F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This direct final rule imposes no requirements on tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This action is not subject to EO 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12886.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This direct final rule makes revisions and clarifications to the rule and should not result in increased emissions beyond those described in the final rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Particulate matter, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 15, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–32830 Filed 12–22–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 110816505–1734–02]

RIN 0648–BB39

Fisheries of the Northeastern United States; Northeast Multispecies Fishery Management Plan; Secretarial Amendment

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

ACTION: Proposed rule; notice of availability of a Secretarial amendment; request for comments.

SUMMARY: NMFS proposes a Secretarial Amendment to the Northeast Multispecies Fishery Management Plan to establish a mechanism for specifying annual catch limits and accountability measures for the small-mesh multispecies fishery. The Secretarial Amendment, incorporating a draft Environmental Assessment and an Initial Regulatory Flexibility Analysis, is available for public comment. NMFS is proposing this amendment because the New England Fishery Management Council has been delayed in implementing the mechanism to specify annual catch limits and accountability measures for the silver hake, red hake, and offshore hake stocks. This amendment is intended to comply with the Magnuson-Stevens Fishery Conservation and Management Act requirements for establishing a mechanism for specifying annual catch limits and accountability measures in this fishery.

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on February 21, 2012.

ADDRESSES: An environmental assessment (EA) was prepared for the Secretarial Amendment that describes the proposed action and other considered alternatives, and provides an analysis of the impacts of the proposed measures and alternatives. Copies of the Secretarial Amendment, including the EA and the Initial Regulatory Flexibility Analysis (IRFA), are available on request from Daniel Morris, Acting Regional Administrator, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available online at *http://www.nero.noaa.gov.*

You may submit comments, identified by NOAA–NMFS–2011–0206, by any one of the following methods:

- *Electronic Submissions:* 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.
- *Fax:* (978) 281–9135, Attn: Moira Kelly.
- *Mail:* Daniel Morris, Acting Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Whiting Secretarial Amendment.''

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.* 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.

SUPPLEMENTARY INFORMATION:

Background

The small-mesh multispecies complex is composed of five stocks of three species of hakes (northern silver hake, southern silver hake, northern red hake, southern red hake, and offshore hake), and the fishery is managed through a series of exemptions from the other provisions of the Northeast Multispecies Fishery Management Plan (FMP). Amendment 19 to the FMP was initiated by the New England Fishery Management Council (Council) in 2009 to establish a mechanism for specifying annual catch limits (ACLs) and accountability measures (AMs) for the small-mesh multispecies fishery as required by the 2007 reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), but the Council postponed development of the amendment in order to include the results of an updated stock assessment in November 2010. Developing the amendment has been further delayed by the Council due to other pressing actions, and Amendment 19 is not scheduled to be implemented until October 2012, well past the Magnuson-Stevens Acts' deadline for implementing ACLs and AMs. NMFS has determined that it is necessary and appropriate, under section 304(c)(1)(A) of the Magnuson-Stevens Act, to develop a Secretarial Amendment in order to bring the small-mesh multispecies fishery into compliance with the Magnuson-Stevens Act requirements concerning ACLs and AMs.

To date, the Council has made a number of preliminary decisions regarding what alternatives will be included in Amendment 19. For the Secretarial Amendment, NMFS is proposing measures that are similar to those that are expected to be in Amendment 19 in order to minimize confusion and disruption for the industry when the Council's amendment, if approved, is implemented. NMFS is proposing to implement the overfishing limits (OFLs), acceptable biological catch limits (ABCs), and the ACL framework that the Council is considering for Amendment 19.

