

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 901246-1100]

RIN 0648-AC88

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; interim final rule and request for comments.

SUMMARY: NOAA issues this final rule to implement amendment 4 (Amendment) to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This rule: (1) Closes the Southern New England yellowtail area for the time period March through May and imposes mesh regulations when the area is open; (2) modifies the Exempted Fisheries Program to include enhanced reporting requirements, changes to target species allowances, and facilitation of sea sampling; (3) provides authority for gear restriction modifications in the northern shrimp fishery; (4) regulates the stowage of nets and mesh; (5) establishes a fishery for silver hake on Cultivator Shoals in the Regulated Mesh Area; and (6) modifies the management unit to include silver hake, red hake, and ocean pout. The interim final rule requires that nets with small mesh stowed below deck be secured in a manner consistent with what is required for nonconforming nets and mesh stowed on deck—specifically, that they be fan-folded (flaked) and bound around their circumferences. Because this specific requirement was not included in the proposed rule (56 FR 979, January 10, 1991), public comment on it is requested. The intended effect is to improve the overall effectiveness of existing management measures and enhance the conservation of the groundfish stocks. The proposed measure to implement a minimum mesh size of 2½ inches (6.35 cm) and the proposed measure to establish framework measures to protect yellowtail flounder and Atlantic cod were disapproved by the Secretary of Commerce (Secretary) and are not included in this final rule.

DATES: *Effective Date:* June 27, 1991. Written comments on the stowage requirement contained in § 651.20(f)(1)(iii) will be considered if received on or before June 12, 1991.

ADDRESSES: Copies of the Amendment, Environmental Assessment (EA), and Regulatory Impact Review (RIR), and

other supporting documents are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01960. Comments on the small mesh stowage requirement, contained in § 651.20(f)(1)(iii), should be sent to Richard B. Roe, Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (NMFS, Resource Policy Analyst), 508-281-9252.

SUPPLEMENTARY INFORMATION:

Amendment 4, which this rule implements, was prepared by the New England Fishery Management Council (Council) under the provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, 16 U.S.C. 1801 *et seq.* A notice of availability of amendment 4 was published on December 7, 1990 (55 FR 50572), and the proposed rule was published on January 10, 1991 (56 FR 979).

Approved Measures

The Secretary has approved six of the eight measures proposed by the Council in amendment 4. The Secretary approved, and this final rule implements: (1) An expansion of the Southern New England/Mid-Atlantic Region yellowtail closure area and a 5½ inch (13.97 cm) minimum mesh size requirement when the area is open; (2) changes to the Exempted Fisheries Program to include modified reporting requirements, a requirement to carry a sea sampler if requested, redesignation of the target species; (3) provisions that allow gear restriction modifications in the northern shrimp fishery to minimize bycatch of regulated species; (4) requirements for the stowage of small mesh nets when in the Regulated Mesh Area; (5) a fishery for silver hake on Cultivator Shoals and impose time, area, mesh size, reporting, and sea sampler requirements; and (6) the inclusion of silver hake, red hake, and ocean pout in the management unit.

Disapproved Measures and the Reasons for Disapproval

Two additional measures that had been proposed by the Council in amendment 4 have been disapproved by the Secretary. The measure that proposed a minimum mesh size of 2½ inches (6.35 cm) was determined to be inconsistent with National Standard 1 of the Magnuson Act. National Standard 1 states that "conservation and management measures shall prevent

overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry." The retention characteristics of the proposed mesh size would be virtually the same as is currently in use, as indicated by a mesh selectivity curve presented in the Amendment. As a result, the proposed mesh size would do little to prevent overfishing. Accordingly, the benefits of going from 2 inch (5.08 cm) to 2½ inch (6.35 cm) mesh were overstated in the Amendment. The many exemptions to the 2½ inch (6.35 cm) mesh further reduce any likely benefits.

The Amendment failed to provide an analysis showing any increase in percent maximum spawning potential (% MSP) for silver hake resulting from this measure. The Council has defined overfishing as occurring when the % MSP target levels are not achieved. Further, there is no evidence that the proposed mesh size would reduce fishing mortality rather than shift it to other age classes.

The economic analysis of the proposed measure failed to demonstrate any benefit over a 10-year period, inconsistent with Executive Order 12291 (E.O. 12291), which requires that regulatory action not be undertaken unless the potential benefits to society outweigh the costs. The net result would have been a discounted loss of \$2 million and 50 jobs. The Mid-Atlantic region would bear the major impact of this measure, a statement supported by comments on the proposed mesh size.

The second measure that was disapproved proposed a means to close quickly areas that had been determined to have high discards of sublegal (below the minimum size) multispecies finfish. The Technical Monitoring Group of the Council had previously reported to the Council that short-term, reactive time/area closures may be "inappropriate for yellowtail flounder, since juveniles are resident due to fairly well-defined nursery areas. Annual fixed closures in space and time are more sensible." For Atlantic cod this approach may be more reasonable but could be hampered by fairly rapid shifts in distribution, as well as NMFS' ability to determine rapidly that a problem exists. Given the depleted status of the yellowtail flounder resource, a 49 percent discard rate before action is taken is not acceptable. The Flexible Area Action System (FAAS) is already in place and can be implemented to handle any occurrences until a more effective procedure is developed.

