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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 180209147-8147-01]

RIN 0648-BH76

Fisheries of the Northeastern United States; 2018-2020 Small-Mesh Multispecies Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes small-mesh multispecies specifications for fishing years 2018-2020 and corrects a regulatory error from a previous rulemaking action. The specifications are intended to establish allowable catch limits for each stock within the fishery to control overfishing while allowing optimum yield. This action also informs the public of the proposed fishery specifications and regulatory correction, and provides an opportunity for comment.

DATES: Comments must be received by 5:00 p.m. local time, on [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2018-0031, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0031*,
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

Mail: Submit written comments to Michael Pentony, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA, 01930. Mark the outside of the envelope: “Comments on the Proposed Rule for Small-Mesh Multispecies Specifications.”

INSTRUCTIONS: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

A draft environmental assessment (EA) has been prepared for this action that describes the proposed measures and other considered alternatives, as well as provides an analysis of the impacts of the proposed measures and alternatives. Copies of the specifications document, including the EA and the Initial Regulatory Flexibility Analysis

(IRFA), are available on request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also accessible via the Internet at www.nefmc.org.

FOR FURTHER INFORMATION CONTACT: Cynthia Hanson, Fishery Management Specialist, (978) 281-9180.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council manages the small-mesh multispecies fishery within the Northeast Multispecies Fishery Management Plan (FMP). The small-mesh multispecies fishery is composed of five stocks of three species of hakes: Northern silver hake, southern silver hake, northern red hake, southern red hake, and offshore hake. Southern silver hake and offshore hake are often grouped together and collectively referred to as “southern whiting.” The small-mesh multispecies fishery is managed separately from the groundfish fishery because it is conducted with much smaller mesh, and does not generally result in the catch of regulated groundfish species like cod and haddock. Amendment 19 to the FMP (April 4, 2013; 78 FR 20260) established the process and framework for setting catch specifications for the small-mesh fishery. The FMP requires that catch and landing limits for the small-mesh multispecies fishery be established through the specifications process on an annual basis for up to three years at a time.

The Whiting Plan Development Team (PDT) met in July 2017 to review the latest Stock Assessment and Fishery Evaluation (SAFE) report for the small-mesh multispecies

fishery. This assessment update indicated that, in general, small-mesh multispecies stocks (whiting and hake) are increasing in the north and decreasing in the south. The Council's Scientific and Statistical Committee (SSC) conducted a final review of the PDT's recommended specifications and the SAFE report at their October 2017 meeting. On December 7, 2017, the Council approved the final recommended 2018-2020 catch limit specifications for the small-mesh multispecies fishery.

During development of these specifications, NMFS identified an error in the small-mesh multispecies regulations. In a previous action (80 FR 30379; May 28, 2015), we approved a Council-recommended reduction in the northern red hake possession limit from 5,000 lb (2,268 kg) to 3,000 lb (1,361 kg). However, when we drafted the rule implementing this change, we did not clarify that the possession limit for southern red hake remained unchanged at 5,000 lb (2,268 kg). In addition to setting new specifications for the whiting fishery for 2018 and projecting specifications for 2019 and 2020, this action would correct the error, and clarify the red hake possession limits in the regulations.

The recommended specifications would adjust the overfishing limit (OFL), allowable biological catch (ABC), annual catch limit (ACL), and total allowable landings (TAL) for the four main stocks in the small-mesh multispecies fishery (Table 1). These adjustments are based on Council recommendations, and account for the changes in stock biomass shown in the latest stock assessment update from 2017. The specification limits are intended to provide for sustainable yield and keep the risk of overfishing at acceptable levels as defined by the Council and its SSC.

Proposed Specifications

This action proposes the Council’s recommended specifications for the 2018-2020 small-mesh multispecies fishery, which are consistent with the catch and landings limits recommended by the PDT and SSC. A summary of the proposed specifications is shown below in Table 1.

Table 1. Summary of Proposed Small-Mesh Multispecies Specifications for Fishing Years 2018-2020, with Percent Change from 2017, in metric tons.

