

PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

3. Add section 1836.513 to read as follows:

1836.513 Accident prevention.

The contracting officer must insert the clause at 1852.223-70, Safety and Health, in lieu of FAR clause 52.236-13, Accident Prevention, and its Alternate I.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend the clause at section 1852.223-70 by revising the date of the clause; revising paragraphs (f)(1) and (g); redesignating paragraphs (h) and (i) as (i) and (j) respectively, and adding a new paragraph (h) to read as follows:

1852.223-70 Safety and Health.

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SAFETY AND HEALTH

(XX/XX)

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(f) (1) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. In situations where the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer shall notify the Contractor orally, with written confirmation. The Contractor shall promptly take and report any necessary corrective action. The Government may pursue appropriate remedies in the event the Contractor fails to promptly take the necessary corrective action.

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(g) The Contractor (or subcontractor or supplier) shall insert the substance of this clause, including this paragraph (g) and any applicable Schedule provisions and clauses, with appropriate changes of designations of the parties, in all solicitations and subcontracts of every tier, when one or more of the following conditions exist:

(1) The work will be conducted completely or partly on premises owned or controlled by the Government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the Contractor (or subcontractor or supplier) determines that the assessed risk and consequences of a failure to properly manage and control the hazard(s) warrants use of the clause.

(h) The Contractor (or subcontractor or supplier) may exclude the provisions of paragraph (g) from its solicitation(s) and subcontract(s) of every tier when it determines that the clause is not necessary because the application of the OSHA and DOT (if applicable) regulations constitute adequate safety and occupational health protection. When a determination is made to exclude the provisions of paragraph (g) from a solicitation and subcontract, the Contractor must notify and provide the basis for the determination to the Contracting Officer. In subcontracts of every tier above the micro-purchase threshold for which paragraph (g) does not apply, the Contractor (or subcontractor or supplier) shall insert the substance of paragraphs (a), (b), (c), and (f) of this clause.

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5. Amend the clause at section 1852.223-72 by revising the date of the clause, and revising paragraph (d) to read as follows:

1852.223-72 Safety and Health (Short Form).

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Safety and Health (Short Form)

(XX/XX)

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(d) The Contracting Officer may notify the Contractor in writing of any noncompliance with this clause and specify corrective actions to be taken. In situations where the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to safety and health of the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer shall notify the Contractor orally, with written confirmation. The Contractor shall promptly take and report any necessary corrective action. The Government may pursue appropriate remedies in the event the Contractor fails to promptly take the necessary corrective action.

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6. Revise the clause at section 1852.223-73 and the introductory text of Alternate I to the clause to read as follows:

1852.223-73 Safety and Health Plan.

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Safety and Health Plan

(XX/XX)

(a) The offeror shall submit a detailed safety and occupational health plan as part of its proposal (see NPG 8715.3, NASA Safety Manual, Appendices). The plan shall include a detailed discussion of the policies, procedures, and techniques that will be used to ensure the safety and occupational health

of Contractor employees and to ensure the safety of all working conditions throughout the performance of the contract.

(b) When applicable, the plan shall address the policies, procedures, and techniques that will be used to ensure the safety and occupational health of the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), and high-value equipment and property.

(c) The plan shall similarly address subcontractor employee safety and occupational health for those proposed subcontracts that contain one or more of the following conditions:

(1) The work will be conducted completely or partly on premises owned or controlled by the government.

(2) The work includes construction, alteration, or repair of facilities in excess of the simplified acquisition threshold.

(3) The work, regardless of place of performance, involves hazards that could endanger the public, astronauts and pilots, the NASA workforce (including Contractor employees working on NASA contracts), or high value equipment or property, and the hazards are not adequately addressed by Occupational Safety and Health Administration (OSHA) or Department of Transportation (DOT) regulations (if applicable).

(4) When the assessed risk and consequences of a failure to properly manage and control the hazards warrants use of the clause.

(d) This plan, as approved by the Contracting Officer, will be included in any resulting contract. (End of provision).

