

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

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Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Framework Adjustment 17 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, and Framework Adjustment 6 to the Bluefish Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: This action implements Framework Adjustment 17 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan and Framework Adjustment 6 to the Bluefish Fishery Management Plan. This framework was developed by the Mid-Atlantic Fishery Management Council in conjunction with the Atlantic States Marine Fisheries Commission to revise the process for setting recreational management measures and recreational accountability measures for summer flounder, scup, black sea bass, and bluefish. Recreational management and accountability measures prevent overfishing while balancing recreational fishing opportunities.

DATES: Effective March 9, 2023.

ADDRESSES: Copies of Framework Adjustment 17 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan and Framework Adjustment 6 to the Bluefish Fishery Management Plan, including the Environmental Assessment, the Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared in support of

this action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. The supporting documents are also accessible via the internet at: <https://www.mafmc.org/actions/hcr-framework-addenda>.

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SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) cooperatively manage the summer flounder, scup, black sea bass, and bluefish fisheries. The Council submitted Framework Adjustment 17 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and Framework Adjustment 6 to the Bluefish FMP (collectively referred to as the Recreational Harvest Control Rule (HCR) Framework) to us for consideration of approval. This final rule approves and implements the Recreational HCR Framework, which establishes a new process for setting recreational measures (*i.e.*, bag, size, and season limits), and modifies the recreational accountability measures (AM). This Framework/Addenda establishes a process for setting recreational measures that: Prevents overfishing; is reflective of stock status; appropriately accounts for uncertainty in the recreational data; takes into consideration angler preferences; and provides an appropriate level of stability and predictability in changes from year to year.

Recreational Management Measure Setting Process: The Percent Change Approach

This action modifies the process for setting recreational management measures for summer flounder, scup,

black sea bass, and bluefish, including how to determine when management measures need to be changed, the percent change required if changes are made, and the timing of the overall process. This process will apply to stocks not in a rebuilding plan; when a stock is in a rebuilding plan, recreational measures will be determined based on the requirements of that plan. Bluefish is in a rebuilding plan, so this approach is not currently applicable. The new process, referred to as the Percent Change Approach, uses two factors to determine if recreational management measures can remain status quo, can be liberalized, or must be restricted. These factors are:

1. Comparison of a confidence interval (CI) around an estimate of expected harvest under status quo measures to the average recreational harvest limit (RHL) for the upcoming 2 years; and,
2. Biomass compared to the target level, as defined by the most recent stock assessment.

Considered together, the harvest and biomass comparisons determine the appropriate degree of change, defined as a percentage change in expected harvest, as summarized in Table 1. For example, when the future 2-year average RHL is greater than the upper bound of the harvest estimate CI (*i.e.*, an RHL underage is expected under status quo measures) and biomass is below the target level, measures would be modified to achieve no more than a 10-percent liberalization in harvest. In this scenario, the liberalization is capped at 10 percent even if the difference between the RHL and expected harvest is greater than 10 percent. Note that this is a more conservative approach than the previous process, which would have allowed liberalization up to the full difference between the estimated harvest and the RHL, even for stocks in decline and below the target biomass. Additional information on the process is contained in the proposed rule and is not repeated here.

TABLE 1—MANAGEMENT RESPONSE TABLE

Factors to determine recommended change		Recommended change in harvest
(1) Future RHL vs harvest estimate	(2) Stock biomass compared to the target stock size (B/BMSY)	
Future 2-year average RHL is <i>greater than</i> the upper bound of the harvest estimate confidence interval (harvest is expected to be lower than the RHL).	<i>Very high</i> (at least 150% of the target stock size).	<i>Liberalization:</i> percent based on the difference between the harvest estimate and the 2-year average RHL, not to exceed 40 percent.
	<i>High</i> (between the target and 150% of the target stock size).	<i>Liberalization:</i> percent based on the difference between the harvest estimate and the 2-year average RHL, not to exceed 20 percent.
	<i>Low</i> (below the target stock size).	<i>Liberalization:</i> 10 percent.

TABLE 1—MANAGEMENT RESPONSE TABLE—Continued

Factors to determine recommended change		Recommended change in harvest
(1) Future RHL vs harvest estimate	(2) Stock biomass compared to the target stock size (B/BMSY)	
Future 2-year average RHL is <i>within</i> the confidence interval of the harvest estimate (harvest is expected to be close to the RHL).	<i>Very high</i> (at least 150% of the target stock size). <i>High</i> (between the target and 150% of the target stock size). <i>Low</i> (below the target stock size).	<i>Liberalization</i> : 10 percent. <i>No change</i> : 0 percent. <i>Reduction</i> : 10 percent.
Future 2-year average RHL is <i>less than</i> the lower bound of the harvest estimate confidence interval (harvest is expected to exceed the RHL).	<i>Very high</i> (at least 150% of the target stock size). <i>High</i> (between the target and 150% of the target stock size). <i>Low</i> (below the target stock size).	<i>Reduction</i> : 10 percent. <i>Reduction</i> : percent based on the difference between the harvest estimate and the 2-year average RHL, not to exceed 20 percent. <i>Reduction</i> : percent based on the difference between the harvest estimate and the 2-year average RHL, not to exceed 40 percent.

Key Terms

- **Biomass (B):** The size of a stock of fish measured in weight. For summer flounder, scup, black sea bass, and bluefish, the biomass levels and biomass targets used in management are based on spawning stock biomass.
- **Biomass target (B_{M_{SY}}):** The stock size (B) associated with maximum sustainable yield (MSY), as defined by a stock assessment. MSY is the largest average catch that can be taken from a stock at B_{M_{SY}} over time under existing environmental conditions without negatively impacting the reproductive capacity of the stock.
- **Confidence Interval:** the upper and lower bound around a point estimate to indicate the range of probable values given the uncertainties around the estimate.
- **Recreational Harvest Limit (RHL):** The total allowable annual recreational fishery harvest; set based on information from the stock assessment, considerations about scientific and management uncertainty, allocations between the commercial and recreational sectors, and assumptions about dead discards.

Timing

The previous process considered adjustments to recreational management measures annually. This presented a number of associated challenges, given the timing of Marine Recreational Information Program (MRIP) data availability and the fishing seasons. The Percent Change Approach shifts the timing to a 2-year cycle, adjusting measures in sync with the setting of catch and landings limits in response to updated stock assessment information. Updated stock assessments will be available every other year for all four species. In the interim year, measures will be reviewed, and may be modified

if new data suggest a major change in the expected impacts of those measures on the stock or the fishery.

Sunset Provision

The Percent Change Approach to setting recreational management measures is an improvement over the status quo process because it allows for management measures to be set for 2 years, includes the explicit consideration of the best estimate of the current biomass of the stock compared to the target level, and requires the consideration of the variability in harvest estimates. However, the Council and Commission’s Policy Board intend for the Percent Change Approach to be an interim process, which will sunset no later than December 31, 2025, with the goal of implementing additional improvements to recreational fisheries management by fishing year 2026. These improvements will be developed through a separate, future management action. In the absence of additional action to revise the recreational management measure-setting process or continue the Percent Change Approach by the sunset date, the process for establishing recreational measures will revert to the methodology previously used by the Council, which is part of the FMP but not set forth in regulatory text.

Recreational Accountability Measures

When a reactive AM has been triggered by a recreational Annual Catch Limit (ACL) overage and the most recent biomass estimate is between the target and the threshold, consideration would also be given to the most recent estimate of fishing mortality (F) relative to the fishing mortality associated with MSY (F_{M_{SY}}) in the year(s) when the overage(s) occurred. The AM response would be more restrictive if F_{M_{SY}} was exceeded in addition to the ACL (e.g., a payback

would be required). If only the recreational ACL was exceeded but not F_{M_{SY}}, the AM response would be less strict (e.g., measures would be revised but a payback would not be required).

