

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

[Docket No. 951116270-5308-02; I.D. 102896B]

Fisheries of the Northeastern United States; Summer Flounder Fishery

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

ACTION: Commercial quota harvest; Closure of the exclusive economic zone (EEZ).

SUMMARY: NMFS issues this notification to announce that the summer flounder commercial quota available to the State of Maryland has been harvested and to announce the closure of the summer flounder fishery in the EEZ. Accordingly, vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Maryland and no commercial vessel may fish for or possess summer flounder in the EEZ for the remainder of calendar year 1996. Regulations governing the summer flounder fishery require publication of this notification to advise Maryland that the State's quota has been harvested and to advise vessel and dealer permit holders that no commercial quota is available for landing summer flounder in that state. Also, regulations governing this fishery require that once the commercial fisheries for summer flounder are closed in all states, such as is now the case, the Regional Administrator close the EEZ to fishing for summer flounder for the remainder of the calendar year.

EFFECTIVE DATE: December 27, 1996, through December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Regina Spallone, Fishery Policy Analyst, 508-281-9221.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648, Subparts A and G. The regulations require annual specification of a commercial quota that is apportioned among the states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in

§ 648.100. Amendment 7 to the Fishery Management Plan for the Summer Flounder Fishery (November 24, 1995, 60 FR 57955) revised the fishing mortality rate reduction

schedule for summer flounder, and the revised schedule was the basis for establishing the 1996 quota. The total commercial quota for summer flounder for the 1996 calendar year was adopted to achieve the appropriate fishing mortality rate of 0.41 for 1996, and is set equal to 11,111,298 lb (5,040,000 kg) (January 4, 1996, 61 FR 291). The percent allocated to vessels landing summer flounder in Maryland is 2.03910 percent or 226,570 lb (102,770 kg).

Section 648.101(b) requires the Regional Administrator, Northeast Region, NMFS, (Regional Administrator) to monitor state commercial quotas and to determine when a state commercial quota is harvested. The Regional Administrator is further required to publish a notice in the Federal Register advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined that the 1996 summer flounder quota allocation for vessels landing in Maryland has been harvested.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours December 27, 1997, through December 31, 1997, further landings of summer flounder in Maryland by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1996 calendar year, unless additional quota becomes available through a transfer and is announced in the Federal Register. Federally permitted dealers are also advised that they may not purchase summer flounder from Federally permitted vessels that land in Maryland for the remainder of the calendar year, or until additional quota becomes available, effective on December 27, 1996, through December 31, 1996.

Furthermore, the closure of the State of Maryland to landings means that the quota allocated to all of the states for 1996 has been attained and all of those states have been closed by virtue of either state or Federal action. As required by § 648.101(a), this notification closes the summer flounder fishery in the EEZ to harvesting or otherwise possessing summer flounder by commercial vessels for the remainder of the 1996 calendar year. During the closure, harvesting or otherwise

possessing summer flounder in the EEZ is prohibited as authorized under § 600.725(a) and (k).

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: December 20, 1996.

Gary C. Matlock,

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

[FR Doc. 96-32890 Filed 12-20-96; 4:26 pm]

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50 CFR Part 648

[Docket No. 960216032-6352-08; I.D. 112196D]

RIN 0648-AH70

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Small Mesh Area 2

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 modifies the size of Small Mesh Area 2, which is an exempted small mesh fishing area located in the Gulf of Maine/Georges Bank (GOM/GB) Regulated Mesh Area, by removing the northernmost portion from the list of exempted fisheries. The intent of this action is to reduce the bycatch of regulated multispecies in Small Mesh Area 2 so that it is consistent with the conservation objectives of the fishery.

EFFECTIVE DATE: January 1, 1997.

ADDRESSES: Copies of Amendment 7 to the FMP, its regulatory impact review (RIR), 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: Peter W. Christopher, Fishery Management Specialist, 508-281-9288.

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. Among the specific measures is a bycatch control measure that prohibits prosecution of any fishery for which NMFS has not determined the bycatch level of regulated multispecies.

The bycatch control restriction is applied on a fishery-specific basis in each of two regulated mesh areas: The GOM/GB 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 allocation, fishing with exempted gear, fishing under the handgear or party/charter permit restrictions, or fishing in an exempted fishery.

