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## **5. Applicable law**

### **5.1 Magnuson-Stevens Act (FCMA)**

The Magnuson-Stevens Act, implemented Oct 11, 1996, resulted in some major changes to the standards by which all Councils must manage the fisheries. Perhaps the most significant of these changes is the national goal of achieving maximum sustainable yield (MSY) for all stocks, and for rebuilding overfished stocks to biomass levels that can produce MSY on a continuing basis. This new requirement has taken several years to implement, primarily because the NEFMC has had to first revise all overfishing definitions to comply with the new standard, conduct assessments of all stocks to determine the status relative to the new overfishing definitions, and the modify the management plans to achieve the stock rebuilding that is necessary in most cases. In the meantime, the NEFMC has had to meet its existing regulatory requirements established under Amendment 7, including the conducting of annual and periodic adjustments to the plans to achieve the Amendment 7 rebuilding goals.

The Council's revised the overfishing definitions for the multispecies stocks in Amendment 9 which was submitted on October 9, 1998. NMFS published the proposed rule on March 23, 1999 and the final rule on October 15, 1999. The SAW's Northern Demersal Working Group completed updated assessments of 11 of the multispecies stocks in August, 1999, providing stock status relative to the new overfishing definition reference points. In light of this situation (both Amendment 7 goals and Amendment 9 overfishing definitions being in effect simultaneously), the Chairman of the MSMC requested guidance from the Council for the development of the 1999 MSMC Report, including management measures for the 2000 fishing year. The following is excerpted from a letter the Council Chairman sent to the MSMC Chairman in response:

*the Council is in a transition period between a management policy under the Amendment 7 rebuilding plan and management under the revised goals of Amendment 9*

*overfishing definitions. The full environmental impact analysis of management measures designed to achieve Amendment 9 goals, including biological, habitat, economic and social impacts, will be done in Amendment 13.*

*Therefore, for this year's annual adjustment, the Council requests that the MSMC provide catch targets (TACs) calculated on the Amendment 9 control rules and, for the five stocks with specific goals in Amendment 7, TACs at the  $F_{0.1}$  standard. You should also provide the target TAC based on  $F_{max}$  for Gulf of Maine cod to comply with the specific goal set by Amendment 7 for this stock. The Multispecies Monitoring Committee recommendations for management measures should be based on achieving the Amendment 7 objectives, with appropriate discussion and comment on how these measures relate to the Amendment 9 control rule objectives.*

*As for guidance on interpretation of the Amendment 9 control rules, the Council recognizes that those rules provide fishing mortality targets based on equilibrium stock conditions. Current conditions, however, may vary significantly from that theoretical basis, requiring a recalculation of the target fishing mortality rates that will rebuild the stocks within the prescribed time frame of five or ten years, depending on current biomass levels relative to  $B_{msy}$ . Consistent with National Standard 2, requiring the use of the best scientific information available, I recommend the MSMC use the information provided by the Northern Demersal Working Group to calculate the fishing mortality rate that rebuilds overfished stocks in five or ten years as appropriate. You should, therefore, use the rebuilding time period as the guide, not the stated equilibrium fishing mortality rate to calculate target allowable catch levels.*

This framework, and the accompanying MSMC Report are transitional between the Amendment 7 and Amendment 9 (SFA) management programs.

### **5.1.1 Consistency with National Standards**

Section 301 of the Magnuson-Stevens Act requires that regulations implementing any fishery management plan or amendment be consistent with the ten national standards listed below.

- 1. Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. The proposed action achieves the goals established by Amendment 7 to stop overfishing and rebuild stocks of cod, haddock and yellowtail flounder. The target TACs for these stocks represent optimum yield in that they provide for rebuilding of overfished stocks. In developing the management measures for this framework action, the Council considered updated information on 11 of the multispecies stocks which it used as guidance in selecting the proposed action. As noted in the preface to this section, the Council is proceeding with Amendment 13, to expand the stock-rebuilding program to all stocks in the multispecies complex, and to bring the rebuilding programs into compliance with the new overfishing definitions established by Amendment 9.*
- 2. Conservation and management measures shall be based on the best scientific information available.*

This action is based on information contained in the annual Multispecies Monitoring Committee Report, including updated assessments of 11 groundfish stocks completed in August, 1999. While these assessments consider catch data through 1998, the Council has also considered landings data provided by NMFS for the current fishing year. In the case of GOM cod, particularly, the Council considered analysis provided by the MSMC that concluded that the fishing mortality rate has declined from the 1998 level estimated in the assessment to a level that is consistent with the current plan objectives. As new information becomes available, the Council has a process in place to make timely adjustments as needed.