Estimates of fishing mortality during the years relevant to the evaluation may not always be available as these estimates are provided through the stock assessment, which is not updated every year. When the relevant fishing mortality estimates are not available, this comparison would default to a comparison of total catch relative to the ABC.

These recreational accountability measures will not sunset in 2025.

Comments and Responses

We received 10 comments on the proposed rule. Five individuals provided comments on specific State recreational regulations and how these regulations were too restrictive, have resulted in economic hardship, and have eroded trust in the fishery management process. One individual also suggested imposing more restrictions on the commercial fishery. These comments are not directly relevant to the rulemaking and are not discussed further. One comment letter from five organizations (the American Sportfishing Association, Center for Sportfishing Policy, Coastal Conservation Association, Congressional Sportsmen’s Foundation, and the National Marine Manufacturers Association) supported the implementation of the framework. One individual and four conservation organizations (Conservation Law Foundation, Natural Resources Defense Council, Ocean Conservancy, and the Marine Fish Conservation Network), through three comment letters, opposed the implementation of the framework. These letters primarily asserted that the

Percent Change Approach violated National Standards 1, 2, and 4; responses to the specific issues raised in these comments are provided below.

One of the major themes of the comments in opposition to the implementation of the framework was that the Percent Change Approach is an attempt to circumvent the system of Annual Catch Limits (ACL), increasing the risk of overfishing, and creating a *de facto* reallocation of quota to the recreational sector. The nature of these comments suggest there is a misunderstanding of the purpose and intent of this rule. The framework, and the Percent Change Approach as currently configured, is intended to be an interim approach to setting recreational management measures (*i.e.*, bag, size, and season) while the Council and Board continue to work on a number of recreational management issues, including a continued evaluation of how to set recreational management measures, recreational accountability and reporting, and how best to manage the private and for-hire components of the fishery. The Percent Change Approach implemented by this final rule will sunset no later than December 31, 2025, and will either be replaced by a new process or the previous approach to setting recreational management measures will be reinstated.

The Percent Change Approach is not intended to, and does not, eliminate the system of ACLs. We will, through the Council process, continue to set an Allowable Biological Catch (ABC), ACLs, and an RHL for all four species. The Percent Change Approach does not eliminate the use of the RHL. In fact, the evaluation of projected harvest compared to the upcoming RHLs remains a critical component of the process. The intent of the Percent Change Approach is to iteratively adjust measures as necessary to prevent overfishing and more closely monitor the impact that recreational harvest has on a stock. The potential annual adjustments are constrained within certain percentages in order to minimize the social and economic impact of the large adjustments sometimes implemented under the previous system that were driven by large statistical fluctuations in the data used to estimate catch. Recreational data are highly variable and uncertain due, in part, to the sampling protocols used to separately collect effort and catch data. Catch estimates, even under consistent management measures, vary substantially from year to year. An effective system of managing the recreational fishery needs to acknowledge and address this

variability and uncertainty. From 2018 to 2021, recreational management measures for summer flounder, scup, and black sea bass remained unchanged, yet the estimated harvest varied by as much as 45 percent from year to year. For example, estimated black sea bass recreational catch ranged from 10.20 million lb to 16.17 million lb (4,626 to 7,335 metric tons) from 2018 to 2021 despite nearly all management measures remaining the same. Such significant differences in estimated catch under the same management measures (input controls) has made setting management measures in a manner that will precisely reach, but not exceed, a specific catch limit in any given year extremely challenging. Reacting to these large, uncertain swings in estimated harvest, by liberalizing or reducing those management controls in the subsequent year in an attempt to achieve a specific harvest target, has been unsuccessful by all standards. This has been particularly difficult with robust stocks, such as scup and black sea bass, which continue to grow even in situations where harvest has exceeded previously set limits. Such stocks that are readily and widely available to the recreational fishery because of their high abundance will continue to be harvested, even with very restrictive management measures, and the current recreational measures-setting process will continue to chase a target that becomes ever more difficult to reach. The Percent Change Approach allows managers to consider additional scientific information when setting recreational measures beyond simply an uncertain catch estimate, to achieve optimum yield. Based on an evaluation of the current harvest levels compared to the upcoming RHLs, and the biomass relative to the target, the Percent Change Approach prescribes the degree of change necessary to be achieved by the recreational management measures. When a stock is at a low biomass (below the biomass target) the management responses are more precautionary. For example, even when harvest is expected to be close to the upcoming RHL, a 10-percent reduction is required for a stock in the low biomass category. For stocks with a very high biomass (at least 150 percent of the biomass target), a liberalization of no more than 10 percent would be allowed when harvest is close to the RHL. When harvest is expected to be higher than the RHL, a reduction is required regardless of stock size, but it may be more significant for stocks at lower stock sizes (a 10-percent reduction is required for stocks at very high biomass, and stocks at a high and low biomass are required to take a

reduction based on the difference between the harvest estimate and RHL). This is because the conservation risk associated with overages is greater for stocks that are less abundant, whereas stocks that are well above their target biomass are more robust to higher levels of fishing mortality. The overall goal of the Percent Change Approach is to iteratively adjust management measures to achieve the RHL, while minimizing potential overreaction (overcorrection) to annual variability in the harvest estimates.

National Standard 1

National Standard 1 states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

Comment 1: Three comments expressed concern about the “disconnect” between the process for setting recreational management measures, the recreational ACL, and RHL. One comment suggested that the framework, “. . . seeks to circumvent the well-established framework for annual catch limits that Congress mandated for all Federal fisheries in the 2006 reauthorization of the Magnuson-Stevens Act”.

Response: As stated above, the Percent Change Approach does not eliminate the recreational ACL or RHL, and continues to use both in the process of setting measures, and evaluating accountability measures. The approach in this rule attempts to balance the need to constrain harvest in order to prevent overfishing while acknowledging that recreational catch estimates are uncertain and often highly variable. The Percent Change Approach makes incremental adjustments and reduces the tendency of management measures to “chase” after the highs and lows, by either liberalizing or restricting measures too much in any given year in reaction to swings in catch estimates. The rule’s approach also builds in more precaution for stocks at lower biomass levels (biomass levels and the target are taken directly from the approved and peer-reviewed stock assessment that occur every other year for all four species). Consider that when a stock biomass is in decline, it often becomes less available to the recreational fishery and, therefore, catch estimates may decline relative to the RHL; prior to this rule, management measures would be liberalized, sometimes significantly, while catch fell due to a declining biomass, increasing fishing pressure on a declining stock. Conversely, as healthy stocks increase, sometimes far above the

target biomass level, such as with black sea bass and scup, the fish become more available to the fishery, even under restrictive measures, resulting in catch estimates that exceed the RHL. However, what appear to be overages often have no negative impact on abundant stocks as we continue to see increases in biomass through a subsequent stock assessment.

The comment letters focused on the scenario where a stock is at a very high biomass (150 percent or more above the biomass target) and the harvest is projected to be greater than the upcoming RHL. This is the “bin” that black sea bass falls into for 2023—and it therefore requires more conservative measures to achieve a 10-percent reduction in harvest. The conservation risk of this temporary approach, which reduces the magnitude of a needed reduction compared to what would occur with the current approach, on a stock that is over 150 percent of its biomass target is negligible. The Magnuson-Stevens Act defines overfishing as the “rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield *on a continuing basis* (emphasis added).” This scenario, where a stock continues to maintain a biomass significantly above the target, does not constitute overfishing.

The system the Percent Change Approach is replacing utilized the same criteria, and allowed for the same degree of changes to management measures, whether a stock biomass was considered overfished (less than 50 percent of its maximum sustainable yield target) or over 200 percent of its target level. The Percent Change Approach also considers the estimated harvest compared to the RHL, but, in contrast to the previous approach, also incorporates information about stock status to determine whether, and how much, to either liberalize or restrict management measures, ensuring more conservative responses for stocks in low biomass conditions while allowing potentially more liberal responses only for stocks at very high biomass levels.

