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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 110901554-2178-02]

RIN 0648-BB35

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Exempted Fishery for the Southern New England Skate Bait Trawl Fishery

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

**ACTION:** Final rule.

**SUMMARY:** This final rule modifies the regulations implementing the Northeast (NE) Multispecies Fishery Management Plan (FMP) to allow vessels issued a Federal skate permit and a Skate Bait Letter of Authorization to fish for skates in a portion of southern New England

(SNE) from July 1 through October 31 of each year, outside of the NE multispecies days-at-sea (DAS) program. This action allows vessels to harvest skates in a manner that is consistent with the bycatch reduction objectives of the NE Multispecies FMP.

**DATES:** Effective July 1, 2012.

**ADDRESSES:** An environmental assessment (EA) was prepared for the Secretarial Amendment that describes this action and other considered alternatives, and provides an analysis of the impacts of the approved measures and alternatives. Copies of the Secretarial Amendment, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Daniel Morris, Acting Regional Administrator, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available online at <http://www.nero.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Travis Ford, Fishery Management Specialist, 978-281-9233; fax 978-281-9135; email: [travis.ford@noaa.gov](mailto:travis.ford@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

Current regulations, implemented under Framework Adjustment 9 (60 FR 19364, April 18, 1995) and expanded under Amendment 7 to the FMP (61 FR 27710, May 31, 1996), contain a NE multispecies fishing mortality and bycatch reduction measure that is applied to the Gulf of Maine (GOM), Georges Bank (GB), and SNE Exemption Areas found in 50 CFR § 648.80. A vessel may not fish in these areas unless it is fishing under a NE multispecies or a scallop DAS allocation, is fishing with exempted gear, is fishing under the Small Vessel Handgear (A or B) or Party/Charter permit restrictions, or is fishing in an exempted fishery. The procedure for adding, modifying, or deleting fisheries from the list of exempted fisheries is found in 50 CFR § 648.80. A fishery may be exempted by the Regional Administrator (RA), after consultation with the New England Fishery Management Council (Council), if the RA determines, based on available data or information, that the bycatch of regulated species is, or can be reduced to, less than 5 percent by weight of the total catch and that such exemption will not jeopardize the fishing mortality objectives of the FMP.

Representatives from the NE multispecies sector fleet submitted an exempted fishery request to the RA on April 1, 2011. The petitioners requested that NMFS consider an exempted fishery for trawl vessels using 6.5-inch

(16.5-cm) mesh nets and targeting skate bait in a portion of SNE from June through November of each year (referred to in the EA and in this rule as Alternative 2). Northeast Fisheries Observer Program (NEFOP) and at-sea monitoring (ASM) data were compiled and analyzed with reference to groundfish vessels targeting skate in the area and months requested for the exemption. A second alternative was assessed that reduced both the size of the exempted area and the requested season from June through November to July through October (referred to in the EA and in this rule as Alternative 1). The data best supported Alternative 1, revealing that bycatch of regulated species (primarily winter flounder and windowpane flounder) was substantially reduced from the original proposal by reducing the area and contracting the time period.

On April 27, 2012, a proposed rule was published in the **Federal Register** (77 FR 25117) soliciting public comment. The proposed rule and EA discuss these analyses in greater detail. No comments were received during the comment period. In addition, the Council was consulted on June 19, 2012, regarding this final rule. The Council raised no objections. Since no comments were received from the public or the Council, there are no modifications from the proposed measures in this final rule.

