

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 648**

[Docket No. 120905422–2521–01]

RIN 0648–BC50

**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Exempted Fishery for the Cape Cod Spiny Dogfish 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 to fish with gillnet and longline gear from June through December, and with handline gear from June through August, in a portion of inshore Georges Bank (GB) each year, outside of the requirements of the NE multispecies fishery. This action would allow vessels to harvest spiny dogfish and other non-groundfish species 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 November 5, 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 John K. Bullard, 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–2012–0195, 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 Spiny Dogfish 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 Policy Analyst, 978–281–9233; fax 978–281–9135; email: [travis.ford@noaa.gov](mailto:travis.ford@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

Current regulations, implementing 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), GB, and Southern New England (SNE) Exemption Areas found in § 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 on a sector trip, 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)(8). A fishery may be exempted by the NMFS 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 two exempted fishery requests to the RA in December 2011, requesting we consider

an exempted fishery for gillnet, longline, and handline vessels targeting dogfish in portions of the GOM and GB. Sector vessels targeting spiny dogfish in the requested areas are currently required to fish on a declared NE multispecies trip. Vessels are charged a discard rate for regulated species bycatch that is determined by the NMFS 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, and is referred to as a discard stratum. Because the specified target species (groundfish) is not a distinctive part of each discard stratum, vessels that are targeting spiny dogfish (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 leads to applying higher than observed discard rates of groundfish when targeting spiny dogfish. Forfeiting the value of these calculated discards, that otherwise could be available for catching and landed for sale on directed regulated species trips, has created an economic burden for sector fishermen. This has particularly affected the sector’s “choke stocks,” i.e., fish for which the sector has a small amount of quota, either because of a low catch history or a small annual catch limit (ACL) for the stock.

The original requests from industry proposed a year-round exempted fishery in statistical areas 514, 515, and 521 for vessels using gillnet gear with large and extra-large mesh (>6.5-inches (16.5-cm)), longline, and handline gear. Due to relatively higher groundfish bycatch in large portions of these requested areas, this action proposes to exempt vessels from the NE multispecies regulations in a smaller portion of statistical area 521 off the coast of Cape Cod, MA. We further modified the time for the exemption to only during the months of June through December for vessels using gillnet and longline gear. In addition, this action proposes to exempt handline gear in the same smaller portion of statistical area 521 for June through August.

NEFOP and ASM data from all declared groundfish trips using large and extra-large mesh gillnets (>6.5-inch (16.5-cm) mesh), longline, and handline gears from 2010 to 2011 were analyzed. The area and months were revised based on information that shows, of a total of 642 observed trips using the proposed gears in fishing years (FY) 2010 and 2011, the average percentage of groundfish caught was 0.09 percent for this proposed alternative (Alternative 1, as referred to in the Environmental Assessment). Further, observed trip data

for Alternative 1 show no trips that caught greater than 5 percent regulated groundfish.

The majority of groundfish bycatch species in the spiny dogfish fishery are GB cod and pollock. In a 2012 operational assessment, GB cod was determined to be overfished and experiencing overfishing. In the Stock Assessment Review Committee 50 assessment in 2010, it was determined that pollock was not overfished and was not subject to overfishing.

For the trips analyzed under Alternative 1, no single month's average NE multispecies catch exceeded 0.38 percent of the total catch. On the 642 trips analyzed, a total of 798.6 lb (362.2 kg) of cod and 324.8 lb (147.3 kg) of pollock were caught. This represents an average of 1.24 lb (0.56 kg) and 0.51 lb (0.23 kg) per trip, respectively. Based on these very low observed amounts, the discards expected from this exemption should not cause the ACL for these species to be exceeded.

We assessed a second alternative exemption for gillnet, longline, and handline gears in the same modified area year-round. The data indicate that Alternative 2 (the non-preferred alternative) would likely result in a higher percentage of groundfish catch because several handline trips caught greater than 5 percent multispecies from September through December. In addition, the RA could not make a determination as to whether regulated groundfish bycatch was < 5 percent during the months of January through May, given little to no observer data were available from the area during this time.

Although this action would exempt vessels using these gears in this area and from the NE multispecies regulations, this action is not likely to increase effort in the spiny dogfish fishery. The existing spiny dogfish fishery is limited by an annual quota and a 3,000-lb (1,360.78-kg) trip limit. Therefore, this action itself is not expected to jeopardize mortality objectives of any stock, but rather ease some of the burden on vessels participating in the NE multispecies fishery.

