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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200512-0134]

RIN 0648-BI77

Fisheries of the Northeastern United States; Habitat Clam Dredge Exemption Framework

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

ACTION: Final rule.

SUMMARY: NMFS approves and implements the New England Fishery Management Council's Habitat Clam Dredge Exemption Framework Adjustment to its Fishery Management Plans. This action establishes three areas within the Great South Channel Habitat Management Area where vessels may fish for Atlantic surfclams or blue mussels with dredge gear. This action is intended to provide the fishing industry access to part of the surfclam and blue mussel resource within the Habitat Management Area while balancing the Council's habitat conservation objectives.

DATES: Effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: An environmental assessment (EA) has been prepared for this action that provides an analysis of the impacts of the measures and alternatives. Copies of the EA are available on request from Thomas Nies, Executive Director, New England Fishery

Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. This document are also accessible via the Internet at www.nefmc.org.

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 the Greater Atlantic Regional Fisheries Office (GARFO) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978-281-9341.

SUPPLEMENTARY INFORMATION:

Background

The Great South Channel Habitat Management Area (GSC HMA) was created by the final rule to implement the New England Fishery Management Council's Omnibus Habitat Amendment 2 (OHA2) (83 FR 15240; April 9, 2018). The use of all mobile bottom-tending fishing gear is prohibited in the GSC HMA. The GSC HMA contains complex benthic habitat that is important for juvenile cod and other fish species, and it is susceptible to the adverse impacts of fishing gear. The OHA2 included a 1-year delay of the mobile gear closure that allowed the surfclam fishery to continue fishing with hydraulic clam dredges in the area. This delay was intended to give the Council time to determine if a long-term exemption is warranted. The 1-year delay ended on April 9, 2019, and the GSC HMA is now closed to all mobile bottom-tending fishing gear, including clam and mussel dredges.

The Council initiated the Habitat Clam Dredge Exemption Framework Adjustment in 2015 as a trailing action to OHA2. Development of the framework was

guided by a problem statement approved by the Council in October 2015:

The Council intends through this action to identify areas within the Great South Channel and Georges Shoal Habitat Management Areas that are currently fished or contain high energy sand and gravel that could be suitable for a hydraulic clam dredging exemption that balances achieving optimum yield for the surfclam/ocean quahog fishery with the requirement to minimize adverse fishing effects on habitat to the extent practicable and is consistent with the underlying objectives of [OHA2].

In the final stages of OHA2 development, the Council was also approached by parties interested in developing a blue mussel dredge fishery in the GSC HMA.

Currently, there is no Federal blue mussel fishery management plan.

NMFS disapproved the Georges Shoal HMA that the Council recommended in OHA2. The dredge exemption framework became solely focused on the GSC HMA following implementation of OHA2. Development of the Habitat Clam Dredge Exemption Framework occurred over several meetings of Council's Habitat Plan Development Team, Committee, and the full Council. The Council took final action at its December 2018 meeting selecting preferred alternatives and approving the action for submission to NMFS. The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) allows NMFS to approve, partially approve, or disapprove measures proposed by the Council based on whether the measures are consistent with the Fishery Management Plans (FMPs), the Magnuson-Stevens Act and its National Standards, and other applicable law. NMFS generally defers to the Council's policy choices unless there is a clear inconsistency with the law or the FMP.

A proposed rule detailing implementing regulations for this framework was published on September 17, 2019 (84 FR 48899), with a comment period open through

October 17, 2019. In response to a request by the Council, the comment period was reopened November 4, 2019, through November 18, 2019. In total, 68 comments were submitted on the proposed measures and are discussed below in the **Comments and Responses** section.

Final Measures

This action implements three dredge exemption areas (McBlair, Old South, and Fishing Rip) within the GSC HMA where vessels can fish for surfclams or blue mussels. Tables 1 through 3 contain the coordinates for the new exemption areas. These areas are illustrated in Figure 1. Each area is defined by the following points connected in the order listed by straight lines.

