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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 150205118-5443-02]

RIN 0648-BE87

**Fisheries of the Northeastern United States; Small-Mesh Multispecies Specifications**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the New England Fishery Management Council’s recommended fishing year 2015–2017 specifications and management measures for the small-mesh multispecies fishery, clarifies what measures can be modified in a specifications package, and corrects the northern red hake accountability measure. This action is necessary to ensure that catch of these species does not exceed applicable limits.

**DATES:** Effective May 28, 2015.

**ADDRESSES:** Copies of the specifications document, consisting of an Environmental Assessment (EA) and other supporting documents, are available on request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. This document is also available from the following internet addresses: [www.greateratlantic.fisheries.noaa.gov/](http://www.greateratlantic.fisheries.noaa.gov/) or [www.nefmc.org](http://www.nefmc.org). Copies of the small

entity compliance guide are available from John K. Bullard, Regional Administrator, Greater Atlantic Region, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2298.

**FOR FURTHER INFORMATION CONTACT:** Jason Berthiaume, Fishery Management Specialist, (978) 281–9177.

**SUPPLEMENTARY INFORMATION:**

**Background**

The small-mesh multispecies fishery is managed primarily through a serious of exemptions from the Northeast Multispecies Fishery Management Plan (FMP). The small-mesh multispecies fishery is composed of five stocks of three species of hakes (northern and southern silver hake, northern and southern red hake, and offshore hake). It is managed separately from the other stocks of groundfish such as cod, haddock, and flounders, primarily because the fishing is done with much smaller mesh and the fishery does not generally catch these other stocks. Amendment 19 to the Northeast Multispecies FMP (April 4, 2013; 78 FR 20260) established a process and framework for setting the small-mesh multispecies catch specifications.

The New England Fishery Management Council’s Scientific and Statistical Committee (SSC) met on August 26, 2014, to discuss the specifications and to recommend ABCs for the 2015–2017 small-mesh fishery. The FMP’s implementing regulations require the involvement of an SSC in the specification process. Following the SSC, the Whiting Oversight Committee met on September 9 and October 30, 2014, to discuss and recommend small-mesh specifications. The Council approved the final specifications for recommendation to NMFS on November 17, 2014.

The purpose of this action is to set the specifications for small-mesh multispecies for the 2015–2017 fishing years. These specifications include overfishing limit (OFL), acceptable biological catch (ABC), and total allowable landings (TAL) for each of the small-mesh multispecies stocks. In 2012 and 2013, northern red hake catch rates exceeded the annual catch limits (ACL) and the ABC. Northern red hake was also determined to be experiencing overfishing. To reduce the risk of continued overfishing on this stock and better constrain catch to the ACL, this action implements the Council’s recommended reduction of the northern red hake possession limit from 5,000 lb (2,268 kg) to 3,000 lb (1,361 kg) per trip. It also creates a new trigger point at which possession limits are reduced inseason such that when landings of northern red hake reach 45 percent of the TAL, the possession limit will be reduced to 1,500 lb (680 kg). The possession limits and inseason trigger accountability measures for the other stocks of small-mesh multispecies remain unchanged from 2012–2014.

This final rule also includes a correction to the small-mesh accountability measures and clarifies what measures can be modified in a small-mesh multispecies specifications action.

**Final Measures**

*1. 2015–2017 Small-Mesh Multispecies Specifications*

The Council process for developing its specifications recommendations for small-mesh multispecies can be found in the proposed rule for this action published in the **Federal Register** on April 8, 2015 (80 FR 18801), and is not repeated here. These specifications remain effective for fishing years 2015–2017 unless otherwise changed during that time.

TABLE 1—SUMMARY OF THE SMALL-MESH MULTISPECIES SPECIFICATIONS FOR 2015–2017

[All weights in metric tons]

Stock	OFL	ABC	ACL	Percent change from 2012–2014	Discard rate (percent)	TAL	Percent change from 2012–2014
N. Silver Hake .....	43,608	24,383	23,161	85	11.2	19,948.7	122.3
N. Red Hake .....	331	287	273	2.6	60.6	104.2	15.4
S. Whiting * .....	60,148	31,180	29,621	–8.2	17.1	23,833.4	–12.6
S. Red Hake .....	3,400	3,179	3,021	–2.4	55.3	1,309.4	–2.0

\* Southern whiting includes southern silver hake and offshore hake.

