

outside of the envelope, "Comments on GMRI herring EFP." Comments may also be sent via facsimile (fax) to (978) 281-9135.

**FOR FURTHER INFORMATION CONTACT:** Cheryl McGarrity, Fishery Management Specialist, phone: 978-281-9174, fax: 978-281-9135.

**SUPPLEMENTARY INFORMATION:** The Science and Research Director for NMFS's Northeast Fisheries Science Center selected the proposal submitted by GMRI under the 2008-2009 Atlantic Herring Research Set-Aside (RSA) Program entitled: "Effects of Fishing on Herring Aggregations," which would assess the effects of midwater trawling on herring aggregations. An EFP was issued to conduct this work in 2008, and this EFP would authorize exemptions for Year 2 of this research. The proposed research would examine the ability to evaluate potential impacts of midwater trawling on Atlantic herring aggregations through the use of hydroacoustics. Due to concern that other fishing vessels, particularly other herring midwater trawl vessels, fishing in the study area could interfere with the survey, GMRI submitted an EFP application to conduct its research during the midwater gear restriction period, thereby ensuring other midwater trawl vessels will not be fishing in the study area.

GMRI requests that a pair of trawl vessels perform midwater trawling for up to four sampling trips (each of 5-days duration) using standard midwater trawl gear in Areas 1A and 1B between June 1 and September 30, 2008, to evaluate the behavioral response of isolated herring schools to midwater trawls. During a sampling trip, the research team would sequentially perform a series of acoustic surveys, conduct midwater pair trawling, then perform another series of acoustic surveys; which would take less than 72 hr. Vessels would conduct five or fewer tows per day, with each tow lasting 2 to 4 hr. All trawling operations would be monitored by GMRI staff. All herring caught during the survey would be deducted from GMRI's Area 1A and 1B herring RSA allocations of 2,976,240 lb (1,350 mt) and 661,380 lb (300 mt), respectively. Vessels conducting the survey would not be allowed to exceed their Area 1A or Area 1B RSA allocations.

The subject EFP would exempt vessels fishing for herring in Management Area 1A and Management Area 1B from quota closures and herring trip possession limits, as specified at 50 CFR 648.201 and 648.204, respectively. It would also exempt vessels from the

seasonal Management Area 1A trawl gear restriction period (restriction period), as defined at § 648.202(a). Fish caught during research trips would be landed under the set-aside quota awarded to GMRI. Herring caught as part of this research would be deducted from the RSA quota, not from the commercial quota.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs. The applicant may place requests for minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and minimal so as not to change the scope or impact of the initially approved EFP request.

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

Dated: March 19, 2009.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-X002

#### Mid-Atlantic Fishery Management Council; Atlantic Mackerel, Butterfish, Atlantic Bluefish, Spiny Dogfish, Summer Flounder, Scup, Black Sea Bass, Tilefish, Surfclam, and Ocean Quahog Annual Catch Limits and Accountability Measures Omnibus Amendment; Scoping Process

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

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS); notice of public scoping meetings; requests for comments.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) announces its intention to prepare, in cooperation with NMFS, an EIS in accordance with the National Environmental Policy Act to assess potential effects on the human environment of alternative measures to address the new Magnuson-Stevens Fishery Conservation and Management Act requirements for annual catch limits

(ACLs) and accountability measures (AMs) in an Omnibus Amendment to the fishery management plans (FMPs) for Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, tilefish, surfclams, and ocean quahogs. *Loligo* and *Illex* squid are exempt from these new requirements because they have annual life cycles and not subject to overfishing.

This notice announces a public process for determining the scope of issues to be addressed, and for identifying the significant issues related to the implementation of ACLs and AMs for these fisheries. This notice is to alert the interested public of the scoping process, the development of the Draft EIS, and to provide for public participation in that process.

**DATES:** Written comments must be received on or before 5 p.m., EST, on May 15, 2009. Three public scoping meetings will be held during this comment period. See **SUPPLEMENTARY INFORMATION** for dates, times, and locations.

**ADDRESSES:** Written comments may be sent by any of the following methods:

- E-mail to the following address: *Omnibus.NOI@noaa.gov*;
- Mail or hand deliver to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 South New Street, Dover, Delaware 19904-6790. Mark the outside of the envelope "Omnibus Amendment: National Standard 1 Requirements Scoping Comments"; or
- Fax to (302) 674-5399.