3. *To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.* The FMP, and more specifically this framework action, contains measures that are both stock-specific, such as cod and haddock trip limits, and measures that impact the broader grouping of related stocks, such as DAS limits, minimum mesh size and area closures. The stock-specific management measures apply throughout the range of the target stocks, while the broader measures apply on all vessels engaged in fishing for regulated species.

4. *Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.*

The proposed measures do not discriminate between residents of different states. The Council recognizes, however, that measures to conserve stocks that are distributed predominantly inshore may have a greater impact on inshore vessels and the ports bordering the affected areas. While vessels that have depended on the stocks in need of rebuilding, will be most affected by the conservation measures, the Council does not consider the differential impact to be the result of an allocation of fishing privileges by the management plan, but the consequence of individual circumstances. It has worked closely with the affected public to develop a set of measures that fairly and equitably distributes the burden of the rebuilding program across a broad segment of the industry while still achieving the needed conservation.

5. *Conservation and management measures shall, where practicable consider efficiency in the utilization of fishery resources; except that not such measure shall have economic allocation as its sole purpose.*

One of the Council's most important considerations in developing the measures in this framework has been to provide opportunity to the widest range of affected vessels to continue to fish without compromising the conservation goals of the plan. For example, it did not adopt the alternatives that would have reduced days at sea, primarily because it would have unnecessarily placed some of the cost of rebuilding on vessels that are not fishing on the stocks in need of immediate conservation. The Council also considered, but did not adopt alternative DAS counting methods and a layover-day proposal because of the distribution of impacts and the inherent inefficiencies of those measures. The adjustment to the haddock trip limit also promotes efficiency in the utilization of that resource without compromising the

rebuilding program.

6. *Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.*

The Council considered extensive public input from affected industry sectors in its development of the proposed action. Where possible within the conservation requirements, it has sought ways to maximize opportunity for vessels to engage in other fisheries, taking into account the different gear types and the characteristics of different fleet sectors. This proposed action continues the FMP strategy of gear-specific management measures and exceptions that includes, but is not limited to access to closed areas for gear not capable of catching groundfish, exemptions to the minimum mesh size for fisheries with a demonstrated minimal impact on regulated species, different DAS counting for Day Gillnet vessels, inshore Gulf of Maine roller gear restrictions, and different management measures for recreational, party/charter and commercial vessels.

7. *Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.*

The Council considered the costs and benefits of a range of alternatives that would achieve the conservation goals of the plan. It considered costs to the industry, particularly in terms of foregone revenues and costs of compliance, and, where possible, enforcement and administrative costs in selecting the proposed action. In some cases, administrative and enforcement cost estimates are not quantitative but are based on the qualitative comments of affected agencies. The Council seeks to avoid unnecessary duplication by considering the impacts of proposed measures on all stocks in the multispecies complex that are in need of rebuilding. In other words, the Council has considered the collateral benefits for other stocks when selecting measures designed to protect or rebuild specific stocks.

8. *Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse impacts on such communities.*

During the development of Framework 33, the Council considered the importance of fishery resources to affected fishing communities in order to provide for their sustained participation in the multispecies fishery and to minimize adverse impacts resulting from the management adjustment. The Council selected management measures from a range of alternatives that were analyzed for their potential biological, economic, and social impacts. Within the range of alternatives that were analyzed and expected to achieve the biological objectives of the management plan, the Council chose measures that are intended to minimize economic dislocation for affected vessels and negative short-term social impacts on affected fishing communities. On several occasions, the Council has noted that communities most dependent on stocks like Gulf of Maine and Georges Bank cod will likely experience the most negative short-term impacts from the management measures, but these are the same communities that are likely to benefit the most over the long-term from rebuilding the resource to maximum sustainable levels.

