

## **6.0 RELATIONSHIP TO APPLICABLE LAW**

### **6.1 MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT (MSFCMA)**

#### **6.1.1 Consistency with the National Standards**

Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act requires that FMPs contain conservation and management measures that are consistent with the ten National Standards. The following section summarizes, in the context of the National Standards, the analyses and discussion of the proposed action that appear in various sections of this framework adjustment document.

*(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.*

Whiting/offshore hake possession limits, implemented through Amendment 12, are significant components of the Council's strategy to end overfishing and rebuild the northern and southern stocks of whiting (particularly the southern stock, as the northern stock is not considered "overfished"). The proposed action is intended to allow continuation of an historic small mesh fishery while minimizing discards of large mesh regulated species by requiring use of the raised footrope trawl.

Framework 35 measures, as approved, clearly will contribute toward achievement of the whiting rebuilding objectives (including the objective to achieve optimum yield from the fishery) while not adversely impacting the rebuilding programs of large mesh regulated species, in particular Gulf of Maine cod. The biological impacts of this framework adjustment on stocks of whiting, red hake, spiny dogfish, and large mesh regulated species are summarized in Section 5.1 of this document.

*(2) Conservation and management measures shall be based upon the best scientific information available.*

The analyses of measures proposed in this framework adjustment are based on the scientific information gleaned from sea sampling of the raised footrope trawl experimental fishery from 1996-1999 (more emphasis was placed on the 1999 data because it was the most extensive). Section 5.1 and Appendix II of this Framework 35 document identify the data that the Council used to describe the raised footrope trawl whiting fishery and to evaluate the potential impacts of the proposed measures on this and other fisheries. Sea sampling data from this fishery are perhaps the most comprehensive and extensive of all experimental and exempted fisheries in the northeast region. The data considerations specific to Framework 35 are discussed in Section 5.1 of this document.

*(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 management adjustments proposed in this framework do not alter the management units for whiting, red hake, or any of the large mesh regulated groundfish species. Although the proposed action is area and season specific in order to minimize regulated species bycatch, it is consistent

with small mesh multispecies regulations implemented through Amendment 12 and large mesh species regulations implemented through Amendments 5, 7, and 9.

*(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 manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.*

The proposed action does not discriminate between residents of different states, nor does it allocate fishing privileges among various sectors of the fishery. Unless the Council adopts a limited access program for small mesh multispecies in the future, this fishery will remain “open” to any federally permitted vessels that wish to participate.

*(5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.*

The objectives of this framework adjustment are to minimize regulatory discards resulting from the raised footrope trawl whiting fishery, allow the fishery to occur during the October/November rolling closure, and encourage proper gear design and use. With these objectives, the proposed action will likely enhance efficiency in the utilization of fishery resources by minimizing waste and improving yield from the whiting fishery.

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

The Council first accounted for variations in fisheries, fishery resources, and catches by developing two options in this framework to address the October/November “rolling closure.” The approach that was ultimately selected by the Council (the proposed action) maximizes opportunities in the fishery and creates flexibility for the small mesh fleet while not adversely impacting large mesh regulated species, whiting, red hake or spiny dogfish.

The Council developed the modifications proposed in this framework adjustment in response to the impact of a two month “rolling groundfish closure” on the upper Cape Cod raised footrope trawl whiting fishery. The proposed action allows continuance of the raised footrope trawl fishery while maintaining the effectiveness of the rolling closure’s protection of large mesh regulated species. The proposed action represents the Council’s attempt to ensure recovery of Gulf of Maine cod and other large mesh regulated species while allowing for variations among fisheries of which raised footrope trawl whiting fishery is a component.

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

The Council considered the potential costs and benefits of two discrete alternatives to achieve the objectives of this framework adjustment. It considered costs to the National Marine Fisheries Service in administering the raised footrope trawl exemption. It considered costs to the industry in terms of compliance costs. The proposed action allows for greater fishing opportunity and

planning flexibility at minimal administration and enforcement costs. Because a portion of this fishery occurs in state waters, DMF is committed to ensuring that federal administration and enforcement costs remain minimal.

