

by an observer or at-sea monitor and will provide additional beneficial data to increase our understanding of the fishery and allow us to closely monitor this exemption.

Third, measures in this action have been adequately analyzed in several environmental assessments. The environmental assessment for Framework Adjustment 47 analyzed allocations based on stock assessments that use the best available science, are subject to peer review, and include consideration of the growth rates and lifespan of redfish and other groundfish species. Importantly, this action only allows sector vessels an increased opportunity to harvest more of their allocation, which has previously been underharvested. The environmental impacts of sectors receiving an allocation and fishing under regulatory exemptions for fishing year 2012 are further analyzed in the Environmental Assessment for Fishing Year 2012 Sector Operations Plans and Contracts, which also tiers off the assessment for Framework Adjustment 47.

The environmental impacts specific to this action are analyzed in a Supplemental Environmental Assessment for Fishing Year 2012 Sector Operations Plans and Contracts. This assessment included a review of the REDNET study, which showed no increased catch of juvenile fish when fishing for redfish with 4.5 inch mesh nets. Because the REDNET information shows no increased catch of juvenile fish, and there were no significant impacts found in the EAs and specifications that considered the impacts of fishing for the total allocation, an EIS is unnecessary. Last, this action includes increased monitoring, catch thresholds, and we have stated that we will revoke the exemption if it is determined that fishing for redfish with smaller mesh is negatively impacting redfish or other groundfish stocks.

Changes From the Proposed Rule

We had proposed that all vessels in a sector be required to fund their own at-sea monitoring coverage for trips targeting redfish under this exemption if the sector elected to develop an industry-funded at-sea monitoring plan. The final rule changes this requirement so that a subset of sector members may participate in an industry-funded at-sea monitoring plan that is subject to approval by NMFS.

The November 8, 2012, proposed rule stated that “* * * to help mitigate catches of sub-legal sized groundfish, total groundfish discards (excluding redfish discards) may not exceed 5

percent of all groundfish caught when directing on redfish with small-mesh nets.” This requirement was incorrectly stated in the proposed rule. Catch from the REDNET research project demonstrated that vessels discarded less than 5 percent of all groundfish caught (including redfish). A clarification was published in the **Federal Register** on January 10, 2012 (78 FR 2249), with an additional 15-day period to comment on this clarification. No comments on this clarification were received. Redfish discards will be included in the discard threshold as intended and as stated in the EA completed for this action. Not incorporating discards of juvenile redfish could jeopardize the health of the stock.

Classification

The Administrator, Northeast Region, NMFS, has determined that this rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action is exempt from review under Executive Order (E.O.) 12866.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

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

Dated: February 27, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013-05044 Filed 2-28-13; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121128658-3161-02]

RIN 0648-BC72

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Framework Adjustment 7

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

ACTION: Final rule.

SUMMARY: NMFS is changing the butterfish mortality cap on the longfin squid fishery from a catch cap to a discard cap as a result of its approval of Framework Adjustment 7 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. This action also reduces the butterfish mortality cap for the 2013 fishing year by 13 percent (from 4,477 mt to 3,884 mt) to exclude butterfish landings that were previously included in the butterfish mortality cap allocation. The adjustment will maintain the intended function of the butterfish mortality cap by continuing to limit butterfish discards in the longfin squid fishery while accommodating a potential directed butterfish fishery during the 2013 fishing year.

DATES: Effective March 5, 2013 through December 31, 2013.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Framework Document for Framework Adjustment 7, are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The Framework Document is also accessible via the Internet at <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Katherine Richardson, Policy Analyst, 978-675-2152, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a proposed rule for Framework Adjustment 7 on December 13, 2012 (77 FR 74159). The proposed rule included additional background information and detail on why and how the Council developed Framework Adjustment 7, which NMFS has not repeated in this rule.

NMFS implemented the butterfish mortality cap on the longfin squid fishery as part of Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) (75 FR 11441, March 11, 2010) as a means of reducing fishing mortality to the butterfish stock. Butterfish discards in the longfin squid fishery account for the largest source of butterfish fishing mortality. The cap currently limits butterfish catch (both landings and discards) on directed longfin squid trips. The mortality cap accounts for fishery behavior in which fishermen discard most butterfish caught on a longfin squid trip and land only a small amount of butterfish, which has been the case since 2002. In response to new information that suggests increased butterfish abundance, the Council recommended and NMFS implemented on January 16, 2013, (78 FR 3346) a much higher butterfish quota for the 2013 fishing year. The increased quota will allow for a directed butterfish fishery for the first time in recent years.

