### **SCOPING DOCUMENT**

for

**Amendment 22** 



Prepared by the

New England Fishery Management Council

### Schedule of Herring Amendment 22 Scoping Meetings

The Council has scheduled five scoping hearings for this amendment (see table below).

#### **Date and Time**

#### Location

Portland, ME Tuesday, December 1, 2015 5:30 p.m. (or imediatley following the Council Meeting)	Holiday Inn by the Bay 88 Spring Street Portland, ME 04101 Telephone: (207) 775-2311		
Gloucester, MA Tuesday, December 8, 2015 7:00 p.m.	MA DMF of Marine Fisheries Annisquam River Marine Fisheries Station 30 Emerson Ave Gloucester, MA 01930 Phone: (978) 282-0308		
New Bedford, MA Monday, December 14, 2015 7:00 p.m.	Fairfield Inn & Suites 185 MacArthur Drive New Bedford, MA 02740 Phone: (774) 634-2000		
Via Webinar Thursday, December 17, 2015 3:00 – 5:00 p.m.	Webinar Hearing Register to participate: <a href="https://attendee.gotowebinar.com/register/5272201506328155394">https://attendee.gotowebinar.com/register/5272201506328155394</a> Call in info: Toll: +1 (914) 614-3221 Access Code: 539-710-362		
Montauk, NY Monday, December 21, 2015 7:00 p.m.	Montauk Playhouse Community Center Foundation, Inc. 240 Edgemere St. Montauk, New York 11954 Phone: (631) 668-1124		

You may attend any of the above scoping meetings to provide oral comments, or you may submit Amendment 22 scoping comments by email to comments@nefmc.org, or written comments by the end of the day on December 22, 2015 to:

Thomas A. Nies, Executive Director New England Fishery Management Council 50 Water Street, Mill #2 Newburyport, MA 01950 Fax: (978) 465-3116

Please note on your correspondence; "Small-Mesh Multispecies Amendment 22 Scoping Comments."

Scoping comments may also be accepted via fax at the above fax number.



#### NEW ENGLAND FISHERY MANAGEMENT COUNCIL

SEEKS YOUR COMMENTS ON THE MANAGEMENT OF THE SMALL-MESH MULTISPECIES (WHITING & RED HAKE) FISHERY

## Your comments are invited

The New England Fishery Management Council (Council) is initiating the development of an amendment to the Northeast Multispecies Fishery Management Plan (Multispecies FMP) for small-mesh multispecies under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The small-mesh multispecies fishery consists of three species: Silver hake (*Merluccius bilinearis*), red hake (*Urophycis chuss*), and offshore hake (*Merluccius albidus*). There are two stocks of silver hake (northern and southern), two stocks of red hake (northern and southern), and one stock of offshore hake, which primarily cooccurs with the southern stock of silver hake. There is little to no separation of silver and offshore species in the market, and both are generally sold under the name "whiting." Throughout the document, "whiting" is used to refer to silver hake, and combined offshore and silver hake catches.

In accordance with the National Environmental Policy Act (NEPA), the Council also intends to prepare an Environmental Impact Statement (EIS) that will analyze the impacts of this amendment on the affected biological, physical, and human environment.

This scoping document is to inform you of the Council's intent to gather information necessary for the preparation of the EIS and ask for your specific suggestions and input on the issues to be addressed in this amendment to the small-mesh multispecies management program.

# Why is the Council proposing to take action?

#### Purpose and Need for Action

The purpose of this action is to implement measures that would prevent unrestrained increases in fishing effort by new entrants to the fishery. The need for the amendment is to reduce the potential for a rapid escalation of the small-mesh multispecies fishery, possibly causing overfishing and having a negative effect on red hake and whiting markets, both outcomes having negative effects on fishery participants.

The amendment will help ensure that catches of the small-mesh multispecies and other non-target species will be at or below specifications, reducing the potential for causing accountability measures to be triggered and resulting closure of the directed fishery.

