References

A complete list of all references cited herein is available upon request from the Montana Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Author

The authors of this finding are biologists in Region 6 of the U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: April 13, 2007.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. E7–7484 Filed 4–23–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070409081–7081–01; I.D. 032907A]

RIN 0648–AS22

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan; Amendment 14

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 14 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council (Council). The proposed measures include a plan to rebuild the scup stock from an overfished condition to the level associated with maximum sustainable yield, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action also proposes to allow the regulations concerning the Gear Restricted Areas (GRAs) to be modified through framework adjustments to the FMP. The intended effect of this change would improve the timing of developing and implementing modifications to the GRAs.

DATES: Comments must be received by 5 p.m. local time, on May 24, 2007.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *FSBAmendment14ProposedRule@noaa.gov*. Include in the subject line the following identifier: ''Comments on Amendment 14 Proposed Rule (Scup Rebuilding Plan).''
- Federal e-rulemaking portal: *http://www.regulations.gov*
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Amendment 14 Proposed Rule (Scup Rebuilding Plan).''
- Fax: (978) 281–9135

Copies of Amendment 14 and of the draft Environmental Assessment, preliminary Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Michael P. Ruccio, Fishery Policy Analyst, (978) 281–9104.

SUPPLEMENTARY INFORMATION: On August 18, 2005, NMFS notified the Council that the scup (*Stenotomus chrysops*) stock had been designated as overfished and that, within 1 year of that notice, an amendment or proposed regulations for the scup fishery to end overfishing and to rebuild the stock must be prepared in accordance with the Magnuson-Stevens Act. In response, the Council has developed, and submitted for Secretarial review, Amendment 14 to propose two actions: (1) A 7–year plan to rebuild the scup stock from an overfished condition to a level associated with maximum sustained yield (B_{msy}), as required by the Magnuson-Stevens Act; and (2) an administrative change to the regulations on framework adjustments.

Background

The scup stock was determined to be overfished in 1998 when the Sustainable Fisheries Act (SFA) amendments to the Magnuson-Stevens Act were implemented. The Council developed and proposed Amendment 12 (64 FR 16891, April 7, 1999) to rebuild the scup stock in accordance with the provisions outlined in the SFA. The Council proposed in Amendment 12 that the management measures in place to rebuild the scup fishery, established by Amendment 8, were adequate under SFA guidelines. NMFS disagreed, and the rebuilding plan proposed in Amendment 12 was disapproved on April 28, 1999. Following the disapproval, the management measures previously implemented by Amendment 8 remained in place for the scup fishery.

In years subsequent to the disapproval of Amendment 12, the scup stock exhibited signs of recovery. The Northeast Fisheries Science Center (NEFSC) spring survey index 3–year average value for 2001–2003 indicated that scup spawning stock biomass (SSB) had increased to 3.31 kg/tow, above the minimum biomass threshold (1/2 B_{msy}) of 2.77 kg/tow. The scup stock was no longer considered overfished, although the 35th Stock Assessment Review Committee (SARC 35) indicated that the status of the stock with respect to overfishing could not be evaluated. Although the condition of the scup stock was improving, the stock had not yet been rebuilt, as required by the Magnuson-Stevens Act, to the B_{msy} proxy rebuilding target of 5.54 kg/tow.

In 2005, the NEFSC 3–year SSB index value decreased to 0.69 kg/tow, indicating that the stock was again below the minimum biomass threshold (1/2 B_{msy}) and considered overfished. NMFS formally notified the Council of the overfished status of the scup stock, thus initiating the Magnuson-Stevens Act requirement that the Council develop regulations or an amendment to the FMP to rebuild the scup stock to the B_{msy} proxy level. The rebuilding plan implemented by such regulations or amendment must achieve the rebuilding target within 10 years to comply with the Magnuson-Stevens Act. In response, the Council has developed, and submitted for Secretarial review, Amendment 14.

Proposed Scup Rebuilding Plan

Under Amendment 14, a constant fishing mortality rate (F) of 0.10 would be applied each year during a 7–year rebuilding time period. Under this approach, the NEFSC 3–year SSB index value for the rebuilding period ending December 31, 2014, is projected to be 5.96 kg/tow, approximately 8 percent above the B_{msy} proxy rebuilding target (5.54 kg/tow).

