

Framework Adjustment 40B

To the

Northeast Multispecies Fishery Management Plan

Including an

Environmental Assessment

Regulatory Impact Review

Initial Regulatory Flexibility Analysis

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1.0 EXECUTIVE SUMMARY

The New England Fishery Management Council (NEFMC) is charged with developing management plans that meet the requirements of the Magnuson-Stevens Act (M-S Act). The Northeast Multispecies Fishery Management Plan (FMP) specifies the management measures for twelve groundfish species (cod, haddock, yellowtail flounder, pollock, plaice, witch flounder, white hake, windowpane flounder, Atlantic halibut, winter flounder, yellowtail flounder, ocean pout) off the New England and Mid-Atlantic coasts. The FMP has been updated through a series of amendments and framework adjustments. The most recent amendment, published as Amendment 13, was approved by the National Marine Fisheries Service in March, 2004 and became effective on May 1, 2004. This amendment adopted a broad suite of management measures in order to achieve fishing mortality targets and meet other requirements of the M-S Act.

For several stocks, the mortality targets adopted by Amendment 13 represented substantial reductions from existing levels. For other stocks, the targets were at or higher than existing levels and mortality could remain the same or even increase. Because most fishing trips in this fishery catch a wide range of species, it is impossible to design measures that will selectively change mortality for individual species. The management measures adopted by the amendment to reduce mortality where necessary are also expected to reduce fishing mortality unnecessarily on other, healthy stocks. As a result of these lower fishing mortality rates, yield from healthy stocks is sacrificed and the management plan may not provide optimum yield - the amount of fish that will provide the greatest overall benefit to the nation.

In order to increase the fishing effort on and yield from healthy stocks, Amendment 13 created a structure that allows for the development of programs to target healthy stocks. The amendment also included four specific programs, but only two were approved and implemented on May 1, 2004. A brief review of the primary effort control used in the multispecies fishery is in order. The FMP restricts the number of days that vessels can fish by allocating each limited access permit a specific amount of days-at-sea (DAS). Amendment 13 further defined three categories of DAS. For each permit, the number of DAS in each category was determined based on the vessels history of fishing for regulated groundfish during the period 1996 through 2001 (based on fishing years). The DAS categories are:

- Category A: These DAS can be used to target any regulated groundfish stock, subject to the restrictions on gear, areas, and landing limits that are defined by the FMP.
- Category B: These DAS are used to target healthy groundfish stocks – that is, stocks that are not overfished and that are not subject to overfishing. Programs to use Category B DAS prescribe specific conditions for their use.
- Category C: These DAS cannot be used, but remain associated with a permit. As stocks rebuild, in the future some of these DAS may be re-allocated into other categories and may be used.

In addition, Amendment 13 defined two sub-categories for Category B DAS:

- Category B (regular): According to Amendment 13, these DAS would be used to target healthy stocks, but the details were not defined.
- Category B (reserve): These DAS can only be used in Special Access Programs (SAPs) – programs with specific requirements defined based on data that show the activity will not harm stocks of concern.

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In order to create additional opportunities to target healthy groundfish stocks, Framework Adjustment 40A (FW 40A) was submitted by the Council in July, 2004 and became effective November 19, 2004. FW 40A adopted two special access programs (SAPs) to target Georges Bank haddock: one in the Eastern U.S./Canada area using trawl gear, and a second in Closed Area I using longline gear. In addition, FW 40A adopted a pilot program that allows vessels to use Category B (regular) DAS outside of an SAP.

Since the implementation of Amendment 13 and submission of FW 40A, several issues have been raised concerning the overall approach to controlling effort. The **primary purpose** of this action is to improve the effectiveness of the Amendment 13 effort control program, including the opportunities developed to use effort to target healthy stocks and other measures that were adopted to facilitate adaptation to the amendment's effort reductions. The Council considered measures to clarify the DAS allocations and provide a small allocation to all permit holders, modify the DAS leasing and transfer programs, improve opportunities to target healthy stocks, and adjust the GB cod hook sector provisions in order to meet this purpose.

