DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 102302B]

RIN 0648–AN12

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

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

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

SUMMARY: NMFS announces that the Mid-Atlantic Fishery Management Council (Council) has submitted Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) for Secretarial review and is requesting comments from the public. Amendment 13 is intended to revise the quota management program for the black sea bass commercial fishery in order to manage the fishery more effectively and to consider management measures to minimize the effects of fishing on essential fish habitat (EFH).

DATES: Comments must be received on or before December 30, 2002.

ADDRESSES: Comments on the FMP 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 Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass FMP.''

Copies of the FMP, Amendment 13, the Final Environmental Impact Statement (FEIS), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 200 S. New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, 978–281–9288, fax 978–281–9135.

SUPPLEMENTARY INFORMATION: The purpose of Amendment 13 is to rectify problems associated with the black sea bass commercial fishery and to consider management measures to minimize the adverse effects of fishing on EFH. Amendment 13 to the FMP proposes to implement a coastwide annual quota program for the black sea bass commercial fishery to replace the current quarterly quota program. The coastwide annual quota program is proposed because it would best complement state-by-state quota allocations adopted by the Atlantic States Marine Fisheries Commission for black sea bass. Amendment 13 proposes to eliminate the requirement that vessels with both a Northeast Region Black Sea Bass permit and a Southeast Region Snapper/Grouper permit must relinquish their Northeast Region Black Sea Bass permit for 6 months after a fishery closure if they want to continue to fish for black sea bass south of Cape Hatteras under their Southeast Region Snapper/Grouper permit. The Council considered alternatives for minimizing adverse impacts of fishing on EFH, and has determined that current measures are adequate.

A proposed rule that would implement the FMP may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act. Public comments on the proposed rule must be received by the end of the comment period on the FMP to be considered in the approval/disapproval decision on the FMP. All comments received by December 30, 2002, whether specifically directed to the FMP or the proposed rule, will be considered in the approval/disapproval decision on the FMP. Comments received after that date will not be considered in the decision to approve or disapprove the FMP.

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

Dated: October 24, 2002.

Bruce C. Morehead,

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

[FR Doc. 02–27566 Filed 10–29–02;8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021016235–2235–01; I.D. 092402E]

RIN 0648–AP87

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Amendment 10

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

ACTION: Proposed rule.

SUMMARY: NMFS proposes a regulation to implement Amendment 10 to the Coastal Pelagic Species Fishery Management Plan (FMP), which was submitted by the Pacific Fishery Management Council (Council) for review and approval by the Secretary of Commerce. Amendment 10 addresses the two unrelated subjects of the transferability of limited entry permits and maximum sustainable yield (MSY) for market squid. Only the provisions regarding limited entry permits require regulatory action. The purpose of this proposed rule is to establish the procedures by which limited entry permits can be transferred to other vessels and/or individuals so that the holders of the permits have maximum flexibility in their fishing operations while the goals of the FMP are achieved.

DATES: Comments must be received by December 16, 2002.

ADDRESSES: Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

Copies of Amendment 10, which includes an environmental assessment/regulatory impact review, and determination of the impact on small businesses may be obtained from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220. Comments regarding the collection-of-information requirements contained in this rule should be sent to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, and to the Office of Information and Regulatory Affairs, Office of Management and Budget

(OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: James Morgan, Sustainable Fisheries Division, NMFS, at 562–980–4036.

SUPPLEMENTARY INFORMATION: The Council distributed Amendment 10 for public review on April 22, 2002. At its June 2002 meeting, the Council reviewed written comments, received comments from its advisory bodies, and heard public comments. The Council submitted Amendment 10 for Secretarial review by a letter dated August 19, 2002. On October, 3, 2002, a notice of availability of Amendment 10 and the associated documents was published in the **Federal Register** (67 FR 62001).