*(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 economic impacts on such communities.*

During the development of this framework adjustment, the Council considered the importance of fishery resources to affected fishing communities and wanted to provide those communities with continued access to the small mesh multispecies fishery, but not at the expense of compromising the conservation objectives of large mesh management measures. The proposed action is intended to allow for continuing access to both whiting and other small mesh fishery resources (red hake, for example).

The proposed action will not adversely impact affected fishing communities. In fact, the proposed action allows small mesh fishing to occur while the two month rolling closure adjacent to the communities remains intact. The impacts of the proposed action are likely to be positive for the affected communities by increasing fishing flexibility and opportunities and the associated economic benefits.

*(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 objective of this framework adjustment is to minimize regulatory discards of large mesh regulated species while simultaneously allowing continuation of a traditional small mesh whiting fishery. The Council intends for alternatives considered in this framework adjustment to reduce the overall catch and discard of large mesh regulated species in the small mesh whiting fishery in upper Cape Cod Bay. This objective will be achieved by:

- Mandating use of the raised footrope trawl. This trawl reduces bycatch of certain large mesh regulated species and results in cleaner tows, which allow faster deck processing of species, thereby improving the probability of survival of discards. The action proposed in this framework adjustment specifically addresses National Standard 9.
- Seasonal and area restrictions on the raised footrope trawl fishery are designed to minimize cod bycatch within the context of maximizing whiting catch.
- Banning possession of large mesh regulated species and other species often caught when nets are fishing directly on the ocean bottom. The prohibition on the possession of these species encourages proper usage of gear design to reduce bycatch.

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

The Council is aware of the safety implications of its management decisions, both through extensive public comment and the practical experience of many of its members. The

management measures implemented through Framework 35 promote safety at sea by maximizing the flexibility of fishermen to choose where and how they want to fish. The proposed action increases flexibility for the fishing fleet by allowing vessels the choice of fishing inshore within the October/ November rolling closure with the raised footrope trawl or steaming outside the closure to fish for large mesh groundfish. This may be of particular importance to the aging Provincetown fleet that needs to fish near the protected inshore waters of Cape Cod Bay. The raised footrope trawl fishing area is within an one hour steam of the port of Provincetown. The proposal should therefore have no adverse impacts on safety at sea and may have favorable impacts on safety to the extent that the proposal provides an alternative that allows an opportunity to fish near homeports with aging fleets and/or smaller vessels.

### **6.1.2 Other Required Provisions of the MSFCMA**

Section 303 of the MSFCMA contains fourteen additional required provisions for FMPs, which are discussed below. Any FMP 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;*

None of the measures proposed in this framework adjustment apply to foreign fishing vessels. Relative to domestic vessels, Section 3.1 of this document contains a description of the action proposed in this framework adjustment. Section 6.1.1 discusses the framework adjustment's consistency with the National Standards of the MSFCMA.

*(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;*

This Framework 35 document contains a comprehensive description of the whiting raised footrope trawl fishery, including, but not limited to, a brief history of the fishery, historical and recent landings, and revenue information, fishing vessel information, descriptions of the marketing and processing sectors, description of the recreational fishery, and projections of the costs likely to be incurred in management. Much of this information is contained in Sections 1.1 and Appendix II of this framework document. Additional information appears in the annual reports on the experimental raised footrope trawl fishery (1996-1999) and are referenced in this document.

The Environmental Assessment contained in this framework document supplements the information submitted with Amendment 12 to the Multispecies FMP in forming the description

of the fishery. Since this framework adjustment is being submitted so closely to the submission of Amendment 12, no new descriptive information about whiting fisheries is available at this time.

*(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;*

Sections 4.2 and 4.3 of the Amendment 12 document contain new definitions of overfishing and a description of optimum yield for small mesh multispecies. New overfishing definitions are based on maximum fishing mortality and minimum biomass thresholds. This framework adjustment builds on the Amendment 12 management measures to rebuild overfished whiting stocks to levels that will produce maximum sustainable yield over the long-term based on the most recent and best scientific information available.

