

## 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 Under the regulations that implement Amendment 12, these measures would become effective May 1, 2003, unless superseded by revised measures, such as those in Framework 37.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