Several components of the proposed action demonstrate the Council's intent to maintain consistency with National Standard 8. First, the measures that the Council selected for Framework 33 are very similar to status quo management measures (Frameworks 26, 27, and 31 collectively). Continuing the current management strategy with only minor modification should minimize social disruption occurring in affected fishing communities upon implementation. In turn, the social impacts resulting from the action proposed in Framework 33 are not likely to be significantly different from the status quo. Second, Framework 33 proposes a 400-pound trip limit for Gulf of Maine cod, which represents an overall increase from the Gulf of Maine cod trip limits during most of the 1999-2000 fishing year (100 pounds, 30 pounds, for example). Low trip limits often produce an extremely socially undesirable consequence: regulatory discarding. The Council's decision to implement a 400-pound Gulf of Maine cod trip limit without a mechanism for the Regional Administrator to lower that trip limit (but with other equivalent measures) illustrates its commitment to minimizing adverse impacts of these management measures on affected fishing vessels and communities.

Third, the Council selected a "backstop" that is likely to produce less severe negative social impacts than the other "backstop" alternative under consideration. The Council considered the costs and benefits of two Gulf of Maine "backstop" alternatives before selecting the proposed action in order to both maximize the effectiveness of the measure and minimize its potential negative impacts on affected vessels and communities. The "backstop" alternative that was not selected would have produced disproportional negative impacts on smaller vessels and affected fishing communities, especially those located along the outer Cape.

9. *Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.*

The proposed action includes an increased haddock trip limit during the May – September period, and a continuation of the 400 pound per day GOM cod trip limit implemented under Framework 31 specifically to reduce the potential for regulatory discards. The Council also proposes to substitute additional area closures for the current provision that grants authority to the Regional Administrator to reduce the GB cod trip limit by notice action. It is doing so to forestall a situation on Georges Bank similar to what occurred in the Gulf of Maine when the trip limit was reduced to levels that resulted in high discard rates being reported. The Council also proposes to increase the incentive for trawl vessels to fish with nets whose mesh is larger than the minimum required size by modifying the Large Mesh Permit Category conditions. If participation in this program increases, there will be a reduction in regulatory discards due to the minimum fish size rules.

10. *Conservation and management measures shall, to the extent practicable, promote safety of human life at sea.*

The Council is acutely aware of the safety implications of its decisions, both through extensive public comment and the practical experience of many of its members. Notwithstanding the restrictive measures that are needed to achieve the plan goals, the Council has chosen measures that minimize the safety impacts, and do not require unsafe activities. The Council has sought, and continues to seek to provide as much opportunity as possible for vessels within the constraints of the conservation program so that fishermen are not put in the

position of having to take risks just to survive financially. It considers rebuilding the stocks essential to minimizing the need for fishermen to have to make such decisions.

### **5.1.2 Other FCMA requirements**

Section 303 (a) of FCMA contains 14 required provisions for FMPs. These are discussed below. Any fishery management plan that is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

*(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are-- (A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery; (B) described in this subsection or subsection (b), or both; and (C) consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;*

See Section 3.0 for a description of the measures contained in the amendment, and Section 5.1.1 for a discussion of the amendment's consistency with the national standards.

*(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;*

The Environmental Assessment contained in this document (Section 5.2.1) supplements the documents submitted with preceding amendments (particularly Amendment 5, 7 and 9), in forming the description of the fishery. There is no foreign fishing for species covered under this FMP, nor are there any Indian treaty fishing rights.

*(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;*

Amendment 9 contains proposed overfishing definitions based on achieving maximum sustainable yield, and a revised specification of optimum yield. The report of the Overfishing Definition Review Panel in Appendix II of that amendment contains a complete description of the information used in calculating the target and limit reference points. The 1999 MSMC Report (Appendix III of this document) contains rebuilding projections for 11 groundfish stocks based on updated assessments at fishing mortality targets in both Amendment 7 and Amendment 9 overfishing definitions. The target TACs for the critical stocks represent optimum yield for those stocks which are the primary focus of the rebuilding plan. The Council has initiated Amendment 13 to develop rebuilding plans consistent with the new overfishing definitions for all of the multispecies stocks.