Addressing this purpose and need requires the development of an amendment to the Northeast Multispecies FMP to fully consider and analyze an appropriate range of management alternatives. The Council is seeking comments and input from the public on this specific issue.

### Limited Entry Background Information

The industry has sought a limited access program for the small-mesh multispecies fishery for well over a decade. During this time, the Council made several attempts to establish a small-mesh multispecies limited access program, including the submission of Amendment 12 in 1999 that was partially disapproved for a variety of reasons. One reason why the Amendment 12 limited access program was disapproved was that it proposed differential qualification criteria for different classes of vessels that would have qualified for equivalent permits. Another was a five-year sunset provision such that the potential for escalation of effort would not be prevented in the long term. The Council later tried to develop a limited access amendment in 2006-2007 but did not complete the action because the alternatives could not satisfactorily address data, enforcement, and compliance issues.

The policy guidance from the Council specified that Amendment 22 will consider limited entry for the small-mesh multispecies fishery. The Council originally published a control date on September 9, 1996, and later published another control date on March 25, 2003, to reaffirm its intention to consider limited entry to address potential capacity problems in the small-mesh multispecies fishery. In 2012, the Council raised the priority level for consideration of a small-mesh multispecies fishery limited access program and updated the control date to November 28, 2012.

The purpose of the control date was to prevent speculative entry into the fishery at a later time and it also provided public notice after which future participation in the fishery might not be guaranteed for new entrants, if a limited entry program is implemented. Although the Council may use the control date for this purpose, it is not obligated to use limited entry to manage the fishery, or to use participation before the control date as the sole basis for qualification.

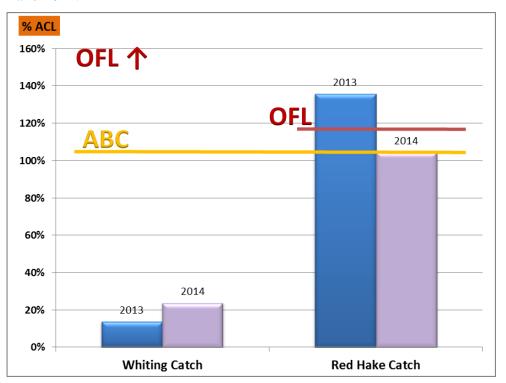
Small-mesh multispecies fishermen are also fearful that a rapid increase in effort could arise due to increasingly strict regulations in other fisheries, particularly in the large-mesh multispecies where several stocks are overfished and subject to severe catch restrictions. Not only could a lot of new entrants into the small-mesh multispecies fishery cause a regulatory problem, but their additional landings could have negative economic effects since the extra supply could cause declining landings prices, at least in the short term

The Council last held public hearings on small-mesh multispecies fishery limited access in 2006. Although informative about the issues, including historical interest and participation in the fishery and problems due to inaccurate landings reports, the Council has developed a new scoping document and is conducting new public hearings. The two above issues may still be relevant, depending on how far back in time that the Council allows vessels to qualify based on their landings history. In addition, new issues may have arisen. Stock conditions and participation in other fisheries has changed in the last decade or so. Just as important, management of other fisheries has changed as well. Fisheries that were formerly regulated with days-at-sea limits and limited access are now controlled by catch limits and sector management. Discards are better monitored and controlled than they have been in the past. These and other new issues may change how the public perceives the need for and type of limited access program that the Council should consider.

What's the current status of the small-mesh multispecies stocks?

Although no stocks are overfished while catches of northern silver hake, southern whiting, and southern red hake are well below recent Acceptable Biological Catch (ABC) limits, overfishing of northern red hake occurred in 2013. As a result reactive Accountability Measures (AMs) took effect and the 2015-2017 specifications package reduced the northern red hake possession limits to address the overfishing. Furthermore, some recent years of yellowtail flounder catches have been above the small-mesh multispecies fishery's sub-ACL. New fishery entrants could cause catches of red hake and yellowtail flounder to increase, making it more likely to trigger AMs. Additional entrants into the small-mesh multispecies fishery would make it more difficult for management to keep catches below specifications for these species and other non-target species. It may also become difficult to manage catches if future red hake and whiting specifications decline due to decreasing stock biomass.

