

*Rulemaking Proceedings*, 63 FR 24,121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, TW-A325, Washington, DC 20554.

Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, SW, CY-B400, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.49, and all other applicable sections of the Commission's rules. The Commission also directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

## List of Subjects

### 47 CFR Parts 1 and 51

Communications common carriers, Telecommunications.

### 47 CFR Part 68

Communications common carriers, Communications equipment.

### 47 CFR Part 76

Cable television.

Federal Communications Commission.

**Magalie Roman Salas,**  
Secretary.

[FR Doc. 99-23404 Filed 9-10-99; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 990811218-9218-01; 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:** Proposed rule, request for comments.

**SUMMARY:** NMFS issues this proposed 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 proposed regulations would 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 Sustainable Fisheries Act (SFA).

**DATES:** Comments must be received on or before October 28, 1999.

**ADDRESSES:** Comments on this proposed rule should be sent to Pat Kurkul, Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the

outside of the envelope, "Comments on Proposed Rule for Amendment 12."

Comments regarding burden-hour estimates for collection-of-information requirements or other aspects of the collection-of-information requirements contained in this proposed 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).

Copies of the Amendment 12 document, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), the Supplemental Environmental Impact Statement (SEIS), 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, 5 Broadway (Route 1), Saugus, Massachusetts 01906-1036.

#### FOR FURTHER INFORMATION CONTACT:

Peter Christopher, Fishery Management Specialist, 978-281-9288.

**SUPPLEMENTARY INFORMATION:** The New England Fishery Management Council (Council) developed Amendment 12 to the Northeast Multispecies FMP (commonly called the Whiting Amendment) primarily to comply with the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the SFA on October 11, 1996. NMFS published a notice of availability for this amendment in the **Federal Register** at 64 FR 29257, June 1, 1999, soliciting public comments on this amendment through August 2, 1999. Public comments that were received on or before August 2, 1999, will be considered in the approval/disapproval decision. Comments received after that date, but before the end of the comment period for this proposed rule, will not be considered in the approval/disapproval decision of the amendment, but will be considered in the decision on issuance of the final rule with respect to matters not related to approval/disapproval of FMP measures. Copies of Amendment 12 are available upon request (see **ADDRESSES**).

Whiting and red hake have been part of the Northeast Multispecies FMP since the implementation of Amendment 4 in 1991. Since that time, one reason no management measures have existed to manage directly the whiting and red hake fisheries is that management measures incorporated into the Multispecies FMP for other species provide indirect protection for whiting

and red hake. Geographic areas that are closed to fishing and minimum mesh sizes that are inefficient at catching whiting and red hake provided some level of protection for whiting and red hake. However, directed whiting fisheries in the Southern New England Regulated Mesh Area (SNE RMA) and exempted or experimental fisheries in the Gulf of Maine/Georges Bank Regulated Mesh Area (GOM/GB RMA) have continued to produce high levels of whiting and red hake catches. In anticipation of additional restrictions to manage whiting, the Council established September 9, 1996, as the control date for whiting and announced that it could limit future access to the whiting fishery through a moratorium on whiting permits.

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 that the Northern stock of whiting is approaching an overfished condition. In response, the Council began the development of Amendment 12 to specifically address overfishing.

Amendment 12 proposes to end overfishing in 4 years. Management measures in years 1, 2, and 3 would be the same, unless changed through framework action or amendment. If the reduction in fishing mortality and exploitation during the first 3 years is not sufficient to meet the goals of Amendment 12, a fourth year default measure has been proposed to achieve the target fishing mortality rates and end 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 (whiting), red hake and offshore 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 whiting, red hake and offshore hake (small mesh multispecies); (6) implement an open access permit category to allow an incidental catch; (7) implement new measures for the Cultivator Shoal Whiting Fishery; (8) initiate management measures for all areas excluding the Cultivator Shoal Whiting Fishery based on mesh size/possession limit categories; (9) add measures which may be implemented by a framework adjustment; (10) implement codend specifications and restrictions on net

strengtheners; (11) restrict the transfer of small mesh multispecies; (12) provide a default measure to be implemented at the beginning of year 4 if management measures do not meet the fishing mortality objectives; (13) designate Essential Fish Habitat for offshore hake; and (14) establish a Whiting Monitoring Committee (WMC).

