

13.0 APPLICABLE LAW

13.1 MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

Amendment 9 to the Multispecies FMP, Amendment 7 to the Sea Scallop FMP, the Monkfish FMP, and the forthcoming Atlantic Herring FMP contain the Council's determination of consistency with the National Standards. This amendment does not change the rules promulgated under these FMPs and amendments; therefore, no further consideration is required.

13.2 NATIONAL ENVIRONMENTAL POLICY ACT

A finding of no significant impact was determined for this proposed action; see Section 12.6 of this document.

13.3 REGULATORY IMPACT REVIEW

This section provides information about the likely economic and socioeconomic impacts of the alternatives including identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantification of the economic impacts if possible, and discussion of the tradeoffs between qualitative and quantitative costs and benefits.

The requirements for all regulatory actions specified in Executive Order 12866 are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

This section also addresses the requirements of the E.O. 12866 and the Regulatory Flexibility Act (RFA) to provide adequate information to determine whether an action is "significant" under E.O. 12866 or will result in "significant" impacts on small entities under the RFA.

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant". A "significant regulatory

action" is one that is likely to:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal government or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients thereof; or,
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

A regulatory program is "economically significant" if it is likely to result in the effects described above. The Regulatory Impact Review (RIR) is designed to provide information to determine whether the proposed regulation is likely to be "economically significant."

13.3.1 Economic Impact on Small Entities

The objective of the RFA is to require consideration of the capacity of those affected by regulations to bear the direct and indirect costs of regulation. If an action will have a significant negative impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis (IRFA) must be prepared to identify the need for the action, alternatives, potential costs and benefits of the action, the distribution of these impacts, and a determination of net benefits.

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of \$3,000,000 as small businesses. In addition, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. NMFS has determined that a "substantial number" of small entities would generally be 20% of the total universe of small entities affected by the regulation. A regulation would have a negative "significant impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, or resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

The proposed EFH designations will have no impact on small entities, fishermen, or fishing businesses, as the designations are not regulatory in nature and are limited to identifying the physical characteristics and geographic extent of the areas of priority interest to the Council and other regulatory agencies. Any regulatory action anticipated

by this plan amendment (maintaining the current Closed Area II closure restrictions within the area designated as an HAPC for juvenile Atlantic cod for habitat conservation reasons) would not be expected to have a significant impact on small entities, fishermen, or fishing businesses, as the proposed restrictions already exist in the area and there will be no additional restrictions on current fishing practices. The area affected by this proposal is extremely small (<0.2%) relative to the total available fishing area in the New England area.

13.3.2 Economic Impact of the Proposed Management Measure to Protect the Juvenile Atlantic Cod Habitat Area of Particular Concern

Maintaining the current Closed Area II closure restrictions in the area designated as a habitat area of particular concern for juvenile Atlantic cod will not cause any economic impacts to fishermen. The HAPC is wholly contained within Closed Area II, and even if the current restrictions were not extended to this area for habitat protection or conservation reasons, the closure restrictions would still exist. There are no additional restrictions or requirements placed on any segment of the fishing industry as a result of this proposed measure.

13.3.3 Summary Finding of Economic Impacts

There are two actions proposed in this plan amendment. The first is simply to describe and identify EFH for all species managed by the Council, which in and of itself, will have no economic impact. The second proposed action in this plan amendment is to establish a habitat area of particular concern for juvenile Atlantic cod and maintain the existing Closed Area II closure restrictions in this area for habitat protection reasons. As discussed in the previous section, this measure is not expected to cause any economic impacts to fishermen. None of the alternatives is expected to result in a "significant regulatory action" as defined in E.O. 12866.

13.4 EXECUTIVE ORDER 12866

The proposed action does not constitute a significant regulatory action under Executive Order 12866; see Section 13.3 of this document.

13.5 REGULATORY FLEXIBILITY ACT

The proposed action will not have a significant economic impact on a substantial number of small entities and a Regulatory Flexibility Analysis is not required; see Section 13.3 of this document.