*2. Northern Red Hake Possession Limit Reduction*

This action reduces the northern red hake possession limit from 5,000 lb

(2,268 kg) in place for fishing year 2014 to 3,000 lb (1,361 kg) for fishing years 2015–2017. This reduction in possession limit is intended to delay the

in-season accountability measure (AM) until later in the year and to reduce the potential for northern red hake catches

to exceed the ACL (as occurred in fishing years 2012 and 2013).

### 3. Additional Northern Red Hake Possession Limit Reduction Trigger

This measure implements an additional inseason possession limit reduction trigger for northern red hake when 45 percent of the TAL is reached. For fishing years 2015–2017 the northern red hake possession limit will be reduced from 3,000 lb (1,361 kg) to 1,500 lb (680 kg) when landings reach this point.

### 4. Clarification on Modifications in a Specifications Action

When developing the rulemaking for this action, we determined that the current regulations governing the specifications process do not fully reflect the Council's intent in Amendment 19 regarding the scope of measures that can be implemented through the specifications process. Amendment 19 specified that the Council shall specify on at least a 3-year basis the OFL, ABC, ACLs, and TALs for each small-mesh multispecies stock as well as the corresponding possession limits, including inseason possession limit triggers to be consistent with the revised specification recommendations and estimates of scientific and management uncertainty from the SSC. However, the implementing regulations for Amendment 19 did not specify that adjustments to possession limits and the inseason possession limit triggers were among the items that could be modified in a specifications action. Consistent with section 305(d) of the Magnuson-Stevens Act, this rule corrects this inconsistency by including possession limits and inseason possession limit triggers in small-mesh multispecies specifications regulations.

### 5. Regulatory Correction

When the specifications were being developed, the Whiting Plan Development Team identified an error in the previous set of specifications (*i.e.*, for fishing years 2012–2014). The details of this error can be found in the proposed rule for this action published in the **Federal Register** on April 8, 2015 (80 FR 18801), and are not repeated here. Using Magnuson-Stevens Act section 305(d) authority, this action corrects the AM. This changes the possession limit reduction trigger point for reducing the possession limit for northern red hake to 400 lb (181 kg) from 45 to 62.5 percent of the TAL. Future AMs for fishing years in which the catch exceeds the ACL will be deducted from the corrected 62.5-

percent trigger, as outlined in the small-mesh AM regulations at § 648.90.

### Comments and Responses

On April 8, 2015, NMFS published proposed specifications for public notice and comment. One comment was received. This comment was not relevant to the rule.

### Classification

The Administrator, Greater Atlantic Region, NMFS, determined that this final rule is necessary for the conservation and management of the small-mesh multispecies fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Office of Management and Budget has determined that this action is not significant for the purpose of E.O. 12866.

The Assistant Administrator also finds good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the otherwise effective 30-day delay in effective date. Because the fishing year began on May 1, 2015, delaying the effectiveness of this action, particularly the northern red hake measures (possession limit reduction, implement additional possession limit trigger, correct accountability measures trigger rate) would not be in the best interest of the fishery resource or vessels fishing for small-mesh multispecies. NMFS could not promulgate this rule sooner because necessary information from the Council was not delivered until the end of March 2015. Although some of the northern red hake measures are restrictive in nature because they reduce the possession limit and implement an additional possession limit reduction trigger, they are designed to slow catch rates and thus increase the length of the overall season for the benefit of the fishermen and the fishery. Delaying implementation of these red hake measures could undermine in the short-term the intended benefits of extending the fishing season and creating better market conditions. In 2012 and 2013, northern red hake catch rates exceeded the ACL and ABC and the possession limit was reduced to the incidental level earlier in the season than anticipated. Delaying these measures again could result in northern red hake ABC and ACL overages and the reduction of the northern red hake possession limits to incidental levels earlier in the season than desired as occurred in 2012 and 2013, thus undermining the intent of the rule. Therefore, although the northern red hake measures impose some restrictions, having the measures effective upon publication is expected to be beneficial for the industry by

extending the season and beneficial for the resource by helping to prevent ACL and ABC overages.