After a preliminary review of Amendment 12, NMFS found that the limited access program would be inconsistent with national standard 4 and section 304(e) of the Magnuson-Stevens Act. The qualification criteria allow vessels that participated in either the Gulf of Maine whiting raised footrope or separator trawl experimental fisheries to qualify for a limited access permit 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 be 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 qualify 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 proposes that at the beginning of year 6 of the Amendment, 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 this amendment is published and that continues to be valid in year 6. The sunset provision may give 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 has been no analysis of the potential effects of such 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. 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 would, therefore, 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.

As a result of this preliminary review, NMFS is returning the limited access program to the Council in its entirety. To return only the two problematic portions would alter significantly the limited access program proposed in Amendment 12, thus changing the limited access program that was approved by the majority of the voting members of the Council. Under section 304(c)(3) of the Magnuson-Stevens Act, the Secretary of Commerce may not implement a limited access system that has not been approved by the majority of the voting members of the Council. Therefore, NMFS's only option in order to avoid implementing the two problematic measures of the limited access program is to exclude the limited access portion of Amendment 12 from regulations proposed for public comment. The open access permit category for small mesh multispecies is also omitted from this regulation because it would serve no purpose without the limited access permit categories.

#### Proposed Measures

The "Open Access Nonregulated Multispecies Permit" would be renamed the "Open Access Multispecies Permit" to avoid confusion that would result from the elimination of the definition of "Nonregulated Multispecies." Vessels currently issued "Open Access Nonregulated Multispecies Permits" would not be required to acquire a new "Open Access Multispecies Permit," but rather would receive a renamed permit when they apply for permit renewal at the end of the fishing year in which this regulation is implemented. The restrictions pertaining to the "Open Access Nonregulated Multispecies Permit" would remain in effect for these vessels.

Amendment 12 proposes to change the season for the Cultivator Shoal Whiting Fishery by decreasing its duration by 1 month. The Cultivator Shoal Whiting Fishery season would begin on June 15 and end on September 30 of each year. Currently, the fishery ends on October 31 each year. The reduction in fishing effort by the elimination of the month of October is expected to contribute toward Amendment 12's overall goal of a 63-percent reduction in whiting exploitation across all stock areas.

Vessels enrolled in the Cultivator Shoal Whiting Fishery would be restricted to a minimum mesh size of 3 in (7.62 cm) subject to applicable codend restrictions. Vessels enrolled in the fishery would also be restricted to a

possession limit of 30,000 lb (13,608 kg) of whiting and offshore hake. Vessels would be allowed to fish in areas other than the Cultivator Shoal Whiting Fishery area while enrolled in this fishery but would be subject to the more restrictive mesh and possession measures regardless of where they fish. These measures allow participants in the Cultivator Shoal Whiting Fishery flexibility to fish in other whiting areas when whiting are not concentrated on the Cultivator Shoal. The possession limit would serve to eliminate extremely large whiting trips that contribute to excessive fishing mortality in the area, yet allow for economically feasible trips.

Amendment 12 would implement whiting and offshore hake possession limits for all areas excluding the Cultivator Shoal Whiting Fishery. Vessels issued a Federal multispecies permit would be allowed the following possession limits of whiting and offshore hake: up to 3,500 lb (1,588 kg), while using a mesh size less than, but not equal to 2.5 in (6.35 cm); up to 7,500 lb (3,402 kg), while using a codend mesh size of 2.5 in (6.35 cm) or larger, provided the vessel has a letter of authorization from the Administrator, Northeast Region, NMFS (Regional Administrator) on board; and up to 30,000 lb (13,608 kg), while using a codend mesh size of 3 in (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 would be valid for a minimum of 30 days. However, vessels could withdraw from the minimum mesh size category after a minimum of 7 days, but they would be subject to a possession limit of 3,500 lb (1,588 kg) regardless of the mesh size in use and would not be able to re-enter the original authorization category for the remainder of the original 30 days.

Vessels that do not receive a letter of authorization would automatically be restricted to a possession limit of 3,500 lb (1,588 kg) of whiting and offshore hake, regardless of the mesh size in use.

Amendment 12 proposes that while participating in the Northern shrimp fishery, to retain whiting and offshore hake, a vessel would be required to be issued a Federal multispecies permit and that vessels would be allowed a possession limit of whiting and offshore hake equal to the amount of Northern shrimp on board up to 3,500 lb (1,588 kg).

