

FINAL
FRAMEWORK ADJUSTMENT #3
to the
NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

**To limit the landing of regulated species
by vessels fishing with small mesh**

Prepared by
New England Fishery Management Council
in consultation with
National Marine Fisheries Service
Mid-Atlantic Fishery Management Council

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FRAMEWORK ADJUSTMENT NORTHEAST MULTISPECIES FMP

To limit the landings of regulated species by vessels fishing with small mesh

1.0 INTRODUCTION

Prior to the implementation of Amendment #5 to the Northeast Multispecies (Groundfish) Fishery Management Plan (FMP) this year, a number of different regulations applied on vessels fishing with mesh smaller than the minimum regulated size depending on where a vessel fished. In the Gulf of Maine, vessels were required to enroll in the Exempted Fisheries Program in order to target small-mesh species such as northern shrimp, dogfish or whiting. The EFP rules specified the area and season in which a vessel could use mesh smaller than the regulated minimum size, and limited the groundfish bycatch to a percentage of the total landings (25% of the trip and 10% for the reporting period).

In southern New England, with the exception of the Southern New England Yellowtail Area, the area, season and groundfish bycatch on vessels fishing with small mesh were not limited. Vessels in this area have traditionally fished for a variety of species depending on availability and market conditions, and they often used different mesh sizes on the same trip depending on the target species.

With Amendment #5, the Council attempted to unify the rules for vessels fishing with mesh smaller than the regulated minimum size while preserving some of the regional characteristics and requirements of the different fisheries. The Council eliminated the Exempted Fishery Program in the Gulf of Maine and adopted a region-wide groundfish possession limit of 500 pounds for vessels fishing with mesh smaller than the regulated minimum size for groundfish. The area in which vessels may fish with small mesh, however, is still limited to those areas where vessels could fish with small mesh prior to the amendment (i.e. the EFP area and southern New England). In the Gulf of Maine, vessels which have more than 500 pounds of groundfish may not have mesh smaller than the regulated minimum size on board. In southern New England, vessels may have the "fine twine" on board provided it is properly stowed when the vessel has more than 500 pounds of groundfish.

The Council included the 500-pound possession limit for regulated groundfish species for two reasons. First, it recognized the need to provide some level of bycatch for groundfish routinely caught in other fisheries such as the scallop fishery or in small mesh fisheries for whiting, squid, butterfish, scup etc. This provision recognizes that these fish may be caught unintentionally and that most would die if returned to the sea. Requiring fishermen to discard their bycatch of groundfish without good reason would cause needless economic waste. The second reason the Council adopted the 500-pound possession limit was to allow a relatively small amount of groundfish to be landed by fishermen who did not qualify to fish in the groundfish program under the moratorium or could find no alternative to fishing for groundfish when not fishing under the groundfish effort reduction program.

In no way did the Council intend for fishermen to target groundfish species with small mesh nets and it is proposing this adjustment to the rule to reduce the opportunity to do that. The measure will not impose significant restrictions on any current or historical fishery, but will prevent an emerging fishery from potentially undermining the conservation benefits of the FMP.

2.0 PURPOSE AND NEED

2.1 Need for adjustment

One of the primary conservation measures of Amendment #5 is the increase in minimum mesh size on vessels fishing for regulated species of groundfish. The basis for this measure is the fact that by delaying the age at entry (age at which fish start to get caught by fishing gear), fishing mortality rates on fully recruited ages would not have to be reduced as much to achieve the same spawning stock biomass per recruit. On a vessel fishing for unregulated species and using nets with mesh smaller than the regulated minimum size, the Council limited the amount of groundfish it could possess to 500 pounds. The Council's intent with this limited allowance was to enable legitimate small-mesh fisheries to continue without compromising its efforts to conserve groundfish with the mesh-size increase.

From the time Amendment #5 was approved, however, fishermen and their association representatives have described to the Council how vessels are gearing up to target groundfish with small-mesh nets under the 500-pound possession limit. In these cases, the 500-pound possession limit is viewed as an opportunity to catch what many fishermen currently consider a day's catch in less time with small mesh and to supplement the trip with any small-mesh species that may also be caught. Instead of directing their effort at times and areas where small-mesh species are traditionally caught with a relatively small (<10%) bycatch of regulated species, these vessels will be targeting areas where groundfish have historically been caught with a potentially far greater impact on those stocks.

The purpose of this framework adjustment is to preserve the Council's intent to allow the continuation of legitimate small-mesh fisheries with a limited incidental catch of groundfish while preventing a directed fishery for groundfish with small mesh under the possession limit rule. By restricting the amount of groundfish a vessel may retain while fishing with small-mesh to a percentage of the non-regulated species on board, the Council is imposing a cost on vessels that want to use small mesh to catch regulated species. The adjustment to the rules will not impose any significant restrictions on existing small-mesh fisheries, but will create a dis-incentive for vessels to begin targeting regulated species with small mesh under the new regulations.

2.2 Need for final rule

The Council has considered the following factors and recommends that NMFS publish the proposed adjustment as a final rule.

2.2.1 Timing of the rule

The timing of the rule does not depend on the availability of time-critical data, and the Council did not consider data availability in its decision to recommend publishing the adjusted measure as a final rule.

NMFS delayed the implementation of the possession limit and the requirement to use 6-inch mesh until May 1. As long as the current regulations remain unadjusted, vessels may target regulated groundfish with mesh smaller than the regulated minimum size in direct conflict with one of the primary conservation objectives of the Council and the FMP. The condition of some of the groundfish stocks, particularly haddock, is so depressed that NMFS, with the Council's support, took emergency action in January of this year to implement protective measures. Many vessels currently using 5.5-inch mesh are finding that 500 pounds of groundfish is a day's catch and are likely to see 6-inch mesh as preventing them from catching even that modest amount. The Council fears that many of these vessels will switch to the small-mesh directed groundfish fishery when the possession limit and 6-inch rules take effect rather than go to the larger mesh size.