The **secondary purpose** of this action is to consider measures developed to address interactions between the herring fishery and regulated groundfish. This fishery is not allowed to fish for, possess, or land groundfish. Catches of groundfish that occur are wasted and do not contribute to optimum yield in the groundfish fishery.

Proposed Action

The proposed action implements twelve specific management measures. A general description of these measures is provided below. For the specific details of each measure as well as the rationale for its adoption, refer to the description of the proposed action in section 4.0.

Changes to the DAS leasing and transfer conservation tax (Measure A.1): Amendment 13 adopted two programs that allow DAS to be exchanged between limited access permit holders. The DAS leasing program allows for the temporary exchange of DAS between two permits, while the DAS transfer program allows for the permanent exchange of DAS. Both programs are subject to a number of restrictions that govern which vessels can exchange DAS and what (if anything) happens to the permits of the vessel that is selling or leasing DAS to another vessel. As adopted by Amendment 13, DAS that are permanently exchanged through the transfer program are subject to a forty percent conservation tax (Category A and B DAS). The proposed action would reduce that tax to twenty percent. While the Council considered imposing a tax on DAS that are leased, the proposed action does not adopt a tax on leased DAS.

Incidental Catch TACs (Measure B): FW 40A adopted several programs that allow vessels to use Category B DAS to target healthy stocks. The catch of stocks of concern - that is, stocks that are overfished or are subject to overfishing - when using these DAS is controlled through the use of Incidental Catch TACs. This action modifies these TACs to account for an additional special access program and to provide for a research set-aside for Georges Bank cod. The total incidental catch TACs are not revised from those adopted by FW 40A (as implemented).

Western Gulf of Maine Closed Area Rod/Reel SAP (Measure C.2): The proposed action implements an SAP to target GOM haddock in the Western Gulf of Maine (WGOM) Closed Area using hand-operated rod and reel. The SAP is only authorized for two months - March and April. The catch (kept and discarded) of haddock is limited to fifty metric tons, while the catch of cod is limited to five percent of the Gulf of Maine cod incidental catch TAC. Vessels are not allowed to retain cod. Vessels must have a limited access multispecies permit to participate (including a Handgear A permit), must use a

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Vessel Monitoring System (VMS), are subject to several notification and reporting requirements, and cannot fish outside of the SAP.

Closed Area II Yellowtail Flounder SAP (Measure C.3): Amendment 13 adopted a SAP to target yellowtail flounder in the southern half of CAII from June 1 through December 31. A total of 320 trips was authorized, with vessels limited to two trips per month. The possession limit for yellowtail flounder was set at 30,000 pounds. The proposed action modifies several of the provisions of this SAP. The total number of trips allowed will be set by the National Marine Fisheries Service after considering the Georges Bank yellowtail flounder TAC (set in accordance with the U.S./Canada Resource Sharing Understanding) and the amount of yellowtail flounder that will be caught outside of the SAP. (It is likely that this process will result in there not being any trips in the SAP in FY 2005). In addition, the SAP will not open until July 1, vessels will be limited to one trip per month, and the possession limit will be 10,000 pounds per trip. NMFS has the authority to increase the possession limit to 30,000 pounds per trip.

Minimum Effective Effort Allocation (Measure D): Amendment 13 categorized the DAS allocated to each permit based on recent fishing history. As described above, only Category A and B DAS can be used. About 400 vessels did not receive any Category A or B DAS, and thus have no opportunity to fish for groundfish with their limited access permit. The proposed action will re-categorize ten Category C DAS as Category B (reserve) DAS for these permits. These DAS can only be used in specifically identified SAPs.

GB Cod Hook Sector (Measure E): Amendment 13 established the GB Cod Hook Sector and allocates GB cod to the sector based on the history of the sector participants. As implemented, only permits with a past history of using hook gear can join the sector, and only cod landed using hook gear is used to determine the sector's cod allocation. The proposed action modifies these requirements by allowing any vessel to join the sector and all cod landings of sector participants, regardless of gear, will be used to determine the sector's allocation. Sector participants are required to use hook gear once in the sector and the maximum share of the GB cod TAC that the sector can be allocated to the sector is twenty percent.

