quota alternative 2 (most restrictive)	Quota alternative 3 (least restrictive)
<b>Summer Flounder</b>			
Aggregate Change .....	+21.30	*+0.03	+29.55
<b>Scup</b>			
Aggregate Change .....	*+2.07	– 33.39	+37.52
<b>Black Sea Bass</b>			
Aggregate Change .....	+28.24	*+8.64	+42.86

\* Denotes status quo management measures. The status quo or “no action” measure for summer flounder, scup, and black sea bass refers to what most likely will occur in the absence of implementing the proposed regulation.

All vessels that would be impacted by this proposed rulemaking are considered to be small entities; therefore, there would be no disproportionate impacts between large and small entities. 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 proposed 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.

The Council estimated the total revenues derived from all species landed by each vessel during calendar year 2002 to determine a vessel's dependence and revenue derived from a particular species. This estimate provided the base from which to compare the effects of the proposed quota changes from 2003 to 2004.

The Council's analysis of the harvest limits in Alternative 1 (Preferred Alternative) indicated that these harvest levels would produce a revenue increase for 1,036 commercial vessels that are expected to be impacted by this rule. The remaining 5 vessels, which landed scup only, were projected to incur small revenue losses (*i.e.*, less

than 5 percent) due to the decrease in the adjusted scup quota. No vessels were expected to have revenue losses of greater than 5 percent.

The Council also analyzed changes in total gross revenue that would occur as a result of the quota alternatives. Assuming 2002 ex-vessel prices (summer flounder—\$1.51/lb; scup—\$0.66/lb; and black sea bass—\$1.73/lb), the 2004 quotas in Preferred Alternative 1 (after overages have been applied) would increase total summer flounder, scup, and black sea bass revenues by approximately \$4.4 million, \$165,000, and \$1.5 million, respectively, relative to 2003 revenues.

Assuming that the total ex-vessel gross revenue associated with the Preferred Alternative for each fishery is

distributed equally among the vessels that landed that species in 2002, the average increase in gross revenue per vessel associated with the preferred quota would be \$5,585 for summer flounder, \$331 for scup, and \$1,998 for black sea bass. The number of vessels landing summer flounder, scup, and black sea bass in 2002 was 796, 499, and 736, respectively.

The overall increase in gross revenue associated with the three species combined in 2004 compared to 2003 is approximately \$6.1 million (assuming 2002 ex-vessel prices) under the Preferred Alternative. If this amount is distributed equally among the 1,041 vessels that landed summer flounder, scup, and/or black sea bass in 2002, the average increase in revenue would be approximately \$5,842 per vessel.

The Council's analysis of the harvest limits of Alternative 2 (*i.e.*, the most restrictive harvest limits) indicated that these harvest limits would produce a revenue increase for 371 commercial vessels, primarily because a large proportion of their revenues were derived from black sea bass, and a revenue loss for the other 670 commercial vessels expected to be impacted by this rule. Assuming 2002 ex-vessel prices as described above, the 2004 quotas in Alternative 2 (after overages have been applied) would increase total summer flounder and black sea bass revenues by approximately \$6,600 and \$400,000, respectively, and decrease total scup revenues by approximately \$2.7 million, relative to 2003 revenues.

Assuming that the total ex-vessel gross revenue associated with Alternative 2 is distributed equally among the vessels that landed that species in 2002, the average change in gross revenue per vessel associated with Alternative 2 would be an \$8 increase for summer flounder, a \$5,343 decrease for scup, and a \$611 increase for black sea bass. The number of vessels landing summer flounder, scup, and black sea bass in 2002 was 796, 499, and 736, respectively.

The overall reduction in gross revenue associated with the three species combined in 2004 compared to 2003 is approximately \$2.2 million (assuming 2002 ex-vessel prices) under Alternative 2. If this amount is distributed equally among the 1,041 vessels that landed summer flounder, scup, and/or black sea bass in 2002, the average decrease in revenue would be approximately \$2,123 per vessel.

The Council's analysis of the harvest limits of Alternative 3 (*i.e.*, the least restrictive harvest limits) indicated that these harvest limits would produce a

revenue increase for all 1,041 commercial vessels. Assuming 2002 ex-vessel prices as described above, the 2004 quotas in Alternative 3 (after overages have been applied) would increase total summer flounder, scup, and black sea bass revenues by approximately \$6.2 million, \$3.0 million, and \$2.2 million, respectively, relative to 2003 revenues.