Amendment Development

When a Secretarial Amendment is being developed, according to section 304(c)(2)(A) of the Magnuson-Stevens Act, the Secretary must ''conduct public hearings, at appropriate times and locations in the geographical areas concerned, so as to allow interested parties an opportunity to be heard in the preparation and amendment of the plan and any regulations implementing the plan.'' In order to satisfy this requirement, NMFS published an Advanced Notice of Proposed Rulemaking (76 FR 57944) on September 19, 2011. Public hearings were held in East Setauket, NY; Toms River, NJ; Gloucester, MA; and Narragansett, RI, and public comments were accepted until October 19, 2011. In general, commenters expressed concern on what effect a stock area total allowable landings (TAL) level would have on the inshore Gulf of Maine exemption areas; how much influence the years that the Council chose for potentially sub-dividing the northern area TALs would have on future actions; and recommended that any new trips limits not be too restrictive and set at such a level as to protect historical participants. NMFS took these comments into consideration during the development of the preferred alternatives and addressed the issues raised by the commenters in the EA.

Proposed Measures

The Council does not yet have a set of preferred alternatives, so NMFS is proposing the broadest, most general of the Council's current alternatives. In choosing the preferred alternatives for the Secretarial Amendment, NMFS intends to meet the requirements of the law, while preserving the Council's flexibility for measures to be proposed in Amendment 19. In doing so, NMFS considered but rejected for this amendment one of the Council's alternatives for a more complicated, sub-divided quota system in the northern area; however, this is not intended to preclude the Council from recommending this alternative in Amendment 19.

1. Mechanism for Specifying OFLs, ABCs, ACLs, TALs, and the Specification Process

The Magnuson-Stevens Act requires that each FMP establish ''a mechanism for specifying annual catch limits * * * at such a level that overfishing does not occur in the fishery, including measures to ensure accountability.'' In order to do that for the small-mesh multispecies fishery, the first step is to estimate the OFL for each stock. The OFL is the amount of catch above which overfishing is deemed to be occurring, that is, it is a status determination criterion for overfishing. It is an annual limit derived as the product of current exploitable biomass and the current rate of fishing, after taking into account the variance of each factor. To calculate this, the Council's Small-Mesh Multispecies Plan Development Team (PDT) derived a distribution of the OFL, and the OFL is equal to the 50th percentile of that distribution. The 3-year moving average biomass estimate for silver hake is estimated using the fall trawl survey; and the 3-year moving average biomass estimate for red hake is estimated using the spring trawl survey, based on guidance from the Council's Scientific and Statistical Committee (SSC) and the November 2010 stock assessment. No reliable estimates for offshore hake are available. For fishing years 2012–2014, the OFLs would be as follows:

TABLE 1—FISHING YEARS 2012–2014 OFLS

	OFL (mt)	OFL (lb)
Northern Red Hake	314	692,252
Northern Silver Hake	24,840	54,762,830
Southern Red Hake	3,448	7,601,539
Southern Silver Hake	62,301	137,350,200

The second step in establishing ACLs is to account for uncertainty in the OFL estimate by estimating the acceptable biological catch, or ABC. ABC is the level of catch that accounts for scientific uncertainty in the estimate of the OFL and any other scientific uncertainty. Based on guidance from the SSC, the ABCs would be based on the OFLs and would be set equal to the 40th percentile of the OFL distribution for both red hake stocks, and the 25th percentile for both silver hake stocks (Table 2). In order to account for offshore hake, which are caught incidentally in the southern silver hake fishery and are marketed together as ''whiting,'' the southern silver hake ABC would be increased by 4 percent.

TABLE 2—FISHING YEARS 2012–2014 ABCS

	OFL	Percentile of OFL distribution	Percent of OFL	ABC
Northern Red Hake	314 mt (692,252 lb)	40th	89.17	280 mt (617,294 lb).
Northern Silver Hake	24,840 mt (54,762,830 lb)	25th	53.05	13,177 mt (2,9050,310 lb).
Southern Red Hake	3,448 mt (7,601,539 lb)	40th	94.52	3,259 mt (7,184,865 lb).
Southern Whiting*	62,301 mt (137,350,200 lb)	25th	54.48	33,940 mt (74,824,890 lb).

