



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No.: 210630-0140]

RIN 0648-BK10

### **Fisheries of the Northeastern United States; Southern Red Hake Rebuilding Plan; Framework Adjustment 62 to the Small-Mesh Multispecies Fishery Management Plan**

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes to approve and implement Framework Adjustment 62 for Whiting, Red Hake, and Offshore Hake to the Northeast Multispecies Fishery Management Plan. The purpose of this action is to establish a 10-year rebuilding plan and adjust management measures for the overfished southern red hake stock. This action is necessary to meet the statutory requirements for an overfished stock and rebuilding plan consistent with the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** Comments must be received by [*INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** The New England Fishery Management Council has prepared a draft environmental assessment (EA) for this action that describes the proposed measures in Framework Adjustment 62, other considered alternatives, and analyzes the impacts of the proposed measures and alternatives. The Council submitted a draft of Framework 62 to NMFS that includes the draft EA, a description of the Council's preferred alternatives, and the Council's rationale for selecting each alternative. Copies of the draft Framework

62, the draft EA, and information on the economic impacts of this proposed rulemaking are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950 and accessible via the internet in documents available at: <https://www.nefmc.org/library/framework-62>.

You may submit comments on this document, identified by NOAA-NMFS-2020-0166, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2020-0166 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

*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 a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://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).

**FOR FURTHER INFORMATION CONTACT:** Laura Hansen, Fishery Management Specialist, 978-281-9225.

**SUPPLEMENTARY INFORMATION:**

**Background**

In January 2018, the southern red hake stock was declared overfished. To meet the Magnuson-Stevens Act requirements of an overfished stock, a rebuilding plan and associated management measure changes are necessary to prevent overfishing, ensure

adequate rebuilding, and help achieve optimum yield in the fishery. The New England Fishery Management Council took final action on this framework at its June 2020 meeting and submitted the action to us in mid-August 2020.

### **Proposed Action**

Framework 62 would establish a 10-year rebuilding schedule for southern red hake. The proposed rebuilding schedule is a range from a minimum associated with a similar increase in biomass that occurred during 2006-2011 to a longer duration that accounts for biological characteristics of red hake. Southern red hake are fully mature, on average, at age 3 and the maximum observed age is 10 years in 2011-2019 survey data. By applying the estimated maturation rate and using biomass at age as a guide, and making reasonable assumptions that fertility (increases by 5 percent per year after age 3) and egg viability (full viability at age 5) increase with age, the Whiting Plan Development Team estimated that 50 percent of lifetime egg production of an unfished female occurs at 4.4 years. By definition, it would take 50 percent of a female's egg production to exactly replace itself and its mate with offspring that would spawn a successive generation. It would be reasonable to expect a higher level of confidence that southern red hake can rebuild in approximately two generations, which equates to 10 years. Under this rebuilding program, catch limits would be established by reducing the acceptable biological catch (ABC) to 75-percent of the fishing mortality rate at maximum sustainable yield ( $F_{MSY}$ ) for the duration of the rebuilding period or until the stock reaches its biomass target, whichever happens first. In past years, the ABC has been set at 90-percent or higher of the  $F_{MSY}$ . In addition, it would decrease the trip possession limit from 5,000 pounds (lb) (2,268 kilograms (kg)) to a dual 1,000-lb/600-lb (453.6-kg/272.2-kg) possession limit based on the selectivity of the gear type or mesh size being used. The 600-lb (272.2 kg) possession limit would apply to standard small-mesh trawls (less than 5.5-inch (13.97- centimeters (cm)) square or diamond mesh), which are less

selective, while the 1,000-lb (453.6-kg) possession limit would apply to large-mesh trawls and other more selective gear types. These small-mesh selective gear types include raised-footrope trawls, large-mesh belly panel trawls, and rope separator trawls. The reduced possession limits are intended to reduce landings and catch and to incentivize fishermen to use gear and gear configurations that reduce the catch of red hake. The in-season accountability measure will remain in place which would reduce the possession limit to 400 lb (181 kg) when the landings meet or exceed the total allowable landings (TAL) trigger at 40.4 percent of the ACL. The Regional Administrator may deem other gears as selective based on an evaluation of their ability to adequately reduce the catch of red hake and would be announced through issuance of a rule in the **Federal Register**. In addition, the 1,000-lb (453.6-kg) possession limit applies to vessels when using gears other than trawls.

### **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 all applicable Fishery Management Plans that the Council manages, 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 Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is as follows.

The New England Fishery Management Council evaluated the potential socioeconomic impacts of the proposed measures in conjunction with an environmental

assessment. This rule would affect all permitted small-mesh multispecies vessels; therefore, the direct regulated entity is a firm that owns at least one small-mesh multispecies permit (either an open access or limited access Northeast multispecies permit). These businesses catch a small fraction of small-mesh multispecies; furthermore, they are minimally affected by the proposed action. To estimate the number of commercial entities that may experience impacts from the proposed action, active small-mesh multispecies entities landing southern red hake are defined as those entities containing permits that are directly regulated and that landed southern red hake in 2018 for commercial sale. In 2018, there were 168 business entities landing southern red hake, of which 167 were classified as small business entities that could potentially be affected by the proposed action. However, it is further estimated that the proposed action would affect only about 50 of those 167 identified as small business entities. These 50 small business entities derived, on average, about 0.57 percent of total entity revenue from red hake.