Alternate I

(XX/XX)

As prescribed in 1823.7001(c), delete the first sentence in paragraph (a) of the basic provision and substitute the following:

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 011129286-1286-01; I.D. 110601B]

RIN 0648-AP65

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

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment that would establish cut-off dates for using landings data from the commercial summer flounder, scup, and black sea bass fisheries to calculate quota overages. The establishment of landings cut-off dates for these fisheries would enable NMFS to establish final adjusted quotas before the beginning of the fishing year on January 1. NMFS also proposes to remove the regulatory language that specifies publication dates for proposed annual summer flounder, scup, and black sea bass fishing measures.

DATES: Public comments must be received on or before December 28, 2001.

ADDRESSES: Comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298. Mark the outside of the envelope "Comments on regulatory amendment." Comments may also be submitted via facsimile (fax) to 978-281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Environmental Assessment (EA) and Regulatory Impact Review (RIR) are available at the above address. They are also accessible via the Internet at <http://www.nero.nmfs.gov>.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Management Specialist, 978-281-9103, Allison.Ferreira@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FMP requires that NMFS compile all landings information on summer flounder, scup, and black sea bass and compare these landings to the quotas allocated to those fisheries. Landings in excess of quota allocations (overages) are required to be deducted from the quota allocations for the following year. The annual quota allocations are specified through a process that culminates in the publication of final specifications, which are scheduled to be published prior to January 1 each year. However, because the fishing year for these fisheries does not end until December 31, it is impossible to have a final accounting of annual landings at the time the annual specifications are published for the fishing year beginning January 1. As a result, NMFS has had to make overage adjustments during the fishing year, when overages were identified.

This proposed regulatory amendment would resolve the timing problems associated with the overage provisions of the FMP by establishing cut-off dates for commercial summer flounder, scup, and black sea bass landings data to be used in setting quotas for the upcoming year. If, during the fishing year, NMFS discovers that any overage deduction was made in error, e.g., based on calculated landings that exceeded actual landings for the period concerned, NMFS would restore all or part of the overage to the appropriate quota allocation and announce the restoration by publishing a document in the **Federal Register**. The purpose of this action is to allow completion of the compilation of landings data used in making adjustments to the next fishing year's quotas in sufficient time to include all necessary adjustments in the final specifications that establish those quotas. The proposed action would thus improve management by NMFS and state marine fisheries agencies by establishing final quota allocation before the beginning of the fishing year that would not be further adjusted in the middle of the fishing year. This would enable fishermen targeting these species to plan their activities for the upcoming fishing year with greater confidence.

This proposed rule would also remove the regulatory language found at §§ 648.100 (d), 648.120 (c), and 648.140 (c) that specifies publication dates for proposed annual summer flounder, scup, and black sea bass fishing measures. The current publication dates of October 15 for proposed annual fishing measures and of February 15 for proposed recreational measures specified in the regulations are misleading because there is no corresponding deadline for submission of annual specifications and corresponding analyses to NMFS, or publication of final measures. The removal of the publication dates would provide NMFS with the time necessary to ensure that all proposed alternatives are appropriately analyzed.

The cut-off date proposed for compiling landings data that would be used in adjusting the quota allocations for the next fishing year is October 31. However, landings data for the full fishing year 2000 have already been used to calculate overages and make necessary adjustments in 2001. Therefore, this measure would be phased in for the 2002 fishery in that only landings from January through October 2001 would be used to determine 2001 overages for purposes of the 2002 quotas. For the 2003 fishery and subsequent years, implementation would occur as described below.

NMFS considered four alternative cut-off dates in developing the proposed measure. These cut-off dates consisted of September 30, October 31, November 30, and the status-quo or no cut-off date. A public hearing was conducted during the October 11, 2001, meeting of the Mid-Atlantic Fishery Management Council (Council) in New Bern, NC. At that meeting, NMFS announced that its preferred cut-off date was October 31. No comments were received that resulted in a modification of the preferred cut-off date.