The success of this measure would depend on sea sampling, which is

reconsideration, but only if and as necessary to complete reconsideration of these rules.

EFFECTIVE DATE: July 1, 1991.

ADDRESSES: The docket for this action (Docket No. 5A-91-1) which contains the public comments, is located for public inspection and copying at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Gloris Butler before visiting the Washington, DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region V, Regulation Development Branch, Twenty Sixth Floor, Northeast, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.
U.S. Environmental Protection Agency, Docket No. 5A-91-1, Public Information Reference Unit (pm-211D) room 2904, Waterside Mall, 401 M Street SW, Washington, DC 20460, (202) 245-3639.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: On January 4, 1991 (56 FR 463), USEPA proposed to extend a three-month stay imposed on January 4, 1991 (56 FR 460) for the following RACT rules, including the applicable compliance dates being reconsidered: (1) The emission limitations and standards for "top coat" and "final repair coating" operations only as applied to General Motors Corporation at their diesel-electric locomotive coating lines in Cook County, Illinois (55 FR at 26868-9), codified at 40 CFR 52.741(e)(1)(i)(M) (2) and (3), as well as the July 1, 1991, compliance date (55 FR 26872), codified at 40 CFR 52.741(e)(5); (2) the emission limitations and standards for miscellaneous fabricated product manufacturing processes and miscellaneous formulation manufacturing processes only as applied to Viskase Corporation's cellulose food casing manufacturing facility in Bedford Park, Illinois (55 FR 26883-4), codified at 40 CFR 52.741 (u) and (v), as well as the July 1, 1991, compliance date (55 FR 26883-4), codified at 40 CFR 52.741 (u)(4) and (v)(4); and (3) the emission limitations and standards for miscellaneous fabricated product manufacturing processes only as applied to Allsteel, Incorporated's adhesive lines at their metal furniture manufacturing operations in Kane County, Illinois (55 FR 25883), codified at

40 CFR 54.741(u), as well as the July 1, 1991, compliance date (55 FR 26883), codified at 40 CFR 52.741(u)(4).

The proposed temporary stay beyond the three months expressly provided in section 307(d)(7)(B) was to remain in effect until withdrawn by a subsequent rule, but only if and as necessary to complete USEPA's rulemaking on the reconsidered actions. The notice proposed to issue the stay pursuant to CAA §§ 110(c) and 301(a)(1), 42 U.S.C. 7410(c) and 7601(a)(1).

Response to the Public Comments

Two public comments were received in support of USEPA's proposed extension of the partial stay. Both cited the complex issues involved as support for the indefinite stay. In addition, one of the commentors pointed out an error in the notice announcing the three-month stay. Specifically at 56 FR 460 (col. 1), the citation of 40 CFR 52.741(u) was incorrectly referred to as 40 CFR 54.41(u). Elsewhere in the proposed rule, the section is correctly referred to as 40 CFR 52.741(u). USEPA regrets any inconvenience or confusion that this error may have caused. No comments requested an opportunity for the oral presentation of comments.

Final Rulemaking Action

Based on the public comments received in support of USEPA's proposed rulemaking action to extend the stay beyond the three months provided in section 307(d)(7)(B) of the CAA, USEPA announces an extension of the stay, but only if and as long as necessary to complete reconsideration of the rules identified in the proposal. At that time, USEPA will publish a rule in the *Federal Register* notifying the public of the withdrawal of this stay.

USEPA intends to complete its reconsideration of the rules and, following the notice and comment procedures of section 307(d) of the CAA, take appropriate action. If the reconsideration results in emission limitations and standards which are stricter than the existing and applicable Illinois rules, USEPA will propose a compliance period of one year from the date of final action on reconsideration. Note that a one year compliance period was the general compliance period provided in the federal RACT rules (55 FR at 26814). Like the rules themselves, any USEPA proposal regarding the appropriate compliance period would be subject to the notice and comment procedures of CAA 307(d).

USEPA recognizes the interests of the State of Wisconsin in this matter. The regulatory requirements that are

affected by today's proposal were undertaken in the context of a settlement agreement between USEPA and the States of Wisconsin and Illinois. In recognition of those obligations, USEPA will reconsider the rules in question as expeditiously as practicable. Under Executive Order 12291 this action is not "major". It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Dated: May 21, 1991.

William K. Reilly,
Administrator.

Identification of Action: Final Rule approving an extended Stay of portions of the Chicago Federal Ozone Plan as applied to General Motors Corporation's Electromotive Division, Viskase Corporation and Allsteel, Incorporated (IL 12-2-5129).

