

(2006 finding) to list the Mono Basin area population of greater sage-grouse as a DPS under the Act. On August 23, 2007, the November 2005 petitioners filed a Complaint challenging the Service's 2006 finding. Upon review of the Complaint, the Service determined that it would revisit its 2006 finding. The Service entered into a settlement agreement with the petitioners on February 25, 2008. Under the terms of the settlement agreement, the Service agreed to undertake a voluntary remand of the 2006 petition finding, and to submit for publication in the **Federal Register** a new 90-day finding by April 25, 2008. The agreement further stipulates that if the new 90-day finding is positive, the Service will undertake a status review of the Mono Basin population of the greater sage-grouse and submit for publication in the **Federal Register** a 12-month finding by April 24, 2009. This notice constitutes our new 90-day finding.

### Finding

Based on our reconsideration of the information provided in the petitions, and in accordance with recent applicable court decisions pertaining to 90-day findings, we find that they present substantial scientific information indicating that listing the Mono Basin area population of greater sage-grouse may be warranted. Our process for making this 90-day finding under section 4(b)(3)(A) of the Act is limited to a determination of whether the information in the petition presents "substantial scientific and commercial information," which is interpreted in our regulations as "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). Therefore, we are initiating a status review to determine if listing the population is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding the Mono Basin area population of greater sage-grouse.

It is important to note that the "substantial information" standard for a 90-day finding is in contrast to the Act's "best scientific and commercial data" standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough status review of the species, which is conducted following a positive 90-day finding.

Because the Act's standards for 90-day and 12-month findings are different, as described above, a positive 90-day finding does not mean that the 12-month finding also will be positive.

The Service is already in the process of conducting a status review of the greater sage-grouse across the entire range of the species (February 26, 2008; 73 FR 10218), and elsewhere in today's **Federal Register** we are publishing a notice that extends our request for information on that status review to June 27, 2008. In today's **Federal Register** we are also publishing a separate notice of a 90-day finding and initiation of a status review for the western sage-grouse (*C. u. phaios*). Consequently, at this time the Service has formally initiated three status reviews involving the greater sage-grouse, and the respective notices in today's **Federal Register** each request that information be submitted by June 27, 2008, for each status review. Information submitted for any one of these status reviews that is relevant to the others need not be submitted more than once. Because the status review of the greater sage-grouse that we initiated on February 26, 2008 (73 FR 10218) covers the entire range of the species, it encompasses the Mono Basin population and the western subspecies of the greater sage-grouse. It is our intention to address the taxonomy and status of the Mono Basin area population, including information received in response to this notice, within the rangewide status review of the greater sage-grouse. Further, because the three status reviews are somewhat interrelated, we anticipate that any interrelated aspects will be taken into account in our ultimate decisions.

If we determine that listing the Mono Basin area population of greater sage-grouse is warranted, we intend to propose critical habitat to the maximum extent prudent and determinable at the time we prepare a proposed listing rule.

### Author

The primary author of this notice is the staff of the Nevada Fish and Wildlife Office (see **ADDRESSES**).

### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 18, 2008.

**Kenneth Stansell,**

*Acting Director, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 080123074-8572-01]

RIN 0648-AW31

### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Scallop Dredge Exemption Areas; Addition of Monkfish Incidental Catch Trip Limits

**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 create three Scallop Exemptions that are identical to the current scallop exemptions, except for the addition of an incidental monkfish catch limit. These new scallop exemptions would be restricted to vessels issued either a General Category Atlantic sea scallop permit or a limited access Atlantic sea scallop permit (when not fishing under a scallop days-at-sea (DAS) limitation), when fishing for scallops with small dredge gear (combined width not to exceed 10.5 ft (3.2 m)). Vessels that land an incidental catch of monkfish within these new scallop exemptions would be required to possess a valid monkfish Incidental Catch permit. The intent of this action is to allow small scallop dredge vessels to land monkfish that they are currently discarding consistent with the bycatch reduction objectives of the FMP and National Standard 9 of the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** Comments must be received no later than 5 p.m., eastern daylight time, on May 14, 2008.

**ADDRESSES:** You may submit comments, identified by RIN 0648-AW31, 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: Timothy Cardiasmenos
- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. Please write on the envelope: Comments on the Addition of

a Monkfish Incidental Catch Limit within the Existing Scallop Exemptions (RIN 0648-AW31).

