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Dated: May 31, 2006.

**Matt Hogan,***Acting Assistant Secretary for Fish and Wildlife and Parks.*

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

[Docket No. 060515131-6131-01; I.D. 050806B]

RIN 0648-AU49

**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 14; Small-mesh Multispecies Limited Access Program and Control Date****AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Advance notice of proposed rulemaking (ANPR); reaffirmation of a control date for the small-mesh multispecies fishery; request for comments.**SUMMARY:** NMFS announces consideration of proposed rulemaking to control future access to the New England small-mesh multispecies (whiting) fishery. The New England Fishery Management Council (Council) has indicated that limited access may be necessary to control participation in the fishery at a level that reduces the risk of overcapitalization and constrains fishing to a level that minimizes the risks of overfishing or creating an overfished stock, as defined by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northeast (NE) Multispecies Fishery Management Plan (FMP).

This announcement alerts interested parties of potential limitation on future access, commonly referred to as limited access, to discourage speculative entry into the fishery while the Council considers how access to the fishery should be controlled during the upcoming development of Amendment 14 to the FMP. By this notification, NMFS reaffirms, on behalf of the Council, that March 25, 2003, may be used as a "control date" to establish eligibility criteria for determining levels of future access to the fishery.

**DATES:** Written comments must be received by 5 p.m., local time, July 12, 2006.**ADDRESSES:** Written comments should be sent to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA, 01950. Mark the outside of the envelope, "Comments on Small-mesh Multispecies Reaffirmation of Control Date." Comments also may be sent via facsimile (fax) to: (978) 465-3116. Comments may be submitted by e-mail as well. The mailbox address for providing e-mail comments is *SmallMeshControlDate@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments-SmallMeshControlDate." Comments may also be submitted electronically through the Federal e-Rulemaking portal: <http://www.regulations.gov>.**FOR FURTHER INFORMATION CONTACT:** Michael Ruccio, Fishery Policy Analyst, 978-281-9104; fax 978-281-9135.**SUPPLEMENTARY INFORMATION:** The New England small-mesh multispecies complex is composed of three species: Silver hake (whiting), *Merluccius bilinearis*; red hake (ling), *Urophycis chuss*; and offshore hake, *Merluccius albidus*. The fishery is currently an open access fishery, meaning anyone may apply for and receive a permit to commercially fish for small-mesh multispecies.

In the most recent Stock Assessment and Fishery Evaluation (SAFE) report published in 2003, the members of the Council's Whiting Monitoring Committee (WMC) indicated concerns about declining survey mean weights for both red and offshore hake in portions of their stock areas. The 2005 stock assessment summary for silver hake indicated continued declines in the overall northern stock biomass index from historic levels and the showed the southern stock biomass index to be above the management threshold but below the target level. The WMC has also expressed concern for the potential of a rapid expansion of the small-mesh fishery by new entrants displaced by declining stocks and tightening regulations in other fisheries. For these reasons, the Council may develop a limited access management program as part of Amendment 14 to the FMP to limit participation and afford additional input control protections to the small-mesh stocks.

The Council initially considered limiting entry into the small-mesh multispecies fishery by establishing September 9, 1996 (61 FR 47473), as the

control date for determining eligibility criteria. The Council used this control date to propose a limited access program as part of Amendment 12 to the FMP. However, the limited access program was not approved in the final Amendment 12 rule (65 FR 16766, March 29, 2000) because it was determined to be inconsistent with certain provisions of the Magnuson-Stevens Act.

By 2003, the Council recognized that fishing practices had substantially changed in the small-mesh fishery. Many changes to the fishery resulted from actions contained in Amendment 5 and Framework 35 to the FMP. These actions restricted the use of small-mesh in some areas and created new small-mesh exemption areas in others that changed fishing dynamics. The Council acknowledged that these changes in the characteristics of the small-mesh fishery had made the 1996 control date an unreliable indicator of historic participation. As a result, NMFS published a second control date for determining limited entry criteria at the request of the Council on March 25, 2003 (68 FR 14388). The Council implemented this second control date citing the previously mentioned changes to fishing practices and locations and to address the potential overcapitalization concerns expressed by the WMC. The intent of both control dates was to discourage speculative entry into the fishery while potential management regimes to control access into the fishery were discussed and possibly developed by the Council.

The Council is now beginning to develop Amendment 14 to the FMP, which will pertain to the small-mesh multispecies fishery. This amendment is in the very early stages of development. At their April 4, 2006, meeting in Mystic, CT, the Council voted to request that NMFS publish an ANPR to reaffirm the most recent control date for this fishery (March, 25, 2003) and to notify the public of the potential development of a limited access program in Amendment 14. Other measures may be considered in the amendment development process; this announcement is for informational purposes only and does not commit the Council to this or any other specific actions. The Council has indicated that distribution of the final scoping document with public hearing dates will occur within the next few weeks. NMFS anticipates publishing the meeting notice for scoping public hearings in the Federal Register before the end of May 2006.

In order to be approved and implemented, any measures proposed

by the Council in Amendment 14 must be found consistent with the requirements of the Magnuson-Stevens Act and other applicable law. The public will have the opportunity to comment on the measures and alternatives being considered by the Council through public meetings and public comment periods required by the National Environmental Policy Act and the Magnuson-Stevens Act, and as provided by the Administrative Procedure Act.

This reaffirmation of the March 25, 2003, control date is intended to strongly discourage speculative entry into the fishery while limited access measures are developed and considered by the Council. Fishermen who have not participated in the small-mesh multispecies fishery or who change

their level of participation in this fishery are notified that entering this fishery or changing their level of participation after March 25, 2003, may not qualify them as previous participants, should such a criterion be the basis for future access to the small-mesh multispecies resources. Fishermen are not guaranteed future participation in the fishery, regardless of their entry dates or intensity of participation in this fishery before or after the control date. The Council and NMFS may choose to give variably weighted consideration to fishermen active in the fishery before and after the control date. Any action by the Council or NMFS will be taken pursuant to the requirements for FMP development established under the Magnuson-Stevens Act.

This notification also gives the public notice that interested participants should locate and preserve records that substantiate and verify their participation in the small-mesh multispecies fishery in Federal waters.

#### **Classification**

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

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

Dated: June 6, 2006.

**James W. Balsiger,**

*Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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