NMFS currently calculates the butterfish mortality cap by extrapolating the observed butterfish catch (landings and discards) on longfin squid trips with an observer aboard to determine the butterfish catch on all unobserved longfin squid trips. The butterfish mortality cap calculations currently include all trips that land greater than or equal to 2,501 lb of longfin squid. With directed butterfish fishing, an observed trip could land a very large amount of butterfish and just enough longfin squid to qualify as a longfin squid trip, and we would include it as a butterfish mortality cap trip. This means that the cap estimation would include a number of trips that are not truly targeting longfin squid. In order to accommodate the directed butterfish fishery, Framework Adjustment 7 changes the butterfish mortality cap on the longfin squid fishery from a catch cap to a discard cap. If the Council specifies a butterfish quota that does not accommodate a directed fishery in future fishing years, it can change the butterfish discard cap to a catch cap as part of the specifications process.

This action also reduces the butterfish mortality cap for the 2013 fishing year by 13 percent (from 4,477 mt to 3,884 mt) to exclude butterfish landings that were previously included in the butterfish mortality cap allocation. NMFS has based this reduction on year-end butterfish mortality cap analyses for the 2011 fishing year, in which 13 percent of butterfish catch in the cap was retained, and 87 percent of butterfish catch in the cap was discarded. Although the total butterfish

mortality allocation will decrease, NMFS expects the adjusted cap level to maintain overall butterfish mortality in the longfin squid fishery.

Changes From the Proposed Rule

At the time the proposed rule for Framework 7 published, NMFS had not yet finalized the butterfish mortality cap allocation for 2013. Final Research Set-Aside (RSA) allocations for a given year are typically not available until final specifications, and the exclusion of the final RSA allocation results in slight decreases in a number of the specified allocations for a given species. We have since finalized in the 2013 MSB Specifications and adjusted the butterfish mortality allocation from 4,500 mt to 4,477 mt to account for allocated butterfish RSA.

The proposed rule included the 13-percent reduction to the mortality cap using the cap specified prior to final RSA allocation. For this final rule, we are adjusting the reduction of the mortality cap to include the RSA allocation. Thus, the final rule for Framework 7 applies the 13-percent discount to the butterfish mortality cap allocation presented in the final 2013 MSB Specifications (4,477 mt), which results in a 2013 butterfish mortality cap of 3,884 mt.

Comments and Responses

NMFS received one comment on the proposed rule for Framework Adjustment 7. The Garden State Seafood Association (GSSA), a New Jersey-based commercial fishing industry group, commented in support for the action and noted that it was consistent with the intent of Amendment 10 to limit butterfish discards and maintain the butterfish cap within the longfin fishery, while facilitating the directed butterfish fishery in 2013.

Response: NMFS agrees that the measures in Framework 7 will still limit butterfish discards in the longfin squid fishery. The measures implemented in the 2013 MSB Specifications facilitate the directed butterfish fishery, but this measure does allow additional landings of butterfish while on a directed longfin squid trip.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provision of the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries finds that the need to implement these measures in a timely

manner to avoid premature closure of the longfin squid fishery constitutes good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date. The 2013 MSB Specifications allocated a level of butterfish catch that may create enough butterfish market interest to cause a directed butterfish fishery for the first time in many years. This directed fishery is expected to be of the greatest value in late winter. If directed butterfish fishing increases without the measures included in this action, vessels that catch a high volume of butterfish on trips we determine to be longfin squid trips (*i.e.*, those trips that also land more than 2,500 lb of longfin squid), will cause the butterfish mortality cap in the longfin squid fishery to be quickly harvested, resulting in a premature closure of the longfin squid fishery. Because the measures in this action remove landed butterfish from the calculation of the longfin squid butterfish mortality cap, these measures would prevent such an early closure of the longfin squid fishery. A premature closure of the longfin squid fishery would be contrary to the public interest because it would cause unnecessary and unjustifiable economic harm to fishery participants.

Failure to implement this rule immediately will undermine NMFS' ability to accurately manage the butterfish resource by correctly estimating discards. This action has no other impacts on the fishing industry or other members of the public, and thus, the potential for closing the fishery during the normal 30-day delay in effectiveness would be contrary to public interest. Therefore, we are waiving the delay in effectiveness so that the final rule may be effective upon publication. Under MSA and other applicable law requirements, we have proceeded expeditiously with this action and factors out of our control resulted in the delay beyond the implementation of the 2013 MSB Specifications.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. NMFS published the factual basis for this certification in the proposed rule and has not repeated it here. NMFS received no comments regarding this certification. As a result, NMFS was not required to prepare a

final regulatory flexibility analysis, and none has been prepared.

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

Dated: February 27, 2013

Alan D. Risenhoover,

*Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.*

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