

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).