Figure 1. Northern stock catches of silver and red hake as a percentage of the ACLs in 2013 and 2014.



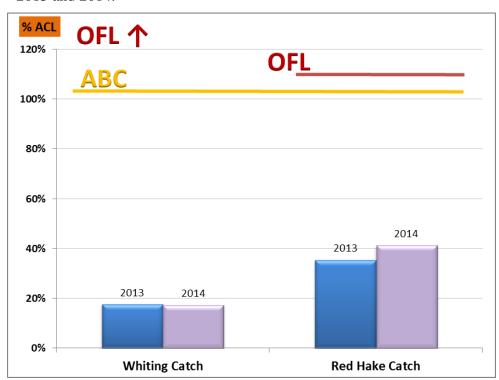


Figure 2. Southern stock catches of whiting and red hake as a percentage of the ACLs in 2013 and 2014.

What's being considered now?

New measures to establish limited access permits are being considered because the small-mesh multispecies fishery remains one of the few open access fisheries in New England. Until access to the fishery is limited through a permit moratorium, the fishery is at risk for overcapacity problems that may prove more costly and difficult to correct as time goes on.

The amendment's objective would be to identify qualification criteria for directed small-mesh multispecies fishing permits and possibly to identify limits on catch for different levels of qualification. For example, tiers may include qualifying vessels that (1) target red hake and whiting, (2) vessels that previously targeted red hake and whiting but qualify for a history permit, and (3) vessels that catch and land smaller quantities of whiting. Single or multiple types of permits may apply to each of the above categories based on a vessel's historic participation defined by quantity of landings and/or type or area of fishing activity.

Having different tiers of limited access may treat vessels differently based on their differential history, distinguishing those that have targeted red hake and whiting from those that catch and land these species while fishing for other stocks. Landings limits for qualifiers and non-qualifiers could therefore be more consistent with the type of fishing that these vessels conduct in order to minimize discarding and economic effects.

Some historic participants in the small-mesh multispecies fishery may also feel entitled to receiving some limited access privileges. Historically, landings of red hake and whiting were very different in certain areas than they are now, such as in Ipswich Bay, MA and off NJ. Many fishermen in these areas think that the catches have declined due to cyclic environmental changes and that the high abundance of red hake and whiting in these areas may repeat itself. If it does, a type of history permit with restrictions on re-entry that depend

on specific conditions may be warranted.

# What actions are the Council considering?

The Council initiated the development of this amendment to address three issues:

- Limited access qualification criteria that would determine whether vessels may target small-mesh multispecies. These criteria may differ by stock/management area and may treat older history different than newer history;
- 2) Limited access permit characteristics and conditions (transfers, ownership caps, history permits, etc.); and
- 3) Permit categories and associated measures.

### 1) Limited access qualification criteria

Qualification criteria might include several factors such as, but not limited to, the time period vessels have participated in the fishery, historical levels of landings, and dependence on the fishery. With any qualification program, the details of the qualifying criteria are critical, and are usually controversial. The Council may also choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded.

Questions to consider when commenting on this issue:

