

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding LaVergne, Channel 275C1 and by removing Shelbyville, Channel 275C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02-29237 Filed 11-18-02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 02-2816; MM Docket No. 01-341; RM-10346]

Radio Broadcasting Services; Coosada, Alabama

AGENCY: Federal Communications Commission.

ACTION: Final rule, petition for reconsideration.

SUMMARY: This document grants a petition for reconsideration filed by Media Equities Corporation, seeking reconsideration of the *Report and Order* in this proceeding, and requesting deletion of Channel 226A at Coosada, Alabama. *See* 67 FR 20459, April 25, 2002. That *Report and Order* allotted, at Media Equities' request, Channel 226A at Coosada, Alabama. Media Equities requests reconsideration of this allotment and withdraws its expression of interest. With no other expression of interest in the allotment, the allotment is deleted.

DATES: Effective December 9, 2002.

FOR FURTHER INFORMATION CONTACT:

Victoria M. McCauley, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 01-341, adopted October 16, 2002, and released October 25, 2002. The full text of this decision is available for inspection and copying

during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Coosada, Channel 226A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 02-29238 Filed 11-18-02; 8:45 am]

BILLING CODE 6712-01-P

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

[Docket No. 021101265-2265-01; I.D. 101602A]

RIN 0648-AQ50

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Exemption Supplement to Framework Adjustment 35

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to modify the regulations implementing Framework Adjustment 35 (Framework 35) to the Northeast Multispecies Fishery Management Plan (FMP). Framework 35 established an exempted small mesh whiting fishery in the Gulf of Maine (GOM), near Provincetown, MA. The fishery occurs from September 1 through November 20 each year and requires the use of raised footrope trawl gear. This final rule modifies the boundaries of the current exemption area through inclusion of an area east of Cape Cod and allows the fishery to continue in the newly added eastern portion of the exemption area through December 31 of each year.

DATES: Effective November 14, 2002.

ADDRESSES: Copies of Amendment 12 to the FMP, its regulatory impact review (RIR), the initial regulatory flexibility analysis contained within the RIR, and its final Supplemental Environmental Impact Statement, along with Framework 35, its RIR and Environmental Assessment (EA), and other supporting documents for both Amendment 12 and Framework 35, and the EA and RIR prepared for this final rule are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, NMFS, 978-281-9272.

SUPPLEMENTARY INFORMATION: The final rule implementing Framework 35 (65 FR 49942, August 16, 2000) established an exempted whiting raised footrope trawl fishery in an area in upper Cape

Cod Bay effective September 1, 2000, based on the low bycatch of regulated multispecies encountered in the fishery while using raised footrope trawl gear. The overall reduction of regulated multispecies bycatch has been significant with the raised footrope trawl gear compared to landings and bycatch of regulated multispecies in regulated multispecies directed fisheries. Also, use of the raised footrope trawl has been demonstrated to significantly reduce total bycatch compared to traditional whiting trawl gear.

The Northeast (NE) multispecies regulations, at 50 CFR 648.80(a)(8)(i)(A), specify that, in order for any fishery to occur in the GOM/Georges Bank (GB) Regulated Mesh Area, it must be shown to have a bycatch of regulated multispecies that is less than 5 percent of the catch of all species. This regulation is intended to prevent the bycatch and discard of large amounts of regulated multispecies that could be caught in fisheries targeting other species. Small mesh bottom trawl fisheries are of particular concern because of the interactions of bottom fish, the limited selectivity of small mesh, and the high potential for regulated multispecies bycatch.

In May 2002, the Massachusetts Division of Marine Fisheries (MADMF) submitted a request to the Administrator, Northeast Region, NMFS (Regional Administrator) for an exempted fishery in the so-called "Area 3" east of Cape Cod and immediately adjacent to the present raised footrope trawl exempted fishery. Since 1997, the MADMF has tested the raised footrope trawl design in Area 3 east of Cape Cod from September 1 through December 31 each year. Section 648.80(a)(8)(i)(A) of the NE multispecies regulations provides for expansion of the existing exemption area boundaries, to include Area 3, if the Regional Administrator, after consultation with the New England Fishery Management Council (Council), determines that the percentage of regulated multispecies bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives of the FMP.

