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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180220191-8191-01]

RIN 0648-BH80

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Commercial Accountability Measure Framework Adjustment 13

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes modifications to the commercial summer flounder, scup, and black sea bass accountability measures, as recommended by the Mid-Atlantic Fishery Management Council. The proposed change would adjust the accountability measures based on the status of the stocks. This rule is intended to provide additional flexibility in determining when accountability measures are appropriate, similar to how the accountability measures are applied towards the recreational fisheries for these species.

DATES: Comments must be received by *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: An environmental assessment (EA) was prepared for this action and describes the proposed measures and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of the Summer Flounder, Scup, and Black Sea Bass Commercial Accountability Measure Framework, including the EA, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management

Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the Internet at <http://www.mafmc.org/s/sfsbsb-commercial-AM-FW-draftEA.pdf>.

You may submit comments on this document, identified by NOAA-NMFS-2018-0080, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0080,
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA, 01930. Mark the outside of the envelope, “Comments on the Proposed Rule to Modify the Summer Flounder, Scup, and Black Sea Bass Commercial Accountability Measures.”

Instructions: 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 by NMFS. All comments received are part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Emily Gilbert, Fishery Policy Analyst, (978) 281-9244.

SUPPLEMENTARY INFORMATION:

General Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35° 13.3' N. lat. (the approximate latitude of Cape Hatteras, North Carolina). States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's management plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen commercially fishing in Federal waters of the exclusive economic zone, as well as vessels possessing a summer flounder, scup, or black sea bass Federal charter/party vessel permit, regardless of where they fish. This rule proposes to modify current Federal regulations that require accountability measures (AM) when the commercial annual catch limit (ACL) is exceeded for any of these three species. AMs and ACLs are only required in the Federal FMP and, as such, no joint action is needed with the Commission.

There are currently two types of commercial sector AMs for summer flounder, scup, and black sea bass. The first is a pound-for-pound landings overage repayment that is applied when the commercial quota is exceeded. This AM is functioning as intended and would not be adjusted by this action. The second is a non-landings based AM that is applied to the

commercial annual catch target (ACT) when the commercial annual catch limit (ACL) has been exceeded and the overage is caused by commercial fishery discards. This action would adjust this non-landings based AM for summer flounder, scup, and black sea bass. The proposed revisions are designed to better account for the variability in commercial discard estimates and provide additional flexibility to these AMs based on stock status and the biological consequences, if any, of estimated discard overages. NMFS adopted similar AMs for the recreational fisheries managed by the Council in 2013 (78 FR 76759; December 19, 2013).

Proposed Action

The Council reviewed the proposed regulations and deemed them necessary and appropriate to implement consistent with section 303(c) of the Magnuson-Stevens Conservation and Management Act.

Incorporate Stock Status in Non-Landings AM Determination

This rule proposes the following system of AMs to be applied when discards cause the commercial ACL to be exceeded.

- (1) If the current biomass (B) is above the biomass target (B_{MSY}) (i.e., $B/B_{MSY} \geq 1$), no overage payback is required.
- (2) If the current biomass is above the biomass threshold (i.e., not overfished), but below the biomass target ($1 \geq B/B_{MSY} \geq 1/2$), and the stock is not under a rebuilding plan, then the following non-landing payback is applied:
 - a. If fishery discards cause the commercial ACL to be exceeded, but not the acceptable biological catch (ABC), no overage is required; or
 - b. If the fishery discards cause the commercial ACL to be exceeded, and the ABC is exceeded, then a scaled, single-year adjustment to the commercial ACT would be made based on

stock biomass (as explained below), so that the adjustment is larger the closer the overall biomass is to the threshold.

(3) If the stock is overfished (i.e., the most recent estimate of biomass is below the threshold, or $B/B_{MSY} < 1/2$), under a rebuilding plan, or the biological reference points (i.e., stock status) are unknown, then a pound-for-pound payback is required for any non-landings overage.

Scaled Payback Calculation

The Council recommends that the amount of a payback (if determined to be appropriate under criteria 2b, as defined above) be scaled relative to the biomass. The payback would be calculated as the difference between the catch and the ACL (i.e., the overage amount) and the payback coefficient. The payback coefficient is equal to the difference between the most recent estimate of B_{MSY} and the current biomass, divided by $1/2 B_{MSY}$.

