

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[Docket No. 030514123-3123-01; I.D. 041003B]

RIN 0648-AQ76

50 CFR Part 648**Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 38**

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures contained in Framework Adjustment 38 (Framework 38) to the Northeast Multispecies Fishery Management Plan (FMP) that would exempt a fishery from the Gulf of Maine (GOM)/Georges Bank (GB) Regulated Mesh Area mesh size regulations. Framework 38 would establish an exempted small mesh silver hake (*Merluccius bilinearis*) (whiting) fishery in the inshore GOM. The exempted fishery would be authorized from July 1 through November 30 each year; require the use of specific exempted grate raised footrope trawl gear; establish a maximum whiting possession limit of 7,500 lb (3,402 kg); and include incidental catch restrictions.

DATES: Comments on this proposed rule must be received on or before June 5, 2003.

ADDRESSES: Copies of the Framework 38 document, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), 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>.

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 38." 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: In September 2002, the New England Fishery Management Council's (Council) Whiting Monitoring Committee (WMC) released the 2002 Stock Assessment and Fishery Evaluation (SAFE) Report for small-mesh multispecies (whiting, red hake, and offshore hake), which represents the WMC's third-year review of the whiting management program implemented in Amendment 12 to the FMP. The 2002 SAFE Report also includes the WMC's recommendations regarding the future management of the small mesh multispecies resources. The WMC determined that the fishing mortality objectives of the whiting management program 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. The current relative exploitation index is only 11 percent of the WMC's FMSY proxy. With respect to management thresholds, targets, and biological objectives, the WMC concluded that exploitation of the northern stock of whiting could absorb some increase. As one way to increase exploitation in the northern stock area, the WMC recommended consideration of new exempted fisheries for small mesh multispecies if experimental data demonstrate that these fisheries can minimize regulated species bycatch.

Based on this recommendation, the Council initiated a framework action pursuant to 50 CFR 648.80(a)(8)(ii), which allows additions or deletions to small mesh exemptions in the NE multispecies regulated mesh areas in cases where there may be insufficient data or information to determine, without public comment, the percentage catch of regulated species or small mesh species. This framework adjustment would establish a seasonal exempted grate raised footrope trawl fishery for silver hake (whiting) in the inshore GOM. This action would allow for a transition from a successful experimental fishery for whiting focused on minimizing regulated species bycatch to a more permanent fishery that provides a seasonal small

mesh fishing opportunity for vessels in the GOM. The exempted grate raised footrope trawl fishery proposed in this framework adjustment is the product of 8 years of experimental work conducted by the Maine Department of Marine Resources (ME DMR), in cooperation with the fishing industry. The gear itself evolved throughout the course of the experimental fisheries, as different mesh configurations and grate bar spacing were tested. The gear proposed for the exempted fishery in this framework adjustment represents the configuration that encountered the most success minimizing regulated species bycatch when vessels used it to target whiting in the area proposed for exemption. The proposed season (July 1 - November 30) and area (see coordinates below) for this fishery most closely represents the traditional Maine whiting fishery and the area utilized by the fishermen who participated in the experimental whiting grate fisheries.

The biological analyses in Framework 38 indicate that establishing a seasonal grate raised footrope trawl fishery in the inshore GOM would not be expected to significantly impact fishing mortality or rebuilding schedules for any small mesh multispecies or large mesh regulated groundfish stocks. Fishing mortality (F) on whiting in the northern area is very low and the increase in F that would be created by the grate fishery is projected to be very low.

