

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 648**

[Docket No. 990811218-0072-02; I.D. 050399A]

RIN 0648-AL27

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 12 to the Northeast Multispecies Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Amendment 12 to the Northeast Multispecies Fisheries Management Plan (FMP) to address the management of silver hake (whiting), red hake, offshore hake, and ocean pout and to implement the framework measure approved in Amendment 11 to the FMP regarding essential fish habitat. Amendment 12 and these regulations establish differential whiting possession limits based on the mesh size with which a vessel chooses to fish. The intended effect of this action is to reduce fishing mortality rates on whiting and red hake to eliminate overfishing and rebuild the biomass in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This rule is effective April 28, 2000.

ADDRESSES: Copies of the Amendment 12 document, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA) and the July 1, 1999, supplement to the IRFA prepared by NMFS, the Final Supplemental Environmental Impact Statement (FSEIS), and other supporting documents for the FMP amendment, as well as all documents pertaining to Amendment 11, are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950.

Comments regarding burden-hour estimates for collection-of-information requirements or other aspects of the collection-of-information requirements contained in this final rule should be

sent to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT:

Peter Christopher, Fishery Policy Analyst, 978-281-9288.

SUPPLEMENTARY INFORMATION: This final rule implements Amendment 12 to the Northeast Multispecies FMP, which was partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on September 1, 1999. NMFS disapproved the limited access permit program and the associated open access permit category. All of the remaining measures contained in Amendment 12, as originally submitted, were approved. A proposed rule to implement these measures was published at 64 FR 49427, September 13, 1999. Comments were accepted through October 28, 1999.

The limited access permit program proposed in Amendment 12 was disapproved because NMFS determined that it was inconsistent with national standard 4 and section 304(e) of the Magnuson-Stevens Act. The qualification criteria would have allowed vessels that participated in either the Gulf of Maine whiting raised footrope or separator trawl experimental fisheries to qualify for a limited access permit under criteria different from those established for other vessels. Vessels that participated in the experiments would have qualified with 1,000 lb (453.6 kg) of landings over 3 years, rather than 50,000 lb (22,680 kg) of landings over 18 years. Vessels would have been subject to the same restrictions regardless of how the vessel qualified for the permit. This portion of the proposed limited access program is inconsistent with national standard 4 because different sectors of the industry could have qualified for the same level of fishing with different landings requirements. Further, vessels may have been excluded from participation in experimental fisheries because NMFS imposed participation restrictions, and these restrictive controls may have discouraged vessels from participating.

The limited access program also proposed that, at the beginning of year 6 of Amendment 12, unless otherwise extended, vessels would be eligible for limited access small-mesh multispecies permits without having to meet the landings criteria, provided the vessels possessed a limited access multispecies permit that was valid on the date the final rule for Amendment 12 is published and that continues to be valid in year 6. The sunset provision could have given vessel owners who would

not qualify for the limited access permit unrealistic expectations that they may be able to participate in the whiting (small-mesh multispecies) fisheries as a limited access vessel when it is unlikely to happen. Further, there was no analysis of the potential effects of such effort on the rebuilding schedule.

Amendment 12 is intended to end overfishing in Year 4 and to rebuild the stocks of whiting and red hake within 10 years. Because it is uncertain that the fishery could sustain additional vessel participation just 1 year beyond the target date to end overfishing, rebuilding goals may be compromised. This measure was, therefore, found to be inconsistent with section 304(e) of the Magnuson-Stevens Act that specifies that overfished fisheries be rebuilt within a period not to exceed 10 years.

This rule does not implement the open access permit category for small-mesh multispecies because this category serves no purpose without the limited access permit program.

Details concerning the justification for, and development of, Amendment 12 and the implementing regulations were provided in the notice of availability (NOA) of Amendment 12 at 64 FR 29257, June 1, 1999, corrected at 64 FR 34758, June 29, 1999, and in the preamble to the proposed rule and are not repeated here.

Approved Measures

Although possession limits and other measures contained in the Amendment 12 are specific to whiting and offshore hake, the measures to protect whiting will also provide similar protection for red hake because it is primarily caught as incidental catch along with whiting or in directed whiting fisheries.

The existing "Open Access Nonregulated Multispecies Permit" category is renamed the "Open Access Multispecies Permit" to avoid confusion that would result from the elimination of the definition of "Nonregulated Multispecies." The term "nonregulated" is no longer appropriate because Amendment 12 regulates whiting, red hake, and offshore hake. Vessels currently issued "Open Access Nonregulated Multispecies Permits" do not have to acquire a new "Open Access Multispecies Permit" this fishing year, but will have to obtain one for future years.

This rule amends the regulations so that the Cultivator Shoal Whiting Exemption Area fishing season begins on June 15 and ends on September 30 of each year. Vessels fishing in this exemption area with the appropriate letter of authorization from the Regional Administrator on board are restricted to

a minimum mesh size of 3 inches (7.62 cm), subject to applicable codend restrictions. Such vessels are also subject to a possession limit of 30,000 lb (13,608 kg) of whiting and offshore hake. Vessels with a valid letter of authorization to fish in the Cultivator Shoal Whiting Exemption Area are allowed to fish in areas other than this exemption area, but they are subject to the more restrictive mesh and possession measures regardless of where they fish.

Vessels issued any category of Federal limited access multispecies permit or an "Open Access Multispecies Permit" are subject to a whiting and offshore hake possession limit of 3,500 lb (1,588 kg) while using a codend mesh size (defined at § 648.86(d)(1)(iv)) of less than 2.5 inches (6.35 cm) or while using any mesh size and not issued a letter of authorization as described at 648.86(d)(2). Vessels issued any category of Federal limited access multispecies permit or the "Open Access Multispecies Permit" are subject to the following whiting and offshore hake possession limits: 7,500 lb (3,402 kg), while using a codend mesh size of 2.5 inches (6.35 cm) or larger, provided the vessel has a letter of authorization from the Administrator, Northeast Region, NMFS (Regional Administrator) on board; and 30,000 lb (13,608 kg), while using a codend mesh size of 3 inches (7.62 cm) or larger, provided the vessel has a letter of authorization from the Regional Administrator on board. Letters of authorization for these mesh size categories are valid for a minimum of 30 days. However, vessels can withdraw from either minimum mesh size category after a minimum of 7 days, but they are subject to a possession limit of 3,500 lb (1,588 kg) regardless of the mesh size in use and may not re-enter the original authorization category for the remainder of the original 30 days.

To retain silver hake (whiting) and offshore hake while participating in the northern shrimp fishery, a vessel must have a Federal multispecies permit. Vessels issued a Federal multispecies permit and fishing in the Small-Mesh Northern Shrimp Fishery Exemption Area with an appropriate letter of authorization from the Regional Administrator on board are subject to a possession limit of silver hake and offshore hake, combined, equal to the weight of shrimp on board, but may not exceed 3,500 lb (1,588 kg).

This rule includes instructions for vessel owners to follow in order for them to receive the required letters of authorization to participate in one of the minimum mesh size and corresponding possession limit categories. To request a

letter of authorization, vessel owners must call the Northeast Region Permit Office during normal business hours and provide the vessel name, owner name, permit number, the desired mesh size/possession limit category, and the period of time that the vessel is enrolled. Because letters of authorization are effective on the date of receipt, vessel owners should allow appropriate processing and mail time. To withdraw from a category, vessel owners must call the Northeast Region Permit Office. Withdrawals are effective upon date of request.

Vessels issued Federal multispecies permits may transfer up to 500 lb (226.8 kg) of small-mesh multispecies to another vessel at sea, provided the transferring vessel has a letter of authorization to transfer fish at sea on board the vessel. A total of 500 lb (226.8 kg) will automatically be deducted from the possession limit of the vessel the fish is transferred from, regardless of the actual amount transferred. Vessels receiving the small-mesh multispecies at sea do not have to have a multispecies permit but must have a receipt for the transferred fish.

For vessels less than or equal to 60 ft (18.29 m) in length overall, the minimum codend mesh size applies to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net. For vessels greater than 60 ft (18.29 m) in length overall, the minimum codend mesh size applies to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net. These restrictions do not apply to vessels using less than 2.5-inch (6.35-cm) mesh and subject to other Northeast Region codend specifications specified in 50 CFR part 648. Vessels using mesh less than 2.5 inches (6.35 cm) may continue to use net strengtheners as allowed in this 50 CFR part 648.

