2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Vehicle and brakes manufacturers typically do not qualify as small entities. Further, aside from the relatively small cost impacts noted above, the amendments will not affect costs or benefits beyond those addressed in the FEA for the ABS final rule. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. No State laws are affected.

4. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act of 1969. The agency has determined that implementation of this action will not have any significant effect on the quality of human environment. This final rule will result in no changes to motor vehicle or motor vehicle equipment production or disposal processes.

5. Executive Order 12778 (Civil Justice Reform)

This rulemaking will have no retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles produced for use in that State. The 49 U.S.C. 30161 sets forth a procedure for judicial review of rulemakings establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency is amending FMVSS No. 121, Air Brake Systems, in title 49 of the Code of Federal Regulations, Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.121 is amended by adding a new definition of ''Effective Projected Luminous Lens Area'' to S4; by revising S5.2.3.3(c)(1); and by adding S5.2.3.3(c)(3) to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S4. Definitions

* * * * *

Effective projected luminous lens area means that area of the projection on a plane perpendicular to the lamp axis of that portion of the light-emitting surface that directs light to the photometric test pattern, and does not include mounting hole bosses, reflex reflector area, beads or rims that may glow or produce small areas of increased intensity as a result of uncontrolled light from small areas (½ degree radius around the test point).

* * * * *

S5.2.3.3 Antilock malfunction indicator

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(c) Location requirements. (1) Each trailer that is not a trailer converter dolly shall be equipped with a lamp mounted on a permanent structure on the left side of the trailer as viewed from the rear, no closer than 150 mm (5.9 inches), and no farther than 600 mm (23.6 inches) from the red rear side marker lamp, when measured between the closest edge of the effective projected luminous lens area of each lamp.

* * * * *

(3) Each trailer that is not a trailer converter dolly and on which the malfunction indicator lamp cannot be placed within the location specified in S5.2.3.3(c)(1) shall be equipped with a lamp mounted on a permanent structure on the left side of the trailer as viewed from the rear, near the red rear side marker lamp or on the front face of the left rear fender of a trailer equipped with fenders.

* * * * *

Issued: February 5, 1998.

Ricardo Martinez, M.D.

Administrator.

[FR Doc. 98–3629 Filed 2–13–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 970829217–8025–02; I.D. 081597E]

RIN 0648–AJ79

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 18

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 18 to the Northeast Multispecies Fishery Management Plan (FMP). Framework Adjustment 18 allows pelagic midwater trawling for herring and mackerel in Multispecies Closed Areas I and II, the Gulf of Maine (GOM) multispecies closure areas, and in the Nantucket Lightship Closed Area, under certain conditions. The intent of this rule is to provide greater economic opportunity for pelagic midwater trawl vessels to harvest herring and mackerel while maintaining the conservation benefits of the current multispecies management measures.

DATES: Effective February 17, 1998.

ADDRESSES: Copies of Amendment 7 to the FMP, its regulatory impact review (RIR), and the final regulatory flexibility analysis (FRFA) contained within the RIR, its final supplemental environmental impact statement, and Framework Adjustment 18 documents are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097.

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, NMFS, Fishery Policy Analyst, 508–281–9279.

SUPPLEMENTARY INFORMATION:

Background

In 1994, at the request of the New England Fishery Management Council (Council), NMFS, by emergency action, closed three large areas of the Northeast multispecies fishery for the duration of the emergency to all fishing gear capable of catching multispecies (59 FR 63926, December 12, 1994, and amended at 60 FR 3102, January 13, 1995). These areas, known as Closed Areas I and II and the Nantucket Lightship Closed Area, cover approximately 4,800 square miles

(12432 sq. km.). In order to avoid a hiatus between the emergency action and the implementation of Amendment 7, the Council proposed and NMFS issued Framework Adjustment 9 (60 FR 19364, April 18, 1995) to implement the emergency measures on a permanent basis while Amendment 7 was being developed to address a long term objective of stock rebuilding. In 1996, Amendment 7 to the FMP continued the existing year-round closures and closed seasonally three additional large areas in the GOM (61 FR 27710, May 31, 1996). These areas currently remain closed to all gear capable of catching multispecies, including pelagic midwater trawls.

