

**Classification**

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: October 21, 1999.

**Bruce C. Morehead,**

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

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

[Docket No. 990301058-9225-02; I.D. 011499B]

RIN 0648-AL56

**Fisheries of the Northeastern United States; Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP); Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement the approved portions of Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP); Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP. This rule would implement framework provisions for amending management measures for these fisheries, restrict the size of domestic harvesting vessels permitted in the Atlantic mackerel fishery without restricting the size of processing vessels, and implement an operator permit requirement for the surf clam and ocean quahog fisheries. The purpose of these amendments is to meet the requirements of the Sustainable Fisheries Act (SFA) of October 1996 (SFA).

**DATES:** Effective November 26, 1999.

**ADDRESSES:** Copies of the SFA amendments, the environmental assessments (EA), the regulatory impact reviews, and other supporting documents are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council,

Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this rule should be sent to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Regina L. Spallone, Fishery Policy Analyst, 978-281-9221.

**SUPPLEMENTARY INFORMATION:**

Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP; Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP (collectively referred to as the SFA Amendments) were prepared by the Mid-Atlantic Fishery Management Council (Council) to address the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the SFA. Background concerning the development of the SFA Amendments was provided in the notice of proposed rulemaking (64 FR 16891, April 7, 1999), and is not repeated here. This final rule implements approved management measures contained in the SFA Amendments intended to eliminate overfishing, rebuild many of the associated stocks, comply with the provisions of the SFA, and achieve other goals. The SFA Amendments were partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on April 28, 1999.

Upon evaluation of the SFA Amendments as required by Section 304(a)(3) of the Magnuson-Stevens Act, NMFS, on behalf of the Secretary, disapproved several provisions of the amendments. The disapproved measures include the scup rebuilding schedule, the scup bycatch provision, the surf clam overfishing definition (OFD), and the deficient essential fish habitat (EFH) portions of all three of the SFA amendments. The deficient portions include: Section 2.2.3.7—Fishing Impacts on EFH and Section 2.2.4—Options for Managing Adverse Effects from Fishing in Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP; Section 2.2.3.7—Fishing Impacts on EFH and Section 2.2.4—Options for Managing Adverse Effects from Fishing in Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP; and Section 2.2.3.8—Fishing Impacts on EFH, and Section

2.2.4—Options for Managing Adverse Effects from Fishing in Amendment 12 to the Atlantic Surf Clam and Ocean Quahog FMP. NMFS has notified the Council of the disapprovals and made recommendations for addressing the deficiencies noted.

**Measures Approved in SFA Amendments**

This final rule implements revisions to the Summer Flounder, Scup, and Black Sea Bass FMP, the Atlantic Mackerel, Squid, and Butterfish FMP, and the Atlantic Surf Clam and Ocean Quahog FMP by adding a framework adjustment process in addition to the annual specification setting process for each of the fisheries.

This final rule also revises regulations implementing the Atlantic Mackerel, Squid, and Butterfish FMP by revising the maximum fishing mortality rate (F) for *Illex* squid to  $F_{MSY}$  to reflect better the goal of achieving maximum sustainable yield (MSY) on a continuing basis, and restricting the size of domestic harvesting, but not processing, vessels permitted in the Atlantic mackerel fishery. A vessel permitted in the Atlantic mackerel fishery may not exceed either of the following specifications: (1) 165 ft (50.3 m) in length overall (LOA) and 750 gross registered tons (GRT), or (2) a shaft horsepower (shp) of 3,000 shp.

**Comments and Responses**

Forty-six written comments on the SFA Amendments were received during the comment period established by the notice of availability of the SFA Amendments, which ended March 29, 1999 (64 FR 4065, January 27, 1999). These comments were considered by NMFS in its decision to approve partially the SFA Amendments on April 28, 1999. In addition, NMFS received 10 comments during the comment period specified for the proposed rule, which ended on May 24, 1999. A number of the comments received on the proposed rule did not specifically address the proposed regulations. In fact, many of these letters referenced existing provisions in the management structures for each of the fisheries that were not proposed for revision under the SFA Amendments. Since those existing provisions had already been found to comply with the Magnuson-Stevens Act under reviews for both previous actions and the SFA Amendments, and were not revised in the SFA Amendments, NMFS determined that it would be inappropriate to address those comments in this final rule. Comments received during the specified comment

periods pertaining to either the SFA Amendments or the proposed rule are addressed here.

#### General

*Comment 1:* One commenter supported the complete adoption of the SFA Amendments.

*Response:* Comment noted. NMFS, however, did not approve all of the SFA Amendments. Upon evaluation of the SFA Amendments, as required by Section 304(a)(3) of the Magnuson-Stevens Act, NMFS, on behalf of the Secretary, only partially approved the SFA Amendments. The measures disapproved were described in the preceding summary section and are not repeated here.