13.6 MARINE MAMMAL PROTECTION ACT

The New England Fishery Management Council does not believe that this management

program will have any adverse effect on marine mammals that occur within the range of species in the management units of the applicable Fishery Management Plans. Commercial fishing operations and vessels which have valid fishing permits issued in accordance with Section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act are subject to the provisions of the MMPA and specifically Section 114 which governs the incidental take of marine mammals. See Section 12.5.5 of this document for a discussion of impacts on marine mammal populations.

13.7 ENDANGERED SPECIES ACT

The New England Fishery Management Council does not believe that this management program will have any adverse effect on any threatened or endangered species that occur within the range of species in the management units of the applicable fishery management plans. Commercial fishing operations and vessels which have valid fishing permits issued in accordance with Section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act are subject to the provisions of the ESA. See Section 12.5.5 of this document for a discussion of impacts on populations of endangered species.

13.8 COASTAL ZONE MANAGEMENT ACT

Implementation of the provisions of this amendment will be conducted in a manner consistent , to the maximum extent possible, with the coastal zone management programs of all states within the geographic extent of the Council's EFH designations, including all coastal states from Maine to North Carolina, within the meaning of Section 307(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations. The Council has submitted this amendment package to the coastal zone management programs of all states within the geographic extent of the Council's EFH designations, including all coastal states from Maine to North Carolina, for review. Copies of the transmittal letters that have the Council's determination of whether the proposed measures are consistent with the coastal zone management plans for the individual states are contained in Appendix F.

No state concurrences with the Council's determinations have been received at the time of submittal of the EFH Amendment.

13.9 PAPERWORK REDUCTION ACT (PRA)

Copies of the PRA analyses for Amendment 9 to the Multispecies FMP, Amendment 7 to the Sea Scallop FMP, the Monkfish FMP, and the forthcoming Atlantic Herring FMP are available from the NMFS Regional Office, Gloucester, Massachusetts. This action includes no new collection of information and further analysis is not required.

14.0 PUBLIC COMMENTS SUMMARY AND COUNCIL RESPONSES

The following section contains a summary of written and verbal comments received during the EFH public hearing and review period from July 1 - July 31, 1998. The comments are not presented verbatim since the same point was often made by more than one individual. Further, a number of comments addressed points not directly relevant to the amendment proposals, objectives or analyses. These comments are not included in the summary, although they are provided in Volume III of the amendment package which includes all comments provided to the Council. This section also includes brief responses from the Council related to the comments.

General Comments Related to Essential Fish Habitat:

1. **Comment:** A large number of letters, form letters, and verbal comments supported the Council's essential fish habitat designations. The Council received a few comments that it should add a ten minute square to EFH designation for Atlantic herring eggs.

Response: The Council maintained the EFH designations as presented in the EFH public hearing document, except for Atlantic salmon, Atlantic halibut and Atlantic herring. Additional information was presented by the State of Maine which contradicted the information used to include the Medomac and St. George rivers in the Atlantic salmon EFH designation, so these rivers were removed from the designation. Based on the information received during the public hearing process and on further Council deliberation, EFH was designated for Atlantic halibut based on a combination of the historic range and the current scientifically observed range. The Council considered the additional information presented by the Maine Department of Marine Resource related to the EFH designation for Atlantic herring eggs and determined it most appropriate to include this additional area. All other proposed EFH designations remained the same and are reflected in Section 3.4 of the EFH amendment.

2. **Comment:** A comment expressed concern that the Council should not attempt to designate EFH until all of the sea bottom is mapped.

Response: The Council was obligated, by the Sustainable Fisheries Act, to designate EFH for all managed species, using the best information *available* and to complete these designations by October 11, 1998. While having detailed maps of the entire sea bottom would allow the Council to refine its designations, adequate information exists to develop initial designations that meet the intention of the law.

3. **Comment:** Several comments reflected concern about the future of EFH and how the Council will implement measures to protect habitat. At least one comment noted that the lack of specific measures to implement EFH is a problem. Several comments also expressed concern that the Council will use the EFH designations to close all of Georges Bank to all fishing activity.