* Southern Whiting ABC = Silver Hake 25th percentile of OFL (32,635 mt) + 4% (1,305 mt).

The final step in estimating the ACLs, after estimating OFL and ABC, as described above, is to take into account any uncertainty in the ability of managers to effectively implement the recommended catch levels. The Council has recommended that ACLs for the small-mesh multispecies fishery be set equal to 95 percent of the corresponding ABC to account for management uncertainty. The mechanism to establish ACLs for the small-mesh multispecies fishery results in four ABCs (northern red hake, northern silver hake, southern red hake, and southern whiting), set below their respective OFLs to account for scientific uncertainty, and four corresponding ACLs, set below ABC to account for management uncertainty, where ACL = 95 percent ABC (Table 3.)

TABLE 3—FISHING YEARS 2012–2014 ABCS AND ACLS FOR SMALL-MESH MULTISPECIES

	ABC	ACL (95% of ABC)
Northern Red Hake	280 mt (617,294 lb)	266 mt (586,430 lb).
Northern Silver Hake	13,177 mt (2,9050,310 lb)	12,518 mt (27,597,470 lb).
Southern Red Hake	3,259 mt (7,184,865 lb)	3,096 mt (6,825,512 lb).
Southern Whiting	33,940 mt* (74,824,890 lb)	32,243 mt (71,083,650 lb).

* Southern Whiting ABC = Silver Hake 25th percentile of OFL (32,635 mt) + 4% (1,305 mt).

This action would also implement TALs on a stock area basis, with southern silver and offshore hake combined. This would result in four TALs (Table 4) that relate directly to the ACLs recommended by the SSC and the Council. Discards and a state landings estimate would be deducted from the ACLs, and stock area TALs would be used as the management limit. At its September 2011 meeting, the Council recommended a 3-percent allowance for state landings. The Council also recommended using a discard estimate based on the average discards from 2008–2010 for all stocks.

TABLE 4—FISHING YEAR 2012–2014 ACLS AND TALS

	Northern Red Hake	Northern Silver Hake	Southern Red Hake	Southern Whiting
ACL	266 mt	12,518 mt	3,096 mt	32,243 mt.
State Landings (3%)	3.35 mt	281.65 mt	33.44 mt	841.54 mt.
Discard Percentage 2008–2010.	58%	25%	64%	13%.
Discards	154.28 mt	3,129.5 mt	1,981.44 mt	4,191.59 mt.
Total Federal TAL (mt)	108 mt	9,106 mt	1,081 mt	27,084 mt.
Total Federal TAL (lb)	238,099 lb	20,075,290 lb	2,383,197 lb	59,710,000 lb.

Specifications Process

Specifications would be set on a 3-year cycle, starting with the first year of implementation of the Secretarial Amendment. This process would update the OFLs, ABCs, ACLs, and TALs based on the most recent available information using the framework mechanisms described above. Data that should be available for the specifications setting process should include, but not limited to, new survey biomass indices, reported landings, estimated discards, and estimates of state-waters landings.

The Council, the Small-Mesh Multispecies Plan Development Team (PDT), and the Small-Mesh Multispecies Oversight Committee would monitor the status of the small-mesh multispecies fishery and resource. The Small-Mesh Multispecies PDT would meet to review the status of the stocks and the fishery. Based on this review, the PDT would provide a report to the Council on any changes or new information about the small-mesh multispecies stocks and/or fishery, and it should recommend whether the specifications for the upcoming year(s) need to be modified. If necessary, the Small-Mesh Multispecies PDT would provide advice and recommendations to the Small-Mesh Multispecies Oversight Committee and the Council regarding the need to adjust measures for the small-mesh multispecies fishery to better achieve the FMP's objectives.