Applying a constant F=0.10 for 7 years is projected to achieve the required stock rebuilding to comply with the Magunuson-Stevens Act; however, because scup is a relatively data poor stock and uncertainty exists around estimates of fishing mortality, stock size, and discards, Amendment 14 contains additional criteria to be

applied to the rebuilding program, as follows:

1. As improvements to the available data occur over the 7–year rebuilding period, the rebuilding trajectory may change. Therefore, to ensure stock rebuilding, a periodic review will be conducted by the Council's scientific advisors to re-evaluate the F necessary to rebuild the stock. If the Council's scientific advisors determine the stock cannot be rebuilt within the time remaining in the initial 7–year time frame under an F=0.10, then the Council will recommend measures to rebuild the stock as soon as possible after the 7 years, but not to exceed the 10–year time frame specified in the Magnuson-Stevens Act for rebuilding periods.

The periodicity of such a review is not specified in Amendment 14; however, it is expected that such reviews will be at the discretion of the Council and will occur as new data are made available, as early in the rebuilding period as possible, so that changes to the F rate, as needed, may be made.

2. The scup biological reference points (stock status determination criteria) would be reviewed after the Fishery Survey Vessel (FSV) *Henry B. Bigelow* has completed 2 full years of service.

3. If a scup stock assessment that results in a change to the biological reference points is completed before the end of the 7–year rebuilding time period, the Council may reconsider the rebuilding targets.

The additional criteria for the rebuilding program contained in Amendment 14 are designed to allow for some degree of flexibility within the specified rebuilding period, while still satisfying the requirements of the Magnuson-Stevens Act, given the considerable scientific uncertainty regarding the status of the scup stock. The intent of the additional criteria is to ensure that certain parameters of the rebuilding program can be revisited in advance of the end of the rebuilding time frame. This may help mitigate the need for severely restrictive measures in the rebuilding plan's final years, should scientific advice or stock status information change during the course of the 7–year rebuilding plan and/or the scup stock fail to respond to the rebuilding efforts as anticipated and fall behind the rebuilding schedule.

Amendment 14 has a target implementation date of January 1, 2008, for the start of the rebuilding program. A final rule for Amendment 14 is anticipated to be published in the **Federal Register** prior to August 2007, with delayed effectiveness until January 1, 2008, so that the 2008 scup specifications would be set consistent with the proposed rebuilding program.

Proposed GRA Modification Process

GRAs were first implemented on May 24, 2000 (65 FR 33486), in conjunction with the annual specifications for the summer flounder, scup, and black sea bass fisheries. The intent of the GRAs has been to reduce discards of scup in small-mesh fisheries, primarily for *Loligo* squid, black sea bass, and silver hake. Because of the manner in which they were initially implemented, the GRAs could only be modified through the annual specification process or through an amendment to the FMP. Amendment 14 proposes an administrative change to add the GRAs to the list of management measures that can be changed through a framework adjustment to the FMP. As such, the Council would develop and analyze changes to the GRAs over the span of at least two Council meetings before making a recommendation to NMFS. This change is intended to allow for improved timing of developing and implementing proposed modifications to the GRAs. Amendment 14 proposes no specific changes to the existing GRAs.

Notice of Availability (NOA) and Public Comment on Amendment 14

A NOA indicating Amendment 14's availability for public review and comment published in the **Federal Register** on April 11, 2007, 72 FR 18193. Public comments are being solicited on Amendment 14 and its incorporated documents through the comment period ending June 11, 2007, as stated in the NOA. Public comments on this proposed rule must be received by the end of the comment period on Amendment 14, as published in the NOA, to be considered in the approval/disapproval of the Amendment 14. All comments received by the end of the NOA comment period for Amendment 14, whether specifically directed to the amendment or this proposed rule, will be considered in the approval/disapproval decision. Comments received after the end of the NOA comment period will not be considered in the approval/disapproval decision on Amendment 14, but will be considered as comments on this proposed rule. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

Classification

At this time, NMFS has not determined that the FMP amendment that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

A notice of availability of the Draft EA/RIR/IRFA, which analyzed the impacts of all of the measures under consideration in Amendment 14, was published on April 11, 2007, (72 FR 18193).

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

An IRFA was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the reasons why the action is being considered, the associated objectives of the proposed action, and the legal basis for this action are contained in the SUMMARY section of the preamble of this proposed rule. A summary of the analysis follows. A copy of the complete IRFA is available from the Council (see **ADDRESSES**).

This proposed rule does not duplicate, overlap, or conflict with any relevant Federal rules.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

Description of Small Entities to Which the Proposed Rule Will Apply

The proposed action regarding scup rebuilding alternatives could affect any vessel issued a Federal permit for scup, as well as vessels that fish for scup in state waters. The GRA alternatives proposed are purely administrative in nature and, therefore, are not expected to impact scup fishery participants in state or Federal waters.

