

secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(iv) *Power-down exemptions.* An owner or operator of a vessel subject to the requirement to have a VMS operating at all times as specified in paragraph (a)(2)(i) of this section can be exempted from that requirement and may power down the required VMS unit if—

(A) The vessel will be continuously out of the water or in port, as defined in paragraph (a)(2)(iii) of this section, for more than 72 consecutive hours;

(B) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS OLE VMS personnel as specified in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This is a one-time requirement. The letter of exemption must be maintained on board the vessel and remains valid for all subsequent power-down requests conducted consistent with the provisions of paragraphs (a)(2)(iv)(C) and (D) of this section.

(C) Prior to each power down, the owner or operator of the vessel files a report to NMFS OLE VMS program personnel, using the VMS unit's e-mail, that includes the name of the person filing the report, vessel name, vessel U.S. Coast Guard documentation number or state registration number, commercial vessel reef fish permit number, vessel port location during VMS power down, estimated duration of the power down exemption, and reason for power down; and

(D) The owner or operator enters the power-down code through the use of the VMS Declaration form on the terminal and, prior to powering down the VMS, receives an e-mail confirmation of the power-down authorization from NMFS OLE.

(v) *Declaration of fishing trip and gear.* Prior to departure for each trip, a vessel owner or operator must report to NMFS any fishery the vessel will participate in on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that will be on board the vessel. This information may be reported to NMFS using the toll-free number, 888-219-9228, or via an attached VMS terminal.

\* \* \* \* \*

3. In § 622.16, paragraph (c)(3)(i) is revised to read as follows:

**§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.**

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) *Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Authorized methods for contacting NMFS and submitting the report include calling NMFS Office for Law Enforcement at 1-866-425-7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ website at [ifq.sero.nmfs.noaa.gov](http://ifq.sero.nmfs.noaa.gov). As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement via appropriate rulemaking. Failure to comply with this advance notice of landing requirement will preclude authorization to complete the landing transaction report required in paragraph (c)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

\* \* \* \* \*

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 070706268-7275-01]

RIN 0648-AV21

**Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 7**

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

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

**SUMMARY:** NMFS proposes to implement Framework Adjustment 7 (Framework 7) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP), developed by the Mid-Atlantic Fishery Management Council (Council). Framework 7 would broaden the FMP stock status determination criteria for summer flounder, scup, and black sea bass, while maintaining

objective and measurable criteria for identifying when the FMP stocks are overfished or approaching an overfished condition. The framework action would also establish acceptable categories of peer review for providing new or revised stock status determination criteria for the Council to use in its annual management measures for each species. This action is necessary to ensure that changes or modification to the stock status determination criteria constituting the best available peer reviewed scientific information are accessible for the management of these three species in as timely a manner as is possible. The intended effect of this action is to improve the timeliness and efficiency of incorporating the best available scientific information, consistent with National Standards 1 and 2 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), into the management processes for the three species covered by the FMP.

**DATES:** Written comments must be received no later than 5 p.m. local time on September 5, 2007.

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

- E-mail: [FSB.framework7@noaa.gov](mailto:FSB.framework7@noaa.gov). Include in the subject line the following identifier: "Comments on FSB Framework Adjustment 7."

- 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 FSB Framework Adjustment 7."

- Fax: (978) 281-9135

Copies of Framework Adjustment 7 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 framework document is also accessible via the Internet at <http://www.nero.noaa.gov>.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

The current stock status determination criteria for these three species are found in Amendment 12 to the FMP. To modify or replace these stock status determination criteria, the Council must enact a framework adjustment or an amendment to the FMP.

The regulations at §§ 648.100, 648.120, and 648.140 outline the respective annual management processes for summer flounder (*Paralichthys dentatus*), scup (*Stenotomus chrysops*), and black sea bass (*Centropristis striata*). Stock assessment information is updated annually as part of the management process that is used to derive annual catch limits (e.g., Total Allowable Landings (TAL)). In addition, assessments for these three stocks undergo periodic formal scientific peer review as part of the Northeast Fisheries Science Center's (NEFSC) Stock Assessment Workshop (SAW) and Stock Assessment Review Committee (SARC) process. These and other periodic formal peer reviews conducted for these stocks may result in recommendations to revise or use different stock status determination criteria as different or new approaches are applied to previously existing data, or to new, previously unexamined data. These recommendations can be incorporated into the management scheme through a framework adjustment or amendment to the FMP. Given the time necessary to develop FMP framework adjustments and amendments, it is likely that, should such new stock status determination criteria result from a formal SAW/SARC peer review, the new criteria would not be available for the Council's use for one or more annual management review cycles (i.e., a 1- to 2-yr delay).

