

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–213 to read as follows:

**§ 165.T11–213 Safety Zone; San Francisco Giants Fireworks Display, San Francisco Bay, CA.**

(a) *Location.* This safety zone is established for the waters of San Francisco Bay surrounding a barge used as the launch platform for a fireworks display to be held at the conclusion of a San Francisco Giants baseball game.

(1) During the loading of the fireworks barge, during the transit of the fireworks barge to the display location, and until fifteen minutes prior to the start of the fireworks display, the safety zone will encompass the navigable waters around and under the fireworks barge within a radius of 100 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 11 a.m. on July 27, 2007, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place on July 27, 2007.

(2) Fifteen minutes preceding the fireworks display and during the fifteen minute fireworks display itself, the safety zone increases in size to encompass the navigable waters around and under the fireworks launch barge within a radius of 1,000 feet. During the fireworks display, scheduled to start at approximately 10 p.m. on July 27, 2007, the barge will be located approximately 500–1,000 feet off of San Francisco Pier 48 in position 37° 46'35" N, 122° 23'00" W.

(b) *Enforcement Period.* This section will be enforced from 11 a.m. to 10:20 p.m. on July 27, 2007. If the event concludes prior to the scheduled termination time, the Coast Guard will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of

this part, entry into, transit through, or anchoring within this safety zone by all vessels and persons is prohibited, unless specifically authorized by the Captain of the Port, San Francisco, or his designated representative.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port, San Francisco, or the designated representative.

(3) Designated representative means any commissioned, warrant, and petty officer of the Coast Guard onboard a Coast Guard, Coast Guard Auxiliary, local, state, or federal law enforcement vessel who is authorized to act on behalf of the Captain of the Port, San Francisco.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. Person and vessels may request permission to enter the safety zone on VHF–16 or via telephone at (415) 399–3547.

(5) The U.S. Coast Guard may be assisted in the patrol and enforcement of this safety zone by local law enforcement as necessary.

Dated: June 29, 2007.

**W.J. Uberti,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco.*

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**BILLING CODE 4910–15–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

**[Docket No. 0612243154–7212–02; I.D. 032907A]**

**RIN 0648–AS22**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan; Amendment 14**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is implementing Amendment 14 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery

Management Council (Council). The measures of Amendment 14 include a plan to rebuild the scup stock from an overfished condition to the level associated with maximum sustainable yield, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This action will also allow the regulations concerning the Gear Restricted Areas (GRAs) to be modified through framework adjustments to the FMP. The intended effect of this change is to improve the timing of developing and implementing modifications to the GRAs.

**DATES:** Effective August 22, 2007. The Amendment 14 scup rebuilding plan will begin on January 1, 2008.

**ADDRESSES:** Copies of Amendment 14 and of the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) 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. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this final rule. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>.

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

**SUPPLEMENTARY INFORMATION:****Background**

The Council developed Amendment 14 in response to being notified by NMFS in 2005 that the scup (*Stenotomus chrysops*) stock had been designated as overfished. The Council developed and submitted Amendment 14 for review by the Secretary of Commerce (Secretary) on February 26, 2007. The amendment contains two actions: (1) A 7-year plan to rebuild the scup stock from an overfished condition to a biomass level associated with maximum sustained yield ( $B_{MSY}$ ), as required by the Magnuson-Stevens Act; and (2) an administrative change to the regulations on framework adjustments.

A notice of availability was published in the **Federal Register** on April 11, 2007 (72 FR 18193), announcing that the Council had submitted Amendment 14 for Secretarial review, and that the document was available for public comment. The closing date for comments on the amendment was June 11, 2007. A proposed rule to implement Amendment 14 was published on April 24, 2007 (72 FR 20314). The public comment period for the proposed rule

ended on May 24, 2007. NMFS solicited input from the public regarding the approval, partial approval, or disapproval of the amendment through the notice of availability and requested comments on all the Amendment 14 proposed measures in the proposed rule. Additional detail on the background and development of the Amendment 14 measures are contained in the preamble of the proposed rule and are not repeated here.