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart O—Illinois

2. Section 52.741, is amended by revising paragraph (z) to read as follows:

§ 52.741 Control Strategy: Ozone Control Measures for Cook, DuPage, Kane, Lake, McHenry and Will Counties.

(z) *Rules Stayed.* Notwithstanding any other provision of this subpart, the effectiveness of the following rules is stayed as indicated below.

(1) The following rules are stayed from January 4, 1991 until USEPA completes its reconsideration as indicated (i) 40 CFR 52.741(e)(1)(i)(M) (2) and (3), and 40 CFR 52.741(e)(5); (ii) 40 CFR 52.741 (u) and (v), including 40 CFR 52.741 (u)(4) and (v)(4) only as applied to Viskase Corporation's cellulose food casing manufacturing facility in Bedford Park, Illinois; and (iii) 40 CFR 54.741(u), including 40 CFR 52.741(u)(4), only as applied to Allsteel, Incorporated's adhesive lines at its metal furniture manufacturing operations in Kane County, Illinois.

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opportunistic rather than guaranteed. Sea samplers may not be available or be in the right place to collect information needed to determine if the action is to be initiated. Short-term time/area closures may shift fishing mortality to other segments of the population or merely postpone it. Furthermore, quantification or biological benefits was done and thus, it cannot be shown that these measures prevent overfishing, which is inconsistent with National Standard 1.

Comments and Responses

Written comments were submitted by Raymond Bogan (Hrymack & Bogan), Cape Ann Vessel Association, Conservation Law Foundation of New England, Inc., Fisherman's Dock Cooperative/Belford Seafood Cooperative, The Gloucester Cooperative, The Gloucester Fishermen's Program, Gloucester Fishermen's Wives Association, Gloucester Inshore Fisheries Association, Massachusetts State Representative Bruce Tarr, Mid-Atlantic Fisheries Management Council, New Jersey Fisheries Development Commission, Joseph Seminara (Wolff, Seminara & Mitherz), West End Fishermen's Association and 103 individuals. The Cape Ann Vessel Association submitted a petition signed by 708 individuals.

Comment: Six commenters stated their opposition to the measure specifying a minimum mesh size of 2½ inches (6.35cm). They stated that the measure was unnecessary in the Mid-Atlantic because: (1) The Southern stock of silver hake has been determined to be underexploited; (2) there are no significant groundfish stocks off northern New Jersey/western Long Island, New York, resulting in little bycatch and subsequent fishing mortality; (3) the proposed mesh would result in a loss of the bycatch of squid and a loss of resultant revenues; and (4) the silver hake fishery is economically important to the ports of northern New Jersey. As an alternative, the commenters proposed a limited groundfish permit that would allow the vessel operator to fish with a minimum mesh of 2 inches (5.08cm) in an area west of 72° W. longitude from October 1 to June 30. One commenter supported the implementation of a 2½ inch (6.35cm) minimum mesh size.

Response: The measure, for the reasons stated in the preamble, has been disapproved. The measure as proposed would not prevent overfishing, and the benefits associated with its implementation would not be greater than the costs.

Comment: Numerous commenters and the signers of the Cape Ann Vessel Association petition stated their opposition to the framework measure responding to sublegal cod discards on Stellwagen Bank/Jeffreys Ledge. They opposed any closure, stating that the existing mesh size would be sufficient to eliminate discards of juvenile fish. They stated that the time period of February 1 to July 31 was too long and suggested an alternative period of from March 31 to May 31. The commenters suggested that the sea sampling be conducted weekly rather than bi-weekly and stated that the decision to take action should not reside solely with the Regional Director, but rather jointly with the Regional Director, the Council Chairman, and the Chairman of the Multispecies Committee of the Council.

Response: The measure, as stated previously, has been disapproved.

Comment: The U.S. Coast Guard made several comments of minor technical or editorial nature.

Response: These comments are addressed in the "Changes from the Proposed Rule" section below.

Comment: The U.S. Coast Guard recommended that the net stowage requirements be changed to include a requirement that vessels with nonconforming nets with small mesh stowed below deck must have them fan-folded (flaked) and secured. This change had been discussed by the Council but was not included in the amendment.

Response: The change will enhance the enforceability of the measure and is inconsistent with what is required on deck. Since it was not included in the proposed rule, NOAA is issuing this requirement as an interim final rule with request for public comment. After the comment period, NOAA will continue, discontinue, or modify the requirements, as appropriate. The change is included in the stowage requirements contained in § 651.20(f)(1)(iii).

Comment: One commenter stated that the amendment was in violation of the Magnuson Act because it was inconsistent with National Standard 1. The commenter noted that the Council has acknowledged that the major stocks have been overfished, but the amendment does not provide a program to rebuild them. The commenter stated that several of the measures would strengthen and extend the age-at-entry controls, but the amendment is insufficient to rebuild the stocks.

