

peer reviewers to comment during the public comment period on the specific assumptions and conclusions regarding the proposed prudency determination. We will consider all comments and information received during the comment period on this proposed determination during preparation of a final determination. Accordingly, the final decision may differ from this proposal.

#### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed determination easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed determination clearly stated? (2) Does the document contain technical jargon that interferes with the clarity? (3) Does the format of the document (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section helpful in understanding the proposed determination? (5) What else could we do to make this proposed determination easier to understand? Send a copy of any comments on how we could make this proposed determination easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This proposed determination does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This determination will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register**

on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

#### Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. We have determined that there are no Tribal lands occupied at the time of listing contain the features essential for the conservation and no tribal lands that are unoccupied areas that are essential for the conservation of *Trichostema austromontanum* ssp. *compactum*. Therefore, no tribal lands will be affected by this finding.

#### References Cited

A complete list of all references cited in this finding is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

#### Author

The primary author of this document is staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: September 19, 2006.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 06-8190 Filed 9-25-06; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 060906236-6236-01; I.D. 083006B]

**RIN 0648-AU83**

### Fisheries of the Northeastern United States; Method For Measuring Net Mesh Size

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

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

**SUMMARY:** NMFS proposes to amend the regulations governing how fishing net mesh size is measured in the Northeast. This proposed change would increase the weight used to measure mesh larger than 120 mm (4.72 inches) in all fisheries. The intent of this proposed rule is to ensure consistent and accurate measurements of fishing net mesh size.

**DATES:** Written comments must be received no later than 5 p.m. local time on October 26, 2006

**ADDRESSES:** Comments may be submitted by any of the following methods:

E-mail: [MeshRegChange@noaa.gov](mailto:MeshRegChange@noaa.gov)  
Federal e-Rulemaking Portal: <http://www.regulations.gov>.

Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. Please write on the envelope: Comments on Proposed Change to Mesh Measurement Regulations.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Management Specialist, (978) 281-9341, FAX (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

NOAA Office of Law Enforcement, U.S. Coast Guard, and state enforcement partners have recently issued a clarification of the method used in measuring fishing net mesh size. This protocol closely follows the regulatory language, at 50 CFR Part 648, that a wedge-shaped net measurement gauge be allowed to settle under a specified weight, without shaking the net or pressing on the gauge to force it deeper into the mesh opening. This clarification eliminated some of the

variation in methods used previously by the various enforcement agencies and personnel. However, the New England Fishery Management Council (Council) raised a concern that the twine bars of stiffer twines (especially those used in larger mesh) may not align properly under a load of 5 kg (11.02 lb), the specified force for all mesh sizes for many years. This has led to an increase in citations for mesh-size violations on gear that had previously measured as legal.

The Council has requested that the NMFS increase the weight to 8 kg (17.64 lb) for measuring the opening in mesh greater than 120 mm (4.72 inches). The increased weight would produce a force consistent with the recommendations of the International Council for the Exploration of the Seas (ICES) in the 2004 report *Mesh Size Measurement Revisited*, which were incorporated into ICES's new OMEGA (Objective Mesh Gauge) mesh measurement gauge. The 5-kg weight would continue to be used to measure mesh smaller than 120 mm. Other measurement systems require frequent calibration and/or are subject to loss of battery power. The wedge gauge also has a long established case history in the Northeast.

It is not expected that the increased weight would result in any de facto reduction in legal mesh size. Scientific studies that determine the selectivity and retention of specific mesh sizes typically use a longitudinal measuring force such as the old ICES gauge or the new OMEGA gauge rather than the wedge. The increased weight is not enough to significantly distort the mesh and would not result in the use of mesh smaller than that considered in previous analyses of environmental impacts.

#### Classification

NMFS has determined that this proposed rule is consistent with the FMPs and preliminarily determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Regional Administrator has determined that this proposed rule is a minor technical addition, correction, or change to a management plan and is therefore categorically excluded from

the requirement to prepare an Environmental Impact Statement or equivalent document under the National Environmental Policy Act.

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. This amendment would not change the minimum mesh size for any fishery or require any fishermen to purchase new gear. The only economic impact of the proposed rule would be to law enforcement agencies to acquire the additional weights. In addition, because this rule is expected to correct the increase in mesh size violations on gear that had previously measured legally, this rule may provide an economic benefit to fishermen. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

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

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 20, 2006.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 648 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, paragraph (a)(2)(ii) is revised to read as follows:

#### § 648.51 Gear and crew restrictions.

(a) \* \* \*

(2) \* \* \*

(ii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), 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. 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.

\* \* \* \* \*

3. In § 648.80, paragraph (f)(2) is revised to read as follows:

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

\* \* \* \* \*

(f) \* \* \*

(2) *All other nets.* With the exception of gillnets, mesh size is measured by a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), 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 § 648.104, paragraph (a)(2) is revised to read as follows:

#### § 648.104 Gear restrictions

(a) \* \* \*

(2) Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches), and a thickness of 2.3 mm (0.09 inches), 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. 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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