Recently, the Council was requested by industry participants to allow pelagic midwater trawling for herring and mackerel in the multispecies closed areas because these fisheries capture negligible amounts of regulated multispecies due to the spatial separation of pelagic and demersal species in the water column. Because of the low value of herring and mackerel, it is important to the industry that vessels have unimpeded access to these species throughout their migrations to ensure that the harvesting and/or processing capacity of the vessels is maximized. Large closed areas impede access and make fishing for herring and mackerel economically less feasible. These pelagic species are very important for commercial fishing vessels in New England that participate in joint ventures or in the directed domestic fishery. Due to the prohibition on fishing in closed areas and an increased reliance on closed areas for multispecies mortality reduction, it has become increasingly difficult to conduct these pelagic fishing operations.

Further details concerning justification for, and development of, Framework Adjustment 18 were provided in the preamble to the proposed rule (62 FR 49193, September 19, 1997).

This framework allows pelagic midwater trawling for herring and mackerel in Closed Areas I and II, the Nantucket Lightship Closed Area, and in the GOM Closed Areas (§ 648.81(a), (b), and (c)) under the following conditions: (1) Vessels must obtain and comply with a midwater trawl letter of authorization (LOA)(as currently required under § 648.80(d)(2) for the midwater trawl gear exemption) from the Administrator, Northeast Region, NMFS (Regional Administrator); (2) harvesting or processing vessels must carry observers, if required by NMFS (as currently required under the midwater trawl gear exemption), and (3) if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies for the fishery or for any individual vessel exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, the Regional Administrator may place restrictions and/or conditions in the LOAs for any or all individual fishing operations, or, after consulting with the Council, the Regional Administrator may suspend or prohibit any or all midwater trawl activities in the closed areas.

Comments and Responses

Five comments were received concerning Framework Adjustment 18. Three of the comments were strongly supportive of the proposed rule and substantiate the finding in the Initial Regulatory Flexibility Act (IRFA) that this action will have a positive economic impact on small business entities. Two other comments were concerned about the potential bycatch of regulated multispecies and marine mammals.

Comment 1: A representative from a pelagic fishing company wrote in support of Framework Adjustment 18. The commenter stated that pelagic midwater trawl vessels have no bycatch of groundfish or marine mammals and disputed assertions to the contrary. To satisfy any perceived problems, the commenter stated that the pelagic trawl industry is willing to take observers, if requested to do so.

Response: Available herring and mackerel sea sampling data shows a minimal bycatch of regulated multispecies. NMFS will continue to collect sea sampling data and other information on these fisheries. This information will be essential for any future decision making purposes. A condition in the LOA necessary to participate in the pelagic midwater trawl fishery states that vessels must carry observers, if required by NMFS. On the basis of sea sampling data or other credible information for this fishery, if bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of the catch of herring and mackerel, by weight, the Regional Administrator may place restrictions or conditions on the required midwater trawl LOA or, in consultation with the Council, suspend all midwater trawl activities in any or all of the closed areas. These precautions should alleviate any real or perceived problems with bycatch in the closed areas.

Comment 2: A representative from a commercial pelagic fishing association submitted written comments supporting Framework Adjustment 18. The commenter stated that allowing midwater trawl vessels into the multispecies closed areas would facilitate the orderly development of the offshore herring fishery. The commenter wrote that, as the herring fishery management plan is developed, it will be essential to gather accurate scientific data and information to respond to any concerns regarding marine mammal interactions with pelagic trawl gear.

Response: NMFS concurs. This final rule could facilitate the orderly development of the industry and provide important additional information on fishery bycatch and pelagic species biology.

Comment 3: A representative from a commercial fishing association submitted written comments supporting Framework Adjustment 18, indicating that it will provide greater economic opportunity for pelagic midwater trawl vessels to harvest herring and mackerel and maintain the conservation benefits of current multispecies management measures.

Response: NMFS concurs. The intent of this framework is to allow pelagic midwater trawling in the multispecies closed areas only if it does not adversely impact current efforts to rebuild depleted groundfish stocks. The RIR/IRFA concluded that this action will have a positive economic impact on small businesses.