Response: Two of the measures were found to be inconsistent with the Magnuson Act or E.O. 12291, for the reasons stated previously. The remaining measures, although they do

not constitute a complete rebuilding strategy, are steps necessary to the rebuilding program that the Council is currently developing in amendment 5 to the FMP. As listed above, the closed-area aspect of measure 1 and the modifications in measures 2, 3, and 4 will enhance information collection, facilitate enforcement, and provide greater protection to juvenile or regulated species. Measure 1 imposes a minimum mesh size of 5½ inches (13.97cm) in the Southern New England Yellowtail Closure Area. A 5½-inch (13.97cm) minimum mesh size had been previously implemented through a FAAS action intended to reduce sublegal yellowtail flounder discards with resultant mortality. However, FAAS actions can only be taken on a temporary basis. Amendment 4 imposes this minimum mesh size whenever the fishery is open.

Measure 5 established a fishery for silver hake on Cultivator Shoals that has been conducted since 1987 through the experimental fishery authority provided by the FMP. This experimental fishery, using sea samplers as observers, was shown to take a minimal bycatch of regulated species. The results of the experimental fishery were incorporated into the conditions under which this fishery will operate.

Measure 6 incorporates silver hake, red hake, and ocean pout into the management unit. These are species taken by groundfish vessels that have been regulated through the Exempted Fisheries Program. It is appropriate to include them in the multispecies management unit to prevent overfishing.

These measures in and of themselves are not expected to achieve the rebuilding goals the Council has set for this fishery, but they are designed as steps necessary to the rebuilding program to be addressed in amendment 5. As stated in the amendment, the Council has already begun efforts on an amendment specifically designed to begin the rebuilding of multispecies stocks within an established timeframe.

Comment: One commenter stated that the Exempted Fishery Program area should be expanded to include the entire range of the management unit with specific exemptions and reporting requirements.

Response: This suggestion was not proposed, had not had the benefit of public review, or been subjected to any analysis of possible impacts. Consequently, it could not be implemented at this time. It will be forwarded to the Council for their consideration.

Comment: One commenter stated that at-sea trials be conducted in the area of implementation before any change in shrimp gear be required.

Response: The rule requires that the Council, Atlantic States Marine Fisheries Commission (ASMFC), and NMFS review information on shrimp gear technology before modifying the gear restrictions. One of the factors that will have to be considered is the effect of the gear in the area of implementation. Once a gear restriction is proposed, there will be opportunity for public comment before a final decision is made.

Comment: One commenter supported the inclusion of silver hake, red hake, and ocean pout to the management unit.

Response: The measure is part of the approved amendment.

Comment: One commenter supported the implementation of a small mesh fishery for whiting on Cultivator Shoals.

Response: The measure is part of the approved amendment.

Comment: One commenter stated that a 50 percent discard criterion for triggering action to prevent discard mortality on yellowtail flounder was too high. The commenter felt that the discards were occurring because of the use of mesh that was smaller than 5½ inches (13.97 cm).

Response: the measure has been disapproved for the reasons stated previously.

Comment: One commenter stated that a regulation that required one mesh on board a vessel was needed rather than the proposed stowage language.

Response: One mesh on board a vessel would facilitate enforcement of mesh requirements. In several of the previous amendments to the FMP, including amendment 4, not allowing nonconforming nets and mesh to be carried on board at the same time has been one of the alternatives adopted by the Council for public hearing. However, the response at public hearing favored the gear stowage alternative. The public cited costs of storage of nets on land, lack of alternatives when fishing, and safety caused by vessels having to travel greater distances to avoid large mesh areas when in possession of nonconforming nets and mesh. Based upon the public comments received, the Council chose to go with the less restrictive alternative.

Comment: One commenter stated that vessels targeting yellowtail flounder in the Southern New England Yellowtail Flounder Closed Area should be required to use a mesh size and shape that would lower retention of juvenile yellowtail flounder.

Response: One of the approved measures increases the mesh size currently in use in this area. The increase will reduce the retention of juvenile yellowtail flounder and discard mortality.

Changes From the Proposed Rule

1. The disapproval of two measures requires that the following changes be made from the proposed rule:
 - a. Sections 651.20, 651.21(g), 651.22(b)(iii), 651.22(c), 651.22(d), 651.23(e)(1), and Figures 5 and 6 from the proposed rule are eliminated;
 - b. The changes specified in the proposed rule for § 651.7 (a)(1), (b)(3), (b)(4), (b)(5), (b)(6), (b)(8), (b)(11), and (b)(12) are no longer necessary;
 - c. The proposed redesignation of certain sections is no longer necessary with the disapproval of the minimum mesh size measure. The minimum mesh size measure had been designated as § 651.20, which required the renumbering of succeeding sections. The numbering of these sections reverts back to its original form;
 - d. Figure 7 from the proposed rule is redesignated as Figure 5; and
 - e. The definition of biweekly is deleted from § 651.2.
2. In commenting on the Amendment, the U.S. Coast Guard made several suggested changes or corrections. These were:
 - a. Section 651.7(b)(14) should reference § 651.21(a)(3)(iv) rather than § 651.21(a)(i);
 - b. References to straight lines in area coordinates should include the "rhumb lines" at § 651.27(b); and
 - c. Section 651.20(f) should include the language "(iii) The net is fan-folded (flaked) and bound around its circumference." Changes (a) and (b) have been incorporated into the final rule. The third change is being issued as an interim final rule with a request for comments.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), determined that amendment 4 is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

The Assistant Administrator has determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291. This rule is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Council prepared an environmental assessment (EA) for the Amendment and the Assistant Administrator concluded that there will be no significant impact on the environment as a result of this rule. A copy of the assessment may be obtained from the Council (see ADDRESSES).