2.2.2 Opportunity for public comment

From the time the Secretary announced that Amendment #5 had been approved, fishermen or their association representatives have asked the Council to address the issue of directed fishing for groundfish with small mesh under the possession limit rules. The Council received both written and oral comments on this issue and on February 24 the Groundfish Committee developed its recommendation for Council action. The following public meetings were held from the time the amendment was approved until the Council adopted the proposed framework adjustment:

January 12-13	Council
February 2-3	Groundfish Committee
February 16-17	Council
February 24	Groundfish Committee- recommendation to limit the possession of groundfish while fishing with small mesh to 100 pounds per day up to a maximum of 500 pounds;
March 17	Council- initiated framework action with limit of 10% per day up to a maximum of 500 pounds;
April 6-7	Council- second meeting under framework process.

The public is notified of all Council meetings by publication of a notice in the *Federal Register* and the agenda is mailed to approximately 1,500 interested parties including local and trade publications and industry associations. The public is informed of Groundfish Committee meetings by a letter to about 500 interested parties, also including the press and industry associations. Public comments received by the Council during this framework process are contained in Appendix I.

2.2.3 Need for immediate resource protection

The need for immediate resource protection is clearly stated in Amendment #5 and has been

restated on numerous occasions by the Council and NMFS. Emergency rules are currently in effect to protect haddock stocks. The most recent assessment of yellowtail flounder stocks suggests that the condition of those stocks has declined since Amendment #5 was being developed. Other stocks in the multispecies fishery complex are over-exploited and in need of immediate protection.

Restricting the ability for fishermen to target groundfish with small mesh is an important element of the protective measures being implemented. The traditional small-mesh fisheries can be allowed to continue without compromising the groundfish effort reduction program provided the fishermen's ability to target groundfish with small-mesh nets is restricted. Without such a restriction, groundfish stocks are vulnerable to significant juvenile mortality by fishermen using small mesh.

2.2.4 Continuing evaluation

The Council will continue to monitor and evaluate the catch of vessels in both the small-mesh and large-mesh fisheries and it may make further adjustments as needed through the framework system.

3.0 PROPOSED ACTION AND ALTERNATIVES

3.1 Proposed action

The Council proposes an adjustment to the possession limit rule, 51 CFR Section 651.27, under the framework abbreviated rulemaking provisions. The adjustment will implement a restriction that vessels fishing with nets smaller than the regulated minimum size may only land or possess regulated species equal to 10 percent of the weight of fish other than the regulated groundfish species aboard or 500 pounds, whichever is less. The limit applies while fishing with nets not meeting the applicable mesh regulations of the Section 651.20. The regulated species include cod, haddock, pollock, yellowtail flounder, winter flounder, witch flounder, American plaice, windowpane flounder, white hake and redfish.

3.2 Alternatives to the proposed action

3.2.1 No action

As discussed in Section 2.0, Purpose and Need, the no-action alternative will result in vessels directing their effort on regulated species with mesh smaller than the regulated minimum size in direct contradiction to the Council's conservation objectives. Taking no action is not an acceptable alternative.

3.2.2 100 pounds per day up to 500 pounds total

The Groundfish Committee initially recommended that the Council limit the possession of groundfish on vessels fishing with small mesh to 100 pounds per day up to a maximum of 500 pounds. The Council rejected this alternative on the grounds that a percentage limit ties the groundfish catch to a legitimate small-mesh fishery, while a straight poundage limit

allows for a directed groundfish fishery with small mesh. Furthermore, the Council considered that enforcement would be more difficult since it would require establishing the date of the beginning of the trip even on vessels that are exempt from the effort reduction program.

4.0 ANALYSIS OF IMPACTS

The proposed adjustment will not significantly impact any historical or traditional small-mesh fisheries that have not already been impacted by the implementation of Amendment #5. As with the initial 500-pound possession limit in traditional small-mesh fisheries, the limitations on the possession of regulated species resulting from this action are within the range of groundfish bycatch. This action will impact fishermen who intend to direct their effort on regulated species with small-mesh nets under the current possession limit section of the rules implementing Amendment #5.

The negative impacts of taking no action on this issue are potentially far more severe than any negative impacts resulting from the proposed adjustment to the rules. The fisheries that are most directly affected are the inshore groundfish stocks in the Gulf of Maine (in the Gulf of Maine/Georges Bank Small Mesh Exemption Area), and those groundfish fisheries in the Southern New England and Mid-Atlantic Regulated Mesh Areas, (principally for yellowtail flounder and winter flounder). Allowing vessels to target groundfish stocks with mesh smaller than the regulated minimum size, even if they are only allowed to keep 500 pounds, will result in increased discards, wasted mortality of juvenile and sub-legal sized fish, and is contrary to the conservation objectives of the FMP.

4.1 Biological impacts

The Council's intent with the possession limit provision was to enable the legitimate small-mesh fisheries to continue under the expanded mesh regulations of Amendment #5. The Council did not expect any significant biological impact on either small-mesh species or large-mesh species under a 500-pound groundfish possession limit since groundfish landings in historical small-mesh fisheries are at or below that level. The Council recognized in the development of Amendment #5 that discards may increase under a possession limit but, unless effort and groundfish catches in the small-mesh fisheries increase, the impacts of the possession limit are more economic than biological.

If the proposed adjustment is not made, the Council feels that groundfish catches and effort in the small-mesh fisheries will increase with detrimental consequences for groundfish stocks. If vessels target groundfish with small mesh, especially if they target higher value species and discard lower value species, the exploitation pattern of the stocks will shift to younger ages in direct contradiction to the Council's management strategy. If fish are caught before reaching sexual maturity, they do not contribute to the overall spawning stock biomass greatly reducing the spawning stock biomass per recruit which this plan is working to increase.

4.2 Economic impacts

Since the 500-pound possession limit has been implemented as part of Amendment #5, the Council considers the impact of the proposed measure to be any additional change in the catch and landings of regulated species resulting from the percentage restriction. As mentioned earlier, the Council did not intend for vessels to target groundfish with mesh smaller than the regulated size, but it did intend to provide a reasonable bycatch allowance for existing small-mesh fisheries. Consequently, in evaluating the impacts of the proposed action only the impact on traditional small-mesh fisheries is relevant. The FSEIS for Amendment #5 already describes the impacts both of the new or increased mesh-size regulations on vessels targeting groundfish, and of the possession limit on vessels in existing small-mesh fisheries.