Another scenario that the comments did not address relates to summer flounder in 2023. Because summer flounder is at a “low” stock size (approximately 80 percent of its biomass target), the Percent Change Approach calls for a 10-percent reduction in harvest, even though such harvest is projected to be below the RHL. The approaches in these two instances were designed to require more precaution in developing recreational measures when a stock is at lower levels of biomass, and

more measured, stepwise reductions in recreational measures when a stock is at very high levels of biomass. In either scenario, if the reduction taken does not result in harvest that is expected to achieve upcoming RHLs, additional reductions will follow in subsequent years—with this cycle continuing until the management measures result in catch that is expected to achieve, but not exceed, the RHL. Using a more gradual, iterative approach to constraining harvest for stocks at very high levels of abundance is a reasonable balance given the significant socioeconomic impacts of the reductions on the recreational sector in a situation involving increasing stocks with low risk of overfishing. This is also not an unprecedented approach. When rebuilding plans are implemented, they sometimes have a tiered or multi-year phase-in to needed reductions.

The comment letters focused on the Percent Change Approach for setting the management measures, but that is only one component of the management system. Accountability Measures (AM) remain a critical part of management, which, while slightly modified through this rule, are not being eliminated or relaxed. The revised AMs incorporate the explicit consideration of fishing mortality to determine if overfishing occurred, which has the effect of more accurately reflecting when more stringent adjustments to management measures are needed.

Comment 2: One of the comment letters stated that, “while recreational harvest may be projected to exceed an RHL, this does not always, and often has not, resulted in overfishing. Given that the OFL is fully allocated, one of the few ways this statement can be true is if commercial under harvest exists and is relied upon to offset recreational exceedances.”

Response: It is true that the impact from recreational overages may be “balanced” by a commercial underage or vice versa in the evaluation of overfishing. This is not a new feature of this approach, nor is it unique to these fisheries. This approach does not take away quota from the commercial fishery or prevent commercial vessels from harvesting their entire allocated quota, and thus does not represent a *de facto* reallocation of quota. It is simply the reality of overfishing and overfished statuses being determined based on all mortality and not sector-specific considerations. To the extent that there is overfishing as a result of a recreational overage, AMs would be applied to the recreational fishery, not the commercial fishery.

Another reason that the OFL may be exceeded, despite the fact that overfishing is not occurring, could be that the catch limits (OFL, ABC, ACLs) were not set at the correct level. When a stock assessment is rerun and updated, it is often the case that our perception of the stock size has changed. Black sea bass has recently experienced a retrospective pattern that has revealed that stock assessments have routinely underestimated stock size and overestimated fishing mortality, resulting in the stock size subsequently being higher than originally estimated, and fishing mortality lower, when a new/updated assessment is conducted. The outcome of this pattern is catch limits that are set lower than what is actually available to the fishery and years where even restrictive management measures result in higher than anticipated harvest, often with increasing levels of discards, even without overfishing occurring.

Comment 3: One commenter stated that, “Under the new system, the ACL would only be relevant to recreational management in an indirect manner, through post-hoc comparisons of rolling average ACLs to average recreational catches. In short, the ACL no longer would be a meaningful forward-looking limit.”

Response: This statement is inaccurate. Recreational and commercial ACLs will be set for all four species annually. The specifications process will also set RHLs for each species. The RHL, which is derived from the OFL, ABC, and recreational ACL, will then be used in conjunction with stock size, to determine the required percent change in recreational harvest.

Comment 4: Two commenters stated that the framework does not provide a “reasonably high level of confidence” that measures will not result in overfishing.

Response: The Percent Change Approach is a new, temporary approach that will improve the process for setting recreational management measures (*i.e.*, bag, size, and season) for stocks that are not under a rebuilding plan. The approach uses the stock size compared to the target stock size, and the projected harvest compared to the harvest target, to determine the management response. Depending on the stock size (*i.e.*, very high, high, or low), the possible outcomes are limited. For example, because summer flounder is in the “low” stock size bin, a 10-percent reduction in harvest must be implemented, even when harvest is expected to be close to the RHL (within the CI). The only scenario where a

liberalization can be implemented for a stock in the “low” biomass bin is when the RHL is greater than the upper bound of the harvest estimate. This is a more conservative approach than the prior approach for setting recreational fishing measures, which only compared the estimated catch to the new RHL, and did not incorporate stock status into the decision-making process. For 2023, the application of the Percent Change Approach to summer flounder resulted in a harvest target below the RHL. When stocks are very healthy (*i.e.*, “very high”), the Percent Change Approach creates more opportunities to liberalize management measures, or allows for a lesser reduction, due to the very large stock size and minimized risk to the stock.

The Magnuson-Stevens Act defines the terms “overfishing” and “overfished” as a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis. Scup and black sea bass are stocks in the “very high” bin, meaning the biomass is over 150 percent of their respective biomass targets—the level of biomass associated with maximum sustainable yield. In plain language, stocks in this bin are at least 1.5 times larger than is ideal for maximizing long-term benefits. In theory, for such stocks, fishing at F_{MSY} should gradually fish the stock back down to the biomass target. Fishing above F_{MSY} for a year may increase the rate at which this is achieved, but would not jeopardize the long-term sustainability of the stock. Adding to the complexity of this is the retrospective pattern observed in the black sea bass stock assessment, as described above. Essentially, when the stock assessment is updated and compared to previous assessments, the stock biomass is higher than previously estimated, and the fishing mortality is lower. This bias results in biomass-based targets (OFL, ABC, ACL, RHL) being set lower than, in retrospect, they should have been.

Comment 5: Two commenters referenced the actions taken at the December 13, 2022, meeting of the Council and Board, where the proposed framework was applied to set recreational management measures for 2023. These comments suggest that the measures adopted for 2023 provide evidence that the framework does not provide adequate assurance that overfishing will not occur, and the very first application of the approach could result in overfishing of scup and black sea bass.

Response: The specific 2023 management measures set for summer

flounder, scup, and black sea bass will be discussed and evaluated in a subsequent rulemaking and are not discussed in detail here. However, it is worth noting that the Percent Change Approach, when applied to black sea bass, called for a 10-percent harvest reduction compared to status quo measures, resulting in a harvest target of 7.14 million lb (3,238 mt). The 2023 RHL is 6.57 million lb (2,980 mt), and the ACL is 9.16 million lb (4,155 mt). A harvest target of 7.14 million lb (3,238 mt) allows for more than 2 million lb (907 mt) of dead discards before exceeding the recreational ACL. Even if the recreational ACL was exceeded, the commercial fisheries catch would also factor into the overall fishing mortality on the stock. In 2021, the commercial black sea bass fishery caught 59 percent of the commercial ACL, an underage of 3.9 million lb (1,782 mt). Given recent commercial underages, and how close the Percent Change Approach estimated harvest is to the actual RHL, it is very unlikely that the OFL would be exceeded or, more importantly, that overfishing would occur. Recreational catches have been significantly above the ACL for many years and, despite this, the black sea bass stock is over 150 percent of its biomass target, and overfishing is not occurring according to the most recent stock assessment. The most recent 2021 management track stock assessment-estimated fishing mortality was estimated to be 0.39 compared to the target ($F_{40\%}$) of 0.46, meaning that fishing mortality has actually been lower than the optimal level. The biomass of black sea bass was estimated to be 29,769 mt; 2.1 times the biomass target.

Comment 6: One commenter stated that the Environmental Assessment (EA) “badly understated the severity of the problem” and how often the annual landings targets mandated by the Percent Change Approach would diverge from the RHLs, the landings limits generated by use of the best scientific information available.