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act, the Exempted Fisheries Program information requirement in § 651.23(f) and the Cultivator Shoal Whiting Fishery information requirement in § 651.28(c)(3) have been approved by OMB. The public reporting burdens are 5 minutes per response for each submission. These collections of information were previously approved under OMB control number 0648-0212. The permitting requirement under § 651.28(c) has also been approved by OMB under control number 0648-0256. This requirement has a public reporting burden of 2 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments on the reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to Jack Terrill, NMFS, One Blackburn Drive, Gloucester, MA 01930; and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attn: Paperwork Reduction Act Projects 0648-0212 and 0648-0256).

The Council prepared a regulatory impact review/regulatory flexibility analysis that analyzes the economic impacts of this rule and describes its effects on small business entities. A summary of those impacts and effects was included in the proposed rule and is not repeated here.

The Council determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina. This determination was submitted for review by the responsible State agencies

under section 307 of the Coastal Zone Management Act, Massachusetts, Connecticut, New York, New Jersey, and North Carolina agreed with the determination. None of the other States commented within the statutory time period, and, therefore, consistency is automatically inferred.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: May 24, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. Section 651.2 is amended by adding a definition of *codend* and revising the definition of *Multispecies finfish* to read as follows:

§ 651.2 Definitions.

Codend means the terminal section of a trawl net in which captured fish may accumulate.

Multispecies finfish includes, but is not limited to, the following finfish in the Northeast portion of the Atlantic Ocean EEZ.

<i>Gadus morhua</i>	Atlantic cod.
<i>Glyptocephalus cynoglossus</i> .	witch flounder.
<i>Hippoglossoides platessoides</i> .	American plaice.
<i>Limanda ferruginea</i>	yellowtail flounder.
<i>Macrozoarces americanus</i> .	ocean pout.
<i>Melanogrammus aeglefinus</i> .	haddock.
<i>Merluccius bilinearis</i>	silver hake.

<i>Pollachius virens</i>	pollock.
<i>Pseudopleuronectes americanus</i> .	winter flounder.
<i>Scophthalmus aquosus</i> .	windowpane flounder.
<i>Sebastes marinus</i>	redfish.
<i>Urophycis chuss</i>	red hake.
<i>Urophycis tenuis</i>	white hake.

3. In § 651.7, the first paragraph is designated "(a)"; paragraph (b)(2) is revised, new paragraphs (b)(12), (b)(13),

(b)(14) and (c) are added, and paragraph (d) is revised to read as follows:

§ 651.7 Prohibitions.

(2) Fish within the areas described in § 651.20(a) with nets of mesh smaller than the minimum size specified in § 651.20(b), unless the vessel is certified in an exempted fishery program established under § 651.22.

(12) Fish within the areas described in § 651.27 without a permit issued under § 651.27(c).

(13) Violate any provisions of the Cultivator Shoals Whiting Fishery specified in § 651.27.

(14) Violate any provisions specified in § 651.20(a)(3)(iv), § 651.20(d), § 651.20(e)(2), and § 651.20(f).

(c) It is unlawful to violate any other provision of this part, the Magnuson Act, or any regulations or permit issued under the Magnuson Act.

(d) *Presumption.* The possession for sale of regulated species that do not meet the minimum sizes specified in § 651.23 for sale will be prima facie evidence that such regulated species were taken or imported in violation of these regulations. Evidence that such fish were harvested by a vessel not holding a permit under this part and fishing exclusively within state waters will be sufficient to rebut the presumption. This presumption does not apply to fish being sorted on deck.

4. Section 651.20 is amended by adding new paragraph (a)(3) and by revising paragraphs (b)(1), (b)(3), and (f) to read as follows:

§ 651.20 Regulated mesh area and gear limitations.

(3) Southern New England Yellowtail Area (Figure 3):

(i) Bounded by straight lines (rhumb lines) connecting the following points in the order stated:

Point	Latitude	Longitude
A.....	40°33.5' N.....	69°40' W.
N.....	40°26.5' N.....	70°40' W.
O.....	40°40.5' N.....	70°40' W.
P.....	40°30' N.....	72°00' W.
Q.....	40°17.8' N.....	72°00' W.
R.....	40°15.5' N.....	72°20' W.
S.....	40°39.0' N.....	72°20' W.
T.....	40°42.0' N.....	72°00' W.
U.....	40°48.2' N.....	72°00' W.
V.....	41°00' N.....	70°49.5' W.
W.....	41°00' N.....	70°30' W.
X.....	40°50' N.....	70°30' W.
Y.....	40°50' N.....	69°40' W.
A.....	40°33.5' N.....	69°40' W.

