

remainder of the 2008 Summer quota period (through October 31, 2008).

**DATES:** Effective June 16, 2008, through October 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Emily Bryant, Fishery Management Specialist, (978) 281-9244.

**SUPPLEMENTARY INFORMATION:**

Regulations governing the scup fishery are found at 50 CFR part 648. The regulations at § 648.121 require the Regional Administrator to monitor the commercial scup quota for each quota period and, based upon dealer reports, state data, and other available information, to determine when the commercial quota for a period has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the scup commercial quota has been harvested and no commercial quota is available for landing scup for the remainder of the Summer Period. Based upon recent projections, the Regional Administrator has determined that the Federal commercial quota of 1,437,588 lb (652 mt) for the 2008 Summer Period will be fully harvested by or before October 31, 2008. To maintain the integrity of the 2009 Summer Period quota by avoiding or minimizing quota overages, the commercial scup fishery will close for the remainder of the Summer Period (through October 31, 2008) in Federal waters, effective as of the date specified above (see **DATES**).

Section 648.4(b) provides that Federal scup moratorium permit holders agree, as a condition of the permit, not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for scup is available. Therefore, effective 0001 hours, June 16, 2008, further landings of scup by vessels holding Federal scup moratorium permits are prohibited through October 31, 2008. Effective 0001 hours, June 16, 2008, federally permitted dealers are also advised that they may not purchase scup from federally permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the Summer Period (through October 31, 2008). The Winter II Period for commercial scup harvest will open on November 1, 2008.

**Classification**

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

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

Dated: June 10, 2008.

**Emily H. Menashes,**

*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 680**

**RIN 0648-AW37**

**Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands King and Tanner Crabs**

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

**ACTION:** Final rule; agency decision.

**SUMMARY:** NMFS announces the approval of Amendment 24 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (FMP). Amendment 24 specifies a five-tier system for determining the status of the crab stocks managed under the FMP, establishes a process for annually assigning each crab stock to a tier and for setting the overfishing and overfished levels, and reduces the number of crab stocks managed under the FMP. Amendment 24 is necessary to establish new overfishing definitions that contain objective and measurable criteria for determining whether each managed stock is overfished or whether overfishing is occurring and to remove from the FMP several crab stocks managed by the State of Alaska. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** This agency decision is effective June 6, 2008.

**ADDRESSES:** Copies of Amendment 24 and the Environmental Assessment (EA) for this action may be obtained from the NMFS Alaska Region at the address above or from the Alaska Region website at <http://www.fakr.noaa.gov/sustainablefisheries.htm>.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Harrington, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management

council submit any Fishery Management Plan (FMP) amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

The North Pacific Fishery Management Council (Council) submitted Amendment 24 to the FMP to NMFS on March 6, 2008. The notice of availability for Amendment 24 was published in the **Federal Register** on March 19, 2008 (73 FR 14766). The public comment period closed on May 19, 2008. NMFS received 1 public comment and considered this comment in determining whether to approve this FMP amendment. NMFS has summarized and responded to the public comment received in this notice under Public Comments, below.

In December 2007, the Council unanimously recommended Amendment 24. Amendment 24 satisfies the Magnuson-Stevens Act requirement that FMPs contain objective and measurable criteria for determining whether a stock is overfished, whether overfishing is occurring, and for rebuilding overfished stocks. Section 301(a) of the Magnuson-Stevens Act establishes national standards for fishery conservation and management, and requires that all FMPs create management measures consistent with those standards. National Standard 1 requires that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from fisheries in federal waters.

The Alaska Fisheries Science Center (AFSC) reviewed the proposed overfishing definitions in Amendment 24 and supporting environmental assessment for compliance with guidelines provided for National Standards 1 and 2 in 50 CFR part 600. During this review, the AFSC recommended modifications to the amendment text to clarify the Council's intent and comply with the Magnuson-Stevens Act. At its February 2008 meeting, the Council adopted the FMP text for Amendment 24 which included the AFSC's recommendations. On February 14, 2008, the AFSC certified that the proposed definitions (1) have sufficient scientific merit, (2) are likely to result in effective Council action to protect a managed stock from closely approaching or reaching an overfished status, (3) provide a basis for objective

measurement of the status of a managed stock against the definition, and (4) are operationally feasible.