Summer Flounder

The commercial summer flounder quota is allocated on a state-by-state basis to the states from Maine through North Carolina. The proposed cut-off date of October 31 would provide sufficient time to compile commercial summer flounder landings data through October 31 and to make necessary quota adjustments to be published in the rule establishing the final specifications for the upcoming year. In addition, this cut-off date would insure that the majority of summer flounder landings data (approximately 80 percent, based on the availability of 2000 summer flounder landings data) are included in the calculation of state-by-state quota overages.

For example, during November 2002, all available 2002 landings data for the period January 1 through October 31 would be compiled and compared to proposed 2002 state quota allocations. Any overages would then be determined, and required deductions would be made from the state allocations for 2003 in the final rule that establishes the 2003 measures (to be published in December 2002). In addition, 2001 landings data for the period January 1 through December 31 would be reviewed and compared to 2001 state quota allocations. This would be the first consideration of landings data for the period November through December 2001. It would be the second consideration of landings from the period January through October 2001; these data would be reviewed to identify any data that were submitted late. Any new overages identified for the 2001 fishing year as the result of this examination would also be deducted from state allocations for 2003 in the final rule that establishes the 2003 measures.

If NMFS determines that a state's quota allocation has been exceeded as of October 31, then that state's commercial summer flounder fishery would be closed in accordance with the regulations found at § 648.101(c). Any additional overages that may occur

during November and December as a result of state waters remaining open would be deducted from the quota allocation for that state in the following fishing year.

Scup

The commercial scup quota is allocated coastwide from Maine through North Carolina, to three seasonal allocation periods: Winter I, January through April; Summer, May through October; and Winter II, November through December. The proposed action would establish a landings cut-off date of October 31 for the Winter I and Summer quota periods, and establish a second landings cut-off date of June 30 of the following year for the Winter II quota period. A landings cut-off date of October 31 would provide sufficient time to compile commercial scup landings for the Winter I and Summer quota periods and to make necessary adjustments to the quota allocations for these quota periods in the final specifications for the upcoming year. In addition, the proposed cut-off date is consistent with the end of the Summer quota period. Based on the availability of 2000 scup landings data for the Winter I and Summer quota periods, most (up to 95 percent) of the landings occurring during these quota periods would be available for inclusion in the calculation of quota overages for the final specifications if a cut-off date of October 31 was established. The establishment of a second landings cut-off date of June 30 for the scup fishery is proposed because all scup landings for the Winter II fishery are generally accounted for before that date, based on the availability of commercial scup landings for the 2000 Winter II quota period.

For example, during November 2002, all available 2002 landings data for the period January 1 through October 31 would be compiled and compared to the 2002 Winter I and Summer quota allocations. Any overages would then be determined, and required deductions would be made from the Winter I and/or Summer allocations for 2003 in the final rule that establishes the 2003 measures. In addition, all available 2001 landings data for the period January 1 through December 31 would be compiled and compared to the 2001 period allocations (Winter I, Summer, and Winter II). Any new overages identified for the 2001 fishing year as the result of late data would be determined, and the required deductions would be made from the appropriate period allocations for 2003 in the final rule that establishes the 2003 measures.

By June 30, 2003, all available 2002 landings data for the Winter II period (November through December) would be compiled and compared to the 2002 Winter II quota allocation. Any overages would be determined, and the required deductions would be made from the Winter II allocation for 2003. The public would then be informed of this adjustment in a **Federal Register** notification published in July 2003.