The Small Business Administration (SBA) defines a small business in the commercial fishing and recreational fishing activity as a firm with receipts (gross revenues) of up to $4.0 and $6.5 million, respectively. The proposed measures regarding the scup rebuilding alternatives could affect any vessel holding an active Federal permit for scup, as well as vessels that fish for this species in state waters. Data from the Northeast permit application database show that, in 2005, the most recent year for which there are complete data, 1,511 vessels were permitted to take part in

the scup fisheries (both commercial and charter/party sectors). 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. Since all permit holders do not actually land scup, the more immediate impact of the rule may be felt by the 428 vessels that are actively participating in this fishery (i.e., that landed 1 lb (0.45 kg) or more of scup in 2005).

Description of Alternatives

The Council proposed seven rebuilding plan alternatives and the no-action (i.e., status quo) alternative. Of these, two alternatives could be expected to have less of an economic impact on small entities than the proposed action. A summary of these alternatives can be found in Table 1, and as follows, including the reasons for selecting the preferred alternative instead of one of the two alternatives with a lower economic impact to small entities.

Table 1. Comparison of the proposed scup rebuilding program alternatives.

Strategy	Alternative	Status of Alternative	Description	Impact Assessment
Maintain Constant Fishing Mortality (F) over Rebuilding Period	1A	Proposed (No action/ Status Quo)	F=0.26	Least
	1B	Proposed	F=0.136; 10-years	
	1C	Proposed	F=0.10; 7-years	Council's Preferred Alternative
	1D	Proposed	F=0.067; 5-years	
	1E	Considered but Rejected	F=0; 4-years	Most
Maintain Constant Harvest over Rebuilding Period	1F	Considered but Rejected	10-years of constant harvest 17.170 million lb (7,788 mt)	Least
	1G	Proposed	7-years of constant harvest 12.842 million lb (5,825 mt)	
	1H	Proposed	5-years of constant harvest 8.741 million lb (3,965 mt)	Most

The no-action alternative, designated 1A, would not implement a rebuilding plan or time frame for rebuilding the scup stock. The current F target of F=0.26 would be maintained, resulting in the least restrictive quotas. Under the no action alternative (1A), the scup stock is not projected to ever achieve the rebuilding target; therefore, the status quo alternative would not achieve stock rebuilding and is therefore contrary to the requirements of the Magnuson-Stevens Act.

Alternatives 1B through 1E consist of rebuilding strategies wherein a specified constant F is applied over a 10, 7, 5, or 4–yr period, respectively. The F rate applied under these four alternatives is highest (i.e., less restrictive) for alternative 1B and decreases (i.e., becomes more restrictive) in alternatives 1C and 1D. The rebuilding program proposed by alternative 1B is less restrictive than the Council's preferred alternative, 1C. Alternative 1B was not selected as the preferred alternative because it utilizes the full 10–year rebuilding period and does not allow for the ongoing rebuilding progress performance assessments, as specified by the Council, that are available in the preferred alternative, 1C. The F rate in 1E is F=0, which would result in no harvest of scup (commercial, recreational, or incidental take in other fisheries) for the proposed 4–yr period; this alternative was considered but excluded from detailed analysis as it was not considered a reasonable solution to the issue.

Alternatives 1F through 1H proposed maintaining a constant harvest level of scup over a specified rebuilding period. Alternative 1F, the least restrictive constant harvest rebuilding alternative, was rejected because it would not rebuild the stock within the 10–year period required under the Magnuson-Stevens Act. Of the remaining two constant harvest alternatives, 1G is less restrictive than alternative 1H. Relative to the constant F strategies, the constant harvest strategies 1D and 1H are expected to be less restrictive than alternatives 1C and 1G, but more restrictive than alternatives 1A and 1B.

For clarity, the Council has identified rebuilding program alternative 1C, with the additional criteria outlined in the **SUPPLEMENTARY INFORMATION** in the preamble of this proposed rule, as its preferred alternative.

Expected Economic Impacts of Alternatives

The effects of actions were analyzed by employing quantitative approaches to the extent possible. Where quantitative data were not available, qualitative analyses were conducted. In the current analysis, effects on profitability associated with the proposed management measures should be evaluated by looking at the impact of the proposed measures on individual vessel costs and revenue. However, in the absence of cost data for individual vessels engaged in these fisheries, changes in gross revenue are used as a proxy for profitability.

