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

[I.D. 122203A]

RIN 0648-AN17

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Amendment 13

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

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 13, incorporating the Draft Final Supplemental Environmental Impact Statement (FSEIS) to the NE Multispecies Fishery Management Plan (FMP) for Secretarial review and is requesting comments from the public. Amendment 13 was developed by the Council to end overfishing and rebuild NE multispecies (groundfish) stocks managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make other changes in the management of the groundfish fishery. The proposed measures include: Changes in the days-at-sea (DAS) baseline for determining historical participation in the groundfish fishery; DAS reductions from the baseline; creation of new categories of DAS and criteria for their allocation and use in the fishery; changes in minimum fish size and possession limits for recreationally caught fish; a new limited access permit category for Handgear vessels; elimination of the northern shrimp fishery exemption line; access to groundfish closed areas for tuna purse seiners; an exemption program for southern New England scallop dredge vessels; modifications to Vessel Monitoring System requirements; changes to procedures for exempted fisheries; changes to the process for making periodic adjustments to management measures in the groundfish

fishery; revisions to trip limits for cod and yellowtail flounder; changes in gear restrictions, including minimum mesh sizes and gillnet limits; a DAS Transfer Program; a DAS Leasing Program; implementing measures for the U.S./Canada Resource Sharing Understanding for cod, haddock, and yellowtail flounder on Georges Bank (GB); Special Access Programs (SAPs) to allow targeted harvest of healthy stocks of groundfish; revisions to overfishing definitions and control rules; measures to protect Essential Fish Habitat (EFH); new reporting requirements; sector allocation procedures; and a GB Cod Hook Gear Sector Allocation. The effort-reduction measures in Amendment 13 are intended to end overfishing on all stocks and constitute rebuilding programs for those groundfish stocks that require rebuilding. Other measures are intended to provide flexibility and business options for permit holders, such as allowing the fishery to pursue the healthy groundfish stocks, and DAS transfer and leasing options.

DATES: Comments must be received on or before February 27, 2004.

ADDRESSES: Comments on Amendment 13 should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Groundfish Amendment 13." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of Amendment 13, the FSEIS, Regulatory Impact Review (RIR), and the Preliminary Regulatory Economic Evaluation (PREE) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

Copies of the Initial Regulatory Flexibility Analysis (IRFA) are available from the Regional Administrator at the address above.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: 978-281-9347, fax: 978-281-9135; email: thomas.warren@noaa.gov.

SUPPLEMENTARY INFORMATION: The Council has been developing Amendment 13 since 1999, in order to bring the FMP into conformance with all Magnuson-Stevens Act requirements, including ending overfishing and rebuilding all overfished groundfish stocks.

On December 28, 2001, a decision was rendered by the U.S. District Court for the District of Columbia (Court) on a lawsuit brought by the Conservation

Law Foundation, Center for Marine Conservation, National Audubon Society and Natural Resources Defense Council against NMFS (*Conservation Law Foundation, et al., v. Evans, et al.*, Case No. 00CVO1134, (D.D.C., December 28, 2001)). The lawsuit alleged that Framework Adjustment 33 to the FMP violated the overfishing, rebuilding and bycatch provisions of the Magnuson-Stevens Act (18 U.S.C. 1801, *et seq.*), as amended by the Sustainable Fisheries Act (SFA), and the Court granted plaintiffs' Motion for Summary Judgment on all counts. The Court did not impose a remedy, but instead asked the parties to the lawsuit to propose remedies consistent with the Court's findings.

From April 5-9, 2002, plaintiffs, defendants and intervenors engaged in Court-assisted mediation to try to agree upon mutually acceptable short-term and long-term solutions to present to the Court as a possible settlement. Although these discussions ended with no settlement, several of the parties continued mediation and filed with the Court a Settlement Agreement Among Certain Parties (Settlement Agreement) on April 16, 2002. The Settlement Agreement called for short-term measures to reduce overfishing while the Council completed its development of Amendment 13.

