

year (FY) 2010 (May 1, 2011 through April 30, 2012).

**DATES:** The effective date of the GB yellowtail flounder specifications in the final rule published April 25, 2011 (76 FR 23042) is extended through April 30, 2012. Comments are accepted through November 7, 2011.

**ADDRESSES:** You may submit comments, identified by FDMS Docket Number NOAA-NMFS-2011-0237, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-rulemaking portal: <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter [NOAA-NMFS-2011-0237] in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- **Mail:** Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: "Comments on NE Multispecies GB Yellowtail Flounder Specifications Emergency Rule Extension."

- **Fax:** (978) 281-9135.

**Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

We will accept anonymous comments (enter "N/A" in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

Copies of the small entity compliance guide are available from the Regional Administrator, NMFS, Northeast Regional Office, at the address above. Copies of the Environmental Assessment (EA) prepared for this rule may be found at the following Internet address: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Warren, Fishery Policy Analyst, (978) 281-9347, fax (978) 281-9135.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

This temporary final rule extends the revised GB yellowtail flounder catch limits implemented through emergency authority as published in the FW 45 final rule on April 25, 2011 (76 FR 23042) in order to maintain those measures through the end of FY 2010 (April 30, 2012). The April 25, 2011 final rule included detailed information on the background and reasons for the need to revise the GB yellowtail flounder catch limits from those originally proposed in the FW 45 proposed rule (76 FR 11858; March 3, 2011). The public had an opportunity to comment on the April 25, 2011 emergency measures, but no comments were submitted. We will again accept public comment on both the appropriateness of the emergency action to date, and its extension.

The emergency specifications extended through this final rule are the revised GB yellowtail flounder catch limits for FY 2011, as follows: A U.S. ABC of 1,458 mt; a total ACL of 1,416 mt; a groundfish sub-ACL of 1,142 mt; a scallop fishery sub-ACL of 200.8 mt; and an Other ACL sub-component of 73 mt. The initial emergency action modified GB yellowtail flounder catch limits from those originally proposed as a result of the passage of new legislation (International Fisheries Agreement Clarification Act).

Although the FW 45 final rule contained preliminary information regarding the more specific components of the groundfish sub-ACL (the division of the groundfish sub-ACL between sectors and the common pool and the Incidental Catch Total Allowable Catches for common pool vessels), it did not implement the final specification of these components (and this rule does not need to address those aspects of the FMP). The components of the GB yellowtail flounder groundfish sub-ACL are specified in the final rule that adjusted the FY 2011 groundfish sub-ACL components for all stocks (76 FR 34903; June 15, 2011).

No comments were received on the initial emergency rule.

##### **Classification**

We have determined that the emergency specifications extended by this temporary final rule are necessary and are consistent with the Magnuson-Stevens Fishery Conservation and

Management Act and other applicable law.

The interim rule that this rule extends was determined to be not significant for purposes of E.O. 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

The supplemental Environmental Assessment (EA) prepared for the initial emergency action analyzed the impacts of the emergency specifications for the duration of a year (Supplemental EA, Revised Georges Bank Yellowtail Flounder Catch Limits for Fishing Year 2011; April 13, 2011). Therefore, the impacts of this emergency action extension have been analyzed, and are within the scope of the Finding of No Significant Impact.

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

Dated: October 3, 2011.

**Eric C. Schwaab,**

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

[FR Doc. 2011-25936 Filed 10-5-11; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

**RIN 0648-XA421**

#### **Fishery Management Plan for the Scallop Fishery Off Alaska; Amendment 13**

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

**ACTION:** Notice of agency decision.

**SUMMARY:** The National Marine Fisheries Service (NMFS) announces approval of Amendment 13 to the Fishery Management Plan for the Scallop fishery off Alaska (FMP). Amendment 13 implements an annual catch limit (ACL) and accountability measures (AMs) to prevent overfishing in the target fishery for weathervane scallops. Implementing these measures requires revising the maximum sustainable yield (MSY) and the optimum yield (OY) for weathervane scallops to account for total catch. Amendment 13 also clarifies that, in the absence of a statewide estimate of spawning biomass for weathervane scallops, the overfishing level (OFL) is

specified as the MSY. Under Amendment 13, scallop species not targeted in the fishery are classified as Ecosystem Component (EC) species. Amendment 13 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws. No changes in Federal regulations are implemented by this amendment.