Background

On June 10, 1999, Amendment 8 to the Northern Anchovy Fishery Management Plan was partially approved by the Secretary of Commerce. Two of the provisions of Amendment 8 were disapproved. However, these two provisions addressed matters required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to be included in all fishery management plans. As such, the Council was required to revisit these issues in subsequent actions. First, bycatch provisions of Amendment 8 were disapproved because they did not contain a standardized reporting methodology to assess the amount and type of bycatch in the fishery. Bycatch requirements of the Magnuson-Stevens Act were eventually addressed in Amendment 9, which was approved on March 22, 2001. Second, optimum yield for market squid (*Loligo opalescens*) was disapproved because Amendment 8 did not provide an estimate of MSY. The Council is addressing MSY through submission of Amendment 10.

Market Squid

Various approaches to determine an MSY proxy for market squid have been attempted. With little knowledge of the biology of squid and inadequate data available, other than landings, results from all methods used were determined to contain too much uncertainty for management, especially considering the large harvests in the 1990s resulting from new market demand. Amendment 10, which contains a description of these methods, examines such things as historical landings, the range of the species, and the manner in which the fishery is conducted.

Additional data on squid became available from research conducted by the California Department of Fish and Game (CDFG) through a program implemented by State legislation establishing permit fees to fund squid research. With new information on growth, maturity, and fecundity, the Council's Scientific and Statistical Committee (SSC) recommended, and the Council concurred, that the SSC work with NMFS and the CDFG to organize a stock assessment review panel (STAR). The STAR panel met on May 14–17, 2001, at the Southwest Fisheries Science Center in La Jolla, California, and developed what became known as the egg escapement (EE) method. A report was prepared and presented to the Council's Coastal Pelagic Species Management Team (Management Team) in August 2001.

At a public meeting on August 14–15, 2001, the Management Team discussed the STAR panel report and decided on the values to be used in the EE method, making its recommendations to the Council at the Council's November 21, 2001, meeting.

The EE method is based on a modeling approach that addresses the life history of the species, with a focus on the mortality and spawning rates of sexually mature females. Per-recruit analysis theory was used to generate stock parameter estimates, such as mean standing stock of eggs per harvested female, eggs per recruit, and egg escapement. All of the estimates were evaluated across a range of fishing mortality. To gauge the fishery's impact on the squid population, the estimated reproductive output of the harvested population was compared with the population's output in the absence of fishing.

The EE method allows for ''real-time'' management of the fishery, without an unnecessarily large investment in personnel or regulations. The method would be used as a management tool to assess whether the fleet is fishing above or below a sustainable level of exploitation. A sustainable level of egg escapement can be practically interpreted as a level of reproductive (egg) escapement that is believed to be at or near a minimum level necessary to allow the population to maintain its level of abundance into the future, that is, to allow for sustainable reproduction year after year.

A critical underpinning of the EE approach is that the fishery continues to concentrate strictly on squid spawning grounds. This fishery has the following characteristics: (1) historically, harvests have consisted almost entirely of mature animals that have laid some or all of their eggs before capture; (2) recruitment and future catches in each fishing season largely depend on successful and adequate spawning in the preceding season; (3) the squid are determinate spawners, with potential lifetime fecundity fixed at maturity; (4) the squid die soon after laying their full complement of eggs; and (5) interpretable, anatomical evidence of spawning must be able to be estimated from commercial harvest data, which can be routinely collected through an ongoing port sampling program. The fact that evidence of spawning can be derived from commercially landed specimens offers a unique opportunity to implement an EE method for fisheries management.

The proposed alternative in Amendment 10 is to adopt the EE method to monitor the market squid fishery in compliance with the Magnuson-Stevens Act. This action will require amending the FMP, but will not require implementing rules.

Capacity Goal

Regulations at 50 CFR 660.514 prohibit the transfer of a limited entry permit to a different vessel or a different owner after December 31, 2000. This provision was imposed to allow for attrition in the fleet following an initial period of transfers. Since then, the Council's Management Team has been working on issues related to the harvesting capacity of the fleet by examining the fleet's dependency on a variety of species that exhibit wide variability and by determining the actual physical capacity of the fleet. Amendment 10 would establish a capacity goal for the fleet and set conditions for the transfer of permits to maintain the capacity goal.

