

contact information (such as Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Dated: May 26, 1999.

**Sylvia V. Baca,**

*Assistant Secretary, Land and Minerals Management.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[I.D. 050399A]

RIN 0648-AL27

#### **Fisheries of the Northeastern United States; Amendment 12 to the Northeast Multispecies Fishery Management Plan; Measures to Address the Sustainable Fisheries Act Requirements**

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

**ACTION:** Notice of availability of an amendment to a fishery management plan; request for comments.

**SUMMARY:** NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 12 to the Northeast Multispecies Fishery Management Plan (Amendment 12) for Secretarial review and is requesting comments from the public. Amendment 12 proposes to address the management of silver hake (whiting), red hake, offshore hake, and ocean pout through management measures, including a moratorium on commercial permits to fish for these species, Cultivator Shoal Whiting Fishery restrictions, differential whiting possession limits based on the mesh size with which a vessel chooses to fish in areas outside of the Cultivator Shoal Whiting Fishery, limitations on transfers at sea, and a year 4 default measure to ensure that overfishing is ended. 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 order to meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act of October 1996 (SFA).

**DATES:** Comments must be received on or before August 2, 1999.

**ADDRESSES:** Comments on this amendment should be sent to Jon C. Rittgers, Acting Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Amendment 12."

Copies of Amendment 12, its regulatory impact review, initial regulatory flexibility analysis, the final supplemental environmental impact statement, and the supporting documents for Amendment 12 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1036.

**FOR FURTHER INFORMATION CONTACT:** Peter Christopher, Fishery Management Specialist, 978-281-9288.

**SUPPLEMENTARY INFORMATION:** In September 1997, NMFS' report to Congress on the "Status of Fisheries of the United States" concluded that red hake and the southern stock of whiting are overfished and the northern stock of whiting is approaching an overfished condition. In response, the Council began the development of the Whiting Amendment (now Amendment 12) to specifically address overfishing.

Amendment 12 proposes to do the following: (1) Establish new overfishing definitions for two stocks of silver hake, two stocks of red hake, and offshore hake (*Merluccius albidus*); (2) specify optimum yield (OY) for silver hake, offshore hake, and red hake; (3) identify whiting, red hake, and offshore hake as small-mesh multispecies; (4) identify geographic areas for potential use in management of different stocks of whiting; (5) implement a moratorium on commercial permits to fish for small-mesh multispecies; (6) implement an open access permit category to allow an incidental catch for 100 lb (45.36 kg) combined of small-mesh multispecies (whiting, red hake, offshore hake), and unlimited amounts of ocean pout; (7) implement a 30,000 lb (13,608 kg) whiting/offshore hake possession limit for vessels fishing in the Cultivator Shoal Whiting Fishery (the current 3-inch (76 mm) minimum mesh requirement will remain the same); (8)

initiate management measures for all areas excluding the Cultivator Shoal Whiting Fishery based on mesh size/possession limit categories (vessels electing to use mesh smaller than 2.5-inches (64 mm) are allowed to possess/land combined whiting and offshore hake up to 3,500 lb (1,588 kg); vessels electing to use a minimum 2.5-inch (64 mm) mesh are allowed to possess/land combined whiting and offshore hake up to 7,500 lb (3402 kg); and vessels electing to use a minimum 3-inch (76 mm) mesh are allowed to possess/land combined whiting and offshore hake up to 35,000 lb (13,608 kg); (9) add measures that may be implemented by a framework adjustment, including essential fish habitat (EFH) designation measures (these new framework measures would include a whiting quota for vessels fishing in the northern management area with mesh smaller than the minimum mesh in combination with a separator trawl/grate; modifications or adjustments to whiting grate/mesh configuration requirements; adjustments to whiting stock boundaries for management purposes; modifications to requirements for fisheries exempt from the minimum mesh requirements for small-mesh multispecies; and seasonal adjustments, declarations, and participating requirements for the Cultivator Shoal Whiting fishery); (10) implement codend specifications and restrictions on net strengtheners (a net strengthener may not be used to fish for small-mesh multispecies with either a minimum 2.5-inch (64 mm) or 3-inch (76 mm) mesh, but a vessel that chooses to fish for small-mesh multispecies with a mesh less than 2.5-inches (64 mm) may use a net strengthener, provided the vessel complies with the net strengthener provisions specified in other small-mesh fisheries); (11) restrict the transfer at sea of small-mesh multispecies; (12) provide a default measure to be applied on a stock specific basis, beginning in year 4 of the amendment if other measures have not been implemented to meet the fishing mortality objectives (this default measure would establish a Regulated Mesh Area with a 3-inch (76 mm) minimum mesh requirement for all fishing activities); (13) designate EFH for offshore hake; and (14) establish a Whiting Monitoring Committee (WMC). Ocean pout will remain an open access multispecies; none of the management measures proposed in this amendment address fishing for ocean pout.