**DATES:** The amendment was approved on September 30, 2011.

**ADDRESSES:** Electronic copies of Amendment 13 and the Environmental Assessment prepared for this action may be obtained from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Peggy Murphy or Gretchen Harrington, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan or fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

NMFS published the notice of availability for Amendment 13 to the FMP on July 11, 2011 (76 FR 40674), with a comment period that ended on September 9, 2011. NMFS received no comments on Amendment 13.

NMFS determined that Amendment 13 to the FMP is consistent with the Magnuson-Stevens Act and other applicable laws and approved Amendment 13 on September 30, 2011. The July 11, 2011, notice of availability (76 FR 40674) contains additional information on this action. No changes to Federal regulations are necessary to implement this FMP amendment.

The Council developed the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), and it was approved by the Secretary on July 26, 1995. The scallop fisheries in the U.S. exclusive economic zone off Alaska are jointly managed according to the FMP and implementing regulations issued by NMFS or the State of Alaska (State). The FMP delegates many management measures for the scallop fisheries to the State with Federal

oversight. Under the FMP, the State sets a guideline harvest level (GHL) for each scallop registration area and manages each fishery inseason to the corresponding GHL. The GHL is an amount of harvest the managers determine acceptable for the upcoming fishing year. The GHL for each scallop fishery is set within the applicable guideline harvest range, which the State has established in regulations.

The FMP covers all scallop stocks off Alaska. Weathervane scallops are currently the only scallop species targeted in commercial fisheries. All other scallop species, including pink, spiny, and rock scallops, are not targeted but occasionally occur as bycatch in the weathervane scallop fisheries.

Amendment 13 was unanimously adopted by the Council in October 2010. Amendment 13 (1) Revises the MSY and OY to include all fishing mortality; (2) specifies that the OFL equals the MSY in the absence of a statewide estimate of spawning biomass for weathervane scallops; (3) specifies an acceptable biological catch (ABC) control rule to account for uncertainty in the OFL; (4) sets the ACL equal to the ABC; (5) specifies accountability measures to prevent catch from exceeding the ACL and to correct for an overage if the ACL is exceeded; and (6) creates an EC category for non-target scallop species. With adoption of Amendment 13, NMFS determines that the FMP complies with the new requirements of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2007.

The Magnuson-Stevens Act establishes, either expressly or by logical extension, four basic requirements that prompted the Council's recommendation to amend the FMP. The Guidelines for National Standard 1 of the Magnuson-Stevens Act (50 CFR 600.310; NS 1 Guidelines) provide guidance to regional fishery management councils about how to satisfy the obligations of the Magnuson-Stevens Act relative to preventing overfishing and establishing an ABC and ACL. The following is a summary of these four requirements.

1. For stocks in the fishery, the FMP must establish a mechanism for specifying an ACL that will prevent overfishing;

2. For each stock or stock complex in the fishery, the FMP must establish an ABC control rule that accounts for relevant sources of scientific uncertainty;

3. The Council's Scientific and Statistical Committee (SSC) must provide the Council with scientific

advice on the ABC control rule and periodic recommendations for specifying the ABC for each stock or stock complex in the fishery; and

4. The FMP must establish accountability measures that prevent exceeding the ACL and correct overages of the ACL if they do occur.

The Council designed Amendment 13 to address these requirements while maintaining the FMP's cooperative State and Federal management structure, to the extent possible. Maximum Sustainable Yield, Optimum Yield, and Overfishing Level.

Previously, the FMP specified an MSY and OY range that reflect only the retained catch in the weathervane scallop fishery. Amendment 13 revises the retained catch MSY and OY range to reflect total catch by encompassing all sources of scallop fishing mortality, including discards in the directed scallop fishery, bycatch in the groundfish fisheries, and mortality associated with research surveys. The statewide weathervane scallop MSY is revised from 1.24 million pounds (562 metric tons) to 1.284 million pounds (582 metric tons) of shucked meats. The OY is estimated statewide with an upper bound of the MSY. Amendment 13 revises the weathervane scallop OY range to be 0 to 1.284 million pounds (582 metric tons) of shucked meats.

Previously, the FMP specified an overfishing control rule for weathervane scallops stocks as a fishing rate in excess of the natural mortality rate. If an estimate of the statewide weathervane scallop spawning biomass becomes available, the overfishing control rule would be applied to that estimate to determine the OFL. An estimate of the statewide weathervane scallop spawning biomass is not currently available, however, which prevents application of the overfishing control rule to annually determine the OFL. Therefore, until such an estimate of spawning biomass is available, Amendment 13 specifies a default OFL equal to the MSY of 1.284 million pounds. The OFL will be set statewide because the best available information indicates that there is one statewide stock of weathervane scallops and the information necessary to set regional OFLs is not available. In practice, the statewide MSY has functioned as the OFL since 1996. The average annual weathervane scallop catch since 1996 has been less than half of the MSY.