Assuming that the total ex-vessel gross revenue associated with Alternative 3 is distributed equally between the vessels that landed that species in 2002, the average increase in gross revenue per vessel associated with Alternative 3 would be \$7,748 for summer flounder, \$6,005 for scup, and \$3,032 for black sea bass. The number of vessels landing summer flounder, scup, and black sea bass in 2002 was 796, 499, and 736, respectively.

The overall increase in gross revenue associated with the three species combined in 2004 compared to 2003 is approximately \$11.4 million (assuming 2002 ex-vessel prices) under Alternative 3. If this amount is distributed equally among the 1,041 vessels that landed summer flounder, scup, and/or black sea bass in 2002, the average increase in revenue would be approximately \$10,947 per vessel.

The Council also prepared an analysis of the alternative recreational harvest limits. The 2004 recreational harvest limits were compared with previous years through 2002, the most recent year with complete recreational data.

Landing statistics from the last several years show that recreational summer flounder landings have generally exceeded the recreational harvest limits, ranging from a 5-percent overage in 1993 to a 122-percent overage in 2000. In 2001, summer flounder recreational landings were 11.64 million lb (5,280 mt), exceeding the harvest limit of 7.16 million lb (3,248 mt) by 63 percent. In 2002, recreational landings were 7.96 million lb (3,611 mt), 18 percent below the recreational harvest limit of 9.72 million lb (4,409 mt).

For summer flounder, the adjusted 2004 preferred recreational harvest limit of 11.21 million lb (5,085 mt) in Alternative 1 would be greater than the recreational harvest limits for the years 1993 through 2003. The adjusted summer flounder Alternative 2 recreational harvest limit of 9.25 million lb (4,196 mt) (the status quo alternative) would be less than 1 percent lower than the 2003 recreational harvest limit, and represents a 16-percent increase from 2002 recreational landings. The adjusted Alternative 3 recreational harvest limit of 11.97 million lb (5,430 mt) would be a 29-percent increase from the 2003

recreational harvest limit, and represents a 50-percent increase from 2002 landings. If Alternative 1, 2, or 3 is chosen, it is possible that more restrictive management measures may be required to prevent anglers from exceeding the 2004 recreational harvest limit, depending upon the effectiveness of the 2003 recreational management measures. More restrictive regulations could affect demand for party/charter boat trips. However, party/charter activity in the 1990s has remained relatively stable, so the effects may be minimal. Currently, neither behavioral or demand data are available to estimate how sensitive party/charter boat anglers might be to proposed fishing regulations. Overall, it is expected that positive social and economic impacts would occur as a result of the 21-percent increase in the recreational harvest limit, relative to 2003. The Council intends to recommend specific measures to attain the 2004 summer flounder recreational harvest limit in December 2003, and will provide additional analysis of the measures upon submission of its recommendations in early 2004.

Scup recreational landings declined over 89 percent for the period 1991 to 1998, then increased by 517 percent from 1998 to 2000. In 2002, recreational landings were 3.62 million lb (1,642 mt). Under Preferred Alternative 1 (the status quo alternative), the adjusted scup recreational harvest limit for 2004 would be 3.99 million lb (1,810 mt), less than 1 percent lower than the 2003 recreational harvest limit, and represents a 10-percent increase from 2002 recreational landings. The Alternative 2 scup recreational harvest limit of 2.78 million lb (1,261 mt) for 2004 would be 31 percent less than the 2003 recreational harvest limit, and 23 percent less than 2002 recreational landings. The Alternative 3 scup recreational harvest limit of 5.20 million lb (2,359 mt) in 2004 would be an increase of 30 percent from the 2003 recreational harvest limit and an increase of 44 percent from 2002 recreational landings. With Alternative 2, and possibly Alternative 1, more restrictive management measures might be required to prevent anglers from exceeding the 2003 recreational harvest limit, depending largely upon the effectiveness of the 2003 recreational management measures. As described above for the summer flounder fishery, the effect of greater restrictions on scup party/charter boats is unknown at this time. Although the proposed recreational harvest limit is approximately 20,000 lb (9.07 mt) less



than the adjusted limit for 2003, it is not likely that more effort controls (e.g., bag limits) will be required to constrain 2004 recreational landings. Overall, positive social and economic impacts are expected to occur as a result of the scup recreational harvest limit for 2004. The Council intends to recommend specific measures to attain the 2004 scup recreational harvest limit in December 2003, and will provide additional analysis of the measures upon submission of its recommendations early in 2004.