Response: We do not yet know by how much, and how often, the harvest target will be different from the RHL. For a stock like summer flounder that has a low stock size (below the target), the 2023 harvest target is lower than the RHL. This is a precautionary approach purposely built into the Percent Change Approach when stocks are below their target biomass levels. The 2023 targets for scup and black sea bass are higher than the 2023 RHLs but, in both cases, reductions to harvest are being required. When the 2023 stock assessments and 2024 ACLs and RHLs are available, everything will be reanalyzed and

additional reductions or liberalizations will be implemented, as appropriate. This iterative process allows managers to make incremental changes, and evaluate the impacts of those changes on the stock, using the best scientific information available (*i.e.*, the stock assessment) and then make necessary adjustments moving forward. For species such as scup and black sea bass, where subsequent assessments have revealed that prior stock sizes had been underestimated and projected fishing mortality overestimated, the approach implemented in this rule can help avoid drastic changes to recreational measures that later prove to have been unnecessary.

During the development of the Percent Change Approach, the Plan Development Team/Fishery Management Action Team (PDT/FMAT) evaluated what changes would have been required for summer flounder and black sea bass in the past, if the Percent Change Approach had been applied. This analysis was part of the process for determining the appropriate percentages for each bin (additional details on this analysis can be found in the response to Comment 13). The percent changes that were selected were based on the historical reductions and liberalizations that have been required.

This commenter seems to imply that the implementation of the Percent Change Approach constitutes a serious conservation concern; yet this approach will only be in place for a maximum of 3 years, does not apply to stocks in rebuilding plans, and requires more precautionary measures when stocks are below their target biomass. As noted under Comment 1, the Percent Change Approach requires more restrictive recreational management measures for summer flounder in 2023, where the prior approach would have allowed for liberalization of management measures.

Comment 7: One commenter cited a statement made by the Regional Administrator about the requirements specific to ACLs. Specifically, that “neither an RHL nor a recreational sector-specific ACL are requirements of the Magnuson-Stevens Act. While an overall ACL as well as AMs are required, these are designed to prevent overfishing at the stock level.” The comments suggested that such statements imply an intent to create a *de facto* reallocation between the recreational and commercial fishing sectors, because the only way that the recreational sector can exceed its ACL, without also causing the overall ACL to be exceeded, is if the commercial sector does not achieve its ACL. Thus, if the Percent Change Approach is designed to

allow the recreational sector to exceed its ACL under certain circumstances, it is also designed to shift the allocation in favor of the recreational sector, and to do so without the need for any allocation-specific management document, or the opportunity for meaningful public input.

Response: The statements made by the Regional Administrator are factual—sector-specific ACLs and the RHL are not required by the Magnuson-Stevens Act or the National Standard Guidelines. As discussed in response to comment 14 below, the Percent Change Approach is not designed to, and does not, shift allocation to the recreational sector. The Magnuson-Stevens Act requirements are designed to prevent and evaluate overfishing at a stock level. Thus, a sector-specific (recreational or commercial) ACL overage may not be a conservation issue, if overall fishing mortality does not exceed the target. The summer flounder, scup, and black sea bass commercial accountability measures include a provision, when the stock biomass is very high, that reduces the severity of the response to a potential overage, so as not to unduly restrict a fishery because the catch limits are not necessarily reflective of the biological status of the stock. Likewise, there could be, in this scenario, a commercial fishery overage and a recreational fishery underage, but this does not mean we are “reallocating” fish from one sector to another. These types of allowances and flexibilities, when the stock size is very high, help to balance the needs of the fisheries in an effort to achieve optimal yield, without causing unnecessarily severe social and economic disruptions that do not address a corresponding biological need.

Comment 8: One commenter suggested that the Percent Change Approach would cause the AMs to be unable to effectively prevent ACLs, including sector ACLs, from being exceeded, and would be unable to correct the problems that caused the overage in as short a time as possible.

Response: The role of AMs is to mitigate the overages and correct the problem that caused them as soon as possible. This rule does not eliminate the AMs, or change their structure or function. The current recreational AMs for these four species are structured such that the AM response is different depending on the stock biomass, and the degree of the overage, and this remains the case with the approach of this rule. If the stock biomass is low (*i.e.*, below the threshold, in a rebuilding plan, or reference points are unknown) a pound-for-pound payback

is required for overages. Moreover, stocks in this category (*e.g.*, a stock in a rebuilding plan such as bluefish) are not eligible for the Percent Change Approach, thus this element of the framework has no impact on the function of the AMs for such stocks. If a stock is above the threshold, but below the target, such as summer flounder, the AM depends on if there was a recreational ACL overage, or if the overall fishing mortality is above the target, with the response being more severe if overfishing was occurring. In that scenario, a payback is required for overages. When a stock is above the biomass target, such as scup and black sea bass, the current AMs call for “adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage.” This rule does not eliminate or change this requirement. If AMs are triggered, the Council and Board will be required to satisfy those AMs and, if they fail to do so, NMFS will adjust measures as needed. There is no evidence provided in the comment that explains how the use of a new method to set the recreational management measures makes the AMs ineffective.

Comment 9: One commenter pointed out that the application of the Percent Change Approach can direct the Council to set an annual landings target that exceeds the sector ACL, and might even ensure that AMs will have to be invoked in a subsequent season. The letter goes on to point out that “. . . it occurred at the December 13 Meeting, the very first time the [Percent Change Approach] was used to set an annual landings target, when it set the 2023 annual landings target for scup at 12.88 million pounds (5,842 mt), approximately 20 percent above the sector ACL. Even if 2023 recreational landings merely approach, but do not exceed, such a landings target, AMs will inevitably be invoked . . .” The comment suggests that under such circumstances, there is no meaningful chance that AMs will not have to be invoked after the 2023 scup season.

Response: This is not a result of the Percent Change Approach. The previous overages that occurred under the previously applied approach were so large that, even if the recreational harvest in 2023 was set to the RHL, the AM would be triggered. In fact, even if there was no scup harvest in 2023, the AM would be triggered. Thus, it is not logical to suggest that the AM being triggered in 2024 was due to the Percent Change Approach.

National Standard 2

Comment 10: Two commenters made statements about continuing to use the previously applied “science-based” approach to setting recreational management measures, suggesting that this approach was better than the process proposed in the framework.

Response: The previous approach to setting recreational management measures was based on reacting to the highly variable and uncertain annual catch estimates of recreational harvest in a given year. Often, the approach relied on *ad hoc* approaches developed by the Monitoring/Technical Committee to smooth out the data across multiple years to achieve the RHL. This approach was regularly unsuccessful at accurately predicting harvest that would not exceed the RHL, particularly for black sea bass and other stocks with very large stock sizes. Using that approach, the black sea bass RHL was exceeded every year from 2012 through 2021, except 2017. During that time, estimated recreational harvest ranged from 97 to 241 percent of the RHL. The previous approach was also unsuccessful with respect to social and economic objectives. There has been widespread angler dissatisfaction as continuously more-restrictive measures were implemented, despite increasing stock size and therefore increasing availability to the fishery. The black sea bass stock is more than 150 percent of the biomass target, yet management measures are the most restrictive they have ever been. The same scenario has been occurring for scup in recent years, and in 2022, we proposed (April 18, 2022, 87 FR 22863) a closure of the Federal scup fishery despite the high stock levels. The previous regulations required that we take that drastic action, not because the stock was at risk, but because the measures proposed by the Council would not fully constrain harvest to the RHL. For context, the scup biomass is about two times larger than the biomass target. Ultimately, given the biological, social, and economic considerations, we did not implement the closure. Additional details can be found in the final rule (87 FR 35112, June 9, 2022) for the 2022 recreational management measures. The fact that the previous process and regulations often resulted in a required restrictive action that was not based on an actual risk of overfishing highlights the necessity for change. The Percent Change Approach implemented by this action is part of an iterative process to build a management system that recognizes the limitations of recreational data, while ensuring long-term sustainability of the stock. The

sunset provision will require the Council and Board to examine the efficacy of the Percent Change Approach over three years, and to develop changes or improvements to the recreational measure-setting process as needed.

Comment 11: Three commenters stated that the framework was not based on the best available science because recreational management measures would not be set based on the RHL.