The Regional Administrator consulted with the Council and, at its June 24–26, 2002, meeting, the Council voted to support the MADMF request to the Regional Administrator to grant exempted fishery status in Area 3 east of Cape Cod. The Council asked that NMFS base its decision on the results of MADMF-funded sea sampling, which demonstrated that regulated multispecies bycatch had been reduced

to less than 5 percent, by weight, of the total catch.

In the last 2 years, the landings of whiting in the experimental area have been substantial and have exceeded 800,000 lb (362,874 kg) annually. Effort in 2001 increased by approximately 50 percent over 2000, with the number of participating vessels increasing from 10 to 15, and reported trips increased from 108 to 164. MADMF expended significant effort in documenting fishing performance in 2000 and 2001. There were 269 observed and unobserved trips in the experimental raised footrope trawl fishery in Area 3 during 2000 and 2001. According to the data submitted by MADMF, the overall percentage of regulated multispecies bycatch in the experimental fishery was 4 percent on seven observed trips, and 0.9 percent on 80 unobserved trips in 2000; and 1.7 percent on 18 observed trips, and 1.9 percent on 164 unobserved trips in 2001. The data indicate that the majority of the trips with regulated multispecies bycatch percentages higher than 5 percent resulted from either very low whiting catches, or apparently aborted trips (trips with total catch less than 500 lb (226.8 kg)), and not from significantly high levels of regulated multispecies bycatch. With a few exceptions, the amount of regulated multispecies bycatch on these trips was no greater than the trips that fell below 5 percent regulated multispecies bycatch.

The Regional Administrator has a reasonable basis to determine that a modification of the boundaries of the Raised Footrope Trawl Whiting Fishery Exemption Area, to include the adjacent area east of Cape Cod (Area 3), will not exceed the 5-percent bycatch allowance of regulated multispecies. In addition, while the current exempted fishery area is closed to exempted fishing on November 20 of each year in order to minimize expected cod bycatch (while still maximizing whiting catch), this rationale does not apply to Area 3 east of Cape Cod. While the landings data for Framework 35 justify closing the existing exempted fishery on November 20, the landings data for the newly added eastern portion of the Raised Footrope Trawl Whiting Fishery Exemption Area support the eastern portion remaining open through December 31.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and opportunity for comment under 5 U.S.C. 553(b)(B). The proposed exempted fishery is seasonal, intended to begin on September 1 and continue only through

the end of the calendar year. Fishermen depend upon access to this fishery (for the past five years, they have been able to participate in the experimental exempted fishery), and this dependence has been increased as a result of recent changes to the NE multispecies regulations as a result of the *Conservation Law Foundation, et al. v. Evans, et al.* Court order.

Immediate publication of this action as a final rule will provide the fishing industry with full access to the seasonal whiting fishery in as quick a timeframe as possible. Should implementation of this action be delayed, the fishing industry would be denied access to this alternative fishery for a significant part of the fishing season for whiting. Because this is a seasonal fishery, there is an urgency to conclude the rulemaking process and implement the exemption as soon as possible. Delays in implementation are contrary to the public interest and would have potentially significant adverse impacts on industry, who would be denied access to this fishery. Therefore, since this action relieves a burden to the fishing industry without compromise of the conservation objective, it would be contrary to the public interest to delay the implementation of this rule through prior notice and comment.

Moreover, it would be impracticable to provide prior public notice and comment. Consideration of this exempted fishery proceeded with the utmost diligence. The Regional Administrator (RA) could not act upon MADMF's application until consultation with the New England Fishery Management Council. Consultation occurred at the first opportunity at the end of June 2002. Following this meeting, the RA instructed her staff to begin analyzing the data submitted by Massachusetts in order to determine (1) whether the data supported the creation of an exempted fishery under 50 CFR § 648.80(a)(8)(i)(A); and (2) the type of National Environmental Policy Act document required to analyze the potential impacts on the human environment. The NMFS, Northeast Regional Office determined that in order to ensure adequate consideration of the environmental impacts of the exempted whiting fishery, the preparation of an Environmental Assessment was necessary.