The procedure for adding or removing exempted fisheries is described in § 648.80 of the regulations governing the FMP. These regulations state that additional fisheries may be exempted if, after consultation with the New England Fishery Management Council, the Regional Administrator, Northeast Region, NMFS, (Regional Administrator) finds that there are sufficient data or information to determine that the percentage of the bycatch of regulated multispecies is, or can be reduced to, less than 5 percent, by weight, of the total catch, and that such exemption will not jeopardize fishing mortality objectives. This section also authorizes the Regional Administrator to remove or modify existing exempted fisheries by imposing specific gear, area, seasonal, or other limitations appropriate to reduce bycatch of regulated multispecies.

On May 15, 1995, the Regional Administrator established a seasonal small mesh fishing area within part of the GOM/GB Regulated Mesh Area (60 FR 26841, May 19, 1995). This small mesh fishing area consists of two subareas, Small Mesh Areas 1 and 2, and was established on the basis that fishing in these areas was not likely to exceed the 5 percent bycatch allowance of regulated multispecies.

Subsequently, the Maine Fisheries Cooperative Association requested that the Regional Administrator reexamine the establishment of Small Mesh Area 2, since it felt that small mesh vessels were causing unacceptable damage to the resource. The Regional Administrator presented the industry request to the Council and, despite earlier data showing that fishers using small mesh in Small Mesh Area 2 during January

through June exhibited less than a 5 percent bycatch of regulated multispecies, several members of the Council insisted that the fishery exceeded the maximum 5 percent bycatch of regulated multispecies. The Council concurred with the industry request that the Regional Administrator reexamine the area and stated it would support further restrictions if the Regional Administrator found that the bycatch was equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption might jeopardize meeting fishing mortality objectives.

After analyzing the available data and considering the gear used, the area where the fishery occurred, and other relevant factors, the Regional Administrator determined that the top third (northernmost portion) of Small Mesh Area 2 does not meet the exemption qualification requirements specified in § 648.80(a)(7). This area is geophysically distinct from the lower two-thirds of Small Mesh Area 2 in that it is in shallower water. The elimination of the northern portion of the area is consistent with the available data, which show that fishing activity in the northern portion of Square Mesh Area 2 has exceeded the allowable bycatch of regulated multispecies. Eligible vessels may continue to participate in the fishery in the lower portion of Small Mesh Area 2 from January through June.

Classification

The Regional Administrator determined that this final rule is necessary for the conservation and management of the fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive prior notice and opportunity for comment under 5 U.S.C. 553(b)(B). Provisions under the FMP give the Regional Administrator authority to add, delete, or modify exempted fisheries based on the percentage of regulated species caught. Public meetings held by the Council to discuss this modification to Small Mesh Area 2, provided prior notice and opportunity for public comment to be made and considered, making additional notice and opportunity for public comment unnecessary. Further, the AA finds good cause to waive the 30-day delay in effectiveness of this regulation under 5 U.S.C. 553(d)(3), because fishing in the area when it opens January 1 with small mesh would jeopardize the conservation objectives of the fishery. Specifically, the FMP's goals to reduce regulated

multispecies bycatch would be jeopardized. NMFS will employ notification methods to fishery participants and the affected public beyond notification by this Federal Register notice (e.g., by letter, fax) so that they will not unknowingly fish in violation of the area modification.

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: December 23, 1996.

Charles Karnella,

Acting 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 § 648.80, paragraph (a)(8)(i) is revised to read as follows:

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

* * * * *

(a) * * *

(8) *Small Mesh Area 1/Small Mesh Area 2.* (i) Vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size from July 15 through November 15 when fishing in Small Mesh Area 1 and from January 1 through June 30 when fishing in Small Mesh Area 2, except as specified in paragraph (a)(8)(ii) of this section. A vessel may not fish for, possess on board, or land any species of fish other than: Butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following allowable bycatch species, with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, 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. These areas are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Director upon request):

SMALL MESH AREA 1

Point	N. Lat.	W. Long.
SM1	43°03'	70°27'
SM2	42°57'	70°22'
SM3	42°47'	70°32'
SM4	42°45'	70°29'
SM5	42°43'	70°32'
SM6	42°44'	70°39'
SM7	42°49'	70°43'
SM8	42°50'	70°41'
SM9	42°53'	70°43'
SM10	42°55'	70°40'
SM11	42°59'	70°32'
SM1	43°03'	70°27'

SMALL MESH AREA 2

Point	N. Lat.	W. Long.
SM13	43°03.7'	70°00'
SM14	43°10.1'	69°43.3'
SM15	42°49.5'	69°40'
SM16	42°41.5'	69°40'
SM17	42°34.9'	70°00'
SM13	43°03.7'	70°00'

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