

locations as close as possible to a reasonable and likely spot for the antenna. The locations shall be at least three meters apart, enough so that the testing is practical. If possible, the first testing point should be chosen as the center point of a square whose corners are the four other locations. Calculate the median of the five measurements (in units of dBu) and report it as the measurement.

(iii) *Multiple signals*—If more than one signal is being measured (*i.e.*, signals from different transmitters), use the same locations to measure each signal.

(2) *Measurement procedure.*

Measurements shall be made in accordance with good engineering practice and in accordance with this section of the rules. At each measuring location, the following procedure shall be employed:

(i) *Testing equipment.* Perform an on-site calibration of the test instrument in accordance with the manufacturer's specifications. Tune a calibrated instrument to the center of the channel being tested. Measure the integrated average power over the full 6 megahertz bandwidth of the television signal. The intermediate frequency ("i.f.") of the instrument must be less than or equal to 6 megahertz and the instrument must be capable of integrating over the selected i.f. Take all measurements with a horizontally polarized antenna. Use a shielded transmission line between the testing antenna and the field strength meter. Match the antenna impedance to the transmission line at all frequencies measured, and, if using an un-balanced line, employ a suitable balun. Take account of the transmission line loss for each frequency being measured.

(ii) *Weather.* Do not take measurements in inclement weather or when major weather fronts are moving through the measurement area.

(iii) *Antenna elevation.* When field strength is being measured for a one-story building, elevate the testing antenna to 6.1 meters (20 feet) above the ground. In situations where the field strength is being measured for a building taller than one-story, elevate the testing antenna 9.1 meters (30 feet) above the ground.

(iv) *Antenna orientation.* Orient the testing antenna in the direction which maximizes the value of field strength for the signal being measured. If more than one station's signal is being measured, orient the testing antenna separately for each station.

(3) Written record shall be made and shall include at least the following:

(i) A list of calibrated equipment used in the field strength survey, which for

each instrument, specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory. Include complete details of any instrument not of standard manufacture.

(ii) A detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable.

(iii) For each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features.

(iv) A description of where the cluster measurements were made.

(v) Time and date of the measurements and signature of the person making the measurements.

(vi) For each channel being measured, a list of the measured value of field strength (in units of dBu after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted.

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proposed rule responds to a request from the fishing industry to add this area to the list of exempted fisheries. The intent of this action is to allow small scallop dredge vessels to harvest scallops in a manner that is consistent with the bycatch reduction objectives of the FMP.

**DATES:** Comments must be received no later than 5 p.m., eastern daylight time, on July 21, 2006.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- E-mail: [GSC521@NOAA.gov](mailto:GSC521@NOAA.gov). Include in the subject line the following: "Comments on General Category Scallop Dredge Exemption."

- Federal e-Rulemaking Portal: <http://www.regulations.gov>.

- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on General Category Scallop Dredge Exemption."

- Fax: (978) 281-9135.

Copies of supporting documents, including the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) prepared for this action are available from Patricia A. Kurkul, Regional Administrator, NMFS, at the above address. A summary of the IRFA is provided in the Classification section of this proposed rule.

**FOR FURTHER INFORMATION CONTACT:**

Tobey H. Curtis, Fishery Management Specialist, 978-281-9273, fax 978-281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

Current regulations, implemented under Framework Adjustment 9 and expanded under Amendment 7 to the FMP, contain a 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. A vessel may not fish in these areas unless it is fishing under a NE multispecies or a scallop day-at-sea (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 part 648.80. A fishery may be exempted by the Regional Administrator (RA), after consultation with the New England

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 060621176-6176-01; I.D. 052306A]**

**RIN 0648-AU50**

**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Great South Channel Scallop Dredge Exemption Area**

**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 either a General Category Atlantic sea scallop permit or a limited access sea scallop permit, when not fishing under a scallop days-at-sea (DAS) limitation, to fish for scallops with small dredges (combined width not to exceed 10.5 ft (3.2 m)) within the Great South Channel Scallop Dredge Exemption Area. This

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.