Table 1 -- Coordinates for McBlair Dredge Exemption Area

Point	Longitude	Latitude
1	69° 49.255' W	41° 25.878' N
2	69° 46.951' W	41° 25.878' N
3	69° 46.951' W	41° 19.34' N
4	69° 49.187' W	41° 19.34' N
1	69° 49.255' W	41° 25.878' N

Table 2 -- Coordinates for Old South Dredge Exemption Area

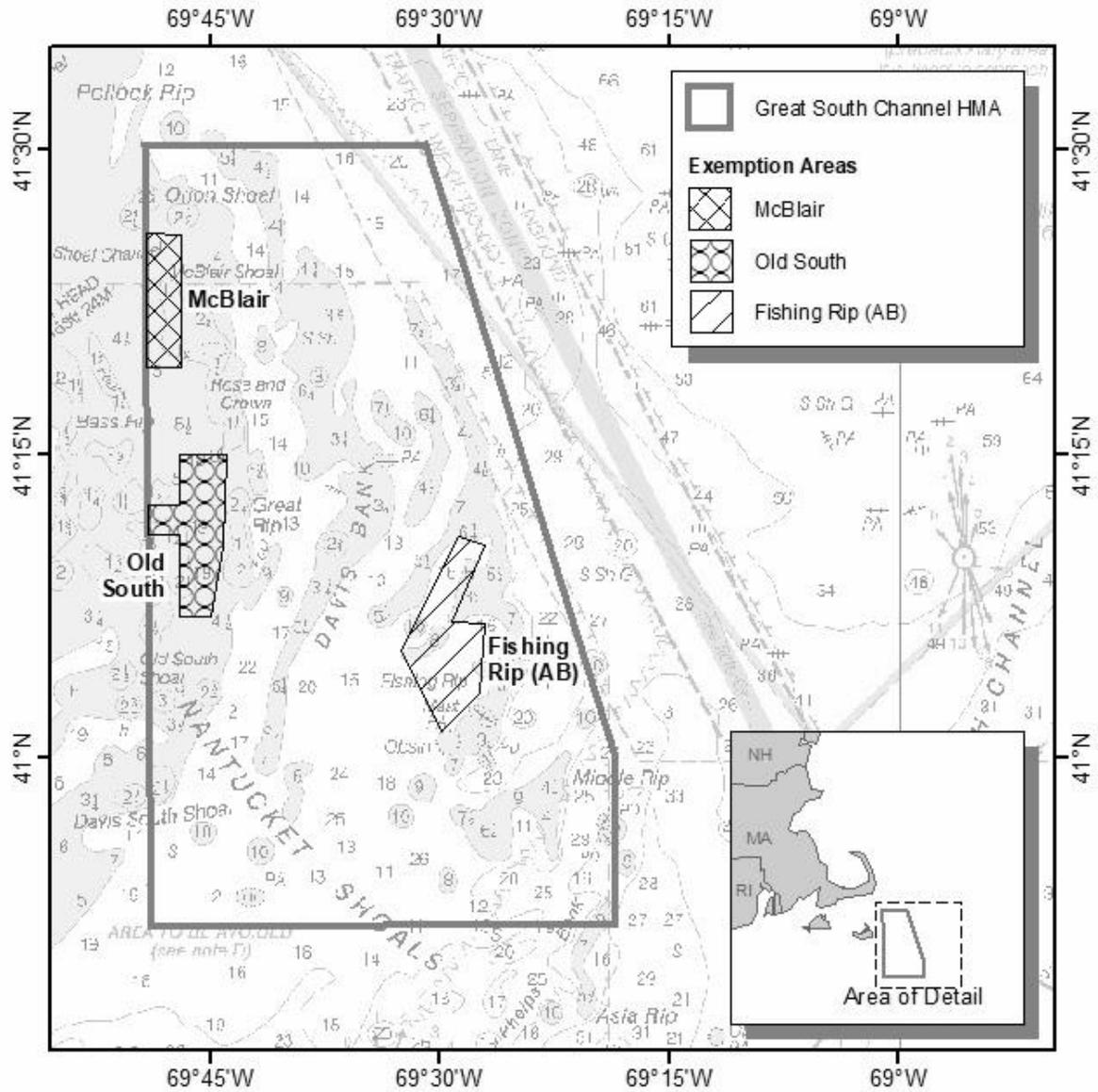
Point	Longitude	Latitude
1	69° 47' W	41° 15' N
2	69° 44' W	41° 15' N
3	69° 44.22' W	41° 10.432' N
4	69° 45' W	41° 7' N
5	69° 47' W	41° 7' N
6	69° 47' W	41° 11' N
7	69° 49.101' W	41° 11' N
8	69° 49.116' W	41° 12.5' N
9	69° 47' W	41° 12.5' N
1	69° 47' W	41° 15' N