*(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;*

Optimum yield is specified in Section 4.3 of the Amendment 12 document. No portion of the allowable catch is available for foreign fishing. The measures proposed in this framework adjustment do not change the Council's specification for optimum yield in this fishery and promote the harvest of optimum yield from the northern stock of whiting by providing a seasonal small mesh fishing opportunity for vessels fishing in and around the Gulf of Maine.

*(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.6.2 of the Amendment 12 document describes the amendment's data considerations and the Council's participation in stock assessments and the Atlantic Coastal Cooperative Statistics Program (ACCSP). These data considerations are still applicable to the measures proposed in this framework adjustment. 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 Council's Scientific and Statistical Committee, Experimental Fisheries and Research Program Steering Committee, and Social Sciences Advisory 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 framework adjustment process allows for temporary and/or real-time adjustments to management measures to address these issues as they arise. The Council is taking advantage of the framework adjustment process to modify whiting management measures to ensure that these issues are addressed while not affecting conservation efforts in other fisheries or discriminating among participants in small mesh multispecies fisheries.

*(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;*

Amendment 10 to the Northeast Multispecies FMP addresses the essential fish habitat requirements for silver hake and red hake. The Amendment 12 document and supplement describe and identify EFH for offshore hake. The Council conducted an EFH consultation for the measures proposed in this framework adjustment pursuant to 50 CFR 600.920 of the EFH Interim Final Rule. The results of that assessment are presented in Section 5.1.5 of this framework 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;*

Obtaining updated stock assessment information for all three small mesh multispecies is critical to achieving the objectives of the whiting management plan. The data considerations specific to Amendment 12 are applicable to this framework adjustment and are identified in Section E.6.2.5 of the Amendment 12 document.

The Council is working closely with the National Marine Fisheries Service to coordinate the reporting of scientific information in a timely manner so that it coincides with the annual plan review and adjustment process. Since small mesh multispecies are part of the multispecies complex, annual plan review and adjustments will occur along the same timeline as other multispecies stocks.

*(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;*

This framework document includes an Environmental Assessment and contains analyses and discussion of the impacts of the proposed action on the affected human environment, including fishing communities. The majority of the impacts on the human environment of this proposed action are likely to be *positive*. The Council developed the measures proposed in this framework adjustment in consultation with the Mid-Atlantic Fishery Management Council through the participation of its members on the Whiting and Groundfish Committees 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 for both stocks of whiting, red hake and large mesh regulated species specify objective and measurable criteria for identifying when these stocks are overfished or when overfishing is occurring on these stocks. Where possible, the reference points in the new overfishing definitions are based on maximum fishing mortality and minimum biomass criteria. If these reference points could not be estimated, the Council developed risk averse overfishing definitions based on rates of change in survey levels that may be indicative of overfishing. For more information, see Section 4.2 and Appendix I of the Amendment 12 document and Amendment 9. Nothing proposed in this framework adjustment changes these criteria.

*(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;*

Vessels fishing for small mesh multispecies with an open access multispecies permit are required to submit Vessel Trip Reports (VTRs, logbooks). NMFS uses VTR information in conducting stock assessments. In addition, the Council and the National Marine Fisheries Service are both participating in the ACCSP (Section E.6.2.4 of the Amendment 12 document), which is a long-term effort to improve the collection and utility of fisheries data, including bycatch information. The measures proposed in this framework adjustment are intended to minimize regulatory discards resulting from the raised footrope trawl whiting fishery.

*(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;*

Similar to Amendment 12, this framework adjustment proposes no recreational fishery management measures. Information suggests that participation in recreational whiting and red hake fisheries has decreased to very low levels. The Council intends to promote the re-emergence of recreational whiting and ling fisheries, particularly in the southern New England

and Mid-Atlantic areas, by ending overfishing and rebuilding southern whiting stocks. If it becomes necessary in the future, the Council may implement management measures for the recreational fishery and a catch and release program to assess the type and amount of fish caught and released alive during recreational fishing.