*(4) assess and specify-- (A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3), (B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and (C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;*

Based on the annual Multispecies Monitoring Committee analysis of DAS utilization rates, fishing mortality rates and target TACs, the total capacity of the fleet exceeds that needed to harvest optimum yield at current stock levels and fishing mortality targets designed to rebuild the resource. Consequently, no portion of the allowable catch is available for foreign fishing. However, much of the capacity, in terms of permitted vessels, is inactive or only uses a fraction of its allotted fishing effort (DAS). As the stocks rebuild, that now-excess capacity will provide the means to harvesting the available resource competitively, efficiently and safely. The Council has an annual review and adjustment process to manage the effort levels and keep them within the target range and it has established a Capacity Committee to review of current fishing capacity and future capacity under rebuilt stock conditions. The Council has also indicated its intent to consider alternatives for managing fleet capacity in Amendment 13 currently under development.

*(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;*

Section E.6.1.1 of Amendment 9 contains a discussion of the FMP's data considerations and the Council's participation in the Atlantic Coastal Cooperative Statistics Program (ACCSP) and in the stock assessments. The Council has initiated efforts to organize and compile all of the data requirements for managing the stocks in a manner consistent with the Sustainable Fisheries Act. These efforts include calling on NMFS to prepare an annual publication of a Stock Assessment and Fishery Evaluation (SAFE) Report, activation of the Science and Statistical Committee and Social Sciences Advisory Committee and continued participation in the Stock Assessment Workshop Steering Committee.

*(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;*

The Council has carefully considered the impacts of needed conservation restrictions on vessels that are constrained because of size or other factors in their ability to fish offshore. This has been one of the most difficult issues in the development of the GOM cod rebuilding strategy because the area where those measures will be most effective in achieving rebuilding are inshore areas

where the cod aggregate, especially to spawn, and where the highest cod landings are observed. It has similar concerns with the small vessel fleets that fish on Georges Bank cod to the east of Cape Cod. It has worked closely with the industry to develop alternatives that minimize these impacts, and it has a framework adjustment process for making changes as needed to address safety consistent with National Standard 10 while maintaining fair and equitable access to the fishery within the limitations of the conservation program.

*(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;*

Pursuant to 50 CFR 600.920 of the EFH Interim Final Rule, the Council prepares an EFH Assessment for each proposed fishery management action. The EFH Assessment includes a description of the proposed action, an analysis of the effects of the proposed action, the conclusions of the Council regarding the proposed action, and proposed mitigation, if necessary. The EFH Assessment can be found at Section 4.1.9 of this document.

*(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;*

The Council is working closely with NMFS to coordinate the reporting of scientific information in a timely manner so it coincides with the annual plan review and adjustment process. See discussion under item 5 above.

*(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--(A) participants in the fisheries and fishing communities affected by the plan or amendment; and (B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;*

The Environmental Assessment contains analysis and discussion of the impacts of the proposed action on the human environment, including fishing communities. The Council developed measures in this framework in consultation with the Mid-Atlantic Council through their participation on the Groundfish Committee and attendance at Council meetings.

*(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;*

The revised overfishing definitions in Amendment 9 specify both biomass and fishing mortality criteria for evaluating a stock's status. The Overfishing Definition Review Panel Report in Appendix II to Amendment 9 contains a full description of the analysis and methodology used to establish these criteria. The FMP contains measures to stop overfishing and an annual review and adjustment process to keep the rebuilding plan on track. The Council has initiated the development of Amendment 13 to address rebuilding programs for all overfished stocks in the FMP.

*(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority--*

*(A) minimize bycatch; and*

*(B) minimize the mortality of bycatch which cannot be avoided;*

The Vessel Trip Reports (logbooks) mandatory under the FMP since 1994, require fishermen to report discards. In conducting the stock assessments, NMFS uses information provided in the VTR as well as information gathered in the Northeast Fisheries Observer Program. In recent years, assessment scientists have expanded the analysis of discards in the stock assessments for some species. The Council and NMFS are both participating in the Atlantic Coastal Cooperative Statistics Program which is a long-term effort to improve the collection and utility of fisheries data (including bycatch).

The FMP contains a number of measures that directly or indirectly minimize bycatch or bycatch mortality as discussed in the submission documents for previous amendments and framework adjustments, for example, minimum mesh size and exempted fishery programs based on minimum bycatch standards for regulated species. The Council recognizes that low trip limits have caused discards and in such cases (specifically GOM cod) has increased the trip limit and provided for the landing of limited overages without compromising the rebuilding program for the target stock by substituting alternative conservation measures. In this framework, the Council also proposes to substitute a Georges Bank area closure for an existing provision that could result in reducing the cod trip limit during the fishing year (which may result in increased discards), and has increased the haddock trip limit while maintaining adequate backstop provisions to prevent exceeding the TAC. The increased incentive for otter trawl vessels to enroll in the Large Mesh Permit Category may also reduce discards.