This final rule implements the measures of the Council's preferred alternative scup rebuilding plan and the administrative change to the framework adjustment provision of the FMP, as presented in the proposed rule and outlined as follows.

### Scup Rebuilding Plan

Amendment 14 implements a constant fishing mortality rate (F) of 0.10, to be applied each year during a 7-year rebuilding time period beginning January 1, 2008. Under this approach, the Northeast Fisheries Science Center (NEFSC) 3-year Spawning Stock Biomass (SSB) index value for the rebuilding period ending December 31, 2014, is projected to be 5.96 kg/tow, which is approximately 8 percent above the BMSY proxy rebuilding target (5.54 kg/tow).

Applying a constant  $F=0.10$  for 7 years is projected to achieve the required stock rebuilding to comply with the Magnuson-Stevens Act; however, because scup is a relatively data poor stock, and uncertainty exists around estimates of fishing mortality, stock size, and discards, Amendment 14 contains additional criteria to be applied to the rebuilding program, as follows:

1. As improvements to the available data occur over the 7-year rebuilding period, the rebuilding trajectory may change. Therefore, to ensure stock rebuilding, a periodic review will be conducted by the Council's scientific advisors to re-evaluate the F necessary to rebuild the stock. If the Council's scientific advisors determine the stock cannot be rebuilt within the time remaining in the initial 7-year time frame under an  $F=0.10$ , then the Council will recommend measures to rebuild the stock as soon as possible after the 7 years, but not to exceed the 10-year time frame specified in the Magnuson-Stevens Act for rebuilding periods.

2. The scup biological reference points (stock status determination criteria) will be reviewed after the Fishery Survey Vessel (FSV) Henry B. Bigelow has completed 2 full years of service.

3. If a scup stock assessment that results in a change to the biological reference points is completed before the end of the 7-year rebuilding time period, the Council may reconsider the rebuilding targets.

### GRA Modification Process

Amendment 14 implements an administrative change to add the GRAs to the list of management measures that can be changed through a framework adjustment to the FMP. As such, the Council will develop and analyze changes to the GRAs over the span of at least two Council meetings before making a recommendation to NMFS. This change is intended to allow for improved timing of developing and implementing proposed modifications to the GRAs. Amendment 14 proposes no specific changes to the existing GRAs.

### Comment and Response

NMFS received one comment in response to the notice of availability on Amendment 14; no comments were received on the proposed rule.

*Comment:* The commenter stated that quotas should be cut by 50 percent this year and by 10 percent in each year thereafter. The commenter had no specific comments regarding whether Amendment 14 should be approved, partially approved, or disapproved by NMFS; in addition, the commenter did not speak to the specific measures contained in the proposed rule.

*Response:* Fixed percentage reductions in quota applied on an annual basis were not considered by the Council, nor were they analyzed in the Amendment 14 range of alternatives for rebuilding the scup stock. The Council made no recommendation to NMFS to apply such a strategy in rebuilding the scup stock. The constant fishing mortality rate to be applied for the 7-year rebuilding period is projected to rebuild the scup stock to the BMSY level required by the Magnuson-Stevens Act.

NMFS acknowledges that quota reductions may be a necessary component of rebuilding the scup stock as part of the constant fishing mortality strategy. However, reductions in quota will only result when the stock status is at such a level that applying the  $F=0.10$  rate, as outlined in the rebuilding plan, results in a lower quota than the previous year.

### Classification

The Administrator, Northeast Region, NMFS has determined that Amendment 14 to the FMP is necessary for the conservation and management of the

scup fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

NMFS approved Amendment 14 to the FMP on July 03, 2007. A copy of the final Amendment 14 document is available from both the Council and NMFS (see **ADDRESSES**).

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

Included in this final rule is the FRFA prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the economic impacts described in the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the complete IRFA is available from the Council (see **ADDRESSES**).