The scoping document may also be obtained from the Council office at the previously provided address, or by request to the Council by telephone (302) 674-2331, or via the Internet at <http://www.mafmc.org/mid-atlantic/comments/comments.htm>.

Comments may also be provided verbally at any of the three public scoping meetings. See Supplementary Information for dates, times, and locations.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New St., Dover, DE 19904-6790, (telephone 302-674-2331).

**SUPPLEMENTARY INFORMATION:** The management units for Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, tilefish, surfclams, and ocean quahogs vary, but span the range from the eastern coast of Florida in the

western Atlantic Ocean northward to the U.S.-Canadian border. The specific management units for each species, are contained in the Atlantic Mackerel, Squid, and Butterfish; Atlantic Bluefish; Spiny Dogfish; Summer Flounder, Scup, and Black Sea Bass; Tilefish, and Surfclam and Ocean Quahog FMPs.

#### Meetings

Three scoping meetings to facilitate public comment will be held on the following dates and locations:

1. April 14, 2009, 7:00 p.m., The Sanderling Resort and Spa, 1461 Duck Rd., Duck, NC 27949;
2. April 21, 2009, 7:00 p.m., NYSDEC Marine Resources, 205 N. Belle Mead Rd., Ste 1 East Setauket, NY 11733.
3. May 4, 2009, 7:00 p.m., Crowne Plaza Old Town Alexandria, 901 N. Fairfax Street, Alexandria, Virginia 22314;

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Bryan (302-674-2331 ext 18) at least 5 days prior to the meeting date.

#### Issues Identified for Discussion Under this Amendment

##### *Various Methods for Calculating Acceptable Biological Catch (ABC)*

In an effort to be compliant with the Magnuson-Stevens Act, National Standard 1(NS 1), and Guidelines (50 CFR 600.310), the Council will seek to develop formulaic approaches, known as control rules, that can be consistently applied to derive ABC relative to the status of the stock and the level of scientific uncertainty surrounding the stock status estimate. The following are examples of ABC control rules that the Council may further develop for use in managing the aforementioned species. However, the Council may deviate from these examples and develop additional ABC control rule approaches, consistent with their description in the NS 1 Guidance. The Council will rely heavily on its Scientific and Statistical Committee (SSC) during development and implementation of ABC control rules and it will be the SSC that is responsible for application of the final control rules to recommend either annual or multi-year ABCs for target species stocks.

For example, ABC for all of the target stocks could be prescribed through a set of tiers designed to classify each stock based on the amount or level of information available, type of stock assessment conducted, current stock

status, and/or other relevant factors. Within each tier, a pre-defined set of control rules would be used to calculate the overfishing level (OFL) and ABC. In addition to an overarching tiered approach, species-specific approaches to developing control rules could be applied to one, some, or all of the stocks in the fisheries. For example, a probability-based ABC control rule could be applied where ABC is reduced from OFL based on a higher likelihood of achieving the target fishing mortality rate of  $F_{MSY}$ , or  $F_{REBUILD}$  if the stock is under a rebuilding plan. An ABC control rule based on a fixed percentage could also be applied. For example, ABC could be set at 75 percent of the OFL ( $ABC = 0.75 OFL$ ) or some other fixed percentage value. An approach based on maintaining some specified level of maximum spawning potential (MSP) of a stock could also be applied.

##### *Various Methods for Establishing ACLs*

The Council will seek to develop control rules that can be consistently applied to derive ACLs relative to the status of the stock and the level of management uncertainty or implementation error surrounding the stock status estimate. The following are examples of ACL control rules that the Council may further develop for use in managing the aforementioned stocks in the fisheries. ACLs may be established at the fishery level, sector level, or sub sector level. The Council may deviate from these examples and develop other ACL control rule approaches, consistent with the NS 1 Guidelines. Approaches to developing ACL control rules could be applied to one, some, or all the stocks in the fisheries. For example, a probability-based ACL control rule could be applied where ACL is reduced from ABC based on a higher likelihood of achieving the target fishing mortality rate of  $F_{MSY}$ , or  $F_{REBUILD}$  if the stock is under a rebuilding plan. An ACL control rule based on a fixed percentage could also be applied. For example, ACL could be set at 75 percent of the ABC ( $ACL = 0.75 ABC$ ) or some other fixed percentage value. An approach based on maintaining some level of MSP of a stock could also be applied.

