

50 CFR Part 651

[Docket No. 940796-4196; I.D. 061094B]

RIN 0648-AG84

Northeast Multispecies Fishery

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Framework Adjustment 3 to the Northeast Multispecies Fishery Management Plan (FMP). The intent of this rule is to reduce the potential for vessels to direct fishing effort on regulated multispecies finfish with mesh smaller than the regulated minimum size. This rule limits the amount of regulated species allowed on board vessels fishing with small mesh to either 500 lb (226.8 kg) or 10 percent of the weight of non-regulated species, whichever is less.

EFFECTIVE DATE: August 17, 1994.

ADDRESSES: Copies of Amendment 5, its regulatory impact review (RIR) and the initial regulatory flexibility analysis contained within the RIR, its final supplemental environmental impact statement (FSEIS), and Framework Adjustment 3 are available upon request from Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906-1097.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, NMFS, Fishery Policy Analyst, 508-281-9252.

SUPPLEMENTARY INFORMATION:**Background**

NMFS approved Amendment 5 to the FMP on January 3, 1994. The primary purpose of Amendment 5 is to eliminate the overfished condition of the primary stocks of the multispecies complex by increasing the spawning stock biomass per recruit. This objective is to be achieved primarily through an effort reduction program supplemented by an increase in the minimum mesh size that vessels can use while fishing for regulated species.

By increasing mesh size, fishing mortality rates on fully recruited ages would not have to be reduced as much to achieve the same increase in spawning stock biomass per recruit. Therefore, under Amendment 5, vessels fishing for non-regulated species and using nets with mesh smaller than the regulated minimum size were limited to 500 lb (226.8 kg) of regulated species. The intent of this limited allowance was

to enable legitimate small-mesh fisheries to continue without compromising efforts to conserve regulated species through the mesh-size increase.

NMFS implemented minimum mesh size increases, regulated mesh areas, and the 500-lb (226.8-kg) possession limit of regulated species that applies to fishing vessels fishing with small mesh included in Amendment 5 on March 1, 1994 (59 FR 9872). The New England Fishery Management Council (Council) developed Framework Adjustment 3 in response to industry concerns that, under current stock conditions, the 500-lb (226.8-kg) possession limit is sufficient incentive for vessel operators to target regulated species with small-mesh nets. When the Council began development of Amendment 5, a 500-lb (226.8-kg) possession limit was considered too low to encourage targeting. Since then, the stocks have further deteriorated and, as a result, catch rates are reduced to the point where 500 lb (226.8 kg) is viewed as an opportunity to catch what many vessel operators now consider a reasonable day's catch in less time, using small mesh. Therefore, instead of directing their effort during times and in areas where small-mesh species are traditionally caught with a relatively small (less than 10 percent) bycatch of regulated species, these vessels could target areas where regulated species have historically been caught, with a potentially far greater impact on those stocks.

The Council's and NMFS' intent is to prevent vessels from targeting regulated species with small-mesh nets, consistent with the explicit objectives of Amendment 5. From the time Amendment 5 was approved in January 1994, fishermen and their association representatives have described to the Council how vessels are gearing up to target regulated species with small-mesh nets under the 500-lb (226.8-kg) possession limit. The purpose of this framework adjustment is to preserve the continuation of legitimate small mesh fisheries, with limited incidental catches of regulated species, while preventing a directed small-mesh fishery for regulated species under the 500-lb (226.8-kg) possession limit. Restricting the amount of regulated species a vessel may retain on board, or land per trip, while fishing with small mesh nets, unless the vessel is fishing under the net stowage exemption specified under § 651.20(c)(3)(i) or (d)(3)(ii), to 10 percent of the weight of non-regulated species, to a maximum of 500 lb (226.8 kg), will not impose any significant restrictions on existing

small-mesh fisheries, but will create a disincentive for vessels to begin targeting regulated species with small mesh. Therefore, this framework action preserves the Council's intent by: (1) Discouraging this practice, (2) allowing a reasonable bycatch in legitimate small-mesh fisheries, and (3) allowing a 500-lb (226.8-kg) trip limit for vessels targeting regulated species using nets with the regulated minimum mesh size.

In this rule, NMFS is also adding language to the small-mesh provisions for the Mid-Atlantic area and the Southern New England area to clarify that small mesh may not be used to harvest more than the possession limit of regulated species.

NMFS is amending the multispecies regulations following the framework abbreviated rulemaking procedure established by Amendment 5 and codified at 50 CFR part 651, subpart C. The Council followed the procedure required in 50 CFR part 651 when making specifically allowed adjustments to the FMP, by developing and analyzing the actions over the span of a minimum of two Council meetings on March 17, and April 7, 1994. The Council provided the public with advance notice of both the proposal and the analysis, and an opportunity to comment on them prior to and at the second Council meeting on April 7. Upon review of the analysis and public comment, the Council recommended to the Director, Northeast Region, NMFS (Regional Director), that the measures contained in Framework 3 be published as a final rule. The Regional Director has further determined that the measures in Framework 3 are appropriate to publish as a final rule.