**Proposed Measures**

*Cape Cod Spiny Dogfish Exemption Area*

The RA has determined that an exempted spiny dogfish fishery in a specifically defined portion of inshore GB area meets the exemption requirements in § 648.80(a)(8)(i) because, based on an analysis of available data, the bycatch of regulated species by vessels that would fish under

this exemption is less than 5 percent, by weight, of the total catch and is not expected to jeopardize the fishing mortality objectives of the NE Multispecies FMP. Therefore, this rule proposes to implement an exempted fishery for eligible vessels when using 6.5-inch (16.5-cm) mesh or greater gillnet gear, and longline gear in a portion of inshore Georges Bank off of Cape Cod, MA, from June through December of each year. In addition, this action proposes to exempt handline gear in the same area in June through August. The area of this proposed exempted fishery would be referred to as the Cape Cod Spiny Dogfish Exemption Area.

The Cape Cod Spiny Dogfish 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.
CCD 1 .....	42/00'	70/00'
CCD 2 .....	42/00'	69/47.5'
CCD 3 .....	41/40'	69/47.5'
CCD 4 .....	41/29.5'	69/35.5'
CCD 5 .....	41/29.5'	69/23'
CCD 6 .....	41/26'	69/20'
CCD 7 .....	41/20'	69/20'
CCD 8 .....	41/20'	(1)
CCD 9 .....	(2)	70/00'
CCD 10 .....	(3)	70/00'
CCD 11 .....	(4)	70/00'
CCD 1 .....	42/00'	70/00'

(1) The eastern coastline of Nantucket, MA at 41°20' N. lat.

(2) The northern coastline of Nantucket, MA at 70°00' W. long.

(3) The southern coastline of Cape Cod, MA at 70°00' W. long., then along the eastern coastline of Cape Cod, MA to CCD 11.

(4) The northern coastline of Cape Cod, MA at 70°00' W. long.

As required by existing regulations, vessels intending to land spiny dogfish under this exemption would need to hold a Federal spiny dogfish permit and comply with existing spiny dogfish per trip and annual quota limits. A participating vessel may possess and land up to 3,000 lb (1,360.78 kg) of spiny dogfish per trip. In addition, vessels would be limited by the spiny dogfish annual quota that is divided into two seasons to help maintain availability throughout the fishing year.

Establishing the proposed Cape Cod Spiny Dogfish Exemption Area should result in a more accurate discard calculation for spiny dogfish and NE multispecies DAS and sector trips. Because these trips would be exempt from NE multispecies regulations, discards of regulated NE multispecies associated with these 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, discard rates for regulated species are calculated over an entire discard stratum, i.e., sector, area, and gear type. Currently, when spiny dogfish 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 spiny dogfish vessel catching 3,000 lb (1,360.78 kg) of spiny dogfish is charged a groundfish discard rate as if that vessel caught 3,000 lb (1,360.78 kg) of groundfish. These discards are deducted from the sector or common pool sub-ACL. The data analyzed from observed trips under Alternative 1, however, showed that these trips averaged a catch of 0.09 percent of multispecies (an average of 2.65 lb (1.20 kg) per trip). Calculating discards using this more accurate rate results in a lower deduction from the sub-ACL than applying the groundfish discard rate to 3,000 lb (1,360.78 kg) of catch. Granting this exemption would provide vessels the opportunity to catch the groundfish on groundfish targeted trips that was formerly counted as discarded on spiny dogfish trips. Conversely, because the lower multispecies discards observed on spiny dogfish targeted trips will no longer be included when determining the groundfish discard rate for targeted groundfish trips, the actual amounts discarded on declared groundfish trips would likely be more accurately reflected. The increase in the calculated discard rate for targeted groundfish trips is not expected to be significant.

**Classification**

This proposed rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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 spiny dogfish exemption area for gillnet, longline, and handline vessels off the coast of Cape Cod, MA. Vessels participating in this exemption would declare “out-of-fishery” on their Vessel Monitoring Systems.

This action was compared to two different alternatives for the exemption. Alternatives to the proposed exemption include exempting the same area for a longer period of time, i.e., year-round, and a No Action Alternative, which would continue to require vessels fishing in this area to be on a declared NE multispecies trip from June through December and therefore subject to the NE multispecies discard rate for such trips.

#### *Description and Estimate of the Number of Small Entities To Which This Proposed Rule Would Apply*

All of the potentially affected businesses are considered small entities under the standards described in NOAA Fisheries guidelines because they have gross receipts that do not exceed \$4 million annually.

#### *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 spiny dogfish fishery off Cape Cod, MA. This exemption was requested by members of the NE multispecies fishing industry, specifically sector members. The cost of fishing for spiny dogfish has become increasingly high primarily due to the deduction of calculated discards from each vessel’s sector annual catch entitlement (ACE) when fishing on a sector trip. Thus, the proposed action would allow vessels to fish under this exemption outside of the groundfish regulations, which proposes to prevent discards from being deducted from a sector’s ACE at a higher rate than is actually occurring. The EA for this proposed action estimates that the exemption could save vessels fishing under this proposed exemption approximately \$24,000 a year in discards alone.

