

(c) * * *

(2) * * *

(i) Fishing with gear as described in paragraph (a)(2) of this section;

* * * * *

(f) * * *

(2) * * *

(ii) That are fishing with or using exempted gear as defined under this part, excluding pelagic gillnet gear capable of catching multispecies, except vessels may fish with a single pelagic gillnet, not longer than 300 ft. (91.44 m) and not greater than 6 ft (1.83 m.) deep, with a maximum mesh size of 3 inches (7.62 cm.), provided the net is fished in the upper two-thirds of the water column and is marked with the owners name and vessel identification number, and provided there is no other gear on board capable of catching multispecies finfish; or

* * * * *

[FR Doc. 97-24812 Filed 9-18-97; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970908229-7229-01; I.D. 082797A]

RIN 0648-AJ55

Fisheries of the Northeastern United States; Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement the provisions of proposed Amendment 10 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP). Amendment 10 would revise some of the management measures in the summer flounder fisheries and require a number of corresponding revisions to the regulations implementing the FMP and its amendments.

DATES: Public comments must be received on or before November 3, 1997.

ADDRESSES: Comments on this proposed rule should be sent to Andrew A. Rosenberg, Ph.D., Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive,

Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Amendment 10 Proposed Rule."

Copies of Amendment 10, the environmental assessment and the regulatory impact review are available from David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508-281-9221.

SUPPLEMENTARY INFORMATION:

Background

Proposed Amendment 10 was prepared by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. A notice of availability for the amendment was published in the **Federal Register** on September 3, 1997 (62 FR 46470), soliciting public comments on Amendment 10 through November 3, 1997. All comments received by the end of the comment period on the proposed amendment, whether specifically directed to Amendment 10 or the proposed rule, will be considered in the approval/disapproval decision on Amendment 10; comments received after that date will not be considered in the approval/disapproval decision of Amendment 10. Public comments must be received (not postmarked or otherwise transmitted) by the close of business on November 3, 1997, to be considered in the approval/disapproval decision.

Amendment 10 revises the management measures in the summer flounder (*Paralichthys dentatus*) fishery, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended. The management unit continues to be summer flounder in U.S. waters in the western Atlantic Ocean from the southern border of North Carolina, northward to the U.S./Canada border.

The regulations implementing the FMP and its amendments impose a broad spectrum of measures on the fishery to stop overfishing and increase spawning stock biomass. These measures include minimum mesh size limits in the otter trawl fishery, a moratorium on the entry of new vessels into the commercial fishery, and a total harvest limit allocated between the commercial and recreational sectors of the fishery. The harvest limit for the

commercial sector is allocated as a quota, apportioned to the states based on historical landings data. All commercial landings in a state count against that state's quota.

Proposed Amendment 10 would require a number of changes to the summer flounder regulations. Amendment 10 would modify the commercial minimum mesh size limit, continue the moratorium on entry of additional commercial vessels, remove the landing requirements applicable to permit retention, modify the vessel replacement criteria, would allow any state to be granted *de minimus* status if commercial summer flounder landings during the preceding calendar year were less than 0.1 percent of the total coastwide quota, allow federally permitted charter and/or party vessels to possess fillets less than the minimum size if in possession of a permit to do so issued by their state, and prohibit transfer of summer flounder at sea. Amendment 10 also contains measures adopted by the Commission as part of its interstate management process. Defined as compliance criteria, these management measures are not part of the Federal regulatory process and are, therefore, not included in this proposed rule. Details of these measures are described in Amendment 10, which is available from the Council (see **ADDRESSES**).

In addition, the Council reevaluated in Amendment 10 the commercial quota system implemented by Amendment 2. During the public hearings for Amendment 10, the Council and Commission proposed several alternative quota allocation methods, with the status quo being the preferred alternative. After receiving and considering public comments, the Council and Commission voted to maintain the existing state-by-state commercial quota allocation system. The Council and Commission felt the current system allows the states the most flexibility in managing their quotas, by implementing state subquotas and trip limits.

After a preliminary review of Amendment 10, NMFS found that the *de minimus* status provision was not consistent with national standard 7, raised questions of consistency with national standard 1, and appears arbitrary and capricious. This measure would require an annual examination of state landings to determine if landings in that state during the preceding year for which data are available were less than 0.1 percent of the overall annual quota. If a state met this criterion, it would be granted *de minimus* status. The *de minimus* measure would impose

an administrative burden or cost to make this annual determination, without conferring any demonstrable administrative or conservation benefit. This would contravene the requirements of national standard 7. Also, it is not clear if a *de minimus* state must close its state fishery when its quota is harvested. A state's failure to close its fishery when its quota is harvested would prevent the attainment of the fishing mortality rate goals in the FMP, since vessels without Federal permits fishing exclusively in that state's waters could continue to land summer flounder. This would result in overfishing and renders the measure inconsistent with national standard 1.