This proposed 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 would be required to 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 would be enrolled. Since letters of authorization would be 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 would be effective upon date of request.

Amendment 12 proposes that a vessel issued a Federal multispecies permit would be allowed to transfer small mesh multispecies at sea up to 500 lb (226.8 kg), provided it has a letter of authorization to transfer fish at sea on board the vessel. A total of 500 lb (226.8 kg) would automatically be deducted from the vessel's possession limit regardless of the actual amount transferred. Vessels receiving the small mesh multispecies at sea would be required to have a receipt for the transferred fish. The allowance for transfers at sea would provide continued flexibility for vessels that have traditionally purchased bait from other vessels while in the course of targeting such other species as lobster or tuna.

Amendment 12 proposes new codend specifications for vessels fishing for small mesh multispecies. For vessels less than or equal to 60 ft (18.28 m) in length overall, the mesh size would be determined by measuring the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net. For a vessel greater than 60 ft (18.28 m) in length overall, the mesh size would be determined by measuring the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net. This restriction would not apply to vessels using less than 2.5-in (6.35 cm) mesh and being subject to other codend specifications specified in this part.

The proposed management measures controlling mesh size are intended to provide an incentive for vessels to use larger mesh to fish for small mesh multispecies. Allowance of several mesh sizes accounts for differences in the characteristics of the various small mesh fisheries (such as squid and herring) which exist.

Amendment 12 proposes to allow vessels using mesh less than 2.5 in (6.35 cm) to use net strengtheners. This provision allows vessels which have traditionally used net strengtheners in

other small mesh fisheries to continue with their use while maintaining the expected conservation benefits by prohibiting the use of net strengtheners in directed small mesh multispecies fisheries.

On May 1, 2002 (the beginning of year 4 under the schedule proposed by Amendment 12), if target mortality and biomass objectives have not been achieved and if the Council and NMFS have not implemented other adequate management measures, default measures would ensure that the fishing mortality objectives of Amendment 12 are achieved. The default measures would include the following:

A regulated mesh area to be defined prior to the effective date of the default measure, with a 3-in (7.62 cm) minimum mesh requirement for all fishing activities (with the exception of fisheries with larger minimum mesh sizes). In the absence of a defined small mesh multispecies regulated mesh area, the default measures would be effective throughout the range of the species. Vessels participating in any fishery would be required to use the minimum 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 would be allowed.

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

A provision to allow a vessel to fish with mesh less than 3 in (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.

Analysis of these management measures indicated that it may be very difficult to achieve the conservation objectives of the proposed amendment without decreasing the amount of whiting retained or discarded with mesh less than 2.5 in (6.35 cm). Therefore, the default measures described above further increase the likelihood that the incidental, as well as the directed, catch of small mesh multispecies will be reduced.

Additional measures that can be implemented through the framework procedure have been proposed under Amendment 12 to allow future adjustments for the small mesh multispecies. The following measures that can be implemented through the framework procedure have been proposed: A total allowable landings limit (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 requirements for fisheries to be exempt from the minimum mesh requirements for small mesh multispecies; and season adjustments, declarations and participation requirements for the Cultivator Shoal Whiting Fishery. Amendment 12 also proposes the following management measures that could be implemented through a framework adjustment to the FMP provided that they are accompanied by a full set of public hearings: A whiting Days at Sea (DAS) effort reduction program and a whiting total allowable catch (TAC), either by region or for the entire fishery. In addition, Amendment 11 to the FMP, which was approved on March 3, 1999, adds essential fish habitat measures to the framework list. The framework procedure for essential fish habitat, which was inadvertently not included in regulations at the time Amendment 11 to the FMP was approved, is now included in this rule.

The framework adjustment process allows the Council flexibility to develop and analyze management actions over a shorter time period than is possible under the amendment process. Framework development still involves notification of proposed measures to the public and opportunities for public comment.

Amendment 12 proposes to establish 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 would be identical to the Multispecies Monitoring Committee (MMC), with the exception that the WMC would contain at least three industry representatives: At least one from New England, one from Southern New England, and one from the Mid-Atlantic regions. Establishment of a monitoring committee provides regular, consistent evaluation of the management measures to ensure that the goals of the Northeast Multispecies FMP specific to small mesh multispecies are achieved.