Change to the DAS Baseline Calculation (Measure F): Amendment 13 determined a DAS baseline for each limited access DAS permit. The baseline was calculated as the maximum DAS used in any single fishing year during the period FY 1996 through FY 2001. Only years when a permit landed 5,000 pounds of regulated groundfish were considered, and the maximum allocation was capped by the permit's allocation in FY 2001. The Council considered, but did not adopt, removing the cap on the allocation. The proposed action does not change the DAS allocations implemented for FY 2004.

Removal of Tonnage from the DAS Transfer Program Requirements (Measure G): In order to exchange DAS using the DAS transfer program implemented under Amendment 13, the permits selling and purchasing the DAS must have similar permit baseline characteristics for length, horsepower, and gross tonnage. The proposed action removes the requirement that tonnage must be similar, making the requirements for the transfer program similar to those for the DAS leasing program.

One Time Permit Baseline Characteristics Downgrade (Measure H): In order to lease DAS, the permits involved in the transaction must have similar permit baseline characteristics for length and horsepower. In general, permits with smaller baseline characteristics have a larger pool of candidates with which to exchange DAS using the leasing program. Some permit holders have placed permits on vessels with physical characteristics that are smaller than the baseline characteristics of the permit. This limits the number of vessels that can be candidates for leasing DAS. The proposed action would allow these permit holders a one-time downgrade of the permit baseline characteristics to the physical characteristics of the vessel using the permit. This change is only used for the DAS leasing program and does not affect any

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other permit actions. In effect, if a permit holder exercises this option, the permit now has two baselines: one for leasing transactions and another that applies to all other permit transactions (upgrades, transfers, etc.). In addition, if the permit is moved to another vessel, the leasing baseline reverts to the permit baseline and cannot be downgraded again.

DAS Credit for Standing By Entangled Whales (Measure I): Teams that attempt to free entangled large whales are often frustrated by an inability to relocate the whale after the initial report. In order to encourage reporting by fishing vessels, the proposed action provides a mechanism for a limited access groundfish vessel to obtain DAS credit for the time spent standing by a large entangled whale.

Herring Vessel Interactions With Regulated Groundfish (Measure J): Recent reports of the catch of regulated groundfish in herring fishing vessels (most notably mid-water trawl vessels) have prompted an interest in gaining a better understanding of the scope of this problem. The proposed action requires vessels with a Category I herring permit that fish in the Gulf of Maine or Georges Bank Regulated Mesh Areas to notify the NMFS observer program seventy-two hours before beginning a trip. In addition, if an observer is not provided for the trip, the vessel must notify NMFS enforcement via VMS prior to offloading the catch. These provisions are intended to improve the ability to place an observer on herring vessels and to monitor offloads.

Trip Gillnet Net Limitations (Measure K): Prior to May 1, 2002, trip gillnet vessels did not have a regulatory limit on the number of nets that could be fished. These vessels must return all nets to port when ending a trip and are limited only by the number of nets that can be carried. Effort is thus limited by the size of the vessel as well as the number of DAS allocated, similar to the approach used for trawl gear. Net limits were first adopted for this group of vessels by the interim regulations adopted to implement a court order. Amendment 13 revised the number of nets that could be carried, but did not remove the limit completely. The proposed action removes the limit on the number of nets that can be used by trip gillnet fishing vessels.

Summary of Environmental Consequences

The Environmental Consequences of the Proposed Action, and the alternatives to the proposed action, are described in section 7.0. The Biological Impacts of the Proposed Action are described in section 7.2.1, while the Habitat Impacts are in section 7.2.1.3 and the Impacts on Endangered, Threatened, and Protected Species are discussed in section 7.2.3. Economic Impacts are analyzed in section 7.2.4, followed by Social Impacts in section 7.2.5. Safety Considerations are discussed in section 7.2.6 and Impacts on Other Fisheries in section 7.2.7. Cumulative Effects of the Proposed Action are discussed in section 7.2.8.