Since the Council undertook development of Amendment 5, the condition of several stocks of regulated species has deteriorated further. In fact, each new assessment of multispecies stocks underlines the urgency of implementing rigorous and effective management measures. The framework adjustment that this rule implements will enhance the conservation impact of the FMP without generating a significant economic or social impact.

Comments and Responses

During the period following the approval of Amendment 5 and preceding the Council's formal initiation of this framework adjustment, a number of industry members and interested members of the public commented on the problems with the current possession limit rule for regulated species. All comments were in support of the Council expeditiously making the adjustment contained in this

rule. During this pre-framework period, two individuals submitted written comments alerting the Council to the problem and urging it to take appropriate action.

During the comment period spanning the two required Council meetings, the Council received written comments from the West End Fishermen's Association and one individual. Oral comments were made to the Council by representatives of the Conservation Law Foundation, Mid-Atlantic Fisheries Management Council, Point Judith Fishermen's Co-operative Association, Offshore Mariner's Association, Gloucester Fisheries Commission, and two individuals.

After the Council submitted its recommendations to NMFS, NMFS received additional written comments from the New Hampshire Commercial Fishermen's Association and 37 individuals.

Comment: During the period in which the Council was developing the framework recommendation, four associations and one individual stated support for the proposed adjustment. After the Council submitted its recommendation, one association submitted comments to NMFS, also in support.

Response: The comments have been noted and the adjustment has been approved.

Comment: Two associations questioned whether the rule is a "possession limit," enforced at sea, or a "trip limit," enforced at the dock at the end of the trip.

Response: The 500-lb (226.8-kg) possession limit and the 10 percent limit of regulated species when using small mesh will be enforced at sea and at the dock. However, the Coast Guard acknowledged the difficulty in enforcing the percentage of the total catch at sea and indicated that discretion will have to be used by the boarding official when evaluating the catch for regulated versus non-regulated species.

Comment: During the period in which the Council was developing the framework recommendation, three individuals opposed adding the percentage aspect of the rule. After the Council submitted its recommendation, 37 individuals submitted comments to NMFS also opposing adding the percentage aspect of the rule. They maintained that a straight 500-lb (226.8-kg) limit would enable small vessels to survive economically and would not force these boats to search for and catch non-regulated species in order to keep the limit of regulated species, or to discard regulated species if the non-

regulated species could not be caught or landed. It was stated that a directed fishery on regulated species with small mesh is only perceived as a problem and is not substantiated. Further, it was maintained that there has been sufficient time for public comment throughout the development of Amendment 5 and that the 500-lb (226.8-kg) provision should be given a chance to work.

Response: Based on Council findings and other public comments, the potential of a directed small-mesh fishery on regulated species is strong. This potential was not as evident at the time Amendment 5 was approved. In adopting the original possession limit in Amendment 5, the Council did not intend to allow directed small-mesh effort on regulated species. Given the severely depleted state of the primary regulated species, NMFS has determined that it must support the Council's framework recommendation as a necessary, risk averse measure. Nevertheless, the new possession limit measure will still allow vessels fishing with small mesh to continue with a minimum allowance for incidentally caught regulated species. Accordingly, there should be no negative impact on traditional small-mesh fisheries.

Classification

This regulation is not subject to the requirements to prepare a proposed rule because adequate opportunity was provided for prior public comment when the action was proposed and discussed over the course of two Council meetings. Because no proposed rule was required, this action is exempt from the procedures of the Regulatory Flexibility Act.

This final rule is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA, finds there is good cause to waive prior notice under 5 U.S.C. 553(b)(B). Public meetings held by the Council to discuss the management measures implemented by this rule provided adequate opportunity for public comment to be considered. Thus, additional opportunity for public comment is unnecessary.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 12, 1994.

Charles Karnella,
Acting Program Management Officer,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

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

2. Section 651.9 is amended by revising paragraphs (b)(1), (d), and (e)(2) introductory text to read as follows:

§ 651.9 Prohibitions.

* * * * *

(b) * * *

(1) Possess at any time during a trip, or land per trip, more than the possession limit of regulated species per trip as specified in § 651.27(a), after accruing the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 651.22.

* * * * *

(d) In addition to the prohibitions specified in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel issued a possession-limit-only permit under § 651.4(c) to possess at any time during a trip, or land per trip, more than the possession limit of regulated species as specified in § 651.27(a).

(e) * * *

(2) Possess at any time during a trip, or land per trip, more than the possession limit of regulated species as specified in § 651.27(a) unless:

* * * * *

3. Section 651.20 is amended by revising paragraphs (a)(3)(i), (a)(4)(i)(A), (c)(3)(i), (c)(3)(ii), (d)(3)(i), (d)(3)(ii), (e)(1)(iv), and (f)(4) to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(i) *Possession limit exemption.* A vessel may not possess on board at any time during a trip, or land per trip, more than the possession limit of regulated species as specified in § 651.27(a).

* * * * *

(4) * * *

(i) * * *

(A) A bycatch limit not to exceed the possession limit of regulated species as specified in § 651.27(a).

