for marking lobster trap lines that should be completed during 2013. The Councils intend to revisit the spiny lobster trap gear marking issue when the results of that study are available. The biological opinion, as amended, requires implementation of the terms and conditions regarding lobster trap line marking by August 6, 2017.

Proposed Rule for Amendment 11

A proposed rule that would implement measures outlined in Amendment 11 has been drafted. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Consideration of Public Comments

The Councils submitted Amendment 11 for Secretarial review, approval, and implementation on April 05, 2012. NMFS' decision to approve, partially approve, or disapprove Amendment 11 will be based, in part, on consideration of comments, recommendations, and information received during the comment period on this notice of availability.

Public comments received on or before June 26, 2012, will be considered by NMFS in its decision to approve, partially approve, or disapprove Amendment 11. All comments received by NMFS on Amendment 11 or the proposed rule for Amendment 11 during their respective comment periods will be addressed in a final rule.

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

Dated: April 24, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–10248 Filed 4–26–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120417417–2417–01]

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: Proposed rule, request for comments.

SUMMARY: NMFS proposes to modify 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 from July through October of each year, outside of the NE multispecies days-at-sea (DAS) program. This action would allow vessels to harvest skates in a manner that is consistent with the bycatch reduction objectives of the NE Multispecies FMP.

DATES: Comments must be received no later than 5 p.m., eastern daylight time, on May 14, 2012.

ADDRESSES: An environmental assessment (EA) was prepared for the Secretarial Amendment that describes the proposed action and other considered alternatives, and provides an analysis of the impacts of the proposed 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.*

You may submit comments, identified by FDMS docket number NOAA–NMFS–2012–0098, by any one of the following methods:

- Written comments (paper, disk, or CD–ROM) should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Mark the outside of the envelope, ''Comments on Skate Bait Exempted Fishery.''
- Comments also may be sent via facsimile (fax) to (978) 465–3116.
- Submit all electronic public comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.*

Instructions: Comments will be posted for public viewing as they are received. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Management Specialist, 978–281–9233; fax 978–281–9135; email: *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 Southern New England (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 § 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 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 proposed rule as Alternative 2). Sector vessels targeting skate bait and fishing on a trip in SNE are currently required to declare a NE multispecies DAS trip. These vessels are charged a discard rate that is determined by the Northeast Fisheries Observer Program (NEFOP) and at-sea monitoring (ASM) discard data. The discard rate is based on the sector, area fished, and gear type, referred to as a discard stratum. Because ''target species'' is not part of each discard stratum, vessels that are targeting skate bait (and catching very little to no groundfish) are being charged the same discard rate as all other declared groundfish trips in that discard stratum. This has led to higher than observed discard rates of groundfish when targeting skate bait when compared to actual discard rates on observed skate bait trips. Forfeiting the value of discards at a higher rate than is actually occurring has imposed an economic burden on sector fishermen, as the discarded fish that are charged to the sector's Annual Catch Entitlement (ACE) could otherwise be landed for sale. Reducing a sector's ACE by a higher rate than is actually occurring has particularly adversely affected the sector's ''choke stocks,'' i.e., fish for which the sector has a small amount of ACE, either because of a low catch history or a small annual catch limit (ACL) for the stock.

NEFOP and 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 to July through October (referred to in the EA and in this proposed 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. It is important to note that large portions of the original area requested by industry had no associated observer data, and thus could not be evaluated. Therefore, the size of the exemption area was reduced to cover only areas where ASM and NEFOP covered trips existed.

For Alternative 1, all large mesh (6.5-inch mesh) DAS trips from 2010 to 2011 were analyzed, and the data showed that no trips caught more than 5 percent groundfish. Therefore, there were no trips that caught over 5 percent NE multispecies that would be exempted under this action. The data indicate that Alternative 2 (the non-preferred alternative) would likely result in a higher percentage of groundfish catch in the months of June and November than in July through October.

Exempted fisheries have a maximum allowable bycatch of 5 percent regulated groundfish under § 648.80(a)(8)(i). For the months of July through October, from 2006 to 2011, the average percentage of regulated groundfish catch for trips in the directed SNE skate bait fishery was 1.25 percent, well under the 5 percent limit for an exempted fishery. No single month's average NE multispecies catch exceeded 2 percent of the total catch. The vast majority of groundfish bycatch species in the skate bait fishery are SNE winter flounder and southern windowpane flounder. Following a recent assessment, SNE winter flounder is no longer experiencing overfishing but remains overfished. Recent information has changed the status of the Southern windowpane flounder stock, which was previously experiencing overfishing but not overfished; it is currently not overfished, is no longer experiencing overfishing, and was rebuilt in 2009. The discards expected from this exemption should not cause the ACL for these species to be exceeded.