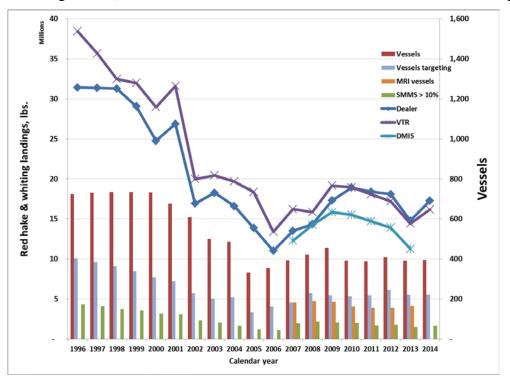
- Should the Council consider and use limited access to manage capacity in the small mesh multispecies fishery? Why or why not?
- If a limited access program is established, should qualifying criteria be based on the November 28, 2012, control date or some other date?
- Should the Council consider more than one type of (or tiered) limited access permit, whose landings allowance would vary according to the type of limited access permit and the qualifying vessel's history? For example, a vessel with a lower amount of fishery participation could qualify for a restricted or tiered limited access permit, but would be allowed to make fewer small-mesh multispecies trips or have reduced possession limits.
- Should limited access permits be based on a level of landings during a specific time period? What time period(s) should be considered? What other factors in a vessel's history should be considered?
- If qualification criteria are established, how would limited entry change the present participation and historical fishing practices in the fishery?

In previous efforts to establish a small-mesh multispecies fishery limited access program, data quality problems existed that limited the usefulness of dealer-reported data. In many cases, individual trips were not reported by dealers and/or vessels landing a trip sold fish to multiple dealers, making dealer reported data less reliable to determine historic fishery participation. In Amendment 12, this problem led the Council to develop less restrictive qualification criteria for some vessels where reporting was a problem, which was one of the factors leading to disapproval.

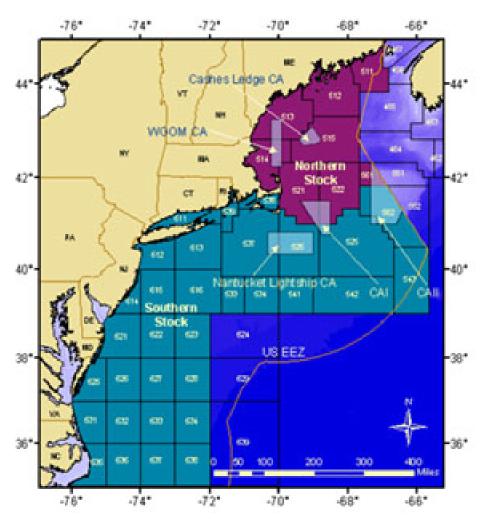
What other sources of data beside dealer reports should be used to determine limited access qualification? Should the qualification criterial utilize Vessel Trip (VTR), Quota Monitoring (IVR) Reports, and/or Atlantic Coastal Cooperative Statistics Program (ACCSP) data to

augment vessel data in dealer reports? If the data sources disagree with each other, how should these differences be resolved to determine whether a vessel qualifies?

Figure 3. Trends in red hake and whiting landings by data source. Number of vessels include 1) any vessel landing small-mesh multispecies (SMMS), 2) vessels with trips having SMMS > 50% by weight, 3) groundfish limited access vessels with SMMS landings, and 4) vessels whose annual revenue is > 10% from SMMS landings.



- Since some trips target a mix of red hake, whiting, and other species such as squid and Atlantic herring, should the landings of these other species be considered in the smallmesh multispecies fishery qualification criteria? If so, should landings of other smallmesh species like Atlantic herring and squid be considered for vessels that historically landed few or no red hake or whiting? If so, how should the landings in these related fisheries be taken into consideration?
- How should fishermen who have lost access to the whiting fishery in the Gulf of Maine as the result of groundfish regulations be considered in terms of qualification criteria? Should the qualification criteria to fish in the northern management area (see map below) differ from limited access qualification criteria that might be established for the southern fishery management area (Map 1).



Map 1. Red hake and whiting stock boundaries with three-digit catch reporting statistical areas.

• Should "historic participation" (e.g. earlier than 2002 or 2007) as evidenced by small-mesh multispecies landings be given reduced weight in determining qualification? Should vessels with "historic participation" be given some form of "Confirmation of Permit History", or CPH, which allows the permit to be activated as long as the fishery is not reaching Optimum Yield (OY)?