Black Sea Bass

The black sea bass quota is allocated coastwide, from Maine to North Carolina, to quarterly allocations: Quarter 1, January through March; Quarter 2, April through June; Quarter 3, July through September; and Quarter 4, October through December. The proposed action would establish a landings cut-off date of October 31 for the Quarter 1 through Quarter 3 fisheries, and establish a second landings cut-off date of June 30 of the following year for the Quarter 4 fishery. Similar to scup, a landings cut-off date of October 31 would provide sufficient time to compile commercial black sea bass landings and make necessary adjustments to the quota allocations for the Quarter 1 through Quarter 3 fisheries in the final specifications for the upcoming year. Based on the availability of 2000 black sea bass landings for this period, at least 90 percent of landings occurring during these quota periods would be available for inclusion in the calculation of quota overages for the final specifications if a cut-off date of October 31 was established. In addition, NMFS is recommending that landings for the Quarter 4 black sea bass fishery be assessed as of June 30 of the following year because the prior year's landings data for this quota period are relatively complete by that date.

For example, during November 2002, all available 2002 landings data for Quarters 1 through 3 that are received by October 31 would be compiled and compared to the 2002 quota allocations for Quarters 1 through 3. Any overages would then be determined, and required deductions would be made from the Quarter 1, 2 or 3 allocations for 2003 in the final rule that establishes the 2003 measures. In addition, all available 2001 landings data (Quarters 1 through 4) would be reviewed to identify any data reported late. Any new overages identified for the 2001 fishing year as the result of this review would also be deducted from the appropriate quarterly allocations for 2003.

By June 30, 2003, all available 2002 landings data for Quarter 4 would be compiled and compared to the 2002

quota allocation for Quarter 4. Any overage would be determined, and required deductions would be made from the Quarter 4 allocation for 2003. The public would then be informed of this adjustment in a **Federal Register** notification published in July 2003.

Classification

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

This proposed rule does not contain certain policies with Federalism implications as that term is defined in Executive Order 13132.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The proposed measures contained in this regulatory amendment could affect any vessel holding an active Federal moratorium permit for summer flounder, scup, or black sea bass, as well as vessels that fish for any one of these species in state waters. Data from the Northeast permit application database show that, as of September 25, 2001, there were 1,396 commercial vessels permitted to take part in the commercial summer flounder, scup, and/or black sea bass fisheries. All of these vessels are considered to be small entities. However, the establishment of a landings cut-off date would not directly modify fishing activities associated with the summer flounder, scup, and black sea bass fisheries. As a result, this action is not expected to have any economic impact on vessels participating in the commercial summer flounder, scup, and black sea bass fisheries. Thus, the revenues and profitability of individual vessels will not be adversely affected by this action. However, the action will allow vessel owners to know the exact quotas for the upcoming fishing year and may enable them to make adjustments to their fishing operations that could potentially increase their profitability by providing vessel owners more certainty in planning for the upcoming fishing year. With exact knowledge of the quotas, they can better plan when to fish based on ex-vessel prices; costs of fuel and food; and arrangements with brokers, dealers, and wharf facilities. As a result, an initial regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements

Dated: December 7, 2001.

William T. Hogarth,

*Assistant Administrator for Fisheries,
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 § 648.100, the first sentence of paragraph (d) introductory text, and paragraph (d)(1)(ii) are revised to read as follows:

§ 648.100 Catch quotas and other restrictions.

* * * * *

(d) After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** to implement a coastwide commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery. * * *

(1) * * *

(ii) All summer flounder landed for sale in a state shall be applied against that state's annual commercial quota, regardless of where the summer flounder were harvested. Any landings in excess of the commercial quota in any state will be deducted from that state's annual quota for the following year in the final rule that establishes the annual state-by-state quotas. The overage deduction will be based on landings for the current year through October 31, and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the annual quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, NMFS will restore all or part of the overage deducted to the appropriate quota allocation. The Regional Administrator will publish a notification in the **Federal Register** announcing such restoration.

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3. In § 648.120, paragraphs (d)(4), (d)(5), and (d)(6) are removed, paragraph (c) is revised and paragraph (d)(3) is added to read as follows:

§ 648.120 Catch quotas and other restrictions.