This rule proposes to correct references to the appeals paragraphs of the multispecies permitting section and to clarify the net strengthener provision at § 648.80(g).

#### Classification

The Council prepared and NMFS has adopted a SEIS for this amendment; a notice of availability was published at 63 FR 48727, September 11, 1998. Although short-term negative impacts would result from lowered allowed

catches of small mesh multispecies, the proposed management action would have long-term positive impacts on affected physical, biological, and human environments. A copy of the SEIS may be obtained from the Council (see ADDRESSES).

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

#### Initial Regulatory Flexibility Analysis

The Council prepared an IRFA for this proposed rule, pursuant to the Regulatory Flexibility Act (5 U.S.C. 603), without a final determination as to whether the proposal would have a significant impact on a substantial number of small entities. In September of 1997, NMFS determined that some stocks of whiting and red hake are overfished or approaching an overfished condition. This proposed rule is published to comply with the new requirements of the Magnuson-Stevens Act which requires that a management plan be developed and implemented to end overfishing and to rebuild overfished stocks. This proposed rule intends to end overfishing by implementing whiting, offshore hake, and red hake possession limits; minimum mesh sizes; and a year 4 default measure to ensure that the elimination of overfishing is attained. To ensure that there will be effective recordkeeping and compliance for the proposed measures, this proposed rule would establish two new collection-of-information requirements and include one collection-of-information requirement that was previously omitted. These two new requirements consist of a requirement for 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 of a requirement to make a receipt for fish bought through a transfer of fish at sea. The omitted requirement 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. The small entities considered in this analysis are 1,156 vessels whose reported landing was made of one or more combined pounds of whiting, red hake, and offshore hake during the calendar years 1995 to 1997. The following is a brief discussion of the measures and alternatives analyzed in the IRFA.

Measures proposed in this amendment are intended to reduce

landings of whiting and red hake and to control effort on these fisheries. Vessels that would continue fishing for small mesh multispecies would be subject to substantial reductions in landings from their historical fishing activity. The most significant effects would be caused by the 4th year default measures, which are expected to result in the largest economic loss for fishery participants. The management measures for years 1–3 are estimated to reduce gross revenues from all species by more than 5 percent for 81 vessels (7 percent of small mesh multispecies participants). If the default measure is implemented, approximately 20 percent of small mesh multispecies fishery participants (222 vessels) are estimated to experience a reduction in annual gross revenues of 5 percent or more.

Additionally, short- and long-run profitability analyses of small mesh multispecies commercial fishing vessels indicate that management measures proposed in this amendment would force some vessels to cease operations. In the short run, vessels may be assumed to maintain business operations, provided operating costs can be paid. In the long run, vessels may be able to maintain business operations only if all costs (fixed and operating) can be paid from gross receipts. Estimated profitability for the years 1–3 and year 4 default management measures indicated that two percent, or more, of the vessels may not be able to operate at positive long-run profit upon implementation of the FMP by this proposed rule. Under the years 1–3 measures, a total of 25 vessels estimated to be earning positive profit under the status quo, (2.2 percent of all small mesh multispecies fishery participants) would be operating at negative profit. Similarly, a total of 61 vessels estimated to be earning positive profit under the status quo (5.3 percent of all small mesh multispecies fishery participants) would be operating at negative profit under the year 4 default measure. It is assumed such vessels would cease operations as a result of their negative profit.

The impact of the proposed action would not be distributed evenly among vessels or sectors of the industry. Impacts of the proposed management action would be the greatest on the communities that depend most heavily on small mesh multispecies fisheries. Most of the effort in the small mesh fisheries and resulting landings are from vessels based in Rhode Island, New York, and New Jersey. Therefore, with management measures designed to reduce effort and landings, vessels fishing from these states would experience the effects of the

management measures to the greatest extent. Compared to the status quo, however, industry may realize much greater benefits in the long term as stocks of small mesh species recover, and value of the species increases as a result of the proposed management measures.

An analysis of the management measures in an open access fishery was also conducted. Although it is likely that current numbers of vessels permitted to fish for small mesh multispecies would remain at current levels or slightly increase, it is uncertain what the actual level of participation, effort and catch levels will result. However, vessels that would have qualified for the limited access permits would remain subject to greater restrictions and therefore would be equally impacted under a limited access or open access fishery. Vessels that would have been excluded from the limited access fishery would likely recognize greater profitability as a result of an open access system over the short-term. Therefore, because the open access fishery would result in increased profitability for some small entities when compared to the limited access permit program, NMFS determines that the management measures in an open access system would have a reduced negative impact on small entities.