* * * * *

(c) * * *

(3) * * *

(i) *Possession limit exemption.* Vessels in the Southern New England regulated mesh area may fish with nets of mesh size smaller than the minimum size specified in paragraph (c)(2) of this section, provided such vessels do not possess at any time during a trip, or

land per trip, more than the possession limit of regulated species as specified in § 651.27(a).

(ii) *Net stowage exemption.* Vessels may possess more than the possession limit of regulated species as specified in § 651.27(a) while in possession of nets with mesh less than the minimum size specified in paragraph (c)(2) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that more than the possession limit of regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(2) of this section.

(d) * * *
(3) * * *

(i) *Possession limit exemption.* Vessels in the Mid-Atlantic regulated mesh area may fish with nets of mesh size smaller than the minimum size specified in paragraph (d)(2) of this section, provided such vessels do not possess or land per trip more than the possession limit of regulated species as specified in § 651.27(a).

(ii) *Net stowage exemption.* Vessels may possess more than the possession limit of regulated species as specified in § 651.27(a) while in possession of nets with mesh less than the minimum size specified in paragraph (d)(2) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(4) of this section, and provided that more than the possession limit of regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (d)(2) of this section.

(e) * * *
(1) * * *

(iv) The bycatch does not exceed the possession limit of regulated species as specified in § 651.27(a).

(f) * * *

(4) The bycatch of regulated species does not exceed the possession limit of regulated species as specified in § 651.27(a).

4. Section 651.22 is amended by revising paragraphs (c)(1)(i) heading, (c)(1)(i)(B), and (d)(2)(ii) to read as follows:

§ 651.22 Effort-control program for limited access vessels.

(c) * * *
(1) * * *

(i) *Days in which vessels may not possess more than the possession limit*

of regulated species as specified in § 651.27(a).

(B) During each period of time declared, the applicable vessel may not possess more than the possession limit of regulated species as specified in § 651.27(a).

(d) * * *
(2) * * *

(ii) A sink gillnet vessel greater than 45 ft (13.7 m) in length that intends to fish for, possess or land, or does possess or land, more than the possession limit of regulated species as specified in § 651.27(a) with gear other than sink gillnet gear, or has other gear on board that is not stowed as described in § 651.20(c)(4), at any time during a calendar year may fish under and shall be subject to, the DAS effort reduction program of this part, except on trips that qualify for the exemption set forth in paragraph (d)(2)(i) of this section;

5. Section 651.27 is amended by revising paragraphs (a) heading, (a)(1), (a)(2), and (a)(4) to read as follows:

§ 651.27 Possession limits.

(a) *Regulated Species possession limit.*—(1)(i) *Vessels fishing with nets of mesh size as specified in § 651.20.* Vessels subject to the effort control programs specified in § 651.22 and issued a limited access permit under § 651.4(a) that are not fishing under the DAS program, or have declared out of the DAS program, vessels subject to effort control programs specified in § 651.22 that have used up their DAS allocations, vessels issued hook-gear-only permits that are fishing with gear other than hook gear, vessels fishing exclusively with a sink gillnet permit that are fishing with gear other than gillnet gear, and vessels issued a possession-limit-only permit under § 651.4(c) are prohibited from possessing on board at any time during a trip, or landing per trip, more than 500 lb (226.8 kg) of regulated species, provided that the regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in § 651.20 (a)(2), (b)(2), (c)(2), and (d)(2).

(ii) *Vessels fishing with nets of mesh smaller than the minimum mesh size as specified in § 651.20.* (A) Any vessel fishing with or possessing on board nets of mesh smaller than the regulated minimum size as specified § 651.20(a) while fishing in the small-mesh exemption area as described under § 651.20(a)(3), or any vessel fishing with nets of mesh smaller than the regulated

minimum size as specified in § 651.20 (c) and (d), is prohibited from possessing on board at any time during a trip, or landing per trip, regulated species in excess of 10 percent, by weight, of all other species on board, or 500 lb (226.8 kg), whichever is less.

(B) While fishing in areas as specified in § 651.20 (c) and (d), vessels may possess on board at any time during a trip, or land per trip, regulated species in excess of 10 percent, by weight, of all other species on board, up to a maximum of 500 lb (226.8 kg) while in possession of nets of mesh smaller than the minimum size if these nets are stowed and are not available for immediate use in accordance with § 651.20 (c)(4) and (d)(3)(i), provided that more than the possession limit of regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in § 651.20 (c) and (d).

(2) Vessels subject to the regulated species possession limit shall have on board the vessel at least one standard box or one standard tote.

(4) The maximum possession limit of regulated species, as specified in paragraph (a)(1) of this section, is equal to 500 lb (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes. The 10-percent requirement, specified under paragraph (a)(1)(ii) of this section, may be measured volumetrically.

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50 CFR Part 675

[Docket No. 931100-4043; I.D. 071394B]

Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Pacific ocean perch total allowable catch (TAC) in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), July 14, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.