#### Atlantic Mackerel Vessel Size Restriction

*Comment 2:* Four comment letters, including three form letters representing 18 comments, supported the size restriction for vessels harvesting Atlantic mackerel. Commenters felt the action was necessary to slow the growth of the fishery while markets develop, and called the restriction "proactive" rather than "reactive." *Response:* NMFS approved this measure and supports the Council's intent to control access to the Atlantic mackerel fishery and fully develop a controlled access provision in a forthcoming amendment to the Atlantic Mackerel, Squid, and Butterfish FMP. This restriction and the publication of the control date (September 12, 1997) begins the process of addressing the Council's concerns about overcapitalization.

The Council established a control date for the Atlantic mackerel fishery of September 12, 1997 (62 FR 48047). The advance notice of proposed rulemaking informed the public that anyone entering the Atlantic mackerel fishery after that date could not be assured access to the fishery if a program to limit such access is developed. The control date and vessel size restriction give the Council time to develop a limited entry program without fear of an influx of vessels having high fishing power and capacity.

*Comment 3:* One commenter questioned the need for the vessel size restriction, noting that the restriction did not appear in Section 1.1—Purpose and Need for Action, and appeared to contradict the FMP objective that states the goal of promoting "the growth of the U.S. commercial fishery, including fishery for export." The commenter also questioned how the size restriction achieves the greatest overall benefit to the Nation (as defined by "optimum" under National Standard 1).

*Response:* NMFS believes that the vessel size restriction falls within the scope of the FMP objective of promoting the growth of the commercial Atlantic mackerel fishery. The vessel size restriction does not contradict that, or any other, objective of the FMP. The Council developed this provision not to prevent the growth of the commercial fishery, but rather to control its growth. The Council was concerned about the possibility of rapid overcapitalization of the fishery and of significant increases in harvest potential. Furthermore, the Council was concerned about providing high priority to historical participants in the Atlantic mackerel fishery as it considered development of a limited access system. The vessel size restriction in Amendment 8 helps protect against rapid overcapitalization and significant increases in harvest potential, while also allowing historical participants to remain in the fishery.

The term "optimum yield" (OY) refers to the yield from a fishery that will provide the greatest overall benefit to the Nation, prescribed by MSY, and reduced by social, economic, or ecological factors. National standard 1 states that conservation and management measures shall prevent overfishing while achieving, on a continual basis, the OY from each fishery for the U.S. fishing industry. National standard 1 does not require justification of the vessel size restriction by explaining how it achieves the greatest overall benefit to the Nation. Nevertheless, the Magnuson-Sevens Act authorizes consideration of social, economic, biological, and ecological factors in the development of conservation and management measures. The vessel size restriction reflects legitimate concerns about such factors, including overcapitalization, harvest potential, historical participation, and the impact on the resource due to possible overcapitalization and increased harvest potential.

*Comment 4:* One commenter stated that no environmental impact analysis was conducted on the size restriction nor was any rationale put forward for the specific size parameters.

*Response:* An environmental assessment was prepared for Amendment 8 to the Atlantic Mackerel, Squid, and Butterfish FMP and concluded that approval and implementation of the proposed action, which included the vessel size restriction, would not significantly affect the quality of the human environment. As a result, an environmental impact statement was not required. In Amendment 8, the

Council explained that the vessel size restrictions were developed in response to concerns about the rapid overcapitalization of the mackerel fleet by the entry of large vessels with significant harvest potential and, by implication, the effect such a rapid change in the fishery may have on the resource. By preventing such a rapid change in the fishery, the vessel size restriction constitutes a proactive means of protecting the resource and, therefore, would not have an adverse impact on the environment.

An analysis of the parameters of the Atlantic mackerel vessel size restriction was conducted by the Council in Amendment 8. The analysis investigated the vessels currently participating in the mackerel fishery, including vessel size necessary to participate successfully. The size limits adopted represent the upper bound of those permitted vessels that have been shown to harvest Atlantic mackerel successfully. Thus, the size restriction caps the size parameters of individual vessels in the fleet to those which currently exist in the fishery. Only new, larger vessels are precluded from entering the fishery by this restriction.

*Comment 5:* Thirty-three commenters opposed the vessel size restriction. Opposition to the measure focused mainly on fairness, equity, and conservation and management rationale. Commenters felt that the provision was an attempt by competitors to "reserve the resource for themselves," would impact only one fishing vessel, and violated several national standards.

*Response:* The size restriction for vessels harvesting Atlantic mackerel is not intended to single out an individual, corporation, or other entity, but is intended to preclude large, high capacity vessels from entering the fishery. This restriction is designed to address a class of vessels and to prevent rapid overcapitalization while the Council develops a limited access program for the Atlantic mackerel fishery in a future action. NMFS found the action in compliance with the national standards.

*Comment 6:* The Council submitted language to clarify the Atlantic mackerel vessel size restriction. Specifically, the Council reaffirmed that it intends the restriction to be applied to vessels that exceed any one of the two following criteria: (1) 165 ft LOA and 750 GRT; (2) shaft horsepower of 3,000 shp.

