

**FINAL**

**FRAMEWORK ADJUSTMENT #7**

**to the**

**SEA SCALLOP FISHERY MANAGEMENT PLAN**

**AS AMENDED**

**December 13, 1995**

**Extension of Seven Member Crew Limit**

**Prepared by**

**New England Fishery Management Council**

**in consultation with**

**Mid-Atlantic Fishery Management Council**

**South Atlantic Fishery Management Council**

**National Marine Fisheries Service**

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## **Combined Framework Adjustment**

**Adjustment #7 to the Northeast Multispecies FMP  
Adjustment #3 to the Scallop FMP, and  
Adjustment #1 to the Lobster FMP**

**To eliminate the requirement that permit applicants own title to a fishing vessel at the time they initially apply for limited access/moratorium permits**

### **1.0 INTRODUCTION**

In 1994 NMFS implemented major amendments developed by the New England Fishery Management Council to the fishery management plans (FMPs) for the Atlantic sea scallop, northeast multispecies (groundfish) and the American lobster fisheries. The amendments, intended to eliminate overfishing in these fisheries, employed moratorium and access controls as a first step to cap or reduce fishing effort.

NMFS partially implemented Amendment 4 to the scallop and Amendment #5 to the groundfish FMP on March 1, 1994. Most of the remaining measures and some framework adjustments were implemented on May 1 and in subsequent months. NMFS implemented the approved sections of Amendment #5 to the lobster FMP on June 21, 1994 except for the limited access permit system, which will be implemented on January 1, 1995.

### **2.0 PURPOSE AND NEED**

#### **2.1 Need for adjustment**

Under current regulations for the Atlantic sea scallop, northeast multispecies (groundfish) and the American lobster fisheries, to be eligible for a limited access permit in 1994, an applicant must own a vessel that qualifies under the various moratorium criteria for each of these fisheries. In addition, applicants must obtain a permit in 1994 to be eligible for limited access permits in future years. This situation creates a potential problem for anyone who holds fishing rights under the various moratorium provisions but does not own a vessel. This includes anyone or who recently sold or transferred a vessel and retained the fishing rights, but has not bought a new vessel in time to apply for a permit during the 1994 calendar year.

The requirement that applicants must own a vessel at the time of their initial application for a limited access permit also conflicts with the requirements for permit renewals. Under the current regulations, once an applicant has received a limited access/moratorium permit, the applicant may sell the vessel and renew the permit in order to retain the fishing rights indefinitely.

In developing the amendments, the Council adopted the policy that vessel owners should not be required to fish their vessels to be eligible to get or to renew moratorium or limited access permits. The Council did not want to force vessels to remain in currently overfished fisheries in order to retain fishing rights for the future. Also it did not want to force an applicant to buy and fish a vessel only to preserve future fishing rights.

In making this decision the Council weighed the potential biological benefits of two alternatives. One alternative was to require vessels to fish in order to remain eligible for a permit and thereby attempt to get additional effort reduction through possible attrition from vessels that failed to fish within a defined time period. The other was to not require vessels to fish to retain future eligibility. The Council chose the latter approach because it believed that it had a greater probability of minimizing fishing effort in the early years of plan implementation when it is critical to get as much stock rebuilding as possible. It also believed that the first approach would not work because vessel owners would find a way to maintain potentially valuable fishing rights.

Additionally, the Council was concerned that as a practical matter some of the otherwise ineligible applicants could retain fishing rights by making "paper transactions" to acquire vessels in order to qualify for permits. For example an applicant could acquire a vessel with an agreement to sell it back to the original seller once the applicant obtained a limited access permit.

Although the Council did not explicitly address the issue of vessel ownership as a requirement for permit eligibility in the various FMP amendments, neither did it adopt a policy requiring applicants to own a vessel at the time of application. The idea that, to the extent possible, permits should be attached to vessels to prevent speculative buying and selling of fishing rights further added to the confusion.

Finally the regulations were written to minimize the change in the administration of the fisheries permit system. Federal permits have been issued to fishing vessels instead of to owners or operators. This practice was not a problem until the Council adopted limited access measures and potentially conflicting vessel replacement provisions. NMFS has not yet changed the permit system, partly because of the time the change would require, and partly because issuing permit numbers to vessels simplifies keeping track of vessels in the commercial fisheries data base. The proposed action will require NMFS to make minimal changes to the current permit system.

## **2.2 Publication of the action as a proposed rule and opportunity for public comment**

The Council recommends that NMFS publish the adjustment as a proposed rule with an abbreviated comment period. This procedure will allow more public comment before the adjustment is implemented than is it were published as a final rule.

The Council has discussed and heard public comment on the this issue for several years during the development of the amendments to the Multispecies and Scallop FMPs. More recently, this problem has been discussed starting at the September Council meeting. Below is a list of recent meetings at which the issue has been discussed:

<b>Date</b>	<b>Meeting</b>	<b>Location</b>
9/21-22/94	Council	Southport, ME
10/4/94	Interspecies Committee	Peabody, MA
10/28-29/94	Council	Danvers, MA

Framework adjustment

2

December 6, 1994

Elimination of vessel ownership requirement

The public is informed of Committee meetings by a letter to interested parties and advisors, including the press and industry associations. At the September 21-22, 1994 meeting, the Council initiated this framework action. 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.

### **3.0 PROPOSED ACTION AND ALTERNATIVES**

#### **3.1 Proposed action**

The proposed action would allow an applicant with fishing rights but who does not currently own title to a vessel, to still qualify for a federal limited access/moratorium vessel permit for 1994 and subsequent years in the fisheries for Atlantic sea scallops, northeast multispecies (groundfish) and American lobster. The permit will specify the physical characteristics of the vessel for which the fishing rights were originally established, and only will be valid for vessels that fall within the plan-specified vessel replacement restrictions, if applicable.

For example, the vessel replacement restrictions would be based on the physical characteristics, the length, tonnage and horsepower, of the vessel that originally qualified under the limited access/moratorium criteria. At present this provision would apply only to the scallop and groundfish fisheries because there are no restrictions on the size or power of replacement vessels in the lobster fishery.

#### **3.2 Alternatives to the proposed action - no action**

Because of the nature of the problem, the only alternative to the proposed action is simply to not take any action. The current regulations prevent an applicant who does not own a vessel at the time of application from being issued a limited access/moratorium permit. Additionally, the current regulations would prevent such an applicant from qualifying for a limited access permit in the future (unless the applicant obtains the permit by acquiring another vessel that has qualified).

The no-action alternative causes several problems. First, the current regulations might be legally challenged on procedural grounds. Potential applicants were not informed of the vessel ownership requirement at the time of the public hearings for these FMP amendments and, therefore, did not have adequate opportunity to comment on this issue. In fact, if they had carefully followed the discussions of the Council and its species committees they may have been led to believe they would not be required to own a vessel when applying for a limited access/moratorium permit.

Second, taking no action would allow a restriction to remain in effect that the Council never intended to implement. This restriction could cause significant financial loss to applicants who might otherwise qualify for limited access/moratorium permits by forcing them to purchase and operate a vessel. Finally, the entry of any additional vessels would have a negative economic impact on other participants in these fisheries because the major fish stocks are either fully exploited or over-exploited.

## **4.0 ANALYSIS OF IMPACTS**

### **4.1 Biological impacts**

This proposed action affects only permit eligibility requirements and is not expected to have any biological impacts on the stocks managed under plans to which the adjustment would apply. The FMPs to which the measure applies will be monitored on the basis of whether they achieve their biological objectives and adjusted for any shortcomings. Consequently, the proposed action may affect the distribution of landings among vessels, but not the overall level of landings or fishing mortality.

### **4.2 Economic impacts**

At present, information is not available about the number of vessel operations that might be affected, but the economic impacts of the proposed action are expected to be positive. The proposed action will not increase or decrease the overall level of fishing effort if current controls on effort are effective. It will, however, forestall investment in or the acquisition of additional vessels solely for the purpose of retaining fishing privileges. Under successful management these privileges could become very valuable as they have in other fisheries under limited access or rights-based management systems. Applicants who would qualify except for the fact that they do not own a vessel have a strong incentive to make a substantial investment in acquiring vessels to keep the fishing rights. Such expenditures would be counterproductive. First, they represent a needless expenditure of capital to maintain fishing rights and second, they could result in an increase in the number of active participants in fisheries that are severely overfished. Any increase in the number of active participants in the near future would have a negative impact on the ability of current participants to remain profitable during the next several years of rebuilding. The groundfish and scallop fisheries, in particular are barely sustaining today's harvesting industry.

### **4.3 Fisheries impacts**

The proposed action will prevent possible negative impacts on other fisheries because it will forestall investment in or the acquisition of additional vessels solely for the purpose of retaining fishing privileges. Today, when most major commercial fisheries in the Northeast are either overfished or under restrictive management, additional investment in fish harvesting could increase fishing effort region-wide by increasing the competitive pressure for vessels to maintain or increase revenues to survive financially.

## **5.0 APPLICABLE LAW**

### **5.1 Magnuson Act- Consistency with National Standards**

Section 301 of the FCMA requires that any regulation promulgated to implement any FMP or amendment shall be consistent with the seven national standards listed below.

1. *Conservation and management measures shall prevent over-fishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.*

The proposed action will more effectively implement Council policy regarding eligibility requirements for limited access fisheries under its management. In so doing it will help the Council achieve its goals of eliminating overfishing and achieving optimum yields. The adjustment will not directly affect the fishing mortality rates of the species managed under the various plans.

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

This consideration does not apply to the proposed measure which would change permit eligibility requirements and does not require scientific information.

3. *To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.*

The proposed action does not change the definition of the management unit or any geographical aspects of how permit eligibility requirements apply to the fishery.

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

The proposed action applies to residents of all states equally.

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

The proposed action will improve efficiency by eliminating the requirement for permit applicants to acquire vessels solely to maintain their eligibility for limited access permits in the future in fisheries that already are over-capitalized.

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

The proposed action would enable permit applicants to postpone investment in the fisheries until conditions improve thereby allowing them more flexibility in making investment decisions rather than forcing applicants to acquire a vessel before the end of 1994.

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

*unnecessary duplication.*

The proposed action minimizes costs by eliminating the requirement for permit applicants who otherwise would not qualify for limited access/moratorium permits to purchase and perhaps operate vessels in fisheries that are already severely over-exploited or fully exploited.

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

The proposed action is very limited in scope and potentially affects a small but unknown number of permit applicants. The impacts of the proposed actions fall entirely within the scope of the impacts analyzed in the Supplemental Environmental Impact Statements submitted with Amendment #4 to the Scallop FMP, Amendment #5 to the Northeast Multispecies FMP, and Amendment #5 to the Lobster FMP.

### **5.2.1 Environmental Assessment**

The proposed action only affects a small number of individuals and only it affects those who may be eligible for limited access permits but who do not currently own a fishing vessel. It is not expected to have any biological impacts and is expected to have positive economic impacts (see sections 4.1 and 4.2) Based on this analysis, the Council finds that the proposed action will not have any significant impact on the environment.

### **5.2.2 Finding of no significant environmental impact (FONSI)**

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

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

No. The proposed action will more effectively implement Council policy regarding eligibility requirements for limited access fisheries under its management. In so doing it will help the Council achieve its goals of eliminating overfishing and achieving optimum yields. The adjustment will not directly affect the fishing mortality rates of the species managed under the various plans.

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

The proposed action is not expected to impact coastal or ocean habitat.

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



The measure is not expected to have any impact on public health or safety.

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

The proposed action does not change the way the FMPs affect endangered, threatened species or marine mammal populations. The NMFS biological opinions for Amendment #5 to the Northeast Multispecies FMP, Amendment #4 to the Scallop FMP and Amendment #5 to the Lobster FMP issued under authority of Section 7 (a) (2) of the Endangered Species Act, concurred that the fishing operations conducted under these amended FMPs are not likely to adversely impact endangered or threatened species under the jurisdiction of NMFS.

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

The proposed action is intended to be a part of the management programs implemented through recent amendments to Scallop, Lobster and Northeast Multispecies FMPs. As such the cumulative effects are expected to be consistent with those of the respective plans. The proposed action is not expected to add to the effect of the FMP on other stocks.

The guidelines on the determination of significance also identify two other factors to be considered: degree of controversy and socio-economic effects. The Council expects no significant adverse socio-economic impacts (section 4.2). The Council also has determined that the proposal is not controversial since there has been no substantial dispute on the environmental effects of the proposed action. Based on this guidance and the evaluation of the preceding criteria, the Council proposes a finding of no significant impact.

**FONSI statement:** In view of the analysis presented in this document and in the DSEIS for Amendment #5 to the Northeast Multispecies FMP, Amendment #4 to the Atlantic Sea Scallop FMP and Amendment #5 to the American Lobster FMP, it is hereby determined that the proposed action would not significantly affect the quality of the human environment with specific reference to the criteria contained in NDM 02-10 implementing the National Environmental Policy Act. Accordingly, the preparation of a Supplemental Environmental Impact Statement for this proposed action is not necessary.

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Assistant Administrator  
for Fisheries, NOAA

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Date

### **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 under the discussion of how the proposed action is characterized under Executive Order 12866 and the Regulatory Flexibility Act.

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

The proposed action does not constitute a significant regulatory action under Executive Order 12866. (1) As stated in section 4.2, the management proposals will not have any impact on the overall level of landings and revenues from the scallop, lobster and groundfish fisheries. Therefore, the proposed action will not have an annual effect on the economy of more than \$100 million. (2) The proposed action is expected to have a positive economic effect on the lobster, scallop and groundfish harvesting industries (section 4.2). For these reasons, the proposed actions will not adversely affect in a material way the economy, productivity, competition and jobs. (3) For the same reasons, it will not affect competition, jobs, the environment, public health or safety, or state, local or tribal governments and communities. (4) The proposed action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will affect these fisheries in federal waters. (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. Permit qualification issues of this sort are common to limited access fisheries management systems.

#### **5.3.2 Regulatory Flexibility Act**

The lobster, groundfish and scallop harvesting industries are composed entirely of small business entities. This proposed action is expected to affect a very small but unknown number of applicants for limited access/moratorium permits in a positive way by ensuring that they are not denied permits because they did not meet the vessel ownership criterion at the time of their application or forced to acquire vessels to meet this criterion. The proposed action also is expected to have positive economic impacts by not forcing some applicants to participate in overfished fisheries in order to preserve future fishing rights. For the same reasons, the proposed action will not result in a reduction in annual gross revenues of more than 5 percent. Similarly, the proposed measures will not increase annual compliance costs for small entities by more than five percent and they will not increase compliance costs for small entities compared to large entities.

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**

The Council finds no cause to change its earlier findings with respect to the Endangered Species Act requirements as they apply to the scallop, lobster and groundfish fisheries.

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

Upon the submission of Amendment #5 to the Northeast Multispecies FMP, Amendment #4 to the Scallop FMP and Amendment #5 to the Lobster FMP, the Council conducted reviews of the FMPs for their consistency with the coastal zone management plans of the affected states. All the concerned states concurred with the Council's consistency determinations. The response letters from the states are on file at the Council office. The Council has determined that the proposed action is within the scope of measures already reviewed and that the consistency determinations done for these amendments are sufficient. The affected coastal states have been informed of this decision.

#### 5.6 Paperwork Reduction Act (PRA)

Copies of the PRA analyses for Amendment #5 to the Northeast Multispecies FMP, Amendment #4 to the Scallop FMP and Amendment #5 to the Lobster 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 rules implementing the amendments. The proposed action requires no additional paperwork.

### 6.0 PUBLIC COMMENTS

No public comments on the proposed adjustment were received at the final Council meeting on October 28-29. Below are excerpts from the discussion of the proposed action at the September 21-22, 1994 Council meeting.

Mr. Allen: I think the intent of the Council was clear that somebody not have to replace a boat in any specific period of time. As I interpreted the situation I really didn't think about the fact that you said you had to renew your permit, but you didn't have to replace a boat within any certain period of time. We didn't think about the fact that you can't renew a permit unless you have a boat. I think what needs to happen as I see it, is that you would transform a permit into a certificate of fishing history or something like that which you could retain and replace the boat whenever you want and then you get the permit based on the fishing history that you hold. I guess it probably needs a framework measure to create the right things, but that would follow the intent of the Council.

Mr. Martin: It's not just a renewal problem, but a first year problem also. The regulations read that you have to get a permit the first year in order to be able to renew the rest of the period of the amendment as well. It is not just a renewal problem it's a problem for the first year that if you don't have a vessel can you get this sort of interim permit that holds your right to get a vessel at some future time.

Mr. Allen: My interpretation of what we tried to do is that everybody that qualified was qualified and on into the future. As to the existence of a boat either in the first year or in subsequent years we said we didn't want to force people to go out and get boats.

## 6.0 Public Comments (continued)

Mr. Brancaleone: That is my recollection also. Don't force a guy to get a boat and put more pressure on it.

Mr. Brennan: It is my collection as well. A system that would allow an individual to tender a permit would be the most direct and expeditious way to handle this problem.

Mr. Coates: I agree with Mr. Brennan.

Mr. Goodreau: We handed out today minutes from the May 13, 1993 Council meeting at which this was discussed. It is 50 pages, but the first seven pages deal with this issue. In fact, the result of that discussion is in the plan. There were two elements. The first one applies to this and it just says on page 176 in the plan, under Days at Sea Adjustment Due to Vessel Attrition says, "Vessel operators may tender their permit for an entire permit year in order to fish in other fisheries without being subject to scallop regulations. Since the number of scallop vessels that have active limited access permits will be known in advance, the Council may consider changes to days at sea allocations and to allow the remaining vessels to fish at higher levels without undermining the rebuilding schedule. This adjustment would be temporary and it would extend for the maximum of a year." This would make it possible for someone [who wanted] later on to actively use their permit.

If you recall, when we were developing this plan we went to three groups, twenty-two groups and had them placed in color categories of fleets. I think my sense of the whole development was that this was a new permit, this was a limited access permit, a separate entity from the current, and at that time, general permit. As it went through the implementation stage, NMFS quite logically used the general category permit because they did not have to go through the whole rigmarole of getting a new form approved and the cost of it, printing it and sending it out and all that. They just put another box on it [the general permit] to check off. The problem is that the number that is assigned to that permit is the number that is assigned to a boat. So when the boat disappears, the number goes with it, so there is no permit. I have a suggestion and if NMFS does it I hope that Mr. Brennan will not be mad at me, because I don't think this is a framework issue. It is an easy solution. There are 464 limited access permits. We simply need to make up a new number on the form that says "limited access number, 1-464. You can retain the permit with a limited access number even if there is no permit number for a boat on it. That way you can carry it forward year after year after year until you decided to replace the boat and then actively pursue your limited access permit.

Mr. Brancaleone: It can't be done. It's too simple.

Mr. Goodreau: Then I suggest we go to Framework #3.

Mr. Martin: What you just cited is not the same issue. That's a different issue. This thing about tendering a permit for a year to allow days at sea to be spread out among other fishermen has nothing to do with not having a vessel to replace during the first year.

Mr. Goodreau: That was part of the discussion. That was one of the two issues that were raised as a means or a purpose or reason for reallocating. But the first sentence was what the Council had intended which was "the vessel operators may tender their permit for an entire permit year in order to fish in other fisheries without being under the scallop regulations." It's written in other parts of the plan that someone had to get their permit for the first year.

## 6.0 Public Comments (continued)

Mr. Martin: But we are not talking about whether you have to fish. That's assuming he has a vessel. He can't fish in other fisheries unless he has a vessel. The issue that Mr. Starvish has raised is "if you don't have a vessel can you still preserve your right to get a permit in future years even though you don't get the permit this particular year." That is the problem with whether we can do this under a framework or whether we can do this as a technical amendment on the part of the Council. The more evidence that the Council intended that you can get the permit without having a vessel then the more likely we are going to agree that you can do it just as a technical amendment or a policy change.

Mr. Goodreau: You do have to renew the permit every year, but you can state that you do not intend to fish for the whole year.

Mr. Martin: That is not the issue. That is already in the regulations. The issue before us now is whether you have a vessel or not in order to get the permit.

Mr. Goodreau: That's right.

Mr. Allen: Can I ask a related question. We put some limits on upgrading vessels in the Scallop and Groundfish Plans. If you downgrade a vessel, can you down upgrade from the original vessel or can you only upgrade from the replacement?

Mr. Martin: You can upgrade from the original vessel.

Mr. Allen: If we don't make some simple accommodating adjustment to this problem we make people go out and buy little vessels to get their permits on and stick them in the yard instead of having a certificate in the strong box, they have to have a little vessel stored away somewhere.

Mr. Martin: If your first vessel that you get a permit on, that is the original vessel that I was talking about. If you start with a little vessel, then you are stuck with that upgrade restriction.

Mr. Allen: The one you have qualified with is your original vessel. Is that right?

Mr. Martin: If the horsepower and vessel size is different than what existed in August 1992 for the vessel that you are applying for your initial limited access permit on, then that becomes your baseline horsepower and vessel size. I thought you were asking if you start out with a big vessel with the original permit, then you downgrade, your base line is still the original big vessel that you got your permit on.