*(12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and*

*include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;*

The FMP contains no recreational fishery catch-and-release programs.

*(13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors; and*

Amendment 9 contains several sections that update the FMP in the context of this requirement: Appendix III describes the social and cultural aspects of the multispecies fishery; Section E.6.4. contains additional descriptions of the halibut fishery and recreational fishery, including trends in landings; and Appendix II, the Report of the Overfishing Definition Review Panel, describes the long-term landings history by species for all of the stocks in the multispecies fishery. Furthermore, Amendments 5 and 7 to the Multispecies FMP contain detailed descriptions of the commercial recreational and party/charter sectors participating in the fishery which provides additional historical perspective. Additional information describing the recreational fishery is contained in Appendix IV of this document. In addition to periodic revisions or additions to the baseline information in individual framework documents, the Council will fully update the descriptions of the fisheries in the Environmental Impact Statement for Amendment 13.

*(14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.*

The Council has incorporated all sectors of the fishery into the FMP. For this framework, it has reviewed recreational and party/charter landings and determined that rebuilding program has been equitably distributed across commercial and recreational sectors. It will continue to monitor the relative impacts on different fishery sectors and make adjustments as needed.

## **5.2 National Environmental Policy Act (NEPA)**

The Council conducted an analysis of the environmental impacts of the stock rebuilding plan under Amendment 7. The Final Environmental Impact Statement (FSIES) indicated that the impacts of Amendment 7 would be significant, particularly the positive biological and long-term economic impacts of rebuilding the stocks. The proposed action is intended to modify the management measures to achieve the objectives and purposes of Amendment 7. The impacts discussed in this document are consistent with those that were expected under Amendment 7, as the measures are modifications to the Amendment 7 management program which failed to fully achieve its stated purpose.

### **5.2.1 Environmental Assessment**

Section 2.1 of this document contains a discussion of the purpose and need for the proposed action. Section 3.0 contains a description of the proposed action and alternatives, including the no-action alternative. Section 4.0 contains an analysis of potential impacts.

In developing the proposed measures and in reviewing the analysis of impacts contained in this Environmental Assessment, the Council has consulted with NMFS, the Mid-Atlantic Fishery Management Council, Atlantic States Marine Fisheries Commission and the state marine fisheries agencies (New England states) through their participation in Council and Groundfish Committee meetings. The Council has also informed the interested public of the proposed action and review of environmental documents through notice in the *Federal Register* and by mailing of Council meeting notices and agendas to approximately 1,650 persons. About 850 interested parties receive notices of the Groundfish committee meetings.

### **5.2.2 Finding of No Significant Impact (FONSI)**

NOAA Administrative Order 216-6 provides guidance for the determination of significance of the impacts of fishery management plans and amendments. The five criteria to be considered are addressed below:

1. *Can the proposed action be reasonably expected to jeopardize the long-term productive capability of any stocks that may be affected by the action?*

The proposed action is part of the ongoing Amendment 7 stock-rebuilding program. As such, the Council expects that the proposed action will improve the long-term productivity of the resource. The Council considers the proposed action to be consistent with National Standard 1 of the Magnuson-Stevens Act, which requires fishery management plans to achieve maximum sustainable yield. It has also initiated development of Amendment 13 which will implement broad stock rebuilding programs for all overfished stocks, and provide an opportunity to update the environmental documents supporting the FMP, including updated stock rebuilding and yield projections for all species in the FMP.

2. *Can the proposed action be reasonably expected to allow substantial damage to the ocean and coastal habitats?*

As discussed in Section 4.1.9 of this document, the alternatives and actions proposed in this framework adjustment will not increase any adverse impacts on essential fish habitat (EFH) resulting from fishing activity. The Council does not expect that the proposed action will cause or allow substantial damage to ocean and coastal habitats generally, because the measures consist primarily of those that are protective of habitat (area closures and gear reductions) or those that are neutral on habitat (trip limits).