### 2) Limited access permit characteristics and conditions

Other than limits on allowable landings and fishing activity (see issue #3 below), limited access fishery permits also carry restrictions on how they may be used, when they may be activated, and/or how they may be transferred, leased, or consolidated. There are also strong relationships with fisheries regulated by other FMPs (e.g. herring, squid, large-mesh multispecies) that could have bearing on how and when small-mesh multispecies permits may be fished.

Questions to consider when commenting on this issue:

Should a mechanism exist to allow a controlled number of new entrants in the fishery if it

is not achieving OY due to insufficient fishing effort? If so, what factors should be considered?

- Draft Amendment 18 to the Northeast Multispecies FMP includes accumulation limit alternatives for the limited access large-mesh multispecies fishery. Should Amendment 22 include similar measures for the small-mesh multispecies fishery?
- How will qualification effect participation in other fisheries using small mesh in exemption areas to target other species, such as squid, herring, and shrimp?
- What would vessels with an incidental permit be able to land (using any gear type) and what other restrictions might apply?
- Is there a broadly applicable poundage limit for non-qualifying small-mesh multispecies permit that would be acceptable? Should it be specified by species or as a combined limit for red, silver, and offshore hakes?
- Should qualifying vessels be required to use VMS and report catch through the VMS system?
- Regulations for other management plans including those governing large-mesh groundfish fishing allow for various types of temporary or permanent transfers of permits. To be consistent with other regulations that may apply to a qualifying small-mesh multispecies vessel, should limited access permits be transferable (with the sale of the vessel, by lease, or some other means)? If so, what conditions should apply to such transfers?
- How would communities be affected by a limited access program? What communities would be the most affected?

### 3) Permit categories and associated measures (Multi-tiered limited access and incidental permits)

The Council assumes that only vessels that qualify for limited access would be able to use small-mesh trawls in exemption areas and land red hake and whiting (fishing in some exemption areas currently requires a letter of authorization, which would be unavailable to non-qualifying vessels?). If there are multiple categories of limited access permits with differing qualification criteria, vessels in each category could be allowed a specified amount of total landings per fishing year, a maximum red hake and whiting possession limit, and/or a maximum number of small mesh trips.

Questions to consider when commenting on this issue:

- If multi-tiered limited access permit categories are developed, should the amount of small-mesh fishing activity allowed under each permit be differentiated?
- Should fishing limits (e.g. trips, possession limits, total landings, etc.) be consistent with a vessel's qualification history? If so, how?
- If different limited access permits exist for each management area, should vessels that qualify in one management area be allowed to make a limited amount of trips in the other management area to adapt to changing conditions? If this is allowed, what conditions and limits should apply?

Non-qualifying vessels would be able to use small-mesh trawls to target other species, such as Atlantic herring and squid subject to the rules governing those fisheries. They would also be able to use large-mesh trawls and other gears to target groundfish and other species while catching an incidental amount of red hake and whiting.

- Should non-qualifiers be allowed to land red hake and whiting?
- If so, how should the Council set an incidental limit for red hake and whiting, e.g. based on the historic landings of non-qualifying vessels or a fixed limit that applies to all non-qualifying vessels or by fishery? Should this incidental level accommodate the catch of 80%, 95%, 100% or some other proportion of trips that land incidental amounts of red hake and whiting?
- Should there be an incidental possession limit for red hake and whiting at all, or is a prohibition of small-mesh trawls for non-qualifiers (unless allowed by other FMPs, such as those for northern shrimp, Atlantic herring, and squid) sufficient?

## What actions have already been taken?

The current small-mesh exemptions under the Northeast Multispecies Plan were first established in Amendment 5 to the Northeast Multispecies Fishery Management Plan in 1994. Amendment 5 to the FMP prevented fishing with small mesh in the northern stock area until exempted fisheries could be established that reduce the bycatch of regulated multispecies to less than 5 percent. Since that time, experimental and exempted fisheries for small-mesh multispecies in the northern stock area have evolved through cooperative experimentation, gear research, and gear technologies that significantly reduce bycatch of non-target species, especially regulated multispecies.