On April 29, 2002, NMFS published an interim final rule (67 FR 21139) under the authority of section 304(e), consistent with section 305(c), of the Magnuson-Stevens Act, which allows for interim measures to reduce overfishing until an amendment to stop overfishing and rebuild fish stocks is implemented, and to implement the short-term measures called for by the Settlement Agreement. On May 6, 2002 (67 FR 30331), NMFS corrected the April 29, 2002, interim final rule to bring it into full compliance with the Order. NMFS further amended the April 29, 2002, interim final rule on June 5, 2002 (67 FR 38608) to bring the regulations into conformance with a May 23, 2002, Order issued by the Court in response to a motion for reconsideration. NMFS proposed additional, more restrictive interim measures on July 1, 2002 (67 FR 44139), and implemented those measures on August 1, 2002 (67 FR 50292), also as required by the terms of the Settlement Agreement. A final rule implementing a regulatory amendment to correct minor oversights in the August 1, 2002, interim final rule, was published on January 28, 2003 (68 FR 4113), and another minor correction to the August 1, 2002, interim final rule was published March 25, 2003 (68 FR

14347). Descriptions of the measures implemented through the interim rules can be found in the preamble to those rules and are not repeated here.

The Order specified that management measures implemented by the August 1, 2002, interim final rule remain in effect until the completion of Amendment 13, which was initially scheduled to be in effect no later than August 22, 2003. However, due to the need for additional time to address concerns related to NMFS' Northeast Fisheries Science Center's trawl survey and new biological reference points developed for the NE multispecies stocks, NMFS and two of the plaintiffs filed a motion with the Court requesting an extension of the August 22, 2003, implementation schedule until May 1, 2004. On December 4, 2002, the Court granted an extension of the Court-ordered timeline for Amendment 13 implementation until May 1, 2004.

On January 22, 2003, NMFS published a Notice of Continuation of Regulations in the **Federal Register** to inform the public that NMFS was continuing the interim regulations for a second 180-day period, ending July 27, 2003. Under section 305(c)(3)(B) of the Magnuson-Stevens Act, interim regulations implemented under section 305(c) are limited to two consecutive 180-day periods. Because the Order required that the interim management measures remain in effect until Amendment 13 is implemented, and because the Court granted an extension of the original schedule for implementation of Amendment 13 to May 1, 2004, in response to unanticipated events, NMFS proposed, on April 24, 2003 (68 FR 20096), an emergency action under authority of section 305(c) of the Magnuson-Stevens Act. In addition to continuing the August 1, 2002, measures specified in the Settlement Agreement and Order, the April 24, 2003, emergency rule

proposed a pilot program to allow limited access NE multispecies vessels to lease their NE multispecies DAS. The proposed emergency rule was corrected on May 9, 2003 (68 FR 24914) and notification of changes to that rule was published June 20, 2003 (68 FR 36970). Due to the newness and potential controversiality of the DAS Leasing Program, NMFS extended the comment period through June 10, 2003, on the DAS leasing aspect of the proposed emergency rule only (68 FR 28188; May 23, 2003). On June 27, 2003 (68 FR 38234), NMFS published a final emergency rule that implemented many of the same measures implemented through the August 1, 2002, interim final rule, with some modifications in response to public comment, but did not implement the DAS Leasing Program. Because of the public comments received and the controversial aspects of the DAS Leasing Program, NMFS concluded that it would be better to develop such a program through the Council process than through emergency rulemaking; thus, NMFS withdrew the proposed DAS Leasing Program (68 FR 41549, July 14, 2003). The measures implemented through the June 27, 2003, emergency rule remain in effect at this time. The emergency measures were continued in effect through publication of a notice of continuation in the **Federal Register** on December 22, 2003 (68 FR 71032).

A notice of availability of a Draft Environmental Impact Statement for the EFH components of Amendment 13 was published on April 4, 2003 (68 FR 16511), with public comment accepted through July 2, 2003. A notice of availability of the Draft Supplemental Environmental Impact Statement (DSEIS), which analyzed the impacts of all of the measures under consideration in Amendment 13, was published on August 29, 2003 (68 FR 52018), with

public comments accepted through October 15, 2003. A correction to the DSEIS was published on September 19, 2002 (68 FR 54900).

Amendment 13 contains numerous measures to end overfishing and rebuild stocks. In accordance with the Settlement Agreement resulting from the legal challenge *American Oceans Campaign, et al. v Daley, et al.* (Civil Case Number 99-982 (GK)), Amendment 13 also evaluates the impacts of fishing on EFH through analysis in the FSEIS and includes management measures designed to minimize the adverse effects of fishing on EFH to the extent practicable. The major measures proposed in Amendment 13 are listed in the **SUMMARY**.

A proposed rule that would implement Amendment 13 will be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 13 to be considered in the approval/disapproval decision on the amendment. All comments received by February 27, 2004, whether specifically directed to Amendment 13 or the proposed rule, will be considered in the approval/disapproval decision on the amendment. Any comments on the proposed rule received after that date will not be considered in the decision to approve or disapprove Amendment 13.

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

Dated: December 22, 2003.

Bruce Morehead,

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