

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

[Docket No. 120813331-2562-01]

RIN 0648-XC164

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Proposed Rule to Implement a Targeted Acadian Redfish Fishery for Sector Vessels

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action would expand on a previously approved sector exemption by allowing groundfish sector trawl vessels to harvest redfish using nets with codend mesh as small as 4.5 inches (11.4 cm). In addition, this action proposes to implement an industry-funded at-sea monitoring program for sector trips targeting redfish with trawl nets with mesh sizes that are less than the regulated mesh size requirement.

DATES: Written comments must be received on or before November 23, 2012.

ADDRESSES: A copy of the accompanying environmental assessment and the final draft of Component 2 of the REDNET project are available from the NMFS Northeast Regional Office: John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also accessible via the Federal eRulemaking Portal: <http://www.regulations.gov>.

You may submit comments, identified by NOAA-NMFS-2011-0264, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.
- *Fax:* (978) 281-9135, Attn: William Whitmore.

- *Mail:* Paper, disk, or CD-ROM comments should be sent to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: "Comments on Redfish Rule."

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change.

No comments will be posted for public viewing until after the comment period has closed. 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.

Once submitted to NMFS, copies of addenda to FY 2012 sector operations plans detailing industry-funded monitoring plans, and the supplemental environmental assessment (EA), will be available from the NMFS NE Regional Office at the mailing address above.

FOR FURTHER INFORMATION CONTACT: William Whitmore, Fishery Policy Analyst, phone (978) 281-9182, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:**Background***1. Exemption from 6.5-inch (16.5-cm) Codend Mesh Size so Vessels Can Target Redfish*

Regulations from Amendment 16 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) allow a sector to request exemptions from Federal fishing regulations through its annual operations plan (for more information on sector operations plans and regulatory exemptions, see the fishing year 2012 sector operations plan proposed rule, 77 FR 8780, February 15, 2012).

In their 2011 and 2012 operations plans, several sectors in the NE multispecies fishery requested an exemption from NE multispecies codend mesh-size restrictions so they could use 5-inch (12.7-cm) codend mesh to target redfish, a fully rebuilt groundfish stock. These requests were denied because, at that time, we were waiting for results from a collaborative redfish research project that was looking at redfish bottom trawl fishing using small-mesh nets. The project, known as REDNET, is comprised of a group of researchers, commercial fishermen, and other interested stakeholders who are working to further improve and develop the redfish fishery. Sectors also requested an exemption to use 6-inch (15.2-cm) mesh to target redfish in their 2012 operations plans. This exemption was approved, and an explanation is provided below.

On December 1, 2011, following the completion of a portion of the REDNET project, the Sustainable Harvest Sector and the Northeast Fishery Sectors submitted an exemption request to us to use 4.5-inch (11.4-cm) codend mesh to target redfish in a portion of the Gulf of Maine, east of the year-round Western Gulf of Maine Closure Area. The sectors submitted preliminary results from the REDNET project to justify their exemption request. Sectors are normally required to submit their exemption requests by September 1 to ensure that any necessary analyses can be included in the required environmental assessment (EA) in time for fishing operations to start at the beginning of the following fishing year (i.e., May 1). Due to the late timing of this 4.5-inch (11.4-cm) codend mesh exemption request, we were unable to include any analyses to accompany the rulemaking for the fishing year 2012 sector operations plans. We explained to the requesting sectors that the initial study results from the REDNET research project showed some potential that 4.5-inch (11.4-cm) codend mesh could be used to successfully target redfish with minimal bycatch of other fish species. But we also commented that the study would need to be completed and reviewed prior to the exemption being considered by NMFS. We also informed the sectors that the study results should be sent through the New England Fishery Management Council's (Council) Research Steering Committee for review.