Response: The Percent Change Approach incorporates the best scientific information available, including fishing mortality estimates and stock size from approved stock assessments, in conjunction with estimates of annual harvest, to better understand the impacts of recreational harvest on stocks. This approach allows managers to make more informed decisions, constrains those decisions to minimize the biological risk to stocks at lower stock levels, and reduces the socioeconomic impact to fisheries that depend on stocks at higher stock levels.

Comment 12: Two commenters cited excerpts from an SSC peer review that was conducted during the development of the range of alternatives in the framework.

Response: Two comments quoted the SSC report, specifically the comments of one individual, and staff commentary at the working meetings, which were part of the deliberative process. It is important to note that these reviews occurred during the development of the framework, and were more broadly considering the full range of alternatives in this action, including those that were not selected by the Council and Board. At the time the reviews were completed, the EA had not been drafted, nor had the alternatives been fully developed. Further refinement to the approaches considered in this action and additional analyses occurred after these meetings, in response to many of the SSC's comments.

Comment 13: Two commenters questioned the rationale behind the selection of the percentages used in the percent change approach, claiming that they were completely arbitrary.

Response: The PDT/FMAT conducted a number of analyses of the Percent Change Approach including an evaluation of the percentages, and a post-hoc evaluation of what changes would have been needed in the past compared to the changes that were implemented. The percentages ultimately selected were not random or arbitrary; these percentages were selected based on an FMAT/PDT analysis that evaluated past differences between the RHL and estimated harvest values (*i.e.*, derived from MRIP). These

percent differences represent historically required reductions or liberalizations to achieve, but not exceed, the next year's RHL. A percentile approach was applied to the distribution of these required liberalizations and reductions over the history of each fishery. The percent change was set equal to the average of the absolute values of the 40th and 60th percentiles, 25th and 75th percentiles, and the 10th and 90th percentiles of the "required" liberalizations or reductions. Summer flounder and black sea bass behave similarly in these analyses, scup was excluded from the analysis because the majority of the scup measures over the last decade could have been liberalized to a greater degree but were mostly held status quo causing a continued high degree of difference between RHL and MRIP landing estimates. Using the 25th, 50th, and 75th percentiles for summer flounder and black sea bass were roughly equivalent to the 10-, 20-, and 40-percent changes used in the approach.

National Standard 4

Comment 14: Three commenters were concerned that the Percent Change Approach, constitutes an illegal *de facto* reallocation between sectors. One letter specifically stated that "Although NMFS just recently approved revised allocations that increase the recreational share of the summer flounder, scup, and black sea bass fisheries, NMFS appears to be tacitly increasing again the recreational allocation through the Proposed Rule. By allowing the recreational fishery to exceed its RHL and ACL, the agency would create a further reallocation of summer flounder, scup, and black sea bass (and potentially bluefish) from the commercial sector to the recreational sector."

Response: As stated in National Standard 4, an "allocation" or "assignment" of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) may have incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of National Standard 4. Unlike the commercial/recreational allocation amendment referenced in the comment, this action does not constitute a direct distribution of fishing privileges.

This action will not constrain or otherwise penalize or hold the commercial fishery accountable for the

recreational sector's catch. If recreational overages occur, as they have under the previous process, the recreational fishery would be held accountable as prescribed by the AMs.

As noted, the Council and Board recently reviewed, and ultimately revised, the commercial and recreational allocations for summer flounder, scup, and black sea bass. Throughout the allocation process, we encouraged the Council and Board to consider options that excluded recreational overages from determining revisions to allocations, as using those overages as the basis for an increase in recreational allocation would be inappropriate. If this process, like the previous method to setting recreational management measures, results in ACL overages, those overages should likewise not be used as a justification for increased recreational quota in future consideration of allocations.

Other

Comment 15: Two commenters stated that a framework adjustment is not the appropriate vehicle for such significant changes, and suggested that a "more inclusive and thorough fishery management plan (FMP) amendment process" should have been used to consider the changes proposed. One comment stated that the "fast-tracked" nature of the framework did not allow for public scoping or public comments.

Response: The Percent Change Approach considered through this framework has been a part of an extensive effort (*i.e.*, the Recreational Reform Initiative) to address many of the challenges associated with recreational fisheries management. The initiative began in March 2019, when a steering committee was established to develop strategies to increase management flexibility and stability for jointly managed recreational fisheries. The Council and Board spent several years planning and developing ideas, and then ultimately prioritized the Harvest Control Rule action February 2021. Throughout 2021 and 2022, the Council and Board met jointly six times to discuss the framework (and discussed the Recreational Reform Initiative an additional six times). The Commission hosted a series of public hearings and collected comments in March and April 2022. A subset of the Council's SSC conducted two reviews of the process/models. While a framework can be a more abbreviated process than an amendment, this framework was not. The development of the Harvest Control Rule was a multi-year process with numerous opportunities for public participation, through the Council and

Board meetings, public hearings, SSC reviews, and PDT/FMAT meetings. Moreover, this action is limited to a 3-year implementation, after which it will be replaced or rescinded, or modified and extended.

Comment 16: One commenter suggested that implementing the framework would not be “an effective or appropriate response” to any of the challenges managing recreational fisheries. This letter instead suggests that we should “continue to apply established principles of fisheries management, including managing stocks for sustainability and abundance, using ecosystem-based approaches, addressing climate impacts directly, making improvements to data systems, and managing to achieve the greatest benefit to the nation.”

Response: Use of ecosystem-based approaches, addressing climate impacts, and making improvements to data systems are all important considerations for the management, both commercial and recreational, of these species moving forward. In fact, the Recreational Demand Model, being used in conjunction with the Percent Change Approach, was developed as part of the Council’s Ecosystem Approach to Fishery Management’s Management Strategy Evaluation. The stock assessment for black sea bass is currently undergoing a research track assessment to further improve the stock assessment model for this species. While these are some steps that are already being taken, they are not short-term solutions, as they require significant time and resources. Given the number of challenges managing recreational fisheries, and the need for additional time to work on longer-term solutions, this framework is being implemented to respond to those challenges in a timely manner. The sunset of the Percent Change Approach also requires the Council and Board to explicitly review this action and is intended to allow for further improvements to recreational management.

Comment 17: Two commenters suggested that the current challenges faced by managers of these recreational fisheries have been caused by the Council’s failure to follow the guidelines on management uncertainty. The comment suggests that incorporation of management uncertainty would have solved an array of problems, *i.e.*, “better prevented overfishing, addressed uncertainty and variability in recreational data, and provided more stable and predictable regulations, without the need to

abandon the current data-based management process . . .”

Response: Including management uncertainty into the process for setting recreational management measures would result in setting a recreational harvest target below the RHL, and even more restrictive recreational management measures. This would exacerbate the disconnect between what anglers are observing (*e.g.*, high levels of abundance of black sea bass and scup) and the increasingly restrictive management measures. Implementing a larger buffer, and further reducing the quota, does not recognize that uncertainty applies in both directions—catch and biomass may be higher or lower than estimated. Simply restricting recreational fisheries more is not solving the fundamental problem, particularly when considering the lack of success in continually attempting to constrain harvest to a specific limit that, in retrospect, was lower than needed.

Comment 18: One commenter stated that when asked to evaluate whether the best available data required a 10-percent increase or a 10-percent decrease in summer flounder landings, the Council made the arbitrary decision not to employ the Percent Change Approach at all.

Response: The discussions referenced in this comment were specific to the 2023 recreational management measures, which will be addressed in a separate, forthcoming action. In addition, at the joint December 2022 meeting, the Council and Board were evaluating various models used in support of the development of management measures, and not the fundamentals of the approach being implemented through this action.

Comment 19: One commenter asked about the information that was used during the development of the proposed approach, specifically concerning the input from fishermen that was received and utilized as this action was being formulated.

Response: This action is part of the broader Recreational Reform Initiative, which is an effort of the Council and Commission to improve management of the recreational fisheries for summer flounder, scup, black sea bass, and bluefish. This initiative aims to address a range of challenges in recreational fisheries management. These challenges include widespread angler dissatisfaction with some recreational management measures, stakeholder perceptions that measures are not reflective of stock status, and concerns about how MRIP data are used to manage these fisheries.