Mr. Starvish: So what you are now saying is the way I understand it, I have a permit now with no boat. I am going to go and buy a Boston whaler on the way home, apply the permit to the Boston whaler, park it behind my garage and everything is all right. Now, when I want to take this permit back out again, I can go back to my 850 horsepower.

Mr. Martin: No, you are stuck with the Boston whaler.

Mr. Starvish: But you just said the base line is the first permit.

Mr. Martin: You are getting your first permit on a Boston whaler.

## 6.0 Public Comments (continued)

Mr. Starvish: Then we will put 850 horsepower on the Boston whaler.

Mr. Martin: You can do that.

Mr. Starvish: I am not sitting down today until I get an answer because I have asked this question for the last six months. We have to make a decision here. I personally don't care how you go, because I have a lot of questions. For example, if a permit has to be attached to a boat how does it have to be attached to a boat, one day, one week. I can just start replacing all permits on another boat. This gets way out of proportion here.

Mr. Martin: I am not arguing against this permit thing, but the procedure may be ....

Mr. Starvish: Federal fish permits can be tendered indefinitely. The history remains. That's simple to me. I agree with Mr. Goodreau. Can we do it? How do we do it? I want my permits guaranteed for the foreseeable future. There is too much money at stake.

Mr. Peterson: If I understand correctly, if you don't have a boat and all you have is a permit, at the end of this year you have nothing. You have to have a boat and a permit whether it is a nineteen foot whaler with 850 horsepower or an 850 boat with nineteen horsepower, it makes no difference. I think that is the condition. Is that right, Mr. Martin. You have to have a boat to have a permit.

Mr. Martin: That is the rule right now.

Mr. Peterson: It has nothing to do with tendering. You have to have that [boat] to have that license.

Mr. Starvish: That is not what was voted on. The Council voted unanimously two years ago, that limited access permits could be tendered indefinitely and the history remain with the owner.

Mr. Peterson: All I can say is that what the Council votes at one time or another is as many contractions as there are meetings. It is what comes in the final plan and comes out in the rules and regulations. That is where the question is that you validly raise and that you are trying to get a clarification on. As I understand the regulations, and that is a big if, that in order to be able to carry that permit, you have to have a boat.

Mr. Starvish: So, if a guy's boat sinks the last day of the permit year, he has twenty-four hours to stick that permit on a boat or he loses it.

Mr. Peterson: No, if he can have a vessel history, and in fact I am going through all kinds of appeals now looking at why people couldn't meet the requirements and one thing or another, which are all subject to appeal. If your boat sunk on the last week then that is a condition that would have to get looked at in that vain. It doesn't exclude you. But, if you never had a boat and you got a permit and you don't intend to have a boat, that is different.

Mr. Starvish: I really don't understand you, but we will just have to do it through the permit office.

Mr. Martin: Under existing rules, Mr. Peterson described it correctly. I am not suggesting that you can't change it. The only thing I was concerned about was the procedure for changing whether it had

## 6.0 Public Comments (continued)

to be a framework or a technical amendment. I am uncomfortable with a technical amendment because the rule is so clear one way that it is very difficult to change a fairly clear rule unless you can show blatant disregard for what the amendment says. I don't think the amendment speaks to this.

Mr. Starvish: So you will send a message out to every permit holder that every one who owns a limited access scallop permit has to put a boat on it before the end of the year.

Mr. Martin: Yes, unless the Council changes the rule.

Mr. Allen: As I see where the technical difficulty arose is that the Council was quite clear, talked about it a lot, had a lot of rationale, went back and forth on the whole issue of whether somebody should have to use it or not use it – all of that was well discussed. There is no question what the intent of the Council was. The Council, as far as I know, I don't recall any discussion of the fact that you could not get a permit without a vessel. I don't know if the Council ever created that requirement to begin with or NMFS just decided that permits went on vessels. You could not go and apply for a permit without a vessel. The two never came together. That NMFs policy on issuing permits and the Council's intent on fishing histories and forcing people to go in, never came together to get resolved. It seems to me it is a technical issue that you can solve the Council's intent by turning people's qualification into some kind of certificate of qualification and accomplish what the amendment really said we wanted to accomplish. I would think the technical adjustment would be entirely appropriate.

Mr. Brancaleone: My recollection, for both scallops and groundfish, is that the permit is tied to the boat. The discussion of whether someone had to replace that vessel was that if the vessel was lost, that individual doesn't have to replace that boat, he can hold on to the permit. But you can't replace the boat with a boat that didn't exist prior to the implementation of the document.

Mr. Allen: No. Boats that qualify that were in existence during the qualifying period, qualified. The fact that they sank, burned, etc. after that, didn't remove their qualification.

Mr. Hill: If I understand the issue that Mr. Starvish that is raising, it is that permits of boats that are on the bottom.

Mr. Starvish: I have three boats on the bottom.

Mr. Hill: There are permits for vessels that no longer exist, whether they are on the bottom or whatever. Is that correct?

Mr. Marshall: There is a fishing history which qualifies them.

Mr. Hill: Do we know how many vessels this represents?

Mr. Starvish: The permitting office is permitting sunken vessels.

Mr. Brancaleone: Then, why are we discussing this?

Mr. Martin: It is vessels that have either been sold out of the fishery or sold any where or vessels that are destroyed and no longer exist in physical form.

**6.0 Public Comments (continued)**

Mr. Brancaleone: But, he just said they are issuing permits.

Mr. Martin: No, only for sunken vessels – a vessel that actually exists on the ocean floor.

Mr. Starvish: This gets very complicated.

Mr. Martin: This is a permit office issue. But the distinction is that the vessel still physically exists and theoretically could fish again.

Mr. Starvish: I was hoping not to bring what Mr. Martin said up because it makes it worse.

Mr. Hill: Does this add to the number of permits that we have in the plan, the 400 odd permits or does it include those permits.

Mr. Starvish: It includes those permits.

Mr. Hill: Those permits that are included – their fishing history is represented of the total fishing effort that involved in the drafting of the amendment. Based on that, I don't see why the Council would not then create a mechanism for those "permits" to be carried forward if we used that system and that fishing effort as part of the analysis for the plan and they are part of the permits that were counted as "active vessels in the fishery". Why would we not create a mechanism to accommodate that and how do we do that?

. . .

Ms. Stevenson: I wanted to ask Mr. Martin how we determine if these vessels exist right now.

Mr. Martin: I don't know.

Ms. Stevenson: As far as I can tell there is no way to tell.

Mr. Martin: This is far out of my expertise. Perhaps Ms. Kurkul can help.

Ms. Kurkul: The problem is not with people who still own a vessel in some capacity. In other words, if there is a sunken vessel out there you still own that vessel or the rights to that vessel. The problem is with those people who are holding fishing histories with no vessel. So, for example, you have someone who sold that vessel but has a piece of paper that says I retain the right to fish that went with that vessel. The distinction that the Council has to make is that if it was their intent to exclude the people who are just holding histories from the requirement to renew permits on an annual basis. You still have the first-year problem which is separate.

Ms. Stevenson: So if my boat sank and I never sold any rights to it, there is no problem and I can get my first year permit and I can go on. It is only the people who bought up permits from other people who have a problem.

Ms. Kurkul: Its like you sold the boat to Ben Rathbun who now owns the boat and gets the permit every year.



## 6.0 Public Comments (continued)

Ms. Stevenson: Then why can't I assign my fish history to a fictitious boat. How do you know it is a fictitious boat?

Ms. Kurkul: If you had a Coast Guard documentation then we wouldn't know, but you would have to have the information for the permit.

Mr. Allen: I would be willing to make the motion, but something Pat said gave me a little different approach that might be better. If we just inserted where it said "permit or fishing history" and create a certificate of fishing history then it might make it cleaner and you would not have to have a big new section. Every place it says renew permit or obtain a permit for, you would say "permit or fishing history."

Mr. Hill: Then, could I suggest that the motion needs to be generic and let NMFS figure out how to technically implement the change.

Mr. Brancaleone: Do we have a motion yet?

Mr. Coates: I was asking Mr. Peterson if this would trigger paperwork reduction or something. There is another problem, that is, taking a boat history which I think we could address this and having that history transferrable to a permit and the question has arisen as to what kind of vessel does that tie back to. That history is related to a vessel that had characteristics. It would seem to me that everything that goes back in terms of the constraints of that permit, since we have now implemented the plan, whether that was a 150 horsepower boat etc. Even if the vessel was sold and the person is left holding the rights, you can trace that back to a vessel that at one time existed.

Mr. Martin: That is not what the rules say now. You are changing the rules. The rules say now that you are stuck with whatever your permit was, I think it was August 1992 or 1993, whatever it said on your permit as of August 1992, that its the horsepower and vessel length that you are going to get as your baseline data unless you have different horsepower and vessel length for the vessel you are actually applying for a permit for the first time you get a permit on that vessel. If you change vessels or upgraded since August of 1992 you are allowed for the first permit to get whatever horsepower you had on that vessel that you are applying for. You are restricted to the horsepower of the actual vessel that you are getting a permit on for the first year. Is that correct, Ms. Kurkul.

Ms. Kurkul: Right, you lost me for a minute there, but you are restricted to the horsepower in your initial application for the first permit that you get.

Mr. Martin: It might be different than your qualifying vessel.

Mr. Coates: The vessel for which you have the history of that you want to transfer into a permit.

Mr. Martin: You are suggesting something that's slightly different.

Mr. Coates: I think it is more consistent with the other upgrades. I know it predates the implementation of the plan, but does create more .....

Mr. Martin: You are saying for this special category of people that are going to have whatever permit certificates, that don't have vessel, you are going to say that if you want to get into that category for

## 6.0 Public Comments (continued)

this first year, you're going to be stuck with your qualifying vessel's history. Again, you can do that, but that is going to require some additional regulatory language.

Mr. Coates: But it isn't inappropriate or inconsistent with the limitations imposed on current upgrades.

Mr. Martin: It is inconsistent with the way that I have just explained it. You can have a different horsepower and vessel size if you do have a vessel now, or the initial vessel that you permit different than the qualifying vessel that gets you into the fishery. There is a reason why you might be suggesting this change for the special category.

Mr. Coates: You have to have something as a base. Now, I understand that somebody might have said that I took that sunken 150 horsepower job and now I have my 900 horsepower vessel and that is the one that I blocked in here in this eligibility thing. I don't know if there is a way of evaluating of how much of that there is.

. . .

[There was a discussion of procedural issues which resulted in the following action:]

Mr. Coates further perfected the motion:

**that the respective jurisdictions implement immediately framework measures to accommodate the problem of people with fishing histories and not permits before the deadlines as specified in the various plans.**

Mr. Brancaleone: So, you are suggesting this for groundfish, lobsters...

Mr. Coates: For groundfish, lobsters and scallops.

Mr. Peterson: I know I sat yesterday going over a bunch of appeals for permits. People were arguing why they should be issued a permit and why they didn't have a vessel at a certain time. Some got approved and some didn't. I used my judicial judgement of saying what was the Council intent. The Council intent was not to keep legitimate fishermen out of the fishery, it was to stop speculation. The way I see us going is that we are going to foster speculation to buy up sunken boats, buy a bunch of things and hope that consolidation comes along. I have real problems. We have taken a hard hit on the permitting processes. If I told you how many man hours and effort has gone into trying to issue permits and understand all the complications of this thing, you wouldn't believe it. It's all the way up to my level. I have a great concern if we just start tinkering with these things at this point in time. The regulations say what they say and from my point of view that is the way we ought to live with it until we are really sure that we made a mistake. We made final agency decisions on those permits and some of those permits that have been declined under this new thinking would be approved. God only knows what kind of mess we could get into then where we have made decisions under one set of rules but under a new set of rules, they are eligible. This is not the way to do business.

Mr. Coates: Mr. Chairman, is the regional director saying that he can handle this problem administratively?

Mr. Peterson: No. I am saying that a rule is a rule, if you don't qualify, you don't qualify. You

## 6.0 Public Comments (continued)

appeal and we give you a value judgement after hearing your appeals and you get it or you don't. That's final. If we go with this, some of those decisions would not stand [up] anymore under the type of thing. I do see that this presents a new, different set of circumstances than what we have been operating with at this point in time. I don't know if our reflections on what we have been doing here is at all consistent with the initial discussions that we had. My perception is that the Council did not want to keep somebody out of the fishery who was a legitimate fishermen because they had some kind of complications that came in. They did not want speculation. This opens up the avenue for speculation.

Mr. Coates: On the other hand, this addresses an issue that apparently is a problem with regard to some possible legitimate fishermen that want to basically continue their ability to hold a fishing right without having to make the commitment of purchasing a vessel that cannot be addressed administratively under the current system. Is there a problem here for people that may have legitimate histories and not a vessel that, as a result of the deadline, lose their access to the fishery? If that is going to happen and you can't address it, then we need to take an action. If not, then I'll withdraw the motion.

Mr. Peterson: I don't know if that will happen and I wouldn't make a statement because it would make it subject to appeal. Looking at the circumstances and the conditions, each one of them is a separate, individual case. Otherwise they wouldn't be appealed up to my level as a final agency decision. They could be handled by people who could just interpret the law and say that's it.

Mr. Coates: Could the Council make a recommendation or empower the regional director, recognizing that you already have the power in this area, to handle this issue for us. Could we request that the regional director handle this problem through a technical amendment or whatever power that has to be done to deal with this.

Mr. Martin: If it came up through an appeal, he doesn't have the authority to make wholesale decisions.

Mr. Coates: Everybody in this situation has the right to appeal? Is that correct?

Mr. Martin: If they have applied for a permit and are denied, they would have the right to appeal.

Mr. Coates: But, now their deadline is looming and the rule is that you have to have a vessel in order to get a permit. They are approaching this deadline and they have filed something that says, "I have a history, have fished, etc., but I won't get a permit because the rule says that I have to have a vessel. I really don't want to go out and buy a sixteen foot Boston whaler." What would happen?

Mr. Martin: He may deny everyone of those appeals or he may grant them. He can't tell you that in advance.

Mr. Coates: I am not expecting him to tell me in advance. If he has the authority to deal with it then we don't have to deal with it.

Mr. Peterson: The context of the person who is in that situation would be that he would apply for his new permit and he would be denied. Then he would appeal that and there are two different levels of appeal. The first appeal we would say, give us the documentation, etc. Then he would say he didn't

## 6.0 Public Comments (continued)

have a vessel because I didn't want a vessel. So he probably would still be denied. Then he asks for a hearing and goes before one of the lawyers that act as my hearing officer and establishes all the facts and figures and they build up the case file. It is then given to me with all the documentation and then I render a final agency decision. The process starts when he is denied the permit. All cases are different. If a person comes in and says that he has bought up a bunch of permits because I want to have those boats, chances are he will have a hard time making an argument why he didn't get boats in time.

Mr. Brancaleone: It couldn't be that he is waiting for consolidation?

Mr. Starvish: I have been listening very closely. Mr. Martin said that if you owned the boat, now whether the boat is floating or sunk, you still own it so you will get permitted. The only people that are in contention here and I personally don't know anyone, but there could be someone, would be someone who sold their boat to Alaska or somewhere else, and retained the fishing rights, and haven't put those rights on another boat. Help the guy out.

Mr. Brancaleone: Why don't you just come out and say, hurry up with consolidation. We are not saying they can't buy a boat.

Mr. Allen: Tape inaudible at this point.

Ms. Stevenson: Is it correct that you have until the end of the year to get your permit? So if you don't have a boat you have until the end of the year to get a boat. Now could that person who has this history and no vessel sell the history to me?

The answer was no.

Ms. Stevenson: I could sell my boat with my groundfish history to him and then buy back my boat with its groundfish history and his scallop history.

Mr. Brancaleone: No, you can't do that. You can't have those two permits.

Ms. Stevenson: So it would have to be like a mid-Atlantic squid boat.

Mr. Martin: Answer inaudible.

Ms. Stevenson: The point that I am getting at is that the people who we really wouldn't want to have them, are the people who can think enough to get around it. Why not go ahead and not make people have boats.

Mr. Coates: I am going to try another tack. Is it possible that there is an administrative procedure that the regional director could implement that would basically say that this deadline is extended for a certain period of time and the Council can confer with the regional director and get this squared away in a rationale way. I tend to go with Mr. Peterson and let him use his judgmental authority.

Mr. Martin: If you are asking about the deadline, we could probably agree on policy grounds. If you are saying that in order for a framework to go through, that's different.

## 6.0 Public Comments (continued)

Mr. Coates: Whatever. I want to get this resolved. If there is an appeal process that brings all these people to an appeal.....

Mr. Martin: An appeal process is no guarantee one way or the other. There is no way to prejudge that. I would advise you not to put your stock in an appeals process.

Mr. Coates: The question that I am asking is can it be postponed for either of those reasons until we can sort it out. It seems to me that people losing their permits is an administrative process.

Mr. Martin: Legally I think we could postpone the deadline date for the initial application. I can't make the policy decision whether we do that or not.

Mr. Coates: Can we make that request.

Mr. Brennan: A further question along this line. Is it possible to review the 400 permits and find out how many may be in this situation to try to narrow down the scope of this particular situation.

Mr. Brancaleone: Mr. Kellogg is saying no.

Mr. Kellogg: You could review it, but the whole point is that you have 1500 possible groundfish permits that are in the same situation. It is the same with lobster. I agree with Mr. Goodreau. The reason this thing came up this way in the regulations is because the way that NMFS permit system worked, not because of Council intent. So the regulations were written that you have to have a vessel to renew a permit. As Mr. Allen pointed out, there was a disconnect between the Council intent and the way the regulations were written. I can see no reason for putting people through all these problems. If NMFS had just issued a limited access permit to a person and not attached it to a boat, the problem would have been resolved.

Mr. McCauley: I want to make one comment. I think that when we went into limited access we had maybe 450 permits in scallops and so many in groundfish and I say years from now, we are still going to have exactly that number unless you have consolidation. They are not going to go away under limited access because they have value. These vessels will always just be upgraded into something else unless we allow consolidation and they will end up with two boats going into one boat, but now we can't split permits so you can't make one boat into two. My feeling is that we have to recognize that situation and go with the appeal process. So far I think the appeals have been processed fairly. Right now we are talking about consolidation and the right to hold onto permits.

Mr. Martin: May I make a suggestion that you consider this motion here to at least initiate the framework and let either the Scallop Committee or any of the committees that want to do this for all the plans initiate it for procedural purposes. If we can find a way of bypassing a framework requirement or doing it administratively, no promises, but if we can find a way to foreshorten this somehow, through a simple change or if we are convinced that it was clearly the Council's intent and you are not adding bells and whistles that nobody had ever discussed before, then we could do it in a relatively short time. If we can't find a short fashion to do this then we will have at least initiated the procedure for making the change through the proper procedural channels and perhaps delay the application deadline.

Mr. Brancaleone: I will call the question. There will be ample time to discuss this at committee

## 6.0 Public Comments (continued)

meetings,

**The motion carried on a voice vote with one abstention.**

Mrs. Didricksen: Though you have already voted, it is speculative. There are licenses that have gone from 500 horsepower to 1,600 horsepower. There have been permits given to vessels that are not existing. Mr. Allen said you cannot get a permit if you do not have an existing license. These things are happening. I have looked at the license lists. They say there have been sales. There have been no sales. Anybody who has a vessel and a permit you are fishing your boat because you have to make a living. These are speculative, they were floating around. We mentioned in Connecticut that there were a couple of graveyards of speculation to start. If that's what you want to do and take the fishery away from fishing people and consolidate in a way that you could give people fishing a few more days so they could make a living – you want to turn it over to speculation, that basically is what you are laying the groundwork for.







**FRAMEWORK ADJUSTMENT 9**  
**to the**  
**NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN**

**To implement emergency rules  
as a permanent adjustment  
to the management plan**

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

**Initial Framework meeting:      January 11, 1995**  
**Final Framework meeting:        February 15, 1995**  
**Submitted by NEFMC:                March 6, 1995**



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## **FRAMEWORK ADJUSTMENT 9 NORTHEAST MULTISPECIES FMP**

**To implement emergency rules  
as a permanent adjustment  
to the groundfish plan**

### **1.0 INTRODUCTION**

In August, 1994, the New England Fishery Management Council received an advisory from the Stock Assessment Workshop that stocks of key groundfish species were at or near the point of collapsing. The scientists advised that the recently implemented plan under Amendment 5 to the Northeast Multispecies Fishery Management Plan was insufficient to halt the decline, even if the plan were accelerated. In response the Council initiated the development of Amendment 7 which is intended to rebuild stocks of cod, haddock and yellowtail flounder by reducing fishing mortality rates to levels approaching zero.

The Council recognized that the process of developing and submitting a plan to achieve such an extreme objective could take a year or more. In October, 1994, the Council recommended that the Secretary of Commerce implement certain management measures under the emergency action authority provided in the Magnuson Act. The Act allows for emergency rules to be effective for up to 90 days with a provision that they may be extended on a recommendation of the Council for an additional 90 days. The Secretary implemented emergency rules on December 12.

