

(6.35 cm) may not possess more than 7,500 lb (3,402 kg) of whiting/offshore hake.

Incidental Catch Restrictions

Incidental catch restrictions 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 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 will annually review sea sampling data from the fishery and develop recommendations, as necessary, to ensure that groundfish bycatch remains at a minimum. Because this is a seasonal fishery, the Council may modify the specifications for this fishery through a framework adjustment to the FMP prior to the next season, if the PDT recommends 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, will 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 will be adjusted (increased or decreased)

consistent with that analysis. The PDT may recommend adjustments to the level of observer coverage prior to 2006, based on information examined during the annual review described above.

Comments and Responses

During the comment period, which ended June 5, 2003, one written comment on the proposed rule was received from the Maine Department of Marine Resources (ME DMR).

Comment: The ME DMR strongly supports the measures in the proposed rule to implement Framework 38, is committed to limited monitoring of this whiting fishery, and requested that NMFS also provide resources to assist in monitoring.

Response: NMFS concurs with the ME DMR's support of the management measures in Framework 38, and acknowledges the ME DMR's commitment to monitoring and request for monitoring assistance.

Classification

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

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA) prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, 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.

Summary of Significant Issues Raised in Public Comments

One comment was received during the comment period on the proposed rule, although it did not pertain to the IRFA. No significant issues were raised and, therefore, no changes to the proposed rule were required to be made as a result of public comments.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

According to the Small Business Administration standards, any fish harvesting or hatchery business is a small business if it is independently owned and operated and not dominant in its field of operations and if it has annual receipts of not in excess of \$3.5 million. Approximately 50 vessels are

expected to participate in this exempted fishery. All of these vessels meet the criteria for "small entities" and therefore, all alternatives and analyses contained in Framework 38 necessarily reflect impacts on small entities.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

Framework 38 does not contain any new recordkeeping, reporting, or compliance requirements.

Steps Taken to Minimize Economic Impacts on Small Entities

The Council prepared an economic analysis that describes the economic impact that this rule will have on small entities. A summary of the analysis follows:

The Council considered the no action alternative—not establishing an exempted grate raised footrope trawl fishery. Implementation of the no action alternative would preclude fishermen from engaging in the small mesh silver hake fishery in the inshore GOM. This would result in lost opportunities to harvest whiting, and therefore, fishermen would be unable to earn additional revenue from this fishery (i.e., upwards of \$1 million per year).

Slight variations to the action being implemented were considered by the Council as follows: Beginning the season in June; increasing the size of the exemption area; less restrictive gear restrictions or less restrictive incidental catch allowances. Several of these options (larger area, longer season) may have resulted in increased economic benefits to the participants compared with the action selected. However, there was sufficient uncertainty regarding bycatch rates of regulated multispecies associated with these options, and the Council considered the risk to associated bycatch species (particularly regulated multispecies) to be too great to warrant implementation of these options. Furthermore, the dissimilarities between the inshore area (Options 2A and 2B), specifically, differences in depth, temperature, bottom type, and community composition, caused the Council to conclude that they could not reasonably extrapolate the results of the experiment to the offshore component (Option 1). The uncertainty resulted from the lack of experimental data in the largest area and during the month of June. Because the experiment had not been conducted in the largest 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