The PDT's recommendations would include the following information: OFL and ABC estimates for the next 3 fishing years, based on the control rules; ACLs that are set equal to 95 percent of the corresponding ABC; TALs that are calculated using an estimate of discards based on the most recent 3-year moving average for which data are available and an appropriate estimate of state-waters landings; an evaluation of catches compared to the ABCs in recent years; and any other measures that the PDT determines are necessary to successfully implement the ACL framework, including, but not limited to, adjustments to the management uncertainty buffer between ABC and ACL.

The PDT would provide these recommendations to the SSC for review. The SSC would either approve the PDT's recommendations or provide alternative recommendations to the Council. The Council would then consider the SSC's and PDT's recommendations and make a decision on the specifications for the next 3 fishing years. The Council must establish ACLs that are equal to or lower than the SSC's recommended ABCs. Once the Council has approved ACLs, they would be submitted to NMFS for approval and implementation. After receipt of the Council's ACLs, NMFS would review the recommendations and implement the ACLs in a manner consistent with the Administrative Procedure Act, if it is determined that the ACLs are consistent with applicable law. If the ACLs are determined to be inconsistent with applicable law, NMFS may publish alternative specifications that do not exceed the SSC's recommendations and are consistent with applicable law. If new ACLs are not implemented for the start of the new specifications cycle, the old ACLs would remain in effect until they are replaced.

2. Accountability Measures

NMFS is proposing both a proactive (in-season) and a reactive (post-season) AM framework for the small-mesh multispecies fishery. NMFS intends for the two AMs to complement each other and to work jointly to ensure that the catch limits are not exceeded, and if they are, to mitigate the potential harm to the small-mesh multispecies stocks.

In-Season AM: Incidental Possession Limit Trigger

This action proposes an AM that would reduce the possession of a particular stock to an incidental level when a trigger limit for that stock's TAL is projected to be reached. Under this approach, even if the TAL is exceeded, the possession limit would remain at the incidental level until the end of the fishing year. Based on a review of recent data and recommendations for the Council's Whiting Oversight Committee, NMFS is proposing the following incidental limits and triggers (Table 5).

TABLE 5—POTENTIAL INCIDENTAL POSSESSION LIMITS AND TRIGGERS

	% of TAL	Incidental limit	
Red Hake	90	400 lb	181.44 kg.
Silver Hake	90	1,000 lb	453.59 kg.

The Council's Whiting Oversight Committee recommended at its November 3, 2011, meeting that the Council's draft Amendment 19 include a range of incidental limits for comment at public hearings. The Whiting Oversight Committee has recommended 200, 300, or 400 lb (90.72, 136.08, or 181.44 kg) as the range of potential incidental limits for red hake. The Whiting Oversight Committee has also recommended 500, 1,000, or 2,000 lb (226.80, 453.59, or 907.18 kg) as the range of potential incidental limits for silver hake.

NMFS reviewed recent vessel trip report data (2006–2010) for the Secretarial Amendment. For red hake, 62.5 percent of trips that landed at least 1 lb (0.45 kg) of red hake with a small-mesh otter trawl landed 400 lb (181.44 kg) or less. The landings level for 45-percent of all trips landing at least 1 lb (0.45 kg) of red, silver, or offshore hake with a small-mesh otter trawl was less than 400 lb (181.44 kg); 1,000 lb (453.59 kg) represents nearly two-thirds of all trips. This suggests that 400–1,000 lb (181.44–453.59 kg) is roughly the current level of landings on a small-mesh trip, and that 100–400 lb (45.36–181.44 kg) is approximately the current incidental landing level for all gear types. That is, this is already the incidental level that vessels are landing, without a possession limit dictating that level.