In 1999, the Council created the "small-mesh multispecies" (silver hake, offshore hake and red hake) management unit, as distinguished from the "large-mesh multispecies" more typically referred to as "groundfish," when it implemented Amendment 12 to the Northeast Multispecies FMP. This amendment also:

- Adopted overfishing definitions for the northern and southern stocks of silver and red hake, and for offshore hake throughout its range.
- Made adjustments in the Cultivator Shoals Whiting Fishery
- Set retention limits based on net mesh size, and
- Identified essential fish habitat for all silver, red and offshore hake at all life stages

Subsequent framework adjustments revised the relationships between retention limits and net mesh size, created and then modified a seasonal raised footrope trawl fishery in Cape Cod Bay, eliminated the Amendment 12 default measure based on stock conditions, made minor modifications to several related measures, and created a raised footrope trawl whiting fishery in the inshore Gulf of Maine.

Using a September 9, 1996 control date, the Council developed and submitted Amendment 12 to establish limited access criteria during 1999. Due to concerns about equity and overfishing, the limited access criteria in this amendment were disapproved (http://www.greateratlantic.fisheries.noaa.gov/sfd/multifr/65FR16765.pdf).

In 2006, the Council held new scoping hearings for Amendment '15' (http://archive.nefmc.org/mesh/cte\_mtg\_docs/090914/scoping hearing summaries.pdf) and

began development of limited access alternatives using the March 25, 2003 control date and fishery data (dealer and VTR) through 2005. Extensive analyses were completed through May 2007 for Whiting Advisors and the Small Mesh Multispecies Committee meetings to develop and evaluate alternatives (e.g. May 3, 2007, memo to the (then named) Pelagics Committee). Concerns were raised and potential solutions were generated to address "historic" whiting fisheries that lost access in (then) recent years due to groundfish restrictions and/or changes in availability of small-mesh multispecies (see second May 3, 2007 memo to the Pelagics Committee). Between the 2006 scoping hearings and May 2007, substantial progress was made to analyze the fishery and develop alternatives, but the Council encountered data, enforcement, and compliance problems that compromised any approach that could be taken. Because these issues could not be resolved, the Council took up higher priority issues in 2008 and work on the amendment was discontinued. Many of the issues that were raised at that time have not been resolved, although the passage of time may have reduced the importance of accommodating a "historic" fishery.

Amendment 19 (<a href="http://s3.amazonaws.com/nefmc.org/Final\_Amendment\_19.pdf">http://s3.amazonaws.com/nefmc.org/Final\_Amendment\_19.pdf</a>) was approved and implemented on April 4, 2013

(http://s3.amazonaws.com/nefmc.org/amend19final\_rule.pdf), establishing Allowable Biological Catch (ABC) specifications, Annual Catch Limits (ACL), and Accountability Measures (AM) individually for northern and southern stocks of whiting (silver and offshore hakes) and red hake. These limits were set using a benchmark assessment conducted in 2010 (http://www.nefsc.noaa.gov/publications/crd/crd1101/).

The most recent action was a Specifications Document for Fishing Years 2015-2017 (<a href="http://www.nefmc.org/library/2015-2017-whiting-specifications">http://www.nefmc.org/library/2015-2017-whiting-specifications</a>), taken in response to an operational assessment that updated the stock status and to make a correction to the northern red hake AM. The operational assessment determined that overfishing of northern red hake was occurring in 2013 (<a href="http://s3.amazonaws.com/nefmc.org/SAFE-Report-for-Fishing-Year-2013.pdf">http://s3.amazonaws.com/nefmc.org/SAFE-Report-for-Fishing-Year-2013.pdf</a>), a situation that the Council addressed by changing the ABC and reducing northern red hake possession limits. The assessment detected a large 2013 year class, but its size was imprecise and it would not enter the fishery until 2015-2016. Because this large year class could cause excessive discards with the reduced northern red hake possession limits, a new operational red hake assessment was therefore requested and presented to the Council in September 2015.