Table 3 -- Coordinates for Fishing Rip Dredge Exemption Area

Point	Longitude	Latitude
1	69° 28.829' W	41° 10.963' N
2	69° 27.106' W	41° 10.485' N
3	69° 29.311' W	41° 6.699' N
4	69° 27.034' W	41° 6.609' N
5	69° 27.376' W	41° 3.198' N
6	69° 29.905' W	41° 1.297' N
7	69° 32.579' W	41° 5.368' N
8	69° 31.193' W	41° 7.356' N
1	69° 28.829' W	41° 10.963' N

These exemption areas were chosen to allow limited access to historical surfclam fishing grounds that appear less vulnerable to adverse habitat impacts from dredge gear while protecting the majority of the HMA from the adverse habitat impacts caused by dredge gear. The three exemption areas are 6.9 percent of the total area of the HMA and do not include the areas most clearly identified as containing complex and vulnerable habitats. Because of the small area of this exemption, this action would not materially affect the overall conservation benefit of the HMA. The McBlair and Fishing Rip Dredge Exemption Areas will be open to fishing for surfclams or blue mussels year round. The Old South Dredge Exemption Area will be open for surfclam or blue mussel fishing from May 1 through October 31. Old South will be closed to all mobile bottom-tending gear from November 1 through April 30 each year to avoid disturbing spawning aggregations of cod that may occur in the area.

Figure 1 -- Map of Exemption Areas



To enforce the boundaries of the small exemption areas, participating vessels are required to obtain a letter of authorization (LOA) from the NMFS Regional Administrator. Similar LOAs are used to grant access to specific areas or programs in other fisheries and may be applied for using a common form available from GARFO. If a vessel violates any of the requirements of the exemption areas, the LOA may be canceled, prohibiting future access to the GSC HMA.

To receive the LOA, a vessel must hold a Federal commercial surfclam permit, which requires reporting each fishing trip consistent with existing trip reporting requirements, using a vessel monitoring system (VMS), and selling catch exclusively to a federally permitted dealer. The LOA requires the vessel to have a NMFS-approved VMS unit that is capable of transmitting the vessel's location every 5 minutes while within the GSC HMA. At all other times, the VMS unit would maintain the applicable reporting rate specified at 50 CFR 648.10(c). A list of qualifying VMS units is available from the NOAA Office of Law Enforcement, Greater Atlantic Region (<https://www.fisheries.noaa.gov/national/enforcement/noaa-fisheries-type-approved-vms-units>). This rate of position transmission will provide finer scale resolution on the location of the vessel and allow NMFS to better monitor compliance with the small exemption areas. Vessels fishing in the GSC HMA will be required to use new VMS trip declaration codes that allow law enforcement to know they intend to fish in the GSC HMA for surfclams or blue mussels.

Vessels fishing for surfclams within the GSC HMA are still subject to the requirements of the individual transferable quota system and other provisions of the surfclam regulations. This includes restrictions on retention of other species of fish

caught incidentally while using hydraulic clam dredge gear, which may depend on other Federal fishing permits the vessel holds.

To fish for blue mussels in the GSC HMA, a vessel must hold a surfclam vessel permit. This permit can be obtained from GARFO. By holding a surfclam permit, mussel fishing vessels in the GSC HMA will be subject to reporting and monitoring requirements that would not normally apply to vessels fishing for blue mussels in Federal waters. Mussel fishing vessels also need to obtain the new LOA and use the appropriate VMS trip declaration code for any trip in the GSC HMA. Mussel vessels are required to use a non-hydraulic mussel dredge (also called a dry dredge), which cannot exceed 8 ft (2.4 m) in width. Vessels cannot fish for, harvest, or land any species of fish other than blue mussels on that trip.

Any violation of permit, reporting, monitoring, or LOA requirements for fishing in the GSC HMA would result in NMFS revoking the vessel's LOA, which prevents further fishing by that vessel in the HMA.

Comments and Responses

We received 68 comments on the proposed rule. The majority of comments (58) opposed allowing the use of hydraulic dredge gear in the HMA. These comments were predominately from recreational fishing groups, environmental groups, and residents from Nantucket and Cape Cod. Ten representatives of the surfclam and blue mussel commercial fishing interests supported the exemption areas, but would prefer complete access to the full HMA. Specific topics raised by commenters are discussed below. Comments that express the same position are addressed as a group.