Post-Season AM: Pound-for-Pound Payback of an ACL Overage

This AM would authorize NMFS, through the Northeast Regional Administrator, to deduct from a subsequent year's ACL any overage of a stock's ACL in a given year. In the Northeast Region, there have been two approaches to this type of management measure. For some fisheries, an overage in year 1 is deducted from the ACL in year 2. In other fisheries, the overage from year 1 is deducted from the ACL in year 3. For the small-mesh multispecies fishery, NMFS is proposing the latter approach. ACL overages that occur in one year would be deducted from the ACL in the second year after the overage occurred (i.e., year 3). This approach is recommended for the small-mesh multispecies fishery because the small-mesh multispecies fishery in the northern area is restricted by the groundfish regulations in area and season. An in-season adjustment to

an ACL might result in some exemption areas opening, while others would not. This also allows vessel owners the opportunity to prepare for the reduction with ample time to adjust their business plans.

Other Alternatives Considered

NMFS also analyzed and considered other alternatives for management measures to complement the OFL, ABC, and ACL framework described above. As required, NMFS considered and analyzed the status quo/no action alternatives for implementing a stock area TAL and a post-season AM. Alternatives considered for in-season AMs included the status quo/no action alternative, a zero possession when 100 percent of a TAL is projected to be harvested alternative, and an alternative that combined the 90-percent trigger and incidental possession limit alternative, described above, and the zero possession at 100 percent of the TAL alternative. Details of these alternatives and analysis are included in the Secretarial Amendment and EA.

Classification

Pursuant to section 304(c)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Northeast Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

Public comments on the Secretarial Amendment and its incorporated documents may be submitted through the end of the comment period stated in this notice of availability. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability and proposed rule to be considered in the decision on the amendment. To be considered, comments must be received by close of business on the last day of the comment period. See **ADDRESSES** for more information on public comments.

The Office of Management and Budget has determined that this proposed rule is not significant for the purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), which is included in the Secretarial Amendment and supplemented by information contained in the preamble to this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** of this proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the Regional Administrator (see **ADDRESSES**).

All of the entities (fishing vessels) affected by this action are considered small entities under the Small Business Administration size standards for small fishing businesses ($4.0 million in annual gross sales). Therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery is not readily available and individual vessel profitability cannot be determined directly; therefore, expected changes in gross revenues were used as a proxy for profitability.

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities To Which the Rule Would Apply

In order to fish for small-mesh multispecies, a vessel owner must be issued either a limited access northeast multispecies permit or an open access category K Northeast multispecies permit; however, there are many vessels issued both of these types of permits that may not actually fish for small-mesh multispecies. Although some firms own more than one vessel, available data make it difficult to reliably identify ownership control over more than one vessel. For this analysis, the number of permitted vessels landing small-mesh multispecies is considered to be a maximum estimate of the number of small business entities that may be impacted. The average number of permitted vessels landing at least 1 lb (0.45 kg) of silver hake or red hake from 2005–2010 was 562 vessels per year.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

In general, the economic impacts of the proposed actions are neutral to slightly negative, compared to the status quo/no action alternatives and the other alternatives considered. For northern silver hake, southern red hake, and southern whiting, the proposed catch and landing limits are much higher than recent catch and landings. The recent catch of northern red hake is above the proposed ACL, but recent landings are slightly below the proposed TAL. Given the timing constraints in developing the Secretarial Amendment and the preliminary decisions made by the Council for Amendment 19, the only other alternative that was considered for the ACL and catch limit framework was the status quo/no action alternative. In the short term, the status quo/no action, which is not legally consistent with the Magnuson-Stevens Act, would likely result in neutral impacts to the human communities involved in the small-mesh multispecies fishery. In the long-term, however, the possibility of fishing above the recommended levels may result in negative impacts to the human communities if a small-mesh multispecies stock is fished at an unsustainable level.

Also based on the Council's preliminary decisions for Amendment 19 and the timing constraints associated with the Secretarial Amendment, only the proposed reactive AM (pound-for-pound payback) and the status quo/no action alternative were considered. Not implementing a reactive accountability measure would have a neutral impact to vessels targeting small-mesh multispecies stocks because there is no change from the current management. It is possible, however, that by exceeding the ACL on a regular basis, long-term impacts on the stock could lead to long-term economic losses due to changes in the stock size. The proposed pound-for-pound payback alternative may result in short-term negative impact on the small-mesh multispecies industry by potentially reducing ACLs in the future, if an ACL is exceeded. However, the long-term impacts of maintaining catch within the recommended levels would be positive.

