E 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 230119-0020]

RIN 0648-BJ04

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Omega Electronic Mesh Measurement Gauge Method for Measuring Net Mesh Size

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

ACTION: Final rule.

SUMMARY: This rule modifies regulations to add the Omega net mesh measurement gauge as a permissible device for net mesh measurement and to correct regulatory references to gear restrictions. This action is required to allow the use of the Omega gauge as a method for measuring and enforcing net mesh size. Adoption of the Omega gauge, a handheld electronic device, is intended to improve the efficiency, safety, and cost-effectiveness of at-sea net mesh enforcement.

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

FOR FURTHER INFORMATION CONTACT: Spencer Talmage, Fishery Policy Analyst, phone: (978) 281-9232; e-mail: *Spencer.Talmage@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Omega Electronic Net Mesh Measurement Gauge

Under section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce is authorized to implement regulations that are necessary to carry out any fishery management plan or amendment. We have determined that the adoption of the Omega electronic net mesh measurement gauge

(Omega gauge) as an enforcement tool by the U.S. Coast Guard, NMFS Office of Law Enforcement, and other authorized enforcement agencies to measure net mesh sizes of trawl gear will improve the safety, efficiency, and cost-effectiveness of enforcement boardings at-sea. The Omega gauge will assist in the enforcement of gear requirements for all fishery management plans (FMP) administered by the Greater Atlantic Regional Fisheries Office, but is otherwise administrative and will not result in any changes to fishing behavior or obligations of the fishing industry. We are amending the regulations in §§ 648.51(a)(2)(ii) and (b)(4)(v), 648.80(f)(2), and 648.108(a)(2) to add the Omega gauge to trawl net mesh measurement protocols.

The Omega gauge is an automated, handheld electronic device for measuring net mesh size. A full description of its properties is available in the proposed rule (87 FR 59386, September 30, 2022).

Following the recommendation of its Joint Enforcement Committee and Advisory Panel, the New England Fishery Management Council recommended the use of the Omega gauge for net mesh size measurement. Subsequently, the NOAA Office of Law Enforcement and Office of General Counsel reviewed the study results, operations manual, and other information and determined the Omega gauge is suitable for net mesh measurements.

Regulatory Corrections

We are also amending the regulations at §§ 648.80(c)(2)(i) and (ii) and 648.125(a)(2) to correct cross-references that erroneously direct readers to minimum fish sizes in the summer flounder fishery at § 648.104. The correct reference is to summer flounder gear restrictions at § 648.108(a)(2).

The erroneous cross-references contribute to public confusion and potential misunderstanding of gear requirements and restrictions. This correction will ensure accurate information and notice is provided to fishing industry participants of these

requirements and restrictions. This correction clarifies compliance requirements and does not impose any new requirements. Correcting this cross-reference error improves clarity and reduces chances for confusion. The gear requirements in the corrected cross-references are longstanding, have been widely and regularly communicated in NMFS' bulletins, permit-holder letters, and web site. Based on this NMFS expects that vessels are already in compliance with the gear requirements in the cross-references being corrected.

Comments and Responses

We received no comments on the proposed rule and, as such, no substantive changes from the proposed rule were made as a result of the open comment period.

Classification

NMFS is issuing this rule pursuant to 305(d) of the Magnuson-Stevens Act. Pursuant to Magnuson-Stevens Act section 305(d), this action is necessary to carry out the trawl net mesh measurement regulations for all FMPs administered by the Greater Atlantic Regional Fisheries Office. It provides an efficient, safe, and cost-effective tool for net mesh size enforcement that is expected to lead to improved boardings-at-sea and more effective implementation and enforcement of net mesh size requirements. The NMFS Assistant Administrator has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable law.

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

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this rule. The 30-day delay in effective date is unnecessary and would be contrary to the public interest. This rule is not controversial and is easy to understand, as evidenced by the lack of any public comment on this rule. Further, the 30-day delayed effective date is unnecessary because adoption of the Omega gauge by Coast Guard or

NMFS authorized officers does not require vessels to change any fishing behavior. The Omega gauge is a tool for authorized officers to use to measure fish mesh size for compliance with current, long-existing mesh size requirements. Delayed use of the Omega gauge is also contrary to the public interest because it is expected to benefit vessel and operator permit holders and vessel crewmembers by improving the efficiency of at-sea boardings without imposing any new costs on them.

Delay in the effective date of this rule would also be unnecessary and contrary to the public interest because current regulations relating to summer flounder vessel net requirements include incorrect references to summer flounder permitted vessel gear requirements. This rule corrects that mistake and thereby provides accurate notice to fishermen of their compliance requirements. Implementing correct information thus avoids any potential confusion and facilitates compliance and fishing practices consistent with the summer flounder fishery management plan's requirements.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule does not contain any 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: January 23, 2023.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons stated 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 § 648.51, revise paragraphs (a)(2)(ii) and (b)(4)(v) to read as follows:

§ 648.51 Gear and crew restrictions.