Finally, the public has been given several opportunities to comment on the creation of this exempted fishery. Public meetings were held by the Council to discuss inclusion of Area 3 (which roughly encompasses the area defined in this rule) in the exempted fishery

during the development of management measures for Framework Adjustment 35 and Amendment 12 to the FMP. The development of Amendment 12 to the FMP included the preparation of a full EIS, including notification in the **Federal Register** and a series of public hearings on the proposed management system, as well as proposed and final rulemaking.

In addition, prior to requesting that the existing exemption area be expanded, MADMF had requested, and been granted, experimental exempted fishery permits (EFP) for this expanded area in each of the previous 5 years. Each request for an EFP, which covered the same area and approximately the same number of fishing vessels as would be likely to participate in the exempted fishery, involved a prior notice to the public and solicitation for comments in the **Federal Register**. Lastly, the RA is required by regulation to consult with the Council prior to making a decision on the exemption request. This consultation occurred at the end of June 2002, at a Council meeting, with full prior public notification (the agenda item was specific to the request for input on the request and was noted in all public announcements of the agenda, including a **Federal Register** notice). These processes provided an opportunity for public comment to be considered. Additional opportunity would unnecessarily delay the promulgation of a rule benefitting fishers without any likely benefit coming from the delay.

The AA, under 5 U.S.C. 553(d)(3), finds good cause to waive the 30-day delay in the effectiveness of these measures, as this rule relieves a restriction. Because this fishery is set to close on November 20, 2002, additional fishing opportunities would be prohibited. In order to avoid an interruption in fishing activity in the expanded area, it is necessary to waive the 30-day delayed effectiveness period. This would allow the continued harvest of the whiting stock for the remainder of the calendar year without

compromising the conservation objective.

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

Because prior notice and opportunity for public comment are not required for this final rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 13, 2002.

Rebecca Lent,

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 § 648.80, paragraph (a)(15) introductory text (including the table) and paragraph (a)(15)(i)(F) are revised to read as follows:

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

* * * * *

(a) * * *

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. The exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(h) and (i). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting

the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(September 1 through November 20)

Point	N. Lat.	W. Long.
RF 1	42°14.05'	70°08.8'
RF 2	42°09.2'	69°47.8'
RF 3	41°54.85'	69°35.2'
RF 4	41°41.5'	69°32.85'
RF 5	41°39'	69°44.3'
RF 6	41°45.6'	69°51.8'
RF 7	41°52.3'	69°52.55'
RF 8	41°55.5'	69°53.45'
RF 9	42°08.35'	70°04.05'
RF 10	42°04.75'	70°16.95'
RF 11	42°01.9'	70°14.75'
RF 12	41°59.45'	70°23.65'
RF 13	42°07.85'	70°30.1'
RF 1	42°14.05'	70°08.8'

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(November 21 through December 31)

Point	N. Lat.	W. Long.
RF 1	42°14.05'	70°08.8'
RF 2	42°09.2'	69°47.8'
RF 3	41°54.85'	69°35.2'
RF 4	41°41.5'	69°32.85'
RF 5	41°39'	69°44.3'
RF 6	41°45.6'	69°51.8'
RF 7	41°52.3'	69°52.55'
RF 8	41°55.5'	69°53.45'
RF 9	42°08.35'	70°04.05'
RF 1	42°14.05'	70°08.8'

(i) * * *

* * * * *

(F) Fishing may only occur from September 1 through November 20 of each fishing year, except that it may occur in the eastern portion only of the Raised Footrope Trawl Whiting Fishery Exemption Area from November 21 through December 31 of each fishing year.

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