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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 170126124-7124-01]**

**RIN 0648-BG63**

**Magnuson-Stevens Fishery Conservation and Management Act Provisions;  
Fisheries of the Northeastern United States; Northern Red Hake Accountability  
Measure**

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

**ACTION:** Final rule.

**SUMMARY:** This action reduces the in-season possession limit adjustment trigger for northern red hake due to an annual catch limit overage in fishing year 2015. Reduction of the trigger is a non-discretionary action intended to minimize the potential for catch overages in the future. This action reinstates regulatory text that we inadvertently removed during a previous rule making action. The intent of this action is to inform the public of this reduction in the possession limit trigger. The regulatory correction is intended to clarify the original purpose of the regulation.

**DATES:** The rule is effective [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Peter Burns, Fishery Policy Analyst, phone (978) 281-9144, or peter.burns@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

This action reduces the in-season possession limit adjustment trigger for northern red hake, effective [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*], as described in the Northeast Multispecies Fishery Management Plan (FMP). The accountability measures for the small-mesh multispecies fishery require the reduction of the possession limit adjustment trigger when the fishery exceeds a stock's annual catch limit (ACL), as occurred with northern red hake in 2015. Additionally, this action reinstates the regulatory text that details the raised-footrope trawl gear specifications. Use of the raised-footrope trawl is mandatory in certain small-mesh exemption areas. This action reinstates the regulatory text that we inadvertently removed from the regulations when we published the final rule to implement the measures in Amendment 19 to the Northeast Multispecies FMP in 2013 (78 FR 20260; April 4, 2013).

The small-mesh multispecies fishery is managed as a component of the Northeast Multispecies FMP, using a series of exemptions from the minimum mesh size requirements of the groundfish fishery. There are three species managed as five stocks under these regulations (northern and southern silver hake, northern and southern red hake, and offshore hake). The northern stock areas are generally the Gulf of Maine and Georges Bank, and the southern stock areas are in Southern New England and the Mid-Atlantic regions. Silver hake, also known as "whiting," is generally the primary target

species of the fishery. Red hake is caught concurrently with whiting and is typically sold as bait.

Under the current regulations, if catch of a small-mesh multispecies stock exceeds its ACL in a given fishing year, we are required to reduce the in-season possession limit adjustment trigger (currently 62.5 percent for northern red hake) in a subsequent fishing year by 1 percent for each 1 percent by which the ACL was exceeded. During the fishing year, when we project that the landings have reached the trigger percentage of the total allowable landings (TAL), we will reduce the possession limit for that stock to an incidental level for the remainder of the fishing year.

This is not the first time that we have reduced the northern red hake in-season possession limit adjustment trigger. In fishing year 2012, the trigger for the incidental catch limit was 90 percent for all small-mesh multispecies stocks. We initially determined that the northern red hake ACL was exceeded by 45 percent in 2012 and 2013, so the incidental possession limit trigger was reduced from 90 percent to 45 percent, beginning in fishing year 2014. During development of the whiting specifications for fishing years 2015-2017, the New England Fishery Management Council's Small-Mesh Multispecies Plan Development Team determined that the 2012 ACL had been underestimated, meaning that the catch had exceeded the ACL less than previously thought. Accordingly, we adjusted the possession limit trigger for northern red hake from 45 percent to 62.5 percent of the TAL, beginning in fishing year 2015.

We included the adjusted possession limit trigger in the final specifications packages for the 2015-2017 fishing years. That action also reduced the northern red hake

possession limit from 5,000 lb (2,268 kg) to 3,000 lb (1,361 kg) per trip to delay the in-season accountability measure until later in the season and minimize the chance of a subsequent ACL overage, as occurred in fishing years 2012 and 2013. As an additional means of extending the season and reducing red hake discards, it established a new in-season possession limit trigger that reduced the possession limit for northern red hake to 1,500 lb (680 kg) per trip when estimated landings reach 45 percent of the TAL.

In fishing year 2015, the northern red hake ACL was 273 mt, with a TAL of 104 mt. Northern red hake commercial catch, including landings and discards, was 340 mt, exceeding the ACL by 67 mt, or 24.6 percent. Accordingly, this action reduces the possession limit trigger by 24.6 percent, from 62.5 percent of the TAL to 37.9 percent of the TAL, effective [*INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER*]. This measure reduces the possession limit for northern red hake from 3,000 lb (1,361 kg) per trip to the incidental possession limit of 400 lb (181 kg) once the fleet is projected to land 45.5 mt in fishing year 2017. This action also necessitates the removal of the 1,500-lb (680-kg) possession limit at 45 percent of the TAL. The reduced trigger will remain in effect until the Council changes it through specifications or a framework action. This action will not alter the possession limit triggers for any of the other small-mesh multispecies stocks because catch of those stocks did not exceed the respective ACLs in 2015.

In addition to adjusting the possession limit trigger percentage, this action reinstates important regulatory text that we inadvertently deleted from the regulations during a previous rulemaking action. Specifically, text for paragraphs (a)(9)(ii)(A)

through (D) of § 648.80 were mistakenly removed from the regulations when an amendment in a final rule implementing measures for Amendment 19 was incorporated into the Code of Federal Regulations. Those longstanding paragraphs provide the detailed gear specifications for the raised-footrope trawl, a gear type that fishermen must use when fishing in certain small-mesh exemption areas. In that rule, we had intended only to amend the introductory text to § 648.80(a)(9)(ii), but the subsequent paragraphs were ultimately removed when the amendment was incorporated into the Code of Federal Regulations.

