

You may mail or hand-deliver written comments to the Field Supervisor, Arizona Ecological Services Office (see **ADDRESSES** section). Hand deliveries must be made during normal business hours.

You may send comments by e-mail to [cftp\\_habitat@fws.gov](mailto:cftp_habitat@fws.gov). If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include a return address in your e-mail message.

You may send written comments by facsimile to 602/242-2513.

Prior to making a final determination on this proposed rule, we will take into consideration all relevant comments and additional information received during the comment period. You may inspect comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, by appointment during normal business hours at our office listed in the **ADDRESSES** section.

#### Authority

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

Dated: February 20, 2003.

**Julie A. MacDonald,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 030210027-3027-01; I.D. 012103E]

RIN 0648-AQ35

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

**SUMMARY:** NMFS issues this proposed rule to implement measures contained in Framework Adjustment 37 (Framework 37) to the Northeast 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; 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; and slightly modify the Cape Cod Bay raised footrope trawl fishery area.

**DATES:** Comments on this proposed rule must be received on or before March 27, 2003.

**ADDRESSES:** Copies of the Framework 37 document, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA) and supplement to the IRFA prepared by NMFS, 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 (FSEIS), and other supporting documents for Amendment 12 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The Final Regulatory Flexibility Analysis 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.

Written comments on the proposed rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Framework 37." Comments may also be sent via facsimile (fax) to (978) 281-9135. Comments will not be accepted if submitted via e-mail or the Internet.

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

#### SUPPLEMENTARY INFORMATION:

Amendment 12 was developed to address the overfished condition of red hake and the southern stock of whiting, to reduce fishing mortality on northern whiting, which was approaching an overfished condition, and to establish management measures for offshore hake. The final rule implementing Amendment 12, which was partially approved by NMFS on behalf of the Secretary of Commerce on September 1, 1999, was published on March 29, 2000 (61 FR 16766), and became effective on April 28, 2000. The New England Fishery Management Council (Council) intended for the measures in Amendment 12 to achieve the target fishing mortality rates (F) for whiting within 4 years of implementation and to rebuild whiting and red hake stocks within 10 years.

Under Amendment 12, fishing with small mesh is regulated in the North Atlantic region through the establishment of three large "Regulated Mesh Areas." In the Gulf of Maine/ Georges Bank (GOM/GB) Regulated Mesh Area, vessels may fish for whiting with nets that have less than the minimum mesh size of 6-inch (15.24-cm) diamond mesh or 6.5-inch (16.51-cm) square mesh when participating in certain exempted fisheries. The GOM/GB exempted fisheries for whiting include: The Small Mesh Northern Shrimp Fishery, the CSWF, the Small Mesh Area 1/Small Mesh Area 2 Exemptions, and the Raised Footrope Trawl Whiting Fishery. The CSWF has a 3-inch (7.62-cm) minimum mesh size, and the Raised Footrope Trawl Whiting Fishery has a 2.5-inch (6.35-cm) minimum mesh size. In the Southern New England Regulated Mesh Area, vessels are exempt from the minimum mesh size requirement throughout the area when fishing for exempted species, which include whiting and offshore hake. Finally, in the Mid-Atlantic Regulated Mesh Area, vessels may fish for whiting and offshore hake with nets of mesh less than the minimum size when not fishing under a multispecies day-at-sea (DAS), provided that the vessel does not possess or land regulated multispecies.

Amendment 12 includes three possession limits, depending upon the minimum mesh size used. Vessels may possess and land up to a combined total of 3,500 lb (1,588 kg) of whiting and offshore hake when fishing with mesh less than 2.5 inches (6.35 cm). Vessels may possess and land up to a combined total of 7,500 lb (3,402 kg) of whiting and offshore hake when fishing with mesh equal to or greater than 2.5 inches (6.35 cm) and less than 3.0 inches (7.62

cm). Vessels may possess and land up to a combined total of 30,000 lb (13,608 kg) of whiting and offshore hake when fishing with mesh equal to or greater than 3.0 inches (7.62 cm). These possession limits were intended to provide an incentive for vessels to utilize the larger 3-inch (7.62-cm) mesh when fishing for whiting to minimize the catch of small whiting. Because red hake is primarily an incidental species caught in whiting and other small-mesh fisheries, the measures to protect whiting are expected to simultaneously protect red hake. Offshore hake, a species similar to whiting, was included in the management measures to provide basic protection for the species and to ensure that misidentification of offshore hake is accounted for.