The proposed alternative that is most likely to have an impact in the foreseeable future is the 90-percent trigger AM for northern red hake. Using vessel trip report data from 2006–2010, a 400-lb (181.44-kg) incidental possession limit in the northern stock area, implemented when 90 percent of the northern red hake TAL is projected to be harvested, would have impacted approximately 23 trips per year, and an average of 7 vessels per year. At a loss of approximately $282 per trip, this AM would have cost the fleet $6,486 per year in lost northern red hake revenue. This may not be a true revenue loss, however. Red hake is rarely the primary target species and vessel owners are likely to shift effort onto another routinely landed incidental species, such as skates or dogfish, to finish their trip. The other in-season AM alternatives considered for this amendment included zero possession at 100 percent of the TAL, a combination of the 90-percent trigger and zero

possession at 100 percent of the TAL alternatives, and the status quo/no action alternative. The zero possession at 100 percent of the TAL alternative would likely have negative economic impacts on the small-mesh multispecies fleet. Because northern red hake is the only stock where the TAL is likely to be harvested in the near future, the Secretarial Amendment focused on the likely impacts of the alternatives to that stock. Based on 2009 vessel trip report data for northern red hake, the fishery would have harvested the proposed TAL by early September. This would have resulted in approximately $29,544 in lost revenue for the fleet (estimated at $0.37/lb for the 79,849 lb (36,219 kg) of northern red hake landed in excess of the proposed TAL (238,099 lb (108,000 kg)) for fishing year 2009). However, these losses may not be realized, as vessels may redirect the effort that would have been used to land red hake onto another incidental species, such as skates or dogfish. The impacts from the combined 90-percent trigger and zero possession at 100 percent of the TAL alternative would likely be the same as the 90-percent trigger alternative itself, as the possession limit would reduce landings such that the TAL would not likely be harvested prior to the end of the fishing year. Not implementing a proactive AM (i.e., the status quo/no action alternative) would have a neutral impact to vessels targeting small-mesh multispecies stocks because there is no change from the current management. It is possible, however, that by exceeding the recommended landing level on a regular basis, long-term impacts on the stock could lead to long-term economic losses due to changes in the stock size.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: December 20, 2011.

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 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 § 648.80, paragraphs (a)(8)(iii) and (a)(16)(iii) are revised to read as follows:

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

(a) * * *

(8) * * *

(iii) For exemptions allowing no incidental catch of regulated species, as defined under paragraph (a)(8)(i) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(c), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species. For exemptions allowing incidental catch of regulated species, as defined under paragraph (a)(8)(ii) of this section, the NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(c), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, the risk that this exemption would result in a targeted regulated species fishery, the extent of the fishery in terms of time and area, and the possibility of expansion in the fishery.

* * * * *

(16) * * *

(iii) *Annual review.* On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a minimum, the Council may take action prior to the next fishing year through the framework adjustment process specified in § 648.90(c), and in accordance with the Administrative Procedure Act.

* * * * *

3. In § 648.86, paragraph (d)(4) is added to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(d) * * *

(4) *In-season adjustment of small-mesh multispecies possession limits.* If the Regional Administrator projects that 90 percent of a stock area TAL, as defined in § 648.90(b)(3), has been landed, the Regional Administrator shall reduce the possession limit of that stock described in paragraphs (d)(4)(i) and (ii) of this section, for the remainder of the fishing year through notice consistent with the Administrative Procedure Act, unless such a reduction in the possession limit would be expected to prevent the TAL from being reached.

(i) *Red hake.* If a possession limit reduction is needed for a stock, the incidental possession limit for red hake in that stock area will be 400 lb (181.44 kg) for the remainder of the fishing year.