Biological Impacts

The proposed action will not have substantial nor significant biological impacts on regulated groundfish or other species when compared to the No Action alternative. Several measures are adopted that modify provisions of the DAS leasing and transfer programs. While these provisions are expected to increase exchanges of DAS between permit holders, these increases are expected to be small. It is not possible to predict how these changes will impact fishing mortality since the impacts will depend on how the DAS that are exchanged are used. The WGOM Rod/Reel Haddock SAP is expected to result in a minor increase in fishing mortality for GOM haddock, but the small haddock TAC allocated to this SAP is a fraction of the total target TAC and the increase will not threaten Amendment 13 mortality objectives. This SAP is also subject to a restrictive TAC for GOM cod to ensure that any bycatch of cod does not threaten the rebuilding program for that stock. The modifications to the CAII Yellowtail Flounder SAP will not increase mortality on yellowtail flounder and may help control mortality since the number of trips in the SAP will more closely match the available TAC. The modified provisions for the GB Cod Hook Sector will not increase mortality of any stock, and may contribute to reduced mortality on some flounder

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stocks should gillnet or trawl vessels choose to join the sector. Maintaining the current DAS baselines will have no biological impacts. Requiring herring vessels to provide additional notice of sailing and landing times may provide additional information but will not have any other biological impacts. Removing the net limit for trip gillnet vessels may result in slight increases in mortality for regulated groundfish, and could result in increased mortality for monkfish. Any increases are expected to be minor given the analysis of the imposition of the net limit that was included in Amendment 13.

Habitat Impacts

The proposed action is expected to have minimal impacts on habitat and EFH.

Impacts on Endangered, Threatened, and Other Protected Species

The proposed action is expected to account for few, if any, impacts on protected species beyond those already identified in Amendment 13 and Framework 40A.

Economic Impacts

The proposed action will likely have only modest economic effects. The changes to the DAS transfer and leasing programs will have positive economic effects as they will increase the ability of fishermen to operate their businesses in an efficient manner. The changes to the Closed Area II Yellowtail Flounder SAP may have the broadest economic effect. The changes create an explicit link between the yellowtail flounder TAC and the SAP, increasing the probability that maximum economic benefits will be realized from this stock. Removing the net limit for trip gillnet vessels will increase the operating flexibility for these vessels and will improve economic performance. The WGOM Rod/Reel SAP will provide limited increased revenues (about \$140,000) to a small group of vessels. Other measures are likely to have minor economic effects.

Social Impacts

The proposed action is expected to have only minimal social benefits. The modifications to the DAS leasing and transfer program provisions would have positive social impacts, as would the Minimum Effective Effort allocation. Changes to the Closed Area II Yellowtail Flounder SAP would have the broadest social benefits. The WGOM Rod/Reel Haddock SAP may have interactive effects with the Minimum Effective Effort Allocation if those vessels receiving ten Category B (reserve) DAS are able to use them in the SAP.

Impacts on Other Fisheries

Most of the measures in the Proposed Action are expected to have negligible impacts on other fisheries. The exception is the removal of the net limitation for trip gillnet vessels, which could lead to increased fishing effort on monkfish, particularly in the Gulf of Maine. If this measure increases monkfish mortality in this area, it could lead to additional restrictions in the monkfish fishery in the future.

Cumulative Effects

The cumulative effects of this action are not likely to have a substantial impact on any of the valuable ecological components (VECs) associated with the multispecies fishery. The overall reductions in fishing effort adopted by previous actions will have a positive impact on groundfish stocks. While the proposed action may result in a small increase in effort, enough controls are included that these increases will not threaten the mortality objectives of the management plan. The cumulative impacts of this proposed action will mitigate some of the negative economic and social impacts of Amendment 13.