In approving the emergency action, the Secretary expressed serious concern that the amendment process would take longer than the time covered by the emergency rules. The NMFS strongly urged the Council to initiate proceedings under the framework for abbreviated rulemaking established by Amendment 5 so that the rules promulgated under the emergency action would remain in effect until such time as the more comprehensive amendment is implemented. The Council agreed to this approach and set the February 15-16 as the final meeting date for this framework action. This date would possibly have allowed for publication of the regulations before the expiration of the emergency rules on March 12. At the February Council meeting, however, the representative of the NMFS Regional Office indicated that there is no certainty that the review and approval process could be completed before March 12. On that basis, the Council recommended extending the emergency action rules with the understanding that this framework adjustment (which includes some needed modifications) will be implemented as soon as possible and that it will supersede the emergency rules.

Appendix I of this document contains the Environmental Assessment (EA) prepared by NMFS for the emergency action. Section III of the EA contains a description of the measures. Based on public and Council comment, NMFS prepared a technical adjustment to the regulations to modify the list of allowable bycatch species and to allow for transit of closed areas by vessels seeking safe haven. Appendix I also contains the *Federal Register* notice describing the amendment to the emergency rule. The Council proposes to make additional changes to the rules implemented by the emergency action as described in Section 3.0 of this document.

The framework process requires the Council to consider the adjustment over the span of at least two Council meetings. At the final meeting the Council reviews all public comment and analysis and, if appropriate, makes its recommendation to the Regional Director. The final meeting took place on February 15, 1995.

## **2.0 PURPOSE AND NEED**

### **2.1 Need for adjustment**

Section II of the EA (Appendix I) contains NMFS' discussion of the purpose and need for the emergency action. The need for this framework regulatory adjustment arises from an inconsistency between procedural rules: the maximum time allowed for emergency action is 180 days and the minimum time required to implement a plan amendment with significant environmental impacts is 185 days from the time the Draft Environmental Impact Statement is available. Practically speaking, however, the minimum time needed to complete major plan amendment is about nine months to a year from the time a problem is identified. This extended period includes the time necessary for analysis, identifying alternatives to meet the amendment objectives and to mitigate significant impacts, and for preparing required documentation. Failure to implement these regulations on a permanent basis through the framework adjustment procedure will result in a return to the previous management system upon the expiration of the emergency action. The scientists advise that such a course of action will result in a serious worsening of the fishery resource crisis.

### **2.2 Publication as a final rule**

The Council concurs with NMFS' statements in the EA about the urgent need to have these rules in place until Amendment 7 is implemented. The Council considers the adjustments to the emergency action regulations contained in this framework document as important to mitigating some of the economic or safety impacts of those rules without compromising their conservation impact. The Council is also addressing some of the controversy and perceived inequity with the rules based on comments from the industry and other interested parties. Furthermore, the Council is enhancing the conservation impact of the emergency rules by restricting the ability of scallop dredges to catch groundfish.

The fishing industry throughout the northeast is already experiencing severe economic hardship as a result of declining stocks and increased regulation under this and other fishery management plans. The Council urges NMFS to take advantage of the opportunity to alleviate some of that burden by the implementation of this adjustment as a final rule without further delay. The Council is making this recommendation on a consideration that these adjustments will not compromise the conservation objectives of the overall action. In at least one case (the hagfish pot fishery), the adjustments contained in this framework will alleviate a costly and gear conflict situation which has been reported to the Council. The Council has considered the following factors as specified in 50 CFR 551.40 (d) and recommends that NMFS publish the proposed adjustment as a final rule.

#### **2.2.1 Timing of the rule**

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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.

The timing of the rule is relevant, however, to the expiration of the emergency action. At the February 15 meeting, the Council voted to recommend the extension of the emergency action on the basis of comments made by the representative of NMFS. Since the framework adjustment procedure does not specify a maximum review period, the likelihood exists that this action would not be implemented prior to March 12. Rather than risk having a gap between the expiration of the emergency rules on March 12 and the implementation of this framework adjustment upon completion of NMFS' review, the Council voted to recommend the extension of the emergency rules. The Council made this decision with the understanding that the agency would complete the process as quickly as possible, and it is recommending publication as a final rule to expedite the implementation of the proposals. The public comments which prompted the Council to make some of the proposals in this action indicate that the burden imposed by the emergency regulations is unnecessary for conservation but is having an economic impact which needs to be relieved as soon as possible.

### **2.2.2 Opportunity for public comment**

When NMFS announced that the emergency action had been approved, at the December 7-8, 1994 Council meeting, the agency also strongly urged the Council to initiate a framework adjustment to implement the emergency measures as a permanent part of the fisheries regulations so that they would remain in effect during the period between the expiration of the emergency action and the implementation of Amendment 7. The Council agreed and announced that the February meeting would be the final meeting in the framework procedure.

The December meeting marks the beginning of the comment period for this regulatory action. Both the Council and NMFS began to receive comments on the emergency measures upon their implementation. NMFS addressed some of the comments through a technical amendment to the emergency rules which was implemented on January 13, 1995. Other comments have been incorporated into the comments on this framework adjustment for Council consideration. Written comments and a transcription of the comments and Council discussion at the January and February meetings are contained in Appendix II.

The Groundfish Oversight Committee scheduled a discussion of this framework adjustment for its meeting on January 10 and for the Council meeting on the following day. Notices of the Groundfish Committee and Council meeting were mailed on December 29 to 750 and 1553 interested parties, respectively. The Groundfish Committee also included a discussion of this action on its meeting agenda for February 13. Public comment and committee action at the February 13 was transmitted to the Council for the final meeting on February 15. The Council mailed the notice of February 15-16 final framework meeting to interested parties on February 3. This final meeting document was available for public review on February 7.

On a more general level, recent Council and NMFS action and notices have significantly

raised public awareness of the groundfish crisis. The resource problems and the Council's efforts to develop a rebuilding plan have been extensively covered in regional and national media. The Council has published a notice of its intent to prepare a draft environmental impact statement for Amendment 7, and has been conducting scoping meetings while working on this framework action.

### **2.2.3 Need for immediate resource protection**

With this action, the Council is implementing on a permanent basis temporary emergency measures which the Secretary of Commerce implemented to address the serious crisis in the Northeast multispecies groundfish fishery. If the emergency measures expire, the regulations in effect will be those established under Amendment 5 which the Stock Assessment Workshop Advisory Report states are insufficient to halt the decline in spawning stock abundance for critical stocks of cod, haddock and yellowtail flounder. The Council is preparing a comprehensive amendment, Amendment 7, to implement a stock rebuilding plan and to address the broader range of issues associated with that plan. NMFS' justification for the emergency action contained in the Environmental Assessment also applies to the extension of the emergency through this framework adjustment:

Amendment 7 is moving forward at an unprecedented rate but will likely take several months before its implementation because of the complexity of the problem to be addressed and the extreme controversiality of the measures being considered. Therefore, given the drastic condition of the groundfish stocks, emergency action is warranted to implement certain narrowly focused, less controversial protective measures immediately to begin the process of slowing stock decline and to address the consequent effort displacement. This emergency action is in no way a panacea for the groundfish crises at hand but rather a set of measures addressing the immediate interim need to begin the process of curtailing fishing pressure on these stocks and addressing vessel displacement. The measures to be implemented were selected because they are relatively less controversial as evidenced by the near unanimous support of the Council; they are more readily definable in the short time frame available to implement emergency actions; and they are more narrowly focused and therefore more easily administered as emergency interim measures. (page 6, Environmental Assessment for the emergency action, Appendix I)

### **2.2.4 Continuing evaluation**

The Council has stated that the actions taken in this framework adjustment, including the modifications to the emergency regulations, do not necessarily reflect its policy with respect to the measures to be contained in Amendment 7. The Council and NMFS will continue to monitor the impacts of these measures and where appropriate, make any necessary changes in that amendment. In many cases, the measures contained in this package will be superseded by a different set of regulations aimed at rebuilding the stocks (not only stopping their decline) and mitigating the impacts of effort displacement to other fisheries.

### 3.0 PROPOSED ACTION AND ALTERNATIVES

#### 3.1 Proposed action

Section III of the Environmental Assessment for the emergency action contains a description of the initial regulations (see Appendix I). Appendix I also contains the *Federal Register* notice describing the amendment to the emergency regulations. The Council proposes to implement the amended emergency action regulations with several changes based on public comment received during the framework adjustment period. The Council proposes implementing the following changes to the emergency regulations:

- 1) to allow an exception to the Nantucket Lightship closed area for recreational, party and charter vessels under the following conditions:
  - A) the sale of fish caught on vessels fishing under this exemption is explicitly prohibited (regardless of where the fish is caught);
  - B) the vessels only have on board hand line or rod-and-reel fishing gear;
  - C) party and charter vessels notify the Regional Director and carry on board a letter of authorization which states the restrictions specified in items A and B above;
- 2) to allow pelagic hook gear, both recreational and commercial, and pelagic harpoon gear to fish in groundfish closed areas provided there is no retention of any regulated groundfish species;
- 3) to allow the hagfish pot fishery in groundfish closed areas;
- 4) to allow all vessels to transit groundfish closed areas with their gear properly stowed, except that in Area II only pelagic longline and harpoon vessels will be allowed to transit;
- 5) to establish a certification program enabling vessels to transit the Gulf of Maine/Georges Bank area with small-mesh nets and small-mesh species on board which would otherwise be prohibited;
- 6) to allow vessels in the northern shrimp fishery fishing with an approved finfish excluder device (grate) to keep up to two standard totes of whiting;
- 7) to allow vessels fishing in approved small-mesh fisheries to retain monkfish or monkfish parts provided the weight of monkfish does not exceed ten percent of the total weight of fish possessed on board;
- 8) to allow vessels fishing in approved small-mesh fisheries to retain lobster provided the weight of lobsters does not exceed ten percent of the total weight of fish on board or two hundred lobsters, whichever is less;
- 9) to consider scallop dredge gear to be the functional equivalent of small mesh and subject to the same regulations when a scallop vessel is not fishing under its days-at-sea allocation;
- 10) to allow vessels fishing in state waters with mesh smaller than the regulated minimum size to retain winter flounder provided they are fishing under a fishery management plan approved by the Atlantic States Marine Fisheries Commission.



Since the extended emergency action will expire on June 10, the regulations do not specifically address two small-mesh fisheries which begin on or after that date, the Cultivator Shoal whiting fishery and the Nantucket Shoals dogfish experimental fishery. The Council intends to allow these fisheries to continue under the frameworked emergency rules and is communicating its intent to NMFS in a separate correspondence. The Council has voted to indicate to the Regional Director its support of the following:

- 1) allowing the Nantucket Shoals dogfish experimental fishery to continue, subject to the restriction of no possession of groundfish and provided vessels in the fishery meet the 5-percent groundfish bycatch standard applied to allowed small-mesh fisheries;
- 2) allowing the Cultivator Shoal whiting fishery to continue outside of Area I provided the vessels do not possess any groundfish;

### **3.2 Alternatives to the proposed action**

#### **3.2.1 No action**

The no-action alternative would result in the expiration of the emergency rules either on March 12 or, if extended, on June 10, 1995. Fishing would resume under the regulations implemented through Amendment 5 which, NMFS scientists advise, would result in the continued rapid decline of groundfish stocks. Thus, under the no-action alternative the closed areas would open (although Area II would remain closed until June 30 by existing regulation) and fishing with small mesh would only be regulated by area and groundfish possession limit with only limited control on juvenile groundfish mortality.

#### **3.2.2 Alternatives to specific measures**

In addition to the no-action alternative, the Council considered the following alternatives with respect to specific proposed changes to the emergency rules.

##### **3.2.2.1 Controlling the catch of recreational, party and charter vessels in the Nantucket Lightship Closed Area with a bag limit**

The Council's Groundfish Committee considered instituting a ten fish limit per person but withdrew consideration of this for several reasons: the perception that catches are limited will drastically reduce the business on party and charter vessels with no impact on catches (which are reportedly already well below the proposed limit in most cases); the catch rates on these vessels have fallen by more than fifty percent in recent years and are not expected to increase under current conditions and in the time frame of this action (Note: this exception, and recreational fishing generally will be reconsidered in the development of Amendment 7); the number of trips and fishermen (i.e. effort) has been steadily declining in recent years and is not expected to increase this year; and the trips to the fishing sites within the Nantucket Lightship area catch mostly species other than cod, haddock or yellowtail flounder.

##### **3.2.2.2 Establishment of transit lanes through closed areas**

The Council considered a proposal to establish transit lanes through closed areas so vessels would not have to steam around them. The Council rejected this option for several reasons based on comments from the U.S. Coast Guard. These reasons include:

- 1) if a vessel is required to maintain a specific course in order to stay within a transit lane, it may be forced into an unsafe position with respect to the sea conditions; and
- 2) the effect of drawing transit lanes across a closed area is to increase the number and reduce the size of closed areas which adds to the enforcement costs.

#### **3.2.2.3 Use of a call-in system for vessels seeking permission to transit closed areas**

The Council using considered using a radio call-in system for vessels seeking permission to transit closed areas. The Coast Guard pointed out that the time when the greatest number of vessels would be calling in (as weather conditions deteriorate) is also the time when the Coast Guard most needs to monitor the radio for distress calls. Based on Coast Guard comments, the Council dropped this alternative.

#### **3.2.2.4 Open transit through closed areas for safety purposes only**

The Coast Guard has commented on several occasions that enforceability of closed areas is maximized when all vessel activity is prohibited. The Coast Guard has also listened to concerns of Council members and industry representatives with regards to the safety issues associated with requiring a vessel to steam around a closed area unless a storm warning is posted. The Coast Guard recognizes that a number of circumstances can arise where safety is at risk even though the National Weather Service has not posted a warning, and, furthermore, that the vessel captain is ultimately responsible for decisions about safety of crew and vessel. The Commander of the First District of the Coast Guard has issued an enforcement policy that enables vessels to transit closed areas provided a compelling safety reason exists and the fishing gear is properly stowed. If the vessel is boarded and cannot demonstrate the safety issue, the Coast Guard will take enforcement action.

The Council considered the Coast Guard comments and weighed them against the industry's comments on the costs of requiring vessels to steam around a closed area unless a safety reason exists. The Council does not expect that allowing free and open transit, with gear stowage requirements and severe penalties (including permit vessel and operator sanctions) for fishing in closed areas, will compromise the conservation impact of the closure. The Council qualitatively determined that the increased costs to the industry (fuel, days-at-sea allocations used as steaming time) of a safety-only closure provision would exceed the loss from any decrease in compliance with this alternative.

#### **3.2.2.5 To allow vessels in the northern shrimp fishery to retain an unlimited amount of whiting bycatch**

Vessels fishing in the northern shrimp fishery are required to use a finfish excluder device.

The use of this gear reduces the regulated species bycatch to acceptable levels under the 5-percent standard applied in the emergency action. The most frequently caught bycatch species in the shrimp fishery is whiting. While whiting is not one of the regulated species, it is a prohibited species because vessels fishing for whiting with small-mesh nets (without a separator grate) generally exceed the bycatch limit.

The Council considered allowing vessels fishing with a grate in the shrimp fishery to keep all the whiting bycatch. The Council rejected this idea because it did not want to create a situation where vessels might use the opportunity to target whiting when there is a risk that regulated species bycatch of small fish might increase. Secondly, the Council heard comments from fishermen that a two-tote limit would be sufficient given the levels of whiting bycatch in the shrimp fishery. The Council is proposing a two-tote limit in this framework, and has begun discussions on the development of a whiting fishery using a separator grate or other appropriate gear to enable vessels to target whiting without jeopardizing the groundfish rebuilding program.

#### **4.0 ANALYSIS OF IMPACTS**

The Environmental Assessment of the emergency action rules contains NMFS' analysis of the impacts of the emergency action rules. The Council supports NMFS' finding of no significant impacts for those rules and recommends the same determination for their implementation under the framework adjustment. The Council also notes that it has published notice of its intent to prepare a Draft Supplemental Impact Statement for Amendment 7 to the Multispecies FMP (59 FR 53133) which will supplant the rules promulgated under this action. The Council intends to make the DSEIS available for public comment within the next several months, and implement the amended regulations this year.

#### **4.1 Impacts of adjustments to the emergency regulations**

The Council considered public comment on the emergency action rules to make adjustments to the rules in this framework. The Council expects these changes, either individually or cumulatively, will not significantly change the conservation impacts of the emergency rules while alleviating some of their economic and regulatory burden. The Council, therefore, recommends the finding of no significant impact for these adjustments.

##### **4.1.1 Impacts of allowing recreational, charter and party vessels to fish in the Nantucket Lightship closed area**

NMFS' recreational fishery statistics are not sufficiently detailed to allow for analysis of the impacts of the Nantucket Lightship recreational fishery. Anecdotal information provided in public comment on this issue from both commercial and recreational fishermen suggests that the impact of allowing this fishery on the protection of cod, haddock and yellowtail flounder stocks would be insignificant. The party and charter industry expressed concern that excluding them from this area would be financially disastrous and would not enhance the protection of critical stocks. The vessels that fish in this area work on six or seven wrecks located in the shipping lanes and catch primarily white hake with lesser amounts of cod and pollock. The number of vessels in the charter industry has declined by at least fifty percent

in recent years and this trend shows no signs of changing in the near term. The catch rates on these trips has also declined significantly. If prohibited from fishing in this area, these vessels would probably fish in areas to the north such as Nantucket Shoals where they would have a significantly higher proportion of cod in the catch.

The fishing spots in this area are at least sixty miles from the closest major charter ports of Point Judith and Hyannis which makes it accessible only to larger vessels. The Council does not expect that a significant number of recreational vessels out of other closer ports such as Nantucket or Edgartown will make the 30-50 mile trip into the area when a number of alternative fishing spots exist closer to port. Since the party boats advertise the trips up to a year in advance, and sail from and return to the same ports on a published schedule, their catch could be monitored from the dock. If a problem is identified, the Council could respond with catch controls or re-instatement of the prohibition.

#### **4.1.2 Impacts of allowing pelagic hook gear and harpoon fishing in closed areas**

According to the 1993 NMFS weighout database, pelagic hook vessels land virtually no cod, haddock or yellowtail flounder (CHY). Only one observation out of 3,046 in the database (an observation may include an aggregation of more than one trip) from a variety of hook configurations (longline, hand line, line trawl and troll) on trips whose revenues from tuna and billfish were greater than or equal to ten percent of the trip's total revenues reported landing any CHY. Harpoon gear cannot be used to catch groundfish and is easily distinguished from all other gear types. Thus, from a gear-interaction perspective, the Council does not expect that this proposal will have any impact on the critical groundfish stocks.

From an enforcement perspective, the Coast Guard has indicated that allowing any activity in a closed area reduces its enforceability. The Council feels that the cost of closing the three areas to pelagic fishing outweighs the reduction in enforceability resulting from the proposed closure exception. The Council also feels that prohibiting these vessels from possessing any regulated multispecies while in the closure areas will help in the enforcement of the groundfish closure. Pelagic long-line gear is not fixed or anchored to the bottom and has no cable main line, and as such is readily distinguishable from groundfish hook gear. The other significant pelagic hook fishery that would take place in any of the closed areas is the General Category tuna fishery. Vessels fishing under a General Category permit are prohibited from having more than one hook attached to any line on board, and with a prohibition on the possession of groundfish can easily be distinguished from a groundfish hook vessel. Furthermore, the pelagic fisheries are regulated by a season and quota system which significantly limits the time when pelagic hook vessels can fish.

#### **4.1.3 Impacts of allowing the hagfish pot fishery in closed areas**

The NMFS does not identify hagfish (slime eel) in the species list of the weighout database and, therefore, the impacts of allowing this fishery cannot be quantified. Based on anecdotal information and a description of the gear, the Council does not expect that allowing this fishery to operate in the closed areas will have any impact on groundfish. The number of participants in this fishery is extremely small (only one individual provided comment on this

issue), and the special requirements for handling and marketing of this product limit the potential for significant increases in effort in the near term.

The Council has received several reports from the individual involved in this fishery that he is losing an increasing amount of gear to mobile-gear vessels. Opening the areas that are currently closed to hagfish pot fishing will reduce the potential for gear conflict by creating a zone for hagfish fishing where mobile-gear fishing is prohibited.

The hagfish pot fishery is conducted using baited plastic barrels with several "funnels" attached on the inside. The diameter of the opening does not exceed 1 1/2 inches. The gear is deployed in a manner similar to lobster pots (which are allowed in the closed areas under the emergency action) but, unlike lobster pots, it is virtually unable to catch groundfish or any species other than the target.

#### **4.1.4 Impacts of allowing vessels to transit closed areas**

Transiting closed areas *per se* does not directly impact fishing for groundfish or any other species. While prohibiting transit may indirectly affect fishing by vessels with limited allocations of days at sea by requiring them to expend time steaming around an area, such a regulation imposes inefficiency in a manner that is not uniform across all participants or regions. The impact on fishing of such a prohibition is so indirect as to be unmeasurable, especially since vessels have the option to simply fish somewhere else or out of another port rather than steam around an obstacle. Furthermore, if a vessel is forced to steam around an area to get to the fishing grounds, the added fuel costs may not produce any conservation benefits but will reduce the profitability of the trip and possibly increase a vessel's exposure to dangerous weather.

Another indirect impact on fishing of allowing transit occurs if the enforceability of the closed area is compromised. The Council has developed this proposal in consultation with the Coast Guard and under the qualification that transit be allowed "in the most enforceable manner", and it does not expect that allowing transit will significantly affect the conservation benefit of the closure. While the Coast Guard stated that closed areas could be most effectively enforced if all vessels were prohibited from entering them (except under distress), the agency also provided input on gear-stowage requirements in the event the Council decided to proceed with a different alternative.