(ii) *Silver hake.* If a possession limit reduction is needed for a stock, the incidental possession limit for silver hake in that stock area will be 1,000 lb (453.59 kg) for the remainder of the fishing year.

* * * * *

4. In § 648.90, the introductory paragraph is revised, and paragraphs (b) and (c)(1)(ii) are revised to read as follows:

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

For the NE multispecies framework specification process described in this section, the regulated species and ocean pout biennial review is considered a separate process from the small-mesh species annual review, as described in paragraphs (a)(2) and (b)(1), respectively, of this section. In addition, the process for specifying ABCs and associated ACLs for regulated species and ocean pout, as described in paragraph (a)(4) of this section, is considered a separate process from the small-mesh species ABC and ACL process described in paragraph (b)(2) of this section.

* * * * *

(b) *Small-mesh multispecies.*—(1) *Three-year specifications process, annual review, and Stock Assessment and Fishery Evaluation.* The Council will specify on at least a 3-year basis the OFL, ABC, ACLs, and TALs for each small-mesh multispecies stock in accordance with the following process.

(i) At least every three years, based on the annual review, described below in paragraph (b)(3) of this section, and/or the SAFE Report described in paragraph (b)(4) of this section, recommendations for acceptable biological catch (ABC) from the Scientific and Statistical Committee (SSC), and any other relevant information, the Small-Mesh Multispecies PDT will recommend to the Small-Mesh Multispecies Oversight Committee and Council specifications including the OFL, ABC, ACL and TAL for each small-mesh multispecies stock the following specifications for a period of at least 3-year. The Small-Mesh Multispecies PDT and the Council will follow the process in paragraph (b)(2) of

this section for setting these specifications.

(ii) The Small-Mesh Multispecies PDT, after its review of the available information on the status of the stock and the fishery, may recommend to the Council any measures necessary to assure that the specifications will not be exceeded, as well as changes to the appropriate specifications.

(iii) Taking into account the annual review and/or SAFE Report described in paragraph (b)(2) of this section, the advice of the SSC, and any other relevant information, the Small-Mesh Multispecies PDT may also recommend to the Small-Mesh Multispecies Oversight Committee and Council changes to stock status determination criteria and associated thresholds based on the best scientific information available, including information from peer-reviewed stock assessments of small-mesh multispecies. These adjustments may be included in the Council's specifications for the small-mesh multispecies fishery.

(iv) *Council recommendation.* (A) The Council will review the recommendations of the Small-Mesh Multispecies PDT, Small-Mesh Multispecies Oversight Committee, and SSC, any public comment received thereon, and any other relevant information, and make a recommendation to the Regional Administrator on appropriate specifications and any measures necessary to assure that the specifications will not be exceeded.

(B) The Council's recommendation must include supporting documentation, as appropriate, concerning the environmental, economic, and social impacts of the recommendations. The Regional Administrator will consider the recommendations and publish a rule in the **Federal Register** proposing specifications and associated measures, consistent with the Administrative Procedure Act.

(C) The Regional Administrator may propose specifications different than those recommended by the Council. If the specifications published in the **Federal Register** differ from those recommended by the Council, the reasons for any differences must be clearly stated and the revised specifications must satisfy the criteria set forth in this section, the FMP, and other applicable laws.

(D) If the final specifications are not published in the **Federal Register** for the start of the fishing year, the previous year's specifications will remain in effect until superseded by the final rule implementing the current year's specifications, to ensure that there is no lapse in regulations while new specifications are completed.

(2) *Process for specifying ABCs, ACLs and TALs.* The Small-Mesh Multispecies PDT will calculate the OFL and ABC values for each small-mesh multispecies stock based on the control rules established in the FMP. These calculations will be reviewed by the SSC, guided by terms of reference developed by the Council. The ACLs and TALs will 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.* 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.