In addition, groups outside the NEFSC, including but not limited to the Council, the Atlantic States Marine Fisheries Commission (Commission), academic institutions, and other interested parties have periodically contracted with outside parties or conducted in-house formal peer reviews of the stock status determination criteria for these species. In such instances, it has not been clear how the results of these independently conducted peer reviews should be viewed by the Council in regards to National Standard 2 of the Magnuson-Stevens Act, which specifies that management decisions shall be based upon the best scientific information available. Furthermore, there have been instances where the results of scientific peer review conducted by any of the aforementioned groups were not clear. Peer review panelists may have disagreed on results and presented a majority and minority opinion; results may have lacked specific recommendations or had insufficient clarity to utilize the information provided in the annual management process; or, in some

instances, the results of a peer review may have been to reject, for management purposes, changes proposed to the existing stock status determination criteria. In such situations, the Council has been left to decide what information then constituted the best available information.

In response, the Council has developed and submitted for review by the Secretary of Commerce, Framework 7 to the FMP. This framework, if adopted, would enact the following actions, designed to improve the time frame in which peer reviewed information can be utilized in the management process, as well as providing guidance on peer review standards and how to move forward in the management process when peer review results are not clear. The principal actions proposed by Framework 7 are to:

1. Redefine, in more general terms, while maintaining objective and measurable criteria, the stock status determination criteria for each species;
2. Define what constitutes an acceptable level of peer review; and
3. Provide guidance on how the Council may engage its Scientific and Statistical Committee (SSC) to conduct additional review of information when approved peer review processes fail to provide a consensus recommendation or clear guidance for management decisions.

These changes, proposed in Framework 7, are discussed in detail in the following sections.

#### **Redefined Stock Status Determination Criteria**

Framework 7 would redefine the stock status determination criteria for each of the three species in the FMP. The maximum fishing mortality rate (F) threshold for each of the species in the FMP is defined as  $F_{\text{Maximum Sustainable Yield (MSY)}}$  (or a reasonable proxy thereof) as a function of productive capacity, and based upon the best scientific information, consistent with National Standards 1 and 2. Specifically,  $F_{\text{MSY}}$  is the fishing mortality rate or level associated with the relevant MSY level of each stock. The maximum fishing mortality rate threshold ( $F_{\text{MSY}}$ ), or a reasonable proxy thereof, may be defined as a function of (but not limited to): total stock biomass, spawning stock biomass, or total egg production; and may include males, females, both, or combinations and ratios thereof, that provide the best measure of productive capacity for each of the species managed under the FMP. Exceeding the

established fishing mortality rate threshold constitutes overfishing.

The minimum stock size threshold for each of the species in the FMP is defined as  $1/2 \text{ Biomass (B)}_{\text{MSY}}$  (or a reasonable proxy thereof) as a function of productive capacity, and based upon the best scientific information, consistent with National Standards 1 and 2. The minimum stock size threshold ( $1/2 \text{ B}_{\text{MSY}}$ ) or a reasonable proxy may be defined as (but not limited to): total stock biomass, spawning stock biomass, or total egg production; and may include males, females, both, or combinations and ratios thereof, that provide the best measure of productive capacity for each of the species managed under the FMP. The minimum stock size threshold is the level of productive capacity associated with the relevant  $1/2 \text{ B}_{\text{MSY}}$  level. Should the measure of productive capacity for the stock or stock complex fall below this minimum threshold, the stock or stock complex is considered overfished. The target for rebuilding is specified as  $\text{B}_{\text{MSY}}$  (or reasonable proxy thereof) at the level of productive capacity associated with the relevant MSY level, under the same definition of productive capacity as specified for the minimum stock size threshold.

Under Framework 7, the stock status determination criteria are proposed to be made more general by removing specific references to how minimum stock size threshold and biomass are calculated. By making the stock status determination criteria more general the results of peer reviewed best available science could be more readily adopted through the annual specification setting process. For example, in 2006, the NMFS Office of Science and Technology convened a peer review panel to provide scientific advice on the summer flounder stock. The results of this review, contained in the Summer Flounder Assessment and Biological Reference Point Update for 2006, recommended that spawning stock biomass be utilized as a means for assessing the status of the summer flounder stock. This recommendation was a change from the existing stock status definitions for summer flounder contained in Amendment 12, which use total stock biomass. If Framework 7 is approved and implemented, the Council would be able to utilize the recommendations of the 2006 summer flounder peer review in the management (i.e., specification setting) process as the best available scientific information. The existing Amendment 12 stock status determination criteria for scup and black sea bass would remain unchanged until such time that recommendations

for changes or modifications are recommended by a formal peer review. For all three species, the Council would still provide specific definitions for the stock status determination criteria in documents supporting annual management measures, future framework adjustments, and amendments including, where necessary, information on changes to the definitions.