On October 25, 2005, a request was submitted on behalf of the General Category scallop fleet to establish an additional exempted scallop dredge fishery in the GOM/GB Exemption Area, particularly in Statistical Areas 521 and 526, in the vicinity of traditional scalloping grounds within the area known as the Great South Channel, off Cape Cod, MA. Neither the GOM Scallop Dredge Exemption Area, established in Framework 21 to the FMP (February 1997), nor the SNE Scallop Dredge Exemption Area, established in Amendment 13 to the FMP (April 2004), include these statistical areas within their exemption programs. Therefore, a new exempted fishery is needed to allow General Category scallop vessels to fish in statistical areas 521 and 526, provided the fishery does not jeopardize the fishing mortality objectives of the FMP. During its November 2005 meeting, the Council voted to concur with the RA's determination regarding the exemption request, and to approve it if it was found to be consistent with the regulations and FMP objectives.

The data analyzed for this industry request consisted of observer data from both General Category and limited access scallop dredge trips in the GOM/GB Exemption Area from 2000 to 2005. A total of 31 General Category trips and 91 limited access trips were observed during that period. Because observer data were sparse outside of statistical areas 521 and 526, the analyses focused on these two areas. Bycatch rates were calculated on a trip-by-trip basis by adding up the total weights (lb) of multispecies, scallops (in-shell weight), and all other catch on each observed trip, and then calculating the percentage of the total catch represented by regulated multispecies. The percent bycatch of regulated multispecies in statistical areas 521 and 526 ranged from 0 to 0.4 percent in General Category trips (N=5), and 0 to 3.7 percent in limited access trips (N=37). No observed scallop dredge trips in statistical areas 521 or 526 exceeded 5 percent. The mean percent bycatch of regulated species by weight of the total catch across all areas in the General Category and limited access fisheries was less than 5 percent. From a total of five observed General Category trips into statistical areas 521 and 526, the mean percent bycatch was 0.1 percent of

the total catch. From the 37 observed limited access scallop dredge trips into those same areas, the mean percent bycatch was estimated to be 0.9 percent of the total catch. Even though the analyses were conducted at the statistical area scale, when spatially plotted, the vast majority of the observed trips occurred within a discrete portion of the statistical areas, primarily in the Great South Channel. Based on this information, the proposed exemption area is constrained to the area from which the most data were available.

The primary groundfish species of concern with this proposed action is yellowtail flounder, which is currently overfished and not yet meeting its required rebuilding schedule as mandated by Amendment 13 to the FMP. Fishing Year (FY) 2006 total allowable catch (TAC) is, therefore, very low for SNE and Cape Cod (CC)/GOM stocks, and any additional sources of mortality must be carefully considered. Although overall regulated species bycatch rates were very low, yellowtail and winter flounders were the primary bycatch species on the observed trips in the Great South Channel area. Based on the observed bycatch rates of yellowtail flounder in scallop dredges in this area, and projections of the annual number of General Category scallop dredge trips to this area, however, the total catch of yellowtail flounder in this exemption program would likely represent less than 0.5 percent of the FY 2006 TACs for SNE and CC/GOM stocks. Additionally, the opening of the Great South Channel to General Category scallop vessels may redistribute the effort in this fishery away from other areas that have higher bycatch rates of yellowtail flounder. The proposed exemption is therefore expected to meet both the bycatch and the fishing mortality requirements of the regulations.

### Proposed Measures

#### *Great South Channel Scallop Dredge Exemption Area*

Based on the analysis of available data, the bycatch of regulated species by scallop dredge vessels is less than 5 percent, by weight, of the total catch in the Great South Channel. Therefore, the RA has determined that an exempted scallop dredge fishery in a specifically defined portion of the Great South Channel meets the exemption requirements specified in § 648.80(a)(8). At this time, there are not sufficient data to determine if a scallop dredge fishery in any other area would also meet the exemption requirements.

Therefore, this rule proposes to implement an exempted fishery for vessels fishing with General Category scallop permits, or limited access scallop permits not fishing under a DAS allocation, to use small dredges with a combined width not greater than 10.5 ft (3.2 m) in portions of the Great South Channel (see area definition below). This area would be referred to as the Great South Channel Scallop Dredge Exemption Area (GSC Area). Portions of the GSC Area would be seasonally closed to protect SNE, GB, and Cape Cod (CC)/GOM yellowtail flounder during their peak spawning periods. Peak spawning periods are defined in the EA prepared for Framework Action 40-B to the FMP. The portion of the GSC Area that lies within statistical areas 525 and 526 (SNE and GB yellowtail flounder stock areas) would be closed from April 1 through June 30. The portion of the GSC that lies within statistical area 521 (CC/GOM yellowtail flounder stock area) would be closed from June 1 through June 30.