Instructions: 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. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Timothy Cardiasmenos, Fishery Management Specialist, (978) 281-9204, FAX (978) 281-9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

Current regulations, implemented under Framework Adjustment 9, and expanded under Amendment 7 to the FMP, contain a NE 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. This measure prohibits vessels from fishing in these areas unless they are fishing under a NE multispecies or a scallop DAS allocation, are fishing with exempted gear, are fishing under the Small Vessel Handgear (A or B) or Party/Charter permit restrictions, or are 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 Administrator, Northeast Region, NMFS (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, on average, less than 5 percent per trip, by weight on board, and that such exemption will not jeopardize the fishing mortality objectives of the FMP.

At present, there are three scallop exemptions for scallop dredge vessels when fishing under the scallop General Category permit, or under the limited access scallop permit when not fishing under a scallop DAS. They are referred to as: The GOM Scallop Dredge Exemption Area, established in Framework 21 (February 1997); the SNE Scallop Dredge Exemption Area, established in Amendment 13 (April

2004); and the Great South Channel (GSC) Scallop Dredge Exemption Area, established by the authority of the RA (August 2006). On November 2, 2007, a request was submitted on behalf of the General Category scallop fleet to establish an incidental monkfish catch limit, of 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip, consistent with the Monkfish FMP, within the three scallop exemptions. This rule proposes three new exemptions, identical to the existing scallop exemption areas, described at § 648.80(a)(11)(i)(A), (a)(18)(ii)(A), and (b)(11)(ii)(A), with the addition of a 50-lb (23-kg) tail weight or 166-lb (75-kg) whole weight incidental monkfish catch limit per trip, provided the fishery does not jeopardize the fishing mortality objectives of the FMP.

The data analyzed for this action consists of observer data from both General Category and limited access scallop dredge trips within the GOM, GSC, and SNE scallop exemption areas from 2001 to 2007. A total of 85 General Category trips and 198 limited access trips were observed during that period. Bycatch rates were calculated on a trip-by-trip basis by adding up the total weight of NE 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 NE multispecies. The percent bycatch of regulated NE multispecies in the exemption areas ranged from 0 to 10.33 percent in General Category trips (N=85), and 0 to 8.6 percent in limited access trips (N=198). The mean percent bycatch of regulated NE multispecies by weight of the total catch across all areas in the General Category and limited access fisheries was less than 1 percent. From a total of 85 observed General Category trips into the exemption areas, the mean percent bycatch was 0.97 percent of the total catch. From the 198 observed limited access scallop dredge trips into those same areas, the mean percent bycatch was estimated to be 0.93 percent of the total catch.

Monkfish discards were analyzed within this same dataset. Monkfish discards within the current exemption areas ranged from 0 to 611 lb (0–277 kg) tail weight per trip in the General Category fishery (N=85). From a total of 85 General Category trips into the current exemption areas, the mean monkfish discard was 48.1 lb (22 kg) tail weight per trip, and the mean trip was 0.44 days (11 hr). The proposed level of monkfish incidental bycatch within the scallop exemption areas is 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip. This level of monkfish

fishing mortality from scallop dredge vessels is within the allowable limit specified under Framework 4 of the Monkfish FMP (October 22, 2007, i.e., 150 lb (68 kg) tail weight or 498 lb (226 kg) whole weight per trip).

*GSC Scallop Dredge Exemption Area*

From a total of 38 observed General Category trips into the current GSC Scallop Exemption, the mean monkfish catch per trip was 28.98 lb (13 kg) tail weight, and only 1 trip discarded more than 150 lb (68 kg) tail weight. Monkfish bycatch ranged between 0–302.71 lb (0–137 kg) tail weight per trip.

*GOM Scallop Dredge Exemption Area*

From a total of 29 observed General Category trips into the GOM Scallop Exemption, the mean monkfish catch per trip was 40.6 lb (18 kg) tail weight, and only 3 trips discarded in excess of 150 lb (68 kg) tail weight. Monkfish bycatch ranged between 0–425 lb (0–193 kg) tail weight per trip.

*SNE Scallop Dredge Exemption Area*

From a total of 18 observed General Category trips into the SNE Scallop Exemption, the mean monkfish catch per trip was 100.5 lb (46 kg) tail weight, and only 3 trips discarded more than 150 lb (68 kg) tail weight. Monkfish bycatch ranged between 0–611 lb (277 kg) tail weight per trip.

