

**SUPPLEMENTARY INFORMATION:** Effective January 1, 1996, the ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC) and established the Board within the Department of Transportation. Section 204(a) of the ICCTA provides that "[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act."

Under the prior law, the ICC had general jurisdiction over water carrier transportation. Former 49 U.S.C. 10541. The areas the ICC specifically regulated included domestic water carrier licensing (former section 10922); rates and practices to ensure that they were reasonable and nondiscriminatory (former sections 10701 and 10741); tariffs (former section 10761); mergers, purchases, and acquisitions (former section 11343); and limitations on the common ownership or control by railroads of water carriers (former section 11321).

The prior law also contained statutory exemptions to economic regulation of water transportation. These exemptions pertained to bulk transportation (former section 10542); incidental water transportation (former section 10543); and certain miscellaneous exemptions (former section 10544).

As relevant here, the ICC promulgated regulations at 49 CFR parts 1070 and 1071 relating to the miscellaneous exemptions provision of former 49 U.S.C. 10544. The regulations at 49 CFR part 1070 pertain to exempt water carrier transportation under former section 10544(a)(1) within New York and Philadelphia.<sup>1</sup> The regulations at 49 CFR part 1071 concern exemptions for water carrier transportation by small craft; water carrier transportation of passengers between places in the United States through foreign ports; water contract carrier leasing of vessels to private water carriers; and water carrier transportation of property owned by a person owning substantially all of the voting stock of the carrier.<sup>2</sup>

<sup>1</sup> The section 1070 regulations were issued pursuant to section 303(g)(1) of the Interstate Commerce Act (the predecessor of former 49 U.S.C. 10544(g)(1)) in *Determination of the Limits of New York Harbor and Harbors Contiguous Thereto*, Ex Parte No. 140, 6 FR 1756 (1941) and *Determination of the Limits of Philadelphia Harbor and Harbors Contiguous Thereto*, Ex Parte No. 145, 6 FR 3597 (1941).

<sup>2</sup> These regulations were issued pursuant to the ICC's authority in former sections 10544(a)(2), 10544(b), 10544(e), and 10544(f)(1), respectively, in *Exemption of Water Carrier Operations*, 4 I.C.C. 2d. 699 (1988).

Under the ICCTA, residual jurisdiction is maintained over domestic water carriage "to ensure that this transportation would not be subjected to similar regulation under other laws." S. Rep. No. 196, 104th Cong., 1st Sess. 42 (1995). The general jurisdiction statement of former section 10541(a), with the exception of an introductory clause that had permitted regulation through other laws, is now found in new section 13521. *Id.* There is no longer active regulation of domestic water carriage except for rate reasonableness regulation in the noncontiguous domestic trade (section 13701) and tariff filing in the noncontiguous domestic trade (section 13702) with certain exceptions.<sup>3</sup> Thus, the ICCTA eliminated both the broader regulatory provisions of former sections 10922, 10701, 10761, 10741, 11343, and 11321 and the general exemptions from those provisions at former sections 10542-44.

Because the statutory basis (former section 10544) for the regulations at 49 CFR parts 1070 and 1071 has been eliminated, we will remove those regulations. We emphasize, however, that the removal of these exemptions does not signify a more active regulatory role regarding water carriage. As noted, there is no longer active regulation of domestic water carrier transportation (except for rate reasonableness and tariff regulation in the noncontiguous domestic trade).

Because this action merely reflects, and is required by, the enactment of the ICCTA and will not have an adverse effect on the interests of any person, this action will be made effective on the date of publication in the Federal Register.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Parts 1070 and 1071

Water carriers.

Decided: October 7, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,  
Secretary.

## **PARTS 1070-1071—[REMOVED]**

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the

<sup>3</sup> The exceptions are for bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste. Section 13702(a)(1).

Code of Federal Regulations is amended by removing parts 1070 and 1071.