### Final Regulatory Flexibility Analysis

#### *Statement of Objective and Need*

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

#### *Summary of Significant Issues Raised in Public Comments*

The one comment received on the notice of availability did not specifically address the potential economic impact of the rule. No changes to the proposed rule were required to be made as a result of the public comment. For a summary of the comment received, and the response thereto, refer to the "Comment and Response" section of this preamble.

#### *Description and Estimate of Number of Small Entities to Which This Rule Will Apply*

The proposed action regarding scup rebuilding alternatives could affect any vessel issued a Federal permit for scup, as well as vessels that fish for scup in state waters. Incorporating changes to the GRAs as part of the framework adjustment process is purely administrative in nature and, therefore, is not expected to impact scup fishery participants in state or Federal waters.

The Small Business Administration (SBA) defines a small business in the commercial fishing and recreational fishing activity as a firm with receipts (gross revenues) of up to \$4.0 and \$6.5 million, respectively. The measures regarding scup rebuilding could affect any vessel holding an active Federal permit for scup, as well as vessels that fish for this species in state waters. Data

from the Northeast permit application database show that, in 2005, the most recent year for which there are complete data, 1,511 vessels were permitted to take part in the scup fisheries (both commercial and charter/party sectors). All vessels that would be impacted by this final rulemaking are considered to be small entities; therefore, there would be no disproportionate impacts between large and small entities. Since all permit holders do not actually land scup, the more immediate impact of the rule may be felt by the 428 vessels that are actively participating in this fishery (i.e., that landed 1 lb (0.45 kg) or more of scup in 2005).

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

*Description of the Steps Taken to Minimize Economic Impact on Small Entities*

As previously mentioned, the modification to the framework adjustment language to include the GRAs is administrative in nature and is not expected to have any impact on small entities.

The ability of NMFS to minimize economic impacts in rebuilding the scup stock to the  $B_{MSY}$  level, as required by the Magnuson-Stevens Act, is constrained by the requirement that rebuilding (i.e., meeting or exceeding the  $B_{MSY}$  target) must occur as soon as possible, but no longer than a 10-year period. Among the alternatives proposed to achieve scup rebuilding, two methodologies were considered wherein quotas could be set at a constant level for the specified rebuilding period duration (i.e., constant harvest strategy) or a target F rate could be applied to derive quotas for the duration of the rebuilding period (i.e., constant fishing mortality or F strategy). In addition, the time frame for rebuilding may be set equal to or less than the required 10-year period. Each methodology and time frame for rebuilding carries with it different potential economic impacts to small entities.

The economic analysis for the scup rebuilding plans assessed the impacts of six of the eight proposed rebuilding plans. Two alternatives, 1E and 1F, were not analyzed for detailed economic impacts because the first (Alternative 1E) required a complete prohibition on the take of scup in all fisheries for a 4-year period and was deemed an

unreasonable solution to the issue of rebuilding the stock, and the second (Alternative 1F) was not projected to rebuild the scup fishery within the required maximum 10-year period. Similarly, the no action alternative (status quo), Alternative 1A was not projected to ever achieve stock rebuilding and was removed from consideration, despite having the lowest economic impact of the constant F strategies proposed.

Alternatives 1D and 1H were the most restrictive constant F and constant harvest strategies, respectively, applying measures designed to achieve stock rebuilding within 5-year periods. These two alternatives were associated with the highest economic impacts to small entities. Given that the Magnuson-Stevens Act allows for rebuilding periods to occur over a 10-year period, these alternatives were considered unduly restrictive when compared to other alternatives that are also projected to achieve the required rebuilding within 10 or fewer years.