Comment: The majority of comments (58) opposed the proposed measures and

advocated a policy of managing natural resources for the good of the general public, primarily through recreational fishing, and not just for a few individuals in the commercial fishing industry. Commenters suggest that no exemption should be allowed unless the gear used is shown to have no adverse impacts to EFH. Many also expressed a concern that allowing surfclam and mussel dredging in a portion of the HMA would make it harder to disapprove future exemption requests from other commercial fishery interests.

Response: The Magnuson-Stevens Act created the Regional Fishery Management Councils and tasked each to develop fishery management plans for each fishery that requires conservation and management within its jurisdiction. The Council provides a public process to weigh competing interests in a public resource and develop appropriate management measures. This process allows the Council to consider commercial and recreational fishing interests and conservation and management requirements in the Magnuson-Stevens Act's National Standards when it selects management measures to recommend to NMFS. The Council selected exemption areas that appear less vulnerable to adverse habitat impacts from dredge gear while protecting the majority of the HMA from the adverse habitat impacts caused by dredge gear. Requirements of the National Standards and the mandate to minimize adverse impacts of fishing on EFH are discussed in more detail in other comments and responses below. The Magnuson-Stevens Act permits NMFS to approve, partially approve, or disapprove measures proposed by the Council based only on whether the measures are consistent with the Magnuson-Stevens Act and its National Standards, and other applicable law. Otherwise, we must defer to the Council's policy choices. While some commenters may not think the measures were

optimal, the commenters did not cite any legal deficiencies in the measures that would justify disapproving the Council's action. Based on its own review, and explained in the EA and proposed and final rules, NMFS determined the measures meet all legal requirements. Adoption of these exemption areas alone does not increase the likelihood of future exemptions from the requirements of this HMA. Any future exemption request would need to consider available information for evaluation and analysis of potential impacts, including the cumulative impacts of other actions.

Comment: Some of representatives of the surfclam industry suggest the exemption areas may be too limiting and will result in rapid localized depletion of surfclams. These commenters advocate for restored use of mobile bottom-tending hydraulic clam fishing throughout the entire HMA.

Response: The use of dredge gear throughout the HMA would likely result in impacts beyond what could be considered minor or temporary in nature. Allowing hydraulic clam dredge gear to access the full HMA would be counter to the Council's stated intent for this action because it would result in more than minimal and temporary impacts on the habitats in the HMA. These impacts could substantially reduce the complexity of the benthic habitat and reduce the HMA's effectiveness in promoting the growth of juvenile cod and other groundfish species. While hydraulic dredge gear may primarily be used in sandy sediments that can be highly dynamic, a tow that occurs on more complex habitat can have negative impacts that could take years or even decades to fully recover naturally. The relatively small footprint of the exemption areas implemented by this action will allow industry some access to the surfclam and blue mussel resource in potentially less sensitive areas compared to the vast majority of the

HMA the Council designated for protection. These exemption areas balance providing access, without undermining the conservation objectives.

Comment: One lawyer representing the clam industry asserts that the proposed measures are not supported by the best available science. To support this, he cites discussions at the May 2018 meeting of the Council's Habitat Committee. He asserts the Committee concluded there was no scientific evidence to support any restrictions on the surfclam industry in the area and that it voted to allow fishing to continue in the area for another 2.5 years while additional data were collected. He makes several assertions about the validity of various data sources that were available to the Council during the development of this action.

Response: The commenter mischaracterizes the actions of the Council's Habitat Committee. Contrary to the commenter's statement, the May 2018 Habitat Committee discussion was not whether to place any restrictions on the clam industry in the GSC HMA; rather, it was discussing whether to grant any exemptions to surfclam vessels to fish in the HMA. The difference is important, as the OHA2 final rule specified that the HMA would close to hydraulic dredging in April 2019, unless the Council and NMFS specifically took action to change it. If there was insufficient scientific information for the Council to take any action, the default measure would go into effect and the whole GSC HMA would close and remain closed. The Council's Plan Development Team had reviewed available information and concluded that it was unable to identify areas within the HMA where complex habitat was absent and fishing was occurring that clearly lent themselves to being defined as exemption areas.

The motions approved by the Habitat Committee at the May 2018 meeting were

for the Council to consider several new alternatives and to direct the Plan Development Team to analyze them to determine if they could meet the purpose and need for this framework action. Contrary to the commenter's claims, the Committee did not endorse any of these alternatives nor did it vote to allow surfclam harvest to continue. The 2.5-year provision approved by the Committee at that meeting was not for an extension of then-current fishing levels, but rather a potential sunset provision on any exemption areas. Ultimately, the Council did not support this sunset provision, and it was not included in the final Framework Adjustment.