This economic impact analysis considers impacts on fisheries based on species traditionally caught with mesh smaller than 4.5 inches and not on those groundfish fisheries where, prior to Amendment #5, the mesh size was not regulated. Under the regulations prior to Amendment #5, vessels that targeted groundfish with "small mesh" (in areas where the mesh size was not regulated) generally used mesh in the 4.5-5.5-inch range and caught primarily yellowtail flounder, winter flounder, summer flounder (not managed by this FMP) and to a lesser degree other regulated species. Amendment #5 effectively eliminated those small-mesh groundfish fisheries, and the FSEIS for that amendment considered the impact of the possession limit and mesh regulations on them.

To evaluate the impacts of the proposed ten-percent limit on the landings and revenues of the existing small-mesh fishery, trips are classified into four groups according to the composition of landings. The first category of trips are those in which no regulated species were caught. The second category consists of those trips in which the amount of regulated species landed was less than 500 pounds and was also less than ten percent of total landings. These two categories of trips would be unaffected by either the 500 pounds or ten percent parts of the proposed possession limit. The third category of trips would cover those trips that meet the ten-percent bycatch requirement for the regulated species but exceed 500-pound restriction. This category of trips would already be affected by the possession limit for the small-mesh fishery implemented by Amendment #5. Finally, the fourth category includes those trips whose landings of regulated species exceed the ten-percent limit for the regulated species and which, therefore, would be affected by the proposed percentage restriction on the landings of regulated species.

The data are derived from 1992 fishing trips in NMFS' weighout database on which the captain was interviewed, since only those trips were classified according to the mesh size. Although these trips covered a relatively small subset (22 percent) of otter-trawl trips, they accounted for 61 percent of the landings of regulated large-mesh species by otter trawls in 1992 (Table 1). The empirical results obtained from this sample of interviewed trips are then applied to analyze the impacts of the proposed ten-percent limit on all fishing trips with small mesh.

Table 1: 1992 Trip Totals, Weighout Data and Interviewed Trips

	Otter Trawls Interviewed Trips	All Vessels All Trips	Otter Trawls All Trips	Interviewed Trips As a % of All Otter Trawl Trips
Regulated Species Landings (1,000 lbs)	71,722	152,279	117,666	60.95
Regulated Species Revenue (\$1,000)	63,746	129,663	103,301	61.71
Total Landings (1,000 lbs)	156,658	2,594,271	372,899	42.01
Total Revenue (\$1,000)	92,299	813,834	209,900	43.97
Total Trips	9,561	116,821	43,723	21.87
Number of Vessels	756	1,890	1,014	74.56

Table 2 shows the composition of interviewed trips by otter trawls on which small mesh was used in 1992. On 54.3 percent of the trips, no regulated species were landed, and on 32 percent of the trips the landings of regulated species was both less than 500 pounds and less than 10 percent of the landings other species (not regulated by this plan). On 4.5 percent of the trips, the landings of regulated species exceeded 500 pounds and, therefore, those trips would have been affected by the 500-pound possession limit. Finally, on the remaining 9.8 percent of the interviewed trips, the landings of regulated species exceeded 10 percent of the landings of other species and, therefore, those trips would have been affected by the proposed limit.

Table 2: Composition of Individual Trips, Otter Trawls, 1992

Trip Composition Category	Number of Interviewed Trips	As a percentage of Total Trips (%)
I. No landings of regulated species	1822	54.3
II. Regulated species landings less than 500 pounds and less than 10 percent of other species	1052	3.0
Subtotal of categories I and II	2874	85.7
III. Regulated species landings greater than 500 pounds but less than 10 percent of other species	153	4.5
IV. Regulated species greater than 10 percent of other species	329	9.8
TOTAL	3356	100.0

The expected reduction in the landings of the regulated species with the implementation of the proposed ten-percent limit is estimated to affect 123 vessels out of 320 interviewed that use small mesh. Affected vessels will incur a loss in revenues from regulated species under the proposed change. For all interviewed trips, the total decline in revenues would have been \$252,153 in 1992. The actual decline in revenues for the entire fleet will be greater since this estimate does not include non-interviewed trips. The next step in the analysis involves extending the results of this analysis of interviewed trips to all trips based on the proportions or ratios presented in Tables 1 and 2 and explained below.

Table 3: Annual Impacts of 10 Percent Landings Limit in 1992 (based on interviewed otter trawl trips using mesh measuring less than 4.5 inches).

Total number of vessels using mesh smaller than 4.5 inches	320
Number of vessels affected by a 10-percent limit	123
Landings of regulated species without the 10-percent limit on all interviewed trips with small mesh (pounds)	724,304
Landings of regulated species without the 10-percent limit on affected interviewed trips only (pounds)	325,910
Annual reduction in landings of regulated species due to the 10-percent limit on affected interviewed trips (pounds)	283,178
Revenues from regulated species without the 10-percent limit on all interviewed trips with small mesh	\$573,076
Revenues from regulated species without the 10-percent limit on affected interviewed trips only	\$291,313
Annual reduction in revenues from regulated species due to the 10-percent limit on affected interviewed trips	\$252,123

To evaluate the impacts of a ten-percent limit on the entire otter trawl fleet, two assumptions are made: 1) the non-interviewed trips have a similar composition of landings as the interviewed trips; and 2) the composition of landings on small-mesh trips remains constant. The values obtained from the interviewed trips are scaled-up by the proportions given in Tables 1 and 2 in order to calculate the impact at the fleet level on all trips using small mesh.