Unless a framework or amendment to address fishing mortality for whiting and red hake is implemented by May 1, 2002, the following default measures are applicable:

A regulated mesh area throughout the range of the species, with a 3-inch (7.62-cm) minimum mesh requirement for all fishing activities. Vessels participating in any fishery are required to use the minimum codend mesh or larger unless fishing in a fishery that has been determined exempt from the minimum mesh size.

A possession limit of whiting and offshore hake up to 10,000 lb (4,536 kg) for vessels possessing a Federal multispecies permit.

An allowance for vessels to fish with mesh less than 3 inches (7.62 cm), if fishing is determined to be exempted

from the minimum mesh size by demonstrating a bycatch of small-mesh multispecies that is less than 10 percent of total catch.

A possession limit of 100 lb (45.36 kg) of whiting and offshore hake for vessels participating in an exempted fishery.

This rule allows the following measures to be implemented through the framework procedure in § 648.90: A total allowable landings limit of whiting (and appropriate seasonal adjustments) for vessels fishing in the northern area requiring that the fishery be closed when the limit is reached; modifications or adjustments to whiting grate/mesh configuration requirements; adjustments to whiting stock boundaries for management purposes; modifications to criteria defining fisheries as exempt from the minimum mesh requirements for small-mesh multispecies; adjustments to the season, declaration process, or participation requirements for the Cultivator Shoal whiting fishery; and measures to designate essential fish habitat. In addition, the following management measures can be implemented through a framework adjustment to the FMP, provided that they are accompanied by a full set of public hearings: Whiting Days at Sea (DAS) effort reduction program and a whiting total allowable catch (TAC), either by region or for the entire fishery.

This rule establishes the Whiting Monitoring Committee (WMC) to monitor the progress of the rebuilding of small-mesh multispecies stocks on an annual basis. The role, structure, and process for the WMC are identical to those of the Multispecies Monitoring Committee (MMC), with the exception that the WMC must include at least three industry representatives: One from New England, one from Southern New England, and one from the Mid-Atlantic regions. This final rule changes the proposed regulations to specify that the first meeting of the WMC will take place in 2001. Implementation of this final rule will occur only six months prior to the first scheduled meeting of the Whiting Monitoring Committee. Therefore, the Whiting Monitoring Committee would have an incomplete year under the management measures to review if they were to meet in 2000. Changing the first meeting date to 2001 will provide a full year of the initial management measures for the Whiting Monitoring Committee to consider.

Comments and Responses

Comment 1: Two commenters stated that the limited access permit program proposed in Amendment 12 represents the best compromise that could be reached to address the difficult and

complex problem of limiting access to small-mesh multispecies fisheries.

Response 1: The limited access permit program has some merits; however, the exemption from the landing criteria for vessels that participated in an experimental fishery is inequitable. Further, no analysis of the potential effects of the sunset provision on the rebuilding schedule exists. Amendment 12 proposes to end overfishing in Year 4 and to rebuild the stocks of whiting and red hake within 10 years. Because it is uncertain that the fishery could sustain additional vessel participation just 1 year beyond the target date to end overfishing, rebuilding goals may be compromised.

Comment 2: Several comments were received in support of the limited access permit program. Commenters felt that, since equity is a concern with any limited access program, implementing Amendment 12 without limited access should be of greater concern, that a limited access permit program would protect historical participants' interests in the fishery and ensure that as many people as possible who have participated in the whiting fishery would qualify, and that the limited access permit program should be implemented immediately, while the Council continues to work toward resolving concerns.

Response 2: The limited access permit program was disapproved on the basis of its inconsistency with national standard 4 and sec. 304(c) of the Magnuson-Stevens Act. The Council should proceed with developing a new limited access program that is equitable and supports the rebuilding goals of Amendment 12.

Comment 3: The Council commented that the exception from the 50,000 lb (22,680 kg) landing requirement for vessels that participated in an experimental fishery is not intended to exclude vessels that did not participate in experimental fisheries, but rather to include vessels that have demonstrated a clear intent to fish for small-mesh multispecies and may not have had the opportunity to land 50,000 lb (22,680 kg). The Council commented that every known vessel denied access to the experiment would at least qualify for the limited access possession limit permit. The Council commented that it is likely that unknown vessels having been denied participation would also qualify for at least the possession limit permit.

Response 3: The Council's intent to allow any vessel into the fishery that showed a clear intent to participate in whiting fisheries is misrepresented by the exemption from landing

requirements for a small number of vessels that had participated in experimental fishing. Instead, this exception creates an inequitable provision by eliminating any vessel whose owner may have had an intent to participate but may have been discouraged from participating or may have been denied participation in the fishery or experimental fishing. The Council's argument that most vessels that were denied access to the experiment would still qualify for the possession limit permit does not justify the exemption from the landing requirement but, rather, appears to support not having an exemption at all.

Comment 4: The Council and two individuals commented that the inclusion of the sunset provision is appropriate because it is not an automatic condition and is conditional on the determination that whiting stocks can withstand additional pressure.

Response 4: Like the default management measures, the sunset provision would have been implemented unless the Council took action to prevent its implementation. Although it may have been the intent of the Council to review the status of the stocks before the sunset provision was implemented, the measure as proposed implied that vessels would be allowed entry. It would be appropriate to consider allowing additional vessels into the fishery only when it is determined that the stocks can withstand the additional effort.

Comment 5: The Council, the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council), and one individual commented that open access and increasing regulations in other fisheries are reasons to expect a potential increase of effort in whiting fisheries, despite market conditions.

Response 5: NMFS agrees that increased participation over the long-term in an open access fishery is possible. However, market conditions and Amendment 12's increased restrictions on the whiting fisheries would likely discourage a large number of new vessels from entering the fishery. The measures approved by NMFS are designed to eliminate overfishing and allow the stocks to rebuild. If stocks begin to recover and market conditions improve and/or stabilize over time, vessels may find whiting fisheries more attractive. NMFS encourages the Council to develop a limited access system as soon as possible.

Comment 6: The Council commented that it is unfair to impose the default measure at the beginning of Year 4 if the tools to achieve the Year 1–3 reductions, including limited access permits, are

not implemented in a timely manner. Some commenters feel that the Year 4 default measures should also be delayed.

Response 6: The default measure is necessary to reach rebuilding objectives within the time required by the Magnuson-Stevens Act as amended by the Sustainable Fisheries Act (SFA) and Amendment 12. The default measure, as demonstrated in the analyses in Amendment 12, is needed to meet rebuilding goals under either limited access or open access. The Council will have the opportunity under the annual review process to change management measures if needed.

Comment 7: The Mid-Atlantic Council commented that the conclusion that the elimination of the limited access permit program will not have an adverse effect on overfishing contradicts the reason for the disapproval of the sunset provision because both appear to allow additional vessels into the fishery and would have the same net effect on rebuilding goals. The Mid-Atlantic Council and one individual further commented that both the sunset provision and an open access fishery would compromise optimum yield (OY) and rebuilding goals.

Response 7: The assumptions are not the same when considering the sunset provision and an open access fishery. NMFS reasonably assumed that, in the short-term, participants in an open access fishery will not significantly increase due to current market conditions, status of the fishery, and restrictions of the management measures. The sunset provision, however, allows vessels into the fishery in the future without consideration of their effects on the rebuilding goals and without any compensating measures.

Comment 8: One commenter suggested that the supplemental analysis prepared to evaluate the management measures in an open access fishery is a "case of magic numbers."

Response 8: NMFS disagrees. However, NMFS recognizes that it is difficult to precisely predict the behavior of fisheries in an open access fishery. Nevertheless, NMFS' analysis is supported by current market conditions in the fishery and by new restrictions implemented by Amendment 12 that may dissuade vessel owners from entering the fishery. NMFS is aware that the level of uncertainty could be greatly reduced if effort is controlled over the long term with a limited access permit program. Accordingly, NMFS has encouraged the Council to develop a limited access permit program that is fair and equitable.

Comment 9: The Mid-Atlantic Council and another commenter supported using landings data dating back to 1980 to qualify for a limited access permit. The commenters feel that, because of declines in availability of fish in the Mid-Atlantic/Southern New England areas around 1988, a qualifying period beginning in 1987 would eliminate many vessels from qualification in the southern areas.

Response 9: This comment is moot because NMFS disapproved the limited access component of Amendment 12.

Comment 10: The Mid-Atlantic Council commented that the limited access qualifying criteria should be applied equally across all fisheries and the sunset provision should be disapproved. The Mid-Atlantic Council also commented that Amendment 12 should include an exemption for vessels that participated in the small-mesh shrimp fishery with separator grates that would not have qualified for limited access small-mesh multispecies permits.