The overarching Harvest Control Rule approach was originally brought forward as a proposal from six recreational fishing organizations through scoping comments on the Summer Flounder, Scup, and Black Sea Bass Commercial/Recreational Allocation Amendment. While it was not pursued through that action, the Council and Board expressed interest in further pursuing the ideas relative to setting recreational management measures, which they did, through this framework. After initiation of this action in February 2021, a series of public meetings and hearings were held to solicit comments and information from the public, including the fishing industry. A complete history of the action, the data used, and analyses conducted can be found in the EA (see ADDRESSES).

Comment 20: One comment letter from five organizations (the American Sportfishing Association, Center for Sportfishing Policy, Coastal Conservation Association, Congressional Sportsmen’s Foundation, and the National Marine Manufacturers Association) supported the implementation of the framework. Specifically, the comment letter stated that the framework “. . . aims to address numerous challenges currently facing recreational fishery management, including limitations of the MRIP data, the need to change measures (sometimes annually) based on those data, and recreational measures (bag, size and season) not reflecting stock status. Most recently, the 2022 fisheries specification process exemplified these challenges and demonstrates the need to implement alternative approaches to setting bag, size, and season limits in 2023, and beyond”.

Response: We agree, and have approved the framework as proposed.

Changes From the Proposed Rule

There are no changes to the measures in this final rule from the proposed rule.

Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this final rule is consistent with the Summer Flounder, Scup, and Black Sea Bass, and Bluefish FMPs, other provisions of the Magnuson Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay of effectiveness period for this rule, to ensure that the final management measures are in place as soon as possible.

The Council and Board adopted this Framework/Addendum in June 2022, and indicated their intention that this new process would be used for development of the 2023 recreational management measures. In December of 2022, they used the new process to recommend recreational management measures for summer flounder, scup, and black sea bass. We cannot implement the recommended 2023 recreational management measures until the process implemented through this rule is effective. A delay in the effectiveness in this rule would create additional challenges and confusion about the 2023 recreational management measures. The summer flounder, scup, and black sea bass fishing year began on January 1, 2023. This is the earliest this rule could be completed. The Council submitted the revised framework document on November 21, 2022, and the proposed rule was published on December 15, 2022, this final rule is being issued as soon as possible.

The Federal coastwide regulatory measures for recreational summer flounder and black sea bass fishing that were codified last year (87 FR 35112, June 9, 2022) remain in effect until the decision to waive Federal measures for 2023 is made. Because the Council and Board-recommended measures are based on the approach implemented in this rule, the states have already developed and have begun implementing their conservationally equivalent 2023 measures. Inconsistencies between the states' measures and the Federal measures could lead to misunderstanding of the applicable regulations and could increase the likelihood of noncompliant landings. Additionally, the Federal summer flounder measures currently in place are more restrictive than many of the measures in State waters, which unnecessarily disadvantage federally permitted vessels who are subject to these more restrictive measures until the 2023 recreational measures are put in place.

The measures currently in place for scup and black sea bass are more liberal than the measures that will be implemented for 2023. A delay in effectiveness of this rule, and a resulting delay of the implementation of the 2023 measures, will increase the likelihood that the 2023 RHLs and recreational ACLs will be exceeded. We are required to implement measures to constrain recreational harvest to prevent overfishing.

In response to this action, unlike actions that require an adjustment period to comply with new rules, recreational and charter/party operators

will not have to purchase new equipment or otherwise expend time or money to comply with the new management process. Additionally the Council and Board already took action, in December 2022, to recommend recreational management measures based on the new process.

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 during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification, and to our knowledge, there are no changed circumstances. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 1, 2023.

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 § 648.100, revise paragraphs (a) introductory text, (b) introductory text, and (b)(1) to read as follows:

§ 648.100 Summer flounder Annual Catch Limit (ACL).

(a) *Annual catch limits.* The Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational summer flounder fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance

relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Monitoring Committee will review fishery performance information and consider whether changes in measures are needed.

* * * * *

■ 3. In § 648.101, revise paragraphs (a) introductory text, (a)(1), and (b) to read as follows:

§ 648.101 Summer flounder Annual Catch Target (ACT).

(a) *Annual catch target.* The Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the summer flounder specification process. The Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with this paragraph (a).

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.100(b)(1) through (3).

■ 4. In § 648.102, revise paragraphs (a) introductory text, (a)(6) and (11), (b), and (d) to read as follows:

§ 648.102 Summer flounder specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures.* The Monitoring Committee shall recommend to the MAFMC, through the specifications process, for use in conjunction with each ACL and ACT, a sector-specific research set-aside, estimates of sector-related discards, a recreational harvest limit, and a commercial quota, along with other measures, as needed to prevent overages of the applicable specified limits or targets for each sector, as prescribed in

the FMP. The measures to be considered by the Monitoring Committee are:

* * * * *

(6) Recreational possession limit set from a range of 0 to 15 summer flounder.

* * * * *

(11) Modification of existing accountability measures and ACT control rules utilized by the Monitoring Committee.

(b) *Specification fishing measures.* The MAFMC shall review the recommendations of the Monitoring Committee and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to constrain the sectors to the applicable limit or target as prescribed in the FMP. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC.

* * * * *

(d) *Recreational specification measures.* The MAFMC shall review the recommendations of the Monitoring Committee and, based on the recommendations and any public comment, recommend to the Regional Administrator measures that are projected to prevent overages of the applicable recreational target, as prescribed in the FMP, for an upcoming fishing year or years. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The MAFMC and the ASMFC will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual, or multi-year, coastwide management measures projected to achieve the applicable recreational target as prescribed in the FMP, or

(2) *Conservation equivalent measures.* Individual states, or regions formed voluntarily by adjacent states (i.e., multi-State conservation equivalency regions), may implement different combinations of minimum and/or maximum fish sizes, possession limits, and closed seasons that achieve equivalent conservation as the coastwide measures established under paragraph (e)(1) of this section. Each State or multi-State conservation equivalency region may implement measures by mode or area only if the

proportional standard error of recreational landing estimates by mode or area for that State is less than 30 percent.

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the **Federal Register** as soon as possible to implement the overall recreational target for the fishing year(s), and the ASMFC's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary adjustment to recreational landings. The ASMFC will provide the Regional Administrator with the individual State and/or multi-State region conservation measures for the approved State and/or multi-State region proposals and, in the case of disapproved State and/or multi-State region proposals, the precautionary default measures that should be applied to a State or region. At the request of the ASMFC, precautionary default measures would apply to federally permitted party/charter vessels and other recreational fishing vessels harvesting summer flounder in or from the EEZ when landing in a State that implements measures not approved by the ASMFC.

(iii) After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement either the State or regional conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(iv) The ASMFC may allow states or regions assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the State or region can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted State or regional proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a document in the **Federal Register** to notify the public.

* * * * *

■ 5. In § 648.103, revise paragraphs (c), (d)(1), and (d)(2)(ii) to read as follows:

§ 648.103 Summer flounder accountability measures.

* * * * *

(c) *Recreational ACL Evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both

landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) * * *

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the BMSY threshold (i.e., B/BMSY is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or BMSY) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent 3-year average recreational catch estimate exceeded the most recent 3-year average recreational ACL will be deducted, in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT. This payback may be evenly spread over 2 years if doing so allows for use of identical recreational management measures across the upcoming 2 years.

(2) * * *

(ii) *If the fishing mortality (F) has exceeded FMSY (or the proxy).* If the most recent estimate of total fishing mortality exceeds FMSY (or the proxy), then an adjustment to the recreational ACT will be made as soon as possible, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. If an estimate of total fishing mortality is not available for the most recent complete year of catch data, then a comparison of total catch relative to the ABC will be used.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the most recent 3-year average recreational catch and the most recent 3-year recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section. This payback may be evenly spread over 2 years if doing so allows for use of identical recreational management measures across the upcoming 2 years.