3. *Can the proposed action be reasonably expected to have an adverse impact on public health or safety?*

The proposed action will probably not adversely affect public health, as no public health issues have been identified. The action is consistent with National Standard 10 of the Magnuson-Stevens Act which requires fishery management plans to promote safety. In developing management measures the Council receives significant comment from affected members of the industry regarding the safety implications of various alternatives that it considers in deciding on a final action.

4. *Can the proposed action be reasonably expected to have an adverse effect on endangered, threatened species or a marine mammal population?*

As discussed in Section 4.1.8, the Council does not expect that the proposed action will have

a negative impact on endangered or protected species.

5. *Can the proposed action be reasonably expected to result in the cumulative adverse effects that could have a substantial effect on the target resource species or any related stocks that may be affected?*

As discussed earlier, the proposed action is part of the ongoing Amendment 7 stock rebuilding program and, as such, is designed to have a positive effect on the fishery resource. Considering the status of the stocks that are the focus of this action, particularly Georges Bank and Gulf of Maine cod, taking no action would have a far more adverse impact on the resource than the proposed action. While some effort shifting may result in short-term adverse impacts on some stocks as vessels seek alternative fisheries, these impacts are likely offset by the cumulative benefit of closed areas, mesh size increase and roller-gear limitations that will accrue to target stocks and related species.

Based on the preceding criteria and analysis, the Council proposes a finding of no significant impact.

**FONSI STATEMENT:** In view of the analysis presented in this document and in the FSEIS for Amendment #7 to the Northeast Multispecies Fishery Management Plan, the proposed action will not significantly affect the quality of the human environment with specific reference to the criteria contained in NAO 216-6 implementing the National Environmental Policy Act. Accordingly, the preparation of a Supplemental Environmental Impact Statement for this proposed action is not necessary.

\_\_\_\_\_  
**Assistant Administrator  
for Fisheries, NOAA**

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**Date**

### **5.3 Regulatory Impact Review**

This section provides the information necessary for the Secretary of Commerce to address the requirements of Executive Order 12866 and the Regulatory Flexibility Act. The framework document contains all the elements of the RIR/RFA, and the relevant sections are identified by reference to the document.

The purpose and need for management (statement of the problem) is described in Section 2.0 of this document. The proposed action is described in section 3.1 of the amendment document. Alternatives to the proposed action are also summarized in section 3.2. The economic impacts are described in section 4.2 and summarized below under the discussion of how the proposed action is characterized under Executive order 12866 and the Regulatory Flexibility Act.

#### **5.3.1 Executive Order 12866**

The proposed action does not constitute a significant regulatory action under Executive Order 12866 for the following reasons:

- (a) The Framework 33 proposed action is developed to reduce the fishing mortality rates on Georges Bank and Gulf of Maine cod stocks, by 36 percent and 56 percent respectively from their 1998 levels. This action is the fourth iteration of the annual plan review and adjustment process established by Amendment 7 to ensure that rebuilding goals of the plan are met on a continuing basis.

As projected by the cost-benefit analysis in the FSEIS of Amendment 7, in the short-term, the proposed regulations will reduce gross revenues, profits, and crew income in the fishing industry. Over the long-term, however, the net impacts on the economy will be positive.

The short-term impacts of the Framework 33 proposals could be summarized as follows:

- The proposed Gulf of Maine cod measures include the continuation of the closures contained in Frameworks 27 and 31 (status quo), and the current trip limit of 400 pounds per days-at-sea implemented under Framework 31. As a result, no change in revenues and costs are expected with these closures and trip limits from the status quo levels for the fishing year 2000.
- The proposed action also extends Western GOM Closed area for one additional year, from May 2001 to April 30, 2002. Since this closure was scheduled to end on April 30, 2001, the one-year extension will reduce the revenues that could be potentially derived from fishing in this area if the scheduled opening went into effect in the 2001 fishing year. The potential revenue loss will range from \$1.8 million with a 75 percent effort shift to other areas to \$7.4 million if there is no effort displacement. It is more reasonable to expect, however, that vessels will shift their effort, and recover some part of the lost revenues by fishing in other areas. It also should be emphasized that if this area was opened on May 2001, other restrictions on catch and effort would likely be needed to provide an equivalent cod conservation in order to meet GOM cod fishing mortality objectives.
- In addition, the proposed action would close the Cashes Ledge Closed Area in November and Blocks 124 and 125 in January if 50 percent of the TAC were landed by July 31, see Figure 2. These closures would have negative economic impacts on vessels by reducing the revenues from all species derived from these areas. Specifically, if half of TAC were indeed reached by July 31, the proposed closures would reduce the fleet revenues by \$161,600 with a 75% effort displacement and by \$646,500 with no effort displacement.
- The proposed Georges Bank cod measures include closure of the area shown in Figure 3 in May. This closure will likely cause the total revenues of the vessels that use groundfish gear, that is, otter trawls, gillnets and hook vessels, to decline, by \$0.3 million if there is total effort displacement to other areas or up to \$4.1 million if there is no effort shift to other areas. The actual impacts will lie somewhere between these two extremes, since some vessels will probably recover a part of the lost revenues by fishing in other areas.
- Party and charter vessels would be required to obtain an exemption certificate from NMFS to fish in any of the Gulf of Maine closed areas. A limited access vessel in the exemption