By requiring that fishing gear be unavailable for immediate use, and by calling for increased penalties for closed-area violations and swifter adjudication of these cases, the Council feels that there will be a significant deterrence to violating the regulations. Under such a deterrence fewer vessels will risk the cost of violating the closure, thereby reducing the risks to the closure's conservation objective while at the same time reducing the cost of the closure on the industry. Furthermore, fishermen have begun to say that they will be more active in reporting violations that they observe, since they recognize that the consequence of allowing those violations to continue is additional restrictions on the entire fleet. The Coast Guard and NMFS have installed toll-free telephone service in response to calls from fishermen for greater industry involvement in enforcement.

**4.1.5 Impacts of allowing vessels to transit between Gulf of Maine ports and southern New England small-mesh areas with small-mesh nets and small-mesh species on board**

Under the terms of the emergency regulations, vessels in the Gulf of Maine/Georges Bank area are prohibited from having on board mesh smaller than the regulated size of six inches unless such a vessel is fishing for northern shrimp with a finfish excluder grate. When fishing for shrimp, the only species allowed on board are shrimp and longhorn sculpin, and pending approval of this adjustment, two standard totes of whiting. The shrimp season is set by Atlantic States Marine Fisheries Commission and generally runs from December to May, and fishing for shrimp at other times is prohibited. The result is that vessels which fish out of Gulf of Maine ports are prohibited from transiting to southern New England to fish with small-mesh nets for the broader range of small-mesh species which are allowed in that area and returning to their home ports to take out their catch.

The issue which the Council is addressing with this proposed adjustment is that many vessels have traditionally fished for certain small-mesh species, especially whiting, in the Gulf of Maine and have long-term relationships with established local dealers and processors. The current prohibition would unnecessarily disrupt this marketing system and place some vessels at a significant economic disadvantage by virtue of their port of operation. The Council argues that allowing these vessels to transit the Gulf of Maine/Georges Bank area will not jeopardize the conservation objective of the small-mesh prohibition while mitigating a significant component of its economic impact.

The Council proposes that vessels wishing to operate under this exemption be required to enroll in a program modelled after the Cultivator Shoal Whiting Fishery. Under such a program, a vessel would declare to NMFS that it will be transiting the Gulf of Maine/Georges Bank regulated mesh with small-mesh nets and small-mesh species on board. The vessel will be required to have on board a letter from NMFS stating that the vessel has enrolled in such a program. (NMFS provides states or federal port agents with Cultivator Shoal Fishery authorization letters so that vessels may obtain them locally without having to contact the Regional Office.) While fishing in this program, a vessel may not fish for or possess regulated species, and may not fish for other prohibited species in the Gulf of Maine/Georges Bank area. Each authorization letter applies for one two-week period.

The Council does not expect that a significant number of vessels will participate in this program for several reasons. One of the limiting factors will be fuel costs and transit times. Since whiting is a highly perishable product with a volatile price, vessels participating in this program will be incurring added costs and risk when compared to competing vessels from other areas. Furthermore, the profitability of whiting fishing on trips of extended duration is achieved through volume which limits list of potential participants to the larger vessels in the fleet. For these reasons, the level of participation in the Cultivator Shoal Fishery is probably indicative of the potential number of participants in this proposed program. In 1993 and 1994, 29 and 25 vessels fished in the Cultivator program, although many enrolled for only one or two two-week authorization periods and most of the vessels fished out of southern New England and Mid-Atlantic ports.

**4.1.6 Impacts of allowing vessels to retain up to two standard totes of silver hake while fishing for northern shrimp with a finfish excluder grate**

Vessels fishing in the northern shrimp fishery are required to use a device which separates the catch entering the net and allows the escapement of fish while retaining the shrimp. The grate uses a one-inch bar spacing and consequently does not exclude all of the fish encountered by the net but retains some small fish that can pass through the bars. The predominant bycatch in the shrimp net consists of small flatfish and whiting. Any regulated groundfish (those with a minimum legal size), which includes the flatfish, caught by a shrimp net would be below the minimum size and, therefore, discarded. The regulations do not specify a minimum size for whiting, however, and any whiting caught by the shrimp net must be discarded because the emergency regulations prohibit its possession.

The rationale behind the whiting prohibition under the emergency action is that vessels fishing for whiting (without a separator grate) in the Gulf of Maine have had at times a bycatch of juvenile groundfish in excess of the 5-percent standard. Allowing vessels to retain whiting, without restrictions on the quantity or gear could, therefore, result in significant groundfish mortality. When fishing for shrimp, however, the groundfish bycatch is nearly eliminated and any whiting that is caught must still be discarded because of the emergency regulation intended to protect regulated groundfish.

The requirement to discard the whiting bycatch produces an economic loss (whiting prices range from \$0.10 to \$1.00) with no conservation benefit. Allowing unrestricted effort on whiting could have groundfish bycatch implications but the maximum possession limit of two totes (approximately 200-250 pounds) removes the incentive for vessels to redirect their effort from shrimp to whiting. Allowing vessels to retain and sell a limited amount of whiting caught while shrimp fishing will not increase the mortality of critical cod, haddock and yellowtail flounder stocks nor the exploitation of whiting but it will modestly increase the economic returns on shrimp trips.

**4.1.7 Impacts of allowing vessels in allowed small-mesh fisheries to retain limited quantities of monkfish and lobster**

Under the emergency action regulations vessels fishing in exempted small-mesh fisheries have been prohibited from retaining any monkfish or lobster. The purpose of the prohibition was to prevent vessels from directing their effort on those species because of the potential for significant groundfish bycatch. By limiting the possession of monkfish or lobster to a small percentage of the total catch on board and up to a maximum amount, the catch of these species must be a bycatch in some other fishery which has been determined to have only a minimal (<5%) impact on groundfish stocks. While not having significant impacts on the groundfish catch in small-mesh fisheries which are already allowed to occur, this proposed adjustment will reduce the discards of two economically valuable species. This proposal will not, however, supersede landings restrictions on monkfish established by states from New Jersey through Massachusetts which require a minimum size of 17 inches for whole fish and 11 inches for tails.

The levels of monkfish and lobster bycatch allowed by this proposal are generally within

current levels in these fisheries and, therefore, do not represent a potential increase in effort directed on these species. The following table shows the percent of landings (mean and one standard deviation) on small-mesh otter trawl trips landing either monkfish or lobster based on interviewed trips recorded in the NMFS weighout database 1986-1993. Trips using mesh larger than five inches were considered to be large-mesh trips during the period covered by this analysis. The number of interviewed trips is also given.

Mesh size (inches)	MONKFISH			LOBSTER		
	Mean %	S.D. ±	N	Mean %	S.D. ±	N
<1	1.2	1.7	22	NA	NA	0
1 - 2	3.4	7.2	2768	7.4	12.5	131
2 - 2.5	3.6	6.6	1976	7.3	19.4	73
2.5 - 3	4.0	6.7	5220	7.5	15.3	165
3 - 5	7.4	12.1	2848	13.5	23.0	176

The table indicates that at a time when landings of monkfish and lobsters by otter trawl vessels were not restricted, most vessels landed less than or equal to the proposed ten-percent limit. Thus, the Council does not expect that the proposal will allow for any significant increase in the effort directed on these species with a potential for increasing the groundfish bycatch. The proposal will, however, contribute to the mitigation of the economic impacts of the regulations due to the high market value of these two species.

#### 4.1.8 Impacts of restricting scallop dredge fishing on species other than scallops

Scallop dredge vessels fishing under the days-at-sea management program of the Atlantic Sea Scallop Fishery Management Plan (50 CFR 650) are limited to a possession of 500 pounds of regulated groundfish and are prohibited from retaining any haddock from January through June. When not fishing under their days at sea allocation, scallop dredge vessels are limited to 400 pounds of scallops and 500 pounds of groundfish. Scallop vessels in this situation are currently fishing for a mix of species, including monkfish and lobsters as well as the limited scallops and groundfish allocations. The result is that the catch and discarding of groundfish is uncontrolled and potentially significant.

Since this trend toward using dredge gear for a "mixed-trawl" catch is a recent development in the industry, limited data exists to characterize or analyze the impacts on groundfish. The allocation of days at sea to scallop vessels in the different management categories, however, leaves a potentially large number of days open to these vessels to fish for other species. For 1995 and 1996, full-time scallopers (264 vessels) have 182 scallop days at sea, leaving 183 days for other activity. Approximately 100 vessels in each of the "part-time" and "occasional" categories have 82 and 16 days, respectively, allocated to scalloping with the remaining time available for other activities.



The Council never intended, in developing the recent scallop and groundfish plans, for scallop vessels to target other species with a scallop dredge and have a groundfish bycatch, and it has recently stated that the activity should not be allowed to continue unless it is held to the same standards to which other bycatch fisheries are being held. The other proposals in this action which limit the catch of monkfish and lobsters on vessels fishing with small mesh in combination with this measure will reduce the incentive for scallop dredge vessels to engage in uncontrolled fishing for those species which have the greatest potential for significant groundfish bycatch.

#### **4.1.9 Impacts of an exception to the prohibition on the possession of winter flounder while fishing with small mesh**

Under this proposed exception, a vessel which holds a federal Multispecies Fishery Permit may possess winter flounder while fishing with mesh smaller than that specified in the regulations governing the multispecies fishery if certain conditions are met. These conditions are:

- 1) the fishing is conducted exclusively in state territorial waters and the vessel has on board a certificate issued by the state agency authorizing the vessel's participation in the state waters winter flounder fishing program;
- 2) the Atlantic States Marine Fisheries Commission (ASMFC) has approved the state's winter flounder regulations as being in compliance with the management objectives of the ASMFC Winter Flounder Fishery Management Plan;
- 3) the state elects, by a letter to the Regional Director of NMFS, to participate in the state water exemption program;
- 4) while fishing under this exception with mesh smaller than the regulated size, the prohibition on possession of other regulated multispecies groundfish shall apply, exclusive of the winter flounder on board;
- 5) when authorized to fish under an approved state waters winter flounder fishing program, and when in possession of winter flounder and mesh that does not comply with federal regulations, a vessel will be prohibited from entering or transiting the Exclusive Economic Zone (EEZ).

At the time this proposal was being considered by the Council, only three states had regulations allowing smaller mesh than the federal minimum size on vessels fishing for or retaining winter flounder, New York, New Jersey and Connecticut. At the time, only New York and Connecticut had winter flounder fishery management plans approved by ASMFC. The original proposal reviewed by the Council applied only to the two states, but based on public comments and National Standard 4 considerations, the Council broadened the measure to apply to any state which meets the criteria.

The Council's Groundfish Plan Development Team only reviewed data provided by the Mid-

Atlantic Council on winter flounder fishing in New York and Connecticut state waters and the catch of cod, haddock and yellowtail flounder. Other states wishing to qualify for this exemption program and meeting the other requirements could present relevant data for review at the appropriate time. Based on the available data for New York and Connecticut, however, the bycatch of the critical species appears to be well below the 5-percent bycatch standard applied to other small-mesh fisheries under the emergency action regulations. The total cod and yellowtail landings for 1989-1993 are shown below:

Landings 0-3 miles <sup>1</sup> (pounds)	NY cod	NY yellowtail flounder	CT cod	CT yellowtail flounder
1993	25,000	36,000	13,000	5,000
1992	129,000	66,000	16,000	5,000
1991	16,000	56,000	0	0
1990	37,000	6,000	0	0
1989	33,000	3,000	0	0

Note: 1) Connecticut landings include statistical area 611 which covers Long Island Sound and some portion of the EEZ. The cod and yellowtail landings reported by Connecticut and which appear in this table are all from the EEZ portion of area 611 (Eric Smith, CT DEP, pers. comm.)

Source: Mid-Atlantic Council

The catch of winter flounder would be controlled by state regulations implemented in accordance with the Atlantic States Marine Fisheries Commission and under a more conservative biological objective than winter flounder fishing under the federal plan. Appendix III contains a summary and review of the ASMFC winter flounder plan and the winter flounder regulations for New York and Connecticut. Vessels from any state may obtain a permit to fish for winter flounder in Connecticut state waters. In New York, vessels may obtain non-resident state waters fishing permits at the beginning of the year provided the vessel's state of residence is in compliance with the ASMFC plans. (At this time New Jersey is not in compliance and, therefore, New Jersey-based vessels would not be able to fish in New York state waters.)

The Council may consider expanding the area covered under this exemption under a future framework adjustment. The Council will base its decision on a review of supporting analysis and documentation prepared by the Mid-Atlantic Council which is making the proposal.

## 5.0 APPLICABLE LAW

### 5.1 Magnuson Act (FCMA)

#### 5.1.1 Consistency with National Standards

Section 301 of the FCMA requires that any regulation promulgated to implement any FMP or amendment shall be consistent with the seven national standards listed below.

1. *Conservation and management measures shall prevent over-fishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.*

The Council is taking the proposed action to implement on a permanent basis regulations which NMFS implemented under its authority to take emergency action. These measures, if implemented, will extend the protection of critical cod, haddock and yellowtail flounder stocks until the Council can complete the process of developing a comprehensive plan amendment to rebuild these stocks. The measures contained in this package not only address the specific stocks which have been identified as collapsed or as near to collapsing, but also partly address the displacement of fishing effort which is taking place as a result both of the declining availability of some stocks and the regulations intended to protect them. The adjustments contained in this framework will also enhance the economic yield of the fishery by reducing vessel costs imposed by some of the emergency rules. Even though these measures will become a part of the "permanent" regulations governing the multispecies fishery, the Council considers them interim until Amendment 7 takes effect which will address the broader conservation issues in the industry.

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

This regulatory adjustment will establish on a permanent basis emergency measures which the Council recommended to NMFS on the advice of the scientists at the 18th Stock Assessment Workshop. Wherever possible, the Council has used information provided by NMFS in the development and analysis of the original emergency measures, and has used NMFS-collected data in considering the modifications which are included in this package. In some cases, the available scientific data is insufficient to evaluate alternatives, so the Council relied on information provided by the industry, the U.S. Coast Guard, and interested members of the public in developing this proposed action.

3. *To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.*

The Northeast Multispecies Fishery Management Plan under which this action is being taken defines the management unit. This regulatory adjustment does not change the geographical range to which the management plan applies. This action

takes into consideration the interrelatedness of the stocks of fish defining the northeast multispecies fishery management unit and applies restrictions on possession of "regulated species" rather than only on the specific cod, haddock and yellowtail flounder stocks even though most the regulated species are not in as critical condition.

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

The measures contained in this regulatory adjustment do not discriminate between residents of different states. Where certain fishing activities have been restricted on a geographical basis, such as the prohibition on most small-mesh fishing in the Gulf of Maine, the Council has provided a mechanism for affected vessels to transit to other areas where they may catch small-mesh species and return to their home ports. The Council decided to allow recreational fishermen into the Nantucket Lightship area in part on a consideration of the proportion of their catch in the area consisting of cod compared with their potential catch of cod in other nearby areas (such as Nantucket Shoals just to the north) where there is a greater abundance of cod and cod makes up a larger portion of the catch.

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

In developing this regulatory adjustment, the Council has attempted to balance this efficiency standard with the conservation standards given the severity of the biological crisis in certain fisheries. The Council has, for example, allowed certain fishing activities to take place for other species even though there is a small bycatch of cod, haddock, or yellowtail flounder which must be discarded. The Council feels that cost of prohibiting all such fisheries (in terms of revenues foregone through discarding) exceeds the marginal benefit to the protection of the critical species. The Council also seeks to alleviate some regulatory inefficiency by allowing vessels to steam through closed areas, retain a limited bycatch of lobsters and monkfish, and other provisions. This action does not have allocation as its sole purpose.

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

Within the overall conservation objective of this regulatory action, the Council has considered and made adjustment for variations among fisheries and resources. The regional differences in allowable small-mesh fishing, exemptions for pelagic hook fishing, clam dredging, and lobster and hagfish pot fishing in closed areas, and recreational fishing in the Nantucket Light ship closed area are examples of the Council's efforts to be consistent with this standard.

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

The extreme conservation needs of the fishery which this action address necessitate an increase in short-term costs for both the industry and the government. The short-term losses for the industry include lost revenues from closed fisheries, foregone revenues from discards of prohibited species, and increases in operating costs and capital expenditures in the adjustment to a different way of doing business. The government costs include increased enforcement and administration costs under a new management system. Wherever practicable, the Council has considered alternatives that reduce these costs without significantly compromising the conservation objective of the regulatory action. In some cases, particularly those involving transit through closed areas or regulated mesh areas and fishing by specific gears in areas closed to other gears, the Council has had to balance conflicting cost/benefit considerations.

### **5.1.2 Fishery Impact Statement**

The information provided in Section 4.0, Analysis of Impacts, of both this document and the Environmental Assessment contained in Appendix I, summarizes the impacts of the proposed action on participants in the fisheries regulated by the Northeast Multispecies Fishery Management Plan and by other fishery management plans where regulated multispecies are caught incidentally. The Council has considered the effect of the action on participants in affected areas which are under the authority of the Mid-Atlantic Council and the Atlantic States Marine Fisheries Commission. The New England Council has consulted the Mid-Atlantic Council during the plan development and decision phases, and has proposed measures which, to the extent possible, mitigate impacts on those affected fisheries while still meeting the conservation objectives of this action. The Council has also taken into consideration comments from the Atlantic States Marine Fisheries Commission Winter Flounder Board.

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

### **5.2.1 Environmental Assessment**

#### **5.2.1.1 Introduction**

See Section 1.0 of this document and Section I of Appendix I.

#### **5.2.1.2 Purpose and Need for Action**

See Section 2.0 of this document and Section II of Appendix I.

#### **5.3.1.2 Proposed Action and Alternatives**

See Section 3.0 of this document and Section III of Appendix I.

#### **5.3.1.3 Affected Environment**

See Section IV of Appendix I.

#### **5.3.1.4 Environmental Consequences**

Section 4.0 of the Environmental Assessment, (Appendix I of this document) contains NMFS' analysis of the impacts of the emergency action and the statement of a Finding of No Significant Impact. Section 4.0 of this document contains analyses of the expected impacts of the Council's proposed modifications to the emergency action regulations. The Council notes that while these measures, if implemented, will become a permanent part of the multispecies regulations, it considers them to be provisional until it can complete the process of developing a comprehensive plan amendment to rebuild the critical stocks and address a number of significant issues which have been identified during the current scoping phase. The Council has published a Notice of Intent to prepare a Draft Supplemental Impact Statement for Amendment 7 which will be available for public review when the analysis of alternatives is completed.

#### **5.2.2 Finding of no significant environmental impact (FONSI)**

In view of the finding of no significant impact for the emergency action as stated in Appendix I and the analysis presented in this document with respect to modifications of the emergency rules, it is hereby determined that the proposed action would not significantly affect the quality of the human environment with specific reference to the criteria contained in NAO 216-6, implementing the National Environmental Policy Act. Accordingly, the preparation of a supplemental environmental impact statement on this proposed action is not necessary.

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Assistant Administrator for  
Fisheries, NOAA

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DATE

### **5.3 Regulatory Impact Review**

This section provides the information necessary for the Secretary of Commerce to address the requirements of Executive Order 12866. The purpose and need for management (statement of the problem) is described in Section 2.0 of this document. The alternative management measures to the proposed regulatory action are described in Section 4.0.

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

The proposed action does not constitute a significant regulatory action under Executive Order 12866 for the following reasons. (1) It will not have an annual effect on the economy of more than \$100 million. Total revenues from the large and small mesh fisheries of the Northeastern U.S. were about \$248 million in 1992. Although the action closes some of the primary fishing grounds for cod and haddock on Georges Bank and for yellowtail in Southern New England and places restrictions on small mesh fishing, it directly affects much less than 25% of the current fishing activity in the region. Associated impacts also are not of the magnitude to make the total impacts exceed \$100 million. (2) The proposed action is necessary to protect

Framework adjustment 9  
Groundfish emergency rules

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key stocks of commercially important groundfish stocks. The condition of these stocks would be further jeopardized without the proposed action (see the Environmental Assessment for the Emergency Action, Appendix I). The proposed action therefore benefits in a material way the economy, productivity, competition and jobs in the long-term. (3) For the same reason, proposed action will not adversely affect, in the long-term, competition, jobs, the environment, public health or safety, or state, local or tribal governments and communities. (4) The proposed action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will affect the groundfish fishery in the EEZ. (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. It employs the type of measures that have long been used to regulate the groundfish fishery. The following table shows the dockside value of certain species harvested in the northeastern United States.

