

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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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

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

RIN 0648-AN46

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

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

**ACTION:** Final rule.

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

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

**DATES:** This rule is effective April 28, 2000.

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

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

#### **SUPPLEMENTARY INFORMATION:**

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

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

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

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

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

owners would discard whiting that would be caught over the allowed 3,500 lbs (1,588 kg) with less than 2.5-inch (6.35-cm) mesh nets because *Loligo* squid, which has a minimum mesh size requirement of 1.875 inches (4.76 cm), continue to be more valuable than whiting. Vessel owners felt that the 2.5-inch (6.35-cm) mesh would release too much squid and that there would be no incentive for these vessels to move up to a 2.5-inch (6.35-cm) mesh, which would promote conservation of whiting. Thus, some vessel owners would continue to use the smaller mesh and discard whiting. Allowing a net strengthener with 2.5-inch (6.35-cm) mesh provides an incentive for squid vessels to increase their mesh size to 2.5 inches (6.35 cm) by allowing squid catches similar to those caught with 1.875-inch (4.76-cm) mesh nets and allowing for a 7,500-lb (3,402-kg) possession limit of whiting and offshore hake. During the development of the strengthener options, industry commented that the use of a net strengthener with mesh sizes larger than 2.5 inches (6.35 cm) was not an issue because the concern was to find a solution for the small-mesh squid fishery. The provisions for the circumference, length, and composition of the net are intended to prevent vessels from using a combination of inside and outside codends that would reduce the effective inside mesh size, thereby compromising the effectiveness of whiting conservation measures.

#### Abbreviated Rulemaking

NMFS is making these adjustments to the regulations under the framework abbreviated rulemaking procedure codified in 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the Multispecies FMP, to develop and analyze the action over the span of at least two Council meetings where public comments are accepted. The Council must provide the public with advance notice of both the framework proposals and the associated analyses, and provide an opportunity to comment on them specifically prior to and at the second Council meeting. Upon review of the analyses and public comments, the Council may recommend to the Regional Administrator, Northeast Region (Regional Administrator), that the measures be published as a final rule, or as a proposed rule if additional public comment is necessary.

The initial and final meetings for Framework 32 at which public comment was received were on September 21–23, 1999, and November 16–18, 1999, respectively. The Council's Whiting and

Enforcement Committees and Whiting Industry Advisory Panel also held meetings and took public comment on the proposals for Framework 32 during meetings in October 1999. Documents summarizing the Council's proposed action and the analyses of biological, economic, and social impacts of this action and alternative actions were available for public review 1 week prior to the final meeting, as is required under the framework adjustment process. No written comments were received.

To eliminate confusion to the industry and to reduce the administrative burdens that Amendment 12's enrollment procedures would cause, Framework 32 is published just after the final rule implementing Amendment 12. This final rule modifies the final rule implementing Amendment 12. This effectively eliminates implementation of the burdensome enrollment procedures created by Amendment 12.

#### Classification

The Regional Administrator determined that this framework adjustment to the FMP is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule eliminates a reporting requirement under the Paperwork Reduction Act estimated at 13.3 hours. The Call-in to NMFS Region for Enrollments for Mesh Size/Possession Limit Authorization (2 minutes/response) (part of the paperwork burden authorized by OMB No. 0648–0391) has been eliminated.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 551 *et seq.*, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared. Nevertheless, the socioeconomic impacts on affected small entities were considered in the RIR contained in the supporting analyses for Framework 32. Relative to the status quo, expected average net returns would increase by less than one percent for the net strengthener provision implemented by this final rule. The minimum mesh size/possession limit provision implemented by this final rule is the simplest alternative available and improves flexibility for the industry. Further, it reduces costs to participating fishermen and the agency and may improve enforceability of the measure.

Alternatives to this measure were also considered by the Council and were discussed in the framework adjustment document.

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

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 22, 2000.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is 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 § 648.80, paragraph (g)(5) is revised to read as follows:

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

\* \* \* \* \*

(g) \* \* \*

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies.* (i) *Nets of mesh size less than 2.5 inches (6.35 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas as defined in paragraphs (a), (b), and (c) of this section with nets of mesh size smaller than 2.5 inches (6.35-cm), as measured by methods specified in § 648.80(f), may use net strengtheners (covers as described at § 648.23(d)) provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.35 cm) complies with the provisions specified under § 648.23(d).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas as defined in paragraphs (a), (b), and (c) of this section with nets with mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62 cm) (as measured by methods specified in § 648.80(f), and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (i.e., outside net) provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.24 cm), diamond or square

mesh, as measured by methods specified in § 648.80(f). The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (i.e., both square or both diamond mesh) as the outside net.

3. In § 648.86, paragraph (d) is revised to read as follows:

**§ 648.86 Multispecies possession restrictions.**

\* \* \* \* \*

(d) *Small-mesh multispecies through April 30, 2002.* (1) Vessels issued a valid Federal multispecies permit specified under § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the mesh size used by or on board vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels possessing on board or using nets of mesh size smaller than 2.5 inches (6.35 cm).* Owners or operators of a vessel may possess and land not more than 3,500 lb (1,588 kg) of combined silver hake and offshore hake if either of the following conditions are met:

(A) The mesh size of any net or any part of a net used by or on board the vessel is smaller than 2.5 inches (6.35 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured in accordance with § 648.80(f); or,

(B) The mesh size of any net or part of a net on board the vessel not integrated into a fully constructed net is smaller than 2.5 inches (6.35 cm), as measured by methods specified in § 648.80(f). “Integrated into a fully constructed net” means that the mesh smaller than 2.5 inches (6.35 cm) occurs only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv), and, that the net into which the mesh is integrated is available for immediate use.

(ii) *Vessels possessing on board or using nets of mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62 cm).* Owners or

operators of a vessel, which is not subject to the possession limit specified in paragraph (d)(1)(i) of this section, may possess and land not more than 7,500 lb (3,402 kg) of combined silver hake and offshore hake if either of the following conditions are met:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); or,

(B) The mesh size of any net or part of a net on board the vessel not integrated into a fully constructed net is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62 cm), as measured by methods specified in § 648.80(f). “Integrated into a fully constructed net” means that the mesh smaller than 2.5 inches (6.35 cm) occurs only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv), and, that the net into which the mesh is integrated is available for immediate use.

(iii) *Vessels using nets of mesh size equal to or greater than 3 inches (7.62 cm).* Owners or operators of a vessel, which is not subject to the possession limits specified in paragraphs (d)(1)(i) and (ii) of this section, may possess and land not more than 30,000 (13,608 kg) of combined silver hake and offshore hake if both of the following conditions are met:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); and,

(B) The mesh size of any net or part of a net on board the vessel not integrated into a fully constructed net is equal to or greater than 3 inches (7.62 cm), as measured by methods specified in § 648.80(f). “Integrated into a fully constructed net” means that the mesh smaller than 3 inches (7.62 cm) occurs only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv), and, that the net

into which the mesh is integrated is available for immediate use.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i), (ii) and (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.28 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)).

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

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

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