

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, butterflyfish, 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.