

Dated: June 13, 2003.

**James Jones,**

*Director, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

#### **PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.1228 is added to subpart D to read as follows:

#### **§ 180.1228 Diallyl sulfides; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of diallyl sulfides when used in/on garlic, leeks, onions, and shallots.

[FR Doc. 03-17106 Filed 7-8-03; 8:45 am]

**BILLING CODE 6560-50-S**

### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 030514123-3162-02; I.D. 041003B]

**RIN 0648-AQ76**

#### **Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 38 to the Northeast Multispecies Fishery Management Plan**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement measures contained in Framework Adjustment 38 (Framework 38) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) to exempt a fishery from the Gulf of Maine (GOM) Regulated Mesh Area mesh size regulations. Framework 38 establishes an exempted small mesh silver hake (*Merluccius bilinearis*) (whiting) fishery in the inshore GOM. The exempted fishery is authorized from July 1 through November 30 each year; requires the use of specific exempted grate raised footrope trawl gear; establishes a maximum whiting possession limit of 7,500 lb (3,402 kg); and includes incidental catch restrictions.

**DATES:** This regulation is effective July 9, 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 (Council), 50 Water Street, Mill 2, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses contained in this final rule, and the summary of impacts and alternatives contained in this final rule.

**FOR FURTHER INFORMATION CONTACT:** E. Martin Jaffe, Fishery Policy Analyst, 978-281-9272.

**SUPPLEMENTARY INFORMATION:** This final rule implements measures contained in Framework 38 to the FMP. Details concerning the justification for and development of Framework 38 and the implementing regulations were provided in the preamble to the proposed rule (68 FR 27774, May 21, 2003) and are not repeated here.

#### **Exempted Grate Raised Footrope Trawl Fishery Area**

The Exempted Grate Raised Footrope Trawl Fishery 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 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 area option implemented by this final rule. The first option was the largest area under consideration and included an offshore component to the area implemented. Another option was the smallest area under consideration and represented a subset of the area implemented, where past experimental fishing was concentrated. The area implemented was selected by the Council, following an endorsement by the Plan Development Team (PDT), even though sampling was not conducted throughout the entire area. The area was selected because there were 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 area implemented may be similar to that observed in the experiments. Thus, the

rate of capture of regulated species is not expected to differ over the area implemented.

#### **Fishing Season**

The 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 to 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 to 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 is expected to fish with even lower bycatch during the summer.

#### **Gear Specifications**

There are several gear specifications 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). There is also a minimum codend mesh requirement of 2.5 inches (6.35 cm) (square or diamond mesh). Vessels may 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**

There is a maximum whiting/offshore hake possession limit of 7,500 lb (3,402 kg) for this fishery. Vessels using mesh larger than the minimum 2.5 inches

(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

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 largest 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 resulting from the 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. The retrospective analysis included in the Framework 38 document indicates that there would be approximately 50 vessels expected to participate in this exemption fishery and they are expected to share in a possible \$1 million increase in revenue (an additional \$20,000 in annual revenue per participating vessel). Analyses included in the Framework 38 document indicate that the initial fishery using the grate raised footrope trawl would not be expected to expand quickly, but will allow bait fishing activities to occur and will likely result in activity levels similar to those that occurred in 1996. Given that the conditions under which the grate raised footrope trawl exemption fishery may be conducted (gear, area, season, etc.) are almost identical to the conditions under which the experimental fishery was operated, it is expected that a similar number of vessels, with similar characteristics (size, tonnage, homeport) as those that participated in the experimental fisheries and described in detail in the Framework 38 document, will participate in and benefit from this exemption fishery. The economic benefits, although not significant overall (approximately \$1 million to the fishery as a whole), will be important to participating vessels (approximately \$20,000 in increased annual revenue), especially those along the coast of Maine and in smaller ports adjacent to the Gulf of Maine.

*Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule, or group of related rules, for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity

compliance guide will be sent to all holders of permits issued for the NE multispecies fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see ADDRESSES) and may be found at the following web site: <http://www.nmfs.gov/ro/doc/nero.html>.

Pursuant to 5 U.S.C. Section 553 (d)(1), the Assistant Administrator for Fisheries, NOAA, (AA) waives the 30-day delayed effectiveness period of the implementing regulations. Currently, the minimum mesh size and possession limit restrictions implemented under the Northeast Multispecies FMP prevent this fishery from occurring. Although these measures impose new regulations on participants in the GOM whiting grate raised footrope trawl fishery, the overall program to implement the exemption fishery relieves existing restrictions that prevent the fishery from occurring without these measures. Specifically, this fishery has been operating for the past several years on an experimental basis. This action will benefit the silver hake resource by allowing fishermen to target an abundant stock (whiting), thereby reducing the need to target less abundant and less stable stocks (Gulf of Maine cod). This rule relieves the restrictions that would otherwise prevent the exempted fishery from occurring. Any additional restrictions implemented through this rule are necessary constraints placed on the exemption fishery to protect the resource from overharvest and to ensure that compliance with the regulations governing the exemption fishery can be adequately monitored and enforced. Overall, this rule has a beneficial impact on the fishing industry by providing an opportunity to fish for whiting off the coast of Maine. Because there is no longer an experimental fishery, there is a need to implement these regulations in order to allow fishers to participate in the small mesh silver hake exempted fishery, currently off-limits because of existing restrictions.

**List of Subjects in 50 CFR Part 648**

Fishing, Fisheries, Reporting and recordkeeping requirements.

Dated: July 2, 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 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.**

\* \* \* \* \*

(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, and 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'
GRF4	43°41.8'	69°20'
GRF5	44°58.5'	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) of this section 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), and in accordance with the Administrative Procedures Act.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 021122286-3036-02; I.D. 070203A]

#### Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific ocean perch in this area.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), July 3, 2003, through 2400 hrs, A.l.t., December 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-2778.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the

GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Pacific ocean perch for the Western Regulatory Area was established as 2,700 metric tons (mt) by the final 2003 harvest specifications for groundfish in the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC for Pacific ocean perch in the Western Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,500 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Regulatory Area of the GOA.

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 TAC for Pacific ocean perch in the Western Regulatory Area of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*