program would be prohibited from fishing on a DAS while in possession of the certificate. Under this action, only one vessel would lose more than 5 percent of its annual income, and the loss is estimated to be about 7 percent.

- Limited access vessels would be prohibited from fishing under a DAS while taking passengers for hire. This option would close a perceived “loophole” in the regulations that allows party/charter vessels that possess a limited access permit to fish for regulated species with the lower minimum fish size that applies on commercial vessels, and to sell their catch. Party/charter vessels that do not have limited access permits do not have this option. Although this option may potentially have negative impacts on the revenues, the extent of these impacts could not be assessed quantitatively at this time.
- The proposed increase in the haddock trip limit will not likely have a measurable impact on the fishing mortality rate from the status quo. The proposed action reduces the potential for discards during the May-September period with a conservation impact approximately equivalent to the status quo. Since discards are reduced, revenues may increase, although the extent of this increase could not be quantified at this time.
- For otter trawl vessels fishing in the revised Large Mesh Permit Category, the reduction in the minimum mesh size from 8 inches to 7 inches may have some positive impacts on revenues by itself. The potential increase revenues is offset by a reduction in the increased DAS allocated to participating vessels fishing in this category, from 36 percent to 25 percent. Vessels participating in this program will also have to incur the cost of purchasing a large-mesh trawl net. However, since this is a voluntary program, presumably vessels will not participate unless it is projected to have a positive net economic impact at the vessel level.

The proposed measures contained in this framework are designed to achieve the biological objectives of Amendment 7 at a minimum economic cost to the industry whenever possible without compromising the conservation goals. The proposed measures will reduce the landings and revenues in the short-term, but will contribute to stock rebuilding, and therefore, will increase the net economic benefits in the long term. For these reasons, the proposed action will not adversely affect in a material way the economy, productivity, competition and jobs.

Even with the unrealistic assumption of no effort displacement, the total loss in revenues from all measures will not exceed \$12.1 million including the loss from the extension of Western GOM Closed area (\$7.4 million) from May 2001 to April 30, 2002. The actual economic impacts will be less than this amount, however, as effort is shifted at least partially to other areas and months. For example, with a 50 percent effort displacement, the estimated total revenue loss will not exceed \$5.7 million. If the effort displacement is only partial, the variable costs of vessels will also decline. As a result, the decline in revenues net of variable costs will be less than estimated even with no effort displacement. In addition, the ex-vessel prices may increase as a result of reduced landings from closures, offsetting some part of the revenue loss. Therefore, the proposed action will not have an annual effect on the economy of more than \$100 million.

For the same reasons as above, the proposed action will not significantly affect competition, jobs, the environment, or state, local or tribal governments and communities. The area closures and trip limits will not affect safety or public health.

- (b) The proposed action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will impact the same areas and the fisheries.
- (c) The proposed action will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of their recipients.
- (d) The proposed action does not raise novel legal or policy issues. Regulations regarding area closures, trip limits, and gear requirements have already been used to manage fisheries in the Northeast.

### **5.3.2 Regulatory Flexibility Act (RFA)**

The purpose of the Regulatory Flexibility Analysis (RFA) is to reduce the impacts of burdensome regulations and record-keeping requirements on small businesses. To achieve this goal, the RFA requires government agencies to describe and analyze the effects of regulations and possible alternatives on small business entities. On the basis of this information, the Regulatory Flexibility Analysis determines whether the proposed action would have a “significant economic impact on a substantial number of small entities.”