Amendment 12 established the Whiting Monitoring Committee (WMC) to review the effectiveness of management measures and to recommend adjustments. Such reviews occur annually, beginning in 2001. The Council expected that the measures in Years 1, 2, and 3 would reduce exploitation by at least 50 percent of the required amount and that annual adjustments would indicate whether further management measures were needed. To ensure attainment of the FMP's mortality objectives, the default measures were developed for Year 4. The Council expected, and Amendment 12 specified, that the WMC would meet during the third year to determine whether the Year 4 default measures would be necessary. Furthermore, during the third year, and based upon the effectiveness of the first three years of management, the WMC was charged with considering and recommending, if appropriate, small-mesh multispecies measures for Year 4, other than the default measures, to achieve the F targets.

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.

The analyses in Amendment 12 indicated that substantial negative economic and social impacts would be likely to result from implementing the Year-4 default measure. The default measure would be expected to generate large losses of not only small-mesh multispecies, but also other small mesh species, such as squid. Shinnecock, NY, would be projected to experience the largest reductions in landings of all species combined from the Year 4 default measure (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 measure would produce similar impacts in the ports of Stonington and New London.

In September 2002, the WMC released the 2002 Stock Assessment and Fishery Evaluation (SAFE) Report for small-mesh multispecies, which represents the WMC's third year review and includes recommendations regarding the Year 4 default measure (see Appendix I to Framework 37). The WMC determined that the fishing mortality objectives of Amendment 12 appear to have been achieved, based on the evaluation of relative exploitation indices as a proxy for fishing mortality.

The northern stock of whiting (as well as the northern stock of red hake) is considered to be "rebuilt," or above its target biomass level according to the Amendment 12 overfishing definition. The relative exploitation of northern whiting is far below the target value that the WMC set as a proxy for FMSY, so overfishing is not thought to be occurring (see Table 19, p.31 of the SAFE Report). The current relative exploitation index is only 11 percent of the WMC's FMSY proxy. With respect to management thresholds, targets, and biological objectives, exploitation of the northern stock of whiting could be increased. The WMC concluded, therefore, that the Year 4 default measure is not necessary to further reduce effort on the northern stock of whiting.

The southern stock of whiting is not considered to be in an overfished condition, according to the Amendment 12 overfishing definition based on a 3-year moving average of the trawl survey index. The 3-year moving average of the trawl survey index increased from 0.63 in 1998 to 1.27 in 2001. Currently, the stock is at 71 percent of its biomass

target. The relative exploitation of southern whiting is below the target value that the WMC set as a proxy for a target fishing mortality rate (see Table 19, p.31 of the SAFE Report), so overfishing is not thought to be occurring on the southern stock. The current relative exploitation index is 47 percent of the WMC's target for this stock. While the information that the WMC evaluated suggests that exploitation could increase in the southern area, this stock has not yet rebuilt to its target level, so increases in exploitation are not recommended. Perceptions about the current biomass status of the southern stock hinge on a very high autumn 2001 survey value, which increased the 3-year moving average above the overfishing definition biomass threshold. It is too early to conclude whether the high survey value in autumn 2001 is a product of survey variability or a true indication of increasing biomass in the southern area. Several additional survey points will be necessary to make such a determination. Although the WMC does not support increasing whiting exploitation in the southern area, it agrees that the Year 4 default measure is not necessary to further reduce effort.

Northeast multispecies regulations, including those for small-mesh multispecies, are such that Council action (through a framework adjustment or amendment) is required to prevent the Year 4 default measure from becoming effective on May 1, 2003, in both the northern and southern stock areas. In preparation for the third year review by the WMC and in anticipation of an action to address the default measure, the Council approved the following motion at its March 19–20, 2002, meeting:

*That the Council initiate a framework adjustment process to develop a management strategy that responds to the Year 4 management measures contained in the whiting plan and allows for potential development of new whiting fishing areas.*

The WMC presented its findings and recommendations to the Council at the September 10–12, 2002, meeting, which was the first meeting for Framework 37. (The WMC's findings and recommendations can be found in their entirety in Appendix I to the Framework 37 document.)

