

procedures for framework adjustments specified under paragraph (c)(3) of this section must be followed.

(3) *Framework Adjustment Procedures.* Framework adjustments shall require at least one initial meeting of the Monkfish Oversight Committee or one of the Councils (the agenda must include notification of the framework adjustment proposal) and at least two Council meetings, one at each Council. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis, and opportunity to comment on them prior to the first of the two final Council meetings. Framework adjustments and amendments to the Monkfish FMP require majority approval of each Council for submission to the Secretary.

(i) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation to the Regional Administrator. The Councils' recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, the Councils must consider at least the following four factors and provide support and analysis for each factor considered:

(A) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(B) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures;

(C) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(D) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(ii) *Action by NMFS.* (A) If the Regional Administrator approves the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (c)(3)(i) of this section, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for

public comment in the **Federal Register**. The Secretary, in so doing, shall publish only the final rule. Submission of the recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(B) If the Regional Administrator concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures shall be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures shall be issued as a final rule in the **Federal Register**.

(C) If the Regional Administrator does not concur, then the Councils shall be notified in writing of the reasons for the non-concurrence.

(iii) *Adjustments for gear conflicts.* The Councils may develop a recommendation on measures to address gear conflict as defined under § 600.10 of this chapter, in accordance with the procedure specified in § 648.55(d) and (e).

\* \* \* \* \*

[FR Doc. 03-10409 Filed 4-23-03; 4:27 pm]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 030210027-3097-02; I.D. 012103E]

RIN 0648- AQ35

### 50 CFR Part 648

#### Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 37 to the Northeast Multispecies Fishery Management Plan

**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 37 (Framework 37) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) to eliminate the Year 4 default measure for whiting in both stock areas; reinstate the Cultivator Shoal whiting fishery (CSWF) season through October 31 each year; eliminate the 10-percent restriction on red hake incidental catch in the CSWF;

adjust the incidental catch allowances in Small Mesh Areas 1 and 2 so that they are consistent with those in the Cape Cod Bay raised footrope trawl fishery; clarify the transfer-at-sea provisions for small-mesh multispecies for use as bait; modify slightly the Cape Cod Bay raised footrope trawl fishery area; and retain the 30,000-lb (13.6-mt) trip limit for the CSWF.

**DATES:** Effective May 1, 2003.

**ADDRESSES:** Copies of the Framework 37 document, its Regulatory Impact Review (RIR), the Environmental Assessment and other supporting documents for the framework adjustment are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>.

This action is also based upon analyses conducted in support of Amendment 12 to the FMP. Copies of the Amendment 12 document, its RIR, IRFA and the July 1, 1999, supplement to the IRFA prepared by NMFS, the Final Supplemental Environmental Impact Statement, and other supporting documents for Amendment 12 are available from Paul J. Howard (See address above). The Final Regulatory Flexibility Analysis (FRFA) for Amendment 12 consisted of the IRFA, public comments and responses contained in the final rule implementing Amendment 12 (65 FR 16766, March 29, 2000), and the summary of impacts and alternatives in that final rule.

**FOR FURTHER INFORMATION CONTACT:** E. Martin Jaffe, Fishery Policy Analyst, 978-281-9272.

**SUPPLEMENTARY INFORMATION:** This final rule implements measures contained in Framework 37 to the FMP. Details concerning the justification for and development of Framework 37 and the implementing regulations were provided in the preamble to the proposed rule (68 FR 8731, February 25, 2003) and are not repeated here.

This framework adjustment eliminates the Year 4 default measure in both whiting stock areas and implements adjustments to allow for moderate increases in effort on small-mesh multispecies in the northern stock area. This adjustment is necessary because current regulations specify that the Year 4 default measure will become effective in both stock areas on May 1, 2003, unless modified or eliminated by a New England Fishery Management Council (Council) action.

This final rule also reinstates the CSWF season through October 31 each

year; eliminates the 10-percent restriction on red hake incidental catch in the CSWF; adjusts the incidental catch allowances in Small Mesh Areas 1 and 2 so that they are consistent with those in the Cape Cod Bay raised footrope trawl fishery; clarifies the transfer-at-sea provisions for small-mesh multispecies for use as bait; modifies slightly the Cape Cod Bay raised footrope trawl fishery area; and continues the status quo 30,000-lb (13.6-mt) trip limit for the CSWF.