*Response:* NMFS had raised concerns about the specific language of the restriction both during the Council meetings and after Amendment 8 was submitted during informal discussions with Council staff. It was not clear

whether the Council's intent was to adopt the vessel size restriction language of the American Fisheries Act, the Department of Commerce appropriations bill language, or the language developed by the New England Fishery Management Council for the Atlantic Herring FMP. Because of the subtle differences between all of these varying provisions, NMFS chose to publish the most restrictive provision in the proposed rule and solicit comment. No comments on the precise wording of the measure were received. However, based on the Council's clarification of its intent, the Council's clarification is accepted and adopted in this final rule.

#### Overfishing Definitions

*Comment 7:* One commenter felt that the OFDs for both scup and black sea bass were not sufficiently precautionary. The commenter cites technical recommendations that  $F_{0.1}$  be adopted for both species.

*Response:* The Council adopted  $F_{MAX} = 0.32$  as a fishing mortality reference point proxy for  $F_{MSY}$  for black sea bass, and  $F_{MAX} = 0.26$  as a proxy for  $F_{MSY}$  for scup. Scientific advice recommended a more conservative reference point,  $F_{0.1} = 0.18$  as a proxy for  $F_{MSY}$  for black sea bass, and  $F_{0.1} = 0.15$  as a proxy for  $F_{MSY}$  for scup, to compensate for the uncertainty in the assessment of both. NMFS approved the OFDs for scup and black sea bass because they were conceptually sound, albeit less conservative and risk averse than those recommended by scientists.

*Comment 8:* One commenter felt that, for scup and black sea bass, the rebuilding plans specified in Amendment 12 to the Summer Flounder, Scup, and Black Sea Bass FMP were not adequate and should be disapproved. The commenter stated that, "given the level of uncertainty [in the assessment data for scup], a much greater level of caution" is necessary.

*Response:* NMFS agrees that the rebuilding plan specified for scup was not adequate, and, therefore, disapproved that provision because of the minimal probability that the stock could rebuild to the minimum biomass index within 10 years. The combination of the less conservative choice of mortality reference point by the Council (see comment 7 and response) and the general decline of this fishery is risk-prone and the rebuilding program warranted disapproval.

The rebuilding plan for black sea bass was not disapproved because the current rebuilding schedule for black sea bass is less risk-prone for a stock that has been relatively stable, albeit at low levels, for the past decade. In

contrast, the scup stock indices have been trending downward during that time and the rebuilding schedule posed an unacceptably high risk.

*Comment 9:* Three commenters found the *Illex* OFD confusing.

*Response:* Since the OFDs are very technical in nature, they are also often confusing. Since the commenters did not specify what they found to be confusing in particular about the definition, it is difficult to respond. During development of Amendment 8, there was some confusion surrounding the estimation of the harvestable yield in the *Illex* squid fishery that would arise from the OFD. For the purposes of this response, NMFS will assume this is the point about which the commenter is confused. Rather than explain the calculations that were made which, again, would necessarily be technical, NMFS points out that an error was made that is corrected by this rule. This correction results in an increased harvest of *Illex* squid from 18,000 to 22,800 metric tons (mt). This revision—incorporating the intended, correct value—was approved by NMFS as part of the review of Amendment 8.

*Comment 10:* One commenter supported the *Illex* squid OFD.

*Response:* Comment noted. As noted, the *Illex* squid OFD was approved, as corrected (see comment 9 and response).

#### Essential Fish Habitat (EFH)

*Comment 11:* Two commenters considered the EFH portions of the SFA Amendments to be overly broad and exceeding the intent of Congress. The commenter specifically cited the breadth of EFH designations, noting that EFH appeared to be designated in an arbitrary manner, over the range of the species, and included coastal state and estuarine waters. The commenter opposed what he interpreted to be a requirement for EFH to be further designated by "project proponents." Another commenter supported the identification of EFH, noting that a broad designation of EFH was mandatory, especially where a stock is overfished and loss of habitat is considered to be a contributing factor. The commenter also supports the designation of submerged aquatic vegetation as habitat area of particular concern (HAPC) due to its value as nursery habitat.

*Response:* The Magnuson-Stevens Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Therefore, the geographic scope of EFH must be sufficiently broad to encompass the biological requirements of the species. The information that the

Council used for EFH designation was primarily species distribution and relative abundance data, which would be classified as "level 2" information under the EFH regulations (50 CFR 600.815). Since the information available was not more specific (e.g., did not show species production by habitat type), the approach prescribed by the regulations led to fairly broad EFH designations. The EFH regulations at 50 CFR § 600.10 interpret the statutory definition of EFH to include aquatic areas that are used by fish, including historically used areas, where appropriate, to support a sustainable fishery and the managed species' contribution to a healthy ecosystem, provided that restoration is technologically and economically feasible. The Council's EFH designation is consistent with these requirements.

The specific methodology used by the Council for designating EFH was based on the highest relative density of each life stage for each species. This methodology was developed by scientists at the Northeast Fisheries Science Center, and is supported by scientific research and ecological concepts that show that the distribution and abundance of a species or stock are determined by physical and biological variables. The abundance of a species is higher where conditions are more favorable, and this tends to occur near the center of a species range. As population abundance fluctuates, the area occupied changes. At low levels of abundance, populations are expected to occupy the habitat that maximizes their survival, growth, and reproduction. As population abundance increases, individuals move into other available habitats.