Response: The Council has developed an EFH Strategic Plan (Section 8.0) that outlines how the Council will continue the EFH management process over the next five years, leading up to a review and revision of all the Council's EFH designations. This plan also explains how the Council will pursue the development and implementation of measures determined necessary to protect EFH from any adverse impacts associated with fishing activity. Although all of Georges Bank is designated EFH for one species or another, the Council will use the designations to pinpoint small areas that are EFH for multiple species at especially critical life history stages. If measures are determined necessary to protect EFH from any adverse impacts associated with fishing activity, these small areas would most likely be the focus of Council consideration.

4. **Comment:** There were several comments that the Council's EFH designations are too broad and encompass too much area.

Response: The Council designated EFH for all species as narrowly or as broadly as was most appropriate for each species, based on the guidelines provided to the Council by NMFS, the information available on each species, and the status of the stocks. In some cases the EFH designation for a particular species is a broad expansive area and this occurred when there was little information on the species or when the species was in a overfished condition. In other cases, in light of detailed information and/or a species that was not overfished, the Council designated EFH more narrowly. The Council will continue to review the EFH designations, and refine them as more information becomes available.

5. **Comment:** The Council received several comments suggesting that natural events impact bottom habitats more than man-made impacts and therefore the Council should not manage habitat as habitat issues are not a problem

Response: The Council is required by the Sustainable Fisheries Act to identify and describe the EFH for all managed species and take action to manage both the fishing and non-fishing related activities that have the potential to adversely impact EFH. There is a substantial amount of scientific literature that suggests that both some fishing and non-fishing related activities have the potential and do cause adverse impacts to the habitat of our fishery resources. Sections 4.0, 5.0, and Appendix E describe these activities and the impacts they can cause.

6. **Comment:** The Council received a comment that there is no indication how the Council will use the EFH designations for habitat conservation and management.

Response: Sections 4.0 and 5.0 provide an assessment of the potential adverse impacts to EFH from fishing and non-fishing related activities. Section 4.0 also describes the Council's existing management measures which provide habitat conservation benefits and the process the Council will use to implement future conservation measures, should they be determined to be necessary. Section 6.0 of the amendment describes the conservation and enhancement measures that the Council recommends to mitigate non-fishing impacts to EFH. Section 8.0 describes the

Council's EFH Strategic Plan for continuing its habitat management program.

7. **Comment:** The Council received a comment that the Council clarify its explanation of the methodology for developing the EFH designations.

Response: This has been done in the EFH amendment document, Section 3.2.

8. **Comment:** The Council received one comment that the entire EFH amendment document should be made available for public review rather than a public hearing document.

Response: The Council policy is to publish a public hearing document that summarizes the points under consideration by the Council, rather than to develop an FMP document in its entirety prior to receiving public input. Many sections of FMPs and amendments are required by law, but not of highest interest to the public. Public hearing documents are designed to be shortened, summary versions of the Council decision documents in order for the public to understand the most significant decisions before the Council and to provide input on those decisions as efficiently as possible. Waiting to develop the full amendment package, then sending out documents that are often several hundreds of pages would unnecessarily delay and overwhelm the public process.

9. **Comment:** The Council received one comment that the Council should send public hearing notices to all towns in the region.

Response: The Council has a mailing list that it maintains of all individuals and organizations that have expressed an interest in being kept abreast of Council issues and made aware of Council meetings and hearings. All individuals and organizations on the Council mailing list are sent notices of public hearings. The Council also sends notices to several newspapers in the New England and Mid-Atlantic region. Council management actions are focused on the fishing industry and the major fishing communities receive hearing notices through their local fishing organizations and commissions. Sending additional notices to all communities in the affected regions (often all New England and Mid-Atlantic coastal states) would be cost prohibitive and unnecessarily redundant.

10. **Comment:** The Council received two comments opposing the designation of Wells Harbor, Maine as EFH, suggesting that the appropriate scientists were not consulted, that there was no information contributing to the designation, and that the designation was intended to prevent a maintenance dredging activity.