*(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;*

The Amendment 12 document, recently submitted, contains an extensive description of the commercial and recreational fishing sectors and quantifies the trends in landings by these sectors of the fishery. The history of small mesh multispecies fisheries is described in Section E.6.5.1 of the Amendment 12 document. Commercial landings information by state and by port is provided in Section E.6.5.2. Information specific to small mesh multispecies fisheries throughout New England and the Mid-Atlantic is provided in Section E.6.5.3. The sociocultural characteristics of the fishery as well as port-specific fishery information is provided in Section E.6.5.5. The recreational whiting and red hake fisheries are described in Section E.6.5.6.

The Environmental Assessment contained in this framework document supplements the information submitted with Amendment 12 to the Multispecies FMP in forming the description of the raised footrope trawl fishery. Since this framework adjustment is being submitted so closely to the submission and implementation of Amendment 12, no new descriptive information about whiting fisheries is available at this time.

*(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 adopted whiting management measures that apply equally to all sectors of the commercial fishery in Amendment 12. The measures proposed in this framework adjustment also apply equally to all sectors of the commercial fishery. If it becomes necessary in the future, the Council may develop management measures to address sectors of the commercial fishery differently or to address the recreational sector of the fishery.

## **6.2 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**

### **6.2.1 Environmental Assessment**

Section 2.0 of this framework document contains a discussion of the purpose and need for the proposed action. Section 3.0 contains a description of the proposed action and the alternatives that the Council rejected (where applicable). Section 5.0 contains an analysis of the potential biological, economic, and social impacts of the proposed action, including the impacts on other stocks (regulated multispecies, dogfish, and herring).

In developing the proposed action and in reviewing the analyses of impacts contained in this document, the Council consulted with NMFS, the Mid-Atlantic Fishery Management Council, the Atlantic States Marine Fisheries Commission, and the state marine fisheries agencies (New

England and the Mid-Atlantic) through their participation at PDT, Committee, and Council meetings. The Council also informed the interested public of the proposed action and review of environmental documents through notice in the *Federal Register* and by mailings of meeting notices and agendas for Committee and Council meetings two to three weeks in advance. Approximately 1,650 persons receive mail notification of Council meetings.

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

NOAA Administrative Order 216-6 provides guidance for the determination of significance of the impacts resulting from the management measures contained in fishery management plans, their amendments, and framework adjustments. 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 consists of the relatively minor adjustment of reclassifying an ongoing experimental fishery to an exempted fishery implemented through Framework 35 to the Multispecies FMP. None of the actions contained in this framework adjustment are likely to have a significant impact on the recovery and long-term viability of the large mesh regulated species, whiting, or red hake stocks.

The majority of the benefits of this framework action result from increased flexibility for the small mesh fishing fleet. The proposed action is not likely to jeopardize the long-term productive capability of any stocks affected by the action, including Gulf of Maine cod, whiting, red hake or any large mesh regulated species. Rather, to the extent that the proposed action discourages a shift of effort from the raised footrope trawl fishery to large mesh regulated species during September 1-November 20 period, the proposed action may prevent increased mortality on large mesh regulated species.

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

As discussed in Section 5.1.5 of this framework document, the alternatives and actions proposed in this framework adjustment will not increase any adverse impacts on essential fish habitat (EFH) resulting from fishing activities. The raised footrope trawl gear is designed for minimal contact with the bottom, far less than the heavier traditional groundgear. The Council expects that the proposed action will be neutral relative to causing or allowing substantial damage to ocean and coastal habitats as the fishery has been on going. The proposed action will not have any adverse impacts on the EFH of any managed species relative to the baseline conditions established under Amendments 7, 9, 11 and 12.