Response 10: NMFS disapproved the limited access permit program in part because the qualifying criteria were not fair and equitable.

Comment 11: The Council commented that the proposed enrollment program for the mesh size/possession limit categories does not provide the industry the flexibility that was intended and that it would discourage vessels from fishing for whiting and other small-mesh species with the most appropriate gear. The Council suggested that NMFS make a technical change in the final rule to implement a call-in enrollment, which would be incorporated into the current call-in system for groundfish to provide industry the necessary flexibility.

Response 11: The rule accurately reflects the enrollment program developed by the Council in Amendment 12. While the Council may now feel that a call-in program is preferable, a technical amendment to the regulations is not the proper vehicle to make a change in the type of enrollment program. After its submission of Amendment 12 to NMFS, the Council developed Framework 32, which eliminates Amendment 12's enrollment program. The final rule for Framework 32 will be published concurrently with this rule and will override relevant portions of the Amendment 12 rule.

Comment 12: The Council recommended that NMFS implement an allowance for a net strengthener of mesh size that is twice that of the inside mesh (e.g., 5-inch (12.7 cm) for 2.5-inch (6.35-cm) inside mesh) as a technical change to the 2.5-inch (6.35-cm)

minimum mesh size/possession limit category measure. The Council feels that vessels may not catch enough squid with 2.5-inch (6.35-cm) mesh to make a profitable trip and will use 1.875-inch (4.76-cm) mesh and discard whiting over 3,500 lbs (1,588 kg), creating an excessive amount of discarding that could compromise the objectives of Amendment 12 to reduce whiting mortality and discards. The Mid-Atlantic Council supported the use of net strengtheners for all mesh sizes provided they do not alter the intended selective properties of the minimum mesh specified in Amendment 12.

Response 12: A technical amendment to this rule is not an appropriate means of eliminating Amendment 12's limited prohibition on the use of net strengtheners. The Whiting Plan Development Team (PDT) expressed concern during the development of Amendment 12 that net strengtheners may have a detrimental impact on the selectivity of the net, increasing catch and discards. However, time constraints prevented a full analysis of the use of various net strengtheners prior to Amendment 12's submission for Secretarial review. As a result, it was determined that, given the uncertain impacts, allowing the use of net strengtheners may compromise the objectives of Amendment 12. The Council has since analyzed impacts of net strengtheners and submitted a framework adjustment action to implement a net strengthener allowance for vessels using 2.5-inch (6.35-cm) mesh, that will be implemented simultaneously with this amendment. Assuming that all vessels may choose to use a net strengthener whenever the best strategy is to use 2.5-inch (6.35-cm) mesh, the conservation benefits of Amendment 12 are expected to be reduced by only 3.6 percent in the northern area and 1.9 percent in the southern area. Under the alternative assumption that the net strengthener would be employed only on observed trips where squid revenues exceeded small mesh multispecies revenues, the conservation benefits are estimated to remain unchanged compared to the status quo in the northern area and are estimated to be reduced by 0.9 percent in the southern area.

Comment 13: One commenter suggested that the implementation of the proposed minimum mesh size/possession limit measures would result in increased discards. The commenter notes that the Council was considering a call-in enrollment procedure and the use of a net strengthener. Therefore, the commenter recommends that NMFS should wait to implement all

Amendment 12 regulations until the Council acts on these issues.

Response 13: As noted in the response to comment 12, NMFS is publishing the Framework 32 final rule, which provides for the use of net strengtheners and new mesh possession limit measures, simultaneously with this final rule.

Comment 14: The Mid-Atlantic Council commented that Amendment 12 should require the use of square mesh, which has been demonstrated to greatly improve the escapement of small fish in a number of fisheries around the world similar to U.S. whiting fisheries.

Response 14: The Council and NMFS are not aware of any data to support the commenter's claims about the benefits of square mesh for small-mesh multispecies. The Mid-Atlantic Council may want to consider recommending this gear restriction to the Council for future consideration. The WMC would have an opportunity to review the effects of the current measures and recommend new measures as part of its first annual review.

Comment 15: Several commenters felt that, because the default measures do not currently specify a geographical extent, Amendment 12 would affect southern fisheries, such as southern shrimp trawl fishery. The commenters suggested that a southern limit at 39° or 39°30' N. lat. be established to protect fisheries that have little interaction with whiting, red hake, and offshore hake. Further, the commenters expressed concern that the 3-inch (7.62-cm) minimum mesh size will shut down *Loligo*, *Illex*, herring, and Atlantic mackerel fisheries.

Response 15: In the years prior to the Year 4 default measure, the Councils and NMFS can work together to identify appropriate fisheries for exemption from the 3-inch (7.62-cm) minimum mesh size and to consider a southern limit to the measure, which was discussed by the Council in the development of Amendment 12.

Comment 16: One commenter opposes the Year 4 default measures. The commenter feels that the disapproval of the limited access permit program and the gaps in scientific information on the stocks should be addressed before implementing the Year 4 default measures.

Response 16: Sufficient scientific information exists on stock abundance of whiting and hakes to form the basis for concluding that the stocks are overfished and that the Year 4 default measures are necessary to ensure that rebuilding occurs in sufficient time to comply with the Magnuson-Stevens Act, while easing the economic burden in

Years 1–3. Meanwhile, prior to the actual implementation of the default measure in Year 4, there will be opportunities to review the scientific data and adjust management measures based on that review, if appropriate. Other management alternatives could be developed that would replace the default measures.

Comment 17: Two commenters felt that the economic impact analysis is inadequate with respect to the effects on non-whiting fisheries, such as squid, mackerel, and herring fisheries. An industry representative further stated that, because of the inadequacy, Amendment 12 does not comply with national standard 8.

Response 17: NMFS disagrees with the commenters' suggestion that regulations implementing Amendment 12 violate national standard 8 of the Magnuson-Stevens Act. National standard 8 states that "conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the preventing of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to: (1) Provide for the sustained participation of such communities; and (2) to the extent practicable, minimize adverse economic impacts on such communities." Economic impacts of the preferred management measures and alternatives on communities are described in Amendment 12 in section E.5.2, E.7.0, the RIR, and the IRFA. Section E.7.2.3, "Analysis of Fishery Impacts," describes the impacts of production losses associated with fisheries for large-mesh species, offshore hake, whiting, red hake, *Loligo* and *Illex* squid, shrimp, and small-mesh species (which include mackerel and herring) and identifies such losses in tables on pages 243 and 245 of Amendment 12. Community involvement in small-mesh multispecies fisheries and community impacts are discussed throughout Amendment 12 and its FSEIS.

Amendment 12 and this rule provide for the sustained participation of communities in small-mesh multispecies fisheries and minimizes economic impacts on them to the extent practicable in several ways, including the following. First, to reach the goal of ending overfishing, the rebuilding plan phases in reductions of the fishing mortality rate over the first 3 years, rather than requiring attainment of that goal immediately. Thus, they provide for the continued harvest of small-mesh species, albeit at reduced levels. Second, Amendment 12 sets up a rebuilding plan that meets the

conservation requirements of the Magnuson-Stevens Act, yet provides for rebuilding over an extended period of time—the full 10 years allowed by the Magnuson-Stevens Act. Third, while the impacts of the Year 4 default measure are likely to be more severe than those of the Year 1–3 measures, the impacts of the Year 4 measure are short-lived relative to the negative impacts associated with maintaining the status quo and allowing fishing mortality to remain too high on stocks of whiting and red hake. By delaying the default measure to Year 4, Amendment 12 and this rule provide fishermen with the opportunity and incentive to modify their strategies for small mesh fishing in Years 1–3, which could make implementation of the Year 4 default measure unnecessary. Finally, Amendment 12 and this rule accommodated non-whiting fisheries by allowing possession of silver hake and offshore hake in amounts depending on mesh size. For these reasons, NMFS finds that Amendment 12 and this rule comply with national standard 8.

Comment 18: One commenter felt that Amendment 12 is inconsistent with national standards 4, 5, and 8 because it discriminates between sectors of the industry, does not foster efficiency in utilization of the fishery, and does not consider the importance of fishery resources to communities. Specifically, the commenter expressed a concern that large vessels would be unfairly disadvantaged by the possession limit in the Cultivator Shoal whiting fishery because trips to the area involve long travel time and 30,000 lb (13,608 kg) of whiting could not cover costs of operating the vessel. The commenter finds this inequitable because smaller vessels, which generally fish closer to shore, would be able to reach their fishing grounds in less time and, thus, have lower operating costs to cover.

