

and longlining, and better enforcement of fisheries regulations. The commenter also objected to NOAA Fisheries not accepting comments via e-mail on this action.

*Response:* This rule implements measures designed to provide for improved utilization of the Federal commercial scup quota, and to improve efficiency of this fishery. While NMFS acknowledges the importance of the issues raised by the commenter, this rule is not the proper mechanism to address these general issues.

### Classification

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

During the Winter scup quota periods, the quota is monitored on a coastwide basis, and the commercial scup fishery is closed coastwide when the allocation for a period is reached. The current regulations do not allow for the transfer of quota between periods within the year. Underharvest of the Winter I quota occurred in 2002 and 2003, leaving available quota unused, whereas quota for the Winter II period has been harvested early each year since 1999. Under the current management system, negative economic impacts may result from early closure of the Winter II fishery. In an effort to lengthen the fishing season under a relatively small quota, a possession limit is implemented, but this can result in regulatory discards of fish caught in excess of the possession limit. Any overages during a Winter quota period are subtracted from the period's allocation for the following year.

This action relieves a restriction by implementing 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. Without this action, the Winter II fishery must close when the initial Winter II quota is reached, even if substantial quota remains from the Winter I period. This action allows the Winter II fishery to remain open longer, by allowing vessels to take advantage of remaining Winter I quota. Commercial possession limits for the Winter II period also are adjusted upward, based on the amount of quota rolled over from the Winter I period, to allow for the landing of scup that were available during the 2003 Winter I period, but were not harvested. This action allows for improved coordination of timing of the fishery's harvest potential with the availability of the resource. Additionally, because the Winter II quota typically has been harvested

before the end of the quota period, the rollover of quota from the Winter I period is expected to extend the Winter II season and have a positive economic impact on the ports and communities associated with the vessels participating in this fishery. Therefore, the 30-day delayed effectiveness period for the management measures regarding the quota rollover from Winter I to Winter II is not applicable, as this rule relieves restrictions pursuant to 5 U.S.C. 553(d)(1).

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*

One comment was received during the comment period on the proposed rule, although it did not pertain to the economic impacts of this rule. No significant issues were raised and, therefore, no changes to the proposed rule were required to be made as a result of public comments. For a summary of the comment received, refer to the section above titled "Comments and Responses."

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

Federal Northeast permit data indicate that there were 878 vessels with scup commercial permits in 2001. This action could affect any commercial vessel holding an active Federal Northeast scup permit by providing permit holders with an increased opportunity to harvest scup during the Winter II period, if some portion of the Winter I quota for that year is unused. The Summer period allocation element of this action would affect only how certain landings are attributed, and would not affect the ability of vessels holding only a state permit to land and sell scup during a Federal closure.

#### *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

It is not possible to further mitigate economic impacts on small entities because the Council selected the alternative with most positive economic impacts relative to the other alternatives determined to achieve the biological objectives. 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).

Under the no-action quota rollover alternative, the current allocation system as specified in the FMP would remain unchanged, and any negative economic impacts associated with it could persist. More specifically, a portion of the annual quota allocated to Winter I may be left unharvested, which would result in foregone economic opportunities to the fishing industry. Additionally, the existing regulations require that once the Winter II quota has been achieved, additional scup captured by the fishery operating during that time of year be discarded.

Allowing the transfer of unused scup quota from the Winter I period to the Winter II period could potentially increase landings of scup during the Winter II period. Applying the nominal average ex-vessel price of scup for the 1998–2002 Winter II period of \$0.80/lb (\$1.76/kg), and assuming the transfer of 1,873,050 lb (849,601 kg), the additional amount of scup available for harvest during the 2003 Winter II period would be valued at approximately \$1.5 million. If this increase in revenue is equally distributed among the 213 vessels that landed scup during the 2002 Winter II period, then overall ex-vessel gross revenues could increase by \$7,034 per vessel. However, as it is possible that the average price for scup during Winter II may decrease, given the potential increase in scup landings, the estimate of the increase to ex-vessel gross revenues most likely represents an upper limit.

The proposed Winter II possession limit for 2003 of 4,000 lb (1,814 kg) per trip is not expected to impact the scup fishery negatively. In fact, the increased