The calculation is explained below:

- a) Number of trips affected: Out of 9,561 interviewed trips, 3,356 were made with small mesh (35 percent of the total). Applying this proportion to the total number of otter trawl trips (43,723 x 35%), 15,347 trips are estimated to be made using small

mesh. Since only 9.8 percent of interviewed trips are estimated to be impacted by the ten-percent possession limit (Table 2), only 1,505 trips ($15,347 \times 9.8\%$) are expected to be impacted by this rule;

b) Number of vessels affected: Table 1 shows that 756 otter trawl vessels were interviewed in 1992, which is 74.5 percent of the total number of otter trawl vessels in the weighout database. Only 123 interviewed vessels would have been affected by the ten-percent limit. Scaling this number up by a factor of 1.34 ($100/74.5$), it is estimated that 165 vessels would have been affected by this measure.

c) Total reduction in landings of regulated species due to the proposed ten percent limit: since landings of regulated species from interviewed trips accounts for 62 percent of the total landings of these species by otter trawl vessels (Table 1), the estimated reduction in landings from interviewed trips is scaled up by a factor of about 1.64 ($100/61$). That is $1.64 \times 283,178$ pounds= $464,613$ pounds. Similarly, the estimated reduction in revenues is scaled-up by a factor of 1.62 ($100/62$), resulting in a calculated total reduction in revenues of \$408,612. The calculated reduction in revenues per vessel is \$2,476, ($\$408,612/165$ vessels).

Table 4 shows the results of this analysis. It is estimated that the proposed ten-percent limit will reduce the annual landings of the regulated species by 464,613 pounds and the annual revenues by \$408,612. The estimated reduction in the average annual revenue per vessel is about \$2,500, or \$272 per trip for the 1,505 trips that are estimated to be affected by the proposed adjustment. There will be no change, however, in trip landings and revenues for the calculated remaining 13,842 small-mesh trips. Based on this analysis, the Council does not expect that the additional ten-percent restriction on the possession of regulated species will have a significant impact on existing small-mesh fisheries. The proposal is consistent with the Council's objectives for the proposed framework action to prevent an increase in effort directed on regulated species with small mesh, while minimizing the impact on existing small-mesh fisheries.

The real economic and conservation benefits derived from the proposed action are not attributed to some reduction in groundfish catch by vessels currently in small-mesh fisheries but to the protection of small or juvenile groundfish from any potential increase in the number of trips that target groundfish using small mesh. While it is not possible to quantify these benefits in monetary terms since it is not known how many such trips would be taken in the absence of the proposed restriction and what mesh size would be used, it is known that the catch and discards of sub-legal size and juvenile groundfish will increase dramatically resulting in substantial lost revenues. In addition, what is certain is that the conservation objectives of the FMP will be compromised if vessels make many quick trips using small mesh, targeting groundfish, and discarding the juvenile and lower-value components of the catch to end up with 500 pounds of marketable product. The proposed adjustment will discourage such trips by adding to the cost of directing fishing effort on groundfish under the possession limit rule. The Council expects that this action will forestall a significant problem that might offset the biological and economic benefits of Amendment #5.

Table 4: Estimated impacts of the proposed ten-percent limit on the possession of regulated species by vessels fishing with small mesh (<4.5 in.)

Estimated total number of trips by otter trawl vessels using small mesh	15,347
Estimated number of trips affected by the 10-percent limit	1,505
Estimated number of vessels affected by the 10-percent limit	165
Landings of regulated species on all trips that would be affected by the 10-percent limit (pounds)	534,724
Estimated reduction in landings of regulated species on all trips affected by the 10-percent limit (pounds)	464,613
Revenue from landings of regulated species on all trips that would be affected by the 10-percent limit	\$472,072
Estimated reduction in revenues from landings of regulated species on all trips affected by the 10-percent limit	\$408,612
Estimated reduction in gross revenues per vessel affected by the 10-percent limit	\$2,476
Estimated reduction in revenue per trip affected by the 10-percent limit	\$271

Distribution of Economic Impacts by Area and Port

Table 5 shows the geographic distribution of the impacts of the ten-percent limit by three-digit statistical area. Only those areas that are expected to be affected by the measure based on the area of catch recorded in the NMFS weighout database are included in the table.

More than half of the trips that targeted regulated species with small mesh in 1992 took place in waters off of Rhode Island (Areas 537, 538, and 539). On 26 percent of the interviewed trips (193 out of 730 trips) fishing with small mesh in these areas, landings of regulated species were nearly equal to or more than the landings of non-regulated species. As a result, the proposed ten-percent landings limit would have its largest impacts in this area. The Council estimates the revenue loss to this area to be about \$360,000, or 88 percent of the total estimated impact of the measure region-wide. On the other hand, the revenue-loss as a proportion of the area's gross revenue would be only 5.6 percent, since a large majority of the area's trips with small mesh will not be affected by the ten-percent restriction.

In the Gulf of Maine, on only nine percent of interviewed small-mesh trips (86 out of 926) did the landings of the regulated species exceeded the proposed ten-percent landings limit. Therefore, the Council expects only minimal economic impact (about \$20,000 in total lost revenues) in this area from the restriction. (Prior to Amendment #5, vessels fishing with small mesh in the Gulf of Maine were regulated by the Exempted Fisheries Program. Under that program, vessels were prohibited from landing regulated species in excess of 25 percent of the weight of the non-regulated species per trip and 10 percent per reporting period, which

explains the minimal calculated impact of the proposed measure.)

Most of the statistical areas covering Georges Bank are within the Regulated Mesh Area where fishing with small mesh fishing is prohibited or restricted (i.e. the Cultivator Shoals Area). For this reason the Council does not expect the proposed measure to have a significant impact in these areas. In the Long Island Sound Area (Areas 611 to 616), only 0.5 percent (41 out of 815) of the small-mesh trips exceeded the proposed percentage restriction according to the weighout data. Consequently, the Council estimates the revenue loss in this area to be about 4 percent of total impact of the measure, or about \$18,000.

Table 6 shows the distribution of impacts by major ports. Again, only those ports which will be affected by the proposed landings limit are included in the table. As expected from the previous table, Point Judith, RI, will be the port most affected by the proposed action, followed by Newport, RI. Fifty-five percent of the trips calculated to be affected by the ten-percent limit landed in Point Judith. Although about 78 percent of the total revenue loss (or about \$320,000) from the proposed action will be incurred by this port, the reduction is small in comparison to the port's total revenue (3.3 percent). In Massachusetts, the Council expects the proposed action will have only marginal impacts in Gloucester (about \$16,000 loss in port's gross revenue) and negligible impacts on other ports.