Prior to Amendment 12 to the FMP, the season for the CSWF was June 15–October 31. Amendment 12 shortened the season to end on September 30 as an effort reduction measure. This action reinstates the month of October to the CSWF, which will provide increased economic opportunity for participating vessels. Further discussion appears in the Classification section of this preamble.

Currently, participants in the CSWF are limited in their red hake landings to 10 percent, by weight, of all other fish on board. According to the Whiting Monitoring Committee, there is no biological reason to restrict the catch of red hake at this time. The current restriction on red hake landings may cause discards in the CSWF. Because of market limitations, it is unlikely that this action will encourage directed fishing on red hake. This action also will simplify and improve the consistency of regulations for exempted fisheries in the northern stock area, since no other exempted small mesh fishery in the northern area includes such a restriction on red hake landings.

Three of the four exempted whiting fisheries in the northern area currently require the use of a raised footrope trawl to minimize bycatch of groundfish. However, the incidental catch allowances for these three fisheries are not consistent with each other. The incidental catch allowances for the Cape Cod Bay raised footrope trawl fishery were established to discourage vessels from rigging their gear improperly and allowing it to fish on the ocean bottom. As a result, bottom-dwelling species, such as lobster and monkfish, are prohibited in the Cape Cod Bay raised footrope trawl fishery. Because Small Mesh Areas 1 and 2 require use of the raised footrope trawl, the Council felt it appropriate to allow the same incidental catch species for Small Mesh Areas 1 and 2 and to provide the same incentives for fishing the required gear properly. Specifically, monkfish, lobster, ocean pout, and sculpin will no longer be allowed to be taken as incidental catch in Small Mesh Areas 1 and 2. The following species will be the

only allowable incidentally caught species in these areas: Red hake, squid, butterfish, mackerel, dogfish, herring, and scup.

Clarification of the transfer at sea provisions for small-mesh multispecies reflects the status quo for vessels that are currently engaged in this activity. The Whiting Monitoring Committee has indicated that there is no biological reason to restrict the catch of northern red hake. Vessels will be allowed to transfer up to 500 lb (226.8 kg) of whiting and unlimited amounts of red hake at sea for use as bait.

The slight area modification to the Cape Cod Bay raised footrope trawl fishery will provide Provincetown fishermen with improved access to this fishery in times of inclement and unpredictable weather, thereby promoting the safety of the Provincetown vessels, which tend to be smaller and older than vessels from other ports. Specifically, the southern boundary of the area will move from the Loran 44100 line to the 42° N. lat. line, creating a “lee” by opening a triangle-shaped area totaling 5.5 square miles (14.3 sq. km).

#### Comments and Responses

Two sets of written comments on the proposed rule were received during the comment period, which ended March 27, 2003. A comment was also received prior to the comment period. All three comments addressing the proposed rule were considered in implementation of the management measures in the final rule and are responded to here.

*Comment 1:* Both commenters believe that the current trip limit in the CSWF is unnecessarily restrictive and each commenter disagrees with the Council’s decision not to increase the trip limit in accord with one of the alternatives considered and analyzed by the Council as set forth in Framework 37. Both commenters urge that the Regional Administrator either increase or eliminate the trip limit in the CSWF.

*Response:* Under the default measures, the trip limit for all whiting trips, including trips in CSWF, would have been 10,000 lb (4.5 mt), thereby reducing the status quo CSWF trip limit from 30,000 lb to 10,000 lb (13.6 mt to 4.5 mt). In developing Framework 37, the Council considered increasing the CSWF trip limit to several levels above the 30,000-lb (13.6-mt) CSWF trip limit, but ultimately decided to retain the status quo trip limit of 30,000 lb (13.6 mt). NMFS has determined that there are valid reasons for keeping the trip limit at 30,000 lb (13.6 mt), as discussed in the FRFA. Under the Magnuson-Stevens Fishery

Conservation and Management Act, NMFS may only approve, disapprove, or partially approve an action proposed by the Council. Disapproval of the Framework 37 trip limits would, in this case, be less desirable, as the more restrictive Year 4 default measures (CSWF trip limit of 10,000 lb (4.5 mt)) would be implemented, resulting in significant adverse economic impacts on all sectors of the small-mesh multispecies fishery. This result would run counter to the commenters’ concerns about the CSWF trip limit being too small. Approving the Framework 37 trip limits, therefore, is more consistent with commenters’ concerns than disapproving them, which is the only other option available. Commenters may raise their concerns about the CSWF trip limit to the Council for possible future action.