According to the EFH assessment (Section 5.1.5.7), the actions proposed in this framework adjustment have no potential adverse effects on the EFH of any species managed by the New England, Mid-Atlantic or South Atlantic Fishery Management Councils. Because there are no potential adverse impacts associated with this action, an EFH consultation and a proposed mitigation plan are not required.

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

The action proposed in this framework adjustment is not likely to have an adverse impact on either public health or safety. The action has been found to be consistent with National Standard 10 of the MSFCMA, which requires management measures to promote the safety of human life at sea. In developing management measures, the Council usually receives extensive comments from affected members of the public regarding the safety implications of various alternatives under consideration. No safety or public health issues were identified during the development of the management measures proposed in this framework adjustment.

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

The management measures proposed in this framework adjustment are not expected to have an adverse impact on any endangered or threatened species or marine mammals. See Section 5.1.4 of this framework document for a discussion of the impacts of the proposed action on threatened and endangered species and marine mammals.

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

As previously discussed, the proposed action consists of a relatively minor adjustment to the whiting and multispecies management programs implemented through Amendment 12 and Amendment 9 to the Multispecies FMP. None of the actions contained in this framework adjustment are likely to have a significant impact on the recovery and long-term viability of the whiting stocks. Furthermore, none of the actions proposed in this framework adjustment are likely to affect fishing mortality rates on whiting, red hake or large mesh regulated groundfish species.

Based on the preceding criteria and analyses, the Council proposes *a finding of no significant impact* for the management adjustments contained in this framework adjustment to the Northeast Multispecies FMP.

**FONSI STATEMENT:** In view of the analyses presented in this framework adjustment document and in the FSEIS for Amendment #12 to the Northeast Multispecies FMP, the proposed action will not significantly affect the quality of the human environment with specific reference to the criteria contained in NOAA Administrative Order 216-6 implementing the National Environmental Policy Act. Accordingly, the preparation of a Supplemental Environmental Impact Statement for this proposed action is not necessary.

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**Assistant Administrator for Fisheries, NOAA**

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**Date**

### **6.3 REGULATORY IMPACT REVIEW**

This section provides the information necessary to address the requirements of Executive Order 12866 and the Regulatory Flexibility Act.

The Regulatory Impact Review (RIR) provides an assessment of the costs and benefits of proposed action and other alternatives in accordance with the guidelines established by Executive Order (E.O.) 12866. The regulatory philosophy of Executive Order 12866 stresses that, in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives and choose those approaches that maximize net benefits to the society.

The RIR also serves as a basis for determining whether any proposed regulations are a “significant regulatory action” under the criteria provided in Executive Order 12866 and whether the proposed regulations will have a significant economic impact on a substantial number of small entities in compliance with the Regulatory Flexibility Act of 1980 (RFA), as amended in 1996. This RIR summarizes the effects of the proposed action and other alternatives considered in this framework adjustment. This framework document contains all of the elements of the RIR/RFA, and the relevant sections are referenced.

#### **6.3.1 Executive Order 12866**

Executive Order 12866 defines a “significant regulatory action” as one that is likely to result in:

- (1) an annual effect on the economy of \$100 million or more or one which adversely affects in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- (2) a serious inconsistency or interference with an action taken or planned by another agency; or
- (3) novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The proposed action, consisting of the establishment of a seasonal small mesh, raised footrope trawl whiting fishery in Upper Cape Cod Bay, is not likely to be a “significant regulatory action” as defined above. The economic impacts of the proposed action (Section 5.2) are positive for participating vessels. No adverse impacts are expected from the proposed action. When compared to the “status quo” alternative (not establishing this fishery), the proposed action is likely to generate approximately \$1.25 million in revenues for vessels fishing primarily out of the ports of Gloucester and Provincetown, Massachusetts (based on 1997-1999 averages). These revenues will be achieved during a time when these vessels have little to no other fishing opportunities due to surrounding groundfish area closures.