If *de minimus* status does not, at the very least, require a state to impose landing constraints, the provision would encourage owners of vessels that have not traditionally landed in that state to land amounts of summer flounder much greater than they could land in their home port states. This could result in the state's *de minimus* quota being rapidly exceeded and compound the overfishing situation if a *de minimus* state is not required to close its fishery when its *de minimus* quota is harvested.

Further, the standard established to determine *de minimus* status (examination of landings data for the last year for which data are available) appears arbitrary and capricious. Landings in the intervening time period in the state under consideration for *de minimus* status could well exceed the threshold for such status. Thus, such a determination would not reflect accurately the true status of the state.

As a result of this preliminary review, NMFS proposes to disapprove the *de minimus* measure. Therefore, this measure is not included in the regulations proposed for public comment.

Issue of Concern

NMFS notes that the Council recommended that May 13, 1997, be the baseline date for measuring vessel upgrades at the time of replacement. The baseline date was not specified when the Council held public hearings on Amendment 10, although it is a necessary adjunct required for the administration of the replacement upgrade provision. In order that all potentially affected fishery participants have equal notice of the baseline date, NMFS is proposing September 19, 1997, instead of May 13, 1997, as proposed by the Council.

Proposed Measures

Minimum Mesh Requirement

The minimum mesh size for otter trawl vessels possessing 100 lb (45.4 kg) or more of summer flounder between May 1 and October 31, or 200 lb (90.8 kg) or more of summer flounder between November 1 and April 30, would be 5.5-inch (14.0-cm) diamond, or 6.0-inch (15.2-cm) square, inside measure, applied throughout the body, extension(s) and codend of the net. Under the existing regulations, this requirement applies to the codend only. The minimum mesh size requirement could be changed annually following the existing Monitoring Committee process set forth in the FMP. In future years, the minimum mesh size could be specified to apply to any portion of the entire net, including the wings, body, extension(s), or codend. The Council and Commission could recommend to the Administrator, Northeast Region, NMFS (Regional Administrator), a delayed implementation date for any modification to the minimum mesh size regulations to account for the availability of net construction materials. The delay could be for up to 6 months, and would account for localized shortages in the twine needed to meet the mesh requirements. The Council and Commission assessed the availability of net construction materials and recommended an effective date for the revised mesh requirements of 6 months after the date the final regulations are published in the **Federal Register**.

Commercial Moratorium

Amendment 10 would extend indefinitely the moratorium on the entry of additional commercial vessels into the summer flounder fishery in the exclusive economic zone. Amendment 2 to the FMP instituted the vessel moratorium in 1993, which automatically expires December 31, 1997.

Vessel Replacement Criteria

Amendment 10 would permit a vessel with a moratorium permit to be replaced by another vessel and its permit transferred to the new vessel without having to leave the fishery involuntarily (e.g., sink or burn), as is currently required. The replacement vessel could be upgraded if it met the criteria specified in the Fishery Management Plan for the Northeast Multispecies Fishery: A one-time horsepower increase that may not exceed 20 percent of the horsepower of the vessel replaced and a one-time increase of up to 10 percent in the vessel's length, gross

registered tons (GRT), and/or net tons (NT), all of which must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade. Upgrades would be based on the original vessel's specifications as of the effective date of the final regulations for Amendment 10.

Expiration of the Moratorium Permit

Amendment 10 would remove the existing provision that requires a vessel with a moratorium permit to land summer flounder at least once every 52 weeks to retain the permit. This regulation was originally intended to reduce effort on the fishery by eliminating inactive permits. However, since implemented in 1993, no permits have been lost as a result of this measure and, in fact, the measure may increase effort as participants fish merely to retain their permit. Therefore, the elimination of this measure may serve to decrease fishing effort.

Transfer of Summer Flounder at Sea

Amendment 10 would prohibit vessels issued a summer flounder moratorium permit from transferring or attempting to transfer any summer flounder from one vessel to another vessel. Transfer means to begin to remove, to remove, to pass over the rail, or to otherwise take away fish from any vessel and move them to another vessel. Currently, there is no such prohibition. As such, vessels might be able to circumvent regulations such as trip limits, and Federal and/or state permit requirements by transferring fish at sea. These actions could increase effort in the summer flounder fishery.

Filleting at Sea

Amendment 10 would allow party/charter boats to fillet summer flounder at sea if in possession of a state-issued permit that allows filleting of summer flounder at sea and possession of body parts smaller than the minimum size.