*Comment 2:* Both commenters supported the Council’s decision that the Year 4 default measures contained in Amendment 12 were not necessary, and one commenter further supported all of the measures contained within Framework 37.

*Response:* Elimination of the Amendment 12 Year 4 default measure and its replacement with the measures contained in Framework 37 is generally supported by the fishing community. In addition, NMFS believes these measures contained in Framework 37 are necessary and are consistent with the national standards and other provisions of the Magnuson-Stevens Act.

*Comment 3:* A commenter voiced concern over potential economic impacts associated with the proposed modification to incidental catch allowances in Small Mesh Areas 1 and 2. This modification will prohibit the retention of monkfish and lobsters in these areas and may generate regulatory discards and affect profitability for some vessels.

*Response:* The modification to incidental catch allowances in Small Mesh Areas 1 and 2 will provide the same incentives for fishing the required gear properly (e.g., discourage improper rigging, which could allow gear to fish on the ocean bottom) as it does in the Cape Cod Bay raised footrope trawl fishery. This modification brings the incidental catch allowances for all three raised footrope trawl fisheries into consistency with each other. The amount of monkfish and lobster currently retained by vessels in Small Mesh Areas 1 and 2 is small (<15 lb (6.8 kg) per trip, on average, in 2001), and landings of these species do not contribute significantly to vessel revenues (<\$20 per trip, on average, in 2001).

## Classification

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

The Assistant Administrator for Fisheries, NOAA (AA), waives the 30-day delayed effectiveness period of the implementing regulations contained within this final rule, pursuant to 5 U.S.C. 553(d)(1). These management measures relieve a restriction by replacing the unnecessarily restrictive Year 4 default measures, which are otherwise scheduled to be implemented on May 1, 2003. This final rule will eliminate the Year 4 default measure for whiting in both stock areas; reinstate the CSWF season through October 31 each year; eliminate the 10-percent restriction on red hake incidental catch in the CSWF; and slightly modify the Cape Cod Bay raised footrope trawl fishery area, thus replacing unnecessary restrictive year 4 default measures. Implementation of this final rule will preclude the default measures and their negative economic impacts on the industry and fishing communities. Therefore, the AA finds good cause under 5 U.S.C. 553(d)(1) to waive the 30-day delayed effectiveness period of the implementing regulations.

The Year 4 default measures would prohibit vessels from using nets with mesh size less than 3 inches (7.62 cm) (square or diamond) in most fisheries operating within the three Regulated Mesh Areas in New England and Mid-Atlantic waters and impose a 10,000-lb (4,536-kg) combined possession limit in most fisheries on whiting and offshore hake. In addition, the existing possession limit for whiting and offshore hake in the Small Mesh Northern Shrimp Fishery would be reduced from an amount equal to the total weight of shrimp on board (not to exceed 3,500 lb (1,588 kg)) to 100 lb (45.3 kg). Under the regulations that implement Amendment 12, these measures would become effective May 1, 2003, unless superseded by revised measures, such as those in Framework 37.

The analyses in Amendment 12 indicated that substantial negative economic and social impacts would be likely to result from implementing the Year 4 default measures. The default measures would be expected to generate large losses of not only small-mesh multispecies, but also other small mesh species, such as squid. Shinnecock, NY is projected to experience the largest reductions in landings of all species combined from the Year 4 default measures (39.4 percent), followed by Greenport, NY (36.7 percent), Point

Judith, RI (32.8 percent), Montauk, NY (25.9 percent), Gloucester, MA (16.4 percent), Portland, ME (14.8 percent), Provincetown, MA (11.5 percent), Cape May, NJ (9.7 percent), Point Pleasant, NJ (8.0 percent), and Belford, NJ (7.2 percent). Although Connecticut ports could not be analyzed due to data limitations, it is likely that the default measures would produce similar impacts in the ports of Stonington and New London.

Included in this final rule is the Final Regulatory Flexibility Analysis prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, a supplement to the IRFA prepared by NMFS in consultation with the Council, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**).

## Final Regulatory Flexibility Analysis

### Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated in its entirety here.