The observed level of monkfish discard within the current scallop exemptions, as detailed above, is consistent with the proposed monkfish incidental catch limits. This level of monkfish fishing mortality in the General Category scallop dredge fleet was previously analyzed within Framework 4 to the Monkfish FMP (October 22, 2007). Since the data indicate that the proposed monkfish incidental catch limit is currently being discarded, no change in fishing behavior is expected, and it is not anticipated that there will be an increase in regulated species bycatch. The proposed scallop exemptions, identical to the existing scallop exemptions with the addition of an incidental catch of monkfish, are therefore expected to meet both the bycatch and the fishing mortality requirements of the regulations.

**Proposed Measures**

*GOM, SNE, and the GSC Scallop Dredge Exemption Areas*

Based on the analysis of available data, the bycatch of regulated species by scallop dredge vessels is less than, on average, 5 percent per trip, by weight on board, within the exemption areas and the monkfish bycatch is consistent with

the incidental catch level analyzed within the Monkfish FMP. The data analysis shows that, on average, scallop dredge vessels are currently discarding 48.1 lb (22 kg) tail weight of monkfish per trip within the three exemption areas, a level consistent with the proposed level of monkfish incidental catch (50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip). In addition, there are no data to suggest that modifying the present exemptions to accommodate a monkfish incidental catch at 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip would cause a shift in effort towards monkfish or NE multispecies. Therefore, the RA has determined that a monkfish incidental catch of 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight per trip, within the GOM, SNE, and GSC Scallop Exemptions, meets the exemption requirements specified in § 648.80(a)(8), and would not be inconsistent with the monkfish fishing mortality goals of the Monkfish FMP.

Therefore, this rule proposes to create three scallop exemptions (GOM, SNE, and GSC), identical to the existing scallop exemptions, with the addition of a 50-lb (23-kg) tail weight or 166-lb (75-kg) whole weight per trip monkfish incidental catch possession limit. These new scallop exemptions would be restricted to vessels issued either a General Category Atlantic sea scallop permit or a limited access sea scallop permit (when not fishing under a scallop DAS limitation), when fishing with small dredges (combined width not to exceed 10.5 ft (3.2 m)). Vessels that land an incidental catch of monkfish within these new scallop exemptions would be required to possess, and have onboard, a monkfish Incidental Catch permit.

#### 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.

An Initial Regulatory Flexibility Analysis was not prepared, pursuant to 5 U.S.C. 603, as it has been determined that this rulemaking would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. 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 three scallop exemptions for General Category scallop vessels, or limited access scallop vessels not fishing on a DAS allocation, identical to the current scallop exemptions, with the addition of an incidental catch of monkfish. This action was categorically excluded under the National Environmental Policy Act, as an action that includes minor technical additions, corrections, or changes to an FMP.

The economic impacts of the proposed action are expected to be minimal and positive. This action would allow the General Category scallop fleet, while fishing under a scallop exemption, to land up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip, in addition to scallops. This would allow the fleet to utilize these resources in a manner consistent with the bycatch and mortality objectives of the FMP. The proposed incidental catch of monkfish is small, and as such is expected to minimally increase revenues for scallop dredge vessels fishing under the General Category permit provisions.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 23, 2008.

**Samuel D. Rauch III,**

*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 § 648.80, paragraphs (a)(8)(iv) introductory text, (a)(11)(i)(A), (a)(18)(ii)(A), and (b)(11)(ii)(A) are revised to read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(8) \* \* \*

(iv) Unless otherwise specified within the exempted fisheries authorized under this paragraph (a)(8), incidental catch is restricted, at a minimum, to the following:

\* \* \* \* \*

(11) \* \* \*

(i) \* \* \*

(A) A vessel fishing in the GOM Scallop Dredge Fishery Exemption Area specified in this paragraph (a)(11) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

\* \* \* \* \*

(18) \* \* \*

(ii) \* \* \*

(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 and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

\* \* \* \* \*

(b) \* \* \*

(11) \* \* \*

(ii) \* \* \*

(A) A vessel fishing in the SNE Scallop Dredge Exemption Area may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops and up to 50 lb (23 kg) tail weight or 166 lb (75 kg) whole weight of monkfish per trip.

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