#### Approved Measures

##### *Southern New England Skate Bait Trawl Exemption Area*

The RA has determined that an exempted skate bait trawl fishery in a specifically defined portion of SNE meets the exemption requirements in § 648.80(a)(8)(i). Analysis of available data indicate that bycatch of regulated species by vessels targeting skate bait in that portion of SNE is less than 5 percent, by weight, of the total catch. Also, the RA has determined that the exemption will not jeopardize the fishing mortality objectives of the FMP because this exemption does not increase the demand for skate bait and is not expected to increase fishing for skate bait. Due to this exemption, common pool vessels will have more DAS available to target multispecies; however, DAS are not considered a limiting factor in the common pool. Further, Annual Catch Limits (ACLs) for each stock will prevent the overharvest of any species. Based on these determinations, the RA is exempting eligible vessels from the prohibition against fishing while not on a DAS in a portion of SNE from July through

October of each year when the vessels target skates and use 6.5-inch (16.5-cm) mesh trawl gear. The area of this exempted fishery will be referred to as the SNE Skate Bait Trawl Exemption Area.

The SNE Skate Bait Trawl Exemption Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the RA upon request):

Point	N. lat.	W. long.
SBT 1 .....	Southeastern MA.	71° 00'
SBT 2 .....	41° 00' .....	71° 00'
SBT 3 .....	41° 00' .....	72° 05'
SBT 4 .....	Southern CT ....	72° 05'

As required by existing regulations, vessels participating in the exempted skate fishery will need to hold a Federal skate permit and a valid Skate Bait Letter of Authorization (LOA) from the RA containing an exemption from the skate wing possession limits, which will allow them to land whole skates for use as bait. A participating vessel may possess and land up to 25,000 lb (9,072 kg) of whole skates of less than 23 inches (59 cm) total length. In addition, vessels will be limited by the skate bait Total Allowable Landings (TAL) that is divided into three seasons to help maintain a supply of bait throughout the fishing year. When 90 percent of the seasonal quota is landed in either Season 1 or 2, or when 90 percent of the annual skate bait TAL is landed, the RA will close the directed fishery by reducing the skate bait possession limit to the whole weight equivalent of the skate wing possession limit in effect at that time (either 5,902 lb (2,677 kg); 9,307 lb (4,222 kg); or 1,135 lb (515 kg)).

For additional details regarding the SNE Skate Bait Trawl Exemption Area, please see the proposed rule for this action.

#### Comments and Responses

No comments were received.

#### Changes From the Proposed Rule

There are no changes from the proposed measures in this final rule.

#### Classification

NMFS has determined that this final rule is consistent with the FMP and the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

#### Administrative Procedure Act

The Assistant Administrator, NMFS, finds that a waiver of the 30-day delay in the rule's effectiveness is justified under 5 U.S.C. 553(d)(1) because this rule "recognizes an exemption or relieves a restriction[.]" Currently, vessels fishing for skates in the SNE must use a groundfish DAS. This rule creates an exemption to the DAS requirement and allows vessels fishing in a portion of the SNE with 6.5 inch (16.5-cm) net mesh during part of the year to fish without using a DAS. As a result, more DAS will be available to vessels to fish specifically for groundfish rather than have them used on skate trips that catch very small amounts of groundfish. Because this rule recognizes an exemption and relieves a restriction by eliminating the requirement that vessels use NE Multispecies DAS while targeting skate bait in SNE, the 30-day delay in effectiveness may be waived pursuant to 5 U.S.C. 553(d)(1).

The Assistant Administrator also finds that there is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay because such a delay would be contrary to the public interest by potentially preventing sector members from realizing the full potential savings in discards and DAS. The exemption would ordinarily be in effect from July 1 to October 31, but the 30-day delay in effectiveness would reduce the duration of the exemption in 2012 by nearly 25 percent. Currently, sector members in the SNE area have an elevated groundfish discard rate applied to skate trips fished under groundfish DAS. The elevated discard rate applied to skate trips and use of DAS on skate trips costs sector members approximately \$24,000 each year. Delaying the effective date of this rule could prevent the sector members from obtaining the full amount of cost savings. Further, waiving the 30-day delay in effectiveness will not cause any hardship for regulated entities because this rule does not create any new obligations or otherwise require trawl operators to make modifications to equipment or processes. Therefore, the primary rationale for the 30-day delay—to provide regulated entities with time to prepare for new rules—does not apply to this rule.