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(c) Annual fishing measures. The Demersal Species Committee shall review the recommendations of the Scup Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall recommend to the MAFMC measures necessary to assure that the specified exploitation rate will not be exceeded. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the Commission. After such review, NMFS will publish a proposed rule to implement a commercial quota in the **Federal Register**, specifying the amount of quota allocated to each of the three periods, landings limits for the Winter I and Winter II periods, the percentage of landings attained during the Winter I fishery at which the landing limits will be reduced, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to assure that the specified exploitation rate will not be exceeded, he or she will publish a proposed rule in the **Federal Register** to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement annual measures.

(d) * * *

(3) All scup landed for sale in any state during a quota period shall be applied against the coastwide commercial quota for that period, regardless of where the scup were harvested. Any current year landings in excess of the commercial quota in any quota period will be deducted from that quota period's annual quota in the following year as prescribed below:

(i) For the Winter I and Summer quota periods, landings in excess of the allocation will be deducted from the appropriate quota period for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through October 31, and on landings for the previous calendar year that were not included when the overage deduction was made in the final rule that established the period quotas for the current year. If the Regional Administrator determines during the fishing year that any part of an overage

deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, NMFS will restore all or part of the overage deduction to the appropriate quota allocation. The Regional Administrator will publish notification in the **Federal Register** announcing the restoration.

(ii) For the Winter II quota period, landings in excess of the allocation will be deducted from the Winter II period for the following year in a notification published in the **Federal Register** during the following year. The overage deduction will be based on landings information available for the Winter II period as of June 30. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, NMFS will restore all or part of the overage deduction to the appropriate quota allocation. The Regional Administrator will publish notification in the **Federal Register** announcing the restoration.

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4. In § 648.140, paragraphs (c) and (d)(2) are revised and paragraphs (d)(3) and (d)(4) are added to read as follows:

§ 648.140 Catch quotas and other restrictions.

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(c) Annual fishing measures. The Demersal Species Committee shall review the recommendations of the Black Sea Bass Monitoring Committee. Based on these recommendations and any public comment, the Demersal Species Committee shall make its recommendations to the Council with respect to the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. The Council shall review these recommendations and, based on the recommendations and public comment, make recommendations to the Regional Administrator with respect to the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action. The Regional Administrator will review these recommendations and any recommendations of the Commission. After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** to implement a commercial quota, a

recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to assure that the target exploitation rate specified in paragraph (a) of this section will not be exceeded, he or she will publish a proposed rule in the **Federal Register** to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the Federal Register to implement the measures necessary to assure that the target exploitation rate specified in paragraph (a) of this section is not exceeded.

(d) * * *

(2) All black sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4 (a)(7) shall be applied against that quarter's commercial quota, regardless of where the black sea bass were harvested. All black sea bass harvested north of 35°15.3' N. lat., and landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters will be counted against the quota by the state in which it is landed pursuant to the

Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission. The Regional Administrator will determine the date on which the quarterly quota will have been harvested; the EEZ north of 35°15.3' N. lat. will be closed on that date. The Regional Administrator will publish a notice in the **Federal Register** advising that, upon, and after, that date, no vessel may possess black sea bass in the EEZ north of 35°15.3' N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure pursuant to the Fishery Management Plan for the Black Sea Bass Fishery adopted by the Commission.

(3) For the Quarter 1 through Quarter 3 quota periods, landings in excess of the allocation will be deducted from the appropriate quota period for the following year in the final rule that establishes the annual quota. The overage deduction will be 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 quarterly quotas for the current year. If the Regional Administrator determines during the

fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, NMFS will restore all or part of the overage deduction to the appropriate quota allocation. The Regional Administrator will publish a notification in the **Federal Register** announcing the restoration.

(4) For the Quarter 4 quota period, landings in excess of the allocation will be deducted from the Quarter 4 period for the following year in a notification published in the **Federal Register** during the following year. The overage deduction will be based on landings information available for the Quarter 4 period as of June 30 of the following year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, NMFS will restore all or part of the overage deduction to the appropriate quota allocation. The Regional Administrator will publish a notification in the **Federal Register** announcing the restoration.

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