

abundance of plastics in the California Current, and their impact on ashy storm-petrels.

(16) Military activities at sea and on islands off the coast of California and northern Baja California, Mexico, and their impacts on ashy storm-petrels.

(17) Factors that pose a threat to ashy storm-petrels (those listed above, and otherwise) and the potential cumulative effects of these factors and their impacts on ashy storm-petrels.

Please note that comments merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, because section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made “solely on the basis of the best scientific and commercial data available.” At the conclusion of the status review, we will issue a new 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information and materials concerning this finding by one of the methods listed in the **ADDRESSES** section.

Before including your address, phone number, email address, or other personal identifying information in your information, you should be aware that we will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Bay Delta Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

### Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of

the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly initiate a species status review, which we subsequently summarize in our 12-month finding. This notice initiates our status review.

On October 16, 2007, we received a petition from the Center for Biological Diversity, requesting that we list the ashy storm-petrel as a threatened or endangered species throughout its range and that we concurrently designate critical habitat. In response to the petition, we sent a letter to the petitioner dated January 11, 2008, stating that we had secured funding and that we anticipated making an initial finding as to whether the petition contained substantial information indicating that listing the ashy storm-petrel may be warranted in Fiscal Year 2008. On May 15, 2008, we published a 90-day petition finding (73 FR 28080) in which we concluded that the petition provided substantial information indicating that listing of the ashy storm-petrel may be warranted, and we initiated a status review. On August 19, 2009, we announced our 12-month finding (74 FR 41832) in which we found that, after reviewing the best available scientific and commercial information, listing the ashy storm-petrel was not warranted. The Center for Biological Diversity challenged this decision in the District Court of the Northern District of California on October 25, 2010 (*Center for Biological Diversity v. Salazar, et al.*, No. 4:10-CV-4861-DMR (N. D. CA)). This challenge was resolved by a September 16, 2011, Stipulation of Dismissal, based on the September 9, 2011, approval of two settlements in *In re Endangered Species Act Section 4 Deadline Litig.*, Misc. Action No. 10-377 (EGS), MDL Docket No. 2165 (D. D.C.), in which the Service agreed to submit a warranted 12-month finding with a concurrent proposed rule to list the ashy storm-petrel or a not-warranted finding regarding the ashy storm-petrel to the **Federal Register** by the end of Fiscal Year 2013.

At this time, we are soliciting new information on the status of and potential threats to the ashy storm-petrel. Information submitted in

response to our 2009 12-month finding will be considered and need not be resubmitted. We will base our 12-month finding on a review of the best scientific and commercial information available, including all information received as a result of this notice. For more information on the biology, habitat, and range of the ashy storm-petrel, please refer to our previous 12-month finding published in the **Federal Register** on August 19, 2009 (74 FR 41832).

### Author

The primary authors of this document are staff of the U.S. Fish and Wildlife Service, Bay-Delta Field Office.

### Authority

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

Dated: September 5, 2012.

### Rowan W. Gould,

Director, U.S. Fish and Wildlife Service.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 121115632-2632-01]

RIN 0648-BC70

#### Control Date To Limit Excessive Accumulation of Control, Qualifying Landings History, and Referendum Eligibility in the Small-Mesh Multispecies Fishery

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

**ACTION:** Advance notice of proposed rulemaking (ANPR); request for comments.

**SUMMARY:** At the request of the New England Fishery Management Council, this notice announces a “control date” that may be used as a reference for future management actions applicable to, but not limited to, qualifying landings and permit history for a limited access or allocation-based management program and limits on the accumulation of excessive control or ownership of fishing privileges in the small-mesh multispecies fishery. This notice is intended to promote awareness of possible rulemaking; notify the public that any future accumulation of fishing privilege interests in the small-mesh

multispecies fishery may be affected, restricted, or even nullified; and discourage speculative behavior in the market for fishing privileges while the New England Fishery Management Council considers whether and how such limitations on accumulation of fishing privileges should be developed. Interested participants should locate and preserve records that substantiate and verify their control of small-mesh multispecies permits and other fishing privileges, as well as red, silver, and offshore hake, collectively known as small-mesh multispecies, landings history from Federal waters.

**DATES:** November 28, 2012, shall be known as the “control date” for the small-mesh multispecies fishery and may be used as a reference for future management measures related to the maintenance of a fishery with characteristics consistent with the Councils’ objectives and applicable Federal laws. Written comments must be received on or before 5 p.m., local time, December 28, 2012.

**ADDRESSES:** You may submit comments on this document, identified by “NOAA–NMFS–2012–0212,” by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal [www.regulations.gov](http://www.regulations.gov). To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter “NOAA–NMFS–2012–0212” in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- *Mail:* Submit written comments to John Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on SMMS Limited Access and Accumulation Limits Control Date.”