Amendment 24 (1) specifies a five-tier system for determining the status of the crab stocks managed under the FMP, (2) establishes a process for annually assigning each crab stock to a tier and for setting the overfishing and overfished levels, and (3) reduces the number of crab stocks managed under the FMP. The stock status determination criteria in Amendment 24 reflect current scientific information and accomplish the following:

- Provide an FMP framework to annually define overfishing values using the best available scientific information;
- Provide a new tier system that accommodates varying levels of uncertainty of information and takes advantage of alternative biological reference points; and
- Define the status determination criteria and their application to the appropriate component of the population.

#### Five-Tier System

Under Amendment 24, the stock status determination criteria for crab stocks is annually calculated using a five-tier system that accommodates varying levels of uncertainty of information. The five-tier system incorporates new scientific information and provides a mechanism to continually improve the stock status determination criteria as new information becomes available. The five-tier system is used to determine the status of the crab stocks and whether (1) overfishing is occurring or the rate or level of fishing mortality for a stock or stock complex is approaching overfishing, and (2) a stock or stock complex is overfished or a stock or stock complex is approaching an overfished condition.

Overfishing is determined by comparing the overfishing level, as calculated in the five-tier system for the crab fishing year, with the catch estimates for that crab fishing year.

Annually, the overfishing level for each stock is calculated based on the most recent abundance estimates and prior to the State setting the total allowable catch or guideline harvest level for that stock's upcoming crab fishing season. First, a stock is assigned to one of the five tiers based on the availability of information for that stock. Tier assignments are made through the Council's Crab Plan Team process and recommended by the Council's Scientific and Statistical Committee.

#### Tiers 1 through 4

Once a stock is assigned to a tier, the stock status level is determined based on biomass estimates from recent survey data and simulation models, as available. The tier system specifies three levels of stock status: "a," "b," and "c." At stock status level "a," current stock biomass exceeds the biomass estimated to produce maximum sustainable yield to the fishery ( $B_{MSY}$ ). At status level "b," current stock biomass is less than necessary to produce  $B_{MSY}$ , but greater than a level specified as the critical biomass threshold. At stock status level "c," current stock biomass is below the critical biomass threshold and directed fishing is prohibited. The stock status level determines the equation for calculating the fishing rate ( $F$ ) used to determine the overfishing level ( $F_{OFL}$ ). For stocks in Tiers 1 through 4,  $F$  is reduced as biomass declines by stock status level.

For Tiers 1 through 3, reliable estimates of biomass,  $B_{MSY}$ , and the fishing rate expected to result in maximum sustainable yield to the fishery ( $F_{MSY}$ ), or their respective proxy values, are available. Tier 4 is for stocks where essential life-history, recruitment information, and understanding are lacking. In Tier 4, a default value of natural mortality rate ( $M$ ) or an  $M$  proxy, and a scalar, gamma ( $\gamma$ ), are used in the calculation of the  $F_{OFL}$ . Use of the scalar  $\gamma$  is intended to allow adjustments in the overfishing definitions to account for differences in biomass measures. Amendment 24 sets a default value of  $\gamma = 1.0$ , with the understanding that the Council's Scientific and Statistical Committee may recommend a different value for a specific stock or stock complex as merited by the best available scientific information.

#### Tier 5

Tier 5 stocks have no reliable estimates of biomass or natural mortality and only historical data of retained catch is available. For stocks in Tier 5, the overfishing level is specified in terms of an average catch value over an historical time period, unless the Scientific and Statistical Committee recommends an alternative value based on the best available scientific information.

After the crab fishing year, NMFS determines whether overfishing occurred by comparing the overfishing level with the catch from the previous crab fishing year. For stocks where non-target fishery removal data are available, catch includes all fishery removals, including retained catch and discard losses. Discard losses will be

determined by multiplying the appropriate handling mortality rate by observer estimates of bycatch discards. For stocks where only retained catch information is available, the overfishing level is set for and compared to the retained catch.