Under the consultation provisions of the Magnuson-Stevens Act, a Federal agency must consult with NMFS when a proposed project has the potential to impact adversely any area of EFH that has been designated by the Council. The EFH regulations at 50 CFR 600.920(g) require that Federal agencies submit an EFH Assessment that describes the effects of the action on EFH. No requirement exists for further designation of EFH by project applicants.

*Comment 12:* A commenter stated that the conservation and enhancement recommendations for non-fishing impacts to EFH that are provided in the SFA Amendments are not based on the best available science, nor sufficiently supported. Two commenters contended that the recommended measures do not take into consideration current practices, are likely to be in conflict with measures being pursued under

other regulatory programs, and may cause severe over regulation. One commenter also stated that the Magnuson-Stevens Act did not empower the Councils to address non-fishing activities.

*Response:* NMFS disagrees that the conservation and enhancement recommendations for non-fishing impacts to EFH are not based on the best available science. The information presented in the EFH sections of the SFA Amendments is well researched and substantiated by the best available information. Moreover, the commenter did not provide examples of specific information not considered by the Councils.

Conservation and enhancement recommendations for non-fishing industries were included to satisfy the requirements of section 303(a)(7) of the Magnuson-Stevens Act to "identify other actions to encourage the conservation and enhancement of [EFH]." This information is provided to assist non-fishing industries, such as the timber and paper industries, in avoiding impacts to EFH. The recommendations are neither posed as, nor meant to be, binding in nature. It is up to the discretion of the non-fishing industries and relevant regulatory agencies whether these recommendations are implemented.

Additionally, under section 305(b) of the Magnuson-Stevens Act, NMFS is required, and the Councils are authorized, to make conservation recommendations to any Federal or state agency regarding any activity that would adversely affect EFH. Moreover, Federal agencies are required to respond to these recommendations in writing.

*Comment 13:* Two commenters stated that the SFA Amendments contain no meaningful threshold of significance or likelihood of adverse effect on habitat for non-fishing impacts. The commenters suggested that the consultation and conservation recommendation provisions of the Magnuson-Stevens Act will be burdensome and unworkable. One commenter contended that the consultation procedures will be redundant with the National Environmental Policy Act (NEPA), costly, and time consuming.

*Response:* The Magnuson-Stevens Act requires Federal action agencies to consult with NMFS on activities that may adversely affect EFH. Adverse effects, as defined at 50 CFR 600.810(a), means any impact that reduces the quality and/or quantity of EFH. Adverse effects may include, for example, direct effects through contamination or physical disruption, indirect effects

such as loss of prey or reduction in species fecundity, and site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions. Only actions that have a reasonably foreseeable adverse effect require consultation.

Consultations are not likely to be redundant or inefficient. The EFH regulations provide for streamlined consultation procedures, such as general concurrences and abbreviated consultations, that may be used when the activities at issue do not have the potential to cause substantial adverse effects on EFH. The EFH consultation requirements will be consolidated with other existing consultation and environmental review procedures wherever appropriate. This approach will ensure that EFH consultations do not duplicate other environmental reviews, yet still fulfill the statutory requirement for Federal actions to consider potential effects on EFH.

*Comment 14:* A commenter stated that the SFA Amendments generally failed to address the potential for significant adverse impacts of these amendments on non-fishing entities, specifically citing the requirements of NEPA and the Regulatory Flexibility Act (RFA).

*Response:* The conservation and enhancement recommendations outlined in the SFA Amendments include a review of suggested measures for municipal, state, and Federal agencies and other organizations for the conservation and enhancement of EFH. As stated previously, these recommendations are non-binding. Any regulatory action that may reflect these recommendations will be subject to the analysis and public review required by state or Federal law, which will be the appropriate vehicle for consideration of impacts to both fishing and non-fishing entities.

In the EAs included with the SFA Amendments, the Council found, and NMFS concurs, that there will be no significant impacts on the human environment as a result of these SFA Amendments. The EFH regulations and NOAA policy require that NMFS coordinate EFH consultations with other consultation and commenting requirements under environmental review procedures currently in place. This will eliminate duplication and will ensure a workable review process.

An analysis of the rule with respect to the requirements of the RFA concluded that the SFA Amendments would not have a significant economic impact on a substantial number of small entities. As a result, no regulatory flexibility analysis was prepared. Further, no specific management measures were

submitted regarding the EFH designation. Any changes in management provisions that arise as a result of the measures enacted by these SFA Amendments (such as a framework adjustment) will be reviewed for their economic impacts when submitted.

*Comment 15:* A number of commenters stated that the amendment did not adequately address fishing impacts to EFH, and urged NMFS to disapprove these sections. Commenters stated that work plans to implement additional HAPCs and gear management measures should be developed.

*Response:* NMFS agrees that the Council did not adequately address adverse impacts to EFH from fishing gear, and as a result, has disapproved three sections of the SFA Amendments that relate to EFH.