Response: Wells Harbor, Maine, was designated EFH for five species: Atlantic herring, white hake, windowpane flounder, winter flounder, and yellowtail flounder. The information used to develop these designations was obtained from the NOAA Estuarine Living Marine Resources (ELMR) program reports. A summary of these reports and an explanation of the Council's rationale for incorporating the information they contain in the EFH designation process is provided in Section 3.2.2 of the amendment. Local scientists were consulted in the development of the ELMR reports

used by the Council. The Council made great efforts to ensure that all EFH designations were based on biological information without regard to human activities or their impacts -- addressing impacts to EFH separately. Review of any planned maintenance dredging operation will fall under the EFH consultation process led by NMFS. The Council will support NMFS in this process. No EFH designations were made for the purposes of preventing any specific actions including dredging.

11. **Comment:** There was a single comment asking where the habitat area of particular concern (HAPC) concept came from.

Response: The guidelines published in the *Federal Register* via an Interim Final Rule on December 19, 1997, Volume 62, Number 244, describes the definition, criteria and use of HAPCs. §600.810, §600.815(a)(6), §600.815(a)(7), and §600.815(a)(9) provide detailed guidance to the Council regarding the designation and management of HAPCs.

12. **Comment:** The Council received a comment that when using adult distributions as a proxy for designating EFH for eggs and/or larvae, the Council should limit the use of the proxy to the distribution of spawning adults, rather than the entire range of adults.

Response: The Council agrees with the intent of this comment, unfortunately, the data and information available to the Council did not differentiate between the range of adults in general and the range of spawning adults. As this information is made available, the Council will refine its EFH designations.

Comments Related to the Proposed Juvenile Atlantic Cod HAPC Designations:

13. **Comment:** A large number of letters, form letters, and verbal comments supported maintaining current closure restrictions for the juvenile Atlantic cod HAPCs, rather than restricting the use of all fishing activity within this area. The Council received several letters of support for providing these areas permanent protection from destructive fishing practices. The Council received several comments specifically opposed to closing the juvenile Atlantic cod HAPCs to all types of fishing activity.

Response: The Council proposes to maintain the current Closed Area II closure restrictions for the juvenile Atlantic cod HAPC and, by doing so, the Council did not propose to close the area to all types of fishing activity. For a discussion of the Council's rationale for choosing this alternative, see Section 12.2.5. No action that the Council takes is ever "permanent" as a later Council action can undo the earlier action.

14. **Comment:** A large number of form letter and other written comments suggested that there is evidence of areas in Gulf of Maine that should be designated as HAPCs for juvenile Atlantic cod.

Response: The comments did not provide any additional information and the Council did not have access to any information suggested by these comments. The Council will pursue this issue and continue to review any information made available.

The Council has the option to designate additional HAPCs using the framework adjustment process.

15. **Comment:** The Council received several comments supporting the designation of two areas (one in Closed Area II and one in Closed Area I) as juvenile Atlantic cod HAPCs.

Response: The Council considered the information available on both areas and determined that only the information available for Closed Area II was sufficient for the Council to designate this area as an HAPC. The information on the area within Closed Area I was insufficient to make an HAPC designation.

16. **Comment:** The Council received several comments that the proposed HAPC designation for juvenile Atlantic cod in Area I was based on insufficient and inconclusive information.

Response: The Council considered the information available on both areas and determined that only the information available for Closed Area II was sufficient for the Council to designate this area as an HAPC. The information on the area within Closed Area I was insufficient to make an HAPC designation.

17. **Comment:** The Council received several comments opposing the areas proposed for juvenile Atlantic cod HAPCs, either because the information on which the designations were based is wrong (either there is no cobble in these areas or there are no juvenile cod in these areas), because these areas are productive scallop grounds and therefore should not be designated juvenile Atlantic cod HAPCs, or because there may not be enough information to support the cod HAPC designations.

Response: There is a substantial literature of scientific studies that demonstrates the importance of this habitat type and the characteristics found in Closed Area II for increased survival of recently settled juvenile Atlantic cod (see Section 3.3.1 for summary). NMFS research clearly indicates an abundance of juvenile Atlantic cod within the HAPC designated in Closed Area II. Independent scientific research has, for several years, documented the location of cobble substrate along the northern edge of Georges Bank. Taken together, this information provides more than enough of a basis for designating the small area on the northern edge of Closed Area II as an HAPC for juvenile Atlantic cod.