Black sea bass recreational landings increased slightly from 1991 to 1995. Landings decreased considerably from 1996 to 1999, and then substantially increased in 2000. In 2001 and 2002, recreational landings were 3.42 million lb (1,551 mt) and 4.46 million lb (2,023 mt), respectively. For the recreational fishery, the adjusted 2004 harvest limit under Alternative 1 is 4.01 million lb (1,558 mt), a 2-percent increase from the 2003 recreational harvest limit and a 10-percent decrease from 2002 recreational landings. Under Alternative 2, the 2004 recreational harvest limit would be 3.40 million lb (1,542 mt), a less than 1-percent decrease from the 2003 recreational harvest limit and a 23-percent decrease from 2002 recreational landings. As such, this alternative could cause some negative economic impacts due to decreased fishing opportunity, depending upon the effectiveness of the 2002 recreational black sea bass measures. The 2004 recreational harvest limit under Alternative 3 would be 4.47 million lb (2,027 mt), a 30-percent increase from the 2003 recreational harvest limit and a less than 1-percent decrease from 2002 recreational landings. Alternative 3 would likely result in positive economic impacts on the recreational fishery because of an increase in fishing opportunities. The Council intends to recommend specific measures to attain the 2004 black sea bass recreational harvest limit in December 2003, and will provide additional analysis of the measures upon submission of its recommendations early in 2004. Overall, positive social and economic impacts are expected to occur as a result of the preferred black sea bass recreational harvest limit for 2004.

The costs and benefits of allowing small mesh experimental nets to fish in the GRAs under the GRA Exemption Program were described in the proposed rule (67 FR 70904, November 27, 2002) and the final rule (68 FR 60, January 2, 2003) implementing the 2003 specifications. Those impacts are not repeated here. These costs and benefits could also be realized under the

proposed 2004 GRA Access Program. The costs would include gear changes to accommodate mesh modifications and fees for at-sea observer coverage; the benefits would be derived from an increase in *Loligo* squid landings. Thus, positive economic impacts on the *Loligo* squid fishery would be expected relative to the GRA measure without the small mesh experimental net provision. However, in order to participate in the 2004 GRA Access Program, vessels would have to comply with new requirements that are analyzed below.

All vessels participating in the GRA Access Program must have installed on board an operational VMS unit. VMS is a comprehensive information system that serves as an important enforcement and catch monitoring tool, and has been in place in New England for the past several years for Atlantic sea scallops, Northeast multispecies, and Atlantic herring. In New England, this type of system has been employed to replace the Days-at-Sea call-in system, provide accurate location data, and provide information used in other analyses. VMS requirements are located at 50 CFR 648.9.

It is estimated that the initial maximum cost of a VMS to vessel owners will be approximately \$5,000 to \$6,000 per vessel. The annual maintenance fee for the VMS system is approximately \$1,800 per vessel. Based on the number of vessels that had directed *Loligo* squid trips (i.e., greater than 50 percent of the total landings were *Loligo* squid) in the GRAs (1996–1999) it is expected that up to 72 vessels may participate in this program. The VMS monitoring system currently employed by NMFS to monitor vessel activity for the Atlantic Sea Scallop FMP, Northeast Multispecies FMP, and Atlantic Herring FMP is expected to be sufficient to monitor additional vessel activity (up to 72 more vessels) proposed under the GRA Access Program. Therefore, the implementation of the VMS system under the GRA Access Program is not expected to increase government costs.

A survey of small Northeast fishing vessels (less than 65 feet in length) whose primary gear was otter trawl and reported landings in New England indicated that average total operating cost per trip for small trawlers in 1996 was \$267. A survey of large Northeast fishing vessels (greater than 65 feet in length) whose primary gear was otter trawl and reported landings in New England in 1997 indicated that the average total operating cost per trip for large trawlers in 1997 was \$2,608. For both surveys, trip expenses were divided into eight categories (fuel, oil,

ice, food and water, lumpers fees, supplies, consignment fees, and other expenses). More detail on the surveys is presented in Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP.