The purpose of this framework adjustment is to eliminate the Year 4 default measure in both whiting stock areas and to implement FMP 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 a Council action modifies or eliminates it.

This proposed rule would also reinstate the CSWF season through October 31; 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; and slightly modify the Cape Cod Bay raised footrope trawl fishery area.

Prior to Amendment 12, the season for the CSWF was June 15–October 31. Amendment 12 shortened the season to September 30 as an effort reduction measure. This action would reinstate the month of October to the CSWF, which would provide increased economic opportunity for participating vessels. Further discussion occurs in the Classification section, below.

Currently, participants in the CSWF are limited in terms of their red hake landings to 10 percent by weight of all other fish on board. According to the WMC, 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 the proposed action would encourage directed fishing on red hake. This action also would 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 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 would no longer be allowed to be taken as incidental catch in Small Mesh Areas 1 and 2. The following species would 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 represents the status quo for vessels that are currently engaged in this activity. Vessels would be allowed to transfer 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 would 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 would move from the Loran 44100 line to the 42° N. latitude line, creating a “lee” by opening a triangle-shaped area totaling 5.5 square miles.

#### Classification

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

The Council prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. In addition, NMFS, in consultation with the Council, prepared a supplement to the IRFA, which includes further information considered by the Council related to the decision on whether or not to propose a change to the CSWF possession limit. A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the preamble. There are no new recordkeeping or reporting requirements proposed in this rule. There are no relevant Federal rules that duplicate, overlap, or conflict with this rule. All vessels impacted by this rulemaking are considered to be small entities; therefore, there are no impacts resulting from the effects of disproportionality between large and small entities. A summary of the analysis follows:

NMFS and the Council prepared an economic analysis for Amendment 12, which 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 analysis indicated that 1,156 participating small entities reported landings of one or more combined pounds of whiting, red hake, and offshore hake during the calendar years 1995 to 1997. The management measures proposed for Years 1–3 were estimated to “substantially” reduce gross revenues from all species for 81 vessels. If the default measures were to be implemented, 222 vessels would be likely to experience a substantial reduction in annual gross revenues.

Framework adjustment 37 proposes to eliminate the Year 4 default measures for small-mesh multispecies in both the northern and southern whiting stock areas, and to 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 would have beneficial economic effects for vessels that had traditionally prosecuted the fishery during October and would 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.

#### *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 would permit vessels to increase trip profits on the occasions where the current incidental catch allowance would be exceeded. For this reason, removal of the incidental catch allowance would not be likely to result in any market effects but would permit vessels to increase trip income on the occasions where the current allowance would 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 monkfish and lobster would 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 would have any substantial impact on gross revenues from all sources of fishing income for vessels participating in this fishery. However, at a trip-level, 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 would have a negative economic impact, as the trip may be abandoned. This outcome is difficult to predict.

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

Clarification of the transfer at sea provisions for small-mesh multispecies would allow vessels to transfer 500 lb (226.8 kg) of whiting and unlimited amounts of red hake at sea for use as bait and would represent the status quo for vessels that are currently engaged in this activity. Minimal impacts would be 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 would move from the Loran 44100 line to the 42° N. latitude line, creating a “lee” by opening a triangle-shaped area totaling 5.5 square miles. This slight area modification would likely produce small but positive economic impacts to vessels prosecuting this fishery.

*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 would 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 would continue to serve as a disincentive for them to participate in the CSWF by restricting their potential profitability. However, the Council concluded that under higher possession limits, the majority of present participants in the fishery could suffer substantial decreases in gross revenues and resulting profitability due to disproportionate decreases in whiting prices when large amounts of product are introduced simultaneously into the market. This was the case prior to the introduction of the possession limit in 2000.

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

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: February 14, 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 proposed to be amended as follows:

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.13, 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:

\* \* \* \* \*

**§ 648.14 [Amended]**

3. In § 648.14, paragraph (z)(2) is removed and 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 (18.28 m) in length applied to and 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); butterflyfish; 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 42°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' 6°44.3'  
RF6 41°45.6' 69°51.8'  
R7F 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.

(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).

\* \* \* \* \*

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