With the elimination of these low groundfish discard trips from the sector’s discard stratum, the overall discard rate for the sector will likely increase because the spiny dogfish targeted 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 on groundfish targeted trips, the increase would not represent a significant cost to the sector vessels that are not participating in the exemption. In addition, the calculated discard rates for both groundfish vessels and spiny dogfish vessels would 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 spiny dogfish during the exemption period while on a declared groundfish trip should it be to their benefit.

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

The impacts of Alternative 2, which extends the exemption for the entire year, would be expected to be similar to the impacts of the Preferred Alternative, but the expanded 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 \$877.93 compared to Alternative 1. However, the data indicate that Alternative 2 would likely result in a higher percentage of groundfish catch because several handline trips caught greater than 5 percent multispecies from September through December. In addition, the RA could not make a determination as to whether regulated groundfish bycatch was <5 percent during the months of January through May, given little to no observer data were available from the area during this time for all of the gear types. Providing an exemption for trips that caught over 5 percent groundfish, or in areas where no data are available, would be contrary to the purpose and requirements of the Magnuson Stevens Fishery Conservation and Management Act and the NE multispecies regulations. Therefore, this alternative was not selected.

The No Action Alternative would have a negative economic impact on spiny dogfish vessels relative to the Preferred Alternative. Under the No Action Alternative, sector fishermen targeting spiny dogfish would continue fishing on declared groundfish trips only to be charged a higher than observed groundfish discard rate for their trip targeting spiny dogfish. The spiny dogfish fishery is a valuable resource. 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. Thus, sectors requested an exemption because of the economic burden that the cost of multispecies discards applied to these trips had on sector fishermen targeting other stocks (i.e., spiny dogfish). As described above, it is estimated that this proposed action could save vessels fishing under this exemption approximately \$24,000 a year in discards alone, compared to the No Action alternative.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 15, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the 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; (a)(19), the Cape Cod Spiny Dogfish 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 (a)(3)(vi) is revised, and paragraph (a)(19) is added to read as follows:

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

\* \* \* \* \*

- (a) \* \* \*
- (3) \* \* \*

(vi) *Other restrictions and exemptions.* A vessel is prohibited from fishing in the GOM or 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 (a)(16) and (a)(18) through (a)(19), (d), (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 the scallop state waters exemptions specified in § 648.54 and paragraph (a)(11) of this section; 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 specified in § 648.88; or if fishing as a charter/party or private recreational vessel in compliance with § 648.89. Any gear used by a vessel in this area must be authorized under one of these exemptions. Any gear on a vessel that is not authorized under one of these exemptions must be stowed as specified in § 648.23(b).

\* \* \* \* \*

(19) *Cape Cod Spiny Dogfish Exemption Area.* Vessels issued a limited access permit 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 Cape Cod Spiny Dogfish Exemption Area as defined under paragraph (a)(19)(i) of this section, when not under a NE multispecies or scallop DAS, provided the vessel complies with the requirements specified in paragraph (a)(19)(ii) of this section.

(i) *Area definition.* The Cape Cod Spiny Dogfish 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):

**CAPE COD SPINY DOGFISH EXEMPTION AREA**

[June 1 through December 31, unless otherwise specified in paragraph (a)(19)(ii)(C) of this section]

Point	N. lat.	W. long.
CCD 1 .....	42/00'	70/00'

**CAPE COD SPINY DOGFISH EXEMPTION AREA—Continued**

[June 1 through December 31, unless otherwise specified in paragraph (a)(19)(ii)(C) of this section]

Point	N. lat.	W. long.
CCD 2 .....	42/00'	69/47.5'
CCD 3 .....	41/40'	69/47.5'
CCD 4 .....	41/29.5'	69/35.5'
CCD 5 .....	41/29.5'	69/23'
CCD 6 .....	41/26'	69/20'
CCD 7 .....	41/20'	69/20'
CCD 8 .....	41/20'	( <sup>1</sup> )
CCD 9 .....	( <sup>2</sup> )	70/00'
CCD 10 .....	( <sup>3</sup> )	70/00'
CCD 11 .....	( <sup>4</sup> )	70/00'
CCD 1 .....	42/00'	70/00'

(1) The eastern coastline of Nantucket, MA at 41°20' N. lat.

(2) The northern coastline of Nantucket, MA at 70°00' W. long.

(3) The southern coastline of Cape Cod, MA at 70°00' W. long., then along the eastern coastline of Cape Cod, MA to Point 11.

(ii) *Requirements.* (A) A vessel fishing in the Cape Cod Spiny Dogfish Exemption Area specified in this paragraph (a)(19) may not fish for, possess on board, or land any NE regulated species.

(B) Vessels may use gillnet gear, as specified in § 648.80(a)(4)(iv) or longline gear as specified in § 648.80(a)(4)(v) from June 1 through December 31.

(C) Vessels may use handline gear from June 1 through August 31.

\* \* \* \* \*

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