Comment 4: A representative of the commercial fishing industry submitted a written comment expressing concern about bycatch of regulated multispecies (specifically cod, haddock, and pollock) in the midwater trawl fishery, if these areas are reopened to pelagic midwater trawl gear. The commenter wrote that groundfish occasionally leave the sea bottom and may, therefore, be vulnerable to capture with midwater trawl gear. The commenter emphasized that this is why 100–percent observer coverage should be required in the midwater trawl fishery. The commenter also questioned the validity of the data provided on the cost of 100–percent observer coverage in relation to the economic value of the pelagic fishery. The commenter stated that the cost of observers would be minimal compared with the value of the herring and mackerel caught in the areas and with the value of assured protection to groundfish.

Response: The Council and NMFS have been aware of the concern with multispecies bycatch throughout the development of Framework Adjustment 18. An important factor in the decision to allow midwater trawling is the fact

that available herring and mackerel sea sampling data and mackerel weighout data do not show a bycatch of regulated multispecies. The data do indicate some bycatch of nonregulated multispecies (whiting) and scup. Monitoring of data will continue with the implementation of Framework Adjustment 18, and appropriate action will be taken if the bycatch of regulated multispecies exceeds 1 percent, by weight, of harvested herring and mackerel. Since many of the vessels operating in these fisheries will be reporting their landings under the mackerel and multispecies fishery management plans, data will be available. Safeguards have been included in the framework whereby the midwater trawl fishery in the closed area(s) can be restricted or closed if the bycatch of regulated multispecies for the fishery exceeds 1 percent, by weight, of harvested herring and mackerel by any or all vessels. This will ensure that bycatch of regulated multispecies is minimal. Furthermore, vessels participating in these fisheries are not allowed to retain regulated multispecies and, therefore, have no incentive to capture them.

The Council considered requiring 100–percent observer coverage or having observers present whenever fish are transferred from a harvesting vessel to the processor, but it rejected these alternatives due to prohibitive costs and limited observer availability. Observer costs were found in the IRFA prepared by the Council to range from 8 percent to as much as 148 percent of ex-vessel revenues. These costs would average 55 percent of gross revenues for ton-class 3 vessels, and 14 percent of gross revenues for ton-class 4 vessels based on available herring catch rate data. Therefore, for vessels that land pelagics ashore and for some freezer trawlers, it would be economically unfeasible to require observers. That is why the alternative to require mandatory observers was rejected.

Importantly, however, the framework does require vessels to obtain and comply with the midwater trawl LOA, as described in § 648.80(d)(2), to fish in the closed areas. A condition in the LOA states that vessels must carry observers, if required by NMFS. Also, observers are currently required on processing vessels participating in joint venture operations.

Comment 5: A representative of the commercial fishing industry submitted a written comment stating that this rule could result in increased interactions between pelagic midwater trawl gear and marine mammals, especially harbor porpoise. The frequency of interactions could increase because the GOM closures coincide with periods of high harbor porpoise abundance, and the target species for both harbor porpoise and the midwater trawl fleet is herring. The commenter indicated that minimal sea sampling data is available upon which to base a final rule and expressed concern regarding compliance with the Marine Mammal Protection Act and the Endangered Species Act. Finally, it was stated that Framework Adjustment 18 should not compromise efforts already underway to rebuild groundfish and marine mammal stocks.

Response: NMFS appreciates the commenter's detailed discussion of the potential for bycatch of harbor porpoise and other marine mammals in the midwater herring and mackerel trawl fisheries and the need for observer coverage in these fisheries. The NMFS sea sampling program has collected information on marine mammal bycatch in foreign and domestic midwater trawl fisheries targeting mackerel in the Mid-Atlantic. Sample sizes for herring and mackerel midwater trawl trips in the GOM are small and provide limited information on marine mammal bycatch rates for these fisheries. Based upon the available data on midwater trawl fisheries, the 1996 marine mammal stock assessment report prepared by NMFS indicated that no takes of harbor porpoise have been documented in midwater trawl gear.