The RFA applies to any rule or regulation that must undergo “notice and comment” under the Administrative Procedures Act (APA), specifically those rules published as proposed rules. When RFA applies, the Council must assess the impacts of the regulations to determine if they will have a “significant economic impact on a substantial number of small entities”. Since this action is submitted as a final rule, not subject to further notice and comment under the APA, the RFA does not apply, however, the Council has carefully considered which groups will be affected by the proposed action, possible alternatives to achieving the plan’s conservation objectives, and how to minimize negative regulatory impacts. See Sections 3.0, 4.2, and 4.3 for the discussion of alternatives and their impacts on vessels of different sizes and gear types. The Council also considered a large amount of input from the regulated entities and will evaluate the effectiveness and impacts of the proposed action on a continuing basis.

The Small Business Administration (SBA) defines a small business entity in the commercial fishing industry as a firm with annual gross revenues up to \$3 million. In practice, although some firms own more than one vessel, the number of vessels is a reasonable proxy for the number of small business entities. The groundfish industry directly affected by the proposed action is composed primarily of small business entities. In 1998, about 847 otter trawls, 460 gillnet and 289 vessels participated in the Northeast fishery, including the Gulf of Maine and Georges Bank areas. The average annual revenues of these vessels were less than \$3 million for the period 1994-1998.

The RFA requires government agencies to evaluate the financial impacts of regulations on small businesses. According to current NMFS guidelines, if more than 20 percent of the small

businesses in a particular industry are affected by the regulations, the regulations are considered to have an impact on a "substantial number" of these entities. Since the proposed regulations will affect all vessels with a multispecies permit, the "substantial number" criterion of RFA would be met.

Furthermore, the economic impacts on small business entities are considered to be "significant" if the proposed regulations are likely to cause any of the following ("threshold analysis"):

- a) a reduction in annual gross revenues by more than 5 percent;
- b) an increase in total costs of production by more than 5 percent as a result of an increase in compliance costs;
- c) an increase in compliance costs as a percent of sales for small entities at least 10 percent higher than compliance costs as a percent of sales for large entities;
- d) costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or
- e) a number (two percent as a "rule of thumb") of small businesses being forced to cease business operations.

Since the proposed action is submitted as a final rule, an Initial Regulatory Flexibility Analysis and threshold analysis are not required. The information needed for such analyses are presented in 4.2.5, however, in the context of the economic impacts on vessels and other small business entities.

#### **5.4 Endangered Species Act (ESA)**

Section 7 of the Endangered Species Act requires federal agencies conducting, authorizing or funding activities that may affect threatened or endangered marine species to ensure that those effects do not jeopardize the continued existence of listed species. The Council has concluded that the proposed action may affect, but is not likely to jeopardize the continued existence of any endangered and threatened species. Consultation on the Multispecies Plan in 1996 resulted in a jeopardy finding for the northern right whale.

Consultation was reinitiated in 1997 to incorporate the Atlantic Large Whale Take Reduction Plan (ALWTRP) as an expanded reasonable and prudent alternative. Implementation of that plan, in conjunction with simultaneous right whale recovery actions taken by NMFS and other agencies, is expected to remove the threat of jeopardy to the northern right whale represented by the multispecies fishery. The Council does not anticipate any adverse modification to right whale critical habitat as a result of the proposed action. Should activities associated with the Multispecies FMP change significantly or new information become available that changes this determination, the Council will reinitiate consultation.

#### **5.5 Coastal Zone Management Act (CZMA)**

The Council has reviewed the coastal zone management programs for states whose coastal waters are within the range of areas affected by the proposed actions, including: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware and Maryland. It has determined that the proposed action is consistent with the CZM programs of

those states and has sent a notification of this determination, along with a copy of the amendment document, for their concurrence. Copies of the correspondence are on file at the Council office.

#### **5.6 Paperwork Reduction Act (PRA)**

Materials and analysis required under the PRA are submitted under separate cover.

#### **5.7 Marine Mammal Protection Act (MMPA)**

The Council has reviewed the impacts of Framework 33 on marine mammals (Section 4.1.8) and concludes that this action is consistent with the provisions of the MMPA and will not alter existing measures to protect species likely to inhabit the management unit. Overall, positive benefits may accrue to species inhabiting the areas affected by the proposed measures.