18. **Comment:** The Council received one comment that the range of management alternatives presented to conserve the juvenile Atlantic cod HAPC does not really represent the two extremes of possible measures.

Response: The Council felt that going out to public hearing with a range of alternatives from maintaining the status quo to the most restrictive possible measure (prohibiting all fishing activity in the area) did represent the two extremes of measures it could implement for this area.

19. **Comment:** The Council received one comment that the juvenile Atlantic cod HAPC

is also an important area for herring (egg beds).

Response: The Council recognizes that this may be the case, and the Council will continue to review the information on this area and take additional action, as appropriate.

Comments on the Proposed Atlantic Salmon EFH and HAPC Designations:

20. **Comment:** The Council received two comments that it should be more specific in the designation of Atlantic salmon EFH, as well as a comment that the best available data was not used to designate salmon EFH.

Response: The Council agrees that with more detailed information it may be able to refine the EFH designations for Atlantic salmon to be more specific and limited to specific portions of rivers, rather than the entire river watershed. At this point, however, the information available to the Council did not provide a level of detail sufficient for the Council to limit the EFH designations beyond naming entire river systems as EFH. It is important to note that the Atlantic salmon EFH Text Description (Section 3.4) does provide limiting factors, such as substrate type, water depth, etc. for the EFH designation.

21. **Comment:** The Council received one comment that the river tributaries should be included in Atlantic salmon EFH designations.

Response: In its review of the information available, the Council agreed that the Atlantic salmon EFH designations should include the tributaries to the named river systems. The Atlantic salmon EFH Text Description clearly states that these tributaries are included in the EFH designation.

22. **Comment:** The Council received one comment that the St. Croix River should not be considered EFH for Atlantic salmon because it borders Canada.

Response: The Council considered the available information and the methodology used to designate EFH for Atlantic salmon and the St. Croix River met the criteria set by the Council. However, the Council can only designate EFH in U.S. waters, so, by definition, only those portions of the St. Croix River that are within the U.S. border are included in the EFH designation for Atlantic salmon.

23. **Comment:** The Council received a few comments that it should limit the Atlantic salmon HAPC designation to seven rivers in Maine rather than the proposed eleven rivers.

Response: The Council considered all available information regarding the appropriateness of designating just the seven rivers, or all eleven rivers as HAPCs for Atlantic salmon. Considering the importance of all eleven rivers for Atlantic salmon, and the likelihood that the salmon from the four rivers in question are part of the same distinct population segment as the salmon from the other seven, the Council felt that it was appropriate to include all eleven rivers in the Atlantic salmon HAPC

designation. These four rivers met the same criteria used by the Council to designate HAPC for Atlantic salmon as the other seven.

24. **Comment:** The Council received one comment that it should designate all eleven proposed rivers as HAPC for Atlantic salmon.

Response: The Council considered all available information regarding the appropriateness of designating just the seven rivers, or all eleven rivers as HAPCs for Atlantic salmon. Considering the importance of all eleven rivers for Atlantic salmon, and the likelihood that the salmon from the four rivers in question are part of the same distinct population segment as the salmon from the other seven, the Council felt that it was appropriate to include all eleven rivers in the Atlantic salmon HAPC designation.

25. **Comment:** The Council received one comment that the Connecticut and Merrimack Rivers should be considered for HAPC designation for Atlantic salmon.

Response: Based on the information available to the Council in review of this issue, it did not appear that the habitat of these two rivers met the criteria for HAPC designation. The rivers are not thought to support salmon from the distinct population segment of salmon that occupy the rivers in Maine, and thus do not meet the criteria set by the Council. These rivers are considered EFH for Atlantic salmon.

Comments Related to Fishing Related Impacts Assessment:

26. **Comment:** The Council received one comment that lobster gear (pots) has no adverse impact on habitat. This individual was concerned that the Council might assume that all gear has the same impact and that to protect EFH, the Council might prohibit all types of fishing gear.

Response: While it is possible that under certain conditions and used a certain way, lobster pots would have the potential to adversely impact certain types of benthic habitat, based on the available information, under most conditions lobster pots contribute minimally, if at all, to the adverse impacts on habitat associated with fishing activity. The Council recognizes this and in no case did the Council propose to restrict the use of lobster pots for habitat protection.