The Magnuson-Stevens Act National Standard 2 states that "(fishery) conservation and management measures shall be based upon the best scientific information available." In 2013, NMFS published amended guidance for National Standard 2 and what constitutes the best scientific information available (78 FR 43066; July 19, 2013). We refer the commenter to this document to clarify how NMFS designates best scientific information available for management measures. Data from clam vessel VMS units were used to identify areas where fishing recently occurred, and were instrumental in setting the boundaries of the exemption areas implemented by this action. However, evidence of fishing activity is not necessarily evidence of exclusively soft, sandy sediment as the commenter contends. The Plan Development Team was aware that fishing captains actively monitor their acoustic displays and avoid what they consider to be hard bottom. If large amounts of cobbles or rocks are encountered, the captain will move to another nearby location to avoid damaging their gear and having to deal with lots of rocks on the deck. While these complex habitats are not preferred by vessel operators, they are encountered while using this gear and adverse impacts to these

habitats can occur. Available habitat information indicate that complex habitats can occur throughout the HMA, but are patchy and mixed with areas of less complex sediment. As discussed in the EA, there was more evidence for the presence of complex habitat in other potential exemption areas that were considered by the Council but ultimately not selected.

Comment: The Conservation Law Foundation (CLF) cited four different factors why this action should be disapproved. CLF asserts: 1) that the action is inconsistent with the purpose and need the Council established for the Framework action; 2) that the Council and NMFS did not conduct a sufficient practicability analysis; 3) that the conducted analysis does not sufficiently describe the potential impact on Council-managed species, including Atlantic cod; and 4) that potential impacts to north Atlantic right whale critical habitat should be analyzed in an Endangered Species Act Section 7 consultation.

Response: NMFS disagrees with CLF's assertions that the action is legally deficient, and will address each point from the comment letter separately. 1) As noted earlier in the preamble, the Council's objectives in developing this Framework Adjustment were to allow for some level of dredge fishing for surfclams within the HMA while still minimizing the adverse effects of fishing to EFH, to the extent practicable. The EA's analyses of potential impacts on EFH, as well as an EFH consultation conducted for this action, both conclude that there are probable adverse impacts on EFH, but those impacts are expected to be minimal. Because this action allows for some continuation of the surfclam fishery while having minimal impact on the overall habitat protected by the HMA, this action fully meets the purpose and need designated by the

Council. NMFS acknowledges there is some concern about the inclusion of an exemption for mussel dredging. However, the expected scope of mussel fishing within the exemption areas is expected to be small. Mussel beds are considered important habitat and the development of the blue mussel fishery within the exemption areas and its impacts on the HMA will be monitored moving forward.

2) The Magnuson-Stevens Act requires that FMPs minimize adverse effects on EFH caused by fishing to the extent practicable. This practicability requirement does not remove or replace other Magnuson-Stevens Act requirements, including the National Standard 8 requirement to take into account the importance of fishery resources to fishing communities and to minimize adverse economic impacts on fishing communities to the extent practicable. NMFS guidance on Magnuson-Stevens Act EFH requirements advises that Councils should consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the nation (67 FR 2343, January 17, 2002). A practicability analysis may not necessarily be a strict calculation, but rather a qualitative assessment of the tradeoffs between different options. A recent Court opinion on a legal challenge to OHA2 supported this approach (*Conservation Law Foundation v. Ross*). With the selection of these exemption areas, the Council sought a balance between different constituencies within all of the legal directives involved. The likely impacts of this action and of other alternatives the Council considered are fully discussed in Section 6 of the EA. That analysis indicates the Council's preferred alternative was better for the surfclam industry than taking no action, which would leave the entire GSC HMA closed to all mobile bottom-tending gear, but would result in less revenue for the industry than

the other three action alternatives. However, some of the lost revenue may be mitigated by shifting fishing effort to other areas outside of the HMA. On the other hand, the preferred alternative would result in more adverse impacts on EFH than no action, but less than each of the other three action alternatives considered. In making its final decision the Council did not select other available alternatives that would have had more adverse impacts on EFH as well as options that would have more adversely impacted the surfclam industry.