<b>DOCKSIDE VALUE OF CERTAIN SPECIES HARVESTED IN THE NORTHEASTERN U.S.</b> (Thousand Dollars)			
<b>LARGE MESH SPECIES</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>
COD	61,329	74,300	51,800
CUSK	1,229	1,700	1,700
HADDOCK	5,967	4,800	5,800
HAKE, WHITE	4,300	5,400	8,000
OCEAN PERCH	703	500	800
POLLOCK	10,516	9,900	10,400
FLOUNDERS			
AMERICAN PLAICE	5,600	8,900	13,900
BLACKBACK	17,100	19,100	15,400
GRAY SOLE	5,800	6,100	6,900
YELLOWTAIL	28,060	17,400	13,800
WINDOWPANE	1,700	4,400	3,000
SUBTOTAL	142,304	152,300	131,300
<b>OTHER SPECIES</b>			
WHITING	11,100	11,100	15,200
BUTTERFISH	2,800	2,700	3,400
DOGFISH		3,444	4,675
HAKE, RED	600	800	1,000
HERRING, ATLANTIC	5,700	6,300	6,800
MACKEREL	3,600	5,400	3,600
NORTHERN SHRIMP	6,912	6,800	7,300
OCEAN POUT	300	300	100
SUMMER FLOUNDER	12,000	14,800	19,100
SCUP	6,400	7,800	7,300
SQUID, ILLEX	6,500	6,900	9,700
SQUID, LOLIGO	14,000	22,700	23,300
MONKFISH	13,100	21,800	20,100
SUBTOTAL	63,012	110,844	121,575
<b>TOTAL</b>	<b>225,316</b>	<b>263,144</b>	<b>252,875</b>

SOURCES: STATUS OF FISHERIES RESOURCES OFF THE NORTHEASTERN U.S. (1990 - 1992)



#### **5.4 Endangered Species Act**

See Section 8.4, Volume IV of Amendment #5 to the Northeast Multispecies FMP. The Council finds no cause to change its earlier findings with respect to the Endangered Species Act requirements.

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

NMFS determined that the initial emergency action would not directly affect the coastal zones of the states in the region, and the Council finds no cause to review that determination. The Council has notified states of its determination that the modifications to the emergency action regulations would also not directly affect the states' coastal zones. The letters of notification for the emergency action are on file at NMFS Regional Office in Gloucester, and for this framework adjustment at the Council office.

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

The proposed action creates three exemption programs requiring collection of information. The Council has prepared a supporting statement for revisions to the OMB approval the multispecies fishery family of forms. This statement is on file at the Regional Office.

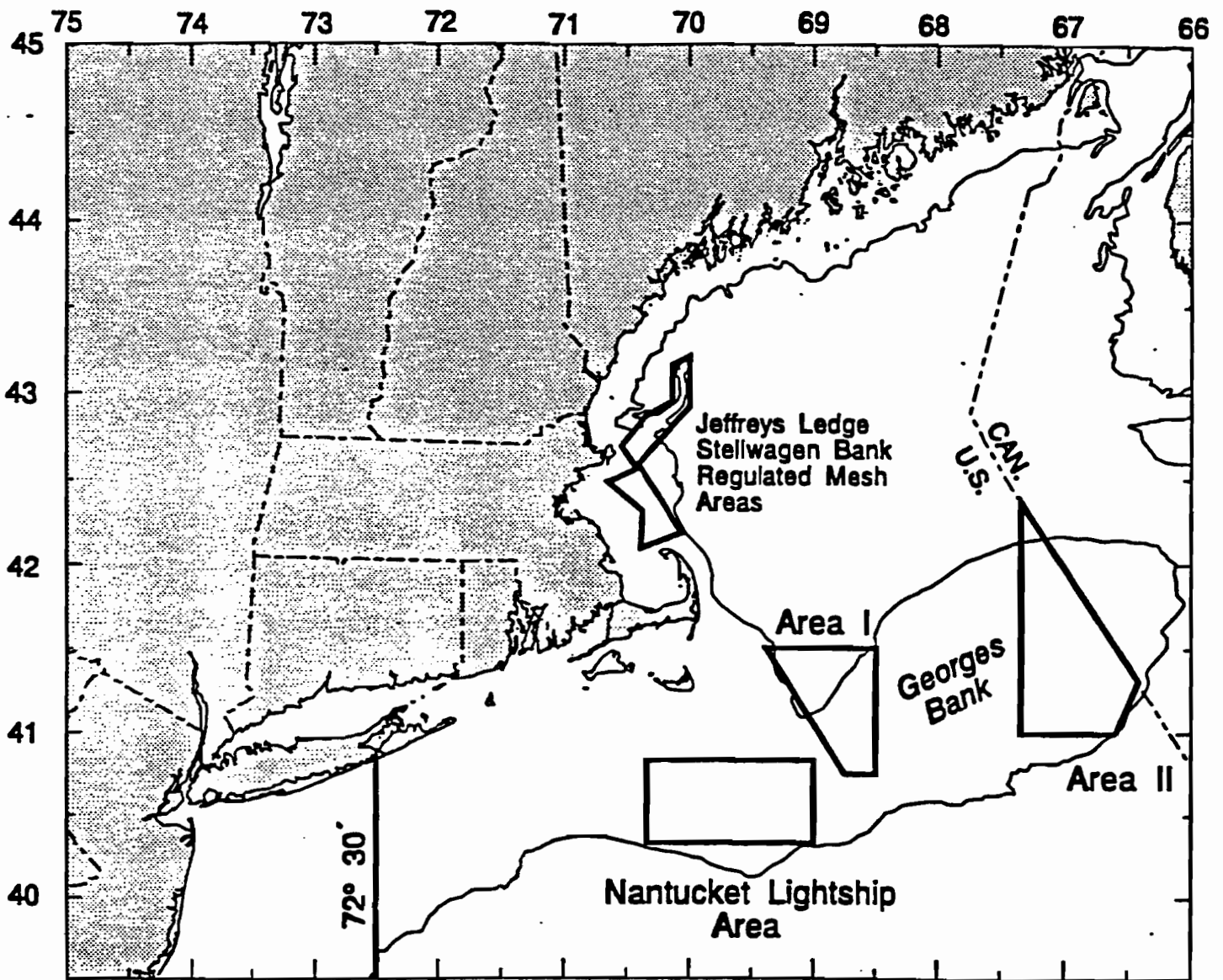


Figure 1 Management areas under the emergency action and proposed for Framework 9.

**APPENDIX I**

**Environmental Assessment of an Emergency Action  
to Implement Protective Measures  
in the Northeast Multispecies Fishery  
prepared by NMFS-Gloucester**

**and**

**Regulatory Language of the Emergency Action  
as amended through 1/31/95**

**Framework 9  
Emergency Action Measures**

**March 6, 1995  
Multispecies FMP**

ENVIRONMENTAL ASSESSMENT  
OF AN  
EMERGENCY ACTION TO IMPLEMENT  
PROTECTIVE MEASURES  
IN THE  
NORTHEAST MULTISPECIES FISHERY

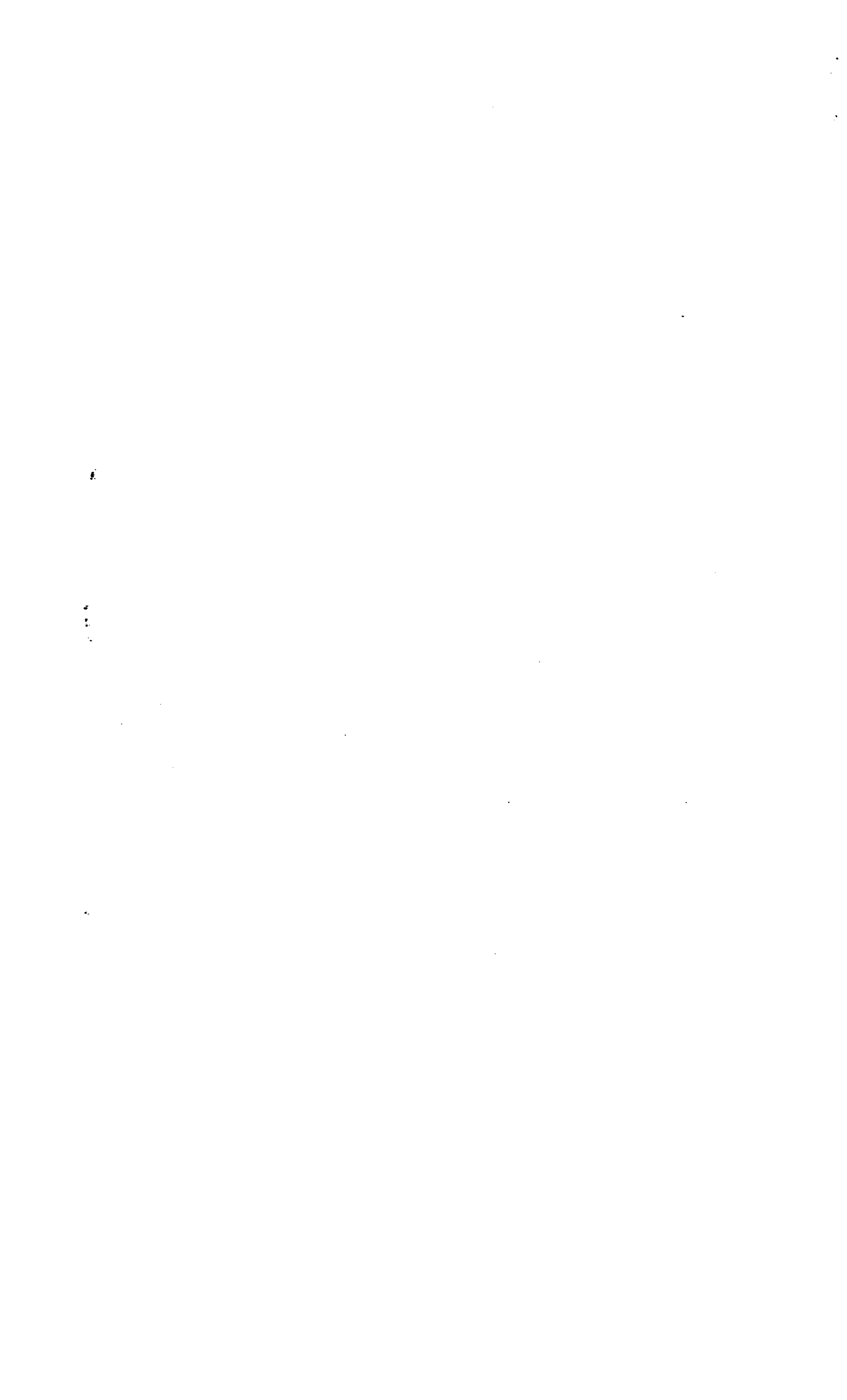
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Gloucester, MA 01930

November, 1994

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**ENVIRONMENTAL ASSESSMENT OF AN  
EMERGENCY ACTION TO IMPLEMENT PROTECTIVE MEASURES  
IN THE NORTHEAST MULTISPECIES FISHERY**

**I. Introduction**

Following the Council's August 9-10, 1994 meeting, the Northeast Regional Stock Assessment Workshop (SAW) issued to the Council an **unprecedented** Special Advisory on Groundfish Status on Georges Bank along with its Stock Assessment Report. The Advisory Report concluded that yellowtail flounder and haddock stocks have 'collapsed'. The Advisory further warned that the last three year classes of cod are the lowest on record and "that there is imminent danger that unless the sharp declining trend in spawning stock biomass (SSB) is halted, that cod too will collapse". The Advisory counselled that "current F levels on cod and yellowtail need to be reduced by 60% and 52%, respectively, just to achieve the maintenance level (e.g., the point at which stocks will cease, on average, to decline)". The Advisory offered that "in order to avert collapse of cod and improve the prospects of stock rebuilding for yellowtail, that fishing mortality 'should be reduced to as low a level possible, approaching zero'".

The Council, in response to the SAW advisory at its September 21-22, 1994 meeting, voted to recommend that the Groundfish Committee immediately begin the development of an amendment (Amendment 7) to the FMP to implement the recommendations of SAWs 17 and 18 for severely depleted groundfish stocks including Georges Bank yellowtail flounder, Southern New England yellowtail flounder, haddock, Georges Bank cod, and others as needed. The Council also voted for the Committee to consider all the available options in meeting this objective while ensuring that in the Committee's analysis, consideration of fishing effort displacement into other fisheries and other groundfish fisheries is taken into account.

On October 14, 1994, the Groundfish Committee recommended that the Council request the Secretary to take emergency action to implement groundfish protection measures while Amendment 7 is being developed. In response to the Groundfish Committee's recommendation for emergency action, the Council voted on October 27, 1994, to recommend that the Secretary take emergency action to address a crisis in New England fisheries while it develops a plan amendment under the normal notice and comment procedures. Specifically, the Council recommended in its November 1, 1994 letter to the Secretary that the following measures be implemented under the authority established by Section 305(c) of

the Magnuson Fishery Conservation and Management Act (MFCMA):

- 1) that no fishery using mesh smaller than the regulated size be allowed that has not been verified to have a catch of less than five percent by weight of regulated species, and that possession of regulated species while fishing with small mesh, be prohibited; "Fishery" in this context may be defined by gear and/or area and/or season. Verification will be accomplished by NMFS in consultation with state agencies, and may be based on existing data or future sea sampling, and should be completed as quickly as possible;
- 2) that all mobile-gear fishing in the Stellwagen Bank and Jeffreys Ledge areas be required to use 6-inch square mesh codends;
- 3) that Area I with boundaries as defined in the Council's request for Flexible Area Action System 7, the Nantucket Lightship Closed Area (the area defined in Amendment 5 to protect juvenile yellowtail flounder) and Area II be closed to fishing simultaneously;
- 4) that scallop vessels be prohibited from fishing in groundfish closed areas; and
- 5) that the minimum mesh size in southern New England east of 72°30' be set at 6-inch square or diamond consistent with the mesh size on Georges Bank and in the Gulf of Maine.

These recommended emergency measures build upon the existing provisions of Amendment 5 of the Northeast Multispecies Fisheries Management Plan. Volume I of Amendment 5 gives a brief history of the management plan from its inception in 1977. Amendment 5 was approved on January 3, 1994. Additional information on the deteriorating condition of the haddock stock on Georges Bank prompted emergency regulations in January 1994 protecting haddock. These measures were made permanent by Secretarial Amendment 6 to the management plan in June.

## II. Purpose and Need for Action

The primary New England groundfish stocks of cod, haddock, and yellowtail flounder are overexploited and at extremely low biomass levels. While the decline in these principal groundfish stocks has taken place over more than a decade, newly reported scientific evidence presented at the most recent Stock Assessment Workshop (SAW 18) concludes that Georges Bank cod and yellowtail flounder stocks are at or are near the point of collapse. In fact, the assessment scientists warned of the dangerously low levels of cod, haddock, and yellowtail flounder and the dire consequences resulting if serious measures greater than what



Amendment 5 calls for are not taken immediately.

Georges Bank cod and yellowtail flounder were two of the groundfish stocks most recently assessed at SAW 18. For Georges Bank cod, the assessment concludes that the fishing mortality rate increased from 0.3 in 1978 to a record-high of 0.91 in 1993, well over twice the definition of overfishing level specified in the plan. The spawning stock biomass continued to decline from over 90,000 metric tons during the early 1980s to a record low of 37,200 metric tons for 1993. Projections for 1994 indicate that the spawning stock biomass will decline further still to record low levels of around 19,000 metric tons. The landings for 1994 under Amendment 5 will be the lowest since the 1960's.

SAW 18 results on the status of Georges Bank yellowtail flounder concludes that fishing mortality rates are about twice the definition of overfishing level. Further, the spawning stock biomass of 3,010 metric tons for 1993 has declined from a moderate level of 17,385 metric tons in 1982 and from an earlier high of 25,000 metric tons in 1973. Hence, for Georges Bank cod and yellowtail flounder, current fishing mortality levels need to be reduced by 60% and 52%, respectively, just to achieve the maintenance level (e.g., the point at which stocks will cease, on average, to decline).

Similar grave reports came out of the last assessment for the Southern New England yellowtail flounder stock (Stock Assessment Workshop 17, [SAW 17]). Fishing mortality rates for this stock have been extremely high, reaching exploitation rates greater than 80% in recent years. In 1992 the exploitation rate was 84%, far exceeding the 35% exploitation rate associated with the overfishing definition. Spawning stock biomass declined 94% between 1989 and 1992; from 22,000 metric tons to 1,300 metric tons as the 1987 year class was removed from the spawning stock. Further, spawning stock biomass for 1993 has been projected to decline to 1,052 metric tons because year classes following the 1987 year class are weak. Recruitment in the last several years has been the lowest on record. Landings and spawning stock biomass for 1994 are projected to be less than 1,000 and 2,500 metric tons respectively, both well below average.

As discussed in the Regulatory Impact Review for Amendment 5, the most recent assessment of haddock (Stock Assessment Workshop 13, [SAW 13]) indicated that haddock spawning stock biomass on Georges Bank has been reduced from 130,000 metric tons in 1963 to an estimated 10,000 metric tons at the beginning of 1993, significantly lower than the 130,000 metric tons required to provide an annual maximum sustainable yield of 47,000 metric tons. The haddock stocks on Georges Bank and the Gulf of Maine are at all time low levels of abundance and the 1993 landings were the lowest in recorded history. Amendment 6 to the multispecies FMP and its Environmental Assessment/Regulatory

Impact Review addressed the need for immediate action to protect these stocks. The conservation measures for haddock implemented under Amendment 6 have likely reduced fishing mortality and have afforded some protection to the spawning stock and to new recruits. The stock is still in a collapsed condition, but the harvest rate is probably below the level at which the stock is simply maintained.

Management advice provided for Georges Bank and Southern New England yellowtail flounder and haddock concludes that these stocks have collapsed. This term is generally used to describe the condition of chronic low recruitment due to reduced spawning biomass, truncated age structure, and prolonged periods of yields less than about 25% of the maximum sustainable yield (MSY) value. For these stocks, all of these conditions are clearly met. In the case of Georges Bank cod, unless the sharp decline in spawning stock biomass is halted, there is a strong possibility of stock collapse for this stock as well. Resultingly, advice from the SAW further concludes that in order to avert the collapse of cod and improve the prospects of stock rebuilding for yellowtail, fishing mortality should be reduced to levels approaching zero.

Amendment 5 was intended to eliminate overfishing through incremental effort-reduction, mesh-size increase, and expanding spawning area closures, among other measures. When the Council adopted objectives for Amendment 5 more than 3 years ago, cod, haddock, and yellowtail flounder stocks were being fished at a rate that was on average twice what could be sustained over the long term, so a plan was designed to reduce fishing by half. However, during the implementation period of this amendment, fishing mortality rates increased and the downward trends in stock size and yields continued. Consequently, despite the very restrictive management measures in Amendment 5, they are clearly inadequate to achieve the reductions in fishing mortality rates needed to allow for appreciable stock rebuilding.

The New England Fisheries Management Council has begun the development of a plan amendment (Amendment 7) to implement the recommendations of SAWs 17 and 18 for severely depleted groundfish stocks including Georges Bank yellowtail flounder, Southern New England yellowtail flounder, haddock, Georges Bank cod, and others as needed. To this effect, a Notice of Intent to prepare a supplemental environmental impact statement for Amendment 7 and a request for comments was published in the Federal Register on October 27, 1994.

Amendment 7 is moving forward at an unprecedented rate but will likely take several months before its implementation because of the complexity of the problem to be addressed and the extreme controversiality of measures being considered. Therefore, given the drastic condition of the groundfish stocks, emergency action

is warranted to implement certain narrowly focused, less controversial protective measures immediately to begin the process of slowing stock decline and to address the consequent effort displacement. This emergency action is in no way a panacea for the groundfish crises at hand but rather, a set of measures addressing the immediate interim need to begin the process of curtailing fishing pressure on these stocks and addressing vessel displacement. The measures to be implemented were selected because they are relatively less controversial as evidenced by the near unanimous support of the Council; they are more readily definable in the short time frame available to implement emergency actions; and they are more narrowly focused and therefore more easily administered as emergency interim measures. **The Secretary has therefore determined it necessary to implement the following measures in the multispecies fishery effective**

- 1) that no fishery utilizing mesh smaller than the regulated size be allowed that has not been verified to have a catch of less than 5 percent by weight of regulated species, and that the possession of regulated species while fishing with small mesh, be prohibited;
- 2) that all mobile gear vessels fishing in the Stellwagen Bank and Jeffreys Ledge areas, with the exception of mid-water trawl vessels, be required to use 6 inch square mesh codends;
- 3) close Closed Area I as defined in the Council's recommended Flexible Area Action System 7, the Nantucket Lightship Closed Area (as defined in Amendment 5) and Closed Area II simultaneously;
- 4) prohibit scallop vessels from the Closed Areas; and
- 5) restrict the mesh size in Southern New England east of 72°30' west longitude to 6 inch square or diamond, consistent with the mesh size requirements in the Gulf of Maine and Georges Bank areas.

### III. Proposed Action and Alternatives

#### 1. Preferred Alternative

**a) That no fishery utilizing mesh smaller than the regulated size be allowed that has not been verified to have a catch of less than 5 percent by weight of regulated species, and that the possession of regulated species while fishing with small mesh, be prohibited.**

Because the small mesh fishery has historically been

identified as having a significant bycatch of both juvenile and legal sized groundfish, Amendment 5 imposed a 500 pound bycatch limit of regulated species on this fishery. Reports of vessel's abusing this measure by directing their efforts on groundfish with small mesh prompted the development of Framework Adjustment 3 to the FMP. Framework 3 adjusted the possession limit of regulated species to 10% by weight of unregulated species, up to a maximum of 500 lbs. However, even with Framework 3 in place, reports of intentional and unintentional abuse continues. It is believed, that as the groundfish stocks of cod, haddock, and yellowtail flounder continue to decline, more effort will shift to these small mesh fisheries resulting in increased mortality on juvenile stocks of overfished groundfish as well as on relatively stable groundfish stocks.