(ii) Vessels fishing with mesh smaller than that specified in paragraphs (b) and (c) of this section may not have any yellowtail flounder stored on deck in baskets, fish boxes (totes), or other containers, or below deck in any form. Vessels with yellowtail flounder and nonconforming nets and mesh aboard must follow the regulations pertaining to the carrying of nonconforming nets and mesh specified in paragraph (f) of this section.

(b) *Trawl nets*—(1) *Diamond mesh.* Except as provided for in §§ 651.20(b)(3), 651.20(d), and 651.22, the minimum mesh size for any trawl net, including midwater trawls, or Scottish seine, used by a vessel fishing in the mesh area described in paragraphs (a)(1), (a)(2), and (a)(3) of this section, is 5½ inches (13.97 cm) throughout the entire net.

(3) *Selective shrimp gear.* (i) The Council, in consultation with the ASMFC and NMFS, will review information on shrimp gear technology annually.

(ii) For 1991, the Council, in consultation with ASMFC, will make a recommendation to the Regional Director by July 15, on the appropriate shrimp gear to be used. The recommendation will include an economic impact analysis prepared by the Council and will specify the type of shrimp gear that should be used to minimize the bycatch of multispecies finfish. The Regional Director will publish notice of the Council's recommendation following the procedure of paragraph (b)(3)(iv) of this section.

(iii) For 1992 and after, if a change in shrimp gear is determined to be necessary, the Council will prepare an economic impact analysis and make a recommendation to the Regional Director by July 15 of each year. This recommendation will include the economic analysis and will specify the type of shrimp gear that should be used to minimize the bycatch of multispecies finfish.

(iv) The Regional Director will publish a notice in the *Federal Register* informing the public of the Council's recommendation and making available the economic impact analysis. The notice will initiate a 30-day public comment period. Upon review of the public comments, a final notice informing the public of the Regional Director's decision to approve/disapprove the Council's recommendation and to specify the gear requirements will be published in the *Federal Register*.

(v) The shrimp season will extend from December 1 through May 30 unless modified by the ASMFC.

(f) Except as provided in paragraph (d) of this section, no vessel issued a permit under § 651.4 may have available for immediate use any net, or any piece of a net, not meeting the requirements specified in paragraphs (b) and (c) of this section, or mesh that is rigged in a manner that is inconsistent with § 651.20(e)(2), while in the areas described in paragraph (a) of this section. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use":

- (1) A net stowed below deck, provided:
 - (i) It is located below the main working deck from which the net is deployed and retrieved;
 - (ii) The towing wires, including the "leg" wires, are detached from the net;
 - (iii) It is fan-folded (flaked) and bound around its circumference.

(2) A net stowed and lashed down on deck, provided:

- (i) It is fan-folded (flaked) and bound around its circumference;
 - (ii) It is securely fastened to the deck or rail of the vessel; and
 - (iii) The towing wires, including the leg wires, are detached from the net.
- (3) A net that is on a reel and is covered and secured, provided:
- (i) The entire surface of the net is covered with canvas or other similar material that is securely bound;
 - (ii) The towing wires, including the leg wires, are detached from the net; and
 - (iii) The codend is removed from the net and stored below deck.

(4) Nets that are secured in a manner approved by the Regional Director, provided that the Regional Director has reviewed the alternative manner of securing nets and has published that alternative in the Federal Register.

5. Section 651.21 is amended by revising paragraph (b)(2) to read as follows:

§ 651.21 Closed areas.

* * * * *

(b) * * *
 (2) The area defined in paragraph (b)(1) of this section will be regulated as follows:

- (i) The area will be closed as of 0001 hours on March 1 of each year.
- (ii) The entire area will be reopened at 2400 hours on May 31 of each year, or at an earlier date after May 1, by notice in the Federal Register, when the Regional Director, after consultation with the Council, determines that the close has achieved the appropriate spawning level for yellowtail and winter flounder.

6. Section 651.22, paragraphs (e) (2) and (3) and (f) are revised and a new paragraph (i) is added to read as follows:

§ 651.22 Exempted fishery program.

* * * * *

- (e) * * *
 (2) Participation in the exempted fisheries program is subject to:
 - (i) Seasonal limitations, exempted species, mesh and gear restrictions, and maximum percentage restrictions on the catch of other species as follows:

Period..... June through November
 Target Species Dogfish, mackerel, red hake, silver hake, ocean pout, and squid
 Restrictions..... Regulated species weight may not exceed 10% for the reporting period or 25% on each trip of the total landings of dogfish, mackerel, red hake, silver hake, ocean pout, and squid.