In letters to the Council dated September 4, 1998, and October 2, 1998, NMFS identified the need for improvements in these sections and provided specific recommendations. Although the Council attempted to address many of the comments provided by NMFS, the SFA Amendments fell short of the requirements set forth in both the SFA and the EFH regulations. In order to comply with the EFH regulations, the disapproved sections must be revised to discuss specifically how each of the fishing equipment types used in areas designated as EFH affect EFH. The SFA Amendments state that the gears expected to have the most adverse impact are hydraulic clam dredges and the scallop dredge, and note a number of discernable effects, but conclude that the effects are minimal. The SFA Amendments should be revised to give a clearer explanation of the basis for its conclusion about the magnitude and permanence of any adverse effects.

Section 2.2.4 of all three amendments states that evidence of various gear impacts on bottom habitat have been presented to the Council, and that all mobile gear contacting the sea floor has potential impact to EFH. However, the Council concludes that these effects are not "identifiable" and that for this reason and lack of quantifiable information, no management measures will be proposed. Although the Council may be correct that no new management measures are practicable, the SFA Amendments do not contain a sufficient discussion or analysis to support this conclusion. The three amendments should be revised either to provide a clear rationale for the conclusion that no new management measures are practicable, in accordance with 50 CFR 600.815(a)(3)(iii) and (iv); or to propose new management measures that

address, to the extent practicable, any identifiable adverse effects.

Although NMFS agrees that the development of schedules for the identification of HAPCs and gear management measures could be useful, these activities are not required by either the Magnuson-Stevens Act or the EFH regulations.

#### *Other Comments*

*Comment 16:* Three commenters felt that the analyses and discussion of bycatch were not adequate, particularly with respect to the scup and summer flounder fisheries. One of the commenters referred to discards in these fisheries as "significant" and "a clear problem", respectively, and noted that minimizing scup bycatch has taken on a special urgency in light of what is believed to be a large year class in 1997.

*Response:* NMFS agrees that the bycatch provision for scup was not adequate, and disapproved the provision as inconsistent with National Standard 9. Measures for scup in the Summer Flounder, Scup, and Black Sea Bass FMP do not reduce bycatch adequately or minimize bycatch mortality. The most recent assessment for scup, conducted at the 27<sup>th</sup> stock assessment workshop (SAW-27) advised reducing F "substantially and immediately" and noted that reducing discards (especially in small mesh fisheries) would have the most impact in that regard. NMFS acknowledges that data with respect to identifying primary discard sources sufficient to implement management measures are limited. Still, it is envisioned that the Council would take the precautionary approach to develop measures to reduce discards as a result of this disapproval. The most recent stock assessment for summer flounder (SAW-25) did not express similar concerns for that fishery, although NMFS contemplates that the Council will take the precautionary approach when establishing future actions for this fishery as well.

NMFS supports action related to this issue, particularly as a follow-up to the discussions of scup discards in the April 27, 1999, workshop held by the Council's Comprehensive Management Committee. This Committee is charged with investigating alternatives to address scup discards, such as gear modification and season/area closures.

*Comment 17:* In addition to non-compliance with National Standard 9, one commenter believes the Summer Flounder, Scup, and Black Sea Bass FMP does not comply with National Standard 8, the requirement to take into account the impact of regulations on fishing communities, and National

Standard 10 on safety at sea. Specifically, the commenter feels that the Council gave only " cursory treatment" to the changes the summer flounder state-by-state quota has had on fishing communities and that the quota created unsafe conditions for industry participants.

*Response:* NMFS approved the continuation of the state-by-state allocation of summer flounder quota under Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass FMP. The Council and Commission agreed that, although the state-by-state system has some problems, it is the most flexible in that it allows states to implement subquotas and trip limits to manage best their individual fisheries. Review of Amendment 10 included a review for consistency with the new National Standards, 8, 9, and 10. During that review, the quota allocation was found consistent with the national standards and other applicable law.

*Comment 18:* One commenter charges that the amendments do not address Magnuson-Stevens Act National Standards 1 (prevent overfishing), 2 (best available scientific information), and 7 (unnecessary duplication). The commenter stated that the Council "appeared to avoid serious discussion" of addressing overfishing and rebuilding overfished stocks.

*Response:* NMFS notes that the commenter did not elaborate on its assertion that the SFA Amendments violated several national standards. However, of the three FMPs reviewed under this rule, comprising a total of nine separate species, three of those species are considered overfished under their revised OFDs (summer flounder, scup, and black sea bass). The SFA Amendments continue the rebuilding programs already established for these species. These rebuilding programs called for an end to overfishing of the summer flounder resource in 1998, of scup in 2002, and of black sea bass in 2003. These schedules continue to direct the Council to design annual measures to achieve specific fishing mortality rates. However, as noted earlier in this document, the Council will be required to develop a more rigorous rebuilding program for scup. The scientific advice advocates for more conservative rebuilding measures, and NMFS agrees that more could have been done in this regard. However, only the scup rebuilding schedule was found so deficient as to compel disapproval (see response to comment 8), while those for summer flounder and black sea bass were determined to be adequate.