The purpose of the capacity goal is to ensure that fishing capacity in the CPS limited entry fishery is in balance with resource availability. The preferred alternative in Amendment 10 is to establish a capacity goal for the limited entry fleet by using a proxy of 5,650.9 mt of the aggregate gross tonnage (GT) of the fleet. Measuring the actual harvesting capacity of a vessel and monitoring each vessel's capacity can be complicated because the amount of fish a vessel can carry depends on many factors; therefore, Amendment 10 proposes to use GT as a proxy for capacity. The aggregate gross tonnage level of 5,650.9 mt would result in a larger, diverse CPS finfish fleet, which also relies on other fishing opportunities such as fishing for squid and tuna. The current fleet of 65 vessels, which totals 5,650.9 mt GT, satisfies this goal. Estimated normal harvesting capacity for the current fleet, which was determined by reviewing historical average and maximum landings per trip,

ranged from 60,000 mt to 111,000 mt per year. The physical harvesting capacity of the current fleet ranged from 361,000 to 539,000 mt per year. Physical capacity is a technological or engineering measure of the maximum potential output per unit of time.

Permit Transfers

Under the proposed alternative in Amendment 10, as long as aggregate fleet gross tonnage is not above 5,933.5 mt (fleet gt plus 5 percent) limited entry permits could be transferred with the following restrictions: (1) full transferability of permits only to vessels of comparable capacity (vessel GT +.10 (GT) or less), and (2) permits could be combined up to a greater level of capacity in cases where the vessel to which the permits would be transferred to is of greater harvesting capacity than the vessel from which the permit originated.

Each limited entry permit would have an endorsement based on the currently permitted vessel's calculated GT as defined by the formula in 46 CFR 69.209 for ship-shaped hulls. This formula is used by the U.S. Coast Guard (GT=0.67 (length x breadth x depth)/100).

The original permits and their respective endorsements would remain in effect for the lifetime of each permit, regardless of the GT of a vessel to which it was transferred. In cases where a permit was transferred to a vessel with a smaller GT, the original GT endorsement would remain, and excess GT could not be split out from the original permit configuration and sold. In cases where two or more permits were transferred to a larger vessel, the larger vessel would hold the original permits and could fish for CPS finfish as long as the aggregate GT endorsements, including the 10 percent allowance, as defined by the formula for comparable capacity (vessel GT + .10 (GT) or less) added up to the new vessel's calculated GT. In the event that a vessel with multiple permits leaves the CPS limited entry program, the permits could be sold together or separately, but the original permit endorsement could not be altered.

To ensure manageability of the permit program and stability of the fleet, only one transfer per permit would be allowed during each calendar year. Permits could be used only on the vessel to which they were registered. Catch history would be tied to the vessel and not to the permits.

Maintaining the Capacity Goal

When the upper threshold of aggregate fleet capacity plus 5 percent (5,933.5 mt) is reached, fleet capacity would be restored to the capacity goal (5,650.9 mt) by restricting conditions for permit transfer. When the threshold of 5,933.5 mt is reached or exceeded, permits could only be transferred to vessels with equal or smaller GT, and the 10–percent vessel allowance would be removed. Restoring the 10 percent-allowance could be considered once total aggregate fleet capacity reached the 5,650.9 mt target.

Procedures for Issuing New Limited Entry Permits

Based on positive changes in CPS finfish resources or market conditions, and, if the Council determines, and recommends to NMFS, that new limited entry permits should be issued, the qualifying criteria originally established in the FMP would be used for issuance of these new permits. This would entail continuing down the list of vessels having landings during the 1993–97 window period in order of decreasing window period landings from the original qualifying level of 100 mt. If no vessel meets the qualifying criteria of 100 mt, then the permit would be issued to the vessel with total landings nearest 100 mt during the qualifying period. New permits could be issued on either a temporary or permanent basis, depending on the circumstances surrounding the need for additional fleet capacity.

Classification

At this time, NMFS has not determined that Amendment 10, which this rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable law. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the 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 that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

There are some fish processors operating in the west coast CPS finfish fishery that would not be considered small businesses, but the vast majority of CPS finfish fishery participants are considered small businesses under the SBA standards. The small entities that could be affected by the proposed regulatory actions would consist exclusively of fish-harvesting businesses, i.e. fishing vessels. All vessels fishing for CPS are considered small business.

The proposed rule would establish a capacity goal for the CPS fleet, maintain the existing fleet of 65 vessels with limited entry permits, allow transfer of permits to new vessels and/or individuals under conditions controlling the size of the vessels, and issue new permits if justified by resource and economic conditions. Establishing a capacity goal sets a limit on the capital that can be invested to harvest a limited resource. Restraining the growth of the capacity of the existing fleet would maintain the capacity goal while allowing fishing vessels to take full advantage of all fishing opportunities, which is important to the economics of CPS vessels because of the wide fluctuations in abundance that occur with many of the individual species. Allowing the transfer of permits gives the holders of limited entry permits flexibility in the management of their individual business operations while maintaining the capacity goal and allows non participants in the fishery to enter the fishery. The payment to the seller for a permit would presumably at least reflect the worth of that permit remaining with the transferring vessel. Issuing new permits would only occur when economic conditions were favorable for adding additional vessels. The procedures for qualifying new vessels would therefore not have an impact on the existing fleet, but the alternatives for issuing new permits could have disproportionate effects on vessels vying for entry. Effects of the regulatory actions under consideration are expected to be neutral, although positive results will likely accrue in the long term by making permits transferable. This will provide some protection to the investments of individual fishermen and reduce the possibility of a declining fleet.

As a result, an Initial Regulatory Flexibility Analysis wasnot prepared.

This proposed rule contains a collection-of-information requirement subject to the Paperwork Reduction Act and which has been approved by OMB under control number 0648–0204. Public reporting burden for an application for transfer of a limited entry permit is estimated to average 30 minutes per response, including 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 this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (See **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, OMB, Washington, D.C. 20503 (Attention: NOAA Desk Officer).

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

List of Subject in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: October 24, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.502, definitions for ''comparable capacity'', and ''gross tonnage'' are added, in alphabetical order, to read as follows:

§ 660.502 Definitions.

* * * * *

Comparable capacity means gross tonnage plus 10 percent of the vessel's calculated gross tonnage.

* * * * *

Gross tonnage (GT) means gross tonnage as determined by the formula in 46 CFR 69.209(a) for a vessel not designed for sailing (.67 x length x breadth x depth/100). A vessel's length, breadth, and depth are those specified on the vessel's certificate of documentation issued by the U.S. Coast Guard or State.

* * * * *

3. In § 660.512, a new paragraph (h) is added to read as follows:

§ 660.512 Limited entry fishery.

* * * * *

(h) *Issuance of new permits.* (1) When the aggregate gross tonnage of all vessels participating in the limited entry fishery declines below 5,650.9 metric tons (mt), the Council will review the status of the fishery, taking into consideration:

(i) The changes in gross tonnage that have and are likely to occur in the transfer of limited entry permits;

(ii) The actual harvesting capacity as experienced in the current fishery in comparison to the capacity goal;

(iii) Comments of the CPSMT;

(iv) Any other relevant factors related to maintaining the capacity goal.

(2) Following its review, the Council will recommend to NMFS whether additional permit(s) should be issued and if the new permit(s) should be temporary or permanent. The issuance of new permit(s) shall be based on the following:

(i) The qualifying criteria in paragraph (b) of this section, but vessels that were issued a permit before December 31, 2000, are not eligible.

(ii) If no vessel meets the qualifying criteria in paragraph (b), then the permit(s) will be issued to the vessel(s) with total landings nearest 100 mt during the qualifying period of paragraph (b).

(iii) No vessel will be issued a permit under this paragraph (h) that is currently registered for use with a permit.

(3) The Regional Administrator will review the Council's recommendation and determine whether issuing additional permit(s) is consistent with the FMP and with paragraph (h)(2) of this section. If issuing additional permit(s) is appropriate, the Regional Administrator will:

(i) Issue the appropriate number of permits consistent with the Council's recommendation; and

(ii) Publish a document in the **Federal Register** notifying the public that a new permit has been issued, the conditions attached to the permits, and the reasons for the action.