Preliminary findings from Component 2 (of 6) of the REDNET report were presented to the Council on February 1, 2012. Following the presentation, the Council requested that NMFS expedite approval of a sector exemption allowing vessels to more easily target redfish. In response to the Council's request, and because we determined that a reduction to 6.0-inch (15.2-cm) codend mesh represented a minor change, sectors were granted an exemption from mesh size restrictions for fishing year 2012, and are now able to utilize 6.0-inch (15.2-cm) codend mesh to target redfish (see the final rule approving sector operations plans (77 FR 26129; May 2, 2012)). As proposed by the sectors, vessels fishing with 6.0-inch (15.2-cm) codend mesh size on the exemption trips are required to have a NMFS-certified observer or at-sea monitor on board. In addition, vessels targeting redfish under this exemption must notify their sector manager that they intend to target redfish and must submit daily catch reports to their sector manager.

A report summarizing the results of Component 2 of the REDNET project was completed in April 2012. Although the results were encouraging, the report lacked detail with regard to the actual design of the gear tested, the operational procedures vessels used when targeting redfish and what a "significant" amount of minimal bycatch of other fish species is. Also, Component 2 of the REDNET project was considered exploratory/demonstration fishing and was not a designed study.

In a May 21, 2012, letter to the Council, we requested that the Council's Research Steering Committee review the summary report mentioned above at its June 25, 2012, meeting and provide comments on the report, as well as on the feasibility for granting a regulatory exemption to allow sector vessels to use codend mesh as small as 4.5 inches (11.4-cm) to target redfish. The Research Steering Committee reviewed the REDNET report and identified concerns similar to those listed above. The Committee recommended that an exemption allowing vessels to use 4.5-inch (11.4-cm) mesh codend to target redfish be approved annually based on catch information from the previous year.

As explained above, exemptions are normally proposed, reviewed, and approved through the final rule implementing the annual sector operations plans; however, sectors can request exemptions at any time within the fishing year. Because the Council has requested that NMFS pursue exemptions allowing sector vessels to more efficiently target redfish, and the Research Steering Committee has endorsed the approval of a 4.5-inch (11.4-cm) mesh exemption, this action proposes a 4.5-inch (11.4-cm) codend trawl mesh exemption for potential mid-year implementation. All measures proposed for this exemption are also being extended to the currently approved 6-inch (15.2-cm) codend mesh exemption.

To aid in identifying trips targeting redfish with small-mesh nets, all sector trawl vessels that intend to target redfish with codend mesh greater than or equal to 4.5 inches (11.4-cm) but less than 6.5 inches (16.5-cm) (the required regulated codend mesh size for the area fished), would be required to have an observer or at-sea monitor on board, and would be required to submit a trip start hail prior to leaving port. Sector vessels intending to utilize this exemption would also be required to submit a trip start hail identifying the trip as one that will target redfish under the exemption.

To ensure that this exemption does not negatively impact fish stocks, we are

proposing two catch thresholds that, if exceeded by a sector, could, taking into account the circumstances, result in the NMFS Northeast Regional Administrator rescinding approval of the exemption for the sector in question. To help ensure that vessels do not direct on other species of fish while using small mesh, monthly catch amounts under this exemption must be comprised of at least 80 percent redfish. Additionally, to help mitigate catches of sub-legal sized groundfish, total groundfish discards (excluding redfish discards), may not exceed 5 percent of all groundfish caught when directing on redfish with small-mesh nets. These thresholds were determined to be consistent with catch information from REDNET trips. The final report for Component 2 of the REDNET project is available for review and the analyses for these thresholds are included in the accompanying EA (see **ADDRESSES** section). This rule also proposes that the Regional Administrator could further adjust these two thresholds, if necessary, to help ensure that vessels are directing on redfish and catching minimal amounts of undersized groundfish.

Sector catch utilizing this exemption would be analyzed monthly with a cumulative calculation. If a sector exceeds either of the thresholds, it would have 1 month to correct this overage. If, after 1 month, the sector has still exceeded either threshold, the exemption for that particular sector could be revoked by the Regional Administrator for the remainder of the fishing year through a notice published consistent with the Administrative Procedure Act. An interim reporting process would be developed to monitor catch under this exemption. Because of these catch thresholds, a catch monitoring program, and the requirement to submit a trip start hail, sector vessels would no longer be required to submit daily catch reports they currently submit when utilizing the 6.0-inch (15.2-cm) codend mesh exemption. The reporting mechanisms used for submitting catch data may be adjusted at any time if deemed necessary by the Regional Administrator.