NMFS finds no evidence that the best scientific information was not used by

the Council, consistent with National Standard 2.

With regards to the commenter's assertion that the SFA Amendments violate National Standard 7, NMFS assumes, for the purpose of responding to this comment, that the commenter is alleging that the EFH consultation process is duplicative of other federally required consultation processes.

Inter-agency consultations on Federal activities that may adversely affect EFH are required by the Magnuson-Stevens Act. Section 305(b)(2) of the Magnuson-Stevens Act states: "Each Federal agency shall consult with the Secretary with respect to any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act." Other Federal statutes, such as the Fish and Wildlife Coordination Act, the Endangered Species Act, and NEPA require consultation or coordination between NMFS and other Federal agencies. EFH consultations will be conducted, to the extent possible, under existing review processes and within existing time frames. NMFS is committed to a consultation process that will be effective, efficient, and non-duplicative. The SFA Amendments contain conservation recommendations that are appropriate for many Federal actions, and they can also serve as guidelines that should be considered during project planning.

#### *Framework Adjustment Procedures*

*Comment 19:* Six commenters supported the framework provisions.

*Response:* Comment noted. NMFS also supports the approved framework provisions.

*Comment 20:* One commenter objects to inclusion of the OFD in the framework procedure, and states that it is "not a typical management measure" and is, therefore, inappropriate to include there.

*Response:* NMFS disagrees that inclusion of OFDs into the list of items that may be altered by framework adjustment is inappropriate. OFDs, and their related thresholds and targets, while not management measures, may change as stocks rebuild and those values are recalculated. Therefore, it is appropriate and scientifically sound that the Council have the ability to adjust OFDs as improved information becomes available without going through the formal amendment process.

#### *Pertinent Data/Reporting Methodology*

*Comment 21:* One commenter felt that the use of the available data (vessel trip

reports (VTR) and observer data) to describe discards is not "valid or defensible." The commenter notes "ample evidence" from public comment that discards are more substantial than reported. The Council should, according to the commenter, undertake "an effort to reach out to fishermen for a more complete documentation of their fluke [summer flounder] discards."

*Response:* While NMFS acknowledges that data are limited in describing discards in many fisheries, anecdotal information presented at public forums is often contradictory and difficult to assimilate into a form useful for quantitative analysis. Currently, industry participants are required by law to report discards, truthfully and accurately, in their VTR logbooks. Industry cooperation in filling out these reports accurately is essential to provide managers and scientists with timely information to evaluate the condition of resources. The information is also necessary to evaluate the effectiveness of current management measures and to validate the information received through dealer reports. It is in industry's best interest to fill out these logbooks accurately and completely so that regulations are based on data that portray the industry correctly.

*Comment 22:* One commenter feels that the SFA Amendments do not comply with the mandate to establish a standardized reporting methodology for addressing discards.

*Response:* NMFS disagrees. The SFA Amendments do not establish a standardized reporting system because such a system already exists. The existing program includes the VTR system and sea sampling. The VTR system was established in 1993 in response to industry concerns that the voluntary reporting system did not provide complete information about their particular fishery, port, or vessel. The VTR system reaches all fishermen, even those in remote locations, and records important information concerning fishing operations, including data on gear and areas fished, as well as species kept and discarded.

The sea-sampling program is designed primarily to observe fishing operations in fisheries that have interactions with protected resources such as marine mammals and turtles. However, information on bycatch is also collected on these sampled trips. In addition, the Administrator, Northeast Region, NMFS (Regional Administrator), may request any vessel holding a moratorium permit for summer flounder, scup, or black sea bass, or a permit for mackerel, squid, or butterfish, to carry a NMFS-approved sea sampler/observer. If requested by

the Regional Administrator to carry an observer or sea sampler, a vessel may not engage in any fishing operations in the respective fishery unless an observer or sea sampler is on board, or unless the requirement is waived.

#### Changes from the Proposed Rule

In § 648.4, paragraph (a)(5)(iii) is revised to reflect the request by the Council to clarify the language limiting the size and horsepower of a vessel permitted to harvest Atlantic mackerel. In § 648.14, paragraph (p)(10) is added for the same reason.

In § 648.5, paragraph (d) is revised to eliminate the optional information submission of the applicant's social security number.

In § 648.7, the last two sentences of paragraph (c) are removed, as they refer to sections that were modified in previous actions.

Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass fisheries prohibited the transfer of summer flounder at sea (62 FR 63872, December 3, 1997). Language in § 648.7(f)(3) includes reporting requirements for at-sea processors. This language conflicts with the prohibited action specified at § 648.13(d). Therefore, the language in § 648.7 is revised to reflect the intent of Amendment 10 to prohibit transfer of summer flounder at sea.

In § 648.21, paragraph (e) is removed, as it is redundant with the inseason adjustment process established under the framework provision in § 648.24.