The severe condition of the cod, haddock, and yellowtail flounder stocks warrants a biological emergency and therefore, the groundfish discard problems of the small mesh fishery should be addressed immediately. Further, the large amounts of discards reportedly happening in some of these small mesh fisheries effectively eliminates future opportunities and presents conflicts between small mesh and large mesh fishers thereby creating an economic and social emergency, respectively.

Recent anecdotal information indicates that there has been some perceivable recruitment in the Gulf of Maine haddock stock. If this report can be verified, it is imperative that strong conservation measures be implemented immediately to ensure protection in order to avoid discarding of juvenile haddock given that this stock is considered "commercially extinct."

As one of its primary conservation measures, Amendment 5 imposed mesh size increases for regulated species of groundfish. Since Amendment 5 has been implemented, fishing industry members have expressed grave concerns over the discarding of regulated species by certain small mesh fishers. Fishing captains who are using regulated mesh on groundfish report seeing others towing right behind them with small mesh and discarding the juvenile regulated species that they are protecting with larger mesh. Any conservation benefits from the larger mesh is thereby negated with the use of small mesh.

Therefore, the following fisheries are exemptions to the small mesh prohibition based on a scientific judgement that they appear to meet the 5 percent criteria concerning the level of bycatch in each fishery. This determination was based on an analysis of sea sampling data (federal and state) and other information in relation to the gear used,

time of the emergency action, and the species targeted.

SUMMARY OF SMALL MESH EXEMPTIONS

FISHERY	AREA
BUTTERFISH	Southern New England, Mid-Atlantic
DOGFISH	Southern New England, Mid-Atlantic
HERRING	Southern New England, Mid-Atlantic
MACKEREL	Southern New England, Mid-Atlantic
OCEAN POUT	Southern New England, Mid-Atlantic
SCUP	Southern New England, Mid-Atlantic
SHRIMP	Southern New England, Mid-Atlantic
SQUID	Southern New England, Mid-Atlantic
SUMMER FLOUNDER	Southern New England, Mid-Atlantic
WHITING	Southern New England, Mid-Atlantic
WEAKFISH	Southern New England, Mid-Atlantic
SCALLOPS (net boats)	Mid-Atlantic
SHRIMP	Gulf of Maine/Georges Bank
MIDWATER TRAWL HERRING MACKEREL SQUID	ALL
PURSE SEINE HERRING MACKEREL MENHADEN	ALL

The Regional Director may add additional exemptions in the future if he/she makes a determination that the exempted fishery, gear, and/or area has a catch of less than 5 percent by weight of regulated species. Furthermore, the Regional Director may delete an existing exemption if he/she makes a determination that the catch of regulated species is greater than or equal to 5 percent by weight. Notification of additions or deletions will be made through publication of a rule in the Federal Register.

In addition to disallowing small mesh fisheries with a bycatch of greater than or equal to 5 percent, this measure further prohibits the landing of regulated species by all

small mesh fishers, eliminating the incentive for directing any kind of effort on these stocks. Overall, the effect of this measure will greatly remove the unnecessary discarding of juvenile as well as legal sized regulated species.

**b) That all mobile gear vessels fishing in the Stellwagen Bank and Jeffreys Ledge areas, with the exception of mid-water trawl vessels, be required to use 6 inch square mesh codends.**

Amendment 5 implemented 6-inch square mesh in the last 140 bars of the codend and extension piece of all mobile net gear for the Stellwagen and Jeffreys Ledge areas during the period March 1 through July 31. This was imposed due to the concentrations of juvenile codfish in these areas during this time of year and the increased escapement of cod and round fishes when using square mesh. To address several concerns raised by the fishing industry, the Council approved a framework measure on June 30, 1994 to adjust this square mesh requirement to 100 bars of square mesh for vessels greater than 45 feet and 50 bars of square mesh for vessels 45 feet and under. This measure as of yet has not been submitted to NMFS but is the clear intent of the Council and therefore, is included as part of the emergency.

The Stellwagen Bank/Jeffreys Ledge area have been documented as productive groundfish grounds and due to their close proximity to shore, they are susceptible to effort displacement from the closed areas and therefore are in need of protection. Recent research surveys by the state of Massachusetts indicate the possibility that the 1993 year class of cod is better than expected. These new recruits will be vulnerable to fishing in 1995 and will be protected by this provision of the action.

**c) Close Closed Area I as defined in the Council's recommended Flexible Area Action System 7, the Nantucket Lightship Closed Area (as defined in Amendment 5) and Closed Area II simultaneously.**

Amendment 5 suspended the closure of Area I on the grounds that significant haddock spawning had not been observed in recent years in that area. In addition, Area I was opened to provide vessels displaced by the expanded Area II closure with an area to fish for cod and other species. Under the present action there is a need to protect cod as well as haddock, yellowtail and other stocks under stress, not merely haddock spawning, thereby justifying closing Area I.

When the Secretary implemented emergency rules to protect haddock in January 1993, Area I was opened. Within a month, in response to information provided by the industry, the

Council's Groundfish Committee initiated an action under the Flexible Area Action System (FAAS 7) to protect a concentration of spawning haddock reported in and around Area I.

Following a review of NMFS' FAAS 7 fact-finding report, the Council, after a public hearing, voted to recommend closing a modified Area I. The area's coordinates, as modified, were as follows:

Point	Latitude	Longitude
A	41°30'	69°23'
B	40°45'	68°45'
C	40°45'	68°30'
D	41°30'	68°30'
A	41°30'	69°23'

Public comment was overwhelmingly supportive of the proposed FAAS action. (The Secretary ultimately disapproved the recommended FAAS action for reasons that included the economic importance to the ports of Gloucester and New Bedford of the proposed Area I, as modified.)

With the decline of stocks on Georges Bank, and with the expanded closure of Area II beginning in January, more effort is expected to be displaced into Area I. This area is an important cod fishing area, in addition to being a historical haddock spawning area. This measure would protect against increased effort in Area I. In order to protect against the effort displacement from Georges Bank, the closure dates are proposed to be effective immediately, and simultaneously. Failing to close immediately would forgo potential important savings of the cod, haddock, and yellowtail stocks in this area while Amendment 7 is being developed.

The Nantucket Lightship Closed Area was designed to protect concentrations of juvenile yellowtail flounder that historically have been caught in large numbers in this area. Under the current rule, the closure would automatically take effect when evidence exists of a large year class about to recruit to the fishery. Due to the record-low spawning stock size, the likelihood of this occurring is extremely low. Closing this area under an emergency action will provide protection to what yellowtail might be in the area while Amendment 7 is being developed. The Nantucket Lightship Closed Area has not only been an important area for juvenile yellowtail concentrations, but has historically been the area that has produced the largest catch from this

stock.

**d) Prohibit scallop vessels from the Closed Areas.**

During the development of Amendment 5, based on public comment, the Council considered excluding scallopers from areas closed to groundfishing. The basis of this idea was that scallopers have been known to catch significant amounts of yellowtail flounder, are reported to have the ability to catch other groundfish when concentrated as for spawning, and that the dredge disturbs the bottom and disrupts the spawning activity. Failing to prohibit scallop dredging in these closed areas could potentially dissipate some of the benefits to be derived by the closure.

The following table shows foregone or displaced landings and values by scallop vessels for each of the closed areas for the duration of the emergency action:

Table 1: Foregone lbs and value for scallop vessels

	Foregone lbs	Revenue \$	Trips
Closed Area I	1,130,000	4,469,000	126
Closed Area II	2,730,000	11,674,000	377
Nantucket Lightship	1,383,000	5,787,000	222

Because of the possibility that many scallop vessels may have recently redirected their efforts to areas in southern New England and the Mid-Atlantic region due to the severe condition of the scallop resource in the Georges Bank area, the impacts of these closures on the scallop fleet should be less restrictive.

**e) Restrict the mesh size in Southern New England east of 72°30' west longitude to 6 inch square or diamond, consistent with the mesh size requirements in the Gulf of Maine and Georges Bank area.**

Under Amendment 5, the minimum mesh size in southern New England was increased for vessels fishing for groundfish. Under these new rules, beginning in 1995, vessels in possession of more than 500 pounds may have available for immediate use only 5½-inch diamond or 6-inch square mesh. This proposed action would increase the minimum diamond mesh size to 6 inches, making it consistent with the mesh requirements on Georges Bank and in the Gulf of Maine.

With the implementation of Amendment 5 on March 1, 1994, a



large number of vessels, including many from the port of New Bedford, protested the mesh-size increase because 6-inch twine was not readily available. As a result, the mesh size increase was delayed for two months. Based on information available this time, however, NMFS has reason to conclude that nearly all vessels fishing for groundfish have 6-inch diamond mesh available and, therefore, no delay in implementation is warranted.

The NEFSC produced a report in September 1994 evaluating conservation measures for yellowtail flounder in Amendment 5 to the FMP. This report indicates that the maturation of yellowtail flounder increases with increased mesh selection thereby providing additional protection for juvenile and sub-legal fish for this stock. An increase in the diamond mesh size in this area should also increase the escapement of cod and other round fish as well. Under this proposal, vessels fishing near the boundary of the current Georges Bank Regulated Mesh Area will be required to use the same mesh as those fishing inside the area. This measure would also help protect an important component of the Georges Bank cod stock, which migrates through the Nantucket Shoals area and waters south of Martha's Vineyard during the winter.

## **2. No Action Alternative**

Under the current management system of Amendment 5, one of the primary objectives is to eliminate the overfished condition of cod, haddock, and yellowtail flounder by reducing the rate that fish are caught by fifty percent over the next five to seven years. Though Amendment 5 has just recently come into effect, new scientific analysis strongly concludes that for cod and yellowtail flounder, the wide-sweeping management measures of Amendment 5 will not result in sufficient fishing mortality reductions to allow appreciable stock rebuilding.

The restrictive measures implemented under Amendment 5 are now viewed as too little, too late to stem the decline of the primary groundfish stocks in New England and are, therefore, insufficient. During the three years that it took to implement Amendment 5, the conditions have worsened to the extent that failure to take strong management actions now may have severe and potentially long-lasting consequences. Given that substantial reductions in groundfish effort are needed immediately, taking no action at this time is simply unacceptable and will only exacerbate an already acute situation.

## **3. Prohibit Multispecies Fishing Alternative**

This alternative would prohibit the harvesting of all multispecies. Because this alternative meets the crises head-on by reducing multispecies fishing mortality levels to as close to

zero as possible, it clearly addresses the most recent stock assessment advice to consider large, systematic reductions in effort in order to avert catastrophic declines in the Georges Bank cod stock, and to initiate rebuilding of the multispecies components of the groundfish resource. However, because this alternative would be so comprehensive and potentially complex to implement and because it would have a severe economic impact on the fishing industry, it is both significant and controversial. Furthermore, due to its far-reaching consequences and the importance of public input on such a major action, this option would be outside the scope of an emergency measure and therefore, unacceptable. The Council is presently in the process of developing Amendment 7 in an expedient and unprecedented manner and yet, allowing for the normal notice-and-comment rulemaking process. Hence, given the scope of this most draconian measure, it is imperative that time and opportunity be allowed for sufficient consideration of the impacts on participants. This can be accomplished by Council consideration as an Amendment 7 alternative where, if chosen, sufficient time would be allowed for its development.

#### IV. Affected Environment

See Section E.6.0 of the SEIS of Final Amendment 5 to the FMP for a complete discussion of the affected environment, including the physical, biological and human environments. This section will be updated by Amendment 7 to the FMP.

#### V. Environmental Consequences of Fisheries Actions

All of the measures included in this emergency action are related to or expand upon the current provisions of Amendment 5 of the Multispecies Fishery Management Plan. Taken together they will provide additional positive benefits within the scope of Amendment 5 but beyond what was analyzed in some cases. Many of their environmental consequences have been described in the SEIS accompanying that document. The benefits of a mesh size increase in southern New England is discussed in the NEFSC's September 1994 yellowtail document. In the context of the present resource emergency, all of the measures are intended to reduce overall fishing mortality on the stocks of cod, haddock and yellowtail flounder or to protect juveniles of these species to ensure a seed stock for future recovery plans. While these measures may have negative economic consequences in the short term, the long term benefits of stock recovery are considerable (see Amendment 5, Volume IV).

By closing Area I, Area II, and the Nantucket Lightship Closed Area for the duration of the emergency a refuge effect will be created providing very significant conservation benefits to areas

of traditionally high concentrations of cod, haddock and yellowtail flounder. With the implementation of Amendment 5, Area I was just recently reopened to mobile gear vessels, however, in addition to being an important haddock spawning area, Area I is an important codfish area and because this action is being taken primarily to reduce fishing mortality levels on all of the primary groundfish stocks, it is necessary to again close Area I for these reasons as well as to protect against displacement from Area II. In turn, Area II is being closed earlier than what is presently required under Amendment 6 to the FMP in order to protect against displacement from the other closed areas.

Given the very severe condition of the southern New England yellowtail stocks, it is highly unlikely that the trigger mechanism established under Amendment 5 to close this area would ever come to fruition. Closing the Nantucket Lightship Closed Area is an important risk-averse approach to protecting any concentrations of juvenile yellowtail that may be in this area during the development of Amendment 7. This measure will serve as an additional protection from any displacement from the closures of Area I and Area II.

Because of the vulnerability of groundfish stocks to scallop dredge gear, particularly yellowtail flounder, eliminating this gear in the closed areas can only benefit these stocks through further protection. In addition, the removal of scallop dredge gear from the closed areas will benefit the physical environment because of its disruption to the bottom of the sea floor.

With more vessels being displaced from the groundfish fishery due to depleted stocks as well as to increasing regulations, an increase in effort displacement to the small mesh fisheries is anticipated. Because certain small mesh fisheries have a significant bycatch of juvenile and sub-legal regulated species, more effort in these fisheries may lead to an increase in the wasteful discarding of these fish. By disallowing small mesh fisheries with a catch of 5 percent or more of regulated species, a protection of these resources will be afforded at a time when they are most vulnerable. In addition to the discontinuance of certain small mesh fisheries, eliminating the possession of regulated species by all small mesh fishers will remove any incentive to direct on these stocks.

Requiring 6 inch square mesh in the Stellwagen Bank and Jeffrey's Ledge Areas will reduce the juvenile bycatch on roundfish and eliminate the use of small mesh in this area. By implementing this measure immediately under this emergency action, this area will be afforded protection earlier than what Amendment 5 calls for and at a time when recent evidence suggests that the new incoming year class of cod in this area may be better than recent year classes and, therefore, in need of protection.

Also, it is believed that an increase in mesh size to 6 inch diamond in Southern New England increases the survival chances for groundfish, particularly yellowtail flounder, through a shift in the selection pattern. Southern New England yellowtail is perhaps one of the groundfish stocks in the poorest condition and, therefore, in need of any and all protection.

Further discussion of the impacts of the individual measures is given above under sections II and III.

A biological opinion was prepared for the formal section 7 consultation for Amendment 5 to the FMP that determined that fishing activities conducted under the Amendment and its implementing regulations are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat. This action does not change that conclusion.

#### VI. Finding of No Significant Impact

In view of the discussion and analysis presented above, it is hereby determined that the proposed action to establish the following emergency measures: close Area I (as defined in the Council's recommended Flexible Area Action System 7), Area II and the Nantucket Lightship Closed Area immediately and simultaneously; prohibit scallop vessels from the closed areas; disallow any fishery utilizing mesh smaller than the regulated size in the Gulf of Maine and Georges Bank Regulated Mesh Areas except for vessels fishing in the small mesh area for shrimp, or vessels in the mid-water trawl or purse seine fisheries; and prohibit the possession of regulated species while fishing with small mesh; require all mobile gear vessels fishing in the Stellwagen Bank and Jeffreys Ledge areas, with the exception of mid-water trawl vessels, to use 6-inch square mesh codends; and restrict the mesh size in Southern New England east of 72°30' west longitude to 6-inch square or diamond, consistent with the mesh size requirements in the Gulf of Maine and Georges Bank areas - would not significantly affect the quality of the human environment with specific reference to the criteria contained in NAO 216-6, implementing the National Environmental Policy Act. Accordingly, the preparation of a supplemental environmental impact statement on this proposed action is not necessary.

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Assistant Administrator  
for Fisheries, NOAA

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Date

**VII. List of Agencies and Persons Consulted in Formulating the Proposed Action**

**a. Federal Agencies:**

National Marine Fisheries Service  
U.S. Coast Guard  
New England Fishery Management Council

**b. State Agencies:**

Through participation on the New England Fishery Management Council:

Connecticut Department of Environmental Protection  
Maine Department of Marine Resources  
Massachusetts Division of Marine Fisheries  
New Hampshire Department of Fish and Game  
Rhode Island Department of Marine Resources

**VIII. List of Preparers of Environmental Assessment**

National Marine Fisheries Service, Northeast Region, incorporating information provided by the Northeast Fisheries Science Center, NMFS, and the New England Fishery Management Council.

**REFERENCES**

National Marine Fisheries Service, 1994. Evaluation of Conservation Measures for Yellowtail Flounder in Amendment #5 (Draft). Prepared by the Population Dynamics Branch of the Northeast Fisheries Science Center, Woods Hole, Massachusetts.

SAW 17. 1994. Report of the 17th Northeast Regional Stock Assessment Workshop. Northeast Fisheries Science Center Reference Document 94-07.

SAW 18. 1994. Report of the 18th Northeast Regional Stock Assessment Workshop. Northeast Fisheries Science Center Reference Document 94=xx.

SAW 18. 1994. Advisory Report on Stock Status. Northeast Fisheries Science Center.

- 8) Aquaculture enhancement measures and closures
- 9) Closed areas to increase day-at-sea allocations or improve yield-per-recruit
- 10) Modifications to the opening dates of closed areas
- 11) Permit restrictions
- 12) Offloading windows
- 13) Effort monitoring
- 14) Data reporting
- 15) Onboard observers
- 16) VMS demarcation lines for day-at-sea monitoring
- 17) Any other management measures currently included in the FMP

A permanent rotational area management program is not under consideration for the annual framework adjustment, but will be considered as part of Amendment 10, slated for completion in 2001. Temporary access to areas that are now closed to scallop fishing may be considered as part of the annual framework adjustment. Out of the above list, measures 11-16 may involve changes in reporting requirements and could trigger a Paperwork Reduction Act review, potentially delaying implementation of some or all of the annual adjustment measures.

Although the PDT is currently assessing the status of the resource and fishery in 2000, preliminary indications are that conditions are more optimistic than anticipated by Amendment 7. This outlook implies that days may not need to be as low as presently scheduled for the 2001 fishing year. According to the Amendment 7 schedule, day-at-sea allocations will be 49 days for full-time vessels, 19 days for part-time vessels, and 4 days for occasional vessels. The 2000 allocations were 120, 48, and 10, respectively.

Overall fishing mortality has declined significantly, but biomass is still below target levels and mortality remains high in the open areas. The number of days to be allocated in 2001 will depend on the outcome of the PDT analysis, but they are likely to be between the amounts allocated in 2000 and those in the FMP for 2001. Access to areas closed to scallop fishing and access regulations could have a significant effect on whether the day-at-sea allocations meet the annual fishing mortality target for the 2001 fishing year. The Council may also consider in the annual framework adjustment management measures, similar to those in Closed Area II, for scallop fishing in the Hudson Canyon and VA/NC closed areas to optimize yield.

In addition to these changes, the Council may also consider new area closures to increase the amount of day-at-sea allocations scheduled in Amendment 7 or to increase the size of scallops caught by the fishery. The PDT has recommended four areas for closure during the 2000 and 2001 fishing years to promote rebuilding and improve long-term yield. The Council is especially interested in recommendations from industry on whether these closures are needed and if so, what areas should be considered.

**New England Fishery Management Council**

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Chairman  
Joseph M. Brancaleone

Executive Director  
Paul J. Howard

**MEMORANDUM**

Date: August 22, 2000

**TO:** Scallop Advisors and Interested Parties  
**FROM:** Paul Howard  
**SUBJECT:** Annual Framework Adjustment to the Atlantic Sea Scallop FMP

The Council has begun its annual adjustment process under the Atlantic Sea Scallop FMP. The Scallop Plan Development Team (PDT) updated the 1999 assessment and evaluated management options for the 2001 fishing year, which begins on March 1, 2001. This report and any industry proposals will become part of the annual Stock Assessment and Fishery Evaluation (SAFE) Report that will be available at the initial framework meeting (see below).

Anyone who would like to submit a formal management proposal to the Council for consideration should do so by September 11, 2000. Proposals received after this date also may be considered by the Council, but will not become part of the this report.

The Council will use the SAFE Report, other management proposals, and Advisor Panel and Oversight Committee recommendations to develop management alternatives at an initial meeting to address the framework adjustments. This meeting is scheduled for September 26-28 in Fairhaven, MA. A final framework meeting, at which the Council will approve the final adjustments to the FMP, will be held on November 14-16 in Wakefield, MA.