In addition, the Regional Administrator would reserve the right to revoke this exemption if it is determined that the exemption is negatively impacting spawning fish, rebuilding efforts for any groundfish stocks, or populations of stocks that the current minimum codend mesh size of 6.5 inches (16.5-cm) was intended to protect.

Vessels requesting this exemption have asked that they be allowed to fish under this exemption with small mesh and fish with regulated codend mesh nets for other groundfish stocks on the same trip. Supporters of this request claim that vessels need this additional flexibility on a trip to maximize profits, arguing that catch information could be linked to the mesh size fished by observers or at-sea monitors. NMFS has some concern about vessels fishing multiple mesh sizes on the same trip. Both NMFS' Office of Law Enforcement and the U.S. Coast Guard have commented that allowing vessels to fish multiple mesh sizes on the same trip undermines the ability to monitor the catch composition that corresponds with each mesh size fished, and to ensure that groundfish are not targeted with undersized mesh. Because observers and at-sea monitors do not observe every haul (fishing operations may occur while they are sleeping), exact catch from these hauls cannot be identified and included in catch thresholds. Also, during unmonitored times, vessels have an opportunity to either illegally discard fish caught with smaller mesh in an effort to remain within the catch thresholds or target groundfish with the smaller mesh nets. Because adequate catch monitoring is necessary to apply the proposed bycatch thresholds and to differentiate catch between small and standard groundfish mesh sizes, we are expecting that the majority of hauls be recorded by an at-sea monitor or observer on a trip targeting redfish. If the majority of haul backs are not observed, the Regional Administrator could revoke the exemption.

Despite the concerns described above, we are proposing that trawl vessels targeting redfish using nets of codend mesh less than the regulated mesh size be allowed; however, we are specifically requesting public comment on this issue. If this flexibility measure is approved, the thresholds would only be applied to portions of the trip when vessels are trawling with small mesh.

2. Request To Develop Industry-Funded At-Sea Monitoring Programs for Trips Targeting Redfish

Currently, any sector vessel targeting redfish under a mesh size exemption is required to have an at-sea monitor or observer on board. Some sectors are concerned that their ability to utilize this exemption is restricted because vessels have to wait to be randomly selected for a federally funded observer or at-sea monitor. As a result, several sectors have asked to work with us to develop an industry-funded at-sea

monitoring program so they could take more trips targeting redfish. After considering the request, we have determined that we could support a small-scale industry-funded program. Limitations to the size of the program are due to a limited pool of available at-sea monitors and observers.

Specifically, 4 sectors (26 vessels) have expressed interest in funding additional at-sea monitoring coverage for trips targeting redfish. Here, NMFS proposes that any sector interested in developing an industry-funded at-sea monitoring program be required to develop a monitoring plan and include this plan in its operations plan. The monitoring plan would be reviewed by NMFS, and if it is determined that the plan is sufficient, it would be approved along with the rest of the sector's operations plan. For fishing year 2012, any approved at-sea monitoring program would be included as an addendum to the sector's operations plan.

NMFS also proposes that a vessel in a sector that has an approved industry-funded at-sea monitoring program must notify NMFS of its intent to take a small-mesh trip targeting redfish at least 48 hours in advance. Instead of calling into the Pre-Trip Notification System currently established for sector vessels, the vessel would call into a separate system when intending to fish under the small-mesh exemption. Vessels enrolled in a sector that has an approved industry-funded monitoring program would forfeit the opportunity to have a federally funded observer or at-sea monitor assigned for coverage. In other words, any vessel in a sector that has an approved industry-funded program and that elects to target redfish under the redfish exemption would be required to pay for at-sea monitoring coverage for that trip. Once a sector has an approved at-sea monitoring program for targeted redfish trips, the sector may not opt-out of the program until the following fishing year.