Period..... December through January
 Target Species Silver hake
 Restrictions..... Regulated species, other than silver hake, weight may not exceed 10% for the reporting period or 25% on each trip of the total landings of silver hake. Shrimp landings may not exceed 200 pounds (90.8 kg) on each trip during the months shrimp may be landed (see Northern Shrimp below).

Period..... June through November
 Target Species Herring
 Restrictions..... Regulated species and silver hake weight may not exceed 1% of the total landings of herring on each trip.

Period..... December through May, or as specified by ASMFC ¹
 Target Species Northern shrimp
 Restrictions..... Regulated species weight may not exceed 10% for the reporting period or 25% on each trip of the total landings of shrimp. Gear must comply with the shrimp gear specified according to § 651.21(b)(3).

¹ The Northern Shrimp Section of the Atlantic States Marine Fisheries Commission is responsible for the management of northern shrimp. The Section has the authority to adjust the regulatory period appropriate for the conservation of northern shrimp. The Section will consult the New England Fishery Management Council regarding recommendations to adjust the regulatory period with respect to the management of multispecies finfish.

(ii) A vessel may not participate in the exempted fishery programs for whiting and shrimp at the same time; however, participants in the Exempted Fishery Program for whiting may retain up to 200 pounds (90.7 kg) of shrimp per trip during the shrimp season.

(3) Adjustments in the seasons, species, or percentages of the exempted fisheries will be accomplished by regulatory amendment.

(f) *Recordkeeping and reporting.* The reporting period for the exempted fisheries will be equal to the participation period (from 7 to 30 calendar days). Within 1 week from the

expiration of the reporting period or withdrawal from the program under paragraph (g) of this section, or receipt of a notice of revocation under paragraph (h) of this section, the participant must mail or deliver to the Regional Director a NOAA Form 88-30 "Tier Two Fishing Trip Record," listing, in pounds, all fish landed during participation in the Exempted Fishery Program on a trip-by-trip basis, or documentation that no fishing occurred. If no fish were landed, the participant must submit a document indicating no landings. In submitting NOAA Form 88-30, the participant may elect to identify

the area fished by 10-minute squares instead of LORAN C coordinates, and is not required to estimate discards. The participant must provide, upon request of the Regional Director or his designee, trip landing records, kept in the normal course of business, that are certified as accurate by both the buyer and the seller for 1 year after his participation in the Exempted Fishery Program to confirm the information required on NOAA Form 88-30.

(i) *Sea Sampling.* (1) A participant in the Exempted Fishery Program must carry a sea sampler from the NMFS

Domestic Sea Sampling Program, if requested to do so by the Regional Director.

(2) NMFS may waive the sea sampling requirement based on a finding that the facilities for housing the sea sampler or for carrying out sea sampler functions are so inadequate or unsafe that the health or safety of the sea sampler or the safe operation of the vessel would be jeopardized.

(3) The participant, master, and crew must cooperate with the sea sampler in the performance of the sea sampler's duties including:

- (i) Providing adequate accommodations;
- (ii) Allowing for the embarking and debarking of the sea sampler as specified by NMFS. The operator of a vessel must ensure that transfers of sea

samplers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours as weather and sea conditions allow, and with the agreement of the sea sampler involved;

(iii) Allowing the sea sampler access to all areas of the vessel necessary to conduct sea sampler duties;

(iv) Allowing the sea sampler access to communications equipment and navigation equipment as necessary to perform sea sampler duties;

(v) Providing true vessel locations by latitude and longitude or loran coordinates, upon request by the sea sampler;

(vi) Providing marine specimens, as requested;

(vii) Notifying the sea sampler in a timely fashion of when commercial

fishing operations are to begin and end; and

(viii) Complying with other guidelines, regulations or conditions that NMFS may develop to ensure the effective deployment and use of sea samplers.

7. A new § 651.27 and Figure 5 are added to read as follows:

§ 651.27 Cultivator Shoal whiting (silver hake) fishery (Figure 5).

(a) A fishery for whiting may occur annually in the regulated mesh area (§ 651.20), subject to the conditions specified below.

(b) The Cultivator Shoal whiting fishery may occur in the area bounded by straight lines (rhumb lines) connecting the following points in the order stated:

CULTIVATOR SHOAL WHITING FISHERY

Reference point	Latitude	Longitude	Approximate	
			Loran	Coordinates
C1	42°10'N	68°10'W		
C2	41°25'N	68°45'W	13132	43970
C3	41°05'N	68°20'W	13527	43767
C4	41°55'N	67°40'W	13495	43627
			13074	43861

Note: Loran lines and positions are included for the convenience of fisherman.

(c) The Regional Director will issue permits to fish for whiting in the prescribed area subject to the following conditions:

(1) The trip bycatch limit under which the combined landings of regulated species (as defined in § 651.2) shall not exceed 1 percent of the landings of silver hake;

(2) The minimum mesh size of 2½ inches (6.35 cm) applied to the first 160 meshes counted form the terminus of the net must be used;

(3) A Tier Two Fishing Trip Record (NOAA FORM 88-30) must be received by NMFS for each fishing trip.