NMFS has the authority to place observers in the herring midwater trawl fishery for purposes of monitoring fish harvests as well as for monitoring any marine mammal and other endangered species bycatch.

An Endangered Species Act Section 7 consultation on this fishery resulted in a Biological Opinion issued on December 13, 1996. Since the conclusion of that consultation, Framework Adjustment 18 has been revised. Therefore, consultation on Framework Adjustment 18 was reinitiated. The new consultation concluded that impacts from fishing activities conducted under Framework Adjustment 18 will not change the basis for the December 13, 1996, determination that the overall operation of the multispecies fishery under the FMP, without modification, is likely to jeopardize the continued existence of the northern right whale may affect but is not likely to jeopardize the continued existence of other endangered or threatened species of whale, sea turtles, and fish under NMFS jurisdiction and will not result in adverse modification of critical habitat.

Changes in the Final Rule From the Proposed Rule

Some changes from the proposed rule were necessary to make Framework Adjustment 18 more succinct and to eliminate duplicative regulations. Other changes were made to more accurately reflect Council intent and to serve administrative purposes.

Section 648.80(d)(2) of the final rule requires vessels to have on board a midwater trawl LOA when fishing in the Gulf of Maine/Georges Bank (GOM/GB) and Stellwagen Bank/Jeffreys Ledge (SB/JL) Areas and the portion of the Nantucket Lightship Closed Area not within the GOM/GB and the SB/JL Areas. The proposed rule, while not substantively different, independently listed six other multispecies closed areas as being subject to the LOA requirement. Because these closed areas are subareas lying completely within the larger GOM/GB and SB/JL Areas, the final rule does not independently list them.

Section 648.80(d)(3) of the final rule allows vessels in the midwater trawl exemption in areas north of 42°20' N. lat. and in three specified multispecies closed areas to fish for, possess, or land only Atlantic herring, blueback herring, or mackerel. The proposed rule listed all seven of the multispecies closed areas. Because four of these multispecies closed areas are north of 42°20' N. lat., the final rule does not independently list them.

In § 648.80(d), paragraph 5 is added which requires vessels fishing under the midwater trawl exemption to carry a NMFS- approved sea sampler/observer, if requested by the Regional Administrator. This provision is already in the midwater trawl LOA and is specifically mentioned in the Council framework document. Adding this provision makes the regulations consistent with the LOA and better reflects Council intent.

In § 648.81(a)(2)(iii), the final rule specifies that the Regional Administrator shall determine the percent bycatch of regulated multispecies on the basis of sea sampling data and other credible information for the fishery. This was implied in the proposed rule but required clarification. The change from the proposed rule was made to more clearly reflect Council intent and to facilitate the administration of the regulation. Information on which to make decisions will be available on a fishery-wide basis and not only on limited data basis from the closed areas. This is consistent with NMFS's objective to reopen the multispecies

closed areas to midwater trawl vessels in a cautious manner while ensuring that the bycatch of regulated multispecies is minimal.

Classification

The Regional Administrator, Northeast Region, NMFS, determined that Framework Adjustment 18 is consistent with the Magnuson-Stevens Act and other applicable law.

Because this rule relieves restrictions on a sector of the fishing industry by allowing fishing for mackerel and herring to occur in areas currently closed to such fishing, under 5 U.S.C. 553(d)(1) it is not subject to a 30-day delay in effective date.

This action is authorized by 50 CFR part 648 and has been determined not to be significant for purposes of E.O. 12866.

The Council prepared an IRFA that describes the impact this rule would have on small entities. This action would have a significant, but positive, impact on small business entities because it is expected to increase the annual gross revenues of a substantial number of small business entities by more than 5 percent. The IRFA concluded that this action could affect all of the approximately 35 pelagic midwater trawl vessels (which are small business entities) participating in the fisheries by allowing them to fish in areas currently closed to them, thereby increasing their annual gross revenues by more than 5 percent. Ten to twelve additional vessels could enter these fisheries in the next year. However, it is unlikely that more vessels will enter the fisheries because of the expense, which is estimated to range from $75,000 to $250,000 depending on the changes made, to convert conventional trawl vessels into competitive midwater trawls. Because of the conversion expenses, many vessels would be precluded from entering these fisheries.

