

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110816505-1506-01]

RIN 0648-BB39

Fisheries of the Northeastern United States; Northeast Multispecies Fisheries, Small-Mesh Multispecies Secretarial Amendment

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

ACTION: Advance notice of proposed rulemaking; request for comments; notice of public meetings.

SUMMARY: NMFS is requesting public comments on its initiation of a Secretarial Amendment to implement annual catch limits (ACLs) and measures to ensure accountability (AMs) in the small-mesh multispecies fishery. NMFS is initiating the Secretarial Amendment because the New England Fishery Management Council (Council) is not able to develop and submit Amendment 19 to establish ACLs and AMs for the small-mesh multispecies fishery as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), until well past the statutory deadline of 2011. As required by the Magnuson-Stevens Act, NMFS is announcing four public meetings to allow interested parties the opportunity to provide input on the action.

DATES: Written comments regarding the issues in this advance notice of proposed rulemaking (ANPR) must be received by 5 p.m., local time, on [insert date 30 days after publication in the

FEDERAL REGISTER]. Meetings to obtain additional comments on the items discussed in this

ANPR will be held on:

- Monday, October 3, 2011 from 4 p.m. to 7 p.m.
- Tuesday, October 4, 2011 from 4 p.m. to 7 p.m.
- Tuesday, October 11, 2011 from 4 p.m. to 7 p.m.
- Wednesday, October 12, 2011 from 4 p.m. to 7 p.m.

ADDRESSES: The meetings will be held in:

- East Setauket, NY
- Toms River, NJ
- Gloucester, MA
- Narragansett, RI

For specific locations, see SUPPLEMENTARY INFORMATION.

You may also submit comments on this document, identified by NOAA-NMFS-2011-0206, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2011-0206 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- **Mail:** Submit written comments to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, “Comments on Whiting Secretarial.”
- **Fax** 978-281-9135; Attn: Moira Kelly.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. 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. All comments received are a 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.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281-9218, moira.kelly@noaa.gov

SUPPLEMENTARY INFORMATION: Under the Magnuson-Stevens Act at § 304(c)(1)(A), the Secretary of Commerce may develop an amendment for a council-managed fishery, if the responsible council “fails to develop and submit to the Secretary, after a reasonable period of time, a [...] necessary amendment...” The Magnuson-Stevens Act requires all managed fisheries to have ACLs and AMs by 2011. The Council is developing, but has not yet completed, Amendment 19 to the Northeast Multispecies Fishery Management Plan, which would establish ACLs and AMs for the small-mesh multispecies fishery, and does not anticipate Amendment 19 to be submitted to NMFS until May 2012, which means it will not be effective until October 2012. The small-mesh multispecies fishery consists of silver hake, red hake, and offshore hake, often collectively known as “whiting.” There are two stocks each of silver and red hake (northern and southern) and one stock of offshore hake.

The Council has not completed Amendment 19 for a number of reasons, including postponing work on the amendment until after the November 2010 stock assessment review for the three small-mesh species. However, the Council is expected to set the acceptable biological catch (ABC) limits based on recommendations from its Scientific and Statistical Committee (SSC), at its September 2011 meeting. The SSC has recommended separate ABCs by stock or stock group: Northern red hake, southern red hake, northern silver hake, and a combined southern “whiting” ABC for the southern stock of silver hake and offshore hake. The Whiting Advisory Panel (AP) and the Oversight Committee will be recommending management alternatives at the Council’s September meeting as well. NMFS intends to use the Council’s ABC and a subset of the Advisory Panel and Committee’s recommendations in the Secretarial Amendment.

After the public hearings are completed, NMFS will make a decision regarding the management measures to include in the Secretarial Amendment and will publish a proposed rule and a notice of availability for the amendment. After the 60-day proposed rule/notice of availability comment period, NMFS will publish a final rule. The final rule will remain in effect until the Council’s Amendment 19, if approved, is implemented.

Public Comments

To help determine the scope of issues to be addressed and to identify significant issues related to this action, NMFS is soliciting written comments on this ANPR and will hold public meetings in four locations. All of the public meetings will take place from 4 p.m. to 7 p.m., at the locations listed below. The public is encouraged to submit comments related to the specific ideas mentioned in this ANPR. All written comments received by the due date will be considered in drafting the proposed rule.

- Monday, October 3, 2011, from 4 p.m. to 7 p.m., at the New York Department of Environmental Conservation Marine Resources Headquarters, 205 Belle Mead Road, Suite 1, East Setauket, NY.
- Tuesday, October 4, 2011, from 4 p.m. to 7 p.m., at the Ocean County Administration Building, Room 119, 101 Hooper Avenue, Toms River, NJ.
- Tuesday, October 11, 2011, from 4 p.m. to 7 p.m., at the Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA.
- Wednesday, October 12, 2011, from 4 p.m. to 7 p.m., at Narragansett Town Hall, 25 Fifth Avenue, Narragansett, RI.

Issues Under Consideration

Based on information from prior Whiting Advisory Panel and Oversight Committee meetings, NMFS is considering several options for the Secretarial Amendment. NMFS will seek public comment on the scope of this ANPR and requests public input on the following options. For each option, NMFS will propose setting an ACL for the same four stocks or stock groups as the SSC's recommendations. Annual catch targets (ACTs) would be used to account for management uncertainty, and would be set at a proportion of the ACL (75 percent, for example). Discards would be deducted from the ACT to establish the total allowable landings (TAL). The differences among the options would be the allocation of the TALs.

1. ACLs, ACTs, TALs by stock: This option would establish ACLs, ACTs, and TALs for each of the four stocks or stock grouping for which the Council's SSC set an ABC. The Whiting AP recently recommended this approach for the southern TALs (southern red hake and the southern combined whiting TAL), but not for the northern TALs (northern red hake and northern silver hake).

2. Northern TALs subdivided by area according to historic landings proportion: The Whiting AP suggested this approach at a recent meeting. The ACLs, ACTs, and TALs would be set as in Option 1, but the northern area TALs would be further subdivided into three TALs: Cultivator Shoal Exemption Area TAL, Other Exemption Areas TAL, and an incidental TAL. The “Other Exemption Areas” would consist of the Gulf of Maine Grate Raised Footrope Trawl Area, Small Mesh Areas I and II, and the Raised Footrope Trawl Areas near Cape Cod. The allocation would be made by historic landing proportion so that each area is given the opportunity to land proportionally the same amount of the overall catch limit as it has in recent years. The AP recommended using fishing years 2004-2010 to determine the appropriate proportions.
3. TALs subdivided equally by exemption area: The ACLs, ACTs, and TALs would be set as in Option 2, but the northern area TALs would be further subdivided by equally across the three areas.
4. AMs: NMFS is considering a combination of “proactive” and “reactive” accountability measures. The proactive AMs would be the use of ACTs and in-season closure authority when a TAL is projected to be reached. The reactive AM would be ACL and TAL specific pound-for-pound pay back of any overage above the catch limit or target.
5. NMFS is suggesting that no other management measures be introduced or modified through the Secretarial Amendment, in order to keep the measures as simple as possible while meeting the action’s objectives.

Special Accommodations

The public meeting will be accessible to people with physical disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Debra Lambert (301-713-2341), at least 7 days prior to the meeting.

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

Dated: September 13, 2011.

Samuel D. Rauch, III.

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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