#### Peer Review Standards

While the NEFSC SAW/SARC process remains the primary process utilized in the Northeast Region to develop scientific stock assessment advice, including stock status determination criteria for federally managed species, Framework 7 proposes several additional scientific review bodies and processes that would constitute an acceptable peer review level to develop scientific stock assessment advice for the three species stock status determination criteria.

#### Guidance on Unclear Scientific Advice Resulting From Peer Review

In many formal peer reviews, the terms of reference provided in advance of the review instruct the reviewers to formulate specific responses on the adequacy of information and to provide detailed advice on how that information may be used for fishery management purposes. As such, most stock assessment peer reviews result in clear recommendations on stock status determination criteria for use in the management of these three stocks. However, there are occasional peer review results where panelists disagree and no consensus recommendation is made regarding the information. The terms of reference may not be followed and no recommendations for the suitability of the information for management purposes may be made. In such instances, it is unclear what then constitutes the best available information for management use.

Framework 7 proposes that, when clear consensus recommendations are made by any of the acceptable peer review groups, the information is clearly the best available and may be utilized by the Council in the management process for these three species. Similarly, when the consensus results of a peer review are to reject proposed changes to the stock assessment methods or the stock status determination criteria, Framework 7 proposes that the previous information on record would still continue to constitute the best available information and should be used in the management process.

When peer review recommendations lack consensus, are unclear, or do not make recommendations on how the information is to be used in the management process, Framework 7 proposes that the Council engage its SSC or a subset of the SSC with appropriate stock assessment expertise, to review the information provided by the peer review group. The SSC would then seek to clarify the information and provide advice to the Council to either modify, change, or retain the existing stock status determination definitions as the best available information for use in the development of management measures.

The process of how the Council utilizes its SSC may change in the future. The 2006 reauthorization of the Magnuson-Stevens Act requires each Council's SSC to provide ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch, maximum sustained yield, achieving rebuilding targets, etc. Framework 7 does not contemplate how the Council may modify its management process to satisfy this requirement of the reauthorized Magnuson-Stevens Act, as guidance for so doing is still being developed by NMFS and the Council. Framework 7 does not bring this FMP into compliance with the new Magnuson-Stevens Act requirements, nor does it conflict with those requirements as it addresses a separate issue. Once appropriate guidance has been developed for complying with the new Magnuson-Stevens Act requirements, the Council's standard operating procedures and/or an amendment to the FMP may be enacted to clarify how the SSC will provide scientific advice for management decisions. Framework 7 will continue to pertain to the SSC's function in clarifying peer reviews on stock status determination criteria only. Under Framework 7, the primary peer review mechanism for northeast region stock assessments will remain the established NEFSC SAW/SARC process. The Council's SSC would only be utilized in the specific instances as previously outlined within the preamble of this proposed rule (see Guidance on Unclear Scientific Advice Resulting from Peer Review section). Both such peer review processes are consistent with the Office of Management and Budget's Information Quality Bulletin for Peer Review.

The measures outlined above are the only changes proposed by the Council in Framework 7. The no action alternative examined by the Council is to maintain the status quo regarding the

stock status determination criteria, which would require a framework adjustment or amendment to the FMP to effect changes to the definitions in Amendment 12, would leave the standards for peer review undefined, and would not specify how the SSC may be used to clarify ambiguous results of scientific peer reviews for these three stocks.

#### Classification

NMFS has determined that this proposed rule is consistent with the FMP and has preliminarily determined that the rule is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Regional Administrator has determined that this proposed rule is an administrative framework adjustment to the FMP and is therefore categorically excluded from the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

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.

This proposed rule deals only with how the best available, peer reviewed scientific information can be incorporated more quickly and efficiently into the Council's process for crafting management measures for the three species under the FMP. This is achieved by broadening the descriptions of the stock status determination criteria in the FMP so that updated and peer reviewed information can be more readily adopted for use in the management process. The proposed change is to how the stock status determination criteria are defined and does not propose any change to the existing determination criteria. Additionally, the framework identifies acceptable levels of peer review that must be satisfied before new or revised information is accepted as the best available science.

These are administrative changes to the FMP that serve to improve the quality of data used in management decisions, consistent with National Standards 1 and 2 of the Magnuson-Stevens Act. As such, the rule will not have significant direct or indirect economic impacts on small entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Dated: July 31, 2007.

**John Oliver,**

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

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