The purpose of the annual adjustments is to meet the Amendment 7 mortality and rebuilding objectives. The primary focus is on day-at-sea allocation adjustments and potential access to the Hudson Canyon and VA/NC closed areas. These annual adjustments would go into effect on March 1, 2001 and could include the following measures:

- 1) Day-at-sea allocations (possibly gear-specific)
- 2) Shell-height limits
- 3) Scallop size restrictions (not including a minimum size or weight of individual scallop meats)
- 4) Trip limits (primarily for general category and incidental catch limits)
- 5) Gear restrictions
- 6) Crew limits
- 7) Limits on small mesh liners

pleadings submitted in this proceeding that non-cable exclusive contracts of the type involved here are either harmful to the development of competition, "unfair" or "deceptive," or have negative effects on consumers. The record does not demonstrate that such contracts will hinder the development of DBS as an effective competitor to cable; that USSB's contracts with Viacom and Time Warner have impeded the entry either of DirecTV or NRTC into the DBS marketplace; or that the contracts generally have harmed the entry of DBS service into the multichannel video programming marketplace. Indeed, the evidence presented suggests that a DBS distributor's exclusive contract for programming covering one orbital location may foster DBS as a significant competitor to cable. Such contracts may allow a distributor to distinguish its service from that of another, avoid duplication of programming, and eventually lead to more diversity in programming for the consumer. To the extent such contracts allow a greater number of DBS distributors to establish distinctive competing services, we believe they further congressional policy to "rely on the marketplace, to the maximum extent feasible, to achieve greater availability of the relevant programming."<sup>16</sup> In contrast to cable exclusivity in areas unserved by cable, which would foreclose services from non-cable multichannel video programming distributors, consumers will be able to receive all DBS programming from one DBS provider or another by being able to select specific programming services without having to purchase entire programming packages. We agree with Opponents that prohibiting a DBS distributor's exclusive contract for programming covering one orbital location may in fact create unnecessary inefficiencies because the same programming could then occupy multiple transponders on the same satellite and decrease the diverse mix of programming available. Without prejudging any future complaints, we currently believe that the record before us provides no basis to conclude that the market power abuses, about which Congress was concerned, are present in the exclusive contracts at issue here.

14. Our reaffirmation of our interpretation of section 628(c)(2)(C) does not foreclose all remedies to an MVPD who claims to be aggrieved by an exclusive contract between a non-cable MVPD and a vertically integrated

satellite cable programming vendor. In the *First R&O*, we previously determined that while section 628(b) does not specify types of "unfair" practices that are prohibited, it "is a clear repository of Commission jurisdiction to adopt additional rules or to take additional action to accomplish statutory objectives should additional types of conduct emerge as barriers to competition and obstacles to the broader distribution of satellite cable and broadcast programming."<sup>17</sup> The Commission did not sanction exclusive contracts between non-cable MVPDs and vertically integrated cable programming vendors, thus leaving open the possibility that such contracts could be challenged on the basis that they involve non-price discrimination or "unfair practices." Section 628(b) of the 1992 Cable Act and the Commission's implementing rule, § 76.1001, provide a broad prohibition against "unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or to prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers."<sup>18</sup> Also in the *First R&O*, the Commission stated that section 628(b) does not prescribe specific practices (in contrast to section 628(c)), but does require a showing of anti-competitive harm, i.e., that the purpose or effect of the complained of conduct is to "hinder significantly or to prevent an MVPD from providing programming to subscribers or customers."<sup>19</sup> The Commission has stated that the objectives of the "unfair practices" provision are to provide a mechanism for addressing conduct, primarily associated with horizontal and vertical concentration within the cable and satellite cable programming fields, that inhibits the development of multichannel video programming distribution competition.<sup>20</sup> Therefore, where future contracts cause a restriction in the availability of programming to alternative distributors and their subscribers, an aggrieved MVPD could seek redress by filing an "unfair practices" complaint under § 76.1001 of the Commission's rules.

15. Finally, we believe that using § 76.1001 as an avenue to address non-cable exclusive contracts, such as those at issue here, will afford the Commission the opportunity to consider

all the ramifications of such contracts, including the effect on competition, based upon the particular facts of each case. This case-by-case review will avoid amending a Commission rule to create an overly broad per se prohibition appears to be contrary to Congress' intent.

16. For the reasons discussed above, we reaffirm our interpretation of section 628(c)(2)(C) as reflected in our implementing rule. We believe that this is the most reasonable interpretation based on the fact that Congress specifically directed the Commission to prohibit exclusive contracts between cable operators and vertically integrated programming vendors in unserved areas, but did not specifically address the inclusion of exclusive contracts between non-cable MVPDs and vertically integrated programming vendors within section 628(c)(2)(C)'s prohibition. We believe that any complaints regarding exclusive agreements are more appropriately addressed through other provisions of the statute. Thus, the Commission denies NRTC's request.

#### IV. Ordering Clause

17. Accordingly, it is ordered, that the Petition for Reconsideration of the National Rural Telecommunications Cooperative is denied.

#### List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95-894 Filed 1-12-95; 8:45 am]

BILLING CODE 6712-01-M

#### DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

#### 50 CFR Part 651

[Docket No. 950109008-5008-01; LD. 122894A]

Northeast Multispecies Fishery; Amendment to an Emergency Interim Rule

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; amendment.

SUMMARY: NMFS issues this emergency interim rule to amend an existing emergency interim rule concerning the Northeast Multispecies Fishery. This

<sup>17</sup> Id. at 3374.

<sup>18</sup> 47 U.S.C. 548(b); 47 CFR 76.1001.

<sup>19</sup> First R&O, 8 FCC Rcd at 3377.

<sup>20</sup> Id. at 3373.

<sup>16</sup> First R&O, 8 FCC Rcd at 3369 (citing 1992 Cable Act section (2)(b)(2)).



rule specifies among other things, that allowable bycatch species have been added to the exempted fisheries as defined in the existing emergency interim rule, that a bycatch fishery for longhorn sculpin will be allowed in the Northern Shrimp Exemption Area, and that transiting through closed areas established by the existing emergency interim rule will be allowed for vessels seeking safe haven.

**EFFECTIVE DATE:** January 10, 1995, through March 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** Susan A. Murphy, NMFS, Fishery Policy Analyst, 508-281-9252 or Bridgette S. Davidson, NMFS, Fishery Management Specialist, 508-281-9347. **SUPPLEMENTARY INFORMATION:** The New England Fishery Management Council (Council) submitted Amendment 5 to the Northeast Multispecies Fishery Management Plan on September 27, 1993. Amendment 5, with some exceptions, was approved on January 3, 1994. The final rule for Amendment 5 was published, and effective for the most part, on March 1, 1994 (59 FR 9872). On December 12, 1994, an emergency interim rule was published (59 FR 63926), and became effective. This action makes several modifications or clarifications to the December 12 emergency interim rule.

Section 651.20(a)(8) and (9) are revised to clarify that transit is allowed through the Stellwagen Bank/Jeffreys Ledge (SB/JL) juvenile protection area, if nets that are not of proper configuration for trawling in this area are properly stowed. Net stowage requirements at § 651.20(c)(7) are revised to incorporate the SB/JL juvenile protection area transit provision.

Provisions at § 651.21(d)(1)(ii) and (d)(3)(ii) are modified to include, in Closed Area I and the Nantucket Lightship Closed Area, entry of vessels seeking safe haven from storm conditions. These sections are modified due to safety concerns.

Section 651.21(d)(2)(ii) is revised to include a reference to § 651.21(d)(1)(iii), which will define the stowage provision for scallop dredge gear. This definition of a stowed scallop dredge is added due to the inability of scallop dredge gear to be stowed in compliance with the net stowage requirements specified under § 651.21(c)(7).

Sections 651.20(a)(7)(i) and (iii) are revised to clarify that in the Northern Shrimp Exemption Area, a vessel fishing for northern shrimp may direct its fishing effort on northern shrimp only and may not possess or retain any other species with the exception of an allowable bycatch of longhorn sculpin.

Sections 651.20(c)(6)(ii) and (d)(5)(ii) are revised to specify additional bycatch species allowed to be retained in the exempted fisheries as defined by the December 12 emergency interim rule. The bycatch species allowed under this amendment meet the same criteria as those bycatch species allowed under the December 12 emergency interim rule. These species were not raised as potential bycatch species in time to be considered for the December 12 emergency interim rule. Specifically, these species are caught incidentally to the exempted fisheries as defined by the December 12 emergency interim rule. It is unlikely that there would be an incentive to direct on these bycatch species, or if a vessel did direct on them, it is unlikely that they would catch regulated multispecies. This addition preserves the original intent of the requirement without overly burdening the industry or creating unnecessary discards.

This action also adds scientific names for the other allowable bycatch to help in species identification.

All exempted small-mesh fisheries and species which are caught incidentally to them, are subject to any applicable fishery management plans and their implementing regulations contained within Title 50, CFR.

#### Classification

This emergency interim rule amends an existing emergency interim rule, for the remainder of its short duration, for safety considerations and to clarify an exemption to the existing emergency interim rule. Given the limited time of these rules' applicability and that these modifications serve to refine and broaden an existing exemption, prior notice and opportunity for public comment would be impracticable and unnecessary. As such, good cause exists to waive these requirements pursuant to authority at 5 U.S.C. section 553(b)(B). Further, because this emergency interim rule relieves a regulatory restriction and amends an existing rule for safety concerns there is good cause under 5 U.S.C. sections 553(d)(1) and (3) to waive the 30-day delay in effective date.

This action has been determined to be "not significant" for the purposes of E.O. 12866.

#### List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 10, 1995.

Charles Karnella,  
Program Management Officer, National  
Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

#### PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 651.9, paragraph (e)(36), which was temporarily added at 59 FR 63929, December 12, 1994, effective December 12, 1994, through March 12, 1995, is temporarily revised, effective January 10, 1995, through March 12, 1995, to read as follows. On March 12, 1995, § 651.9(e)(36) will expire.

#### § 651.9 Prohibitions.

(e) \* \* \*

(36) Fish with or possess within the areas described in

§ 651.20(a)(1) nets of mesh smaller than the minimum size specified in § 651.20(a)(6), unless the vessel is exempted under § 651.20(a)(7), (a)(9), (e) or (f), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

\* \* \*

3. In § 651.20, paragraphs (a)(7)(i), (a)(7)(iii), (a)(8) introductory text, (a)(9), (c)(6)(ii), (c)(7) introductory text, and (d)(5)(ii), which were temporarily added at 59 FR 63929, December 12, 1994, effective December 12, 1994, through March 12, 1995, are temporarily revised, effective January 10, 1995, through March 12, 1995, to read as follows. On March 12, 1995, § 651.20(a)(7)(i), (a)(7)(iii), (a)(8) introductory text, (a)(9), (c)(6)(ii), (c)(7) introductory text and (d)(5) will expire.

#### § 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

(a) \* \* \*

(7) \* \* \*

(i) *Possession limit.* A vessel fishing under this exemption may not fish for, possess on board or land any species of fish other than shrimp. However, vessels may retain longhorn sculpin (*Myoxocephalus octodecimspinosus*) as an allowable bycatch species in the Northern Shrimp Exemption Area as described in this section.

\* \* \*

(iii) A vessel may only fish for or harvest northern shrimp, with the exception that a vessel may retain longhorn sculpin as an allowable bycatch species, during the northern

shrimp season, as established by the Atlantic States Marine Fisheries Commission (ASMFC). The northern shrimp season is December 1 through May 30, or as modified by the ASMFC.

(8) *Stellwagen Bank/Jefferys Ledge (SB/JL) juvenile protection area.* Except as provided in paragraphs (a)(7), (a)(9), (e) and (f) of this section, the minimum mesh size for any trawl net or Scottish seine in use, or available for use as described under paragraph (c)(7) of this section, by a vessel fishing in the following area shall be 6 inches (15.24 cm) square mesh in the last 50 bars of the codend and extension piece for vessels 45 ft (13.7 m) and less, and in the last 100 bars of the codend and extension piece for vessels greater than 45 ft (13.7 m).

(9) *Transitting.* (i) Vessels subject to the mesh requirements specified in paragraph (a)(6) of this section may transit through the Northern Shrimp Exemption Area defined in paragraph (a)(7) of this section with nets on board with mesh smaller than the minimum size specified in paragraph (a)(6) of this section, provided that the nets are stowed in accordance with the provisions of paragraph (c)(7) of this section, and provided the vessel has no fish on board; and

(ii) Vessels subject to the mesh requirements specified in paragraph (a)(6) of this section may transit through the SB/JL juvenile protection area defined in paragraph (a)(8) of this section with nets on board that do not conform to the requirements specified in paragraphs (a)(6) or (a)(8) of this section, provided that the nets are stowed in accordance with the provisions of paragraph (c)(7) of this section.

(c) \*\*\*

(6) \*\*\*

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh less than the minimum size specified in paragraph (c)(5) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(7) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(5) of this section. Vessels may only fish for, or retain, butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, *Loligo* squid, *Illex* squid, summer flounder, whiting and/or weakfish, while fishing with nets of mesh smaller than the minimum size

specified in paragraph (c)(5) of this section. Vessels fishing for these species under the exemption provided herein may also possess and retain the following species as incidental take to these exempted fisheries: Conger eels (*Conger oceanicus*); searobins (species in the family Triglidae); black sea bass (*Centropristis striata*); red hake; tautog (blackfish) (*Tautoga onitis*); blowfish (puffer) (species in the family Tetraodontidae); cunner (*Tautoglabrus adspersus*); John Dory (*Zenopsis conchifera*); mullet (species in the family Mugilidae); bluefish (*Pomatomus saltatrix*); tilefish (*Lopholatilus chamaeleonticeps*); longhorn sculpin (*Myoxocephalus octodecimspinosus*); fourspot flounder (*Paralichthys oblongus*); alewife (*Alosa pseudoharengus*); hickory shad (*Alosa mediocris*); American shad (*Alosa sapidissima*); blueback herring (*Alosa aestivalis*); sea ravens (*Hemirhamphus americanus*); Atlantic croaker (*Micropogonias undulatus*); spot (*Leiostomus xanthurus*); and swordfish (*Xiphias gladius*).

(7) *Net stowage requirements.* Any person on a fishing vessel or any fishing vessel subject to the net stowage or transitting requirements of this section may not have available for immediate use any net not meeting the regulated mesh requirements as specified in paragraphs (a)(7), (a)(8), (c)(5), and (d)(4) of this section and, as applicable, in the areas and for the times specified in § 651.32(c). A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use:"

(d) \*\*\*

(5) \*\*\*

(ii) *Possession and net stowage requirements.* Vessels may possess regulated species while in possession of nets with mesh less than the minimum size specified in paragraph (d)(4) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(7) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (d)(4) of this section. Vessels may only fish for, or retain, butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, *Loligo* squid, *Illex* squid, summer flounder, whiting weakfish, and/or scallops while fishing with nets of mesh smaller than the minimum size specified in paragraph (d)(4) of this section. Vessels fishing for these species under the exemption

provided herein may also possess and retain the following species as incidental take to these exempted fisheries: Conger eels (*Conger oceanicus*); searobins (species in the family Triglidae); black sea bass (*Centropristis striata*); red hake; tautog (blackfish) (*Tautoga onitis*); blowfish (puffer) (species in the family Tetraodontidae); cunner (*Tautoglabrus adspersus*); John Dory (*Zenopsis conchifera*); mullet (species in the family Mugilidae); bluefish (*Pomatomus saltatrix*); tilefish (*Lopholatilus chamaeleonticeps*); longhorn sculpin (*Myoxocephalus octodecimspinosus*); fourspot flounder (*Paralichthys oblongus*); alewife (*Alosa pseudoharengus*); hickory shad (*Alosa mediocris*); American shad (*Alosa sapidissima*); blueback herring (*Alosa aestivalis*); sea ravens (*Hemirhamphus americanus*); Atlantic croaker (*Micropogonias undulatus*); spot (*Leiostomus xanthurus*); swordfish (*Xiphias gladius*); and skate (species in the family Rajidae).

4. In § 651.21, paragraphs (d)(1)(ii) and (d)(2)(ii)(B), which were temporarily added at 59 FR 63932, December 12, 1994, effective December 12, 1994, through March 12, 1995, are temporarily revised, and paragraphs (d)(1)(iii) and (d)(3)(ii)(C) are temporarily added, effective January 10, 1995, through March 12, 1995, to read as follows. On March 12, 1995, § 651.21(d)(1)(ii), (d)(1)(iii), (d)(2)(ii)(B) and (d)(3)(ii)(C) will expire.

§ 651.21 Closed areas.

(d) \*\*\*

(1) \*\*\*

(ii) Paragraph (d)(1)(i) of this section does not apply to persons on fishing vessels or fishing vessels:

(A) Fishing with or using pot gear designed and used to take lobsters, and which have no other gear on board capable of catching multispecies finfish;

(B) Seeking safe haven from storm conditions. Such fishing vessels may transit through the closed area providing that:

(1) Gale, storm, or hurricane conditions are posted for the area by the National Weather Service;

(2) Such vessels do not fish in the area;

(3) Fishing net gear is stowed in accordance with

§ 651.20(c)(7) and scallop dredge gear is stowed in accordance with paragraph (d)(1)(iii) of this section; and

(4) The vessel provides notice to a patrolling U.S. Coast Guard aircraft or

vessel in the vicinity of Georges Bank by high frequency radio (2.182 kHz) of its intention of transiting the closed area, the time and position when the vessel enters the area and the time and position when the vessel exits the closed area.

(iii) Scallop dredge vessels transiting the closed areas as specified under paragraphs (d)(1), (2), and (3) of this section may not have fishing gear

available for immediate use and must detach the towing wire from the scallop dredge, reel the wire up onto the winch, and secure and cover the dredge so that it is rendered unusable for fishing.

(2) \* \* \*

(ii) \* \* \*

(B) Seeking safe haven from storm conditions in waters adjacent to the western edge of the closed area. Such fishing vessels may transit through the

closed area in accordance with paragraph (d)(1)(ii)(B) of this section.

(3) \* \* \*

(ii) \* \* \*

(C) Seeking safe haven from storm conditions. Such fishing vessels may transit through the closed area in accordance with paragraph (d)(1)(ii)(B) of this section.

[FR Doc. 95-927 Filed 1-10-95; 3:13 pm]  
BILLING CODE 3510-22

the nature of the explosives being transported, and the precautions to be taken in emergencies such as fires, accidents, or leakages.

(b) A driver who receives documents in accordance with paragraph (e) of this section must sign a receipt for them. The carrier shall retain the receipt in its files for 1 year at its principal place of business.

(c) A driver of a motor vehicle which contains Division 1.1, 1.2, or 1.3 materials must be in possession of, be familiar with, and be in compliance with

- (1) The documents specified in paragraph (a) of this section;
- (2) The documents specified in § 177.817 of this title; and
- (3) The written route plan specified in § 397.67.

[FR Doc. 94-30111 Filed 12-9-94; 8:45 am]  
BILLING CODE 4910-02-P

**INTERSTATE COMMERCE COMMISSION**

**49 CFR Part 1039**

[Ex Parte No. 346 (Sub-No. 31)]

**Rail General Exemption Authority—Exemption of Grease or Inedible Tallow**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is exempting from regulation the transportation by rail of grease or inedible tallow, etc. (STCC No. 20-143). These commodities are added to the list of exempt commodities in 49 CFR part 1039, as set forth below. This exemption does not embrace exemptions from regulation of car hire and car service.

On October 21, 1993, at 58 FR 54320, we requested comments on a proposal by the Association of American Railroads (AAR) to exempt from regulation the railroad transportation of grease or inedible tallow. The comments have been received and analyzed. We are approving AAR's proposal.

**EFFECTIVE DATE:** January 11, 1995.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 927-5660. [TDD for hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:** For further information, see the Commission's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229,

Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927-5721.]

We reaffirm our initial finding that the exemption will not significantly affect either the quality of the human environment or the conservation of energy resources.

We also reaffirm our initial finding that the exemption will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 49 CFR Part 1039**

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Decided: November 16, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons, Morgan, and Owen. Vice Chairman Phillips recused herself in this proceeding. Commissioner Owen did not participate in the disposition of this proceeding.  
Vernon A. Williams,  
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039 of the Code of Federal Regulations is amended as follows:

**PART 1039—EXEMPTIONS**

1. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10521 and 10505; and 5 U.S.C. 553.

2. In § 1039.11 the table in paragraph (a) is amended by adding the following new entry in the correct numerical order to STCC tariff 8001-V:

§ 1039.11 Miscellaneous commodities exemptions.

STCC No.	STCC tariff	Commodity
20-143	8001-V CR 1-1-94	Grease or inedible tallow.

20-143 ——— to ——— Grease or inedible tallow.