The most recent estimates indicate that fishing mortality in whiting is approximately 1.79 for the northern

stock and 1.50 for the southern stock. The goal of the Amendment 12, with respect to whiting, is to reduce fishing mortality to 0.36 and 0.34 for the northern and southern stocks, respectively, based on existing overfishing definitions, translating into a 63-percent reduction of exploitation on both stocks of whiting. While there would be no proposed possession limits for red hake, it is expected that reductions of fishing mortality on whiting and offshore hake will have a corresponding reduction in fishing mortality on red hake. The establishment of a WMC has been proposed to monitor annually the progress of the management program and to recommend adjustments, as necessary, to ensure that Amendment 12 meets its objectives.

This amendment is intended to bring the whiting fisheries of the Northeast Multispecies FMP into compliance with the Magnuson-Stevens Act, as amended by the SFA. The provisions in section 108(a) of the SFA require that fishery management councils either add to or revise the required provisions of any fishery management plan prepared by a council or the Secretary of Commerce to include the following provisions: (1) Bycatch reports (standardize reporting methods to assess the type and amount of bycatch in a fishery); (2) bycatch measures (develop management measures to minimize bycatch and mortality of bycatch); (3) commercial, recreational, and charter fishing sectors (specify data for each sector); (4) EFH (describe and identify EFH, minimize to the extent practicable adverse impacts from fishing, and identify other actions to encourage the conservation of such habitat); (5) fishing communities (assess in a fishery impact statement the likely effects of measures on fishing communities); and (6) overfishing definitions (specify objective and measurable criteria for identifying whether a fishery is overfished, and include measures to prevent overfishing). Public comment is invited on the adequacy of Amendment 12 in meeting the requirements of section 108(a) of the SFA.

#### Measure Considered for Disapproval

While Amendment 12 includes a limited access permit program to control effort on small-mesh multispecies, NMFS is concerned that the provision may be inconsistent with national standard 4 and section 304(e) of the Magnuson-Stevens Act. Vessels that participated in either the Gulf of Maine whiting raised footrope or separator trawl experimental fisheries would qualify for the limited access program

with 1,000 lb (453.6 kg) of landings over 3 years, whereas other vessels would qualify with 50,000 lb (22,680 kg) of landings over 18 years. Vessels would be subject to the same restrictions regardless of how they qualified for the permit. Further, vessels may have been excluded from participation in experimental fisheries because NMFS imposed participation restrictions, and fishermen may have been reluctant to participate in the experimental fisheries because of the restrictive participation requirements. This portion of the proposed limited access program may be inconsistent with national standard 4 because different sectors of the industry could qualify for access to the fishery with different landings requirements. These issues raise concerns about fairness and equity that are the subject of national standard 4.

The limited access program also proposes that 5 years from the implementation date of this amendment (at the beginning of year 6), 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 valid limited access multispecies permit on the date the final rule for this amendment is published, as well as 5 years from the effective date for this rule. There has been no analysis of the potential effects of increased effort on the rebuilding schedule. Amendment 12 proposes to end overfishing in year 4 and to rebuild the stocks of whiting and red hake within 10 years. It is not certain 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 may be inconsistent with section 304(e) of the Magnuson-Stevens Act, which specifies that overfished fisheries must be rebuilt as soon as possible and within a period not to exceed 10 years, unless limited exceptions apply.

#### Overfishing Definition

Fishing mortality and exploitation reduction targets and the management measures proposed in Amendment 12 to achieve them would be based on the existing overfishing definitions, rather than on the overfishing definitions proposed in the amendment. Future evaluations of the status of the fishery would be based on the proposed definitions, should Amendment 12 be approved.

This amendment would introduce an overfishing definition for offshore hake and would revise the overfishing definitions for northern and southern

stocks of whiting and red hake to bring them into accord with the new national standard guidelines of the Magnuson-Stevens Act, as amended by the SFA. Under the revised guidelines, overfishing definitions must be composed of two reference points, one for fishing mortality rate and one for stock biomass. "Overfishing" occurs whenever a stock or stock complex is subjected to a rate or level of fishing mortality that jeopardizes the capacity of a stock or stock complex to produce maximum sustainable yield on a continuing basis. "Overfished" describes a stock or stock complex with a sufficiently low biomass to require a change in management practices to achieve the appropriate level and rate of stock rebuilding.

#### Essential Fish Habitat

The Council's omnibus EFH amendment, which included Amendment 11 to the Multispecies FMP, was approved in its entirety on March 3, 1999, and contained EFH designations for whiting and red hake. Offshore hake would be a newly managed species under Amendment 12; therefore, Amendment 12 includes an EFH designation for offshore hake. Under the SFA, these designations are part of the Council's on-going work to identify and describe EFH, describe non-fishing and fishing threats, and suggest conservation and enhancement measures.

A proposed rule that would implement Amendment 12 may be published in the **Federal Register** for public comment following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 12 to be considered in the approval/disapproval decision on Amendment 12. All comments received by August 2, 1999, whether specifically directed to the FMP amendment or to the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on Amendment 12.

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

Dated: May 26, 1999.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
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