### Summary of Significant Issues Raised in Public Comments

Two comments, only one of which pertained to the IRFA, were received during the comment period on the proposed rule. The comment relating to the IRFA addressed the issue of the current trip limit in the CSWF. The commenters stated that the current trip limit in the CSWF is unnecessarily restrictive and disagreed with the Council's decision not to increase the trip limit in accord with one of the alternatives considered and analyzed by the Council as set forth in Framework 37. The commenters urged further, that the Regional Administrator either increase or eliminate the trip limit in the CSWF. See Comment 1 and NMFS' response.

An additional comment was received prior to the comment period and this commenter voiced concern over potential economic impacts associated with the proposed modification to incidental catch allowances in Small Mesh Areas 1 and 2. See Comment 3 and NMFS' response. NMFS determined, after consideration of the public comments, that no changes to the proposed rule were required to be made as a result of the comments.

## Description and Estimate of Number of Small Entities to which Rule will Apply

The IRFA identified 1,156 individual vessels that reported landing one or more combined pounds of whiting, red hake, and offshore hake during calendar years 1995 to 1997. From 1995 to 2001, no more than 676 vessels reported landing small mesh multispecies in any one year. All of these vessels are small entities as defined in 5 U.S.C. 601(3) and, therefore, all alternatives and analyses contained in Framework 37 necessarily reflect impacts on small entities.

## Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Framework 37 does not contain any new recordkeeping, reporting, or compliance requirements.

## Steps Taken to Minimize Economic Impacts on Small Entities

NMFS and the Council prepared an economic analysis for Amendment 12 that indicated that implementation of the amendment, including the restrictive Year 4 default measures, would have a significant economic impact on a substantial number of small entities. Since costs of individual vessel operations were not available, gross revenues were used as a proxy for profitability. The management measures proposed for Years 1–3 were estimated to “substantially” reduce gross revenues from all species for 81 vessels. If the Year 4 default measures were to be implemented, 222 vessels would be likely to experience a substantial reduction in annual gross revenues.

Framework 37 will eliminate the Year 4 default measures for small-mesh multispecies in both the northern and southern whiting stock areas, and adjust measures to allow increased opportunities to fish for small-mesh multispecies in the northern area. A summary of the economic impacts of the measures to be substituted for the Year 4 default measures follow.

## Impacts of Reinstating the CSWF Season

Adjustments to measures in the CSWF increase economic opportunities for affected entities. An average of 16 vessels participated in the CSWF from 1995–2001; 25 vessels participated in the fishery during 2001. Reinstating October to the CSWF season will have beneficial economic effects for vessels that had traditionally prosecuted the fishery during October and will increase economic opportunity for other vessels that are able to participate. Maintaining the current CSWF season (through

September 30) would result in fewer opportunities to harvest whiting and lost economic opportunities for fishermen who otherwise would participate in the CSWF during October.

#### **Impacts of Eliminating the Restriction on Red Hake Incidental Catch Allowance in the CSWF**

Landings data for red hake do not indicate that the current incidental catch allowance is a constraint to increased retention of red hake. Elimination of the red hake incidental catch allowance in the CSWF will permit vessels to increase trip profits on the occasions where the current incidental catch allowance will be exceeded. For this reason, removal of the incidental catch allowance will not likely result in any market effects but will permit vessels to increase trip income on the occasions where the current allowance will be exceeded.

#### **Impacts of Modifying Incidental Catch Allowances for Small Mesh Areas 1 and 2**

The proposed modifications to the incidental catch allowances in Small Mesh Areas 1 and 2 may have some negative economic impacts, since retention of monkfish and lobster will be prohibited (78 vessels fished in Small Mesh Areas 1 and 2 during 2000). For the period 1998–2001, the landed value of lobster and monkfish from these fisheries has averaged about \$30,000 annually, based on an average of 1,800 trips per year. Given the low level of revenues from these species in Small Mesh Areas 1 and 2, it is expected that this action will have only a minimal impact on vessel profitability. It is unlikely that the proposed change in catch allowances will have any substantial impact on gross revenues from all sources of fishing income for vessels participating in this fishery. However, there may be some occasions where revenues from monkfish or lobster could affect vessel profitability for a given trip. In these cases, eliminating the incidental catch allowance may have a negative economic impact, as the trip may be abandoned, but the precise magnitude of such impacts cannot be accurately predicted.