Table 5: Distribution of Impacts by Area

Area	All Trips		Trips that exceed 10 percent limit		Distribution of Revenue Loss by Area as a % of Total Impact	Revenue Loss due to 10% Limit as a Percentage of Area's Total Revenue
	Total Number of Trips	Landings of Regulated Species as a percentage of Non-regulated Species (%)	Number of Trips that will Affected by 10% Limit	Landings of Regulated Species as a percentage of Non-regulated Species (%)		
513	548	1.5	32	19.3	1.1	0.5
514	372	2.6	54	55.2	4.2	3.5
Subtotal	920		86		5.3	
521	53	5.1	8	77.9	2.8	7.3
537	377	3.9	45.2	114.8	43.1	3.4
538	43	5.4	4.3	107.8	3.4	6.5
539	309.7	19.9	143.3	65.5	41.4	16.5
Subtotal	729.7		192.8		87.9	5.6
611	57.5	8.4	16	56.9	1.1	8.5
612	351	0.5	12	21.4	0.5	0.3
613	86	0.6	8.6	27.7	0.3	0.1
615	18	0.0	2	135.3	0.3	0.2
616	302	0.1	2.1	75.1	1.9	0.1
Subtotal	814.5		40.7		4.0	
622	253	0.0	1	18.0	0.0	0.0
Total	2770		328.5		100	

Table 6: Distribution of Impacts by Port

	Trips Affected by 10 %Limit as a percentage of Total Affected Trips (%)	Reduction in Port's Revenue as a percentage of Reduction in Total Fleet Revenue due to 10% Limit (%)	Reduction in Port's Revenue as a percentage of Port's Total Revenue (%)
Rhode Island			
Point Judith	55.0	78.2	3.3
Newport	3.3	8.8	2.5
Oth. Washington	0.3	0.3	0.0
Subtotal	58.6	87.3	
Massachusetts			
Gloucester	12.8	3.9	1.0
Provincetown	4.6	1.7	8.5
Chatham-MA	2.1	1.7	10.7
Subtotal	19.5	7.3	
NY and NJ			
Pt. Pleasant	4.3	2.3	0.8
Montauk-NY	7.9	2.2	1.2
Subtotal	12.8	4.6	
Maine			
Other York	1.2	0.3	4.9
Portland	0.6	0.1	1.1
Other Sagamore	1.5	0.1	0.1
Oth. Cumberland	1.8	0.1	0.1
Subtotal	5.2	0.5	
Total	100	100	

5.0 APPLICABLE LAW

5.1 Magnuson Act- Consistency with National Standards

See pages 52-57 of Amendment #5 to the Northeast Multispecies FMP, Volume I, for a summary of the Council's determination of consistency with the national standards. This framework action is an adjustment to the rules promulgated under that amendment, and the Council does not find cause to reconsider that earlier determination.

5.2 National Environmental Policy Act (NEPA)

The Final Supplemental Environmental Impact Statement (FSEIS) for Amendment #5 contains an assessment of the impacts of the 500-pound possession limit (Section E.7.1.1.1.5, pp. 314-315). The Council has determined, based on the analysis in Section 4.0 of this document, that the impacts of the adjustment under this framework action will probably not be materially different on existing small-mesh fisheries than any impact already resulting from the imposition of the 500-pound limit and addressed in the FSEIS. The Council expects that proposed adjustment will limit any future or emerging fishery that may attempt to target regulated species with small mesh. Since those fisheries either do not currently exist or have already been impacted by Amendment #5, the Council considers that its obligations under NEPA have been met.

5.3 Regulatory Impact Review (Regulatory Flexibility Act and Executive Order 12866)

This section provides the information necessary for the Secretary of Commerce to address the requirements of Executive Order 12866 and the Regulatory Flexibility Act. The purpose and need for management (statement of the problem) is described in Section 2.0 of this document. The alternative management measures of the proposed regulatory action are described in Section 3.0. The economic impact analysis is in Section 4.2 and is summarized below. Other elements of the Regulatory Impact Review are included below.

5.3.1 Executive Order 12866

The proposed action does not constitute a significant regulatory action under Executive Order 12866. (1) It will not have an annual effect on the economy of more than \$100 million (Table 4). (2) It will not adversely affect in a material way the economy, productivity, competition and jobs. The estimated reduction in landings of regulated species is only about 464,000 pounds worth about \$409,000 in ex-vessel revenues. The proposed action is deemed necessary to prevent a potential problem that could jeopardize the success of the groundfish rebuilding program which is projected to result in an increase of net national benefits of \$345 million over the next ten years. (3) The proposed action will not affect competition, jobs, the environment, public health or safety, or state, local or tribal governments and communities. Instead it is expected to help improve the overall condition of the commercial and recreational fisheries which is essential to improving competition, job opportunities, the environment and public health. (4) The proposed action also will not create an inconsistency or otherwise interfere with an action taken or planned by another agency - no other agency has indicated that it plans an action that will affect this fishery. (5) The proposed action will

not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of their recipients. (6) The proposed action does not raise novel legal or policy issues. These types of limits have been successfully employed in the exempted fisheries program for groundfish in the Gulf of Maine for many years.

5.3.2 Regulatory Flexibility Act

The multispecies (groundfish) fishery in the northeast consists of all small business entities operating primarily in New England. A total of 5,356 vessels were issued federal multispecies fishery permits in 1992. Of these, about 165 would be restricted by the proposed action and would experience a loss of about \$2,476 in revenues while engaged in trawling for small mesh species. Although it is not possible to calculate the percentage reduction in annual revenues for these vessels because data are not available, this reduction is probably less than 5% of their annual gross revenues. This represents an average \$271 reduction in trip revenues for 1,505 trips that are estimated to be affected by the proposed adjustment. There will be no change, however, in trip landings and revenues for the remaining 13,842 trips (estimated) using small mesh.

The proposed action will therefore, not affect a significant number of small business entities (defined as more than 20% of the population) and will not increase annual compliance costs for small entities by more than five percent. For the relatively few vessels that are affected by the regulation, compliance costs would be less than 5% of their revenues from trawl fishing. These vessels also may participate in alternative fisheries such as trap or fixed gear fisheries for other species so that these impacts may be a smaller percentage of their total revenues. For most vessels with Multispecies permits, the proposed action would not change compliance costs at all.