	OFL	ABC	ACL	Percent Change	TAL	Percent Change
Northern Silver Hake	58,350	31,030	29,475	+27%	26,604	+33%
Northern Red Hake	840	721	685	+45%	274	+128%
Southern Whiting	31,180	19,395	18,425	-35%	14,465	-39%
Southern Red Hake	1,150	1,060	1,007	-38%	305	-59%

These proposed specifications represent increases in the catch limits of the northern stocks, and decreases in the catch limits of the southern stocks. These changes are unlikely to have a significant impact because generally the small-mesh multispecies fishery harvests less than 50 percent of any given TAL each year; except in the case of northern red hake. In the southern fishery, southern red hake landings have approached 50 percent of the TAL, while southern whiting landings have not exceeded 20 percent of the TAL in the last five years. The northern fishery is usually limited by the northern red hake stock, which has achieved or exceeded the TAL, triggering inseason accountability measures (AM) to reduce the possession limit, each year for the past several years. These restrictions often prevent the northern silver hake landings from reaching much higher than 30 percent of the TAL because of the geographic overlap of the two species and

similar fishing practices used. The proposed increase to the northern stocks catch limits, based on evidence in the SAFE report that populations of northern silver hake and northern red hake have increased, may have a positive impact on the fishery by delaying the need for inseason AMs, avoiding unnecessary discards, and allowing better utilization of the increase in biomass of both stocks.

The 2017 stock assessment update showed that the risk of overfishing in the northern stocks is relatively low. Therefore, the increase in ACL and TAL should not negatively affect the northern stocks. However, the update did show that southern red hake is overfished and overfishing is occurring, and while southern whiting is not overfished, the stock is declining. The Council was notified of the overfished status of southern red hake at their meeting in Gloucester, MA on September 26, 2017, and will begin development of a rebuilding program within the next couple of years. The decrease in southern ACLs is intended to end overfishing. Because recruitment data is conflicting in recent years, the Council is suggesting a full benchmark assessment to re-evaluate southern red hake status before initiating the rebuilding process. The next benchmark assessment for small-mesh multispecies is scheduled for 2019. All other management measures in the small-mesh multispecies fishery (such as possession limits) will remain unchanged. If approved, these specifications would remain effective for fishing years 2018-2020 unless otherwise revised during that time.

Regulatory Correction

This action also proposes to correct regulatory text that specifies the red hake possession limits in the southern small mesh exemption areas (Southern New England

and Mid-Atlantic Exemption Areas). In the 2015-2017 specifications for the small-mesh multispecies fishery (May 28, 2015; 80 FR 30379), the possession limit for red hake in the northern exemption areas was reduced from 5,000 lb (2,268 kg) to 3,000 lb (1,361 kg), but did not specify that the possession limit in the southern areas would remain 5,000 lb (2,268 kg). The Council never intended to change the possession limit for the southern red hake fishery. This action would modify the text in the regulations, consistent with the Council's intent, to specify that the northern red hake possession limit is 3,000 lb (1,361 kg), and the southern red hake possession limit remains 5,000 lb (2,268 kg). This minor modification would reduce confusion in the industry, as it clarifies the difference in red hake possession limits between the northern and southern exemption areas, as originally intended by the Council.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared a draft EA for this action that analyzes the impacts of this proposed rule. The EA includes an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), which is supplemented by information contained in the preamble

of this proposed rule. The IRFA was prepared to examine the economic impacts of this proposed rule, if adopted, on small business entities. A description of the specifications, why they are being considered, and the legal basis for this action are contained at the beginning of this section and in the preamble to this proposed rule. A copy of the detailed RFA analysis is available from the Council (see **ADDRESSES**). A summary of the 2018-2020 small-mesh multispecies specifications IRFA analysis follows.

Description of the Reasons Why Action by the Agency is Being Considered

This action proposes catch limits and fishery specifications for the 2018-2020 small-mesh multispecies fishery. The measures are consistent with the best scientific information available, and the most recent catch limit recommendations of the Council's SSC to prevent overfishing, as well as achieve sustainable yield in the fishery. This action also clarifies regulatory text to specify the red hake possession limits for the northern and southern stocks.

Statement of the Objectives of, and Legal Basis for, this Proposed Rule

The legal basis and objectives for this action are contained in the preamble to this proposed rule, and are not repeated here.

Description and Estimate of the Number of Small Entities to Which this Proposed Rule Would Apply

This proposed rule affects commercial fish harvesting entities engaged in the northeast multispecies limited access fishery and the small-mesh multispecies fishery. For the purposes of the RFA analysis, the ownership entities (or firms), not the individual vessels, are considered to be the regulated entities. Ownership entities are defined as

those entities or firms with common ownership personnel as listed on the permit application. Because of this, some vessels with northeast multispecies permits may be considered to be part of the same firm because they may have the same owners. The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. In terms of RFA, a business primarily engaged in commercial fishing activity is classified as a small business if it has combined annual gross receipts not in excess of \$11 million (NAICS 11411) for all its affiliated operations worldwide. To identify these small and large firms, vessel ownership data from the permit database were grouped according to common owners and sorted by size. The current ownership data set used for this analysis is based on calendar year 2016 (the most recent complete year available) and contains average gross sales associated with those permits for calendar years 2014 through 2016.