[FR Doc. 96-26604 Filed 10-16-96; 8:45 am]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 961008281-6281-01; I.D. 091896B]

RIN 0648-AJ25

### **Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Monkfish Exempted Trawl Fishery**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to modify the regulations implementing the Northeast Multispecies Fishery Management Plan (FMP). This rule allows a year-round exempted trawl fishery for monkfish south of 40°10' N. lat. and east of 72°30' W. long., allows additional bycatch species in the Cultivator Shoal Whiting Fishery, and adds a prohibition to enhance enforcement of the exemptions. The intent of this action is to maximize fishing opportunities in a manner that is consistent with the conservation objectives of the FMP.

**EFFECTIVE DATE:** October 10, 1996.

**ADDRESSES:** Copies of Amendment 7 to the FMP, its regulatory impact review (RIR) and the regulatory flexibility analysis contained within the RIR, and its final supplemental environmental impact statement, are available upon request from Christopher Kellogg, Acting Executive Director, New England Fishery Management Council (Council), 5 Broadway, Saugus, MA 01906-1097. Copies of the Environmental Assessment (EA) supporting this action may be obtained from Dr. Andrew A. Rosenberg, Regional Administrator, NMFS, 1 Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** E. Martin Jaffe, Fishery Policy Analyst, 508-281-9272.

**SUPPLEMENTARY INFORMATION:** Regulations implementing Amendment 7 to the FMP became effective on July 1, 1996 (61 FR 27710, May 31, 1996). These regulations implemented a

comprehensive set of measures to control fishing mortality and rebuild the primary stocks of regulated multispecies. Amendment 7 contains a bycatch control measure that is applied in each of two specific regulated mesh areas: The Gulf of Maine/Georges Bank Regulated Mesh Area and the Southern New England (SNE) Regulated Mesh Area. A vessel may not fish in these areas unless it is fishing under a multispecies or scallop days-at-sea (DAS) allocation, is fishing with exempted gear, is fishing under the handgear 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, Northeast Region (Regional Administrator), after consultation with the Council, if the Regional Administrator 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. The Regional Administrator is also authorized to impose specific gear, area, seasonal, or other limitations appropriate to reduce bycatch of regulated species.

The Council submitted a request to establish an exempted trawl fishery for monkfish south of 40°10' N. lat. and requiring 8-inch (20.3 cm) mesh or larger in the codend. In addition, the Regional Administrator received other requests for monkfish fishery exemptions that differed in area or mesh size but were similar enough to the Council's request to consider and analyze jointly. The data subsequently analyzed consisted of available otter trawl and beam trawl sea sampling, vessel trip reports, and catch data. Consequently, in the regulatory text, references to trawl vessels refer to otter trawl and beam trawl vessels.

The Regional Administrator has also received and completed the data analysis for a request involving the existing Cultivator Shoal Whiting Fishery exemption. The request was submitted by an individual fisher seeking additional bycatch species that could be retained under the constraints of that program. The Regional Administrator also consulted with the Council on this request and found no opposition to adding the requested species.

Based on the analysis of the available data regarding regulated species bycatch for the gear, area, and time periods

specified in the aforementioned exemption requests, and any other relevant factors, the Regional Administrator has determined that the request for an exempted fishery submitted by the Council and the request for additional bycatch in the Cultivator Shoal Whiting Fishery submitted by a fisher meet the exemption requirements specified in § 648.80(a)(7) and (b)(4). The other requests for monkfish fishery exemptions were determined not to meet the requirements based on the EA, which is available upon request from the Regional Administrator.

This rule implements an exempted fishery for trawl vessels using a minimum mesh size of 8 inches (20.3 cm) in the codend, in the portion of the SNE Regulated Mesh Area south of 40°10' N. lat. Such vessels may retain monkfish as well as the existing bycatch species allowed for the SNE Regulated Mesh Area (§ 648.80(b)(3)). Vessels fishing in this exempted fishery are subject to net stowage requirements if mesh less than 8 inches (20.3 cm) is on board and may not possess regulated species.

Vessels enrolled in the existing Cultivator Shoal Whiting Fishery may retain, in addition to the currently allowed bycatch species, unlimited amounts of butterfish and mackerel and may retain red hake and dogfish, each in amounts not to exceed 10 percent, by weight, of all other species on board. The 10 percent limit is based on data that indicate that, when landed as bycatch these two species would not result in greater than 5 percent bycatch of regulated multispecies. To ensure that a directed fishery does not occur for dogfish and red hake in the Cultivator Shoal Whiting Fishery, and that the species are only bycatch, a 10 percent limit is imposed. Ten percent is consistent with previous bycatch limits.