Other measures proposed in this amendment, 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. However, these measures are expected to have minimal economic impact on participating vessels because they would not result in the loss of catch or landings and would allow continued flexibility.

#### Alternatives Considered But Rejected by the Council

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 Sustainable Fisheries Act with respect to overfished stocks. Further, evaluations of biological, social, and economic impacts suggest that the proposed 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 delineation because it felt that area-specific measures would be unnecessary with simplified and uniform management measures for all areas, except the Cultivator Shoal Whiting exemption area.

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 season of the fishery by 2 months by eliminating June and October from the allowed season. In addition, various possession limits and participation restrictions were considered. While Amendment 12 proposes a 1-month reduction of the season that eliminates the month of October, the elimination of the June portion 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 allowed whiting fisheries. The possession limits and other restrictions, other than the proposed measures in this rule, were rejected for consideration in Amendment 12 because they were too complex or not feasible. The Council felt that, while the low possession limits would ensure that fishing mortality goals relative to the Cultivator Shoal area would be reached quickly, vessels would not be able to profit from trips to the Cultivator Shoal area with 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 and that whiting is a highly perishable product.

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.

NMFS seeks comments regarding the IRFA. Copies of the IRFA are available from the Council (see ADDRESSES).

#### 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 proposed rule contains three new collection-of-information requirements subject to the Paperwork Reduction Act and have been submitted to OMB for approval. This proposed rule also repeats an existing requirement that has been approved by OMB under control number 0648-0202. The public reporting burden for these collection-of-information requirements is indicated in the parentheses in the following statements and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding whether the proposed collection-of-information requirements are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments regarding these reporting burden estimates or any other aspects of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

The new requirements are:

Call-in to NMFS Region for Enrollments for Authorization Letter to Transfer at Sea, (2 minutes/response);

Written Receipt for At-Sea Transfers of Small mesh Multispecies, (1 minute/response);

Call-in to NMFS Region for Enrollments for Mesh Size/ Possession Limit Authorization Letter, (2 minutes/response).

The repeated existing requirement is: Call-in to NMFS Region for Enrollment for the Cultivator Shoal Whiting Fishery Authorization Letter, (2 minutes/response).

#### List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 1, 1999.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.2, 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*.

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- *Limanda 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 and ocean quahog 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 January 1, 1997, all mackerel, squid, and butterfish dealers

and all scup dealers, and, as of June 1, 1997, all black sea bass dealers must have been issued under this section, and have in their possession, a valid permit for these species. As of [insert the date the final rule is effective], persons on board 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 or not a transfer of small mesh multispecies at sea occurred or whether or not the actual amount that was transferred was less than 500 lb (226.8 kg). This deduction will 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) or § 648.80(a)(4)(i)(B), and unless the vessel is issued and possesses on board an authorizing letter issued under § 648.80(a)(4)(i).

(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 Shoals 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 of these 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 person owning or operating a vessel holding a multispecies permit, 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) and (c) 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 person owning or operating a vessel issued a 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 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 person owning or operating a vessel issued an 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 any 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 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, unless both vessels fish exclusively in state waters and neither vessel has been issued a multispecies permit.

(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 any vessel 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 whose size is smaller than 3-in (7.62-cm), unless otherwise exempted pursuant to § 648.80(a)(7) or unless the vessel has not been issued a permit under § 648.4 and fishes exclusively in state waters.

(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), and (g)(4) 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) Until May 1, 2002, 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. 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, 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.

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(A) A vessel fishing in the Cultivator Shoal Whiting Fishery under this exemption must have a letter of authorization issued by the Regional Administrator on board and is subject to the following:

(B) Until May 1, 2002, a vessel participating in this fishery 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; butterflyfish; 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.

(C) Beginning May 1, 2002, a vessel fishing in the Cultivator Shoal Whiting Fishery 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) All nets must comply with 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) counted 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) counted from the terminus of the net 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 participating in the Cultivator Shoal Fishery 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 will be 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 will be 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, until May 1, 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)(iv) of this section 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. A vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake, butterfish, dogfish, herring, 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.