Commercial Quota System

Amendment 10 would not change the existing commercial quota system. Currently, the coastwide commercial quota is allocated to each of the states from Maine to North Carolina, based on their share of the commercial landings from 1980 through 1989.

Technical Changes

In 50 CFR part 648, Fisheries of the Northeastern United States, the vessel replacement requirements for the scup, *Illex* and *Loligo* moratorium fisheries are presently specified by referencing the vessel replacement requirements for the summer flounder fishery. As a result,

any change to the regulatory text for the vessel replacement requirements for the summer flounder fishery would result in a change to the replacement provisions for those other fisheries. Since the vessel replacement measures for these other moratorium fisheries would not be changed by Amendment 10, the wording in the regulations would be revised in order to maintain their current vessel replacement criteria. That is, the replacement vessel provisions for the *Loligo* fishery would be modified to maintain the original intent, and the replacement provisions for the remaining fisheries would be revised to reference the *Loligo* provisions.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and 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 as follows.

The proposed rule would implement Amendment 10 by revising a number of the regulations implementing the FMP and its amendments and by adding a number of new regulations. Specifically, the proposed rule would modify the commercial minimum mesh size requirement, continue the moratorium on entry of additional commercial vessels, modify the vessel replacement criteria, remove provisions that pertain to the expiration of the moratorium permit, and prohibit transfer of summer flounder at sea. Amendment 10 examined alternate state commercial quota allocation mechanisms. However, no change was made to the existing state-by-state system.

The requirement that minimum mesh size be applied throughout the net would impact an estimated 42 percent of the participants in the summer flounder fishery (443 of the 1,063 permit holders); the other 620 are already subject to requirements for minimum mesh throughout the net because they hold northeast Multispecies vessel permits. Therefore, a substantial number of small entities (42 percent) would be impacted by this rule. However, the compliance costs associated with the measure are not significant under the Regulatory Flexibility Act. Costs were broken down into trip or variable costs (e.g., fuel, ice, food) and yearly or fixed costs (e.g., gear, insurance, engine and gear repair, electronic equipment expenses). Labor costs were not included in the analysis because labor is generally paid as a percentage of the total revenues after certain expenses are subtracted. Compliance costs are less than 1 percent of the total annual costs for offshore vessels and 1.45 percent for the smaller inshore vessels.

Compliance costs reflect the cost of the gear conversion ranging from \$775 for inshore vessels to \$1,354 for offshore vessels versus annualized vessel costs ranging from \$39,695 for vessels 5–50 in gross registered tonnage to \$171,692 for vessels greater than 150 gross registered tons.

According to the Council, specific data are not available for quantitative analysis of other new measures in Amendment 10. A qualitative analysis conducted by the Council indicates that those measures would have no significant impact on a substantial number of small entities because of their implementation. The National Marine Fisheries Service (NMFS) reviewed this analysis, and since most measures proposed in Amendment 10 are administrative in nature, NMFS concurs that the measures would result in no significant economic impacts on small entities. Additionally, several provisions, such as the prohibition of transferring summer flounder at sea and the vessel replacement criteria, would make the FMP consistent with the Multispecies Fishery Management Plan, and therefore would create no additional impacts for industry participants who also participate in that fishery.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 15, 1997.

David L. Evans,

Deputy 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 § 648.4, paragraph (a)(3)(i)(B)(2) is removed, and paragraphs (a)(3)(i)(C), (a)(5)(i)(A)(2), (a)(5)(i)(C), (a)(5)(ii)(A)(2), (a)(5)(ii)(C), (a)(6)(i)(A)(2), (a)(6)(i)(C) are revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

- (a) * * *
- (3) * * *
- (i) * * *

(C) *Replacement vessels.* To be eligible for a moratorium permit, the replacement vessel must meet the following criteria:

(1) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel that was initially issued a moratorium permit as of [INSERT EFFECTIVE DATE OF THE FINAL REGULATIONS].

(2) The replacement vessel's length, GRT, and NT may not exceed by more

than 10 percent the length, GRT, and NT of the vessel that was initially issued a moratorium permit as of [INSERT EFFECTIVE DATE OF THE FINAL REGULATIONS].

* * * * *

- (5) * * *
- (i) * * *
- (A) * * *

(2) The vessel is replacing such a vessel and the replacement vessel meets the requirements of paragraph (a)(5)(i)(C) of this section.

* * * * *

(C) *Replacement vessels.* To be eligible for a moratorium permit, the replacement vessel must be replacing a vessel of substantially similar harvesting capacity that is judged unseaworthy by the USCG, for reasons other than lack of maintenance, or that involuntarily left the fishery during the moratorium. Both the entering and replaced vessels must be owned by the same person. Vessel permits issued to vessels that involuntarily leave the fishery may not be combined to create larger replacement vessels.