With respect to national standard 5, the commenter stated that the proposed possession limits are contrary to the Council's intent in Amendment 12, which the commenter stated is to increase economic efficiency and allow a wide range of trip sizes. To address inequities associated with uniform possession limits, the commenter states that Amendment 12 should have used a "sliding scale" for possession limits where vessels would be allowed a possession limit based on the size of their vessel.

With respect to national standard 8, the commenter states that the FSEIS does not adequately address the significant economic and social consequences of the preferred alternative on fishermen and

communities as compared to other options.

Response 18: NMFS disagrees that Amendment 12 is inconsistent with national standards 4, 5, and 8. A possession limit of 30,000 lb (13,608 kg) for the Cultivator Shoal whiting fishery was chosen because it provided for the required 63-percent reduction in exploitation by eliminating extremely large whiting trips in the area, some of which have historically exceeded 100,000 lbs (45,360 kg). The 30,000 lb (13,608 kg) possession limit would still result in profitable trips. Based on 1995 through 1997 landings data from the Cultivator Shoal whiting fishery, trips averaged about 10,000 lbs (4,536 kg). Further, with a 30,000 lb (13,608 kg) possession limit, market conditions during the fishery's season should be more stable, allowing more vessels to take advantage of the market and profit from trips that may otherwise have been negatively impacted by large trips flooding the market.

Vessel size and sliding scales were considered as possible criteria for possession limits, but were rejected because they were overly complex and would not have provided any significant benefits compared to the administration and enforcement difficulties associated with them, as described in section E.5.2, "Alternatives to the Proposed Action". Large vessels are not restricted to fishing in the Cultivator Shoal whiting fishery area. In fact, no vessels are restricted to certain areas where they can fish. Vessels of all sizes have the flexibility to modify their trips to reduce costs, if necessary.

Finally, NMFS finds Amendment 12 complies with national standard 8, as described in Comment Response 17.

Comment 19: One commenter felt that NMFS should articulate a program within the context of Amendment 12 to ensure the necessary information will be available to conduct a benchmark assessment.

Response 19: One of the goals of Amendment 12 is to increase scientific information on whiting, red hake, and offshore hake stocks. During the first 3 years that Amendment 12 is in effect, NMFS is hopeful that new stock assessments can be conducted on each species and the results will be used to modify management measures on an annual basis, if appropriate.

Comment 20: Three commenters noted that a composite net, utilizing large-mesh panels in the front of the net, is effective in reducing bycatch of whiting and other species in mixed trawl fisheries. They feel, however, that uniform small-mesh nets have a high bycatch. The commenters feel that

NMFS should consider allowing the gear or authorizing experiments with the "composite" tail bag.

Response 20: NMFS will consider any request for an experimental fishery to evaluate the effectiveness of a composite net in the reduction of bycatch.

Comment 21: One commenter expressed concern regarding the inclusion of two measures on the list of measures that could be implemented by framework action: (1) The description and identification of essential fish habitat (EFH), and (2) the description and identification of habitat areas of particular concern (HAPC). The commenter is concerned that the framework process would allow changes to these measures to be published as a final rule, without publication first as a proposed rule. The commenter states that nonfishing interests lack representation at Council meetings and, therefore, will not have the opportunity to comment upon actions regarding EFH. The commenter also asserts that the framework adjustment process for these two measures will create inconsistencies in the measures among different NMFS Regions and the New England and Mid-Atlantic Fishery Management Councils (Councils), thereby complicating the EFH consultation process. The commenter requests that the inclusion of these measures be delayed until NMFS EFH interim final regulations and guidelines are revised.

Response 21: The framework adjustment process requires the Councils, when making allowed adjustments to the FMP, to develop and analyze them over the span of at least two Council meetings. The Councils must provide the public with advance notice of the meetings, the proposals, and the analysis. Publication of the meeting agenda in the **Federal Register** is required. The public is provided an opportunity to comment on the proposals in writing, and/or in person at the second Council meeting. Upon review of the analysis and written and verbal public comments, the Council may recommend to the Regional Administrator that the measures be published as a final rule, provided certain conditions are met. NMFS may publish the measures either as a final rule or as a proposed rule if either NMFS or the Council determines that additional public comment is needed.

The list of frameworkable measures included in the Amendment 12 and the final rule to implement it is inclusive to provide the Council maximum flexibility in responding quickly to fishery information as it becomes available and in adjusting the

regulations accordingly. As such, modifications to EFH and HAPC can be implemented in an expedited manner if circumstances warrant, based upon Council and NMFS approval. The framework adjustment process requires adherence to all applicable law, and a framework adjustment requires full analysis to evaluate the impact of the measures. The degree of the required analysis will differ for each framework adjustment, depending upon the scope of the action and the degree to which the impacts have been previously analyzed. This process is considered to be adequate in providing the public opportunity to comment or be involved with any measures to address EFH concerns.

Comment 22: One commenter stated that the 15-percent reduction in catch associated with a 0.5-inch (1.27 cm) increase in mesh size from 2.5-inch (6.35 cm) mesh to 3-inch (7.62 cm) mesh is not accurate and reported that industry feels that the reduction is 50 percent. The commenter feels that this would result in measures being more effective in achieving Amendment 12 objectives than anticipated.

Response 22: The Amendment 12 document takes this into account in the comparison of sensitivity trials. However, the Whiting PDT established the 15-percent reduction in catch based on scientific studies conducted by state agencies. There is no current evidence to show that the reduction in catch resulting from a 1/2-inch (1.27-cm) increase in mesh size is higher than that recommended by the Whiting PDT. If measures are more effective than anticipated, NMFS notes that framework action or an amendment addressing the new information may preclude the need to implement default measures in Year 4.

Comment 23: One commenter noted that, because whiting stocks cross US/Canadian boundaries, Canada should also be actively involved in the management of whiting.

Response 23: Annual reviews of the status of the stocks and the effectiveness of the management measures will take into account the possibility of stocks existing and migrating into Canadian waters, allowing NMFS and the Council to develop appropriate management, including coordination with Canada, if necessary.

Comment 24: One commenter feels that Amendment 12 is inconsistent with national standards 1 and 2 because possession limits would not allow achievement of OY and the management measures are not based on the best scientific information. The commenter states that the northern stock of whiting

is approaching an overfished condition, and there is no determination that it is overfished. Further, the commenter states that, because long trips with 30,000 lb (13,608 kg) possession limits would not be economical, vessels would divert effort into the southern area, possibly compromising the rebuilding goals for whiting and red hake in that area.

Response 24: NMFS disagrees and finds Amendment 12 to be consistent with national standards 1 and 2. National standard 1 requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the United States fishing industry. Also, sec. 304(e)(3)(B) of the Magnuson-Stevens Act requires the Council to develop a FMP amendment to prevent overfishing in a fishery identified as approaching an overfished condition. Amendment 12 concludes that the stock of whiting in the northern area is approaching an overfished condition and sets a fishing mortality rate of 0.36 (or a 63-percent reduction in the exploitation rate) to prevent overfishing. The possession limits and the selectivity of the minimum mesh sizes in both the northern area and the Cultivator Shoal whiting fishery exemption area are intended to achieve that fishing mortality target.

Amendment 12 also complies with national standard 1 because it sufficiently specifies OY. Amendment 12 specifies OY for whiting, red hake, and offshore hake as the amount of fish that results from fishing under the set of rules designed to achieve the plan objectives. It is the amount of fish caught by the fishery when fishing at target fishing mortality rates at current biomass levels, or when fishing in a manner intended to maintain or achieve biomass levels capable of producing maximum sustainable yield on a continuing basis. Given the definition of OY is tied to the fishing mortality rate, and the possession limits are designed to achieve the fishing mortality rates, the possession limits allow for the harvest of OY.

The majority of trips that landed 30,000 lbs or greater of whiting historically occurred in either the Cultivator Shoal whiting fishery or in Southern New England waters. Therefore, it is unlikely that the 30,000 lb possession limit would cause additional effort in the southern area that is not already considered in Amendment 12. Regarding the issue of trip profitability under a 30,000-lb limit, see the response to comment 18.

Section E.6.2 of Amendment 12 describes the data the Council used to

evaluate the potential impacts of the management measures on small-mesh multispecies fisheries. In summary, the Council considered information and analyses provided by scientific and technical groups including the Overfishing Definition Review Panel and the Whiting PDT. It also considered information provided by the Whiting Industry Advisory Panel and other industry representatives when systematically collected data were unavailable. While recent information is lacking, Amendment 12 can use only what is available. NMFS found, through review of Amendment 12, that this information was the best available scientific information.