#### Acceptable Biological Catch and Annual Catch Limit

Amendment 13 establishes an ABC control rule and sets the ACL equal to the ABC. Annually, the ABC control

rule will be used to set the maximum ABC for the statewide weathervane scallop stock at 90 percent of the OFL. This 10-percent buffer reduces the risk of overfishing occurring in the weathervane scallop fishery.

The ABC is set to account for the scientific uncertainty in the estimate of the OFL. Lacking a stock assessment model, the sources of scientific uncertainty in the scallop OFL estimate are not directly quantifiable at this time. Therefore, under Amendment 13, scientific uncertainty in the OFL estimate is incorporated in the size of the buffer between the OFL and the ABC.

#### Scientific and Statistical Committee

The Council's SSC annually establishes the ABC for weathervane scallops through the following process. The Scallop Plan Team meets shortly after the scallop fishing season concludes to compile the Stock Assessment and Fishery Evaluation (SAFE) report. The SAFE includes stock assessments, fishery information, and reference points. The Scallop Plan Team will evaluate whether the total catch exceeded the ACL in the previous fishing season. The Scallop Plan Team will then calculate the maximum ABC using the ABC control rule for the upcoming fishing season. The Scallop Plan Team may recommend that the SSC set an ABC lower than the maximum ABC, but it should provide an explanation for such a recommendation.

The SSC will then review the SAFE and recommendations from the Scallop Plan Team. The SSC will set a statewide ABC for the directed weathervane scallop fishery prior to the beginning of the fishing season. The SSC may set an ABC lower than the maximum ABC calculated using the ABC control rule, but it must provide an explanation for why a lower ABC was set.

#### Accountability Measures

Amendment 13 establishes AMs to prevent ACLs from being exceeded and to correct overages of the ACL if they do occur. First, under Amendment 13, the State establishes the annual GHL for each scallop management area at a level sufficiently below the ACL so that the sum of the directed scallop fishery removals and estimated discard mortality in directed scallop and groundfish fisheries does not exceed the ACL.

Second, NMFS expects that the inseason management measures that prevent catch from exceeding the GHL, and have been a part of management of the weathervane scallop fishery since the inception of this FMP, will also prevent catch from exceeding the ACL. State management requires 100-percent observer coverage of all vessels in the weathervane scallop fishery. Fishery observers provide inseason data on catch and bycatch. Managers monitor inseason fisheries landings and observer data, and have the authority to close a fishery inseason to prevent catch from exceeding the GHL.

Third, if total catch does exceed the ACL, State managers will account for the overage through a downward adjustment to the GHL in the following season by an amount sufficient to remedy the biological consequences of the overage.

#### Ecosystem Component

Under the NS 1 Guidelines, all stocks in an FMP are considered to be "in the fishery," unless they are identified as EC species through an FMP amendment process. Council review of the FMP determined that weathervane scallops are "in the fishery" as they are targeted and retained for sale. Amendment 13 establishes an EC category in the FMP that contains all non-targeted scallop species, including pink or reddish scallops, spiny scallops, and rock scallops.

Non-targeted scallops have been managed under the scallop FMP but are not generally retained in commercial scallop fisheries off Alaska. These non-target scallop species occupy habitats at different depths than the targeted weathervane scallops; therefore, NMFS does not anticipate that incidental catch in the weathervane scallop fishery would pose a serious risk to these stocks. The best available scientific information does not indicate that any of the non-target scallop species are overfished, subject to overfishing or approaching an overfished condition, or likely to become overfished if placed in the EC category.

According to the NS 1 Guidelines, no reference points are required for EC species; however, under Amendment 13, these species will be monitored to ensure they are not targeted and that incidental catch does not reach a point where there are concerns for the sustainability of these stocks. Harvest limits and related management measures would be developed and implemented prior to developing a fishery for any of these species.

An Environmental Assessment was prepared for Amendment 13 that provides detailed descriptions of the scallop fishery management background, the purpose and need for action, the management alternatives evaluated to address this action, and the environmental, social, and economic impacts of the alternatives (see ADDRESSES).

#### Response to Comments

NMFS did not receive any comments on Amendment 13.

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

Dated: September 30, 2011.

**Eric C. Schwaab,**

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

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