Further, because of the relationship between the skate bait fishery and the lobster fishery, this action is not likely to increase effort in the skate bait fishery. Although this action would exempt vessels targeting skate bait from the NE multispecies regulations, the demand for skate bait is dependent on the lobster fishery's demand for bait. Consequently, this exemption is not expected to increase the demand for skate bait. Further, the skate bait fishery is controlled by a Total Allowable Landing (TAL) limit that prevents the overharvesting of skate bait. Because it would neither increase demand for skate bait nor significantly affect other regulated species, this action is not expected to jeopardize mortality objectives of any stock and would ease some of the burdens on vessels participating in the NE multispecies fishery.

Proposed 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) because, based on the analysis of available data, the bycatch of regulated species by vessels targeting skate bait in a portion of SNE is less than 5 percent, by weight, of the total catch. Therefore, this rule proposes to implement an exempted fishery for eligible vessels when using 6.5-inch mesh trawl gear in a portion of SNE from July through October of each year. The area of this proposed exempted fishery would be referred to as the SNE Skate Bait Trawl Exemption Area.

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 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 would 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 allows them to land whole skates for use as bait. A participating vessel may possess and land up to 20,000 lb (9,072 kg) of whole skates of less than 23 inches (59 cm) total length. In addition, vessels would be limited by the skate bait 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 would 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)).

Granting the SNE Skate Bait Trawl Exemption Area should result in a more accurate discard calculation for skate bait and NE multispecies DAS trips. Exempted skate bait trips would be exempt from NE multispecies regulations. Discards of regulated NE multispecies from skate bait trips would no longer be deducted from sector or common pool sub-ACLs that make up the commercial groundfish sub-ACL. Instead, the calculated discards would be deducted from the ''other subcomponents'' sub-ACL.

In the NE multispecies fishery, calculated discard rates for regulated

species are calculated over an entire discard stratum, i.e., sector, area, and gear type. Currently, when SNE skate bait vessels are fishing on declared groundfish trips, they are charged a calculated discard rate equivalent to trips targeting groundfish in the same discard stratum. For example, a skate bait vessel catching 20,000 pounds of skate is charged a groundfish discard rate as if that vessel caught 20,000 pounds of groundfish and results in the resulting amount being deducted from the sector or common pool sub-ACL. The data analyzed from observed SNE skate bait trips, however, showed that skate bait trips averaged a catch of 1.25% of multispecies (250 pounds). Calculating discards using this more accurate rate results in a lower deduction from the sub-ACL than applying the groundfish discard rate to 20,000 pounds of catch. Granting this exemption would provide vessels the opportunity to catch the groundfish formerly counted as discarded. Conversely, because the lower multispecies discards observed on skate bait trips will no longer be included when determining the groundfish discard rate for targeted groundfish trips, the actual amounts discarded on declared groundfish trips will be more accurately reflected. The increase in the calculated discard rate for targeted groundfish trips is not expected to be significant.

Classification

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

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

Pursuant to 5 U.S.C. 603, an IRFA has been prepared, which describes the economic impacts that this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, as well as the objectives of and legal basis for this proposed rule, can be found in the preamble to this proposed rule and are not repeated here. There are no Federal rules that duplicate, overlap, or conflict with the proposed rule. This proposed rule does not include any new reporting, recordkeeping or other compliance requirements. This action proposes to create 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 proposed exemption include exempting a larger portion of SNE for a longer period of time, from June through November, and a 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 Proposed 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 2–4 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 draggers working out of Newport and Tiverton, RI, and New Bedford, MA.

Due to direct, independent contracts between draggers 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 Proposed Action

Compared to the No Action alternative, the Preferred Alternative (Alternative 1) 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 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 ACE when fishing under a groundfish DAS. Thus, the proposed 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 proposed action estimates that the exemption could save the fleet approximately $24,490 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 overall sector's discard rate, the increase will not represent a significant cost to the SNE sector vessels that are not participating in 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.

Economic Impacts of Alternatives to the Proposed 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 the Preferred Alternative, 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. 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 was no observer or ASM data available. Providing an exemption for trips that caught over 5 percent groundfish, or areas where no data is available, would be contrary to the purpose and requirements of the Magnuson Stevens Conservation and Management Act and its implementing regulations. For these reasons, this alternative was not selected.

The No Action Alternative would have a negative economic impact on SNE skate bait vessels relative to the preferred alternative. 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 $24,490 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 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.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 23, 2012.

Alan D. Risenhoover,

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

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be 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.

* * * * *

[FR Doc. 2012–10121 Filed 4–26–12; 8:45 am]

BILLING CODE 3510–22–P