The utilization of the proposed VMS system under the GRA Access Program may substantially increase operating costs and decrease profits for vessels that elect to participate in the program. Nevertheless, participation in this program is not mandatory and it is expected that individual vessels will assess changes in costs and revenues to their operations before they participate in this program. If a vessel owner chooses to participate in the program, it is likely that the additional costs of carrying an observer and using the modified gear would be offset by increased landings of non-exempt species (*Loligo* squid, silver hake (whiting), and black sea bass). As such, an increase in *Loligo* landings relative to 2003 would have positive economic impacts on the *Loligo* fishery, relative to the status quo. However, it is not possible to assess the exact monetary value associated with the additional harvest because quantitative data on these nets are limited.

The cost of one at-sea observer day for a NMFS-certified observer is approximately \$1,150, which would be paid by the vessel owner intending to fish in the GRAs. Fishing trips to the Southern GRA are expected to last approximately 4 days, and trips to the Northern GRA are expected to last approximately 3 days. Therefore, the total observer costs are estimated to be \$4,600 and \$3,450 for trips in the Southern and Northern GRAs, respectively. The observer costs would be in addition to operating costs. The average ex-vessel value (1996–1999) of *Loligo* in directed trips in the Southern GRA is \$24,013 and in the Northern GRA was \$4,456. These values are based on the average landings of *Loligo* from 1996–1999 in the GRAs, and the average ex-vessel value (1996–1999) of *Loligo*, adjusted to 2001 dollars. Therefore, the requirement to carry at-sea observers would increase vessel operating costs. However, larger vessels fishing in the Southern GRA would be most likely to recoup any increased operating costs due to their greater harvest capacity. The observer requirement is anticipated to impose a larger negative impact on the profits of vessels fishing in the Northern GRA given the average ex-vessel value of *Loligo* in directed trips, as described above. However, as described above, because only limited information must be collected under the GRA Access Program, NMFS is

proposing to use approved scup GRA monitors rather than NMFS-certified observers. This likely would reduce the costs associated with data collection for each participating vessel. Individual vessels would need to assess changes in costs and revenues upon their operations before participating in the non-mandatory Scup GRA Access Program. An analysis of Vessel Trip Report (VTR) data (1996–1999) indicates that, on average, 72 vessels had directed *Loligo* trips (i.e., greater than 50 percent of the total landings were *Loligo*) in the GRAs, for a total of 209 trips. Assuming that all of these vessels choose to fish the same number of trips in the GRAs, a 100-percent observer requirement would mean that approximately 209 trips would be required to carry observers in the GRAs. The actual total number of trips required to carry an observer would vary, depending upon the individual decisions of vessel owners regarding the potentially increased profitability of fishing in the GRAs versus additional observer costs.

The proposed (status quo) commercial scup possession limits for Winter I (15,000 lb (6.8 mt) per trip) and Winter II (1,500 lb (680 kg) per trip) were chosen as an appropriate balance between the economic concerns of the industry (e.g., landing enough scup to make the trip economically viable) and the need to ensure the equitable distribution of the quota over the period. The proposed Winter I possession limit was selected specifically to coordinate with the 15,000 lb (6.8 mt) per week possession limits recommended by the Commission to be implemented by most states while satisfying concerns about enforcement of possession limits. Changes in possession limits can impact profitability in various ways. These impacts would vary depending on fishing practices. These possession limits are expected to constrain commercial landings to the commercial TAL, and distribute landings equitably throughout the periods to avoid derby-style fishing effort and associated market gluts. According to anecdotal information potential price fluctuations occur as result of irregular supply. The recommended possession limits for Winter I would allow fishermen to determine when the best time for them to fish and further help to avoid market gluts and unsafe fishing practices. Because the Council determined that the status quo scup possession limits minimize negative economic impacts on the industry, alternatives to the proposed possession limits were not analyzed.

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 established through the annual specifications-setting process.