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

* * * * *

■ 6. In § 648.120, revise paragraphs (a) introductory text, (b) introductory text, and (b)(1) to read as follows:

§ 648.120 Scup Annual Catch Limit (ACL).

(a) *Annual catch limits.* The Monitoring Committee shall recommend

to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Monitoring Committee will review fishery performance information and consider whether changes to measures are needed.

* * * * *

■ 7. In § 648.121, revise paragraphs (a) introductory text, (a)(1), and (b) to read as follows:

§ 648.121 Scup Annual Catch Target (ACT).

(a) *Annual catch targets.* The Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the scup specification process. The Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with this paragraph (a).

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.120(b)(1) through (3).

■ 8. In § 648.122, revise paragraphs (a) introductory text, (a)(7) and (14), and (b) to read as follows:

§ 648.122 Scup Specifications.

(a) *Commercial quota, recreational landing limits, research set-asides, and other specification measures.* The Monitoring Committee shall recommend to the MAFMC and the ASMFC through the specifications process, for use in

conjunction with each ACL and ACT, a sector-specific research set-aside, estimates of sector-related discards, a recreational harvest limit, and a commercial quota, along with other measures, as needed, to prevent overages of the applicable specified limits or targets for each sector, as prescribed in the FMP. The measures to be considered by the Monitoring Committee are as follows:

* * * * *

(7) Recreational possession limit set from a range of 0 to 50 scup.

* * * * *

(14) Modification of existing AM measures and ACT control rules utilized by the Monitoring Committee.

(b) *Specification of fishing measures.* The MAFMC shall review the recommendations of the Monitoring Committee. Based on these recommendations and any public comment, the MAFMC shall recommend to the Regional Administrator measures necessary to prevent overages of the appropriate specified limits or targets for each sector, as prescribed in the FMP. The MAFMC's recommendation must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the **Federal Register** to implement a commercial quota, specifying the amount of quota allocated to each of the three periods, possession limits for the Winter I and Winter II periods, including possession limits that result from potential rollover of quota from Winter I to Winter II, the percentage of landings attained during the Winter I fishery at which the possession limits will be reduced, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries.

* * * * *

■ 9. In § 648.123, revise paragraphs (c), (d) introductory text, (d)(1), (d)(2)(i) introductory text, and (d)(2)(ii)(A) to read as follows:

§ 648.123 Scup accountability measures.

* * * * *

(c) *Recreational ACL.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the BMSY threshold (*i.e.*, B/BMSY is less than 0.5), the stock is under a rebuilding plan, or the biological reference points (B or BMSY) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent 3-year average recreational catch estimate exceeded the most recent 3-year average recreational ACL will be deducted in the following fishing year, or as soon as possible, thereafter, once catch data are available, from the recreational ACT. This payback may be evenly spread over 2 years if doing so allows for use of identical recreational management measures across the upcoming 2 years.

(2) * * *

(ii) *If the fishing mortality (F) has exceeded FMSY (or the proxy).* If the most recent estimate of total fishing mortality exceeds FMSY (or the proxy), then an adjustment to the recreational ACT will be made as soon as possible once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. If an estimate of total fishing mortality for the most recent complete year of catch data is not available, then a comparison of total catch relative to the ABC will be used.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the most recent 3-year average recreational catch and the most recent 3-year average recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section. This payback may be evenly spread over 2 years if doing so allows for use of identical recreational management measures across the upcoming 2 years.

* * * * *

■ 10. In § 648.140, revise paragraphs (a) introductory text, (b) introductory text, and (b)(1) to read as follows:

§ 648.140 Black sea bass Annual Catch Limit (ACL).

(a) *Annual Catch Limits.* The Monitoring Committee shall recommend to the MAFMC separate ACLs for the commercial and recreational scup fisheries, the sum total of which shall be equal to the ABC recommended by the SSC.

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to the sector ACLs at least every 5 years.

(1) If one or both of the sector-specific ACLs is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Monitoring Committee will review fishery performance information and consider whether changes to measures are needed.

* * * * *

■ 11. In § 648.141, revise paragraphs (a) introductory text, (a)(1), and (b) to read as follows:

§ 648.141 Black sea bass Annual Catch Target (ACT).

(a) *Annual Catch Targets.* The Monitoring Committee shall identify and review the relevant sources of management uncertainty to recommend ACTs for the commercial and recreational fishing sectors as part of the black sea bass specification process. The Monitoring Committee recommendations shall identify the specific sources of management uncertainty that were considered, technical approaches to mitigating these sources of uncertainty, and any additional relevant information considered in the ACT recommendation process.

(1) *Sectors.* Commercial and recreational specific ACTs shall be less than or equal to the sector-specific ACLs. The Monitoring Committee shall recommend any reduction in catch necessary to address sector-specific management uncertainty, consistent with this paragraph (a).

* * * * *

(b) *Performance review.* The Monitoring Committee shall conduct a detailed review of fishery performance relative to ACTs in conjunction with any ACL performance review, as outlined in § 648.140(b)(1) through (3).

■ 12. In § 648.142, revise paragraphs (a) introductory text, (a)(7) and (10), (b), (d) introductory text, (d)(1), and (d)(2)(i) through (iv) to read as follows:

§ 648.142 Black sea bass specifications.

(a) *Specifications.* Commercial quota, recreational landing limit, research set-aside, and other specification measures. The Monitoring Committee will recommend to the MAFMC and the ASMFC, through the specification process, for use in conjunction with the ACL and ACT, sector-specific research set-asides, estimates of the sector-related discards, a recreational harvest limit, a commercial quota, along with other

measures, as needed, that are projected to prevent overages of the applicable specified limits or targets for each sector as prescribed in the FMP. The following measures are to be considered by the Monitoring Committee:

* * * * *

(7) A recreational possession limit.

* * * * *

(10) Recreational State conservation equivalent and precautionary default measures utilizing possession limits, minimum fish sizes, and/or seasons.

* * * * *

(b) *Specification fishing measures.* The MAFMC shall review the Monitoring Committee recommendations and, based on the recommendations and public comment, make recommendations to the Regional Administrator on measures projected to constrain the sectors to the applicable limit or target as prescribed in the FMP. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the final rule. The Regional Administrator will review these recommendations and any recommendations of the ASMFC. After such review, the Regional Administrator will publish a proposed rule in the **Federal Register** to implement a commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery.

* * * * *

(d) *Recreational specification measures.* The Monitoring Committee shall recommend to the MAFMC and ASMFC measures that are projected to prevent overages of the applicable recreational target as prescribed in the FMP. The MAFMC shall review these recommendations and, based on the recommendations and any public comment, recommend recreational management measures to the Regional Administrator. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The MAFMC and the ASMFC will recommend that the Regional Administrator implement either:

(1) *Coastwide measures.* Annual coastwide management measures that constrain the recreational black sea bass fishery to the recreational target as specified in the fishery management plan, or

(2) * * *

(i) After review of the recommendations, the Regional Administrator will publish a proposed rule in the **Federal Register** as soon as

possible to implement the overall recreational target required for the fishing year(s), and the ASMFC's recommendation concerning conservation equivalency, the precautionary default measures, and coastwide measures.

(ii) The ASMFC will review conservation equivalency proposals and determine whether or not they achieve the necessary recreational target. The ASMFC will provide the Regional Administrator with the individual State and/or multi-State region conservation measures for the approved State and/or multi-State region proposals and, in the case of disapproved State and/or multi-State region proposals, the precautionary default measures that should be applied to a State or region. At the request of the ASMFC, precautionary default measures would apply to federally permitted party/charter vessels and other recreational fishing vessels harvesting black sea bass in or from the EEZ when landing in a State that implements measures not approved by the ASMFC.

(iii) After considering public comment, the Regional Administrator will publish a final rule in the **Federal Register** to implement either the State or regional conservation equivalency measures or coastwide measures to ensure that the applicable specified target is not exceeded.