The Groundfish Plan Development Team (PDT) reviewed the grate raised footrope trawl experimental fishery data in the context of juvenile groundfish bycatch and determined that the impacts of this fishery on juvenile groundfish mortality would not likely be significant. The PDT concluded that, based on the experimental data, this fishery would primarily take juvenile American plaice, redfish, witch flounder, and white hake as bycatch. The amount of bycatch would depend in large measure on the amount of effort in the fishery. In terms of weight, data presented in the Framework 38 document indicate that expected regulated species bycatch would be less than 5 percent of the total catch. Using additional data provided by ME DMR from the 2002 experimental fishery, the PDT estimated that the numbers of juvenile fish that may be caught in this fishery could increase the catch of juvenile plaice by 1.57 percent and the catch of juvenile witch flounder could increase less than 0.5 percent. While catch-at-age estimates are not available to make these comparisons for redfish and white hake, the PDT expects bycatch of these species to be minimal.

Exempted Grate Raised Footrope Trawl Fishery Area

The proposed area is an inshore area in the GOM extending to the Loran 44500 line and northward along the coast of Maine. This area most closely represents the historical whiting fishery and the area utilized by the fishermen who have participated in the experimental whiting grate fisheries between 1996 and 2002. During the development of this framework adjustment, the Council considered three options for the fishery area, including the proposed area option. The first option was the largest area under consideration and included an offshore component to the proposed area. Another option was the smallest area under consideration and represented a subset of the proposed area where past experimental fishing was concentrated. The proposed option was selected by the Council, following an endorsement by the PDT, even though sampling was not conducted throughout the entire area. The proposed option was selected because there are sufficient similarities (species composition, hydrography, habitat, current flow, bottom topography) between it and the subset where the experiment occurred to suggest that bycatch in the proposed area option may be similar to that observed in the experiments. Thus, the rate of capture of regulated species would not be expected to differ over the proposed area.

Fishing Season

The proposed season for the GOM Grate Raised Footrope Trawl Fishery is July 1- November 30. This period encompasses the traditional seasonal presence of whiting along the coast of Maine in the GOM and the period of documented catch and bycatch during research trials and experimental small mesh fisheries permitted by NMFS between 1996 and 2002. The PDT expressed support for a season from July 1 November 30, based on documented catch rates and experimental data from 2001 and 2002, which were reviewed by the PDT in detail.

During the development of this framework adjustment, the Council considered establishing a season for this fishery from June 1 November 30, but ultimately decided to eliminate the month of June from consideration after evaluating the data. These data show that the coastal whiting fishery started in July and ended in November.

The majority of experimental tows with the proposed sweepless trawl were conducted during October and November 2001 and 2002. Past

experience demonstrates that the catches of whiting are generally lower and the bycatch of regulated species is relatively higher during these months than during the summer. Given that the 2001 and 2002 data for the proposed sweepless trawl show low absolute bycatch of regulated species during October and November, the gear should fish with even lower bycatch during the summer.

Gear Specifications

Several gear specifications are proposed for this fishery, including net specifications for the raised footrope trawl that are consistent with those in the Cape Cod Bay whiting fishery, a requirement to use a sweepless trawl, and a requirement to use a Nordmore-style grate with a maximum bar spacing of 50 mm (1.97 inches). A minimum codend mesh requirement of 2.5 inches (6.35 cm) (square or diamond mesh) is also proposed. Vessels would be allowed to use net strengtheners in this fishery, provided that they are consistent with the existing net strengthener provisions for 2.5 inch (6.35 cm) mesh.

Whiting/Offshore Hake Possession Limit

A maximum whiting/offshore hake possession limit of 7,500 lb (3,402 kg) is proposed for this fishery. Vessels using mesh larger than the minimum 2.5 inches (6.35 cm) would not be allowed to possess more than 7,500 lb (3,402 kg) of whiting/offshore hake.