This action could improve the economic competitiveness of all U.S. Atlantic herring and mackerel harvesting operations and preserve the enforceability and effectiveness of the multispecies closed areas. The IRFA indicated that it is difficult to predict the exact increase in annual gross revenues as a result of allowing fishing in the currently closed areas due to the unpredictability of herring and mackerel migrations, but overall annual ex-vessel revenues for the fleet may potentially rise from between $255,684 to $767,051, as compared to taking no action.

As mentioned earlier, the Council had considered requiring the 100–percent observer coverage or having observers present when fish was transferred from the harvesting vessel to the processor, but rejected these alternatives because they were considered too costly for the fleet. No additional alternatives to minimize the economic impacts were considered by the Council because all the impacts are beneficial and need not be minimized. A copy of the IRFA analysis is available from the Council (see **ADDRESSES**). The FRFA incorporates the IRFA findings with the response to comments received, and addressed above, regarding the proposed rule. Framework Adjustment 18 is expected to increase the annual gross revenues of a substantial number of small business entities by more than 5 percent. Framework Adjustment 18 will have a significant, but positive, economic impact on a substantial number of small business entities.

This rule refers to a collection of information which is subject to the Paperwork Reduction Act and which has been approved under OMB control number 0648–0202.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 10, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out 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. Section 648.80 is amended by revising paragraphs (d)(2) and (d)(3), and by adding paragraph (d)(5) to read as follows:

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

* * * * *

(d) * * *

(2) When fishing under this exemption in the GOM/GB and SB/JL Areas, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof.

(3) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, or mackerel in areas north of 42°20' N. lat. and in the areas described in Sec. 648.81(a)(1), (b)(1), and (c)(1); and Atlantic herring, blueback herring, mackerel, or squid in all other areas south of 42°20' N. lat.; and

* * * * *

(5) The vessel must carry a NMFS-approved sea sampler/ observer, if requested by the Regional Administrator.

* * * * *

3. Section 648.81 is amended by adding paragraph (a)(2)(iii), and by revising paragraphs (a)(2)(ii), (b)(2) introductory text, (c)(2)(i), and (f)(2)(ii) to read as follows:

§ 648.81 Closed areas.

(a) * * *

(2) * * *

(ii) Fishing with or using pelagic hook or longline gear or harpoon gear, provided that there is no retention of regulated species, and provided that there is no other gear on board capable of catching NE multispecies; or

(iii) Fishing with pelagic midwater trawl gear, consistent with § 648.80(d), provided that the Regional Administrator shall review information pertaining to the bycatch of regulated multispecies, and, if the Regional Administrator determines, on the basis of sea sampling data or other credible information for this fishery, that the bycatch of regulated multispecies exceeds, or is likely to exceed, 1 percent of herring and mackerel harvested, by weight, in the fishery or by any individual fishing operation, the Regional Administrator may place restrictions and conditions in the letter of authorization for any or all individual fishing operations or, after consulting with the Council, suspend or prohibit any or all midwater trawl activities in the closed areas.

(b) * * *

(2) Paragraph (b)(1) of this section does not apply to persons on fishing vessels or fishing vessels fishing with gears as described in paragraph (a)(2) of this section, or that are transiting the area provided—

* * * * *

(c) * * *

(2) * * *

(i) Fishing with gears as described in paragraph (a)(2) of this section;

* * * * *

(f) * * *

(2) * * *

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in § 648.81(a)(2)(iii), and excluding pelagic gillnet gear capable of catching multispecies, except vessels may fish with a single pelagic gillnet, not longer than 300 ft (91.44 m.) and not greater

than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.62 cm), provided the net is attached to the boat, is fished in the upper two-thirds of the water column, and is marked with the owner's name and vessel identification number and provided there is no other gear on board capable of catching multispecies finfish; or

* * * * *

[FR Doc. 98–3791 Filed 2–10–98; 4:46 pm]

BILLING CODE 3510–22–F