Framework 3 allows for the transfer of unused scup quota from Winter I to Winter II period. A complete description and impact analysis of the provision allowing the rollover of unused quota from Winter I to Winter II period is found in Framework 3. Overall it is anticipated that allowing the transfer of unused quota from Winter I to Winter II period will result in positive economic and social impacts to fishermen and communities as quota not landed in Winter I due to poor weather conditions, changes in the distribution of scup, or market conditions (i.e., low price) will not be lost. In addition, any scup regulatory discards which have occurred in Winter II (i.e., when the fishery closes early) can be converted into landings.

The summer flounder RSA allocation in the Preferred Alternative, if made available to the commercial fishery, could be worth as much as \$263,873 dockside, based on a 2002 ex-vessel price of \$1.51/lb. Assuming an equal reduction in fishing opportunity among all active vessels (i.e., the 796 vessels that landed summer flounder in 2002), this could result in a loss in potential revenue of approximately \$331 per vessel. Changes in the summer flounder recreational harvest limit as a result of the 174,750-lb (79-mt) RSA are not expected to be significant. The RSA would reduce the recreational harvest limit from 11.28 million lb (5,117 mt) to 11.21 million lb (5,085 mt). It is unlikely that the recreational possession, size, or seasonal limits would change as the result of the RSA allocation.

The scup RSA allocation in the Preferred Alternative, if made available to the commercial fishery, could be worth as much as \$105,600 dockside, based on a 2002 ex-vessel price of \$0.66/lb. Assuming an equal reduction in fishing opportunity for all active commercial vessels (i.e., the 499 vessels

that landed scup in 2002), this could result in a loss of potential revenue of approximately \$212 per vessel. Changes in the scup recreational harvest limit as a result of the RSA allocation would be insignificant. The 160,000-lb (73-mt) RSA would reduce the scup recreational harvest limit from 4.03 million lb (1,828 mt) to 3.99 million lb (1,812 mt). It is unlikely that scup recreational possession, size, or seasonal limits would change as the result of the RSA allocation.

The black sea bass RSA allocation in the Preferred Alternative, if made available to the commercial fishery, could be worth as much as \$233,190 dockside, based on a 2002 ex-vessel price of \$1.73/lb. Assuming an equal reduction in fishing opportunity for all active commercial vessels (i.e., the 736 vessels that caught black sea bass in 2002), this could result in a loss of approximately \$317 per vessel. Changes in the black sea bass recreational harvest limit as a result of the RSA allocation would be insignificant. The 134,792-lb (61-mt) RSA would reduce the black sea bass recreational harvest limit from 4.08 million lb (1,851 mt) to 4.01 million lb (1,819 mt). It is unlikely that the black sea bass possession, size, or seasonal limits would change as the result of this RSA allocation.

Overall, long-term benefits are expected as a result of the RSA program due to improved fisheries data and information. If the total amount of quota set-aside is not awarded for any of the three fisheries, the unused set-aside amount will be restored to the appropriate fishery's TAL.

In summary, the 2004 commercial quotas and recreational harvest limits contained in the Preferred Alternative would result in substantially higher summer flounder and black sea bass landings and a small increase in scup landings, relative to 2003. The proposed specifications contained in the Preferred Alternative were chosen because they allow for the maximum level of landings, yet 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 proposed 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 proposed rule. The proposed action would allow small-mesh vessels to fish for non-exempt species in the GRAs until a pre-determined level of scup discards is reached to trigger a closure to small mesh gear. Although the Scup GRA Access Program does impose additional voluntary compliance and operating costs, this alternative is expected to minimize both the reporting burden on small entities and the administrative support required of NMFS to oversee the program. The intent of the observer coverage is to record data regarding the use and effectiveness of any gear modifications employed by the observed vessels in attempts to reduce scup bycatch, and also to monitor scup discards so that the GRA Exemption Program can be discontinued when the trigger is reached.

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 if the RSAs are utilized.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is estimated to average 5 seconds per response for automatically-transmitted data from a VMS (transmitted 24 times per day), 10 minutes per response for the daily transmission of discard data collected by the scup GRA monitor, 2 minutes per response for a request for GRA authorization, 2 minutes for a notification at least 5 days prior to departing on a fishing trip to a GRA, and 2 minutes for a report declaring into the fishery on the day the vessel leaves port to fish under the GRA Access Program.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate;

ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Patricia A. Kurkul (*see ADDRESSES*), and by e-mail to *David.Rostker@omb.eop.gov*, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 21, 2003.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be 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 § 648.14, paragraph (a)(122) is revised to read as follows:

##### § 648.14 Prohibitions.

(a) \* \* \*

(122) Fish for, catch, possess, retain or land *Loligo* squid, silver hake, or black sea bass in or from the areas and during the time periods described in § 648.122(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are obstructed or constricted as specified in § 648.122 and § 648.123(a), unless the nets or netting are stowed in accordance with § 648.23(b), or unless the vessel is in compliance with the Gear Restricted Area Access Program requirements specified at § 648.122(d).