Alternative 1B, which proposed a constant F strategy for a 10-year period, was associated with the lowest economic impacts for the proposed constant F strategies that achieved the required rebuilding with a 10-year time frame. However, because scup is a relatively data poor stock, and uncertainty exists around estimates of fishing mortality, stock size, and discards, the Council expressed concerns about recommending a rebuilding strategy that utilized the full 10-year period for rebuilding with no formal evaluation of rebuilding progress planned during the period. As a result, if a formal assessment occurred during the rebuilding period that adjusted the biomass target or stock status determination criteria, more restrictive measures in the form of reduced F rates might need to be applied in the later years of the rebuilding period to ensure rebuilding occurs. This could result in severe economic impacts to small entities and, therefore, was not viewed as the ideal approach to stock rebuilding.

The remaining two strategies, Alternatives 1C and 1G, proposed rebuilding the stock within a 7-year period through a constant F and constant harvest strategy, respectively. Setting the rebuilding period at less than 10 years is recommended, given the uncertainties previously mentioned for the scup stock. Under a 7-year rebuilding period, the Council may assess the rebuilding progress and recommend changes to the rebuilding strategy to ensure that the stock is rebuilt within the mandated 10-year

period. Applying this approach is expected to mitigate the need for more restrictive measures in the rebuilding period's final years which would be associated with greater economic impacts to small entities (e.g., significant reduction to the F rate in one year, such as year 9, as opposed to a lower F rate reduction over 3 years to ensure rebuilding occurs within 10 years). Between the two alternatives, the constant F strategy Alternative 1C is associated with slightly higher economic impacts in the initial years of the rebuilding strategy than Alternative 1G. However, as stock size increases through rebuilding and the constant F rate is applied, economic impacts associated with Alternative 1C are less than those associated with Alternative 1G, wherein the amount of harvest permitted remains fixed even as stock size increases.

This final rule implements Alternative 1C for a constant  $F=0.10$  for a 7-year rebuilding period, with the additional conditions previously outlined in the preamble to this rule. This alternative is the midpoint for economic impacts for constant F strategies. While other alternatives also meet the rebuilding objective, Alternative 1C follows the recommendation of the Council. This alternative was selected because it is projected to achieve the required stock rebuilding within the mandated 10-year rebuilding period and also allows for some degree of flexibility within the specified rebuilding period, while still satisfying the requirements of the Magnuson-Stevens Act. The intent of the additional conditions contained in the rebuilding strategy are to ensure that certain parameters of the rebuilding program can be revisited in advance of the end of the rebuilding time frame. This may help mitigate the need of severely restrictive measures and associated economic impacts in the plan's final years, should scientific advice or stock status information change during the course of the 7-year rebuilding plan and/or the scup stock fail to respond to the rebuilding efforts as anticipated and fall behind the rebuilding schedule.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall

explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as the small entity compliance guide was prepared and will be sent to all holders of Federal party/charter permits issued for the scup fisheries. In addition, copies of this final rule and the small entity compliance guide are available from NMFS (see **ADDRESSES**) and at the following website: <http://www.nero.noaa.gov>.

This final rule does not duplicate, overlap, or conflict with any relevant Federal rules.

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, Reporting and recordkeeping requirements.

Dated: July 17, 2007.

**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 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 § 648.127, paragraph (a)(1) is revised to read as follows:

##### § 648.127 Framework adjustment to management measures.

(a) \* \* \*

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear restricted areas, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip

limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, operator permits, any other commercial or recreational management measures, any other management measures currently included in the FMP, and set aside quota for scientific research.

\* \* \* \* \*

[FR Doc. E7-14164 Filed 7-20-07; 8:45 am]

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#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

##### 50 CFR Part 679

[Docket No. 070213033-7033-01]

RIN 0648-XB58

##### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 Pacific ocean perch total allowable catch (TAC) in the Western Aleutian District of the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 18, 2007, through 2400 hrs, A.l.t., December 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands

Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 Pacific ocean perch TAC in the Western Aleutian District of the BSAI is 7,141 metric tons (mt) as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2007 Pacific ocean perch TAC in the Western Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,541 mt, and is setting aside the remaining 1,600 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

##### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch in the Western Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 17, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.