A directed fishery for mackerel is unlikely to occur, as it is impractical with the gear used in this fishery. A directed fishery for butterfish is unlikely to occur, because the area is located in the northernmost extent of the species' range and, like mackerel, a directed fishery is impractical with the gear required under the program. Hence, no bycatch limits are necessary for these species. All four additional bycatch species are allowed under the existing time, area, and gear restrictions of the Cultivator Shoal Whiting Fishery exemption.

Finally, this rule adds a prohibition to the regulations to enhance enforceability, specifically referring to the exemptions authorized under § 648.80.

## Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and opportunity for comment under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss this management measure, as well as consultation with the Council on any request for exemption during a public Council meeting, provided full prior notice and opportunity for public comment to be made and considered, making additional opportunity for public comment unnecessary.

Because this rule relieves a restriction under 5 U.S.C. 553(d)(1), it is not subject to a delay in effective date.

This final rule has been determined to be not significant for purposes of E.O. 12866.

## List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 9, 1996.

Rolland A. Schmittin,  
Assistant Administrator for Fisheries,  
National Marine Fisheries Service.

For the reasons set out 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 (a)(43) is revised to read as follows:

### § 648.14 Prohibitions.

(a) \* \* \*

(43) Violate any of the provisions of § 648.80(a)(3), (4), (5), (8), (9), (b)(3) or (b)(5), or of any exempted fishery authorized by the Regional Director. A violation of any of these paragraphs is a separate violation.

\* \* \* \* \*

3. In § 648.80, paragraphs (a)(4)(i)(A) and (b)(2)(iii) are revised, and paragraph (b)(5) is added to read as follows:

### § 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

\* \* \* \* \*

(a) \* \* \*

(4) \* \* \*

(i) \* \* \*

(A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have a letter of authorization issued by the Regional Director on board and may not fish for, possess on board, or land any species of fish other than whiting, except for the

following, with the restrictions noted, as allowable bycatch species: Longhorn sculpin; squid; butterfish; mackerel; monkfish and monkfish parts, dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; and American lobster—up to 10 percent by weight of all other species on board or 200 lobsters, whichever is less.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) *Other gear and mesh exemptions.*

The minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine in use or available for immediate use, as described under § 648.23(b), by a vessel when not fishing under the Northeast multispecies DAS program and when fishing in the SNE regulated mesh area is specified under the exemptions set forth in paragraphs (b)(3), (b)(5), (c), (e), (h), and (i) of this section. Vessels that are not fishing in one of these

exemption programs, with exempted gear (as defined under this part), or under the scallop state waters exemption specified in § 648.54, or under a NE multispecies DAS, are prohibited from fishing in the SNE regulated mesh area.

\* \* \* \* \*

(5) *SNE Monkfish Fishery Exemption Area.* A trawl vessel may fish in the SNE Monkfish Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section. The SNE Monkfish Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10' N. lat., and bounded on the west by the eastern boundary of the Mid-Atlantic Regulated Mesh Area.

(i) *Requirements.* (A) A vessel fishing in the SNE Monkfish Fishery Exemption Area under this exemption, when not fishing under a NE multispecies DAS,

may not fish for, possess on board, or land any species of fish other than monkfish, except that such vessels may retain and land the bycatch species and amounts specified in paragraph (b)(3) of this section. Vessels fishing under this exemption may not possess regulated species unless fishing under the NE Multispecies DAS program.

(B) All trawl nets must comply with a minimum mesh size of 8 inches (20.3 cm) square or diamond mesh applied throughout the codend for at least 45 continuous meshes forward of the terminus of the net.

(C) All nets with a mesh size smaller than the minimum mesh size specified in paragraph (b)(5)(i)(B) of this section must be stowed in accordance with one of the methods described under § 648.23(b).

(ii) [Reserved]

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