(a) * * *

(2) * * *

(ii) *Measurement of mesh size.* Mesh size is measured by using an electronic Omega gauge or a wedge-shaped gauge. The Omega gauge has a measuring range of at least 10 – 300 mm (0.4 inches – 11.81 inches), and shall be inserted into the meshes under a pressure or pull of 125 N or 12.75 kg for mesh greater than or equal to 55 mm (2.17 inches) and under a pressure or pull of 50 N or 5.10 kg for mesh less than 55 mm (2.17 inches). The wedge shaped gauge, with a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), shall be inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes when using either the Omega gauge or the wedge-shaped gauge.

The mesh in the regulated portion of the net is measured at least five meshes away from the lacings running parallel to the long axis of the net.

* * * * *

(b) * * *

(4) * * *

(v) *Measurement of twine top mesh size.* Twine top mesh size is measured by using an electronic Omega gauge or a wedge-shaped gauge. The Omega gauge has a measuring range of at least 10 – 300 mm (0.4 inches – 11.81 inches), and shall be inserted into the meshes under a pressure or pull of 125 N or 12.75 kg for mesh greater than or equal to 55 mm (2.17 inches) and under a pressure or pull of 50 N or 5.10 kg for mesh less than 55 mm (2.17 inches). The wedge shaped gauge, with a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), shall be inserted into the meshes under a pressure or pull of 8 kg (17.64 lb). The mesh size is the average of the measurements of any series of 20 consecutive meshes for twine tops having 75 or more meshes, and 10 consecutive meshes for twine tops having fewer than 75 meshes when using either the Omega gauge or the wedge-shaped gauge. The mesh in the twine top must be measured along the length of the twine top, running parallel to a longitudinal axis, and be at least five meshes away from where the twine top mesh meets the rings, running parallel to the long axis of the twine top.

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3. In § 648.80, revise paragraphs (c)(2)(i) and (ii) and (f)(2) introductory text to read as follows:

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

* * * * *

(c) * * *

(2) * * *

(i) *Vessels using trawls.* Except as provided in paragraph (c)(2)(iii) of this section, and §648.85(b)(6), the minimum mesh size for any trawl net not stowed and not available for immediate use as defined in §648.2, on a vessel or used by a vessel fishing under the NE multispecies DAS program or on a sector trip in the MA Regulated Mesh Area, shall be that specified by §648.108(a), applied throughout the body and extension of the net, or any combination thereof, and 6.5-inch (16.5-cm) diamond or square mesh applied to the codend of the net, as defined in paragraph (a)(3)(i) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

(ii) *Vessels using Scottish seine, midwater trawl, and purse seine.* Except as provided in paragraph (c)(2)(iii) of this section, the minimum mesh size for any sink gillnet, Scottish seine, midwater trawl, or purse seine, not stowed and not available for immediate use as defined in §648.2, on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the MA Regulated Mesh Area, shall be that specified in §648.108(a). This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

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(f) * * *

(2) *All other nets.* With the exception of gillnets, mesh size is measured by an electronic Omega gauge or a wedge-shaped gauge. The Omega gauge has a measuring range of at least 10 – 300 mm (0.4 inches – 11.81 inches), and shall be inserted into the meshes under a pressure or pull of 125 N or 12.75 kg for mesh greater than or equal to 55 mm (2.17 inches) and under a pressure or pull of 50 N or 5.10 kg for mesh less than 55

mm (2.17 inches). The wedge shaped gauge, with a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), shall be inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater, than 120 mm (4.72 inches).

* * * * *

4. In § 648.108, revise paragraph (a)(2) to read as follows:

§ 648.108 Summer flounder gear restrictions.

(a) * * *

(2) Mesh size is measured by using an electronic Omega gauge or a wedge-shaped gauge. The Omega gauge has a measuring range of at least 10 – 300 mm (0.4 inches – 11.81 inches), and shall be inserted into the meshes under a pressure or pull of 125 N or 12.75 kg for mesh greater than or equal to 55 mm (2.17 inches) and under a pressure or pull of 50 N or 5.10 kg for mesh less than 55 mm (2.17 inches). The wedge shaped gauge, with a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), shall be inserted into the meshes under a pressure or pull of 5 kg (11.02 lb) for mesh size less than 120 mm (4.72 inches) and under a pressure or pull of 8 kg (17.64 lb) for mesh size at, or greater than, 120 mm (4.72 inches). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes, when using either the Omega gauge or the wedge-shaped gauge. The mesh in the regulated portion of the net is measured at least five meshes away from the lacings, running parallel to the long axis of the net.

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5. In § 648.125, revise paragraph (a)(2) to read as follows:

§648.125 Scup gear restrictions.

(a) * * *

(2) *Mesh-size measurement.* Mesh sizes will be measured according to the procedure specified in §648.108(a)(2).

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