Vessels fishing in this exemption that wish to land more than 40 lb (18.1 kg) of shucked (5 bu (1.76 hL) unshucked) scallops would be required to have a Category 1B General Category scallop permit, an operational Vessel Monitoring System (VMS), and would be allowed to land a maximum of 400 lb (181.4 kg) of shucked (50 bu (17.62 hL) unshucked) scallops per trip. Vessels with a limited access scallop permit would also be allowed to participate in the exemption when not fishing under a scallop DAS, and would be restricted to the Category 1B General Category scallop permit regulations. These vessels would not be allowed to fish for, possess on board, or land any fish species other than scallops. Other than the seasonal closures between April and June, these regulations are consistent with those of the existing scallop dredge exemption areas defined at § 648.80(a)(11) and (b)(11). Regulations governing the scallop fishery can be found at 50 CFR 648, subpart D.

### 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 is found in the preamble to this proposed rule. There are no Federal rules that duplicate, overlap, or conflict with the proposed rule. This action proposes to create a new scallop dredge exemption area for General Category scallop vessels in the GOM/GB Exemption Area. This action was compared to three different alternatives for the boundaries of the exemption area. Alternatives to the proposed exemption area included exempting all of statistical areas 521 and 526, exempting the entirety of the GOM/GB Exemption Area, and a No Action alternative, which would continue to prohibit General Category scallop dredge vessels from fishing outside of the existing scallop dredge exemption areas.

*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. As of March 2006, a total of 2,814 vessels had been issued open access General Category scallop permits in the NE region. Approximately 30 percent of these were issued the Category 1B permit, which allows up to 400 lb (181.4 kg) of scallop meats per trip, and are considered to be vessels that primarily rely on scallops for the bulk of their revenues. Any of these permitted vessels would be allowed to participate in this exemption program, but the area proposed to be exempt has traditionally been mostly fished by vessels from Massachusetts and Maine. Average 2005 scallop revenues for General Category scallop vessels was \$87,369 per vessel, though there was great variation from vessel to vessel, ranging from less than \$7,000 to over \$160,000 per vessel. The majority of these vessels also receive additional revenues from a variety of other species. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All commercial fishing entities would fall under the SBA size standard for small commercial fishing entities. Therefore, there is no differential impact between large and small entities. A more complete description of the General Category fishery can be found in Framework Adjustment 18 to the Atlantic Sea Scallop FMP, available from the Council ([www.nefmc.org](http://www.nefmc.org)).

*Economic Impacts of This Proposed Action*

The economic impacts of the proposed action are expected to be positive. This action would open a valuable scallop fishing ground to the General Category scallop fleet, and would allow the fleet to utilize these resources in a manner consistent with the bycatch and mortality objectives of the FMP. The demand for scallops has increased significantly in recent years, and revenues for General Category vessels are also expected to increase if the exemption area is approved. There is evidence that some General Category vessels have been fishing in this area for years, despite the fact that it is outside of the existing Scallop Dredge Exemption Areas. Their profits from scallop fishing have declined since access to this area was prohibited and enforced. The ports in Cape Cod and southern Massachusetts will be the most impacted, due to their proximity to the proposed exemption area.

*Economic Impacts of Alternatives to the Proposed Action*

Three alternatives other than the preferred alternative were considered. The alternative that proposed to exempt the entirety of statistical areas 521 and 526 throughout the year to General Category scallop vessels, and the alternative that proposed to exempt the much larger area of the GOM/GB Exemption Area year-round would also have positive economic impacts; possibly slightly more positive than the preferred alternative due to the larger exempted area and the lack of a closure period. These alternatives were rejected, however, due primarily to the lack of observer data needed to estimate the bycatch rates of regulated multispecies throughout these areas. Potentially negative economic impacts would result if this action was delayed for the time period that would be necessary to collect the required observer data. The No Action alternative was the only alternative that could pose negative economic impacts by continuing to prohibit General Category scallop vessels from fishing in the Great South Channel.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 29, 2006.

**William T. Hogarth,**

Assistant Administrator for Fisheries,  
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 (a)(43) is revised to read as follows:

**§ 648.14 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(43) 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)(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; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

\* \* \* \* \*

3. In § 648.80, paragraphs (a)(3)(viii) and (a)(7)(ii) are revised, and paragraph (a)(18) is added to read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(viii) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the GOM/GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (16), (a)(18), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(u)(5) and (6), respectively; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear

permit, 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).