Changes From the Proposed Rule

Changes made are related to technical and administrative needs and concerns and are made to clarify the intent of the regulations. In addition, the final rule for Amendment 9 to the FMP was published on October 15, 1999. Changes are made to make the final rule for Amendment 12 to the FMP consistent with the regulations as modified by the final rule for Amendment 9 to the FMP. The most notable changes from the proposed rule to the final rule implementing Amendment 12 are listed below in the order appearing in the regulations:

In § 648.2, in the definition for Northeast (NE) multispecies or multispecies, Atlantic halibut has been added by Amendment 9 to the FMP. The scientific name for yellowtail flounder in the definition is corrected to *Pleuronectes ferruginea*. In the proposed rule it was inadvertently specified as *Limanda ferruginea*, which was the old classification.

In § 648.6, paragraph (a) is revised to delete references to effective dates that have been passed.

In § 648.14, paragraph (a)(42) is revised to better reflect the intent of the referenced paragraphs. Paragraphs (b) and (c)(7) are revised to reflect revised references.

In § 648.80, paragraphs (a)(3)(i)(A), (a)(3)(i)(B), (a)(4)(i)(B), (a)(8)(i)(A), (a)(8)(i)(B), and (a)(9)(i)(D) are revised to reference additional American lobster possession limits imposed by § 697.17 of this chapter.

In § 648.80, paragraphs (a)(8)(i)(B), (a)(9)(i)(D)(2), and (b)(3)(i)(B) are revised, and paragraph (c)(2)(iii) is added to reflect the minimum mesh size implemented by the Year 4 default measures.

In § 648.80(g) the net strengthener provisions are clarified.

In § 648.80, paragraph (g)(4) is redesignated (g)(5) because a restriction

on street sweeper gear is now designated as paragraph (g)(4).

In § 648.86 the paragraphs that were to be added as paragraphs (c) and (d) are added as paragraphs (d) and (e) because the possession limit for halibut is now designated as paragraph (c).

In § 648.86, the paragraphs that were to be redesignated as paragraphs (e) and (f) are redesignated as paragraphs (f) and (g).

In § 648.86, paragraphs (d)(1)(i) through (d)(1)(iii) are revised for clarity and to specify that net stowage applies to the entire trip, and paragraph (d)(1)(iv) is added to clarify that minimum mesh size applies to the last 50 meshes (100 bars if square mesh is used) for vessels 60 ft (18.28 m) and under and to the last 100 meshes (200 bars if square mesh is used) for vessels greater than 60 ft (18.28 m), as specified in Amendment 12.

In § 648.90, paragraph (a) is revised to specify that the first annual meeting of the Whiting Monitoring Committee will occur in 2001.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648-0391 for §§ 648.13 and 648.86.

Under NOAA Administrative Order 205-11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

The Administrator, Northeast Region, NMFS, determined that the FMP, except for the disapproved measure, is necessary for the conservation and management of the northeast multispecies fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council prepared and NMFS has adopted a FSEIS for Amendment 12; a NOA was published at 64 FR 39990, July 23, 1999. Although short-term negative impacts will result from lowered allowed catches of small-mesh multispecies, the proposed management action will have long-term positive impacts on affected physical, biological, and human environments.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Analysis

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the Council prepared an IRFA, and NMFS prepared a supplement, dated July 1, 1999, that describes the economic impacts of the proposed rule, if adopted, on small entities and discusses various alternatives considered by the Council. The final regulatory flexibility analysis (FRFA) consists of the IRFA, the supplement to the IRFA, public comments received on the amendment and proposed rule related to economic impacts on small entities and responses in this final rule, and the summary that follows.

In its September 1997 Report to Congress, NMFS determined that some stocks of whiting and red hake are overfished or approaching an overfished condition. NMFS is publishing this rule to comply with the Magnuson-Stevens Act, which requires that an amendment be developed and implemented to prevent overfishing of stocks declared to be approaching an overfished condition and to end overfishing and to rebuild overfished stocks. This rule intends to prevent overfishing by implementing whiting and offshore hake possession limits; minimum mesh sizes; and a Year 4 default measure to ensure that overfishing is eliminated. To ensure effective recordkeeping and compliance with the measures exist, this rule establishes two new collection-of-information requirements and includes one existing collection-of-information requirement in the FMP that was not previously approved by OMB. The two new requirements require a vessel owner or operator to call the Regional Administrator to request a letter of authorization to fish under one of the mesh size/possession limit categories and require a vessel owner or operator to provide/obtain a receipt for fish bought through a transfer of fish at sea. The requirement not previously approved by OMB is a requirement to call in to receive a letter of authorization to transfer fish other than regulated multispecies at sea. Measures analyzed in the IRFA include the full set of management measures with particular attention to mesh size and possession limits and the Year 4 default measure and various other alternatives considered by the Council. The entities affected by these regulations are all small entities; therefore, analysis of impacts of the regulations and of the alternatives considered in Amendment 12 constitutes an analysis of the impact of the regulations on small entities as required under the RFA. The small entities considered in this analysis are

1,156 vessels that reported landing one or more combined pounds of whiting, red hake, and offshore hake during the calendar years 1995 to 1997.

Other measures approved in Amendment 12, including minimum mesh and possession limit enrollment programs (not including the direct reductions of catch and landings caused by minimum mesh sizes and possession limits), codend specifications, the net strengthener provision, and the transfer at sea provision have no quantifiable economic impact but are intended, in part, to help mitigate all impacts of these measures on participants in the fishery. These measures are expected to have minimal economic impact on participating vessels because they will not result in the loss of catch or landings.

All of the alternatives considered by the Council have varying degrees of impact upon different sectors of the fishery, all of whom are small entities. These alternatives, their impacts on the participants in the fishery, and reasons they were not adopted are discussed in more detail at section E.5.0 of the FSEIS and are hereby incorporated into the FRFA. A summary of alternatives considered but rejected follows:

1. The Council considered a "no action" alternative that would result in no changes to the current measures under the Northeast Multispecies FMP. The no action alternative was rejected because it would not fulfill the requirements of the Magnuson-Stevens Act as amended by the SFA with respect to overfished stocks and stocks approaching an overfished condition. Further, evaluations of biological, social, and economic impacts suggest that the approved management measures would result in greater, long-term benefits to the industry.

2. The Council considered various management measures specific to northern, southern, and the Cultivator Shoal whiting fishery areas, using the boundary between the Gulf of Maine/ Georges Bank and the Southern New England Regulated Mesh Areas to differentiate between the northern and southern areas. Management measures that were considered included minimum mesh sizes, eastern and western zone delineation in the southern area, and possession limits based on mesh size, areas fished, seasons, and vessel size. While the Council maintained the Cultivator Shoal Whiting Fishery Exemption Area, it rejected further area delineation because it felt uniform management measures for all areas, except the Cultivator Shoal Whiting exemption area, would be the least complex, the easiest to enforce and

administer and would still provide for the necessary reductions in fishing mortality and exploitation.

3. Seasonal restrictions, including a reduction of the current season, were considered by the Council for management measures for the Cultivator Shoal whiting fishery. The Council had considered reducing the fishery season by 2 months by eliminating June and October. In addition, various possession limits and participation restrictions were considered. While Amendment 12 implements a 1-month reduction of the season that eliminates the month of October, the elimination of June from the season was rejected. Public comment during the public hearing stage suggested that landings from the fishery in June are of high value because of the lack of other available fish or whiting fisheries. The possession limits and other restrictions, other than the measures in this rule, were rejected for consideration in Amendment 12 because they were too complex or not feasible. Also, the Council felt that, while a possession limits less than 30,000 lbs in the Cultivator Shoal whiting fishery would ensure that fishing mortality goals relative to the Cultivator Shoal area would be reached quickly, it would be more likely that vessels would not be able to profit from trips to the Cultivator Shoal area with such low possession limits.

4. The Council considered three options for possible transfers of small-mesh multispecies at sea. One measure would prohibit transfers; a second would allow unlimited transfers; and a third would allow vessels to transfer limited amounts of small-mesh multispecies. The Council rejected the prohibition of transfers because it would not allow the needed flexibility in the industry. The unlimited transfer at sea option was also rejected because it would compromise the effectiveness of the possession limits it was developing.