#### **Impacts of Clarifying the Transfer at Sea Provisions for Small-Mesh Multispecies**

Clarification of the transfer at sea provisions for small-mesh multispecies will allow vessels to transfer 500 lb (226.8 kg) of whiting and unlimited amounts of red hake at sea for use as bait and will represent the status quo for

vessels that are currently engaged in this activity. No impacts are expected.

#### **Impacts of Area Modification to the Cape Cod Bay Raised Footrope Trawl Fishery**

The southern boundary of the Cape Cod Bay Raised Footrope Trawl Fishery area will move from the Loran 44100 line to the 42o N. lat. line, creating a “lee” by opening a triangle-shaped area totaling 5.5 square miles (14.3 sq. km). This slight area modification will likely produce small, but positive, economic impacts to vessels utilizing the expanded area.

#### **Impacts of Retention of the 30,000 Possession Limit for the CSWF**

The Council concluded that the proposed retention of the status quo 30,000–lb (13.6–mt) possession limit for the CSWF will have no economic impact to present participants in the fishery, since gross revenues are not expected to change under this trip limit. The Council also considered, but rejected, four alternatives to the proposed possession limit, including a default possession limit of 10,000 lb (4.5 mt) and three higher possession limits, ranging from 50,000 to 90,000 lb (22.7 to 40.8 mt). The Council determined that the 10,000–lb (4.5–mt) default possession limit, which was previously analyzed in Amendment 12 to the FMP, would have substantially negative impacts resulting from an estimated 20,000–lb (9–mt) or 67–percent reduction in the possession limit. Some fishing vessel owners believe that retention of the current 30,000–lb (13.6–mt) possession limit will continue to serve as a disincentive for them to participate in the CSWF, by restricting their potential profitability.

#### **Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of permits issued for the NE multispecies fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see ADDRESSES) and may be found at the

following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

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

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: April 22, 2003.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory programs, National Marine fisheries Service.*

■ For the reasons stated in the preamble, 50 CFR part 648 is amended to read 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 § 648.13, paragraph (b)(2) introductory text is revised to read as follows:

#### **§ 648.13 Transfers at sea.**

\* \* \* \* \*

(b) \* \* \*

(2) Vessels issued a Federal multispecies permit under § 648.4(a)(1) may transfer from one vessel to another, for use as bait, up to 500 lb (226.8 kg) of silver hake and unlimited amounts of red hake, per trip, provided:

\* \* \* \* \*

■ 3. In § 648.14, paragraph (z)(2) is removed and reserved.

#### **§ 648.14 Prohibitions.**

\* \* \* \* \*

(z) \* \* \*

(2) [Reserved]

\* \* \* \* \*

■ 4. In § 648.80,

a. Revise paragraphs (a)(5)(i), (a)(6)(i), (a)(8)(i) and (a)(8)(ii), (a)(9)(i) and (a)(9)(ii) introductory text, (a)(10)(i)(D), and (a)(15) introductory text and (a)(15)(i)(B). Paragraph (a)(15)(i)(C) is removed and reserved.

b. Revise paragraph (b)(3)(i) to read as follows:

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

\* \* \* \* \*

(a) \* \* \*

(5) \* \* \*

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* An owner or operator of a vessel fishing in the northern shrimp fishery under the exemption described in this paragraph (a)(5) may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as

allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

\* \* \* \* \*

(6) \* \* \*

(i) *Requirements.* (A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have on board a valid letter of authorization issued by the Regional Administrator.

(B) An owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish; red hake; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Counting from the terminus of the net, all nets must have a minimum mesh size of 3-inch (7.6-cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.3 m) in length and applied to the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.3 m) in length.

(D) Fishing is confined to a season of June 15 through October 31, unless otherwise specified by notification in the **Federal Register**.

(E) When a vessel is transiting through the GOM or GB Regulated Mesh Areas specified under paragraphs (a)(1) and (a)(2) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraphs (a)(3) or (a)(4) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the

vessel is fishing for small-mesh multispecies under another exempted fishery specified in this paragraph (a).

(F) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the requirements specified in this paragraph (a)(6)(i) for the entire trip.

\* \* \* \* \*

(8) \* \* \*

(i) *Regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the **Federal Register**.