The proposed action therefore will not have a significant economic impact on a substantial number of small business entities and a Regulatory Flexibility Analysis is not required.

5.4 Endangered Species Act

See Section 8.4, Volume IV of Amendment #5 to the Northeast Multispecies FMP.

5.5 Coastal Zone Management Act (CZMA)

See Section 8.5 Volume IV of Amendment #5 to the Northeast Multispecies FMP.

5.6 Paperwork Reduction Act (PRA)

Copies of the PRA analysis for Amendment #5 to the Northeast Multispecies FMP are available from NMFS Regional Office. The burden-hour estimates are detailed in the Classification section of the *Federal Register* notice of the final rule implementing the amendment (*Federal Register*, vol. 59, no. 40, p. 9885, March 1, 1994).

APPENDIX I Public Comments

Framework adjustment #3
Small-mesh possession limits

16

April 27, 1994
Multispecies FMP

APPENDIX I

Public comments on Framework #3

Northeast Multispecies (Groundfish) FMP

Public Comments

The following are verbatim excerpts from the April 7, 1994 Council meeting containing public comment on the groundfish possession limit for vessels fishing with mesh smaller than the regulated minimum size. Where commenters raised questions or issues, the response is included. Written comments submitted on this framework action are also attached.

Ellie Dorsey-Conservation Law Foundation: First, a clarification. The title of this framework adjustment on the first page is to limit the landing of regulated species, etc, but in the text it talks about it as a possession limit as well and I wanted to clarify the intent. Is it to be a possession as well as a landing limit?

Response: It is a possession limit.

Ms. Dorsey: My only comment is to support adoption of this measure. Sounds like a good idea.

Jake Dykstra-Pt. Judith Coop reading an excerpt from letter submitted by Fred Matera who is out fishing: "Groundfish possession limit while fishing small mesh of 500 pounds or ten percent of all species not subject to mesh regulations, whichever is less, I agree with this action. It prohibits directed fishing for groundfish with small mesh. The maximum possession limit should not exceed 500 pounds."

Mr. Dykstra: The Pt. Judith Coop also supports this action, but our support is somewhat contingent with what happens with the 100 pound issue. I think we would be somewhat dismayed if both were in effect. We think this is an adequate measure.

Howard Nickerson-Offshore Mariner's Assoc.: I agree with Jake Dykstra. We feel the same way.

John Mason-MAFMC Rep.: If a guy starts out the day and he is whiting fishing and he catches a 1000 pounds of whiting and he catches 150 pounds of winter flounder, but his day is not done—for that tow does he have to discard the 50 pounds of winter flounder or can he keep them given that it is the first tow of the day?

(Response) Mr. E. Smith: Mr. Mason raises a good question that is one of the things that comes up from time to time when we have one of these things. Technically its a possession limit as Ms. Dorsey asked and technically anytime you are checked you are suppose to be within the ten percent. I guess we need some discussion on that because logically what you really want to be sure of is that somebody's not fishing hard one way and then the other and avoiding the intent of this thing. If you are

fishing properly as a small mesh fishermen, when you land that's really when you want to be sure that you are under the ten percent. The problem by not saying possession limit then you limit your opportunity to enforce it. If somebody can figure out a way to get the sense of this very clear, we could avoid the problem you identified.

(Response) Mr. Haring: When the Council and the Groundfish Committee was discussing trip limit versus possession, the Enforcement Committee reviewed this measure. Their comment was that if you make it a possession limit we can enforce it at sea, if you call it a trip limit you can't enforce it at sea, because a trip is not over until the vessel docks.

(Response) Capt. Barlow-U.S. Coast Guard: Practically, we are going to be looking at at-sea enforcement 500 pounds, we are not going to be looking at percentages. We are going to be looking at 500 pounds. If it goes over that trip wire we'll consider it a violation. If it is under that 500 pounds we are not going to be too concerned.

(Response)Mr. E. Smith: I don't disagree with the Coast Guard's perspective at sea, but at the point of landing the ten percent is the thing that keeps a boat from abusing it. They may check a guy and he's got 450 pounds and they say fine--and then when the vessel is ashore and the weighout process is going on and a person is over the ten percent, he could be sighted for a violation as dockside enforcement. Both of these ways would be proper ways to enforce this measure.

(Response)Mr. McCauley: I would like to know if NMFS anticipates any problems with this framework adjustment.

(Response)Mr. Rittgers: As I look at this I don't anticipate any problems.

Mr. Mason: I ask the Council to look at the letter from Charles Wertz, West End Fishermen's Assoc., Long Island, NY that was distributed this morning. The letter asked that they be allowed to fish up to 500 pounds of winter flounder while they are engaged in their traditional small mesh fishery. ...The way he explained it to me was that he was looking for an exemption from the ten percent in the area west of 72°30', similar to the mesh exemption that this Council has granted in that same area.

(Response)Mr. E. Smith: I read this letter to say that Mr. Wertz wants to be able to fish with small mesh gear to take 500 pounds of winter flounder. I don't agree with that and in some cases we are just going to have to respectfully disagree with someone else's view that wants something we don't agree with.

Tony Verga, Gloucester Fisheries Commission: I think what you are trying to do is eliminate this directed fishery of 500 pounds. I want you to know that the wording that you have is acceptable with us and I think you ought to pass the motion.