(iv) The ASMFC may allow states or regions assigned the precautionary default measures to resubmit revised management measures. The ASMFC will detail the procedures by which the State or region can develop alternate measures. The ASMFC will notify the Regional Administrator of any resubmitted State or regional proposals approved subsequent to publication of the final rule and the Regional Administrator will publish a document in the **Federal Register** to notify the public.

* * * * *

■ 13. In § 648.143, revise paragraphs (c) and (d) to read as follows:

§ 648.143 Black sea bass accountability measures.

* * * * *

(c) *Recreational ACL Evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the BMSY 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 BMSY) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent 3-year average recreational catch estimate exceeded the most recent 3-year average recreational ACL will be deducted in the following fishing year, or as soon as possible thereafter, once catch data are available, from the recreational ACT. This payback may be evenly spread over 2 years if doing so allows for use of identical recreational management measures across the upcoming 2 years.

(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 Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the fishing mortality (F) has exceeded FMSY (or the proxy).* If the most recent estimate of total fishing mortality exceeds FMSY (or the proxy) then an adjustment to the recreational ACT will be made as soon as possible once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. If an estimate of total fishing mortality for the most recent complete year of catch data is not available, then a comparison of total catch relative to the ABC will be used.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the most recent 3-year average recreational catch and the most recent 3-year average recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section. This payback may be evenly spread over 2 years if doing so allows for use of

identical recreational management measures across the upcoming 2 years.

(B) *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 adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

* * * * *

■ 14. In § 648.160, revise paragraph (b) to read as follows:

§ 648.160 Bluefish Annual Catch Limit (ACL).

* * * * *

(b) *Performance review.* The Bluefish Monitoring Committee shall conduct a detailed review of fishery performance relative to the ACL at least every 5 years.

(1) If the ACL is exceeded with a frequency greater than 25 percent (*i.e.*, more than once in 4 years or any 2 consecutive years), the Bluefish Monitoring Committee will review fishery performance information and consider whether changes to measures are needed.

(2) The MAFMC may specify more frequent or more specific ACL performance review criteria as part of a stock rebuilding plan following the determination that the bluefish stock has become overfished.

(3) Performance reviews shall not substitute for annual reviews that occur to ascertain if prior year ACLs have been exceeded, but may be conducted in conjunction with such reviews.

■ 15. In § 648.162, revise paragraphs (a) introductory text and (c) to read as follows:

§ 648.162 Bluefish specifications.

(a) *Recommended measures.* Based on the annual review and requests for research quota as described in paragraph (h) of this section, the Bluefish Monitoring Committee shall recommend to the MAFMC and the ASMFC the following measures to ensure that the ACL specified by the process outlined in § 648.160(a) will not be exceeded:

* * * * *

(c) *Annual fishing measures.* The MAFMC shall review the

recommendations of the Bluefish Monitoring Committee. Based on these recommendations and any public comment, the MAFMC shall recommend to the Regional Administrator by September 1 measures necessary to prevent overages of the applicable specified limits or targets for each sector as prescribed in the FMP. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator shall review these recommendations and any recommendations of the ASMFC. After such review, NMFS will publish a proposed rule in the **Federal Register** as soon as practicable to implement ACLs, ACTs, research quota, a coastwide commercial quota, individual State commercial quotas, a recreational harvest limit, and additional management measures for the commercial and recreational fisheries to prevent overages of the applicable specified limits or targets for each sector as prescribed in the FMP. After considering public comment, NMFS will publish a final rule in the **Federal Register**.

* * * * *

■ 16. In § 648.163 revise paragraphs (a), (d), and (f) to read as follows:

§ 648.163 Bluefish Accountability Measures (AMs).

(a) *ACL overage evaluation.* The ACLs will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the ACLs have been exceeded.

* * * * *

(d) *Recreational landings AM when the recreational ACL is exceeded and no sector-to-sector transfer of allowable landings has occurred.* If the recreational ACL is exceeded and no transfer between the commercial and recreational sector was made for the fishing year, as outlined in § 648.162(b)(2), then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* 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 recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate

exceeded the most recent year's recreational ACL will be deducted from the following year's recreational ACT, or as soon as possible thereafter, once catch data are available. This payback may be evenly spread over 2 years if doing so allows for use of identical recreational management measures across the upcoming 2 years.

(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 recreational ACL has been exceeded.* If the recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the fishing mortality (F) has exceeded FMSY (or the proxy).* If the most recent estimate of total fishing mortality exceeds FMSY (or the proxy) then an adjustment to the recreational ACT will be made as soon as possible once catch data are available. If an estimate of total fishing mortality for the most recent complete year of catch data is not available, then a comparison of total catch relative to the ABC will be used.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the recreational ACL overage and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section. This payback may be evenly spread over 2 years if doing so allows for use of identical recreational management measures across the upcoming 2 years.

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

(3) *If biomass is above BMSY.* If the most recent estimate of biomass is above BMSY (*i.e.*, B/B_{MSY} is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data

are available, as a single-year adjustment.

* * * * *

(f) *Non-landing AMs.* In the event that the fishery-level ACL has been exceeded and the overage has not been accommodated through the AM measures in paragraphs (a) through (d) of this section, then the exact amount, in pounds, by which the fishery-level ACL was exceeded shall be deducted, as soon as possible, from subsequent, single fishing year ACTs. The payback will be applied to each sector's ACT in proportion to each sector's contribution to the overage.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 230224-0053 and 230306-0065; RTID 0648-XC767]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish Managed Under the Individual Fishing Quota Program

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

ACTION: Temporary rule; opening.

SUMMARY: NMFS is opening directed fishing for sablefish with fixed gear managed under the Individual Fishing Quota (IFQ) Program and the Community Development Quota (CDQ) Program. The season will open 1200 hours, Alaska local time (A.l.t.), March 10, 2023, and will close 1200 hours, A.l.t., December 7, 2023. This period is the same as the 2023 commercial halibut fishery opening dates adopted by the International Pacific Halibut Commission. The IFQ and CDQ halibut season is specified by a separate publication in the **Federal Register** of annual management measures.

DATES: Effective 1200 hours, A.l.t., March 10, 2023, until 1200 hours, A.l.t., December 7, 2023.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7228.

SUPPLEMENTARY INFORMATION: Beginning in 1995, fishing for Pacific halibut and sablefish with fixed gear in the IFQ regulatory areas defined in 50 CFR 679.2 has been managed under the IFQ Program. The IFQ Program is a

regulatory regime designed to promote the conservation and management of these fisheries and to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Persons holding quota share receive an annual allocation of IFQ. Persons receiving an annual allocation of IFQ are authorized to harvest IFQ species within specified limitations. Further information on the implementation of the IFQ Program, and the rationale supporting it, are contained in the preamble to the final rule implementing the IFQ Program published in the **Federal Register**, November 9, 1993 (58 FR 59375) and subsequent amendments.

This announcement is consistent with § 679.23(g)(1), which requires that the directed fishing season for sablefish managed under the IFQ Program be specified by the Administrator, Alaska Region, and announced by publication in the **Federal Register**. This method of season announcement was selected to facilitate coordination between the sablefish season, chosen by the Administrator, Alaska Region, and the halibut season, adopted by the International Pacific Halibut Commission (IPHC). The directed fishing season for sablefish with fixed gear managed under the IFQ Program will open 1200 hours, A.l.t., March 10, 2023, and will close 1200 hours, A.l.t., December 7, 2023. This period runs concurrently with the IFQ season for Pacific halibut announced by the IPHC. The IFQ and CDQ halibut season will be specified by a separate publication in the **Federal Register** of annual management measures pursuant to 50 CFR 300.62.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would delay the opening of the sablefish fishery thereby increasing bycatch and regulatory discards between the sablefish fishery and the halibut fishery, and preventing the accomplishment of the management objective for simultaneous opening of these two fisheries. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 6, 2023.