##### *Various Approaches to Establishing AMs*

The Council will develop AMs that are designed to prevent ACLs from being exceeded, in the case of proactive AMs, and AMs that are triggered when an ACL is exceeded, in the case of reactive AMs. The Council may also consider development of annual catch target (ACT) control rules, which are proactive AMs, to establish catch targets

that further insure that the ACL has a low likelihood of being exceeded and, thus, that reactive AMs will be triggered. The following are examples of the type of measures that may be considered by the Council. The Council has considerable latitude in developing the specific measures that will be considered in the Omnibus Amendment.

For one, some, or all of the stocks in the fisheries with recreational measures under Council management jurisdiction (i.e. summer flounder, scup, black sea bass, Atlantic bluefish, tilefish, and Atlantic mackerel) the Council will consider reactive AMs that would be triggered if the ACL is exceeded or proactive AMs which are designed to prevent exceeding the ACL, or both. The recreational catch limit is the sum of the recreational catch limit and recreational discards. Reactive AMs could include the deduction of all or some of the prior year overage to reduce the subsequent year's recreational catch limit. Proactive AMs for the recreational fishery could include the setting of an ACT that is less than the ACL and designed to buffer against exceeding the ACL. This may be useful in the recreational fishery, where timely inseason management is typically not possible. Percentage-based or probability-based approaches similar to those described above for ABC and ACL could be utilized as a mechanism to set ACTs. Methods that directly account for the frequency ACLs could be exceeded (performance-based), will also be considered, to ensure that ACLs are only rarely exceeded. Inseason fishery closures could also be considered. While most recreational data are insufficient to informatively predict when a closure may be appropriate, the current regulations for most recreational fisheries under the Council's jurisdiction do not provide the ability to close the season during the fishing year, even if an overage has occurred or is projected to occur if the fishery remains open. While it is not expected that projections would be utilized to close recreational fisheries inseason, being able to reduce the magnitude of an overage may be a tool considered by the Council.

For one, some, or all of the stocks in the fisheries with commercial measures under Council management jurisdiction, the Council will consider reactive AMs which that would be triggered if the ACL is exceeded, or proactive AMs that are designed to prevent exceeding the ACLs. While some stocks have these measures in their FMPs, others do not. The commercial catch limit is the sum of the commercial quota and commercial discards. Reactive AMs for

the commercial fishery could include deducting all or some of the prior year commercial coverage (in weight) from the subsequent year's commercial catch limit.

Proactive AMs for the commercial fishery could include adjustable trip limits, as a method to prevent ACLs from being exceeded. When a given percent of the commercial catch limit (in weight) is reached, trips limits in the fishery for that species could be decreased until the total commercial catch limit is reached. The fixed percentage at which trip limits would drop would vary depending on which species the limit applies to, and the trip limits themselves would be species-specific. Other proactive AMs could include inseason closures when quotas are projected to be attained. Many Council-managed species already have in place such measures; however, the Council may consider additional approaches or modification of existing reporting requirements in support of improving inseason fishery management.

#### *Other Considerations*

The Council could consider establishing a periodic formal review by the SSC, which would provide the opportunity to revise ABC control rules every few years after a control rule has been implemented. For example, a 5-year time period could be used. The Council may also identify a broader approach to inclusion of species in its FMPs that may or may not require conservation or management, but that may be relevant in trying to further ecosystem management in the fishery. While not required, the Council could identify and include non-target stocks and/or ecosystem components in its FMPs. The Council may also consider ecosystem issues in the development of the catch limit framework for any of the stocks in the fisheries. Any allocation issues relating to the development of ABC, ACL, or AMs could also be considered by the Council.

The Council may deviate from these examples and develop additional approaches, consistent with their description in the Magnuson-Stevens Act, NS1, and the NS 1 Guidelines. The above issues under consideration are described in greater detail in the scoping document itself; copies may be obtained from the Council (see **ADDRESSES**) or via the Internet at <http://www.mafmc.org.mid-atlantic/comments/comments.htm>.

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

Dated: March 19, 2009

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

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## **COMMODITY FUTURES TRADING COMMISSION**

### **Order (1) Pursuant to Section 4(c) of the Commodity Exchange Act, Permitting the Chicago Mercantile Exchange to Clear Certain Over-the-Counter Agricultural Swaps and (2) Pursuant to Section 4d of the Commodity Exchange Act, Permitting Customer Positions in Such Cleared-Only Contracts and Associated Funds To Be Commingled With Other Positions and Funds Held in Customer Segregated Accounts**

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Order.