(d) The Regional Director will conduct periodic sea sampling to determine if there is a need to change the area or season designation, and evaluate the

bycatch of regulated species, especially haddock.

(e) The Council will conduct an annual review of data to determine if there are any changes in area or season designation necessary, and make the appropriate recommendations to the Regional Director.

(f) Unless specified by publication of a notice in the Federal Register, the fishery will take place from June 15 through October 31.

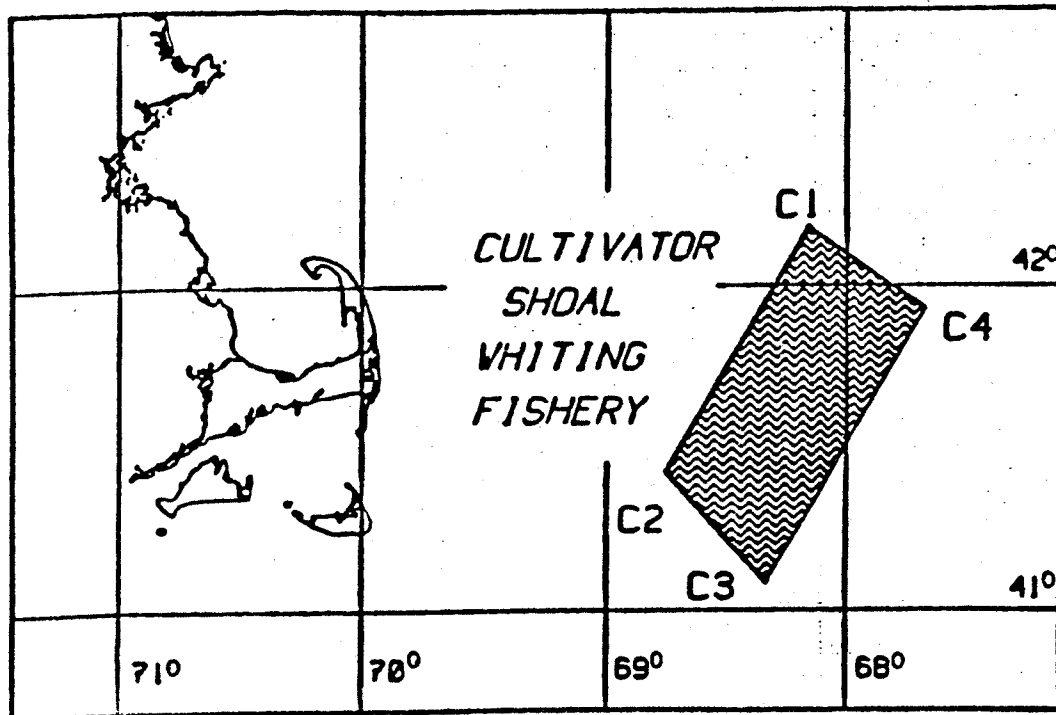


Figure 5. Cultivator Shoal Whiting Fishery. See text for details. This area is defined in §651.27.

[FR Doc. 91-12894 Filed 5-28-91; 91; 3:11 pm]
BILLING CODE 3510-22-M

50 CFR Part 663

[Docket No. 901078-0345]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of fishing restrictions, and request for comments.

SUMMARY: NOAA announces a reduction in the trip limit for sablefish caught with nontrawl gear in the groundfish fishery off Washington, Oregon and California. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The trip limit is designed to keep landings within the nontrawl quota for this species while extending the fishery as long as possible during the year.

EFFECTIVE DATE: 0001 hours (local time) May 24, 1991, through 2400 hours (local time) December 31, 1991, unless modified, superseded, or rescinded. Comments will be accepted through June 17, 1991.

ADDRESSES: Submit comments on this action to Rolland A. Schmitt, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115; or Charles E. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206-526-6140, Rodney McInnis (Southwest Region, NMFS) 213-514-6199, or the Pacific Fishery Management Council at 503-221-6352.

SUPPLEMENTARY INFORMATION: Regulations implementing Amendment 4 to the Pacific Coast Groundfish Fishery Management Plan (FMP), published at 56 FR 736 (January 8, 1991), provide for rapid changes to specific management

measures if they have been designated as "routine." This designation means that the identified management measure may be implemented and adjusted for a specified species or species group and gear type after consideration at a single meeting of the Pacific Fishery Management Council (Council), as long as the purpose of the measure is the same as originally established when the measure was designated as routine and the impacts of the measure already have been analyzed. Trip landing and frequency limits for sablefish caught with nontrawl gear are among those management measures that have been designated as routine at 50 CFR 663.23(c). This management measure falls within the scope of the impacts analyzed when Amendment 4 was implemented.

At its November 1990 meeting, the Council recommended three actions be taken in the nontrawl sablefish fishery in 1991: (1) from January 1-March 31, a 1,500 pound trip limit (for sablefish of any size); (2) on April 1, a trip limit,