Alternatively, vessels could elect to target redfish under the small-mesh exemption only when randomly assigned a federally funded observer or at-sea monitor. Importantly, under this proposal, all groundfish catch from a declared small-mesh redfish trip would be debited against the sector's allocation. Catch from small-mesh redfish trips would not be factored into a sector's overall discard rate, regardless of whether the monitor is federally or industry funded. Because normal groundfish trips and targeted redfish trips may exhibit different behavior and/or catch rates, the discarded fish should be treated differently based on the trip that is taken.

Classification

The NMFS Assistant Administrator has made a preliminary determination that 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 action is exempt from review under Executive Order (E.O.) 12866.

This proposed rule would expand on a previously approved regulatory exemption for NE multispecies sector trawl vessels by allowing them to target redfish with codend mesh nets as small as 4.5 inches (11.4-cm). In addition, this action would allow sectors to develop and fund their own at-sea monitor program for trips targeting redfish.

Public comments on the proposed rule must be received by the end of the comment period. All comments received by the end of the comment period will be considered in the approval/disapproval decision. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

Pursuant to section 605 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–12, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this action, if implemented, would not have a significant economic impact on a substantial number of small entities; therefore, an Initial Regulatory Flexibility Analysis (IRFA) has not been prepared. The factual basis for this determination is explained below.

There are two objectives of this proposed action. The first is to authorize a regulatory exemption that would allow NE multispecies sector vessels to fish bottom trawls with codend mesh sizes greater or equal to 4.5 inches (11.4-cm) but less than 6.5 inches (16.5-cm) when targeting redfish. The second is to allow sectors to develop an industry-funded at-sea monitoring program for trips targeting redfish. All sector vessels could potentially utilize the mesh-size exemption. Currently, approximately 4 sectors, or 26 of 850 sector vessels signed into the 2012 fishing year sector program, have expressed interest in developing an industry-funded at-sea monitoring program.

Because of the limited scope of this proposed rule, the impacts of the preferred alternatives would only directly affect a small number of small businesses. As stated above, four sectors

have expressed interest in funding an at-sea monitoring program. The SBA size standard for small fishing entities is \$4 million in gross sales. No groundfish entity (vessel) exceeds this threshold. Therefore, all permitted and participating vessels in the groundfish fishery are considered to be small fishing entities. It is anticipated that the approximately 26 vessels from these sectors that have expressed interest will target redfish with small mesh on 102 trips. This represents roughly 6 percent of active groundfish vessels and 0.7 percent of the groundfish trips taken by those vessels. Importantly, the proposals in this rule are strictly voluntary; these actions were requested by fishermen to enhance fishing opportunities, improve operational flexibility, and increase profits.

The RFA requires Federal agencies to consider disproportionality and profitability to determine the significance of regulatory impacts. If approved, all sector vessels would have the same opportunity to utilize smaller codend mesh to target redfish. Accordingly, no small entities would be disproportionately impacted in relation to large entities.

Allowing sector vessels to fish with smaller mesh while targeting redfish would increase fishing efficiency and, therefore, revenue. Due to limits in Federal funding for observer coverage, sector vessels are unable to fish for redfish with small mesh as frequently as they would like, because observers or at-sea monitors are not available to monitor trips. Allowing sectors to pay for additional at-sea monitoring, as they requested, would increase operational flexibility by allowing vessels to take more trips. The catch from these additional trips would increase profits. These provisions are not restrictions, but requests by sectors that could improve efficiencies and increase profits. Therefore, the profitability criterion is not met because no reductions in profit are expected for any small entities.

Because this proposal would only provide economic benefits to the affected small entities, there is no significant economic impact to a substantial number of small entities. No assumptions are necessary to conduct the analyses in support of this conclusion. As a result, an IRFA is not required and none has been prepared.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

This proposed rule contains no collection-of-information requirement subject to the Paperwork Reduction Act.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on

proposed sector operations plan addenda.

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

Dated: November 1, 2012.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2012-27245 Filed 11-7-12; 8:45 am]

BILLING CODE 3510-22-P