3) The potential impacts of this action on Atlantic cod and other managed fish species is analyzed within the EA. Finfish, including cod, are infrequently captured by clam dredges. Even with the low rates of finfish bycatch in clam and mussels dredge gears, it is expected that spawning activity could be disrupted by the noise and movement of the gear in the water. For this reason, access was limited to avoid interactions with cod. For example, access to the Old South Exemption Area, the only exemption area that overlaps with identified historical cod spawning areas, is limited seasonally to avoid access when spawning aggregations may be present. In addition to direct effects on fish, this action has potential indirect effects through the impact on habitat. The consideration of the impacts of EFH protection on managed fish species in this region is a significant focus of the EA for this action as well as the environmental impact statement (EIS) for OHA2. While this action is expected to have some adverse impact on EFH within the GSC HMA, those impacts would be limited because the three exemption areas are limited to 6.9 percent of the total area of the HMA and do not include the areas most clearly identified as containing complex and vulnerable habitats.

4) The EA prepared for this action includes an analysis supporting a

determination of “no effect” from this action on large whales and on North Atlantic right whale critical habitat. The GARFO Protected Resources Division conducted an informal Endangered Species Act (ESA) Section 7 consultation on both this action and the broader coastwide surfclam and ocean quahog fishery (completed on January 2, 2020). This consultation did not dispute the analysis and determination in the EA that there have been no observed interactions between clam dredges and ESA-listed large whales and that the action will not affect North Atlantic right whale critical habitat. Therefore, the consultation focused on the potential impacts on ESA-listed species of sea turtles and Atlantic sturgeon as they are the species that are “present in the action area for this consultation and may be affected by the proposed actions.” The consultation found that the risk of an interaction with those species is extremely unlikely and therefore, discountable.

CLF’s assertions of potential impact on right whale critical habitat are not consistent with the analysis contained in the EA. Approximately half (372 nm²) of the GSC HMA overlaps with Unit 1 of North Atlantic right whale critical habitat (21,334 nm²). This is 1.7 percent of the total right whale critical habitat, and the exemption areas being implemented overlap less than this 1.7 percent because they are a small subset of the HMA. Right whale critical habitat overlaps roughly half of the McBlair and Fishing Rip exemption areas and does not intersect the Old South exemption area at all. To support its claim of potential adverse impact on copepods that are an important forage species for right whales, CLF cites studies that looked at the effects of dredging to deepen shipping channels. “Dredging” as defined in NMFS’s critical habitat assessment (81 FR 4838, January 27, 2016) should not be confused with use of commercial fishing dredges, such as those used in the surfclam fishery. In the assessment, dredging is in reference to the

removal of material from the bottom of water bodies to deepen, widen, or maintain navigation corridors, anchorages, or berthing areas, as well as for sand mining. These dredges disturb the sediment surface down to 12 inches (30.5 cm) or more, creating turbidity plumes that last up to a few hours. In contrast, the surfclam fishery uses hydraulic dredges to capture shellfish by injecting pressurized water into the sediment to a depth of 8-10 inches (20.3 - 25.4 cm), creating a trench up to 30 cm deep and as wide as the dredge. Mussel dredges (approximately 1.8 m wide) create furrows approximately 2-5 cm deep. There is no evidence to suggest fishing dredging would negatively impact copepod production or availability and, as a result, limit the recovery of North Atlantic right whales or their critical habitat. In terms of the surfclam fishery, the scale and scope of hydraulic clam or mussel dredges is smaller than that associated with navigational/sand mining dredges. Turbidity created from such fishing dredges will be temporary in nature and will not impact the long-term viability of copepod aggregations. Fishing dredges, such as hydraulic clam or mussel dredges, may also temporarily disturb localized copepod concentrations; however, these localized patches are continually replaced and/or shifting due to the dynamic oceanographic features.

Comment: The Cape Cod Commercial Fishermen's Alliance opposed allowing any mobile bottom-tending fishing gear in the HMA. However, if exemptions were to be granted for surfclam fishing, the Alliance requested that blue mussel fishing also be allowed in the same areas.

Response: This action will allow blue mussel dredging in the same exemption areas and seasons as hydraulic dredging for surfclams.

Comment: Several members and representatives of the surfclam industry suggested that NMFS should allow hydraulic clam dredging throughout the GSC HMA

instead of just the exemption areas proposed by the Council.