**SUMMARY:** By petition dated April 21, 2008 (Petition), the Chicago Mercantile Exchange Inc. (CME), a registered derivatives clearing organization (DCO), and the Board of Trade of the City of Chicago, Inc. (CBOT), a designated contract market, requested permission to clear certain over-the-counter (OTC) swap agreements (swaps) in corn, wheat, and soybeans. Authority for granting this request is found in Section 4(c) of the Commodity Exchange Act (Act).<sup>1</sup> The Petition also requested permission pursuant to Section 4d of the Act<sup>2</sup> to allow CME and futures commission merchants (FCMs) clearing through CME to commingle positions in those cleared-only OTC swaps (cleared-only contracts) and funds associated with those positions with positions and funds otherwise required to be held in a customer segregated account. The Commodity Futures Trading Commission (Commission) has reviewed public comments and the entire record in this matter and it has determined to issue an order granting the requested permission, subject to certain terms and conditions.

**DATES:** *Effective Date:* March 18, 2009.

**FOR FURTHER INFORMATION CONTACT:** Phyllis P. Dietz, Associate Director, 202-418-5449, [pdietz@cftc.gov](mailto:pdietz@cftc.gov), Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

<sup>1</sup> 7 U.S.C. 6(c).

<sup>2</sup> 7 U.S.C. 6d.

## **SUPPLEMENTARY INFORMATION:**

### **I. The CME/CBOT Petition**

CME, the DCO that provides clearing services for CBOT, and CBOT jointly submitted a Petition requesting that the Commission issue an exemptive order under Section 4(c) of the Act.<sup>3</sup> The order would grant CME approval to clear OTC corn basis swaps and corn, wheat, and soybean calendar swaps, and it would permit CBOT to list those products for "clearing-only."<sup>4</sup> The contract size for the basis and calendar swaps would be the same as that for corn, wheat, and soybean futures—5,000 bushels. Each of the proposed cleared-only contracts would be cash settled, in contrast to the corresponding futures contracts which are physically settled.

Part 35 of the Commission's regulations<sup>5</sup> exempts, subject to conditions, swap agreements and eligible persons entering into such agreements from most provisions of the Act.<sup>6</sup> The term "swap agreement" is defined to include, among other types of agreements, a "basis swap" and a "commodity swap."<sup>7</sup> Part 35 was promulgated pursuant to authority conferred upon the Commission in Section 4(c) of the Act to exempt certain transactions in order to explicitly permit certain off-exchange derivatives transactions and thus promote innovation and competition.<sup>8</sup> A number of exemptions and exclusions for off-exchange derivatives transactions were subsequently added to the Act by the Commodity Futures Modernization Act of 2000,<sup>9</sup> but none apply to agricultural contracts.<sup>10</sup>

Part 35 requires, among other things, that a swap agreement not be part of a fungible class of agreements that are

<sup>3</sup> A copy of the petition is available on the Commission's Web site at <http://www.cftc.gov/>.

<sup>4</sup> The suite of OTC agricultural swap products that CBOT proposes to list for clearing-only is comprised of corn basis swap contracts for the following regions: Northeastern Iowa, Northwestern Iowa, Southern Iowa, Eastern Nebraska, Eastern South Dakota, and Southern Minnesota; and corn, wheat, and soybean calendar swaps.

<sup>5</sup> 17 CFR Part 35 (Commission regulations are hereinafter cited as "Reg. \_\_\_").

<sup>6</sup> Jurisdiction is retained for, among other things, provisions of the Act proscribing fraud and manipulation. See Reg. 35.2.

<sup>7</sup> Reg. 35.1(b)(1)(i). "Commodity" is defined in Section 1a(4) of the Act to include a variety of specified agricultural products, "and all other goods and articles, except onions... and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in."

<sup>8</sup> See 58 FR 5587 (Jan. 22, 1993). Section 4(c) of the Act was added by Section 502(a) of the Futures Trading Practices Act of 1992, Public Law 102-546, 106 Stat. 3590 (1992).

<sup>9</sup> Public Law 106-554, 114 Stat. 2763 (2000).

<sup>10</sup> See, e.g., Sections 2(d), (g) and (h) of the Act, 7 U.S.C. 2(d), (g), and (h).