Section 648.106 Sea Turtle Conservation, is revised by removing the old language and adding a reference to the current regulations implementing these measures under the authority of the Endangered Species Act (ESA) 50 CFR parts 222 and 223. This revision was discussed in the preamble to the proposed rule for this action (64 FR 16891, April 7, 1999), however, the regulatory text was inadvertently omitted from the proposed rule. Because the public was notified and comment was invited on the change as part of the proposed rule, NMFS publishes the text as final.

#### Classification

This rule has been determined to be significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities.

While no comments were received specifically regarding this certification,

one commenter did state that the SFA Amendments generally failed to address the potential for significant adverse impacts on non-fishing entities, as required under the RFA. This comment was addressed in the preamble (see the response to comment 14), and did not cause NMFS to change its determination regarding the certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA. These collection-of-information requirements have been approved by OMB under OMB control numbers 0648-0202 and 0648-0229. The requirements and their estimated response times are as follows:

1. Under OMB control number 0648-0202, surf clam and ocean quahog operator permits at 1 hour per response,
2. Under OMB control number 0648-0202, mackerel at-sea processor permits at 5 minutes per response, and
2. Under OMB control number 0648-0229, mackerel dealer weekly reporting for at-sea processors at 2 minutes to complete the dealer purchase report (Form 88-30), and 4 minutes to summarize and call-in the weekly interactive voice response report.

The response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to OMB (see ADDRESSES).

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 19, 1999.

**Andrew A. Rosenberg,**  
Deputy Assistant Administrator for Fisheries,  
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 § 648.4, paragraph (a)(5)(iii) is revised to read as follows:

**§ 648.4 Vessel and individual commercial permits.**

(a) \* \* \*

(5) \* \* \*

(iii) *Atlantic mackerel permit.* Any vessel of the United States may obtain a permit to fish for or retain Atlantic mackerel in or from the EEZ, except for vessels that exceed either 165 feet in length overall (LOA) and 750 gross registered tons, or a shaft horsepower of 3000 shp. Vessels that exceed the size or horsepower restrictions may seek to obtain an at-sea processing permit specified under § 648.6(a)(2).

\* \* \* \* \*

3. In § 648.5, paragraphs (a) and (d) are revised to read as follows:

**§ 648.5 Operator permits.**

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, monkfish, mackerel, squid, butterfish, scup, black sea bass, or, as of November 26, 1999, Atlantic surf clams and ocean quahogs, harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section and carry on board, a valid operator's permit.

\* \* \* \* \*

(d) *Information requirements.* An applicant must provide at least all the following information and any other information required by the Regional Administrator: Name, mailing address, and telephone number; date of birth; hair color; eye color; height; weight; and signature of the applicant.

\* \* \* \* \*

4. In § 648.6, paragraphs (a) and (c) are revised to read as follows:

**§ 648.6 Dealer/processor permits.**

(a) *General.* (1) *Dealer permits.* All NE multispecies, sea scallop, summer flounder, surf clam, and ocean quahog dealers, and surf clam and ocean quahog processors must have been issued under this section, and have in their possession, a valid permit for these species. All mackerel, squid, and butterfish dealers and all scup and black sea bass dealers must have been issued under this section, and have in their possession, a valid permit for these species.

(2) *At-sea processors.*

Notwithstanding the provisions of § 648.4(a)(5), any vessel of the United States must have been issued and carry on board a valid at-sea processor permit

issued under this section to receive over the side, possess and process Atlantic mackerel harvested in or from the EEZ by a lawfully permitted vessel of the United States.

\* \* \* \* \*

(c) *Information requirements.*

Applications must contain at least the following information, as applicable, and any other information required by the Regional Administrator: Company name, place(s) of business (principal place of business if applying for a surf clam and ocean quahog permit), mailing address(es) and telephone number(s), owner's name, dealer permit number (if a renewal), name and signature of the person responsible for the truth and accuracy of the application, a copy of the certificate of incorporation if the business is a corporation, and a copy of the partnership agreement and the names and addresses of all partners, if the business is a partnership, name of at-sea processor vessel, and current vessel documentation papers.

\* \* \* \* \*

5. In § 648.7, the last two sentences of paragraph (c) are removed and paragraph (f)(3) is revised to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

\* \* \* \* \*

(f) \* \* \*

(3) *At-sea purchasers, receivers, or processors.* All persons purchasing, receiving, or processing any mackerel, or squid, or butterfish, or scup, or black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1), (a)(2), or (a)(3) of this section, as applicable, and provide those reports to the Regional Administrator or designee on the same frequency basis.

\* \* \* \* \*

6. In § 648.14, paragraph (p)(10) is added to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(p) \* \* \*

(10) Fish for, retain, or possess Atlantic mackerel in or from the EEZ with a vessel that exceeds either 165 ft (50.3 m) in length overall and 750 GRT, or a shaft horsepower of 3000 shp, except for the retention and possession of Atlantic mackerel for processing by a vessel holding a valid at-sea processor permit pursuant to § 648.6(a)(2).

\* \* \* \* \*

7. In § 648.20, paragraph (c) is revised to read as follows:

**§ 648.20 Maximum optimum yield (OYs).**

\* \* \* \* \*

(c) *Illex*—catch associated with a fishing mortality rate of  $F_{MSY}$ .