The small-mesh exempted fishery allows vessels to harvest species in designated areas using mesh sizes smaller than the minimum mesh size required by Regulated Mesh Area (RMA) regulations. To participate in the small-mesh multispecies exempted fishery, vessels must possess either a limited access multispecies permit (categories A, C, D, E or F) or an open access multispecies permit (category K). Limited access multispecies permit holders can target small-mesh multispecies with different possession limit requirements depending on fishing region and mesh size used, and open access, Category K permit holders may fish for small-mesh multispecies when participating in an exempted fishing program. Therefore, entities holding one or more multispecies permits

(permit type A, C-F, K) are the entities that have the potential to be directly impacted by this action. According to the commercial database, there were 853 distinct ownership entities, based on entities' participation during the 2014-2016 time-period, that could potentially target small-mesh multispecies. This includes entities that could not be classified into a business type because they did not earn revenue from landing and selling fish in 2014-2016 and thus are considered to be small. Of the 853 total firms, 844 are categorized as small business entities and nine are categorized as large business.

While 853 commercial entities have the potential to be impacted by the proposed action, not all of these entities actively land small-mesh multispecies for commercial sale. Therefore, not all 853 entities may be directly affected by the proposed action. There are 406 distinct entities that commercially sold small-mesh multispecies from 2014-2016 and may be directly affected by the proposed action. Of those, 404 (over 99 percent) are categorized as small business.

Description of the Projected Reporting, Record-Keeping, and Other Compliance Requirements of this Proposed Rule

There are no new reporting, recordkeeping, or other compliance requirements contained in this proposed rule, or any of the alternatives considered for this action.

Federal Rules Which May Duplicate, Overlap, or Conflict with this Proposed Rule

NMFS is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

Description of Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic

Impact on Small Entities

This action (the preferred alternative) proposes 2018-2020 commercial catch specifications for the small-mesh multispecies fishery based on the most recent stock assessment update, which would increase the ACLs and TALs for the northern stocks of red and silver hake, and decrease the ACLs and TALs of southern red hake and whiting. The Council also considered a No Action alternative, where the same catch limits and specifications from 2017 would continue into 2018 with no change. Only these two alternatives are considered significant because in order to be considered, alternatives must be recommended by the Council and satisfy Magnuson-Stevens Act requirements. These alternatives were the only two that met these qualifications.

While catch limits for the southern stocks are more restrictive in the preferred alternative, they will not necessarily have a negative impact. Landings of both southern whiting and southern red hake in 2016 were well below the respective 2016 TALs, and southern whiting landings in 2016 were well below the proposed 2018-2020 preferred specifications. Based on 2016 landings, southern red hake landings would likely exceed the proposed TAL, but only by a very small amount. Therefore, we expect the proposed action to have minimal economic impact in the southern region compared to the no action alternative.

For the northern stocks, the proposed action is less restrictive than the no action alternatives and raises the TAL by 33 percent for silver hake and 128 percent for red hake. This is expected to have no impact or low positive impacts on profit relative to the TAL under the no action alternative, depending on availability and market conditions.

The Council recommended these proposed specifications (preferred alternative) over the no action alternative to satisfy the Magnuson-Stevens Act requirements to end overfishing, while allowing the greatest opportunity to achieve sustainable yield. This also increases the likelihood that the fishery will remain a viable source of fishing revenues for small-mesh multispecies entities in the long term, and makes it the better economic choice. Overall, we expect the proposed action to have no impact or slight positive impacts compared to the no-action alternative.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 6, 2018.

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 proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.86, revise the introductory text of paragraphs of (d)(1)(i), (d)(1)(ii), and (d)(1)(iii), and add paragraph (d)(1)(v) 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 3,500 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 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 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 648.80(c)(5), respectively, if both of the following conditions apply:

* * * * *

(v) *Possession limits for red hake.* Vessels participating in the small-mesh multispecies fishery consistent with § 648.86(d)(1), may possess and land not more than 3,000 lb (1,361 kg) of red hake when fishing in the Gulf of Maine or Georges Bank Exemption areas, as described in §648.80(a), and not more than 5,000 lb (2,268 kg) of red hake when fishing in the Southern New England or Mid-Atlantic Exemption Areas, as described in §§ 648.80(b)(10) and 648.80(c)(5), respectively.

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[FR Doc. 2018-07536 Filed: 4/11/2018 8:45 am; Publication Date: 4/12/2018]