Response: As mentioned in previous responses, the Council sought to achieve a balance between habitat protection and fishing access for the surfclam industry. Based upon the analysis contained in the EA for this framework and in the EIS for OHA2, allowing hydraulic clam dredging throughout the GSC HMA could have substantial adverse impact on EFH. This impact could hinder the Council's efforts to rebuild certain depleted fish stocks. Based on our current understanding of the distribution of habitat types in the HMA and the potential effects of hydraulic clam dredge gear, NMFS does not consider allowing fishing with hydraulic clam dredges throughout the HMA without some mitigating measures to be consistent with the Magnuson-Stevens Act requirement to minimize adverse impacts of fishing on EFH to the extent practicable. The Council has expressed its desire for future research to improve our understanding of habitat distribution within the HMA and the operational limits of this gear to better understand the habitat complexity and potential impacts. Such research could modify our understanding of the interactions of fishing gear with habitat and help inform future considerations by the Council of additional exemptions in the HMA.

Changes from the Propose Rule

There are no changes to the proposed measures.

Regulatory Clarification

This action also implements a minor modification to the regulations under authority granted the Secretary under section 305(d) of the Magnuson-Stevens Act to ensure that FMPs are implemented as intended and consistent with the requirements of the Magnuson-Stevens Act. This action defines a "straight line" with regard to regulated

areas, as a rhumb line, unless explicitly stated otherwise. When fishery managers develop regulated areas (*e.g.*, scallop access areas or Northeast multispecies closed areas), the areas are defined by a series of points of latitude and longitude connected by straight lines when drawn on a standard nautical chart. Nautical charts use a Mercator projection so straight lines drawn on a chart are lines of constant compass bearing, also known as rhumb lines. This change helps make the regulations as unambiguous as possible.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that this FMP Framework Adjustment is necessary for the conservation and management of the fisheries under the jurisdiction of the New England Council and that it is consistent with the Magnuson-Stevens 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.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

No comments were received in response to the IRFA. NMFS response to other comments are discussed above.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This rule affects small entities engaged in surfclam/ocean quahog or blue mussel commercial fishing operations in the Federal waters off Southern New England, Georges Bank, and the Gulf of Maine. In 2017, eight large commercial fishing businesses and 377 small commercial fishing businesses held either a surfclam or ocean quahog Federal permit. The number of fishermen actively engaged in the surfclam and ocean quahog fishery is much smaller than the number of individuals permitted for those two fisheries. This is because there is an individual transferrable quota associated with both species, meaning only individuals holding or leasing quota can land surfclam and ocean quahog. Over the last 3 years, the number of businesses that have been active in the areas proposed for exemption areas has been between 10 (8 small and 2 large) and 12 (10 small and 2 large).

Between 10 (2015) and 11 (2016, 2017) vessels were permitted and active in the Massachusetts blue mussel fishery in the most recent 3-year period, although only one or two are expected to fish in the HMA. The current status of the blue mussel fishery in the Great South Channel is exploratory, and ownership data is not available from which to assess business size for state-permitted vessels. This situation precludes a more thorough investigation into the number and size of blue mussel businesses regulated under this action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Reporting, Recordkeeping, and other compliance requirements are discussed above and summarized here. To fish for surfclams or blue mussels in the GSC HMA exemption areas, a vessel must be issued a Federal Atlantic surfclam permit, which mandates an active VMS and submission of fishing vessel trip reports. Vessels will also have to be issued an LOA for the HMA exemption areas and be subject to increased reporting rates from the VMS while inside to the HMA.

Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent with the Stated Objectives of Applicable Statutes

This action proposes management measures to allow fishing with dredge gear for Atlantic surfclams or blue mussels in three exemption areas within the Great South Channel HMA. The measures seek to minimize to the extent practicable the adverse effects on complex habitat within the HMA by fishing for surfclams and blue mussels in the area. Small businesses have historically generated a higher percentage of their revenue within the Great South Channel HMA and are expected to benefit more from any exemption than large businesses, relatively speaking.