5. The Council considered implementing minimum fish sizes for whiting, but rejected the idea due to the likelihood that measuring whiting would be impractical and difficult to enforce given the high-volume nature of the fishery. In addition, whiting is a highly perishable product. Implementing such a requirement would increase the time required to process the fish, thereby lessening the quality and value of retained fish.

6. The Council considered spawning season closures to protect spawning stocks of whiting and red hake, but rejected the measure because spawning data for whiting are incomplete. The data that are available suggest that existing large-mesh measures in the

Northeast Multispecies FMP provide protection for known spawning fish.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This rule contains three new collection-of-information requirements subject to the Paperwork Reduction Act that have been approved by OMB. This rule also repeats an existing requirement that has been approved by OMB under control number 0648-0202. The OMB control numbers and public reporting burden are listed as follows:

Call-in to NMFS Region for Enrollments for Authorization Letter to Transfer at Sea, OMB No. 0648-0391 (2 minutes/response);

Written Receipt for At-Sea Transfers of Small-mesh Multispecies, OMB No. 0648-0391 (1 minute/response);

Call-in to NMFS Region for Enrollments for Mesh Size/ Possession Limit Authorization Letter, OMB No. 0648-0391 (2 minutes/response).

Call in to NMFS Region for Enrollment for the Cultivator Shoal Whiting Fishery Authorization Letter, OMB No. 0648-0202 (2 minutes/ response).

The response times shown include 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 the data requirements, including suggestions for reducing the burden, to NMFS and to OMB (see ADDRESSES).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 22, 2000.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, and 50 CFR part 648, chapter VI, are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding an entry for 648.13 in numerical order and revising the entry for 648.86 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

| CFR part or section where the information collection number is located | Current OMB control number (all numbers begin with 0648-) |
|--|---|
| * * * * | |
| (b) * * * | |
| * * * * | |
| 50 CFR: | |
| 648.13 | -0391 |
| 648.86 | -0202, -0391 |
| * * * * | |

50 CFR Chapter VI

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, the definition for “Nonregulated multispecies” is removed, the definitions for “Dealer” and “Northeast (NE) multispecies or multispecies” are revised, and the definitions for “Small-mesh multispecies” and “Whiting Monitoring Committee (WMC)” are added to read as follows:

§ 648.2 Definitions.

* * * *

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel issued a valid permit under this part, any species of fish, the harvest of which is managed by this part, unless otherwise exempted in this part.

* * * *

Northeast (NE) multispecies or *multispecies* means the following species:

- American plaice- *Hippoglossoides platessoides*.
- Atlantic cod- *Gadus morhua*.
- Atlantic halibut- *Hippoglossus hippoglossus*.
- Haddock- *Melanogrammus aeglefinus*.
- Ocean Pout- *Macrozoarces americanus*.
- Offshore Hake- *Merluccius albidus*.
- Pollock- *Pollachius virens*.
- Redfish- *Sebastes fasciatus*.
- Red hake- *Urophycis chuss*.
- Silver hake (whiting)- *Merluccius bilinearis*.
- White hake- *Urophycis tenuis*.
- Windowpane flounder- *Scophthalmus aquosus*.
- Winter flounder- *Pleuronectes americanus*.
- Witch flounder- *Glyptocephalus cynoglossus*.
- Yellowtail flounder- *Pleuronectes ferruginea*.

Small-mesh multispecies means the subset of Northeast multispecies that includes silver hake, offshore hake, and red hake.

Whiting Monitoring Committee (WMC) means a team appointed by the NEFMC to review, analyze, and recommend adjustments to the management measures addressing small-mesh multispecies. The team consists of staff from the NEFMC and MAFMC, NMFS Northeast Regional Office, the NEFSC, the USCG, at least one industry representative from each geographical area (northern New England, southern New England, and the Mid-Atlantic), and no more than two representatives, appointed by the Commission, from affected states.

3. In § 648.4, paragraph (a)(1)(ii) is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

- (a) * * *
- (1) * * *
- (ii) *Open access permits.* A vessel of the United States that has not been issued a limited access multispecies permit is eligible for and may be issued an “open access multispecies”, “handgear”, or “charter/party” permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a

vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

* * * *

4. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, or spiny dogfish dealers and surf clam and ocean quahog processors must have been issued under this section, and have in their possession, a valid permit for these species. As of April 28, 2000, persons aboard vessels receiving small-mesh multispecies at sea for use exclusively as bait are deemed not to be dealers for purposes of receiving such small-mesh multispecies and are not required to possess a valid dealer’s permit under this section, provided the vessel complies with the provisions specified under § 648.13.

* * * *

5. In § 648.13, paragraph (b) is revised, and paragraph (e) is added to read as follows:

§ 648.13 Transfers at sea.

* * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, vessels issued a multispecies permit under § 648.4(a)(1) or a scallop permit under § 648.4(a)(2) are prohibited from transferring or attempting to transfer any fish from one vessel to another vessel, except that vessels issued a Federal multispecies permit under § 648.4(a)(1) and specifically authorized in writing by the Regional Administrator to do so, may transfer species other than regulated species from one vessel to another vessel.

(2) Vessels issued a Federal multispecies permit under § 648.4(a)(1) may transfer only up to 500 lb (226.8 kg) of combined small-mesh multispecies per trip for use as bait from one vessel to another, provided:

(i) The transferring vessel possesses a Federal multispecies permit as specified under § 648.4(a)(1);

(ii) The transferring vessel has a letter of authorization issued by the Regional Administrator on board; and

(iii) The receiving vessel possesses a written receipt for any small-mesh multispecies purchased at sea.

* * * *

(e) Vessels issued a letter of authorization from the Regional Administrator to transfer small-mesh multispecies at sea for use as bait will

automatically have 500 lb (226.8 kg) deducted from the vessel's combined silver hake and offshore hake possession limit, as specified under § 648.86(c), for every trip during the participation period specified on the letter of authorization, regardless of whether a transfer of small-mesh multispecies at sea occurred or whether the actual amount that was transferred was less than 500 lb (226.8 kg). This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

6. In § 648.14, paragraphs (a)(42), (a)(43), (b), (c) introductory text, (c)(7) and (t) are revised, and paragraphs (x)(4)(iii) and (z) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(42) Fish within the areas described in § 648.80(a)(4) with nets of mesh smaller than the minimum size specified in § 648.80(a)(2), unless the vessel possesses on board a valid authorizing letter issued to the vessel under § 648.80(a)(4)(i) and the vessel complies with the requirements specified in § 648.80(a)(4).

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(3), the small-mesh northern shrimp fishery exemption area; (a)(4), the Cultivator Shoal whiting fishery exemption area; (a)(8), Small-mesh Area 1/Small-mesh Area 2; (a)(9), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(12), the GOM/GB monkfish gillnet exemption area; (a)(13), the GOM/GB dogfish gillnet exemption area; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(7), the SNE dogfish gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; or (b)(9), the SNE little tunny gillnet exemption area. A violation of any provision of the paragraphs in § 648.80 is a separate violation.

* * * * *

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid multispecies permit, or any person issued an operator's permit or issued a letter under § 648.4(a)(1)(i)(M)(3), to land or possess on board a vessel more than the possession or landing limits specified in § 648.86(a),(b),(c), (d) and (e) or to violate any of the other

provisions of § 648.86, unless otherwise specified in § 648.17.

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any owner or operator of a vessel issued a valid limited access multispecies permit or a letter under § 648.4(a)(1)(i)(M)(3), unless otherwise specified in § 648.17, to do any of the following:

* * * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), (c), (d), and (e) and under § 648.82(b)(3), if the vessel has been issued a limited access multispecies permit.

* * * * *

(t) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (h) of this section, it is unlawful for any owner or operator of a vessel issued a valid open access multispecies permit to possess or land any regulated species as defined in § 648.2, or to violate any applicable provisions of § 648.88, unless otherwise specified in § 648.17.

* * * * *

(x) * * *

(4) * * *

(iii) All small-mesh multispecies retained or possessed on a vessel issued a permit under § 648.4 are deemed to have been harvested from the EEZ.

* * * * *

(z) *Small-mesh multispecies.* (1) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, and subject to paragraph (a)(32) of this section, it is unlawful for any person owning or operating a vessel issued a valid Federal multispecies permit to land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, small-mesh multispecies from one vessel to another in excess of the limits specified in § 648.13.

(2) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, beginning May 1, 2002, it is unlawful for an owner or operator of a vessel issued a valid Federal multispecies permit to do any of the following:

(i) Fish with, use or have available for immediate use within the areas described in §§ 648.80(a), (b), and (c), nets of mesh size smaller than 3—in (7.62—cm), unless otherwise exempted pursuant to § 648.80(a)(7).