Incidental Catch Restrictions

Incidental catch restrictions are proposed to ensure that the net is fished properly and remains off the ocean bottom. The incidental catch restrictions mirror those incorporated into the Cape Cod Bay raised footrope trawl fishery, with the addition of a prohibition on the possession of dogfish. Vessels participating in the GOM Grate Raised Footrope Trawl Fishery may retain red hake, squid, butterfish, mackerel, alewife, and herring up to the amounts allowed by the regulations for those species, provided they comply with all regulations for those species. The following additional restrictions apply: A prohibition on the possession of regulated species (Atlantic cod, witch flounder, American plaice, yellowtail flounder, winter flounder, windowpane flounder, haddock, pollock, redfish, and white hake), monkfish, lobsters, skates, crabs, longhorn sculpin, sea raven, summer flounder (fluke), ocean pout, and spiny dogfish.

The prohibition on the possession of monkfish, lobsters, and skates would

help to ensure that fishermen rig the net correctly, so that the footrope is not in contact with the sea floor and thus, much less likely to catch these species. The prohibition on crabs, longhorn sculpin, sea raven and dogfish is designed to reduce the damage to whiting, a soft bodied fish, from abrasion and puncture, as well as to encourage keeping the footrope off the sea floor. Except for a few juveniles, very few dogfish are retained by the grate raised footrope trawl net, as they are too large to pass through the grate.

Annual Review

The PDT would annually review sea sampling data from the fishery and develop recommendations, as necessary, to ensure that groundfish bycatch remains at a minimum. Because this would be a seasonal fishery, the Council could modify the specifications for this fishery through a framework adjustment to the FMP prior to the next season, if the PDT recommended adjustments to address regulated species bycatch.

The Council desires 10-percent observer coverage in this fishery. No later than 2006, NMFS, in consultation with the PDT, would determine if the level of observer coverage is sufficient to monitor catch and bycatch in this fishery with an acceptable level of precision. If practicable, the level of desired observer coverage would be adjusted (increased or decreased) consistent with that analysis. The PDT could recommend adjustments to the level of observer coverage prior to 2006, based on information examined during the annual review described above.

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. 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. 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 that would be impacted by this proposed rulemaking are considered to be small entities; therefore, there will be no disproportionate impacts between large and small entities. A summary of the analysis follows:

The Council considered the no action alternative--not establishing an exempted grate raised footrope trawl

fishery. While there would be no adverse economic impacts on the fishing industry as a result of the no action alternative, the economic opportunities resulting from the proposed action would be foregone.

Slight variations to the proposed action were considered by the Council as follows: Beginning the season in June; increasing the size of the exemption area; or less restrictive gear restrictions. Several of these options (larger area, longer season) may have resulted in increased economic benefits to the participants compared with the proposed action. However, there was sufficient uncertainty regarding bycatch rates of regulated multispecies associated with these options, which the Council considered the risk to associated bycatch species (particularly regulated multispecies) to be too great to warrant further consideration. The uncertainty resulted from the lack of experimental data in the larger area and during the month of June. Because the experiment had not been conducted in the larger area, there were no data to support a decision to allow an exempted fishery in the area outside of the proposed area. Similarly, there were no experimental data during the month of June, but data from May indicated significantly higher bycatch rates than during the proposed season. Due to a lack of data on bycatch rates during the month of June and from the larger area, the exemption could not be justified. Therefore, the Council made a precautionary decision to constrain the exempted fishery to the season and area in which experimental data demonstrated low bycatch rates.

The economic effects of the proposed exempted grate raised footrope trawl fishery are not expected to be significant to the economy as a whole or to the fishing industry in general. However, past experience suggests that approximately 50 vessels could be expected to participate in this exempted fishery, and these vessels would be expected to share in a possible \$1 million in increased revenue (an additional \$20,000 in annual revenue per participating vessel). Analyses suggest that the initial fishery using the proposed grate raised footrope trawl would not be expected to expand quickly, but would probably allow bait fishing activities to occur and would likely result in activity levels similar to those that occurred in 1996. Whiting market limitations, the characteristics of the grate raised footrope trawl fishery (area, season, etc.), and other factors suggest that a similar number of vessels, with similar characteristics (size, tonnage, homeport) as those that

participated in the experimental fisheries, would participate in and benefit from this experimental fishery. The economic benefits, although not significant at the large scale, would be important to participating vessels, especially those along the coast of Maine and in smaller ports adjacent to the the GOM.

