



**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 200225-0063]**

**RIN 0648-BF57**

**Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Approval of New Gear Under Small-Mesh Fisheries Accountability Measures**

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

**ACTION:** Final rule.

**SUMMARY:** This action approves new selective trawl gear for use in several non-groundfish fisheries when subject to the Georges Bank yellowtail flounder accountability measure. The selective gear reduces bycatch of groundfish species, while allowing the target fisheries to continue operating when selective trawl gear is required. This selective trawl gear will provide the fishing industry with more flexibility when accountability measures are triggered because there are limited selective trawl gears currently approved for use.

**DATES:** Effective [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be

submitted to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930, and by e-mail to *OIRA\_Submission@omb.eop.gov*, or fax to (202) 395-7285. Copies of the studies referenced in this final rule may also be submitted to Michael Pentony at the above listed address.

**FOR FURTHER INFORMATION CONTACT:** Emily Keiley, Fishery Management Specialist, phone: (978) 281-9116; e-mail: *Emily.Keiley@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Northeast Multispecies Fishery Management Plan (FMP) requires the use of selective trawl gear in certain times and areas. The FMP specifies the list of selective trawl gear that are approved for use and that meet the required selectivity standards. The FMP also authorizes NMFS to approve additional selective gear, at the request of the New England Fishery Management Council, if the gear meets the regulatory requirements for new selective gear. The regulations (§ 648.85 (b)(6)(iv)(J)(2)(i)) require that new selective gear must either: 1) demonstrate a statistically significant reduction in catch of at least 50 percent, by weight, on a trip-by-trip basis, of each regulated species stock of concern or non-groundfish stocks that are overfished or subject to overfishing; or 2) catch of stocks of concern must be less than five percent of the total catch of regulated groundfish (by weight, on a trip-by-trip basis). Groundfish species (stocks) of concern are defined as a stock that is overfished and, or is subject to overfishing. The New England Fishery Management Council submitted two requests to add the large-mesh

belly panel to the list of approved selective gears for: 1) the Georges Bank yellowtail accountability measure (AM); and 2) the southern windowpane AM.

The small-mesh trawl fishery (*e.g.*, whiting and squid) has a sub-annual catch limit (ACL) and AM for Georges Bank yellowtail flounder. If catch exceeds the sub-ACL, the AM requires small-mesh trawl vessels to use selective trawl gear that reduces flatfish catch in certain areas in a subsequent fishing year.

Southern windowpane flounder is allocated to three fishery components: Groundfish; scallops; and other (non-groundfish) fisheries. The other (non-groundfish) component is primarily the scup, fluke, squid, and whiting fisheries. If the AM for the other (non-groundfish) component is triggered, vessels fishing with any trawl gear with a codend mesh size greater than or equal to five inches (12.7 cm) are required to use one of the approved selective trawl gears to reduce bycatch (*e.g.*, flounder stocks) in certain areas in Southern New England in a subsequent year.

The selective trawl gears approved for use under these AMs are: Haddock separator trawl; Ruhle trawl; and rope separator trawl. When the New England Fishery Management Council developed, and we adopted, the AMs for the non-groundfish fisheries, many industry members expressed concern that the selective trawl gears currently approved for use were not suitable for their fisheries.

To address this concern, Cornell University conducted a series of studies to test the effectiveness of the large-mesh belly panel in several non-groundfish fisheries. The experimental gear included a large-mesh panel to replace the first bottom belly of the trawl net that allows flatfish such as windowpane and yellowtail flounder to escape. The studies compared catch in a standard trawl for each fishery with a trawl outfitted with the

large-mesh belly panel. On Georges Bank when the large-mesh belly panel was compared to a standard small-mesh trawl, catch of all species of concern was reduced on a trip-by-trip basis by 50 percent or more. When the large-mesh belly panel was tested in the southern windowpane flounder AM area, and compared to a net typical of those used in the scup fishery, it reduced catch of windowpane flounder by more than 50 percent on average, but not on each trip. The large-mesh belly panel did not reduce catch of all species of concern by at least 50 percent on a trip-by-trip basis. The results are described in more detail in the proposed rule (83 FR 57395), and copies of the Cornell reports are available from NMFS at the mailing address listed under **ADDRESSES**.

Based on the results of the Cornell studies, we determined that the large-mesh belly panel meets the necessary gear performance standards for use in the Georges Bank yellowtail AM area, and we are approving the use of this gear in that area. We also determined that the large-mesh belly panel does not meet the gear standard in the southern windowpane AM area because it did not reduce catch of all species of concern by at least 50 percent on a trip-by-trip basis. We are denying the request to approve its use in that area. These AM areas are only triggered when there are ACL overages. Based on fishing year 2018 catch, we will not trigger either AM for fishing year 2020.