(ii) If issued a Federal multispecies permit, land or possess on board a

vessel, more than 10,000 lb (4,536 kg) of combined whiting and offshore hake.

7. In § 648.80, paragraphs (a)(3)(i), (a)(4)(i)(A) through (a)(4)(i)(D), (a)(7), (a)(8)(i), (a)(9)(i)(D), (b)(3)(i), (c)(4), (g)(1), and (g)(2)(i) are revised and (a)(4)(i)(E) through (a)(4)(i)(G), (c)(2)(iii), and (g)(5) are added to read as follows:

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

* * * * *

(a) * * *

(3) * * *

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* (A) Through April 30, 2002, an owner or operator of a vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(B) Beginning May 1, 2002, an owner or operator of a vessel fishing for northern shrimp may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to 100 lb (45.36 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

* * * * *

(4) * * *

(i) * * *

(A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have a valid letter of authorization issued by the Regional Administrator on board.

(B) Through April 30, 2002, an owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the

restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Beginning May 1, 2002, an owner or operator of a vessel fishing in this area is subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 10,000 lb (4,536 kg), except for the allowable incidental species listed in paragraph (a)(4)(i)(B) of this section.

(D) Counting from the terminus of the net, all nets must have a minimum mesh size of 3 in (7.62 cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.28 m) in length.

(E) Fishing is confined to a season of June 15 through September 30, unless otherwise specified by notification in the **Federal Register**.

(F) When transiting through the GOM/GB Regulated Mesh Area specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraph (a)(2) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh multispecies under another exempted fishery specified in paragraph (a) of this section during the course of the trip.

(G) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section for the entire trip.

* * * * *

(7) *Addition or deletion of exemptions--(i)(A) Regulated multispecies.* An exemption may be

added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as 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. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications are made through issuance of a rule in the **Federal Register**.

(B) *Small-mesh multispecies.* Beginning May 1, 2002, an exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of small-mesh multispecies bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of small-mesh multispecies caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of small-mesh multispecies. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 10 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions, or modifications are made through issuance of a rule in the **Federal Register**.

(ii) The NEFMC may recommend to the Regional Administrator, through the

framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species or small-mesh multispecies.

(8) * * *

(i)(A) Unless otherwise prohibited in § 648.81, through April 30, 2002, a vessel subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(3)(ii) or (a)(8)(ii) of this section, and, 648.86(d), from July 15 through November 15 when fishing in Small-mesh Area 1 and from January 1 through June 30 when fishing in Small-mesh Area 2. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; and red hake; except for the following allowable incidental species (bycatch as the term is used elsewhere in this part) with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(B) Unless otherwise prohibited in § 648.81, beginning May 1, 2002, in addition to the requirements specified in paragraph (a)(8)(i)(A) of this section, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; and red hake; except for the following allowable incidental species (bycatch as the term is used elsewhere in this part) with the restrictions noted:

Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Small-mesh areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)):

Small-mesh Area 1

| Point | N. lat. | W. long. |
|------------|---------|----------|
| SM1 | 43°03' | 70°27' |
| SM2 | 42°57' | 70°22' |
| SM3 | 42°47' | 70°32' |
| SM4 | 42°45' | 70°29' |
| SM5 | 42°43' | 70°32' |
| SM6 | 42°44' | 70°39' |
| SM7 | 42°49' | 70°43' |
| SM8 | 42°50' | 70°41' |
| SM9 | 42°53' | 70°43' |
| SM10 | 42°55' | 70°40' |
| SM11 | 42°59' | 70°32' |
| SM1 | 43°03' | 70°27' |

Small-mesh Area 2

| Point | N. lat. | W. long. |
|------------|----------|----------|
| SM13 | 43°05.6' | 69°55.0' |
| SM14 | 43°10.1' | 69°43.3' |
| SM15 | 42°49.5' | 69°40.0' |
| SM16 | 42°41.5' | 69°40.0' |
| SM17 | 42°36.6' | 69°55.0' |
| SM13 | 43°05.6' | 69°55.0' |

* * * * *

- (g) * * *
- (j) * * *

(D)(1) Through April 30, 2002, the following species may be retained, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.72 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(2) Beginning May 1, 2002, all nets must comply with a minimum mesh size of 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. Vessels may retain the allowable incidental species listed in paragraph (a)(9)(i)(D)(1) of this section.

* * * * *

- (b) * * *
- (3) * * *

(i) *Species exemptions.* (A) Through April 30, 2002, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(B) Beginning May 1, 2002, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may not use nets with mesh size less than 3 in (7.62 cm), unless exempted pursuant to paragraph (b)(4) of this section, and may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake—up to 10,000 lb (4,536 kg), and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the possession limit restrictions specified under § 648.86. Nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

* * * * *

- (c) * * *
- (2) * * *

(iii) *Small mesh beginning May 1, 2002.* Beginning May 1, 2002, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

* * * * *

(4) *Addition or deletion of exemptions.* Same as paragraph (a)(7) of this section.

* * * * *

(g) *Restrictions on gear and methods of fishing—(1) Net obstruction or constriction.* Except as provided in paragraph (g)(5) of this section, a fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. “The top of the trawl net” means the 50 percent of the net that (in a hypothetical situation) is not in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction.* (i) Except as provided in paragraph (g)(5) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

* * * * *

(5) *Net strengthener restrictions when fishing for small-mesh multispecies.* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas as defined in paragraphs (a), (b), and (c) of this section with nets of mesh size smaller than 2.5-in (6.35-cm) may use a net strengthener provided that the net strengthener complies with § 648.23(d).

* * * * *

8. In § 648.86, paragraphs (d) and (e) are redesignated as paragraphs (f) and (g) respectively and new paragraphs (d) and (e) are added to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(d) *Small-mesh multispecies through April 30, 2002.* (1) Vessels issued a valid Federal multispecies permit specified under § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies:

(i) *Vessels using mesh size smaller than 2.5 in (6.35 cm) and vessels without a letter of authorization.* Owners or operators of vessels fishing for, in possession of, or landing small-mesh multispecies with, or having on board except as provided herein, nets of mesh size smaller than 2.5 in (6.35 cm) (as applied to the part of the net specified at (d)(1)(iv) of this section), and, vessels that have not been issued a letter of authorization pursuant to paragraph (d)(1)(ii) or (d)(1)(iii) of this section may possess on board and land up to only 3,500 lb (1,588 kg) of combined silver hake and offshore hake. This possession limit on small-mesh multispecies does not apply if all nets with mesh size smaller than 2.5 in (6.35 cm) have not been used to catch fish for the entire fishing trip and the nets have been properly stowed pursuant to § 648.81(e), and the vessel is fishing with a mesh size and a letter of authorization as specified in paragraphs (d)(1)(ii), (d)(1)(iii) and (d)(2) of this section. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) *Vessels authorized to use nets of mesh size 2.5 in (6.35 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 2.5 in (6.35 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 7,500 lb (3,402 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 2.5 in (6.35 cm) (as applied to the part of the net specified in (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 2.5 in (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.81(e) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to

applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iii) *Vessels authorized to use nets of mesh size 3 in (7.62 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 3 in (7.62 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 30,000 lb (13,608 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 3 in (7.62 cm) (as applied to the part of the net specified in (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 3 in (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.81(e) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i),(ii) and (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.28 m) or less in length.

(2) *Letter of authorization.* To fish for, possess on board, or land silver hake and offshore hake in excess of 3,500 lb (1,588 kg), as specified in paragraphs (d)(1)(ii) or (d)(1)(iii) of this section, a vessel must be issued and carry on board a valid letter of authorization to fish in the applicable minimum mesh size/possession limit category. To request a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, the desired mesh size/possession limit category and the period of time that the vessel is enrolled. Since letters of authorization are effective on the date of receipt, vessel owners should allow appropriate processing and mail time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective upon date of request. Withdrawals may occur after a

minimum of 7 days of enrollment in which case vessel owners may not re-enroll the vessel in any mesh size/possession limit category until 30 days after the beginning of the original enrollment period. Until the vessel owner re-enrolls, the vessel is subject to a silver hake and offshore hake possession limit of 3,500 lb (1,588 kg) regardless of the mesh size in use. For example, if a vessel owner enrolls in the 3-in (7.62 cm) mesh/30,000 lb (13,608 kg) possession limit category which is effective October 1 and chooses November 30 as the end date but withdraws on October 7, the vessel may not be re-enrolled in the 2.5-in (6.35 cm)/ 7,500 lb (3,402 kg) or 3-in (7.62 cm) mesh/30,000 lb (13,608 kg) possession limit category until October 31.