#### Regulatory Flexibility Act

Pursuant to 5 U.S.C. 603, a Final Regulatory Flexibility Analysis (FRFA) has been prepared, which describes the economic impacts that this rule will have on small entities. The FRFA incorporates the economic impacts and analysis summarized in the Initial

Regulatory Flexibility Analysis (IRFA) for the proposed rule for this action, and the corresponding economic analyses prepared for this action in the EA and the Regulatory Impact Review (RIR). The contents of these documents are not repeated in detail here. Copies of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**). A description of the reasons for this action, the objectives of the action, and the legal basis for this final rule are found in the preamble to the proposed and final rules.

There are no Federal rules that duplicate, overlap, or conflict with this rule. This action does not include any new reporting, recordkeeping, or other compliance requirements. This rule creates a new skate bait trawl exemption area for trawl vessels targeting skate bait in SNE. This action was compared to two different alternatives for the exemption. Alternatives to the selected exemption include exempting a larger portion of SNE for a longer period of time, from June through November, and the No Action alternative, which would continue to require vessels targeting skate bait in this area to be on a declared NE multispecies trip from July through October.

#### Description and Estimate of the Number of Small Entities to Which This Final Rule Would Apply

The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross receipts not exceeding \$4 million. In Rhode Island, there are two major dealers involved in the skate bait market. One reports supplying skate bait to 100 lobster businesses located in Point Judith, Wickford, Newport, Westerly, and Jamestown, RI, along with businesses scattered throughout Connecticut and Massachusetts. The company buys skate bait from 12–15 vessels throughout the year. The lobster businesses supplied by the company employ between two and four crewmembers per vessel. The other major skate dealer in Rhode Island supplies local Newport, Sakonnet, and New Bedford, MA, vessels and numerous offshore lobster vessels fishing in the Gulf of Maine. Skates are supplied to this dealer from druggers working out of Newport and Tiverton, RI, and New Bedford, MA.

Due to direct, independent contracts between druggers and lobster vessels, landings of skates are estimated to be under-documented. While skate bait is always landed (rather than transferred at sea), it is not always reported because it can be sold directly to lobster vessels by non-federally permitted vessels, which

are not required to report as dealers. A more complete description of the skate bait fishery can be found in Amendment 3 to the NE Skate Complex FMP, available from the Council (<http://www.nefmc.org>).

#### *Economic Impacts of This Action*

This action is expected to benefit the local fishing communities that have historically depended on the skate bait fishery in SNE. This exemption was requested by members of the NE multispecies fishing industry, specifically members of a sector that fishes in the SNE area. The cost of fishing for skate bait has become increasingly high primarily due to the deduction of calculated discards from each vessel's sector's Annual Catch Entitlement (ACE) when fishing under a groundfish DAS. This exemption will allow vessels to target skate bait outside of the DAS program, which will prevent the discards being deducted from their sector's ACE at a higher rate than is actually occurring. The EA for this action estimates that the exemption could save the fleet approximately \$24,489.79 a year in discards and DAS alone.

With the elimination of these low discard trips from the sector's discard stratum, the overall discard rate for the sector will likely increase because skate bait trips that were observed were keeping the discard rate for trips targeting groundfish artificially low. While this change will result in an increase of the discard rate for the skate bait vessel's original discard stratum, the increase will not represent a significant cost to the SNE sector vessels that are not participating in the exemption and is outweighed by the benefit of the exemption. In addition, the calculated discard rates for both groundfish vessels and skate bait vessels will be more accurate as a result of the exemption; more accurate discards are not expected to have an economic effect on the fishing community as a whole. Further, participation in this exemption is voluntary. A vessel may still choose to target skate bait during the exemption while on a DAS should they feel it is to their benefit.