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

The purpose of the 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 the 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 framework action will be submitted as a *final rule*, not subject to further notice and comment under the APA, the RFA does not apply. However, during the development of this framework adjustment, the Council carefully considered the potential impacts of the proposed action on small entities, alternatives to the proposed action (and their potential impacts), as well as how to minimize negative impacts on affected small entities.

The statement of the problem/need for management action is presented in Section 2.0 of this framework document. The objectives of this framework adjustment are specified in Section 2.2. The proposed action is described in Section 3.1, and alternatives to the proposed action are described in Section 3.2. The economic analysis of the proposed action is contained in Section 5.2 of this document. The economic analysis focuses on the effects of the proposed action (establishing the raised footrope trawl fishery) versus the effects of the “status quo” (not establishing the fishery). When compared to the “status quo” alternative, the proposed action is likely to generate approximately \$1.25 million in revenues for vessels fishing primarily out of the ports of Gloucester and Provincetown, Massachusetts (based on 1997-1999 averages). These revenues will be achieved during a time when these vessels have little to no other fishing opportunities due to surrounding groundfish area closures.

As discussed in Section 3.0, the “range” of alternatives for the proposed action were considered during four years of experimental fishing (1996-1999), and the specifications proposed in this framework document reflect the best alternatives based on the data collected through the experimental fisheries. Essentially, there was no need for the Council to consider a range of alternatives for season, area, etc. because the experimental data supported one alternative: the proposed action.

The Council did, however, consider two alternatives for allowing the raised footrope trawl fishery to occur during a time and in an area proposed to be closed to all gear capable of catching multispecies (the October/November closure of Blocks 124 and 125). One alternative, which developed into the proposed action, grants participants in the raised footrope trawl fishery an exemption to the October/November closure only to fish for small mesh multispecies in the raised footrope trawl fishery area (see Section 3.1.4). The rejected alternative (“Option 2”) would have moved the boundary of the closed area so as not to include the proposed raised footrope trawl fishery area (see Section 3.2). This alternative would have resulted in additional positive short-term economic benefits as it would have provided an opportunity for groundfish vessels to fish with large mesh for regulated species in an area previously scheduled to be closed. The revenues generated from fishing for regulated multispecies in the southern half of Blocks 124 and 125 during October and November would have been in addition to the revenues generated by the raised footrope trawl fishery itself. However, while the short-term economic impacts of the rejected alternative would have been more positive for a larger number of vessels, the long-term economic impacts could have been more negative if the rejected alternative

resulted in a negative impact on multispecies stock rebuilding and necessitated more restrictive management measures in the future.

For further discussion of the economic impacts of the proposed action relative to the status quo, see Section 5.2 of this framework document.

#### **6.4 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 small mesh multispecies fisheries, as described in Amendment 12 to the Northeast Multispecies FMP, may affect several listed species, but are not likely to jeopardize their continued existence. See Section E.7.2.4 of the Amendment 12 document for a discussion of the impacts on ESA-listed species. See Section 5.1.4 of this framework document for a discussion of the impacts of the proposed action.

#### **6.5 MARINE MAMMAL PROTECTION ACT (MMPA)**

The New England Fishery Management Council has reviewed the impacts of the Framework 35 measures on marine mammals and concludes that this proposed action is consistent with the provisions of the MMPA and will not alter existing measures to protect the species likely to inhabit the management unit. For further discussion, see Section 5.1.4 of this framework document and Section E.7.2.4 of the Amendment 12 document.

#### **6.6 COASTAL ZONE MANAGEMENT ACT (CZMA)**

The Council has reviewed the coastal zone management (CZM) programs for states whose coastal waters are within the range of areas affected by the proposed action, including: Maine, New Hampshire, and Massachusetts. The Council has determined that the proposed action is consistent with the CZM programs of those states and has sent notification of this determination, along with a copy of the framework document, for their concurrence. Copies of the correspondence are on file at the Council office.

#### **6.7 PAPERWORK REDUCTION ACT (PRA)**

Analyses required by the Paperwork Reduction Act will be submitted under separate cover. Copies are available at the Council office.

#### **7.0 REFERENCES**

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