This would result in a smaller payback the closer the estimated biomass is to the target and a larger payback the farther away the estimated biomass is from the target. This scaling is intended to minimize impacts of a payback for healthy stocks, while still accounting for the biological consequences of the overage. As previously noted under criterion 3, this scaling would not be used if the stock was overfished (i.e., if $B/B_{MSY} < 1/2$), or if the stock status is unknown. In those cases, the payback would be equal to the full amount of the overage.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with an environmental assessment. According to the commercial ownership database, 910 affiliate firms landed summer flounder, scup, and/or black sea bass during 2014-2016, with 906 of those business affiliates categorized as small business and four categorized as large business. Summer flounder, scup, and black sea bass represented approximately 12 percent of the average gross receipts of the small entities considered and 3 percent of the average receipts of the large entities considered over this time period. This action does not affect the for-hire recreational fishery.

Analyses indicate that the proposed action would range from no payback or to a pound-for-pound payback (status quo) and is not expected to substantially change fishing effort or the spatial and/or temporal distribution of current fishing effort. The proposed non-landing AM payback alternative is expected to minimize the frequency and magnitude of non-landing annual catch limit overage repayments. This alternative would make regulated small entities no worse off than they would be if no action was taken, and better off under current and expected future stock conditions.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 3, 2018.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
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 § 648.103, paragraph (b)(3) is revised to read as follows:

§ 648.103 Summer flounder accountability measures.

* * * * *

(b) * * *

(3) *Non-landing accountability measure.* In the event that the commercial ACL is exceeded and that the overage has not been accommodated through the landings-based AM, then the following procedure will be followed:

(i) *Overfishing, rebuilding, or unknown stock status.* If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the commercial ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's commercial catch estimate exceeded the most recent year's commercial ACL will be deducted, in the following fishing year from the commercial ACT, as a single-year adjustment.

(ii) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(A) If the Commercial ACL has been exceeded, but not the overall ABC, then no single-year AM payback is required.

(B) If the Commercial ACL and ABC have been exceeded, then a scaled single-year adjustment to the commercial ACT will be made, in the following fishing year. The ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the commercial catch and the commercial ACT, and the payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY}-B$) divided by one-half of B_{MSY} .

(iii) *If biomass is above B_{MSY} .* If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then no single-year AM payback is required.

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3. In § 648.123, paragraph (b) is revised to read as follows:

§ 648.123 Scup accountability measures.

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(b) *Non-landing accountability measure.* In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the following procedure will be followed:

(1) *Overfishing, rebuilding, or unknown stock status.* If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the commercial ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's commercial catch estimate exceeded the most recent year's commercial ACL will be deducted, in the following fishing year from the commercial ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Commercial ACL has been exceeded, but not the overall ABC, then no single-year AM payback is required.

(ii) If the Commercial ACL and ABC have been exceeded, then a scaled single-year adjustment to the commercial ACT will be made, in the following fishing year. The ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference

between the commercial catch and the commercial ACT, and the payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY}-B$) divided by one-half of B_{MSY} .

(3) *If biomass is above B_{MSY} .* If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then no single-year AM payback is required.

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4. In § 648.143, paragraph (b) is revised to read as follows:

§ 648.143 Black sea bass accountability measures.

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(b) *Non-landing accountability measure.* In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the following procedure will be followed:

(1) *Overfishing, rebuilding, or unknown stock status.* If the most recent estimate of biomass is below the B_{MSY} threshold (*i.e.*, B/B_{MSY} is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or B_{MSY}) are unknown, and the commercial ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's commercial catch estimate exceeded the most recent year's commercial ACL will be deducted, in the following fishing year from the commercial ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold (B/B_{MSY} is greater than 0.5), but below the biomass target (B/B_{MSY} is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) If the Commercial ACL has been exceeded, but not the overall ABC, then no single-year AM payback is required.

(ii) If the Commercial ACL and ABC have been exceeded, then a scaled single-year adjustment to the commercial ACT will be made, in the following fishing year. The ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the commercial catch and the commercial ACT, and the payback coefficient. The payback coefficient is the difference between the most recent estimate of biomass and B_{MSY} (*i.e.*, $B_{MSY}-B$) divided by one-half of B_{MSY} .

(3) *If biomass is above B_{MSY} .* If the most recent estimate of biomass is above B_{MSY} (*i.e.*, B/B_{MSY} is greater than 1.0), then no single-year AM payback is required.

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