* * * * *

- (ii) * * *
- (A) * * *

(2) The vessel is replacing such a vessel and meets the requirements of paragraph (a)(5)(i)(C) of this section.

* * * * *

(C) *Replacement vessels.* See paragraph (a)(5)(i)(C) of this section.

* * * * *

- (6) * * *
- (i) * * *
- (A) * * *

(2) The vessel is replacing such a vessel and meets the requirements of paragraph (a)(5)(i)(C) of this section.

* * * * *

(C) *Replacement vessels.* See paragraph (a)(5)(i)(C) of this section.

* * * * *

3. In § 648.13, paragraph (d) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(d) All persons are prohibited from transferring or attempting to transfer at sea summer flounder from one vessel to another vessel.

4. In § 648.14, paragraph (j)(9) is added to read as follows:

§ 648.14 Prohibitions.

* * * * *

- (j) * * *

(9) Offload, remove, or otherwise transfer, or attempt to offload, remove or otherwise transfer summer flounder from one vessel to another, unless that vessel has not been issued a summer

flounder permit and fishes exclusively in state waters.

* * * * *

5. In § 648.103, paragraph (c) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, e.g., fillets, except that party and charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if all state requirements are met.

6. In § 648.104, paragraph (a)(1) is revised, and paragraph (f) is added to read as follows:

§ 648.104 Gear restrictions.

(a) * * * (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh applied throughout the body, extension(s), and codend portion of the net.

* * * * *

(f) The minimum net mesh requirement may apply to any portion of the net. The minimum mesh size and the portion of the net regulated by the minimum mesh size may be adjusted pursuant to the procedures in § 648.100. [FR Doc. 97-24922 Filed 9-18-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970829216-7216-01; I.D. 073097B]

RIN 0648-AK15

Fisheries of the Exclusive Economic Zone Off Alaska; Extension of the Interim Groundfish Observer Program through 1998

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement a regulatory amendment to extend with some minor revisions the

current groundfish observer coverage requirements and implementing regulations for the North Pacific Groundfish Observer Program (Observer Program) that expire December 31, 1997. This action is necessary to assure uninterrupted observer coverage requirements through 1998. This proposed rule also provides notice of proposed changes to observer qualifications and observer training/briefing requirements, which are non-codified elements of the Observer Program.

This action is intended to accomplish the objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs).

DATES: Comments on the proposed rule must be received by October 20, 1997.

ADDRESSES: Comments should be sent to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the 1997 Interim Groundfish Observer Program may be obtained from the Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802; telephone: 907-586-7228. Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for the proposed regulatory amendment also may be obtained from this address.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Area in the Exclusive Economic Zone are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

In 1996, the Council adopted and NMFS implemented the Interim Groundfish Observer Program. The Interim Groundfish Observer Program superseded the North Pacific Fisheries Research Plan and extended the 1996

mandatory groundfish observer requirements through 1997, unless superseded by a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, and observer compensation and working conditions. NMFS continues to pursue a long-term solution and is developing an alternative that was supported by the Council at its June 1997 meeting. The Council is scheduled to take final action on a long-term alternative at its December 1997 meeting. Given that this alternative cannot be in place by January 1, 1998, the current interim program must be extended to assure uninterrupted observer coverage requirements.

At its June 1997 meeting, the Council unanimously requested NMFS to extend through 1998 the current interim program, with minor revisions recommended by NMFS. In addition, the Council recommended an adjustment to the existing observer conflict-of-interest standard that prohibits a person from serving as an observer if that person was employed in a North Pacific fishery during the previous 12-month period. The Council recommended a less restrictive standard that would prohibit an observer from working on any vessel or at any shoreside processor owned or operated by a person who previously employed the observer during the previous 12-month period. Public testimony at the Council meeting indicated that the current conflict-of-interest standard may be too restrictive given that the interim observer program does not address the issue of an adequate observer compensation package. Until the observers are more adequately compensated, they may need to engage in non-observer employment in North Pacific fisheries.

Proposed Regulatory Changes For The 1998 Interim Groundfish Observer Program

A description of the regulatory provisions of the Interim Groundfish Observer Program was provided in the preambles to the proposed and final rules implementing this program (61 FR 40380, August 2, 1996; 61 FR 56425, November 1, 1996). Only minor changes from the 1997 regulations are being proposed for 1998. They are described and justified below.

1. Extend the effective period of 50 CFR 679.50 through December 31, 1998. The 1-year extension is intended to encompass the period of time necessary for NMFS to develop a long-term program that addresses concerns about