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2.4 List of Acronyms

ALWTRP	Atlantic Large Whale Take Reduction Plan
APA	Administrative Procedures Act
ASMFC	Atlantic States Marine Fisheries Commission
CAI	Closed Area I
CAII	Closed Area II
CC	Cape Cod
CPUE	catch per unit of effort
DAM	Dynamic Area Management
DAS	days-at-sea
DFO	Department of Fisheries and Oceans (Canada)
DMF	Division of Marine Fisheries (Massachusetts)
DMR	Department of Marine Resources (Maine)
DSEIS	Draft Supplemental Environmental Impact Statement
EA	Environmental Assessment
EEZ	exclusive economic zone
EFH	essential fish habitat
EIS	Environmental Impact Statement
ESA	Endangered Species Act
F	Fishing mortality rate
FAAS	Flexible Area Action System
FEIS	Final Environmental Impact Statement
FMP	fishery management plan
FSCS	Fisheries Scientific Computer System
FW	framework
FY	fishing year
GAMS	General Algebraic Modeling System
GB	Georges Bank
GIS	Geographic Information System
GOM	Gulf of Maine
GRT	gross registered tons/tonnage
HAPC	habitat area of particular concern
HPTRP	Harbor Porpoise Take Reduction Plan
I/O	input/output
IFQ	individual fishing quota
ITQ	individual transferable quota
IVR	interactive voice response reporting system
IWC	International Whaling Commission
LOA	letter of authorization
LPUE	landings per unit of effort
MA	Mid-Atlantic
MAFAC	Marine Fisheries Advisory Committee
MAFMC	Mid-Atlantic Fishery Management Council
MARFIN	Marine Fisheries Initiative
MEY	maximum economic yield
MMC	Multispecies Monitoring Committee
MMPA	Marine Mammal Protection Act
MPA	marine protected area

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List of Acronyms

MRFSS	Marine Recreational Fishery Statistics Survey
MSFCMA	Magnuson-Stevens Fishery Conservation and Management Act
MSMC	Multispecies Monitoring Committee
MSY	maximum sustainable yield
NAA	No Action Alternative
NAPA	National Academy of Public Administration
NAS	National Academy of Sciences
NEFMC	New England Fishery Management Council
NEFSC	Northeast Fisheries Science Center
NEPA	National Environmental Policy Act
NERO	Northeast Regional Office
NFMA	Northern Fishery Management Area (monkfish)
NLCA	Nantucket Lightship closed area
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NSTC	Northern Shrimp Technical Committee
NT	net tonnage
NWA	Northwest Atlantic
OBDBS	Observer database system
OLE	Office for Law Enforcement (NMFS)
OY	optimum yield
PBR	Potential Biological Removal
PDT	Plan Development Team
PRA	Paperwork Reduction Act
PREE	Preliminary Regulatory Economic Evaluation
RFA	Regulatory Flexibility Act
RMA	Regulated Mesh Area
RPA	Reasonable and Prudent Alternatives
SA	Statistical Area
SAFE	Stock Assessment and Fishery Evaluation
SAP	Special Access Program
SARC	Stock Assessment Review Committee
SAW	Stock Assessment Workshop
SBNMS	Stellwagen Bank National Marine Sanctuary
SEIS	Supplemental Environmental Impact Statement
SFA	Sustainable Fisheries Act
SFMA	Southern Fishery Management Area (monkfish)
SIA	Social Impact Assessment
SNE	Southern New England
SNE/MA	Southern New England-Mid-Atlantic
SSB	spawning stock biomass
SSC	Social Science Committee
TAC	total allowable catch
TED	turtle excluder device
TEWG	Turtle Expert Working Group
TMGC	Trans-boundary Management Guidance Committee
TMS	ten minute square
TRAC	Trans-boundary Resources Assessment Committee
TSB	total stock biomass
USCG	United States Coast Guard

CONTENTS

USFWS	United States Fish and Wildlife Service
VMS	vessel monitoring system
VPA	virtual population analysis
VTR	vessel trip report
WGOM	Western Gulf of Maine
WO	weighout
YPR	yield per recruit

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