## Why should I comment?

Scoping is an extremely important part of the amendment development process. It is the first and best opportunity for members of the public to raise issues and concerns for the Council to consider during the development of Amendment 22 to the Northeast Multispecies FMP.

The Council needs your input to identify important issues and develop a complete range of alternatives that meet the purpose and need for this amendment. Your comments early in the amendment development process will help the Council address your concerns more thoroughly and ensure that an adequate range of alternatives is considered to address these important issues.

# What should my comments address?

Management measures developed by the Council and implemented by NMFS must comply with all applicable Federal laws and Executive Orders. In particular, management measures must comply with ten National Standards specified in the Magnuson Stevens Fishery Conservation and Management Act. During the Amendment 22 scoping process, the Council is particularly seeking comments regarding how to develop alternatives for small-mesh multispecies fishery limited access qualification that are consistent with National Standard 4 Guidelines (see

<u>http://www.fisheries.noaa.gov/sfa/laws\_policies/national\_standards/index.html</u>). While your comments may address any aspect of the purpose and need for this action, the Council is seeking your input on the following:

- Limited access qualification criteria
- Limited access permit characteristics and conditions
- Permit types categories and associated measures

### What is the process?

This is the first and best opportunity for members of the public to raise issues and concerns for the Council to consider during the development of this amendment. The Council needs your input both to identify management issues and develop alternatives that meet the FMP objectives for the small-mesh multispecies fishery. Your comments early in the amendment development process will help us address your concerns more thoroughly.

The Council, its Whiting Committee, the Whiting Plan Development Team (PDT), and the Whiting Advisory Panel have held preliminary public discussions on the purpose and need for Amendment 22 to the Northeast Multispecies (Small-Mesh) FMP and the range of alternatives that may be considered and analyzed. The publication of this scoping document and an announcement in the *Federal Register* of the Council's intent to consider management measures for the small-mesh multispecies fishery is the first part of the formal Amendment 22 process. Public comment will be accepted during November 2015, and [dates and times to be determined] ??? scoping hearings for Amendment 22 will be held to provide additional opportunity for input from the public (see meeting dates and locations on page 1 of this document).

After scoping, the small-mesh multispecies committee, with input from the Whiting Advisory Panel, PDT, and the Council's Scientific and Statistical Committee (SSC) will develop alternatives through a series of public meetings during 2016. Once all input and guidance has been considered the Council will develop a range of alternatives, which will be analyzed by the Whiting PDT. Finally NMFS will publish a Draft EIS for Amendment 22 and the Council will conduct a subsequent round of public hearings on the preferred and non-preferred alternatives.

When the Draft Amendment and Draft EIS is published (approximately mid-2016), there will be more specific alternatives and analyses for public review and comment. Following a review of comments received on the DEIS, the Council will choose final management measures to submit to the Secretary of Commerce for implementation. If no further delays are encountered, Amendment 22 would become effective possibly as early as the 2017 fishing year, but possibly not until the 2018 fishing year after a qualification appeals process has been

completed by the National Marine Fisheries Service.

### How do I comment?

The Council is scheduling five scoping meetings for this amendment (see location and dates of meetings on page 1 of this document). You may attend any of the Amendment 22 scoping meetings to provide oral comments, or you may submit comments by email to comments@nefmc.org, or written comments by the end of the day on December 22, 2015 to:

Thomas A. Nies, Executive Director New England Fishery Management Council 50 Water Street, Mill #2 Newburyport, MA 01950 Fax: (978) 465-3116

Please note on your correspondence; "Small Mesh Multispecies Amendment 22 Scoping Comments." Comments may also be accepted via fax at the above fax number.

If you wish to be on the mailing list for future meetings of the Whiting Committee, please contact the Council office at the above address or by calling 978-465-0492 extension 100.