Procedurally, the economic effects of the quotas under the various rebuilding schedules were estimated by assessing the changes in potential revenues. This was accomplished by multiplying the corresponding level of Total Allowable Landings (TAL) under each alternative by the ex-vessel price forecasted for each of the years in an alternative's rebuilding time line.

Commercial Fishery Impacts

Aggregate scup landings in 2008, the first year of the rebuilding period, relative to 2006 are expected to be the highest under alternative 1A (an increase of 153 percent), followed by alternative 1B (an increase of 41 percent), and alternatives 1C and 1G (an increase of 5 percent each). Under alternatives 1D and 1H, scup landings are expected to decrease (29 percent each) in 2008, compared to 2006. Commercial quotas are expected to increase in each year subsequent to 2008 from the 2006 baseline value for each alternative, except those for constant harvest strategies under

alternatives 1G and 1H. For alternatives 1G and 1H, no increase is predicted until the rebuilding time frame is complete and the stock is rebuilt.

Assuming that the predicted changes in initial annual revenue in 2008 are for all active participants in the fishery and that they are evenly distributed over all active participants in the fishery (the 428 vessels that landed scup in 2005), each business unit could be expected to gain an average of $7,114 in gross revenues under alternative 1A, and $1,914 under alternative 1B, if the entire TAL is landed in 2008. Potential losses in 2008 of $194 in gross revenue are estimated for each scup vessel under alternatives 1C and 1G, and $2,621 under alternatives 1D and 1H.

If revenue earned from all other species is assumed to remain constant, 21 vessels are projected to incur total revenue losses of 5 percent or more in 2008 under the two most restrictive alternatives (1D and 1H). Of these 21 vessels, 11 are projected to incur revenue reductions of 5–9 percent, and 10 vessels are projected to lose up to 10–19 percent of their total gross revenue.

Relative to each vessel's home port state as reported on the vessel's permit application, nine of the vessels projected to incur revenue losses of 5 percent or more under alternatives 1D and 1H listed New York as their home port state, five of these vessels listed Massachusetts as their home port state, and five listed Rhode Island as their home port state. The home port states of the remaining two vessels can not be disclosed for confidentiality reasons.

The 21 vessels estimated to incur revenue losses of 5 percent or more in 2008 under the two most restrictive alternatives (1D and 1H) list 15 different home port locations on their permit applications. The only home port locations with more than one vessel estimated to incur total revenue reductions of 5 percent or more are in Montauk, NY (five vessels) and Point Judith, RI (three vessels).

Although alternatives 1C, 1D, 1G, and 1H will likely have a negative short-term economic impact on some scup harvesting businesses, they are expected to result in long-term positive impacts to the industry as a whole, once the scup stock rebuilds. Quotas will gradually increase toward the rebuilt stock level for constant F strategies and are expected to significantly increase when rebuilding is achieved for constant harvest strategy alternatives.

Recreational Fishery Impacts

Recreational landings of scup in 2006 were projected to be 2.83 million lb (1,284 mt). Potential increases in landings could be observed in 2008 under the recreational harvest limits projected for alternatives 1A and 1B. The 2008 recreational harvest limits under alternatives 1C and 1G would be approximately equal to the projected 2006 recreational landings. The 2008 recreational harvest limits for alternatives 1D and 1H are projected to be 1.923 million lb (872 mt), a potential decrease of approximately 1.0 million lb (453 mt) when compared to 2006 levels.

There is no empirical information available to determine how sensitive to the proposed changes in scup recreational harvest limits affected anglers might be. In other words, it is not possible to determine how affected anglers will respond to the new regulations. Scup angler trip taking behavior may remain unchanged, or the management measures may result in anglers taking fewer fishing trips or no recreational trips at all if suitable alternative target species are unavailable. Although the potential changes in trip taking behavior cannot be quantified, given the marginal changes in management measures from 2006 to those expected for 2008 and the fact that the proposed measures do not prohibit anglers from engaging in catch and release fishing, the demand for fishing trips should remain relatively unaffected. Nevertheless, to the extent that anglers impacted by the proposed measures do take fewer trips, economic losses may accrue to businesses that support marine recreational activities.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 17, 2007.

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 § 648.127, paragraph (a)(1) is revised to read as follows:

§ 648.127 Framework adjustment to management measures.

(a) * * *

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear restricted areas, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, operator permits, any other commercial or recreational management measures, any other management measures currently included in the FMP, and set aside quota for scientific research.

* * * * *

[FR Doc. 07–2016 Filed 4–23–07; 8:45 am]

BILLING CODE 3510–22–S