Brian Turnbull(fisherman from Pt. Judith): This directed fishery of 500 pounds isn't a lot. We have the same problems that those people do to the west of us in New York. If we start approaching 500 pounds, then we think seriously of large mesh gear. A lot of days in the winter time if we are allowed to fish on ocean pout it's on a limited basis. We are told that the buyer can only accept a 1000 or 2000 pounds a day. This puts you in a dilemma of trying to fish on a formula basis. Some days we don't even know until we call the Co-op in the morning that we are allowed to catch ocean pout for the day. It's not that we are fishing with small, small mesh. A lot of the guys prefer mesh that is 4.5 inches in the bag and a 5 inch net. It depends on the gear that they have been using in the past. This whole thing of 500 pounds I thought was a good idea in the original groundfish plan, because it addressed the problem that I am faced with as a dayboat in a mixed trawl fishery. We go out a lot of days in a changing season and we might have a box or two of flounders, a box of cod and maybe a box of yellowtail. This time of year we start to look for some scup to move in. You have to adjust for these species as they move around. It's a problem that the boats are faced with in the under-50-ton range. These are boats that you have allowed 45-footers to be free of regulations and this is kind of the next step up from the 45- to the 60-foot boat. If you remember when we had the three tonnage classes that the small boats, under 50 tons, never did catch their quota. We were still allowed to operate. On a boat my size, 500 pounds can be a decent day of fishing. Having these formulas and to fish by a formula creates another whole dilemma--days at sea, days at the dock, blocks of time out, etc. You have this whole plan into effect already and you are telling us we are doing something wrong. I thought the 500 pounds was an excellent idea to help adjust in the mixed trawl fishery. We are all aware of the high discards and whatever small fish show up, most of us are conscientious enough to avoid them. It's our future too. We aren't the boats that went to the lightship to fish on small yellowtails. We aren't the boats that went to Davis's to fish on snapper cod, and we aren't the boats that hauled boat-load after boat-load to the "dehyde" (fish-meal) plants in the '70's. We chose to be small because of the lifestyle. If you do away with this 500 pounds its going to force a boat my size to go 70 miles offshore and fish on fluke in the winter time where I don't belong. That's my only choice, or go out of business. I suggest that you let things stand for at least a year to see if there is a serious problem of a directed fishery in this area. I think that southern New England should be left out.

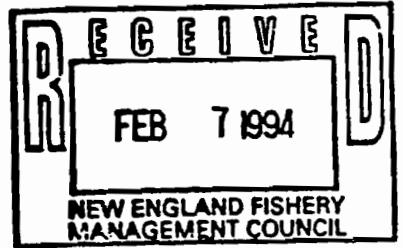
Bruce Loftes: (fishing boat owner) Last year I found myself dumping flounders in the scup fishery in the fall. We could only have 100 pounds of flounders in Mass. state

waters. I can see the same plan happening again in the mixed trawl fishery. If we are scuping in the fall which we are in the hard bottom with the rollers every once in a while we get 500 to 600 pounds of flounders. We try to get them overboard as quick as you can, but you will not get them all overboard alive. Even in the ten percent deal. Sometimes you might not even catch your other 90 percent of the fish and you have already saved these fish thinking you are going to get a tow of whiting, scup or something else later on. Legally at the end of the day you have to dump these fish overboard because you have a 10% deal. The 500 pounds will probably work. It might maintain the smaller boats in the fishery and keep them from going out of business. I am not sure if the Council's idea is to put boats out of business or keep boats working or what is going on. We have to make some kind of adjustment and I don't believe the 500 pounds is going to hurt the fishery.

(Response) Mr. Mirarchi: I believe that something needs to be done and quickly on this measure. The growing behavior of a few misdirected individuals in the GOM targeting groundfish with small meshes is nothing but scandalous. There is a growing awareness that if nothing is done and no leadership exhibited by the Council or NMFS that more and more people will be forced into doing this because their neighbors and their competitors are making more money doing this. A short term expedient way of fishing will have won over the long-term resource conservative way of fishing. I recognize that there is a problem in some fisheries. Three fisheries that have been mentioned to us by the two witnesses and in Mr. Wertz's letter--the whiting fishery, scup and pout fishery. In two of those fisheries gear modifications can be used to mitigate the bycatch of flatfish. In the whiting fishery you can trim your net. In the scup fishery you can go from heavy rollers to a rock hopper to minimize the catch of flatfish. Unless the Council continues to articulate long term gain it will loose the respect it needs to be an effective manager and advocate of the fishery. I strongly urge support for this motion.

February 5, 1994

Rollie Smitten
Assistant Administrator for Fisheries
Silver Springs, Md.



Dear Mr. Smitten:

I have spent the last several weeks answering permit questions at all hours of the day and night. Second only to the permit questions have been questions relating to what an individual can and can't do under Amendment #5. No, I could not refer them to NMFS because as you probably know NMFS in Gloucester were not answering the phones, as if it would have mattered because all but one that I know who got through received wrong answers. The above problems are not the subject of this letter.

Given all of the above, it had not occurred to me until I was at the NEFMC Groundfish Committee meeting Thursday, the devastating consequences of part of Amendment #5. As of today, any fishing vessel in the Gulf of Maine using trawl or gillnet gear must use 5 1/2 inch mesh or larger with a few limited exceptions. All vessels using smaller gear must have an exempted fisheries permit on the vessel. The Coast Guard has a simple job if it boards a vessel in the Gulf of Maine. Do you have an exempted fisheries permit? Do you have the appropriate mesh? No permit plus wrong mesh equals violation. Permit plus wrong gear for permit equals violation.

As of March 1st the Coast Guard will be virtually unable to enforce large mesh except in the large mesh only area. (See Figure 1: Regulated Mesh areas Proposed Rules. Any vessel can fish anywhere else (with minor exception) anytime with any mesh he chooses. At the same time the regulated mesh is to increase to 6 inches. By far the greatest percentage of the fleet in the Gulf

Fa 36 ✓
CK ✓
FEH ✓
DM F ✓

of Maine never reaches the remaining large mesh area. As of March 1st there will be not only be no incentive to use 6 inch mesh in the Gulf of Maine, but there will be an enormous disincentive. The chances of being caught using illegal mesh in a directed groundfish fishery have been reduced from significant enough to keep the fleet pretty much in line to highly unlikely. Much of the fleet can legally prosecute a directed groundfish fishery with any mesh it chooses (even 1 1/2 inches) as long as it remains within the 500 lb. limit. If you are an inshore vessel, now catching about 800 lbs. per day total of which 600 lbs are regulated species almost all of which are legal because they are caught with 5 1/2 inch mesh, as of March 1st you have a choice. You can use 6 inch mesh, catch 600 lbs. per day total of which maybe 400 lbs. are regulated species or you can use 3 inch mesh, catch 2,000 lbs. per day of which 1,500 lbs. are groundfish and which if you are lucky 500 lbs will be of legal length. The choice, as revolting as it is, is clear.