#### *Economic Impacts of Alternatives to the Action*

The impacts of Alternative 2, which extends the exemption an additional 2 months over a larger area, would be expected to be similar to the impacts of Alternative 1, but the expanded area and time would allow more vessels a greater opportunity to participate in the exempted fishery. The EA for this action estimates that Alternative 2 would save

the industry an additional \$ 3,739.37 compared to Alternative 1, for a total savings of \$28,229.16. However, the months of June and November showed an increased number of trips that caught over 5 percent groundfish, and a large portion of the area could not be evaluated because there were no observer or ASM data available. Providing an exemption for trips that caught over 5 percent groundfish, or for areas for which no data are available, would be contrary to the current regulations. Therefore, this alternative was not selected.

The No Action Alternative would have a negative economic impact on SNE skate bait vessels relative to Alternative 1. This exemption was requested because of the economic burden that the cost of DAS and calculated discards had on sector fishermen targeting skate bait. As described above, it is estimated that this exemption could save the fleet approximately \$24,489.79 a year in discards and DAS alone compared to the No Action alternative. Under the No Action Alternative, sector fishermen targeting skate bait would continue fishing on DAS only to be charged a higher than observed groundfish discard rate for their trip targeting skate bait. The skate bait fishery is a valuable resource to those fishing in SNE. The groundfish discards that are attributed to these trips come directly out of the vessel's sector's ACE, which takes away the opportunity to catch these fish in the future.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule. As part of this rulemaking process, NMFS prepared a small entity compliance guide, which will be sent to all holders of permits issued for the NE skate fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see **ADDRESSES**).

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 26, 2012.

**Samuel D. Rauch III,**

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

For the reasons stated 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 § 648.14, paragraph (k)(5)(i) is revised to read as follows:

#### **§ 648.14 Prohibitions.**

\* \* \* \* \*

(k) \* \* \*

(5) \* \* \*

(i) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals Dogfish Fishery Exemption Area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16), the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (b)(3), exemptions (small mesh); (b)(5), the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9), the SNE Little Tunny Gillnet Exemption Area; (b)(11), the SNE Scallop Dredge Exemption Area; or (b)(12), the SNE Skate Bait Trawl Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

\* \* \* \* \*

■ 3. In § 648.80, paragraph (b)(2)(vi) is revised, and paragraph (b)(12) is added to read as follows:

#### **§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(vi) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the SNE Exemption Area, as

defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (b)(12), (c), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing on a sector trip; or if fishing under the Small Vessel or Handgear A permit specified in § 648.82(b)(5) and (6), respectively; or if fishing under a Handgear B permit specified in § 648.88(a); or if fishing under a scallop state waters exemption specified in § 648.54; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing under a General Category scallop permit in accordance with paragraphs (b)(11)(i)(A) and (B) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one

of these exemptions or must be stowed as specified in § 648.23(b).

\* \* \* \* \*

(12) *SNE Skate Bait Trawl Exemption Area.* Vessels issued an open access skate permit and a skate bait Letter of Authorization as specified in § 648.322(c) that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, may fish in the SNE Skate Bait Trawl Exemption Area as defined under paragraph (b)(12)(i) of this section, when not under a NE multispecies or scallop DAS, provided the vessel complies with the requirements specified in paragraph (b)(1)(ii) of this section.

(i) *Area definition.* The SNE Skate Bait Trawl Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

**SNE SKATE BAIT TRAWL EXEMPTION AREA**

[July 1 through October 31]

Point	N. lat.	W. long.
SBT 1 .....	Southeastern MA.	71°00'
SBT 2 .....	41°00' .....	71°00'
SBT 3 .....	41°00' .....	72°05'
SBT 4 .....	Southern CT ....	72°05'

(ii) *Requirements.* (A) A vessel fishing in the SNE Skate Bait Trawl Exemption Area specified in this paragraph (b)(12) may not fish for, possess on board, or land any NE regulated species.

(B) Vessels must use trawl gear, as specified in § 648.80(b)(2)(i).

(C) Vessels must possess an active skate bait letter of authorization issued by the Regional Administrator, as specified in § 648.322(c) and fish pursuant to the terms of authorization.

(D) Fishing may only occur from July 1 through October 31 of each fishing year.

\* \* \* \* \*

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