\* \* \* \* \*

8. In § 648.21, paragraph (b)(2)(i) is revised and paragraph (e) is removed to read as follows:

**§ 648.21 Procedures for determining initial annual amounts.**

\* \* \* \* \*

(b) \* \* \*

(2) *Mackerel.* (i) Mackerel ABC must be calculated from the formula  $ABC = T - C$ , where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year and T is the catch associated with a fishing mortality rate that is equal to  $F_{target}$  ( $F = 0.25$ ) at 890,000 mt spawning stock biomass (or greater) and decreases linearly to zero at 450,000 mt spawning stock biomass ( $1/2 B_{MSY}$ ).

\* \* \* \* \*

9. Section 648.24 is added under subpart B to read as follows:

**§ 648.24 Framework adjustments to management measures.**

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Atlantic Mackerel, Squid, and Butterfish FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description

and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, any other management measures currently included in the FMP, set aside quota for scientific research, regional management, and process for inseason adjustment to the annual specification.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, the Council must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures following their implementation as a final rule.

(3) *NMFS action.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed

rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council recommendation, the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

10. In § 648.73, paragraph (a)(4) is added to read as follows:

**§ 648.73 Closed areas.**

(a) \* \* \*

(4) *Georges Bank.* The paralytic shellfish poisoning (PSP) contaminated area, which is located in Georges Bank, and is located east of 69° W. longitude, and south of 42°20' N. latitude.

\* \* \* \* \*

11. Section 648.77 is added under subpart E to read as follows:

**§ 648.77 Framework adjustments to management measures.**

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Atlantic Surf Clam and Ocean Quahog FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: The overfishing definition (both the threshold and target levels) description and identification of EFH (and fishing gear management measures that impact EFH), habitat areas of particular concern, set aside quota for scientific research, vessel tracking system, optimum yield range.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's

recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, it must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the Council's recommendation includes adjustments or additions to management measures and, after reviewing the Council's recommendation and supporting information:

(i) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council recommendation, the measures will be issued as a final rule and published in the **Federal Register**.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

12. Section 648.106 is revised to read as follows:

**§ 648.106 Sea Turtle conservation.**

Sea turtle regulations are found at 50 CFR parts 222 and 223.

13. Section 648.107 is added under Subpart G to read as follows:

**§ 648.107 Framework adjustments to management measures.**

(a) *Within season management action.* The Council, at any time, may initiate action to add or adjust management measures within the Summer Flounder, Scup, and Black Sea Bass FMP if it finds that action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting and prior to and at the second Council meeting. The Council's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size, maximum fish size, gear restrictions, gear requirements or prohibitions, permitting restrictions, recreational possession limit, recreational seasons, closed areas, commercial seasons, commercial trip limits, commercial quota system including commercial quota allocation procedure and possible quota set asides to mitigate bycatch, recreational harvest limit, annual specification quota setting process, FMP Monitoring Committee composition and process, description and identification of essential fish habitat (and fishing gear management measures that impact EFH), description and identification of habitat areas of particular concern, overfishing definition and related thresholds and targets, regional gear restrictions, regional season restrictions (including option to split seasons), restrictions on vessel size (LOA and GRT) or shaft horsepower, operator permits, any other commercial or recreational management measures, any other management measures currently included in the FMP, and set aside quota for scientific research.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale, if management

measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued as a final rule, it must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the Council's recommendation includes adjustments or additions to management measures and, if after reviewing the Council's recommendation and supporting information:

(i) NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Council's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Council recommendation, the measures will be issued as a final rule and published in the **Federal Register**.

(iii) If NMFS does not concur, the Council will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

14. Section 648.127 is added under subpart H to read as follows:

**§ 648.127 Framework adjustments to management measures.**

(a) *Within season management action.* See § 648.107(a).

(1) *Adjustment process.* See § 648.107(a)(1).

(2) *Council recommendation.* See § 648.107(a)(2)(i) through (iv).

(3) *NMFS action.* See § 648.107(a)(i) through (iii).

(4) *Emergency actions.* See § 648.107(a)(4).

(b) [Reserved]

15. Section 648.147 is added under subpart I to read as follows:

**§ 648.147 Framework adjustments to management measures.**

(a) *Within season management action.* See § 648.107(a).

(1) *Adjustment process.* See § 648.107(a)(1).

(2) *Council recommendation.* See § 648.107(a)(2)(i) through (iv).

(3) *Regional Administrator action.* See § 648.107(a)(i) through (iii).

(4) *Emergency actions.* See § 648.107(a)(4).

(b) [Reserved]

[FR Doc. 99-27921 Filed 10-25-99; 8:45 am]

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 990304063-9063-01; I.D. 102099A]

**Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea**

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

**ACTION:** Modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the 1999 pollock total allowable catch (TAC) specified to the inshore component in the Bering Sea subarea of the BSAI.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), October 24, 1999 until 2400 hrs A.l.t., December 31, 1999.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish