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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130716623-4275-02]

RIN 0648-BD50

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Framework Adjustment 8

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

ACTION: Final rule.

SUMMARY: Framework Adjustment 8 (Framework 8) implements several changes to improve operation of the butterfish discard cap in the longfin squid fishery and the directed butterfish fishery. Framework 8 allocates the butterfish discard cap among trimesters in the same percentages used for the trimester allocations for longfin squid: 43 percent to Trimester I (January to April), 17 percent to Trimester II (May to August), and 40 percent to Trimester III (September to December). Each trimester will close when it is estimated that 95 percent of the butterfish discard cap has been taken. In addition, Framework 8 allows NMFS to transfer, in either direction, up to 50 percent of unused quota between the butterfish landing allocation and the discard cap on the longfin squid fishery. This would occur near the end of the year in order to optimally utilize the butterfish that is available for fishing each year.

DATES: Effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, telephone (302) 674-2331. The EA/RIR/IRFA is also accessible via the Internet at http://www.nero.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Aja Szumylo, Fishery Policy Analyst, 978-281-9195.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule for Framework 8 was published on January 31, 2014 (79 FR 5365), with a comment period ending March 3, 2014. Additional background information and detail on why and how Framework Adjustment 6 was developed were in the proposed rule, and are not repeated here.

Framework 8 adjusts the trimester allocations for the butterfish discard cap and creates distinct closure thresholds for each trimester. Beginning January 2014, this action sets the initial allocation Trimester I at 43 percent (down from 65 percent), the initial allocation for Trimester II at 17 percent (up from 3.3 percent), and the initial allocation for Trimester III at 40 percent (up from 31.7 percent). These adjusted trimester allocations for the butterfish discard cap match the trimester allocations for the directed longfin squid fishery. Framework 8 also requires that each trimester will close when the longfin squid fishery has harvested an estimated 95 percent of the butterfish discard cap.

Framework 8 also allows NMFS to transfer unused butterfish quota in either direction, between the butterfish domestic annual harvest allocation (DAH or landings quota) and the butterfish discard cap on the longfin squid fishery. Prior to November each year, NMFS will make a projection regarding the likely trajectories of butterfish landings and the butterfish discard cap. If the butterfish DAH appears likely to constrain the directed butterfish fishery or the butterfish discard cap appears likely to constrain the longfin squid fishery, and the other fishery appears unlikely to be impacted by a shift in quota, NMFS could transfer up to 50 percent of the total butterfish DAH or total butterfish discard cap to optimize the use of the overall butterfish quota. NMFS would make this transfer on or about November 15 each fishing year, in accordance with the Administrative Procedure Act, in order to optimally utilize the butterfish that is available for fishing each year.

Comments and Responses

NMFS received one comment on the proposed rule for Framework 8 from the Garden State Seafood Association (GSSA), a New Jersey-based commercial fishing industry group.

Comment 1: GSSA supports the proposed trimester allocations, the 95 percent closure threshold for all trimesters, and the transfer of unused butterfish quota, in either direction, between the butterfish landings quota and the butterfish discard cap on the longfin squid fishery.

Response: NMFS concurs, and is implementing the measures in Framework 8 as proposed.

Classification

The Administrator, Greater Atlantic Regional Fisheries Office, NMFS, determined that the approved measures in Framework Adjustment 8 to the MSB FMP are necessary for the conservation and management of the MSB fisheries and that they are consistent with the MSA and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of significant issues raised by public comments in response to the IRFA, and NMFS' responses to those comments. A copy of the IRFA, the RIR, and the EA are available on request (see ADDRESSES). A summary of the FRFA follows.

Statement of Objective and Need

This action implements management measures to facilitate the operation of the butterfish fishery, and the butterfish discard cap on the longfin squid fishery. A complete description of the reasons why this action was considered, and the objectives of and legal basis for this action, was in the proposed rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

There were no issues related to the IRFA or the economic impacts of the rule on affected entities raised in public comments.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

Subsequent to Council action related to this proposed rule, the Small Business Administration revised its small business size standards for several industries in a final rule effective July 22, 2013. The rule increased the size standard for Finfish Fishing from $4.0 to 19.0 million, Shellfish Fishing from $4.0 to 5.0 million, and Other Marine Fishing from $4.0 to 7.0 million. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Longfin squid is technically a shellfish, and would fall under the lower shellfish fishing standard of $ 5.0 million. Nonetheless, all entities subject to this action were considered small entities under the former, lower size standards, and they all would continue to be considered small under the new standards. Thus, all of the approximately 375 vessels with limited access butterfish/longfin squid permits would qualify as small businesses.

Having different size standards for different types of marine fishing activities creates difficulties in categorizing businesses that participate in more than one of these activities. For now, the short-term approach is to classify a business entity into the SBA defined categories based on which activity produced the most gross revenue. In this case, it is very likely the revenue from finfishing was greater than revenue (if any) from shellfishing, and greater than the revenue from charterboat fishing. Based on these assumptions, the finfish size standard would apply to all entities subject to this rule. Under that standard, a business is considered large only if revenues are greater than $19 million. Section 5.6 in the Framework 8 EA describes the vessels, key ports, and revenue information for the longfin squid and butterfish fisheries; therefore, that information is not repeated here.

Although it is possible that some entities, based on rules of affiliation, would qualify as large business entities, due to lack of reliable ownership affiliation data NMFS cannot determine whether any affected entity is in fact "large," according to SBA's size standards. NMFS is currently compiling data on vessel ownership that should permit a more refined assessment and determination of the number of large and small entities for future actions. For this action, since available data are not adequate to identify affiliated vessels, each operating unit is considered a small entity for purposes of the RFA, and, therefore, there is no differential impact between small and large entities. Therefore, there are no disproportionate economic impacts on small entities.

The measures in this action could have some impact on the approximately 375 vessels with limited access butterfish/longfin squid permits, all of which qualify as small businesses because their gross revenues are less than $19 million annually. With a longfin squid price of approximately $1,600/mt, the fishery's FY 2012 landings totaled 671 mt and generated $1.1 million in ex-vessel revenues.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impacts on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

The Council conducted a comprehensive evaluation of the potential socioeconomic impacts of Framework 8 in the EA (see ADDRESSES), and a discussion of this evaluation follows.

Framework 8 adjusts the trimester allocations for the butterfish cap (Trimester I: 43 percent; Trimester II: 17 percent; Trimester III: 40 percent), and establishes a mechanism that will close each trimester when it is projected that 95 percent of the trimester allocation has been harvested (Alternative 2). In addition to the no action alternative (Alternative 1), Framework 8 also considered allocating 54 percent of the butterfish cap to Trimester I, 10.15 percent to Trimester II, and 35.85 percent to Trimester III, with 95 percent closure thresholds for each trimester (Alternative 3). Similar to the status quo alternative, both of the adjusted allocations considered in the action alternatives would allow rollovers of quota not used during trimesters early in the year, and would deduct overages from later trimesters when the trimester allocations have been exceeded early in the year.

The alternatives to amend in-season Trimester II closure authority would result in positive long-term socioeconomic impacts compared to the status quo because they would: 1) Reduce the chance of acceptable biological catch (ABC) overages that could reduce long-term butterfish productivity; 2) avoid distributional issues in the longfin squid fishery that would occur if Trimester II harvested most (75 percent) of the butterfish cap; and 3) avoid future disruptions of the fishery if the status quo led to an ABC overage that had to be repaid.

Compared to the status quo, it is possible that either of the action alternatives could result in vessel owners losing some squid revenues in the short term if NMFS closes Trimester II earlier than it would under the status quo, especially if those revenues are not recouped later in the year because squid are unavailable. The amount of potential relative losses is not clear because there have been no closures at current cap levels on which to base potential economic impacts. However, the longer-term benefits of reducing the likelihood of exceeding ABC each year would offset any occasional short-term losses of revenue.

There are distributional issues in the longfin squid fishery that would occur if most (75 percent) of the butterfish cap was harvested in Trimester II. The disparity of allocation percentages between the current butterfish cap and the longfin squid allocation could cause unnecessary closures that would be avoided if the allocation percentages were the same. Under the status quo, Trimester I receives a large percentage of the cap (65 percent), but Trimester II is not limited by the cap until 75 percent of the entire annual cap is reached. This means that no catch might be available in Trimester III if the combined Trimester I and Trimester II usage of the cap nears 75 percent. The preferred alternative, Alternative 2, would provide vessels with the opportunity to maximize their longfin squid catch while avoiding closures due to the butterfish cap. Maximized catch with no closures would allow for increased and steady revenues for vessels and the fishery as a whole.

At current cap quota levels, none of the proposed allocations would be expected to cause a closure as long as the longfin squid fleet maintains relatively low butterfish discard rates. To ensure that Trimester III has a reasonable amount of quota, some quota must be reallocated from Trimesters I and II. At the same time, Trimester II needs to retain a reasonable quota allocation. The status quo alternative (Alternative 1) was rejected because it does not reallocate quota. While both Alternatives 2 and 3 reallocate quota to Trimester II, Alternative 2 was chosen because it aligns the cap allocation with the squid allocation. Alternative 3 was rejected because the proposed allocation scheme could continue regulatory confusion about butterfish cap allocation levels. Under the preferred alternative, each longfin squid Trimester is responsible for its butterfish cap, and each trimester starts with a butterfish cap that matches its longfin squid allocation. This provides good incentive for vessels to avoid discarding butterfish each trimester and does not penalize a vessel fishing in a trimester that had low historical butterfish discards by giving it a very low quota. By avoiding closures and discouraging discards, Alternative 2 would maximize potential revenues for the fishery.

Among the alternatives, Trimester I has the most cap allocation under the status quo, less under Alternative 3, and least under the preferred Alternative 2. However, since the offshore fleet fishes in Trimesters I and III, and the overall purpose is to ensure that a reasonable amount of cap remains for Trimester III, any disadvantage from losing cap quota in Trimester I for the offshore fleet may be made up by improved access to Trimester III.

Framework 8 considered two alternatives to shift quota between the butterfish cap and butterfish landings: Status quo (Alternative 4) and the proposed alternative, which would allow for transfers between these two allocations late in the year in order to optimally utilize the available butterfish allocation (Alternative 5). The alternative to shift quota at the end of the year could facilitate some additional butterfish fishing or additional longfin squid fishing compared to the status quo, which would have positive economic effects for the fisheries. The maximum transfer amount is 50 percent of the original quota, i.e., 50 percent of one could be transferred to the other (50 percent of the landings quota to the cap quota or 50 percent of the cap quota to landings). As there has been no directed butterfish fishery in the past, it is not possible to predict the exact amount of landings this could result in over time, but because the transfer would occur near the end of the FY, they would probably be limited. Since the transfer would only be in place after November 15, (or approximately 12 percent of the FY) a substantial amount of effort would have already taken place earlier in the year, but a transfer could still offer additional fishing opportunity compared to the status quo. The status quo alternative (Alternative 4) was rejected because, in certain years, it could prevent optimal use of the butterfish allocation.

Since the 2013 butterfish landings quota was 2,570 mt, this provides a starting point for examining the range of benefits that could accrue from a transfer from butterfish landings to the cap. At most, one half of the landings quota (1,285 mt) could be transferred. It is possible that such a transfer could result in reopening of the longfin fishery for the last 6 weeks of the year, or the longfin squid fishery staying open when it would have otherwise closed. While the last 6 weeks of the year have seen relatively low longfin squid landings recently, late season catches in 2004-2007 demonstrate that catches of 1-2 million lb (453.6 to 907.1 mt) per week of longfin squid are possible in the last 6 weeks of the year, which could theoretically result in additional revenues of approximately $6-$12 million, given recent longfin squid prices, though this would likely be the high end of the range.

With the butterfish cap in 2013 set at 3,884 mt, half of that amount would be 1,942 mt, which would be the most that could be transferred to butterfish landings. It is possible that 1,942 mt of butterfish could be landed in 6 weeks, but the price of such landings is difficult to determine. In recent years, prices have ranged from $1,400 – $1,800 per metric ton, which could theoretically mean additional revenues of around $3 million dollars, though it is not clear that recent prices would be maintained at higher landings levels, which would mean that $3 million should be considered the high end of possible additional revenues.

In both of the transfer scenarios, since a transfer would only be made if it appears the quota would not be used during the FY, there are no opportunity costs associated with the transfer in terms of other fishery operations.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency will publish one or more guides to assist small entities in complying with the rule, and will designate such publications as "small entity compliance guides." The agency will explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Greater Atlantic Regional Fisheries Office, and the guide (i.e., permit holder letter) will be sent to all holders of permits for the herring fishery. The guide and this final rule will be available upon request.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 27, 2014.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.22, paragraphs (b)(3)(vi) and (vii) are revised to read as follows:

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

* * * * *

(b) * * *

(3) * * *

(vi) The butterfish mortality cap will be based on a portion of the ACT (set annually during specifications) and the specified cap amount will be allocated to the longfin squid fishery as follows: Trimester I - 43 percent; Trimester II - 17 percent; and Trimester III - 40 percent.

(vii) Any underages of the cap for Trimester I that are greater than 25 percent of the Trimester I cap will be reallocated to Trimester II and III (split equally between both trimesters) of the same year. The reallocation of the cap from Trimester I to Trimester II is limited, such that the Trimester II cap may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester III. Any underages of the cap for Trimester I that are less than 25 percent of the Trimester I quota will be applied to Trimester III of the same year. Any overages of the cap for Trimesters I and II will be subtracted from Trimester III of the same year.

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3. In § 648.24, paragraph (c)(3) is revised and paragraph (c)(5) is added to read as follows:

§ 648.24 Fishery closures and accountability measures.

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(c) * * *

(3) Butterfish mortality cap on the longfin squid fishery. NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 95 percent of each Trimester's butterfish mortality cap allocation has been harvested.

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(5) Butterfish allocation transfer. NMFS may transfer up to 50 percent of any unused butterfish allocation from the butterfish DAH to the butterfish mortality cap on the longfin squid fishery if the butterfish catch in the longfin squid fishery is likely to result in a closure of the longfin squid fishery, and provided the transfer does not increase the likelihood of closing the directed butterfish fishery. NMFS may instead transfer up to 50 percent of the unused butterfish catch from the butterfish mortality cap allocation to the butterfish DAH if harvest of butterfish in the directed butterfish fishery is likely to exceed the butterfish DAH, and provided the transfer of butterfish allocation from the butterfish mortality cap allocation does not increase the likelihood of closing the longfin squid fishery due to harvest of the butterfish mortality cap. NMFS would make this transfer on or about November 15 each fishing year, in accordance with the Administrative Procedure Act.

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