The Council considered three other options for allowing dredge fishing in the HMA. The Council also evaluated taking no action, thereby keeping the entire GSC HMA closed to dredge fishing for surfclams and blue mussels. All of the action alternatives would have resulted in some level of increased revenue for vessels fishing in the exemption areas. While this action does not affect the overall quota for surfclams, the catch rate in the exemption areas is potentially higher than in other open areas. Therefore, the opening of these areas may not affect the total harvest of surfclams, but may improve the efficiency with which part of the quota is harvested. Moreover, within

the affected entities, some may have had a disproportionate historic harvest from the area now closed to hydraulic dredges in the GSC HMA. In choosing a preferred alternative, the Council considered the tradeoffs between short-term economic benefit to the surfclam and blue mussel industries and potential long-term benefit to other fisheries through the protection of essential fish habitat from the adverse impacts of fishing gear.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648-0202. Public reporting burden for obtaining a letter of authorization to fish within the GSC HMA is estimated to average 5 minutes 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. The public reporting burden for increasing the VMS location data from once per hour to once every 5 minutes is estimated to cost participating fishermen \$0.84 per hour while a vessel is within 3 nm (5.6 km) of the HMA and subject to the higher position polling rate. Based on historical fishing effort, this would translate to an average annual cost of \$8,639 spread across all vessels active in the HMA. 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.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 12, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

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 § 648.2, add in alphabetical order, a definition for “Straight line.”

§ 648.2 Definitions.

* * * * *

Straight line, with regard to regulated areas, means a rhumb line, unless explicitly stated otherwise.

* * * * *

3. In 648.370, revise paragraph (h)(2) to read as follows:

§ 648.370 Habitat Management Areas.

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(h) * * *

(2) *Atlantic Surfclam and Mussel Dredge Exemption Areas.* (i) *Dredge Exemption Area Requirements.* A vessel may fish in one or more of the Dredge Exemption Areas

below, provided the area is open and the vessel meets the following requirements:

(A) Holds a federal Atlantic surfclam vessel permit.

(B) Has been issued a Letter of Authorization to fish in the Great South Channel HMA from the Regional Administrator.

(C) Has a NMFS-approved VMS unit capable of automatically transmitting a signal indicating the vessel's accurate position at least once every 5 minutes while in or near the Great South Channel HMA.

(D) Declares each trip into the HMA through the VMS and fishes exclusively inside HMA dredge exemption areas on such trips.

(E) When fishing for surfclams in an HMA exemption area, uses only hydraulic clam dredge gear.

(F) When fishing for blue mussels in an HMA exemption area, any dredge on board the vessel does not exceed 8 ft (2.4 m), measured at the widest point in the bail of the dredge, and the vessel does not possess, or land any species of fish other than blue mussels.

(ii) *McBlair Dredge Exemption Area.* (A) The McBlair Dredge Exemption Area is defined by the following points connected in the order listed by straight lines:

McBlair Dredge Exemption Area

Point	Longitude	Latitude
1	69° 49.255' W	41° 25.878' N
2	69° 46.951' W	41° 25.878' N
3	69° 46.951' W	41° 19.34' N
4	69° 49.187' W	41° 19.34' N
1	69° 49.255' W	41° 25.878' N

(B) The McBlair Dredge Exemption Area is open year-round.

(iii) *Old South Dredge Exemption Area.* (A) The Old South Dredge Exemption Area is defined by the following points connected in the order listed by straight lines:

Old South Dredge Exemption Area

Point	Longitude	Latitude
1	69° 47' W	41° 15' N
2	69° 44' W	41° 15' N
3	69° 44.22' W	41° 10.432' N
4	69° 45' W	41° 7' N
5	69° 47' W	41° 7' N
6	69° 47' W	41° 11' N
7	69° 49.101' W	41° 11' N
8	69° 49.116' W	41° 12.5' N
9	69° 47' W	41° 12.5' N
1	69° 47' W	41° 15' N

(B) The Old South Dredge Exemption Area is open from May 1-October 31, and closed to all mobile bottom-tending gear November 1-April 30.

(iv) *Fishing Rip Dredge Exemption Area.* (A) The Fishing Rip Dredge Exemption Area is defined by the following points connected in the order listed by straight lines:

Fishing Rip Dredge Exemption Area

Point	Longitude	Latitude
1	69° 28.829' W	41° 10.963' N
2	69° 27.106' W	41° 10.485' N
3	69° 29.311' W	41° 6.699' N
4	69° 27.034' W	41° 6.609' N
5	69° 27.376' W	41° 3.198' N
6	69° 29.905' W	41° 1.297' N
7	69° 32.579' W	41° 5.368' N
8	69° 31.193' W	41° 7.356' N
1	69° 28.829' W	41° 10.963' N

(B) The Fishing Rip Dredge Exemption Area is open year-round.

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