3. In § 648.122, paragraphs (a)(1), (b)(1), and (d) are revised to read as follows:

##### § 648.122 Time and area restrictions.

(a) \* \* \*

(1) *Restrictions.* From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this

section, except for vessels participating in the Gear Restricted Area Access Program as specified in paragraph (d) of this section, 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. 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 headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

#### SOUTHERN GEAR RESTRICTED AREA

Point	N. Lat.	W. Long.
SGA1 .....	39°20'	72°50'
SGA2 .....	39°20'	72°25'
SGA3 .....	38°00'	73°55'
SGA4 .....	37°00'	74°40'
SGA5 .....	36°30'	74°40'
SGA6 .....	36°30'	75°00'
SGA7 .....	37°00'	75°00'
SGA8 .....	38°00'	74°20'
SGA1 .....	39°20'	72°50'

(b) \* \* \*

(1) *Restrictions.* From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section, except for vessels participating in the Gear Restricted Area Access Program as specified in paragraph (d) of this section, 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. 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 headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area I is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

## NORTHERN GEAR RESTRICTED AREA I

Point	N. Lat.	W. Long.
NGA1 .....	41°00'	71°00'
NGA2 .....	41°00'	71°30'
NGA3 .....	40°00'	72°40'
NGA4 .....	40°00'	72°05'
NGA1 .....	41°00'	71°00'

\* \* \* \* \*

(d) *Gear Restricted Area Access*

*Program*—Vessels that are subject to the provisions of the Southern and Northern Gear Restricted Areas, as specified in paragraphs (a) and (b) of this section, respectively, may fish for, or possess, non-exempt species using trawl nets having a minimum mesh size less than that specified in paragraphs (a) and (b) of this section, provided that:

(1) The vessel possesses on board all valid required Federal fishery permits and a Scup GRA Access Program Authorization issued by the Regional Administrator, Northeast Region, and is in compliance with all conditions and restrictions specified in the Scup GRA Access Program Authorization;

(2) The vessel carries a NMFS-approved scup GRA monitor on board if any portion of the trip will be, or is, in a GRA;

(3) The vessel has installed on board an operational VMS unit that meets the requirements specified in § 648.9;

(4) In addition to the above advance notice for accessing a GRA, a vessel owner or operator must notify NMFS of his/her intention to fish in the GRA at least 5 working days prior to the date he/she intends to depart on each trip into a GRA. For each of these reports, a vessel owner or operator must submit the following information: Vessel name and permit number; owner and operator's names; owner and operator's phone numbers; date and time of departure; port of departure; and the specific GRA to be fished;

(5) On the day that the vessel leaves port to fish under the GRA Access Program, the vessel owner or operator must declare the vessel into the GRA Access Program, in accordance with instructions to be provided by the Regional Administrator prior to the vessel leaving port;

(6) The owner or operator of a vessel with a GRA Access Authorization submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared into the GRA Access Program. The reports must be submitted in 24-hour intervals,

for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day and must include the following information:

(i) Total pounds/kilograms of scup discarded.

(ii) [Reserved]

(7) A vessel which does not have a valid Coast Guard Inspection Sticker is deemed inadequate or unsafe for purposes of carrying a NMFS-approved GRA monitor and will be prohibited from participating in the GRA Access Program until the vessel is inspected by the Coast Guard and receives its inspection sticker;

(8) The vessel owner will be responsible for paying the cost of the GRA monitor; and

(9) The GRA Access Program for each GRA will end when the discard of scup is projected to be 50,000 lb (22.68 mt) for the Northern GRA and 70,000 lb (31.75 mt) for the Southern GRA. Termination of the GRA Access Program for each area will be made through notification in the **Federal Register** and notification of vessel operators by fax.

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