Because the specifications for the three other stocks remain the same or, as for northern silver hake, increased, a delay is not needed because they automatically remain in place or relieve a restriction. Thus there would be no benefit to delaying the effectiveness of the specifications because they do not impose any new restrictions.

A Final Regulatory Flexibility Analysis (FRFA) was prepared pursuant to 5 U.S.C. 604(a), and incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS's responses to those comments, and a summary of the analyses completed to support the action. A copy of the EA/IRFA is available from the Council (see **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated here.

### Final Regulatory Flexibility Analysis

*A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments*

NMFS received no comments in response to the IRFA. One comment was received on this rule, which was not relevant to the rule or the IRFA.

### *Description and Estimate of Number of Small Entities to Which the Rule Would Apply*

On June 12, 2014, the Small Business Administration (SBA) issued an interim final rule revising the small business size standards for several industries effective July 14, 2014 (79 FR 33467). The rule increased the size standard from \$19.0 million to \$20.5 million for finfish fishing, from \$5.0 to \$5.5 million for shellfish fishing, and from \$7.0 million to \$7.5 million for other marine fishing, for-hire businesses, and marinas. The small-mesh multispecies fishery falls under the finfish category and, thus, has a threshold of \$20.5 million for determining small versus large entities. However, having different size standards for different types of commercial fishing activities creates difficulties in categorizing business that participate in multiple fishing related activities, which is typically the case in the fishing industry.

In order to fish for small-mesh multispecies, a vessel owner must be

issued either one of the limited access category Northeast multispecies permits or an open access Northeast Multispecies Category K Permit; however, there are many vessels issued both of these types of permits that may not actually fish for small-mesh multispecies. Based on ownership data for 2011–2013, there were 1,087 distinct ownership entities based on calendar year 2013 permits that could potentially target small mesh multispecies. Of these, 1,069 are categorized as small and 18 are categorized as large entities per the SBA guidelines. While 1,087 commercial entities are directly regulated by the proposed action, not all of these entities land small-mesh multispecies and are not likely to be directly impacted by this rule. To estimate the number of commercial entities that may experience impacts from the proposed action, active small-mesh multispecies entities are defined as those entities containing permits that are directly regulated and that landed any silver hake or red hake in 2013 for commercial sale. There are 298 potentially impacted, directly regulated commercial entities, 295 of which are classified as small entities.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

No reporting, recordkeeping, or other compliance requirements are included in this final rule.

*Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes*

During the development of these specifications, NMFS and the Council considered ways to reduce the regulatory burden on, and provide flexibility for, the regulated entities in this action. The specifications and alternatives are described in detail in the specifications document, which includes an EA, RIR, and IRFA (available at ADDRESSES). The measures implemented by this final rule minimize the economic impacts on small entities to the extent practicable.

This action revises the ACL specifications for northern and southern stocks of silver and red hakes for fishing years 2015–2017. The specifications are largely unchanged from previous years with the exception of northern silver hake, which is significantly increased. The specifications do not reduce the quotas and are therefore not restrictive in nature and, therefore, are not expected to result in significant positive

or minor economic impacts on small entities.

In general, the remainder of the measures in this action involves preventing northern red hake overages. Overall, this rule minimizes economic impacts by slowing the catch rate of northern red hake while still allowing small-mesh vessels to land northern red hake at more sustainable levels. The previous measures were resulting in ABC and ACL overages and the implementation of restrictive accountability measure possession limit reductions earlier in the fishing season than desired. The red hake measures in this action are designed to slow catch rates and extend the length of the season creating the anticipated more consistent market conditions and prices that are expected should be beneficial for the small-mesh fishery. Alternatives to these measures were analyzed and the final combination of northern red hake measures in this rule were determined to be the optimum combination of alternatives to prevent future ACL and ABC overages and minimize the economic impact on small entities.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 21, 2015.