The measures proposed in Framework 62 would increase the long-term economic benefits on small entities. The proposed action would establish a rebuilding plan and management measures for the southern red hake stock. More specifically, the action would create a lower-tiered year-round trip possession limit based on gear selectivity for southern red hake, unless an in-season accountability measure is put in place which would reduce the possession limit to 400 lb (181 kg) when the landings meet or exceed the TAL trigger at 40.4 percent of the ACL. This is meant to incentivize vessels to use the more selective gear to reduce overall southern red hake catch levels while still allowing a slightly higher possession limit to reduce regulatory discards. Overall, Framework 62 would ensure that catch levels are sustainable and contribute to rebuilding southern red hake stock and, therefore, maximize yield.

The low negative economic loss to small entities from this action are associated

with the small decrease in the southern red hake possession limit. The suite of preferred alternatives will result in a slight loss in revenue from a slight decrease in southern red hake landings compared to taking no action, which would keep the southern red hake possession limit at 5,000 lb (2,268 kg) and allow higher overall catch limits (*i.e.*, higher ABC). The proposed changes in management measures are not likely to dramatically change fishing behavior and or catch because 60 to 80 percent of southern red hake are currently discarded due to lack of marketability. The magnitude in economic loss is low because the stock is not typically targeted. Therefore, the Council concluded, and NMFS agrees, that this action would not have a significant adverse impact on a substantial number of small businesses.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: July 1, 2021.

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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, add paragraph (d)(1)(v) to read as follows:

**§ 648.86 NE Multispecies possession restrictions.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(v) *Possession of southern red hake while under a rebuilding plan.* When the southern red hake stock, defined as statistical areas 525-526, 533-534, 541-543, 537-539, 562, 611-616, 621-623, 625-628, 631-634, 635-638, is under a rebuilding plan, the year-round possession limit for southern red hake shall be the following:

(A) *Vessels possessing on board or using nets of mesh size smaller than 5.5 in (13.97 cm).* Owners and operators of vessels may possess and land no more than 600 lb (272 kg) of southern red hake per trip when:

(1) Using trawls with diamond or square mesh size less than 5.5 in (13.97 cm);  
and/or

(2) A vessel is in possession of a net with mesh size smaller than 5.5 in (13.97 cm), unless it is properly stowed and not available for immediate use in accordance with § 648.2 and not used on that trip.

(B) *Vessels using nets of mesh size greater than or equal to 5.5 in (13.97 cm), using small-mesh selective trawls, or gear other than trawl.* Owners and operators may possess and land no more than 1,000 lb (453 kg) of southern red hake per trip when:

(1) Using trawls with diamond or square mesh size 5.5 in (13.97 cm) or larger;

(2) Using small-mesh selective gear, including raised-footrope trawls as defined in § 648.80(a)(9)(ii), large-mesh belly panel trawls as defined in § 648.84(f), rope

separator trawls as defined in § 648.84(e), and other selective gears deemed by the Regional Administrator to adequately reduce the catch of red hake; or

(3) When using gears other than trawls.

\* \* \* \* \*

3. In § 648.90, revise paragraphs (b)(2) introductory text and (b)(2)(i) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(2) *Process for specifying ABCs, ACLs, and TALs.* The Whiting PDT shall calculate the OFL and ABC values for each small-mesh multispecies stock based on the control rules established in the FMP. These calculations shall be reviewed by the SSC and guided by terms of reference developed by the Council. The ACLs and TALs shall be calculated based on the SSC's approved ABCs, as specified in paragraphs (a)(2)(i)(A) through (C), and (a)(2)(ii)(A) through (C) of this section.

(i) *Red hake—(A) ABCs.* (1) The Council's SSC will recommend an ABC to the Council for both the northern and southern stocks of red hake. The red hake ABCs are reduced from the OFLs based on an adjustment for scientific uncertainty as specified in the FMP; the ABCs must be less than or equal to the OFL.

(2) While the southern red hake stock is under a rebuilding plan, the ABC for that stock shall be set to 75-percent of the OFL for the duration of the rebuilding period or until the stock reaches its biomass target, whichever occurs first.

(B) *ACLs.* The red hake ACLs are equal to 95 percent of the corresponding ABCs.

(C) *TALs.* (1) The red hake TALs are equal to the northern red hake and southern red hake ACLs minus a discard estimate based on the most recent 3 years of data and



then reduced by 3 percent to account for silver hake and offshore hake landings that occur in state waters.

(2) If more than two-thirds of the southern red hake TAL is harvested in a single year, the Regional Administrator shall consult with the Council and will consider implementing quarterly TALs in the following fishing year, as prescribed in the FMP and in a manner consistent with the requirements of the Administrative Procedure Act.

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[FR Doc. 2021-14457 Filed: 7/9/2021 8:45 am; Publication Date: 7/12/2021]