(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, vessels are 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: Silver hake and offshore hake—up to 10,000 lb (4,536 kg), butterfish, dogfish, herring, 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.

(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'



Small Mesh Area 1		
Point	N. lat.	W. long.
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'

\* \* \* \* \*

(9) \* \* \*

(i) \* \* \*

(D)(1) Until May 1, 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; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(2) Beginning May 1, 2002, vessels are subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may retain the allowable incidental species listed in paragraph (a)(9)(i)(D)(1) of this section.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) *Species exemptions.* (A) Until May 1, 2002, 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, 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(c).

(B) Beginning May 1, 2002, 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, 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 (a)(4)(i)(D) and (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86.

\* \* \* \* \*

(c) \* \* \*

(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)(4) of this section, a fishing vessel 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 subject to minimum mesh size restrictions 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) would not be 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) \* \* \* (i) Except as provided in paragraph (g)(4) 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.

\* \* \* \* \*

(4) Net strengthener restrictions when fishing for small mesh multispecies. A vessel 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 the provisions specified under § 648.23(d).

\* \* \* \* \*

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

#### § 648.86 Possession restrictions.

\* \* \* \* \*

(c) *Small mesh multispecies until May 1, 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) Mesh size smaller than 2.5 in (6.35 cm) and vessels without a letter of authorization. Vessels fishing for, in possession of, or landing small mesh multispecies with nets, or with nets on board that have not been properly stowed, of mesh size smaller than 2.5 in (6.35 cm), and, vessels which have not been issued a letter of authorization pursuant to paragraph (c)(1)(ii) or (c)(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. 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) Mesh size 2.5 in (6.35 cm) or greater. Vessels fishing for, in possession of, or landing small mesh multispecies may possess on board and land up to only 7,500 lb (3,402 kg) of combined silver hake and offshore hake when fishing with nets with a minimum mesh size of 2.5 in (6.35 cm) provided the vessel has a letter of authorization issued by the Regional Administrator as described in paragraph (c)(2) of this section requiring mesh size of at least 2.5 in (6.35 cm) to be used and 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). 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) Mesh size of 3 in (7.62 cm) or greater. Vessels fishing for, in possession of, or landing small mesh multispecies may possess on board and land up to only 30,000 lb (13,608 kg) of

combined silver hake and offshore hake when fishing with nets with a minimum mesh size of 3 in (7.62 cm) provided the vessel has a letter of authorization issued by the Regional Administrator as described in paragraph (c)(2) of this section requiring mesh size of at least 3 in (7.62 cm) to be used and 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). 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.

(2) *Letter of authorization.* Vessels fishing pursuant to paragraphs (c)(1)(ii) or (c)(1)(iii) of this section must carry a letter of authorization to fish in the minimum mesh size/possession limit category on board the vessel. 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 would be enrolled. Since letters of authorization would be effective on the date of receipt, vessel owners should allow appropriate processing and mail time. Enrollment must be a minimum of 30 days. To withdraw from a category, vessel owners must call the Northeast Region Permit Office. Withdrawals would be 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 from the original enrollment period have passed and are 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 (13,608 kg) lb possession limit category which is effective October 1 and chooses November 30 as the end date but withdraws on October 7 and enrolls in the possession limit category, the vessel may not be re-enrolled in the 2.5-in (6.35 cm)/ 7,500 lbs (3,402 kg) or 3-in mesh/30,000 lb (13,608 kg) possession limit category until October 31.

(3) *Possession limit for vessels participating in the Northern shrimp fishery.* Vessels participating in the Small mesh Northern Shrimp Fishery exemption, as described in

§ 648.80(a)(3) and 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.* 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) will be 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 would otherwise receive. This deduction will be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(d) *Small mesh multispecies beginning on May 1, 2002—(1) Federal multispecies permit holders.* A vessel issued a valid Federal multispecies permit specified under § 648.4 (a)(1) may possess on board and 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.* Vessels participating in the Small Mesh Northern Shrimp Fishery exemption, as described in § 648.80(a)(3) and issued a valid Federal multispecies permit specified under § 648.4(a)(1) may possess and 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) will be subject to a combined silver hake and offshore hake possession limit which is 500 lb (226.9

kg) less than the possession limit the vessel would otherwise receive. This deduction will 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 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 MMC and 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 on 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. Included in the NEFMC's recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the NEFMC.

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(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 crucifers 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.

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