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: May 15, 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 § 648.80, paragraph (a)(16) is redesignated as paragraph (a)(17) and a new paragraph (a)(16) is added to read as follows:

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

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(a) * * * * *

(16) GOM Grate Raised Footrope Trawl Exempted Whiting Fishery. Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may fish with, use, or possess in the GOM Grate Raised Footrope Trawl Whiting Fishery area from July 1 through November 30 of each year, nets with a mesh size smaller than the minimum size specified, if the vessel complies with the requirements specified in paragraphs (a)(16)(i) and (ii) of this section. The GOM Grate 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:

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(July 1 through November 30)

Point	N. Lat.	W. Long.
GRF1	43° 15'	70° 35.4'
GRF2	43° 15'	70° 00'
GRF3	43° 25.2'	70° 00'

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA—Continued

(July 1 through November 30)

Point	N. Lat.	W. Long.
GRF4	43° 41.8'	69° 20'
GRF5	44° 58.8'	69° 20'

(i) *Mesh requirements and possession restrictions.* (A) All nets must comply with a minimum mesh size of 2.5 inch (6.35 cm) square or diamond mesh, subject to the restrictions specified in paragraph (a)(16)(i)(B) of this section. An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted 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 paragraph (a)(16)(i)(C) of this section, except for the following allowable incidental species: Red hake; butterfish; herring; mackerel; squid; and alewife.

(B) All nets must comply with the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section. Counting from the terminus of the net, the minimum mesh size is applied to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.3 m) in length and is applied to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.3 m) in length.

(C) An owner or operator of a vessel participating in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery may fish for, possess, and land combined silver hake and offshore hake only up to 7,500 lb (3,402 kg). An owner or operator fishing with mesh larger than the minimum mesh size specified in paragraph (a)(16)(i)(A) of this section may not fish for, possess, or land silver hake or offshore hake in quantities larger than 7,500 lb (3,402 kg).

(ii) *Gear specifications.* In addition to the requirements specified in paragraph (a)(16)(i) of this section, an owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear as specified in paragraphs (a)(16)(ii)(A) through (C) of this section.

(A) An owner or operator of a vessel fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery must configure the vessel's trawl gear with a raised footrope trawl as specified in paragraphs (a)(9)(ii)(A) through (C) of this section. In addition,

the restrictions specified in paragraphs (a)(16)(ii)(B) and (C) apply to vessels fishing in the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery.

(B) The raised footrope trawl must be used without a sweep of any kind (chain, roller frame, or rockhopper). The drop chains must be a maximum of 3/8-inch (0.95 cm) diameter bare chain and must be hung from the center of the footrope and each corner (the quarter, or the junction of the bottom wing to the belly at the footrope). Drop chains must be at least 42 inches (106.7 cm) in length and must be hung at intervals of 8 ft (2.4 m) along the footrope from the corners to the wing ends.

(C) The raised footrope trawl net must have a rigid or semi-rigid grate

consisting of parallel bars of not more than 50 mm (1.97 inches) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl. The grate must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having to first pass between the bars of the grate. The net must have an outlet or hole to allow fish or other objects that are too large to pass between the bars of the grate to exit the net. The aftermost edge of this outlet or hole must be at least as wide as the grate at the point of attachment. The outlet or hole must extend forward from the grate toward the mouth of the net. A funnel of net

material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(iii) *Annual review.* On an annual basis, the Groundfish PDT will review data from this fishery, including sea sampling data, to determine whether adjustments are necessary to ensure that regulated species bycatch remains at a minimum. If the Groundfish PDT recommends adjustments to ensure that regulated species bycatch remains at a minimum, the Council may take action prior to the next season through the framework adjustment process specified in § 648.90(b), subject to the Administrative Procedures Act.

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