An overfished condition is determined by comparing annual biomass estimates to the established minimum stock size threshold (MSST), defined as one half the biomass estimated to produce maximum sustainable yield to the fishery. For stocks where MSSTs (or proxies) are defined, if the biomass drops below the MSST (or proxy thereof) then the stock is considered to be overfished. MSST or proxies are set for stocks in Tiers 1 through 4. For Tier 5 stocks, it is not possible to set an MSST because there are no reliable estimates of biomass.

Annually, the Council, Scientific and Statistical Committee, and Crab Plan Team will review the stock assessment documents, the OFLs and total allowable catches or guideline harvest levels for the upcoming crab fishing year, NMFS's determination of whether overfishing occurred in the previous crab fishing year, and NMFS's determination of whether any stocks are overfished.

#### Removal of Stocks

Amendment 24 removes 12 state-managed stocks from the FMP. NMFS and the Council found that the State of Alaska (State) has a legitimate interest in the conservation and management of these stocks. As explained in the EA, federal management of these stocks is no longer necessary because under the deferred authority of the FMP, the State has either closed the directed fishery, managed a limited incidental or exploratory fishery, or the majority of catch occurs in state waters. The State will continue to manage these stocks as they currently do under the deferred management authority of the FMP.

An EA was prepared for Amendment 24 that describes the management background, the purpose and need for action, the management alternatives, and the environmental and socio-economic impacts of the alternatives (see ADDRESSES).

#### Public Comments

*Comment:* Add the following sentence from the draft EA to the Amendment 24 language on Tier 4: "The value for  $\gamma$  is frameworked, depending on the values of  $F_{MSY}$  and it's proxy ( $F_{35\%}$ ) and  $M$ ." Adding this sentence would clarify that the default  $\gamma$  value is a scalar to adjust  $M$  to the proxy  $F_{MSY}$  and avoid confusion about the role of  $\gamma$  in the

determination of  $F_{OFL}$ . The notion that default  $\gamma$  should be set at a value of 1.0 is overly conservative for Bering Sea and Aleutian Islands crab stocks, and simply does not conform to our current understanding of crab population dynamics. NMFS should rely on the simulation modeling estimates of  $\gamma$  generated from the analyses in the EA as best available science and set  $\gamma$  accordingly.

*Response:* NMFS has determined that Amendment 24 is sufficiently clear regarding specifying a value for  $\gamma$  for Tier 4 stocks and does not agree that Amendment 24 FMP should be changed to include the sentence suggested in the comment. NMFS cannot add language to an FMP amendment submitted by a regional fishery management council. Furthermore, Amendment 24 is consistent with the Magnuson-Stevens Act and other applicable law without this addition.

Amendment 24 provides a default of  $\gamma = 1$ , which applies to all Tier 4 stocks

until a stock specific  $\gamma$  can be estimated based on the best available scientific information and reviewed by the Council's Scientific and Statistical Committee. A default  $\gamma$  is necessary until stock specific values can be determined. A  $\gamma = 1$  allows the  $F_{MSY}$  proxy to equal  $M$  which is an appropriate default given our current level of scientific information for the group of Tier 4 stocks. In the stock assessment process, a  $\gamma$  can be set more or less conservatively for each stock based on simulation modeling and the best available information during the stock assessment process.

Amendment 24 provides the flexibility to set  $\gamma$  at the appropriate value for each Tier 4 stock based on stock assessments that use the best available information. Stock specific  $\gamma$  values depend on the relationship between fishery selectivities (discard and retained catch) and maturity and growth estimates. The Council's Crab Plan Team discussed ways to estimate  $\gamma$

for each Tier 4 stock, including the methods analyzed in the EA. In May 2008, the Crab Plan Team recommended that assessment authors analyze alternative  $\gamma$  values for each Tier 4 stock to assist in determining the appropriate value for that stock. Using the method analyzed in the EA may not be appropriate for a particular stock if fishery selectivities, maturity, growth, and discards relative to retained catch are not the same as the proxy stock. For example, it may be appropriate to use F35% estimated for Bristol Bay red king crab to estimate  $\gamma$  for a stock like Pribilof red king crab; however, it may not be appropriate to use that same value for blue king crab.

Dated: June 6, 2008.

**Samuel D. Rauch III**

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

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