27. **Comment:** The Council received several comments that scallop dredging contributes to habitat destruction, and because of this, scallopers should not be allowed in the Closed Areas.

Response: The Council agrees that there is evidence that scallop dredges have the potential to cause adverse impacts to certain types of benthic habitats. No where in the EFH amendment does the Council propose to allow scallop dredges into any of the Council's current closed areas where they are currently prohibited.

28. **Comment:** The Council received *two* comments that scallop gear does no more damage to habitat than any other gear, and that scallop dredges actually enhance

habitat.

Response: All fishing gears interact with the bottom in different ways and have different impacts on different types of habitat. On some types of habitat, certain gears may have a greater potential to cause an adverse impact, while on other types of habitat, different gears may have a greater potential to cause an adverse impact. There may be certain conditions under which a scallop dredge may enhance habitat, but the scientific literature available to the Council largely suggests that scallop dredges are more often associated with adverse impacts to habitat.

29. **Comment:** The Council received one comment that killing epifauna may not be bad for the environment.

Response: There is no evidence to support this assertion, but if the Council received scientific information which does support the assertion, it would give it due consideration. Emergent epifauna provides a third dimension to the sea floor, providing shelter for many juvenile groundfish to avoid predation, as well as attracting organisms which are prey for these juvenile groundfish.

30. **Comment:** The Council received many individual letters and form letters suggesting that the Council's EFH management proposal does not go far enough to protect EFH from the adverse impacts associated with fishing activity.

Response: The existing management measures and the new management measures proposed in the Council's SFA amendments provide significant conservation benefit to EFH. The Council will continue to examine any adverse impacts to EFH associated with fishing activity and will implement new management measures if it determines that such action is required to meet the intent of the Sustainable Fisheries Act. Section 8.0 describes the process the Council will use to continue this process.

31. **Comment:** The Council received one comment that the current management measures do not protect EFH.

Response: The Interim Final Rule suggests three options for managing the adverse effects from fishing: (1) fishing equipment restrictions; (2) time/area closures; and, (3) harvest limits. The Council currently employs all three of these mechanisms in the various fisheries it manages and, as such, these existing measures meet the standard set out in the Interim Final Rule for protecting EFH.

Comments Related to the Non-Fishing Related Impacts Assessment:

32. **Comment:** The Council received several comments expressing concern about the impacts on habitat of non-fishing related activities.

Response: The Council is also concerned about non-fishing related impacts to EFH and has completed an assessment of the most significant non-fishing related threats to EFH (Section 5.0) and has developed habitat conservation and enhancement recommendations to mitigate these impacts (Section 6.0).

33. **Comment:** The Council received two comments that it should prioritize the most significant non-fishing impacts and develop trigger levels for Council involvement.

Response: The Council recognizes that it can not become involved with all decisions relating to non-fishing related activities that may adversely impact EFH, but it does not want to unnecessarily rule out possible involvement in the future, regardless of the level of the activity.

34. **Comment:** The Council received one comment that it should take a stand against land-based outfall systems, especially the Massachusetts Bay outfall pipe system.

Response: The Council does intend to keep informed of developments in this area and will review information as it becomes available, especially on the Massachusetts Bay outfall system. If and when appropriate, the Council will become actively involved and provide comments to the relevant agencies.

Comments on the Proposed Framework Adjustment Process:

35. **Comment:** The Council received several comments supporting the use of a framework adjustment process to streamline future EFH actions.

Response: The Council has proposed to use the framework adjustment process detailed in Section 4.12 of the amendment to streamline future designations of EFH or HAPC and to implement future management measures for the conservation of EFH.

36. **Comment:** The Council received two comments opposing the use of a framework adjustment process to streamline future EFH actions.

Response: The Council has proposed to use the framework adjustment process detailed in Section 4.12 of the amendment to streamline future designations of EFH or HAPC and to implement future management measures for the conservation of EFH. The Council's framework adjustment process complies fully with the Administrative Procedures Act which ensures the appropriate level of public input. This is the most efficient mechanism the Council can use to accommodate future action. The public will continue to have an opportunity to provide input on all actions proposed by the Council.