\* \* \* \*

(7) \* \* \* \*

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Scallop Dredge Fishery Exemption Areas defined in paragraphs (a)(11) and (18) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

\* \* \* \*

(18) *Great South Channel Scallop Dredge Exemption Area.* Vessels issued a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the Great South Channel Scallop Dredge Exemption Area as defined under paragraph (a)(18)(i) of this section, when not under a NE multispecies or scallop DAS, provided the vessel complies with the requirements specified in paragraph (a)(18)(ii) of this section.

(i) *Area Definition.* The Great South Channel Scallop Dredge 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):

#### GREAT SOUTH CHANNEL SCALLOP DREDGE EXEMPTION AREA

Point	N. lat.	W. long.
GSC 1 .....	41°50.52'	69°40'
GSC 2 .....	40°50'	68°49.2'

#### GREAT SOUTH CHANNEL SCALLOP DREDGE EXEMPTION AREA—Continued

Point	N. lat.	W. long.
GSC 3 .....	40°50'	69°29.46'
GSC 4 .....	41°10'	69°50'
GSC 5 .....	41°10'	70°00'
GSC 6 .....	41°35'	70°00'
GSC 7 .....	41°35'	69°40'

(ii) *Requirements.* (A) A vessel fishing in the Great South Channel Scallop Dredge Exemption Area specified in this paragraph (a)(18) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by, or in possession on board, vessels fishing in the Great South Channel Scallop Dredge Exemption Area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) *GSC SNE/GB Yellowtail Flounder Peak Spawning Closure.* No vessel that qualifies under this exemption, as defined in this paragraph (a)(18), may fish for Atlantic sea scallops in the Great South Channel Scallop Dredge Exemption Area that lies within the SNE and GB yellowtail flounder stock areas (statistical areas 525 and 526) between April 1 and June 30, as defined by the straight lines connecting the following points in the order stated below.

#### GSC SNE/GB YELLOWTAIL FLOUNDER SPAWNING CLOSURE

Point	N. lat.	W. long.
YTA 1 .....	41°20'	70°00'
YTA 2 .....	41°20'	69°50'
YTA 3 .....	41°10'	69°50'
YTA 4 .....	41°10'	69°30'
YTA 5 .....	41°00'	69°30'
YTA 6 .....	41°00'	68°57.58'
YTA 7 .....	40°50'	68°49.20'
YTA 8 .....	40°50'	69°29.46'
YTA 9 .....	41°10'	69°50'
YTA 10 .....	41°10'	70°00'
YTA 11 .....	\(1)\	70°00'

\(1)\ Intersection of south-facing coastline of Nantucket, MA, and 70°00' [min] W. Long.

(D) *GSC CC/GOM Yellowtail Flounder Peak Spawning Closure.* No vessel that qualifies under this exemption, as defined in this paragraph (a)(18), may fish for Atlantic sea scallops in the Great South Channel Scallop Dredge Exemption Area that lies within the CC/GOM yellowtail flounder stock area (statistical area 521) between June 1 and June 30 of each year, as defined by the straight lines connecting the following points in the order stated below.

#### GSC CC/GOM YELLOWTAIL FLOUNDER SPAWNING CLOSURE

Point	N. lat.	W. long.
YTB 1 .....	41°33.05'	70°00'
YTB 2 .....	41°20'	70°00'
YTB 3 .....	41°20'	69°50'
YTB 4 .....	41°10'	69°50'
YTB 5 .....	41°10'	69°30'
YTB 6 .....	41°00'	69°30'
YTB 7 .....	41°00'	68°57.58'
YTB 8 .....	41°50.52'	69°40'
YTB 9 .....	41°35'	69°40'
YTB 10 .....	41°35'	70°00'

\* \* \* \*

4. § 648.81, paragraph (g)(2)(iii) is revised to read as follows:

#### § 648.81 NE multispecies closed areas and measures to protect EFH.

\* \* \* \*

(g) \* \* \*

(2) \* \* \*

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS, and provided that the vessel complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h); or when lawfully fishing in the Scallop Dredge Fishery Exemption Areas, as described in paragraphs (a)(11) and (18) of this section.

\* \* \* \*

[FR Doc. 06-6016 Filed 6-30-06; 1:19 pm]

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