- *Fax:* (978) 281–9135; Attn: Moira Kelly.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be

publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Moira Kelly, Fishery Policy Analyst, phone: 978–281–9218, fax: 978–281–9135.

**SUPPLEMENTARY INFORMATION:** The small-mesh multispecies fishery is composed of five stocks of three species of hakes (northern silver hake, southern silver hake, northern red hake, southern red hake, and offshore hake), and the fishery is managed primarily through a series of exemptions from the Northeast Multispecies Fishery Management Plan (FMP). The New England Fishery Management Council (Council) manages these fisheries through annual catch limits, in-season and post-season accountability measures, and possession limits.

According to the most recent assessment, none of the small-mesh multispecies stocks are currently overfished or in danger of being overfished, and overfishing is not occurring. The Council sets limits to achieve maximum sustainable yield, which allows for positive impacts to human communities, yet measures (primarily possession limits) are included in the FMP to minimize excessive fishing effort. Despite this and the relatively stable recent catches, the potential remains for a rapid increase in effort and catch due to the open access management status.

Limited access alternatives for the small-mesh multispecies fishery were proposed during 2000 for incorporation in Amendment 12, using a September 9, 1996, control date. The Council proposed entry requirements based on historic participation in the small-mesh multispecies fishery, including factors such as amount of small-mesh multispecies landed and whether or not the vessel had obtained a multispecies permit on or before the previous control date of September 9, 1996. Future participation would have included catch restrictions based on a vessel’s past involvement in the fishery. The limited access provisions of Amendment 12 were disapproved by NMFS because they were inconsistent with National Standard 4 regarding fairness and equity of the qualifying criteria, and section 304(e) of the Magnuson-Stevens Fishery

Conservation and Management Act, regarding achieving rebuilding objectives. The Council later updated the control date to March 23, 2003, intended for use as part of the basis for determination of potential limited access eligibility with a different set of eligibility criteria. However, development of the limited access program for the small-mesh multispecies fishery stalled due to other priorities of the Council.

The Council is reconsidering limited access in the small-mesh multispecies fishery to address the potential for a rapid increase in fishing effort that could cause overfishing and destabilize markets. Limited access criteria may differ between the northern and southern stock areas due to fishery characteristics and participation. Historically, the northern stock area has seen greater activity involving small-mesh multispecies vessels and trips than the southern stock area. However, access to the directed small-mesh multispecies fishery is more limited in the northern stock area than in the southern stock area. The northern stock area is managed with a series of access areas and seasons, while the vessels may fish with small mesh throughout the southern area year-round. The Council may choose alternatives that account for differences between the areas, focusing on preventing excessive fishing effort. Limited access alternatives may apply to any vessel landing any amount of small-mesh multispecies, or only vessels targeting or landing larger amounts of small-mesh multispecies. The Council intends to develop alternatives that will have thresholds for determining whether a vessel qualifies for limited access or allocation based management program, and, possibly, limits on the accumulation of excessive fishing privileges. The Council may develop alternatives for sector management as well as for limited access. This may include determination of potential section contributions based on a qualifying vessel’s history in the fishery. Because the last control date for this fishery is over 10 years old and may not reflect current fishing activities, the Council requested at its September 2012 meeting that NMFS publish this new ANPR “control date.”

The date of publication of this notification, November 28, 2012, shall be known as the “control date” for the small-mesh multispecies fishery and may be used as a reference for future management measures in determining how to treat landings and permit history acquired before or after this date for purposes of establishing a limited access

or allocation-based management program, as well as possibly limiting the accumulation of fishing privileges acquired before or after this date, depending on the Council's determinations on limiting access, control, or ownership of such landings and privileges. The establishment of a control date, however, does not obligate the Council to use this control date or take any action, nor does it prevent the Council from picking another control date or imposing limits on permits acquired prior to the control date. Accordingly, this notification is intended to promote awareness that the Council may develop management measures to address these concerns; to provide notice to the public that any current or future accumulation of

fishing privilege interests in the small-mesh multispecies fishery may be affected, restricted, or even nullified; and discourage speculative behavior in the market for fishing privileges while the Council considers whether and how such limitations on accumulation of fishing privileges should be developed. Any measures the Council considers may require changes to the Northeast Multispecies FMP. Such measures may be adopted in a future amendment to the FMP, which would include opportunity for further public participation and comment.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their control of small-mesh multispecies permits and

other fishing privileges in the small-mesh multispecies fishery, as well as small-mesh multispecies landings from Federal waters. Fishing privileges include, but are not limited to vessels, fishing permits, and any other type of catch limit or share.

This notification and control date do not impose any legal obligations, requirements, or expectation.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: November 21, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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