(ii) The NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), 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.

\* \* \* \* \*

(9) \* \* \*

(i) *Description.* (A) Unless otherwise prohibited in § 648.81, a vessel subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (a)(4) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of

paragraphs (a)(5)(ii), or (a)(9)(ii) of this section and of § 648.86(d), from July 15 through November 15, when fishing in Small Mesh Area 1, and from January 1 through June 30, when fishing in Small Mesh Area 2. While lawfully fishing in these areas with mesh smaller than the minimum size, an owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d); butterfish; dogfish; herring; Atlantic mackerel; scup; squid; and red hake.

(B) Small-mesh areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)):

#### SMALL MESH AREA I

Point	N. Lat.	W. Long.
SM1	43°03'	70°27'
SM2	42°57'	70°22'
SM3	42°47'	70°32'
SM4	42°45'	70°29'
SM5	42°43'	70°32'
SM6	42°44'	70°39'
SM7	42°49'	70°43'
SM8	42°50'	70°41'
SM9	42°53'	70°43'
SM10	42°55'	70°40'
SM11	42°59'	70°32'
SM1	43°03'	70°27'

#### SMALL MESH AREA II

Point	N. Lat.	W. Long.
SM13	43°05.6'	69°55'
SM14	43°10.1'	69° 43.3'
SM15	°49.5'	69° 40'
SM16	42° 41.5'	69°40'
SM17	42° 36.6'	69°55'
SM13	43°05.6'	69°55'

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(9)(ii)(A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom.

\* \* \* \* \*

(10) \* \* \*

(i) \* \* \*

(D) *Incidental species provisions.* The following species may be possessed and landed, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin;

silver hake—up to 200 lb (90.7 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(15) *Raised Footrope Trawl Exempted Whiting Fishery.* Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (a)(4) of this section may fish with, use, or possess nets in the Raised Footrope Trawl Whiting Fishery area with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraph (a)(15)(i) of this section. This exemption does not apply to the Cashes Ledge Closure Areas or the Western GOM Area Closure specified in § 648.81(h) and (i). The Raised Footrope Trawl Whiting Fishery Area (copies of a chart depicting the area are available from the Regional Administrator upon request) is defined by straight lines connecting the following points in the order stated:

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA (SEPTEMBER 1 THROUGH NOVEMBER 20)

Point	N. Lat.	W. Long.
RF1	42°14.05'	70°08.8'
RF2	42°09.2'	69°47.8'
RF3	41°54.85'	69°35.2'
RF4	41°41.5'	69°32.85'
RF5	41°39'	69°44.3'
RF6	41°45.6'	69°51.8'
RF7	41°52.3'	69°52.55'
RF8	41°55.5'	69°53.45'
RF9	42°08.35'	70°04.05'
RF10	42°04.75'	70°16.95'
RF11	42°00'	70°13.2'
RF12	42°00'	70°24.1'
RF13	42°07.85'	70°30.1'
RF1	42°14.05'	70°08.8'

RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA (NOVEMBER 21 THROUGH DECEMBER 31)

Point	N. Lat.	W. Long.
RF1	42°14.05'	70°08.8'
RF2	42°09.2'	69°47.8'
RF3	41°54.85'	69°35.2°
RF4	41°41.5'	69°32.85'
RF5	41°39'	69°44.3'
RF6	41°45.6'	69°51.8'
RF7	41°52.3'	69°52.55'
RF8	41°55.5'	69°53.45'
RF9	42°08.35'	70°04.05'
RF1	42°14.05'	70°08.8'
	.....	.....
	.....	.....

(i) \* \* \*

(B) All nets must be no smaller than a minimum mesh size of 2.5-inch (6.35-cm) square or diamond mesh, subject to the restrictions as specified in paragraph (a)(14)(i)(D) of this section. An owner or operator of a vessel enrolled in the raised footrope whiting fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake subject to the applicable possession limits as specified in § 648.86, except for the following allowable incidental species: Red hake; butterfish; dogfish; herring; mackerel; scup; and squid.

(C) [Reserved]

(b) \* \* \*

(3) *Exemptions—(i) Species exemptions.* Owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(4) and (b)(2) of this section, may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the GB and SNE Regulated Mesh Areas when fishing in the SNE Exemption Area defined in paragraph (b)(10) of this section, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).