**Samuel D. Rauch III,**

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

For the reasons set out 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 § 648.86, paragraphs (d)(1)(i) introductory text, (d)(1)(ii) introductory text, (d)(1)(iii) introductory text, and (d)(4) introductory text are revised and paragraph (d)(5) is added to read as follows:

**§ 648.86 NE Multispecies possession restrictions.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(i) *Vessels possessing on board or using nets of mesh size smaller than 2.5 in (6.35 cm).* Owners or operators of a vessel may possess and land not more than 3,000 lb (1,361 kg) of red hake, and not more than 3,500 lb (1,588 kg) of combined silver hake and offshore hake,

if either of the following conditions apply:

\* \* \* \* \*

(ii) *Vessels possessing on board or using nets of mesh size equal to or greater than 2.5 in (6.35 cm) but less than 3 in (7.62 cm).* An owner or operator of a vessel that is not subject to the possession limit specified in paragraph (d)(1)(i) of this section may possess and land not more than 3,000 lb (1,361 kg) of red hake, and not more than 7,500 lb (3,402 kg) of combined silver hake and offshore hake if either of the following conditions apply:

\* \* \* \* \*

(iii) *Vessels possessing on board or using nets of mesh size equal to or greater than 3 in (7.62 cm).* An owner or operator of a vessel that 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 3,000 lb (1,361 kg) of red hake, and not more than 30,000 lb (13,608 kg) of combined silver hake and offshore hake when fishing in the Gulf of Maine or Georges Bank Exemption Areas, as described in § 648.80(a), and not more than 40,000 lb (18,144 kg) of combined silver hake and offshore hake when fishing in the Southern New England or Mid-Atlantic Exemption Areas, as described in § 648.80(b)(10) and (c)(5), respectively, if both of the following conditions apply:

\* \* \* \* \*

(d) \* \* \*

(4) *Accountability Measure In-season adjustment of small-mesh multispecies possession limits.* If the Regional Administrator projects that an in-season adjustment TAL trigger level for any small-mesh multispecies stock, as specified in § 648.90(b)(5)(iii), has been reached or exceeded, the Regional Administrator shall reduce the possession limit of that stock to the incidental level for that stock, as specified in this paragraph (d)(4), for the remainder of the fishing year through notice consistent with the Administrative Procedure Act, unless such a reduction in the possession limit would be expected to prevent the TAL from being reached.

\* \* \* \* \*

(5) *In-season adjustment of Northern Red Hake Possession Limits.* In addition to the accountability measure in-season adjustment of small-mesh multispecies possession limits specified in paragraph (d)(4) of this section, if the Regional Administrator projects that 45 percent of the northern red hake TAL has been reached or is exceeded, the Regional Administrator shall reduce the possession limit for northern red hake to

1,500 lb (680 kg) for the remainder of the fishing year unless further reduced to the incidental possession limit according to the accountability measure in-season adjustment of small-mesh multispecies possession limits specified in paragraph (d)(4) of this section.

\* \* \* \* \*

■ 3. In § 648.90, paragraphs (b)(4)(i) and (b)(5)(iii) are revised to read as follows:

**§ 648.90 NE multispecies assessment, framework procedures and specifications, and flexible area action system.**

\* \* \* \* \*

(b) \* \* \*

(4) *Specifications package.* (i) The Whiting PDT shall prepare a specification package, including a SAFE Report, at least every 3 years. Based on

the specification package, the Whiting PDT shall develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The specifications package shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the small-mesh multispecies fishery. The specifications package shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP. The specifications package may include modifications to the OFL, ABC, ACL, TAL, possession limits, and in-season possession limit triggers.

\* \* \* \* \*

(5) \* \* \*

(iii) *Small-mesh multispecies in-season adjustment triggers.* The small-mesh multispecies inseason accountability measure adjustment triggers are as follow:

Species	In-season adjustment trigger (percent)
Northern Red Hake .....	62.5
Northern Silver Hake .....	90
Southern Red Hake .....	90
Southern Whiting .....	90

\* \* \* \* \*

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