### **Comments and Responses**

We received six comments on the proposed rule. One comment was not related to the rulemaking and is not discussed further. All relevant comments were supportive of the proposal to approve the large-mesh belly panel for use when the Georges Bank yellowtail flounder AM is triggered for the small-mesh fisheries. Two commenters suggested the addition of clarifying text in the regulatory definition of the large-mesh

belly panel gear. This final rule contains a revised gear definition based on these comments.

*Comment 1:* One member of the public supported the large-mesh belly panel for use in the Georges Bank yellowtail AM area because the results of the Cornell University study demonstrated that the gear meets the regulatory standards.

*Response:* We agree. This final rule approves the large-mesh belly panel as a selective gear permitted for use in the Georges Bank yellowtail flounder AM area, when the AM is triggered.

*Comment 2:* Two commenters, a gear researcher and a gear manufacturer, commented on the proposed gear definition. Both comments supported the proposed definition but suggested adding additional information to ensure that the area being covered by the large mesh panel is the same as the area of the panel being replaced. If the large-mesh panel inserted into the net was too wide, the gear would not fish as intended, and the effective mesh size would be reduced.

*Response:* We agree. The design and construction of the large-mesh belly panel outfitted for an existing small mesh trawl is based on the premise that the large-mesh panel will have the same coverage area as the belly-panel it is replacing. To that end, the first step is to determine the ratio of the mesh sizes involved. The large-mesh belly twine is 80 cm (31.5 inches) knot center to knot center full mesh (KKFM), two meshes deep with a 40-cm (15.8-inch) sewing seam on the top and bottom. In most cases, the existing first bottom belly twine sizes are 12 cm (4.7 inches) KKFM and 16 cm (6.3 inches) KKFM yielding ratios of 20:3 and 5:1, respectively. To determine the appropriate width of the large-mesh panel, in number of meshes, you divide the number of meshes of the

existing belly by the ratio. Because this ratio is unique to each net, and mesh being replaced, we have not prescribed a specific ratio in the regulatory definition of the net, but have provided a description of how it should be calculated, and several examples of its application.

*Comment 3:* The researcher who conducted the studies cited in this rule commented in support of the approval of the large-mesh belly panel for the Georges Bank yellowtail flounder AM. The commenter also stated that the large-mesh belly panel significantly reduces the bycatch of windowpane flounder and should be approved for use when the AM for windowpane flounder is triggered for non-groundfish vessels fishing with trawl gear with a codend mesh size greater than or equal to five inches (12.7 cm). The commenter suggested that NMFS should consider creating a new gear performance standard, consistent with accountability measure goals, to focus on evaluating the catch reductions specifically of the species the accountability measure was designed for, rather than all overfished/overfishing stocks.

*Response:* This final rule approves the large-mesh belly panel for the Georges Bank yellowtail flounder AM. We do not have the authority to approve the large-mesh belly panel for windowpane flounder because it does not meet the selectivity standards. We agree that the gear standard should be reviewed and revisions considered to allow the approval of selective gears specific to the objectives of an AM that are consistent with the FMPs goals and objectives and the Magnuson-Stevens Act requirements. The Council has recommended a modified gear standard when we are considering approval of a selective gear for use as an AM. This revision will be proposed in an upcoming action, Framework 59.

*Comment 4:* One member of the fishing industry, who participates in the small-mesh fishery, commented in support of the approval of the large-mesh belly panel as a selective gear that can be used in the Georges Bank yellowtail flounder AM area when it has been triggered. The commenter cited the importance of selective gear to enable targeting of healthy stocks while reducing bycatch.

*Response:* We agree. This final rule approves the large-mesh belly panel for the Georges Bank yellowtail flounder AM. We also agree that the continued development of opportunities that enable fishermen to target healthy stocks, while preventing, or reducing bycatch, is important to the success of the fishing industry and fish stocks.

### **Classification**

The Administrator, Greater Atlantic Region, NMFS, determined that these measures are necessary for the conservation and management of the Northeast multispecies fishery and that the measures are consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule is considered an Executive Order 13771 deregulatory action. We cannot provide an estimate of cost savings due to the nature of this action. Cost savings will occur if the Georges Bank yellowtail AM is triggered and vessels opt to use the large-mesh belly panel gear to access the area. Use of an approved selective gear is required to access the AM area, when the AM has been triggered. This final rule approves the large-mesh belly panel as a selective gear for use in the Georges Bank yellowtail flounder AM area. The addition of a new selective gear provides increased

opportunities for fishermen to access healthy target stocks when the area is otherwise closed to fishing. We do not know how many vessels will use the gear, or when the AM will be triggered in the future.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis is not required and none was prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). Requests to revise the collection-of-information approvals under control numbers 0648-0212 and 0648-0201 have been submitted to OMB for approval. Public reporting burden for gear code selection is estimated to average one minute per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *OIRA\_Submission@omb.eop.gov*, or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information

displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at:

<https://www.reginfo.gov/public/do/PRASearch#>.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: February 25, 2020.