(3) *Possession limit for vessels participating in the Northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption Area, as described in § 648.80(a)(3) with a vessel issued a valid Federal multispecies permit specified under § 648.4(a)(1) may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(4) *Possession restriction for vessels electing to transfer small-mesh multispecies at sea.* Owners and operators of vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small-mesh multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit which is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(e) *Small-mesh multispecies beginning on May 1, 2002—(1) Federal multispecies permit holders.* An owner or operator of a vessel issued a valid Federal multispecies permit specified under § 648.4 (a)(1) may possess on board or land up to 10,000 lb (4,536 kg) of combined silver hake and offshore hake. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to restrictions on gear,

area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(2) *Possession limit for vessels participating in the Northern shrimp fishery.* Owners or operators of vessels fishing in the Small-mesh Northern Shrimp Fishery Exemption Area under the exemption described in § 648.80(a)(3), with a vessel issued a valid Federal multispecies permit specified under § 648.4(a)(1), may possess on board or land silver hake and offshore hake, combined, up to 100 lb (45.36 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh multispecies at sea.* Vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small-mesh multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.9 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

* * * * *

9. In § 648.90, paragraphs (a) introductory text, (a)(1) through (a)(4), and (b)(1) are revised to read as follows:

§ 648.90 Multispecies framework specifications.

(a) *Annual review.* The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and to develop options for NEFMC consideration on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the NE Multispecies FMP goals and objectives. For the year 2000 and thereafter, the MSMC, and for the year 2001 and thereafter, the Whiting Monitoring Committee (WMC) shall meet separately on or before November 15 of each year to develop options for NEFMC consideration on any changes, adjustments, or additions to DAS allocations, if applicable, closed areas or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(1) The MSMC and WMC, as applicable, shall separately review available data pertaining to: Catch and landings, discards, DAS, and other measures of fishing effort, survey results, stock status, current estimates of

fishing mortality, and any other relevant information.

(2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The MSMC and WMC must demonstrate through analyses and documentation that the options they develop are expected to meet the NE Multispecies FMP goals and objectives. The MSMC and WMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC or WMC may include any of the management measures in the NE Multispecies FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the NE Multispecies FMP for the 10 regulated species or small-mesh multispecies; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of essential fish habitat (EFH); fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the NE Multispecies FMP. In addition, for the 2002 fishing year, the WMC must consider, and recommend as appropriate, management options other than the default measures for small-mesh multispecies management (mesh and possession limit restrictions for small-mesh multispecies beginning May 1, 2002).

(3) The NEFMC shall review the recommended target TACs recommended by the MSMC and all of the options developed by the MSMC and WMC, and other relevant information, consider public comment, and develop a recommendation to meet the NE Multispecies FMP objective pertaining to regulated species or small-mesh multispecies that is consistent with other applicable law. If the NEFMC does not submit a recommendation that meets the NE Multispecies FMP objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MSMC or WMC, unless rejected by the NEFMC, as specified in paragraph (a)(6) of this section, provided the option meets the

NE Multispecies FMP objectives and is consistent with other applicable law.

(4) Based on this review, the NEFMC shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations (if applicable), closed areas or other measures necessary to achieve the NE Multispecies FMP's goals and objectives. The NEFMC shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the NEFMC.

* * * * *

(b) * * *

(1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for

fisheries exempted from minimum mesh requirements to fish for small-mesh multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area

(ii) *Adjustment process for Whiting TACs and DAS.* The Council may develop recommendations for a Whiting DAS effort reduction program or a Whiting TAC through the framework process outlined in paragraph (c)(1) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

* * * * *

[FR Doc. 00-7697 Filed 3-28-00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000307061-0061-01; I.D. 013100D]

RIN 0648-AN46

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 32 to the Northeast Multispecies Fishery Management Plan

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 32 to the Northeast Multispecies Fishery Management Plan (FMP) to address management measures for silver hake (whiting), red hake, and offshore hake. This final rule implementing Framework Adjustment 32 (Framework 32) establishes that a vessel's whiting and offshore hake possession limit shall be determined by the smallest codend mesh size the vessel has on board or the smallest mesh on board not incorporated into the body of a fully-constructed net, whichever is smaller. In addition, this final rule allows vessels fishing for small-mesh multispecies with 2.5-inch (6.35-cm) mesh codends to use a net strengthener. The intended effect of this action is to mitigate regulatory discards resulting from the

whiting/offshore hake possession limits implemented in Amendment 12 and to reduce the administrative and compliance burdens associated with approved provisions of Amendment 12 to the FMP (Amendment 12).

DATES: This rule is effective April 28, 2000.

ADDRESSES: Copies of the Framework 32 document, its Regulatory Impact Review (RIR), the Environmental Assessment, and other supporting documents for the framework adjustment, are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, 978-281-9288.

SUPPLEMENTARY INFORMATION:

Amendment 12 was partially approved on September 1, 1999, and contains a measure requiring vessels to be issued and carry on board a letter of authorization (LOA) to fish under a particular mesh size/possession limit category. Under Amendment 12, vessels issued an LOA for the 3-inch (7.62-cm) or 2.5-inch (6.35-cm) minimum mesh size categories would be allowed a possession limit of 30,000 lb (13,608 kg) or 7,500 lbs (3,402 kg), respectively, of whiting and offshore hake. Those vessels using less than 2.5-inch (6.35-cm) mesh or vessels without the appropriate LOA would be allowed a 3,500-lb (1,588-kg) possession limit of whiting and offshore hake. Vessels could elect to fish under the specified mesh/possession limit category for a minimum of 30 days and could withdraw after 7 days, but would be restricted to a 3,500-lb (1,588-kg) possession limit of whiting and offshore hake for the remainder of the original 30 days. These requirements (hereinafter referred to as "the enrollment procedures") were designed to encourage vessel owners and captains to make extended decisions about their fishing activity and give more force to the minimum mesh sizes and possession limits. Also, Amendment 12 allows only vessels using nets with mesh sizes less than 2.5 inches (6.35 cm) to use net strengtheners.

In a letter to NMFS dated June 3, 1999, the New England Fishery Management Council (Council) expressed concern that the Amendment 12 enrollment procedures and restriction on net strengtheners would not provide flexibility for the industry and would encourage discarding of whiting by continued fishing with smaller mesh. The Council urged NMFS to proceed with a technical change to

Amendment 12 to modify the enrollment procedures and to allow the use of net strengtheners for the larger mesh size nets. NMFS determined that the changes would be substantive, could have possible impacts on conservation goals and, therefore, would require a framework adjustment or amendment action to allow the Council to consider available options and conduct proper analysis of the impacts. As a result, the Council proceeded in developing Framework 32.

Framework 32 eliminates Amendment 12's enrollment procedures and instead bases possession limits on the smallest codend mesh on board (either stowed or available for fishing), or the smallest mesh on board not incorporated into a fully-constructed net, whichever is smaller. The restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), consistent with current minimum mesh size restrictions in the FMP. Under Amendment 12, minimum mesh size is applied to the first 50 meshes or 100 bars counted from the terminus of the net for vessels 60-ft (18.29 m) or smaller and the first 100 meshes or 200 bars counted from the terminus of the net for vessels greater than 60-ft (18.29 m) in length. The elimination of the enrollment procedures will allow vessel owners improved flexibility in the size of the mesh that they can use in the nets on a trip-to-trip basis and reduces the possibility of high regulatory discards of whiting and offshore hake. The application of the possession limit based on the smallest mesh size on board eliminates the administrative burden associated with implementing the enrollment procedures and may improve enforcement of the possession limits.

This final rule implementing Framework 32 also includes a measure that allows vessels fishing with 2.5-inch (6.35-cm) mesh-sized nets to use a net strengthener (a large mesh codend positioned around a small-mesh codend), provided that the net strengthener has a minimum mesh size of 6 inches (15.24 cm), has the same circumference and configuration (square or diamond mesh) as the inside codend, and that the inside codend is no more than 2 ft (61 cm) longer than the outside codend. The allowance of net strengtheners would help alleviate discards by providing some vessels with an incentive to use trawl net codends with mesh size of at least 2.5 inches (6.35 cm). Testimony during the comment period for Amendment 12 and throughout the development of Framework 32 suggests that vessel