Please, as staunch a supporter of 6 inch mesh as I have been, don't implement Amendment #5 on March 1st. If you can implement 6 inch mesh within the framework of the current exempted fisheries system do so.

We in the Gulf of Maine firmly believe that our healthy Sea Dab and Hake stocks are a result of 5 1/2 inch mesh. We also are finally witnessing improvements in the redfish stocks. Redfish, in particular could be devastated by small mesh. It took us a long time to plug the loopholes in the current system. Please, we all agree groundfish need help. Don't eliminate a decade of progress.

Very disturbed but truly yours,

Barbara Duer Stevenson

West End Fishermens Association

April 6, 1994

New England Council
Suntaug Office Park
Saugaus, Mass. 01906

Gentlemen,

As you know Western Long Island, NY is located on the fringe of the large mesh groundfish's range. In fact, we only catch three species of cod, yellow tails, and winter flounder. For a big portion of the winter, we fish for whiting with a by-catch of these three species. Winter flounder makes up the biggest portion of the by-catch. This is a day boat fishery and many days the catch of winter flounder is needed just to make expenses.

It has already been recognized that we are on the fringe of the range and have an insignificant effect on the total population. This was recognized with the exemption from the total five and a half inch net requirement west of the seventy two degrees thirty minute line. We are asking you to continue to let us catch up to five hundred lbs. of winter flounder while we are engaged in our traditional small mesh fishery. Any thing less than this would make many of our day trips non - profitable.

To stop any abuse of this exemption, only day boats fishing west of seventy two degrees thirty minutes should be able to catch up to five hundred lbs. of large mesh groundfish while engaged in their traditional small mesh fishery. While five hundred lbs. of groundfish should be allowed to be taken, I want to make it clear that the majority of the time this by-catch is almost 100% winter flounder. Since New York state is going to a twelve inch minimum size limit in 1995, I see no problem in letting us keep five hundred lbs. of winter flounder by-catch. Keep in mind that this by-catch was always there and will always be there, so why waste a valuable product. With the five hundred lb. by-catch allowance, we will have to make less tows per day and thus have much less impact on discards and all other species. This could be considered a form of effort reduction.

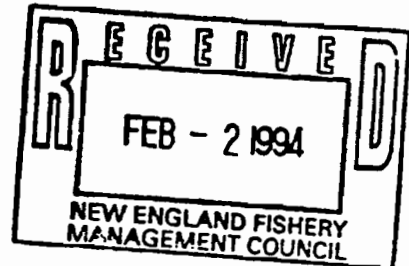
This matter is of utmost importance to New York State boats and your consideration of this by-catch allowance is imperative.

Yours Truly,

Charles Wertz

February 2, 1994

Joseph M. Brancaleone
Chairman
New England Fishery Management Council
Saugus, Ma



Dear Mr. Chairman,

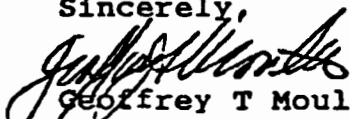
Unfortunately due to conflicts in my schedule I cannot attend this latest meeting of the Multispecies Oversight Committee. I would like to take this opportunity to respond via the fax machine to the issue of the whiting fishery and small fishing in general.

It defies logic that some fishermen are being regulated to a larger mesh size ($5\frac{1}{2}$ up to 6 inches) while it is proposed that the fishery can sustain a small mesh program. After interviewing many fishermen from Maine to Rhode Island the general concensus is that small mesh kills a variety of species and at a very young age. I'm sure that if you interview many of the members of the council and go back in your own memories of time spent fishing, you will come to the same conclusion.

Therefore I submit to you and the council, stop the small mesh program immediately. For the sake of a few vessels we can not forsake the future of the entire industry. I am including the shrimp fishery in this category as well. We must divert our efforts to alternative methods of harvesting shrimp and perhaps wait out the appropriate time period for whiting to reach the "king" size which will fetch a higher market price. The pressure being put on dogfish by the small mesh program is going to effectively end that fishery soon due to the extremely low recruitment rate of that species. There is absolutely no sense to the methodology being used by the council, NMFS, or NOAA allowing small mesh to continue the demise of the New England fish stocks.

I write you this letter representing no firm or special interest group. I am simply a person who wants to see a future to the New England fishery and the citizens who rely solely upon it. Please take these considerations to heart and put the proposal forward that there be a ban on small mesh fishing in the New England management area.

Sincerely,



Geoffrey T Moulton
508 388 2549

Distributed at Feb 23, 94
C. P. Moulton

The following comments pertain to the framework adjustments (A, B, & C) to Amendment #5.

A. 100 lbs. winter flounder possession limit (of the 500 lbs. allowed) is an unrealistic action. While fishing on ocean pout, skates or dogfish and not targeting winter flounder it is conceivable to catch more than 100 lbs. of flounders. This action would result in discard and highgrading. If you insist on this action then I suggest you limit the 500 lb. possession limit to:

100 lbs. winter flounder
100 lbs. yellowtail flounder
100 lbs. codfish
100 lbs. haddock
100 lbs. alternative regular species

 B. Groundfish possession limit while fishing will small mesh of 500 lbs. or 10% of all species not subject to mesh regulations, whichever is less. I agree with this action, it prohibits directed fishing for groundfish with small mesh. The maximum possession limit should not exceed 500 lbs.

C. 365 Day Effort Reduction Program based on the implementation date of the program, is a favorable action to pursue. To commence with the effort reduction program in the 1994 calendar year would slight many fishermen. Especially those in the fleet as they would have to take 80 days out of 8 months or less, creating excessive economic hardship, also, 20 days must come out between March 1st and May 31st which would nearly eliminate fishing in May. The fair and equitable action would be to begin the year upon the date of implementation.

Amendment #5 is an extremely complicated plan, I suggest that upon implementation, enforcement would proceed with a cautious and open mind. Mistakes will be made, Let's strive to make this transition as smooth as possible.

Sincerely,

Fred Mattera
RR1 28 Knowles Lane
W. Kingston, R.I. 02892

FM/pm