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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 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 § 648.84, add paragraph (f) to read as follows:

**§ 648.84 Gear-marking requirements and gear restrictions.**

\* \* \* \* \*

(f) *Large-mesh belly panel trawl.* A large-mesh belly panel trawl is defined as a four-seam bottom trawl net (*i.e.*, a net with a top and bottom panel and two side panels) modified to include a large-mesh panel to replace the first bottom belly, as further specified in paragraphs (f)(1) through (3) of this section.

(1) *Mesh size.* The minimum mesh size applied throughout the body of the trawl, as well as the codend mesh size, must be consistent with mesh size requirements specified in § 648.80. If a vessel is fishing in an exemption area or an exempted fishery, it must comply with all of the requirements and conditions of the exemption.

(2) *Large-mesh belly panel.* The large-mesh belly panel must have a minimum mesh size of 30 in (76.2 cm) measured using the standard defined in § 648.80(f)(2). The owner or operator of a fishing vessel shall not use any mesh construction, mesh configuration, or other means on, in, or attached to the regulated portion of the net, as defined in this paragraph (f)(2), if it obstructs or constricts the meshes of the net in any manner. The width of the panel must extend the full width of the bottom panel (*i.e.*, from one bottom gore to the other bottom gore). To determine the width of the large-mesh panel please see the explanation, and example provided below. The depth must be at least 90 in (228.6 cm) and at least three meshes deep (two meshes deep with a 15-in (38.1-cm) sewing seam on top and bottom). No more than six meshes of the small-mesh net may be left behind the sweep, before the large-mesh panel is sewn in.

(3) *Determining panel width example.* Assume the large-mesh twine is 30 in (76.2 cm) knot center to knot center (KKFM), two meshes deep with a 15-in (38.1-cm) sewing seam on the top and bottom. In most cases, the existing first bottom-belly twine sizes are 12 cm (4.7 in) KKFM and 16 cm (6.3 in) KKFM yielding ratios of 20:3 and 5:1, respectively. Therefore, to determine the required width of large mesh panel, take the number of meshes of the existing belly and divide by the ratio. If the existing twine is 16 cm (6.3 in) KKFM, and the belly, six meshes behind the sweep is 150 meshes wide, you would divide 150 by 5:1 to get the width of the large-mesh panel, 30 meshes.

3. In § 648.90, revise paragraph (a)(5)(v), to read as follows:

**§ 648.90 NE multispecies assessment, framework procedures, and specifications, and flexible area action system.**

\* \* \* \* \*

(a) \* \* \*

(5) \* \* \*

(v) *AM if the small-mesh fisheries GB yellowtail flounder sub-ACL is exceeded.* If NMFS determines that the sub-ACL of GB yellowtail flounder allocated to the small-mesh fisheries, pursuant to paragraph (a)(4)(iii)(G) of this section, is exceeded, NMFS shall implement the AM specified in this paragraph consistent with the Administrative Procedures Act. The AM requires that small-mesh fisheries vessels, as defined in paragraph (a)(4)(iii)(G)(I) of this section, use one of the following approved selective trawl gear in the GB yellowtail flounder stock area, as defined at § 648.85(b)(6)(v)(H): A haddock separator trawl, as specified in § 648.85(a)(3)(iii)(A); a Ruhle trawl, as specified in § 648.85(b)(6)(iv)(J)(3); a rope separator trawl, as specified in § 648.84(e); a large-mesh belly panel trawl, as specified in § 648.84(f); or any other gear approved consistent with the process defined in § 648.85(b)(6). If reliable information is available, the AM shall be implemented in the fishing year immediately following the year in which the overage occurred only if there is sufficient time to do so in a manner consistent with the Administrative Procedure Act. Otherwise, the AM shall be implemented in the second fishing year after the fishing year in which the overage occurred. For example, if NMFS determined after the start of Year 2 that the small-mesh fisheries sub-ACL for GB yellowtail flounder was exceeded in Year 1, the applicable AM

would be implemented at the start of Year 3. If updated catch information becomes available subsequent to the implementation of an AM that indicates that an overage of the small-mesh fisheries sub-ACL did not occur, NMFS shall rescind the AM, consistent with the Administrative Procedure Act.

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[FR Doc. 2020-04204 Filed: 3/5/2020 8:45 am; Publication Date: 3/6/2020]