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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 200818-0220]

RIN 0648-BJ91

**Magnuson-Stevens Fishery Conservation and Management Act Provisions;
Fisheries of the Northeastern United States; Southern 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 southern red hake due to an annual catch limit overage in fishing year 2018. Reduction of the trigger is a non-discretionary action intended to minimize the potential for catch overages in the future. This action also reduces the in-season possession limit because the trigger implemented with this action has been reached. The intent of this action is to inform the public of the possession limit trigger reduction and reduction in possession limit.

DATES: Effective [*insert date of publication in the Federal Register*].

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fishery Management Specialist, phone (978) 282-8456, or shannah.jaburek@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

This action reduces the in-season possession limit adjustment trigger for southern red hake, effective upon 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 southern red hake in 2018.

The small-mesh multispecies fishery is managed as a component of the FMP, using a series of exemptions from the minimum mesh size requirements of the groundfish fishery. There are three hake 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 generally encompass the Gulf of Maine and Georges Bank, and the southern stock areas are in the southern New England and Mid-Atlantic regions. Silver hake, also known as "whiting," is generally the primary target species of the fishery. Red hake are caught concurrently with whiting and in other small-mesh fisheries targeting squid and are typically sold as bait.

Under the current regulations, if the small-mesh multispecies fishery exceeds its ACL for a stock in a given fishing year, the accountability measures require us to reduce the in-season possession limit adjustment trigger (currently 90 percent for southern red hake) in a subsequent fishing year. The reduction is one-to-one; therefore, the possession limit trigger is reduced by 1 percent for each percentage point by which the ACL was exceeded. During each fishing year, when we project that the landings have reached the trigger percentage of the total allowable level of landings (TAL), we reduce the

possession limit for that stock to an incidental level for the remainder of the fishing year. Such accountability measure actions are taken under the authority of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act.

In fishing year 2018, the southern red hake ACL was 1,007 metric tons (mt). Southern red hake commercial catch, including landings and discards, was 1,507 mt, exceeding the ACL by 500 mt, or 49.6 percent. As a result, this action reduces the possession limit trigger from the 90 percent to 40.4 percent of the TAL for fishing year 2020. The fishing year 2020 southern red hake TAL is 305 mt; therefore, the incidental limit takes effect when the fleet lands approximately 123.2 mt. Review of catch reports as of July 31, 2020, indicate that the new in-season possession limit trigger, effective with this rule, has been reached (*i.e.*, 135 mt of southern red hake have been harvested). As a result, the possession limit for southern red hake is hereby reduced from 5,000 lb (2,268 kg) to the incidental possession limit of 400 lb (181.4 kg) for the remainder of the year. The revised possession limit trigger will remain in effect until the New England Fishery Management Council (Council) changes it through specifications or a framework action. This action does 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 2018. At its June meeting, the Council took final action on alternatives to rebuild the overfished southern red hake stock. These alternatives include a reduced harvest level for a 10-year rebuilding period and tiered possession limits based on fishing gear. Separate rulemaking will be conducted to implement the southern red hake rebuilding measures.

Classification

NMFS is issuing this rule pursuant to 305(d) of the Magnuson-Stevens Act. The reason for using this regulatory authority is the Secretary has the general responsibility for carrying out the provisions of the FMP. The NMFS Assistant Administrator has determined that this final rule is consistent with the Northeast Multispecies FMP and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and opportunity for additional public comment for the modifications to the southern 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 would 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, formulaic action required by the provisions of Amendment 19 to the FMP. Because the ACL was exceeded in 2018, the 90-percent trigger for southern red hake is reduced by this rule to 40.4 percent (123.2 mt). As of July 31, 2020, the fleet has landed approximately 135 mt, exceeding the new trigger limit put in place by this action. If the new trigger is not effective upon publication for the 2020 fishing year which started on May 1, 2020, the fishery will continue to exceed the catch limits because fishery participants would not be aware of the new reduced trigger level. This could result in adverse impacts to fishery resources and curtailed fishing opportunities leading to unnecessary adverse economic impacts for fishery participants. For the reasons stated

above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of these accountability measures.

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

This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

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.*, are inapplicable.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 18, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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

PART 648–FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.90, revise paragraph (b)(5)(iii) 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:

Species	In-season Adjustment Trigger (percent)
Northern Red Hake	37.9
Northern Silver Hake	90
Southern Red Hake	40.4
Southern Silver Hake	90

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