4. Section 660.514 is revised to read as follows:

§ 660.514 Transferability.

(a) *General.* (1) The SFD will process applications for transferring limited entry permits to a different owner and/or to a different vessel according to this section.

(2) After the effective date of the final rule, the SFD will issue a limited entry permit to the owner of each vessel permitted to participate in the limited entry fishery for CPS. This permit will replace the existing permit and will include the gross tonnage of the vessel, which will constitute an endorsement for that vessel for the purpose of regulating the transfer of limited entry permits.

(b) *Criteria.* (1) When the aggregate gross tonnage of all vessels participating the limited entry fishery is at or below 5,650.9 mt, a permit may be transferred to a different owner or to a different vessel in the following circumstances only:

(i) A permit may be transferred to a vessel without a permit if the vessel without a permit has a comparable capacity to the capacity on the permit or is less than comparable capacity on the permit.

(ii) When a permit is transferred to a vessel without a permit that has less gross tonnage than that of the permitted vessel, the excess gross tonnage may not be separated from the permit and applied to a second vessel.

(iii) A permit may be transferred to a vessel without a permit that is of greater than comparable capacity only if two or more permits are transferred to the vessel without a permit to equal the gross tonnage of the vessel. The number of permits required will be determined by adding together the comparable capacity of all permits being transferred. Any gross tonnage in excess of that needed for a vessel remains with the permit.

(2) When a vessel with multiple permits leaves the fishery, the permits may be sold separately and applied to other vessels according to the criteria in this section.

(c) *Stipulations.* (1) The gross tonnage endorsement of a permit is integral to the permit for the duration of the permit, regardless of the gross tonnage of any vessel to which the permit is transferred.

(2) Permits may be used only on the vessel for which they are registered by the SFD. All permits that authorize a vessel to operate in the limited entry fishery must be on board the vessel during any fishing trip on which CPS is harvested or is on board.

(3) A permit may be transferred only once during a calendar year.

(d) *Vessel alterations.* (1) A permitted vessel's length, breadth, or depth may be altered to increase the gross tonnage of the vessel only if the aggregate gross tonnage of all vessels participating the limited entry fishery equals to, or is below 5,650.9 mt, and only under the following conditions:

(i) The gross tonnage of the altered vessel, calculated according to the formula in 46 CFR 69.209(a), does not exceed 110 percent of the vessel's original gross tonnage endorsement, and

(ii) A new certificate of documentation is obtained from the U.S. Coast Guard or State. Modifications exceeding 110 percent of the vessel's gross tonnage endorsement will require registration of the vessel under an additional permit or permits or under a permit with a sufficient gross tonnage endorsement.

(2) A copy of the certificate of documentation indicating changes in length, depth, or breadth must be provided to the SFD.

(3) The revised gross tonnage will not be valid as an endorsement until a revised permit is issued by the SFD.

(e) *Applications.* (1) All requests for the transfer of a limited entry permit will be made to the SFD in writing and shall contain the following information:

(i) Name, address, and phone number of the owner of the permitted vessel.

(ii) Name of the permitted vessel and documentation number of the vessel.

(iii) Name, address, and phone number of the owner of the vessel to which the permit is to be transferred.

(iv) Name and documentation number of the vessel to which the permit is to be transferred.

(v) Signature(s) of the owner(s) of the vessels participating in the transfer.

(vi) Any other information that the SFD may request.

(2) No permit transfer is effective until the transfer has been authorized by the SFD.

(f) *Capacity reduction.* (1) When the aggregate gross tonnage of the limited entry fleet reaches 5,933.5 mt, a permit may be transferred to a vessel without a permit only if the vessel without a permit is of the same or less gross tonnage.

(2) When the aggregate gross tonnage of the limited entry fleet reaches 5,933.5 mt, alterations in the length, depth, or breadth of a permitted vessel may not result in an increase in the gross tonnage of the vessel.

[FR Doc. 02–27613 Filed 10–29–02; 8:45 am]

BILLING CODE 3510–22–S