For reasons described below, there is good cause to waive the 30-day delay of the effective date for the actions in this final rule. Accordingly, the adjusted possession limit adjustment trigger and the reinstatement of the regulatory text take effect immediately upon publication in the **Federal Register** (see **Classification**).

### **Classification**

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment for the modifications to the northern red hake possession limit trigger because it would be impracticable and contrary to the public interest. The final rule for Amendment 19 to the Northeast Multispecies FMP, which set the specifications and accountability measures for the small-mesh multispecies fishery, already considered comment on these measures with the understanding that the possession limit trigger could be adjusted when the ACL is exceeded. This action modifies the regulations regarding the accountability measures as intended by the Council and as required in the regulations. Adjustment of the

possession limit trigger is a non-discretionary action required by the provisions of Amendment 19. Currently, these regulations specify the northern red hake trigger at 62.5 percent of the TAL. Because the ACL was exceeded, the 62.5-percent trigger for northern red hake will be reduced to 37.9 percent. If the new trigger is not published near the start of the 2017 fishing year on May 1, 2017, the fishery could once again exceed the catch limits because fishermen would not be aware of the new reduced trigger level, which could result in adverse impacts to fishery resources and curtailed fishing opportunities leading to unnecessary adverse economic impacts for fishery participants. The Council and industry were informed of this necessary action at recent meetings of the Council (September 20, 2016), the Council's Small-Mesh Multispecies Committee (October 13, 2016), and at a joint meeting of the Council's Small-Mesh Multispecies Plan Development Team and Advisory Panel (October 6, 2016). During those meetings, there was no indication that the Council intended to reconsider the need for this non-discretionary adjustment to the possession limit trigger. For the reasons stated above, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30-day delay in effectiveness of these accountability measures.

As to the reinstatement of the regulatory text in paragraphs (a)(9)(ii)(A)-(D) in § 648.80, pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, also finds there is good cause to waive prior notice and comment as it would be impracticable and contrary to the public interest. The reinstatement of the regulatory text in paragraphs (a)(9)(ii)(A)-(D) in § 648.80 is necessary to ensure the proper

specifications for the raised footrope trawl in the small-mesh fishery. The extraction of the relevant text was a drafting error and was not intended under Amendment 19, which was the basis for the rulemaking by which the text was inadvertently deleted. The industry has continued to comply with these specifications, which constitute standard industry practice, but the text setting forth these requirements is missing from the regulations. The specifications ensure that the trawl net is rigged to avoid contact with the ocean bottom to reduce the bycatch of non-targeted regulated species. The absence of these regulations may cause harm to fishery resources and benthic habitat and, therefore, should be reinstated as soon as practicable before the start of the 2017 fishing year to maintain the regulations as intended in the FMP. These gear requirements have undergone the appropriate level of notice and comment prior to their initial publication in the regulations. Delaying the re-instatement of this component of the fishery specifications to allow for notice and comment would be contrary to the public interest because it could have negative implications on the resource and create confusion for the industry. In addition, a delay for additional comment would be counter to the intent of the Council, which has not requested a reconsideration of the need for these important specifications. For the reasons stated above, pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30-day delay in effectiveness of the raised footrope trawl regulations.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, do not apply.

This rule is not significant for the purposes of Executive Order 12866.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 4, 2017.

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Alan D. Risenhoover,

Acting Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

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

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

2. In § 648.80, paragraphs (a)(9)(ii)(A) through (D) are added to read as follows:

**§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.**

\* \* \* \* \*

(a) \* \* \*

(9) \* \* \*

(ii) \* \* \*

(A) Eight-inch (20.3-cm) diameter floats must be attached to the entire length of the headrope, with a maximum spacing of 4 ft (122.0 cm) between floats.

(B) The ground gear must all be bare wire not larger than ½ inch (1.2 cm) for the top leg, not larger than 5/8 inch (1.6 cm) for the bottom leg, and not larger than ¾ inch (1.9 cm) for the ground cables. The top and bottom legs must be equal in length, with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms (73 m) from the doors to wing ends.

(C) The footrope must be longer than the length of the headrope, but not more than 20 ft (6.1 m) longer than the length of the headrope. The footrope must be rigged so that it does not contact the ocean bottom while fishing.

(D) The raised footrope trawl may be used with or without a chain sweep. If used without a chain sweep, the drop chains must be a maximum of 3/8-inch (0.95-cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends. If used with a chain sweep, the sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long drop chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging, including drop chains, must be made entirely of bare chain with a maximum diameter of 5/16 inches (0.8 cm). No wrapping or cookies are allowed on the drop chains or sweep. The total length of the sweep must be at least 7 ft (2.1 m) longer than the total length of the footrope, or

3.5 ft (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner. The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at intervals of 8 ft (2.4 m) from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 ft (1.1m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

\* \* \* \* \*

**§ 648.86 [Amended]**

3. In § 648.86, paragraph (d)(5) is removed.

4. In § 648.90, paragraph (b)(5)(iii) is amended to read as follows:

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

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(b) \* \* \*

(5) \* \* \*

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

<b>Species</b>	<b>In-season Adjustment Trigger (percent)</b>
Northern Red Hake	37.9

Northern Silver Hake	90
Southern Red Hake	90
Southern Silver Hake	90

\* \* \* \* \*

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