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

(C) *TALs.* The red hake TALs are equal to the ACLs minus a discard estimate based on the most recent 3 years of data. The red hake TALs are then reduced by 3 percent to account for red hake landings that occur in state waters.

(ii) *Silver and Offshore Hake*—(A) *ABCs.* The Council's SSC will recommend an ABC to the Council for both the northern and southern stocks of silver hake. The ABC for the southern stock of silver hake will be increased by 4 percent to account for catch of offshore hake. The silver hake and offshore hake combined ABC will be the southern whiting ABC. The silver hake and whiting 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 OFLs.

(B) *ACLs.* The northern silver hake and southern whiting ACLs are equal to 95 percent of the ABCs.

(C) *TALs.* The northern silver hake and southern whiting TALs are equal to the northern silver hake and southern whiting ACLs minus a discard estimate based on the most recent 3 years data. The northern silver hake and southern whiting TALs are then reduced by 3 percent to account for silver hake and offshore hake landings that occur in state waters.

(3) *Annual Review.* (i) The Small-Mesh Multispecies PDT will meet at least once annually to review the status of the stock and the fishery and the adequacy of the 3-year specifications. Based on such review, the PDT will provide a report to the Council on any changes or new information about the small-mesh multispecies stocks and/or fishery, and it will recommend whether the specifications for the upcoming year(s), established pursuant to paragraph (b)(1) of this section, need to be modified. At a minimum, this review should include a review of at least the following data, if available: Commercial catch data; current estimates of fishing mortality and catch-per-unit-effort (CPUE); discards; stock status; recent estimates of recruitment; virtual population analysis results and other estimates of stock size; sea sampling, port sampling, and survey data or, if sea sampling data are unavailable, length frequency information from port sampling and/or surveys; impact of other fisheries on the mortality of small-mesh multispecies; and any other relevant information.

(ii) If new and/or additional information becomes available, the Small-Mesh Multispecies PDT will consider it during this annual review. Based on this review, the Small-Mesh Multispecies PDT will provide guidance to the Small-Mesh Multispecies Oversight Committee and the Council regarding the need to adjust measures for the small-mesh multispecies fishery to better achieve the FMP's objectives. After considering guidance, the Council may submit to NMFS its recommendations for changes to management measures, as appropriate, through the specifications process described in this section, the process specified in paragraph (c) of this section, or through an amendment to the FMP.

(4) *SAFE Report.* (i) The Small-Mesh Multispecies PDT will prepare a SAFE Report at least every 3 years. Based on the SAFE Report, the Small-Mesh Multispecies PDT will develop and present to the Council recommended specifications as defined in paragraph (a) of this section for up to 3 fishing years. The SAFE Report will be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the small-mesh multispecies fishery. The SAFE Report will provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(ii) In any year in which a SAFE Report is not completed by the Small-Mesh Multispecies PDT, the annual review process described in paragraph (a) of this section will be used to recommend any necessary adjustments

to specifications and/or management measures in the FMP.

(5) *Accountability measures for the small-mesh multispecies fishery.*—(i) *In-season adjustment of possession limits.* When the Regional Administrator projects that 90 percent of a small-mesh multispecies TAL has been landed, the Regional Administrator may, through notice consistent with the Administrative Procedure Act, reduce the possession limit of that stock to the incidental level, as specified in § 648.86(d)(4), for the remainder of the fishing year.

(ii) *Post-season adjustment for an overage.* If NMFS determines that a small-mesh multispecies ACL was exceeded in a given fishing year, the exact amount of the landings overage will be deducted, as soon as is practicable, from a subsequent single fishing year's ACL for that stock, through notification consistent with the Administrative Procedure Act.

(c) * * *

(1) * * *

(ii) *Adjustment process for whiting DAS.* The Council may develop recommendations for a whiting DAS effort reduction program through the framework process outlined in paragraph (c) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

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[FR Doc. 2011–32996 Filed 12–22–11; 8:45 am]

BILLING CODE 3510–22–P