[FR Doc. 94-30470 Filed 12-9-94; 8:45 am]  
BILLING CODE 4910-02-P

**DEPARTMENT OF COMMERCE**

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 941236-4336; LD. 111894A]

RIN 0648-AM48

**Northeast Multispecies Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Emergency interim rule.

**SUMMARY:** NMFS, by emergency interim rule, amends the regulations implementing the Northeast Multispecies Fishery Management Plan (FMP). This emergency rule implements a simultaneous closure of redefined Closed Area I, the Nantucket Lightship Closed Area, and Closed Area II; a prohibition on scallop vessels in the closed areas; a disallowance of any fishery utilizing mesh smaller than the minimum mesh size allowed for regulated species, with the exception of fisheries that have been determined to have a catch of less than 5 percent by weight of regulated species; a prohibition on the possession of regulated species while fishing with small mesh; a requirement that all mobile gear vessels fishing in the Stellwagen Bank and Jeffreys Ledge areas, with the exception of mid-water trawl vessels, use 6-inch (15.24-cm) square mesh codends; and an increase in the minimum mesh size in the Southern New England and Nantucket Lightship Regulated Mesh Areas to 6-inch (15.24-cm) diamond or square mesh.

**EFFECTIVE DATE:** December 12, 1994, through March 12, 1995.

**ADDRESSES:** Copies of the Environmental Assessment (EA) supporting this action may be obtained from Jon C. Rittgers, Acting Regional Director, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Susan A. Murphy or E. Martin Jaffe, NMFS, Fishery Policy Analysts, at 508-381-8252 or 508-281-8272.

**SUPPLEMENTARY INFORMATION:** The New England Fishery Management Council (Council) submitted Amendment 5 to the FMP to NMFS on September 27, 1993. The Amendment contained provisions that the Council believed would eliminate the overfished condition of cod, yellowtail flounder, and haddock. Amendment 5 was

approved by NMFS on January 3, 1994. Most measures were implemented on March 1, 1994.

Meanwhile, NMFS issued an emergency rule, which was published in the Federal Register on January 3, 1994 (59 FR 26) and effective from January 3, 1994, through April 2, 1994, to protect the seriously depleted stocks of haddock. The emergency rule established a 500 lb (226.8 kg) possession limit for haddock; began the closure of an expanded Closed Area II on January 3, 1994, rather than February 1, 1994; and implemented several other measures to protect haddock. The final rule implementing Amendment 5 on March 1, 1994, permanently put into place several measures that were contained in the emergency rule. Other measures in the emergency rule that were not contained in the proposed rule for Amendment 5 were continued in effect by the final rule, and would have expired on April 2, 1994, as provided by the emergency rule, but for its extension through further rulemaking, effective through June 30, 1994. The final rule for Amendment 6 to the FMP (59 FR 32134, June 22, 1994) was made effective beginning June 30, 1994, and continued on a permanent basis three measures originally imposed by the January 3, 1994, emergency rule to protect depleted haddock stocks.

Amendment 5 allows for regulatory adjustments through the framework abbreviated rulemaking procedure codified in 50 CFR part 651, subpart C. Although four frameworks have been implemented (Frameworks 1, 3, 4, and 6), only Framework 3 and Framework 6 pertain directly to increased protection of multispecies. Framework Adjustment 3 (59 FR 36725, July 19, 1994) limited the amount of regulated species allowed on board vessels fishing with small mesh to either 500 lb (226.8 kg) or 10 percent of the weight of non-regulated species, whichever is less. Framework Adjustment 6 (59 FR 47815, September 19, 1994) increased the minimum mesh size from 2½ inches (6.35 cm) to 3 inches (7.62 cm) in the Cultivator Shoal whiting (silver hake) fishery. Two other framework adjustments, Framework Adjustment 2 and Framework Adjustment 5, were withdrawn and put on hold, respectively.

Following the Council's August 9-10, 1994, meeting, the Northeast Regional Stock Assessment Workshop (SAW) issued to the Council an unprecedented Special Advisory on Groundfish Status on Georges Bank along with its 18th Stock Assessment Report (SAW 18). The Advisory Report concluded that yellowtail flounder and haddock stocks have "collapsed" and warned that the

cod stock is in imminent danger of collapse, as well, unless the sharply declining trend in spawning stock biomass is halted. Hence the report advised that, for Georges Bank cod and yellowtail flounder, current fishing mortality rates would need to be reduced by 60 percent and 52 percent, respectively, just to achieve the maintenance level (i.e., the point at which stocks will cease, on average, to decline). The report advised that in order to avert a collapse of cod and improve the prospects of stock rebuilding for yellowtail, fishing mortality should be reduced to as low a level as possible, approaching zero.

For Georges Bank cod, SAW 18 concluded that the fishing mortality rate increased from 0.9 in 1978 to a record high of 0.91 in 1993, well over twice the definition of the overfishing level specified in the FMP. The spawning stock biomass continued to decline from more than 90,000 metric tons (mt) during the early 1980s to a record low of 37,200 mt in 1993. Projections for 1994 indicate that the spawning stock biomass will decline further to record low levels around 19,000 mt and that the landings for 1994 will be the lowest since the 1960s.

SAW 18 results on the status of Georges Bank yellowtail flounder concluded that fishing mortality rates are about twice the overfishing level as defined in the FMP. Further, the spawning stock biomass of 3,010 mt in 1993 has declined from a moderate level of 17,385 mt in 1982 and from an earlier high of 25,000 mt in 1973.

Similar grave reports came out of the last assessment for the Southern New England yellowtail flounder stock (Stock Assessment Workshop 17 (SAW 17)). Fishing mortality rates for this stock have been extremely high, reaching exploitation rates greater than 80 percent in recent years. In 1992, the exploitation rate was 84 percent, far exceeding the 35 percent exploitation rate associated with the overfishing definition. Spawning stock biomass declined 94 percent between 1989 and 1992, from 22,000 mt to 1,300 mt as the 1987 year class was removed from the spawning stock. Further, spawning stock biomass for 1993 has been projected to decline to 1,052 mt because year classes following the 1987 year class are weak. Recruitment in the last several years has been the lowest on record. Landings and spawning stock biomass for 1994 are projected to be less than 1,000 and 2,500 mt respectively, both well below average.

The most recent assessment of haddock (Stock Assessment Workshop 13 (SAW 13)) indicated that haddock

spawning stock biomass on Georges Bank has been reduced from 130,000 mt in 1963 to an estimated 10,000 mt at the beginning of 1993, significantly lower than the 180,000 mt required to provide an annual maximum sustainable yield of 47,000 mt. The haddock stocks on Georges Bank and the Gulf of Maine are at all-time low levels of abundance, and the 1993 landings were the lowest in recorded history. Amendment 6 to the FMP and its Environmental Assessment/Regulatory Impact Review addressed the need for immediate action to protect these stocks. The conservation measures for haddock implemented under Amendment 6 have likely reduced fishing mortality and have afforded some protection to the spawning stock and to new recruits. The stock is still in a collapsed condition, but the harvest rate is probably below the level at which the stock is simply maintained.

Amendment 5 was intended to eliminate overfishing of the primary multispecies stocks through incremental effort-reduction, mesh-size increase, and expanding spawning area closures, among other measures, over a 5- to 7-year period. When the Council adopted objectives for Amendment 5 more than 3 years ago, cod, haddock, and yellowtail flounder stocks were being fished at a rate that was, on average, twice what could be sustained over the long term, so a plan was designed to reduce fishing by half. However, during the development and implementation period of Amendment 5, fishing mortality rates increased and the downward trends in stock size and yields continued to accelerate. Given the new information presented at SAW 18, the recently imposed management measures in Amendment 5 are inadequate and will not achieve the reductions in fishing mortality rates needed to rebuild the multispecies stocks.

In response to these new, alarming assessments and advice, the Council has begun the development of an FMP amendment (Amendment 7) to implement the recommendations of SAWs 17 and 18 for severely depleted multispecies stocks, including Georges Bank yellowtail flounder, Southern New England yellowtail flounder, haddock, Georges Bank cod, and others, as needed. To this effect, a notice of intent to prepare a supplemental environmental impact statement for Amendment 7 and a request for comments was published in the Federal Register on October 27, 1994.

Although the development of Amendment 7 is moving forward quickly, it will likely take several

months for it to be completed and implemented, if approved. However, because the primary multispecies stocks have reached dangerously low levels, the Council and NMFS believe it is imperative that fishing effort on these stocks be curtailed as much as practicable on an immediate basis. The Council and NMFS are also concerned about displaced effort resulting from vessels re-directing their effort from Georges Bank multispecies stocks into other areas outside of Georges Bank and into other fisheries, creating even more competition for fewer and fewer fish. Further, more and more vessels probably will be displaced into the small-mesh fisheries where there is sometimes a high rate of juvenile and legal-size multispecies bycatch. Given this concern, on October 27, 1994, the Council voted to recommend that the Secretary of Commerce (Secretary) take emergency action to implement immediate protective measures to slow the stock decline as much as practicable and to address the consequent effort displacement.

Due to the very serious condition of the multispecies stocks and the need to begin addressing this crisis, NMFS believes that emergency action is warranted. These emergency measures build upon the existing provisions of Amendment 5 and are in no way a panacea for the multispecies fishery crises at hand. They are a set of initial measures addressing the immediate interim need to begin the process of curtailing fishing pressure on these stocks and addressing vessel displacement. The measures were selected among other options because they are relatively less controversial, as evidenced by the near unanimous support of the Council; the measures and the scope of their impacts can be relatively easily defined, given the emergency nature of this action and the need for a quick response, and the short timeframe available to implement emergency actions; and they are more narrowly focused and therefore more easily administered.

NMFS has, therefore, determined it necessary to implement the following measures in the multispecies fishery as an emergency action. The first measure closes Area I (as defined in the Council's proposed FAAS 7), Area II, and the Nantucket Lightship Closed Area immediately and simultaneously. Because these areas all have historically high concentrations of various multispecies, closing them will help slow the decline of the stocks through a reduction in fishing mortality. Also, Area II is being closed earlier than currently required, and simultaneously

with Area I and the Nantucket Lightship Area in order to protect against any effort displacement from one area to another while this measure is in effect.

The second measure prohibits scallop vessels from the closed areas. Scallopers have been known to catch significant amounts of yellowtail flounder, as well as other multispecies. There have also been reports that scallop dredge gear disturbs the bottom and disrupts spawning activity; therefore, this measure will also help rebuild multispecies stocks in these areas.

The third measure disallows any fishery utilizing mesh smaller than the minimum mesh size for regulated species, except for fisheries that have been determined to have a catch of less than 5 percent by weight of regulated species, and prohibits the possession of regulated species while fishing with small mesh. Current regulations limit possession of regulated species by vessels fishing with small mesh nets to the lesser of 10 percent of the total catch or 500 lb (226.8 kg). The Council is concerned about reports that this measure is being abused, resulting in increased mortality of juvenile multispecies stocks. Furthermore, recent anecdotal information indicates that there has been some perceivable recruitment in the Gulf of Maine haddock stock. This action will protect juvenile haddock, which if caught in a small-mesh fishery would have to be discarded.

Because fishing effort will likely shift to small-mesh fisheries as the result of this emergency action, prohibiting the possession of regulated species in all areas while fishing with small mesh will remove any incentive to target multispecies stocks. The Council proposed that no fishery using small-mesh nets be allowed that has not been verified to have a catch of less than five percent by weight of regulated species. . . . The Regional Director has determined that the purse seine and midwater trawl fisheries in all areas, the shrimp fishery in the Gulf of Maine/Georges Bank regulated mesh area, the sea scallop net fishery in the Mid-Atlantic regulated mesh area, and the butterfish, dogfish, herring, Atlantic mackerel, ocean pout, stump, shrimp, squid, summer flounder, whiting, and weakfish fisheries in the Southern New England and Mid-Atlantic regulated mesh areas meet this requirement. The Regional Director may close these or other fisheries, based on a determination that the catch of regulated species is 5 percent or more by weight, or may exempt a closed fishery, based on a determination that the catch of regulated species is less

than 5 percent by weight. Any such closure or exemption will be done through publication of a rule in the Federal Register.

The fourth measure requires all mobile gear vessels fishing in the Stellwagen Bank and Jeffreys Ledge areas, with the exception of midwater trawl vessels, to use 6-inch (15.24-cm) square-mesh codends. This restriction is already in place under Amendment 5 during the period March 1 through July 31, and applies to the last 140 bars of the codend and extension piece. To address several recent concerns raised by the fishing industry—namely, small boats do not have nets as long as 140 bars—the Council voted to adjust this requirement such that vessels greater than 45 ft (13.7 m) must have 160 bars of square mesh in the codend and extension piece, and vessels 45 ft (13.7 m) and under must have 50 bars of square mesh in the codend and extension piece. Although this adjustment to the current FMP has not been submitted to NMFS, it is the clear intent of the Council and is, therefore, reflected in this emergency action. Because square mesh allows for better escapement of juvenile cod as well as other roundfish, this measure is being extended to protect this known productive fishing ground; also, due to the area's close proximity to shore, this measure will serve as a protection against effort displacement. Further, protection is particularly warranted in light of recent research surveys by the Commonwealth of Massachusetts indicating the possibility that the 1993 year class of cod is better than expected in this general area. These new recruits will be very vulnerable to fishing in 1995 and this action has a high potential of protecting them.

The fifth and final measure requires that the minimum mesh size in southern New England, east of 72°30' W. lat., be set at 6-inch (15.24-cm) diamond or square, consistent with the mesh size requirement in the Gulf of Maine and Georges Bank areas. Increasing the minimum diamond mesh size will increase the escapement of cod and other roundfish, thereby providing additional protection for juvenile and sub-legal fish. Vessels fishing near the boundary of the current Georges Bank Regulated Mesh Area will be required to use the same mesh as those fishing inside the area. Also, this measure will help protect an important component of the Georges Bank cod stock that migrates through the Nantucket Shoals area and waters south of Martha's Vineyard during the winter.

Paragraph (a) of § 651.22 is temporarily suspended and paragraph

(c) of § 651.32 is temporarily added to ensure that cross-referencing between regulatory text temporarily added and regulatory text remaining unchanged in 50 CFR part 651 is accurate and meaningful.

#### Classification

NMFS has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, also finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide additional notice and opportunity for public comment, or to delay for 30 days the effective date of these emergency regulations, under the provisions of sections 553(b) and (d) of the Administrative Procedure Act. All of the measures have received some public comment during Council meetings and in connection with the development of Amendment 5 or proposed Amendment 7 to the FMP. Implementation of these emergency measures will provide much-needed immediate interim protection to declining multispecies stocks.

This emergency rule has been determined to be not significant for purposes of E.O. 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment. No analysis has been prepared.

#### List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 6, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

#### PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 651.9, paragraphs (a)(13), (e)(14) through (e)(27), (e)(28), (e)(29), and (e)(31) are temporarily suspended, and paragraphs (a)(15) and (e)(36) through (e)(51) are temporarily added, effective December 12, 1994, through March 12, 1995, to read as follows:

#### § 651.9 Prohibitions.

(a) \* \* \*

(15) Fish with, set, haul back, possess on board a vessel, unless stowed in accordance with § 651.20(c)(7), or fail to remove, a sink gillnet from the area and for the times specified in § 651.32(c), unless authorized in writing by the Regional Director.

(a) \* \* \*

(36) Fish with or possess within the areas described in § 651.20(a)(1) nets of mesh smaller than the minimum size specified in § 651.20(a)(6), unless the vessel is exempted under § 651.20(a)(7) or (9), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(37) Fish with or possess within the area described in § 651.20(b)(1), nets of mesh smaller than the minimum size specified in § 651.20(b)(3), unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(38) Fish with or possess within the area described in § 651.20(c)(1), nets of mesh smaller than the minimum size specified in § 651.20(c)(5), unless the vessel is exempted under § 651.20(c)(6), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(39) Fish with or possess within the areas described in § 651.20(d)(1), nets of mesh smaller than the minimum size specified in § 651.20(d)(4), unless the vessel is exempted under § 651.20(d)(5), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(40) Enter the area described in § 651.21(d)(1) on a fishing vessel, except as specified in § 651.21(d)(1)(ii).

(41) Fish with, set, haul back, have on board a fishing vessel, or fail to remove sink gillnet gear in or from the area specified in § 651.21(d)(1).

(42) Enter the area described in § 651.21(d)(2) on a fishing vessel, except as specified in § 651.21(d)(2)(ii).

(43) Enter the area described in § 651.21(d)(3) on a fishing vessel, except as provided in § 651.21(d)(3)(ii).

(44) Fish for, harvest, possess, or land in or from the EEZ northern shrimp, unless such shrimp were fished for or harvested by a vessel meeting the requirements specified in § 651.30(a)(7).

(45) Fail to comply with the requirements as specified in § 651.30(a)(8).

(46) Fish with, set, haul back, possess on board a vessel, unless stowed in accordance with § 651.30(c)(7), or fail to remove a sink gillnet from the EEZ portion of the areas and for the times

specified in § 651.32(c), unless authorized in writing by the Regional Director.

(47) Violate any of the provisions of § 651.20(a)(9).

(48) Possess or land fish within the area described in § 651.20(a)(1) while in possession of nets of mesh smaller than the minimum size specified in § 651.20(a)(6), unless the vessel is exempted under § 651.20(a)(7) or qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(49) Possess fish within or land fish from the area described in § 651.20(b)(1) while in possession of nets of mesh smaller than the minimum size specified in § 651.20(b)(3), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(50) Possess or land regulated species within the area described in § 651.20(c)(1), while in possession of nets of mesh smaller than the minimum size specified in § 651.20(c)(5), unless the vessel and the small mesh nets conform with the requirements of § 651.27(a), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

(51) Possess or land regulated species within the area described in § 651.20(d)(1), while in possession of nets of mesh smaller than the minimum size specified in § 651.20(d)(4), unless the vessel and the small mesh nets conform with the requirements of § 651.27(a), or unless the vessel qualifies for the exception specified in paragraph (e)(1)(ii) of this section.

3. In § 651.20, paragraphs (a)(2) through (a)(5), (b)(2), (c)(2) through (c)(4), (d)(2), (d)(3), (e)(1)(iv), (e)(2), and (f)(4) are temporarily suspended, and paragraphs (a)(6) through (a)(10), (b)(3), (c)(5) through (c)(8), (d)(4) through (d)(6), (e)(1)(v), (e)(1)(vi), (e)(3), (f)(5), and (f)(6) are temporarily added, effective December 12, 1994, through March 12, 1995, to read as follows:

§ 651.20 Regulated mesh areas and restrictions on gear and methods of fishing.

(a) \* \* \*

(6) Mesh-size restrictions. Except as provided in paragraphs (a)(7) through (a)(9), (e), and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine, or midwater trawl, on a vessel or used by a vessel fishing in the GOM/GB regulated mesh areas shall be 6 inches (15.24 cm) diamond or square mesh throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m)

x 3 ft (0.9 m) (9 ft<sup>2</sup> (0.81 m<sup>2</sup>)), or to vessels that have not been issued a Federal multispecies permit and that are fishing exclusively in state waters.

(7) *Northern shrimp exemption.* The Northern shrimp fishery has been found to meet the exemption qualification requirements specified in paragraph (a)(10) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (a)(6) of this section may fish for, harvest, possess, or land northern shrimp with nets of mesh smaller than the minimum size specified in paragraph (a)(6) of this section in the Northern Shrimp Exemption Area, if the vessel complies with the requirements specified in paragraphs (a)(7)(i) through (iii) of this section. The Northern Shrimp Exemption Area is defined by straight lines connecting the following points in the order stated:

**NORTHERN SHRIMP EXEMPTION AREA**

Point	Latitude	Longitude
SM1	41°35' N.	70°00' W.
SM2	41°35' N.	69°40' W.
SM3	42°49.5' N.	69°40' W.
SM4	43°12' N.	69°00' W.
SM5	43°41' N.	68°00' W.
G2	43°58' N.	67°22' W.

(the U.S.-Canada maritime boundary).

**NORTHERN SHRIMP EXEMPTION AREA—Continued**

Point	Latitude	Longitude
G1	(7)	(7)

1. Northward along the irregular U.S.-Canada maritime boundary to the shoreline.

(i) *Possession limit.* A vessel may not fish for, possess on board or land multispecies finfish.

(ii) *Finfish Excluder Device.* A vessel must have a properly configured and installed finfish excluder device in any net with mesh smaller than the minimum size specified in paragraph (a)(6) of this section. The finfish excluder device must be configured and installed consistent with the following specifications (see Figure 2 to part 651) for an example of a properly configured and installed finfish excluder device:

(A) A finfish excluder device is a rigid or semi-rigid grate consisting of parallel bars of not more than 7-inch (2.54-cm) spacing that excludes all fish and other objects, except those that are small enough to pass between its bars into the codend of the trawl.

(B) The finfish excluder device must be secured in the trawl, forward of the codend, in such a manner that it precludes the passage of fish or other objects into the codend without the fish or objects having first passed between the bars of the grate.

(C) A fish outlet or hole must be provided to allow fish or other objects that are too large to pass between the bars of the grate to pass out of the net. The aftermost edge of this outlet must be at least as wide as the grats at the point of attachment. The fish outlet must extend forward from the grate toward the mouth of the net.

(D) A funnel of net material is allowed in the lengthening piece of the net forward of the grate to direct catch towards the grate.

(iii) A vessel may only fish for or harvest northern shrimp during the northern shrimp season, as established by the Atlantic States Marine Fisheries Commission (ASMFC). The northern shrimp season is December 1 through May 30, or as modified by the ASMFC.

(8) *Stellwagen Bank/Jeffreys Ledge (SB/JL) juvenile protection area.* The minimum mesh size of all mobile net gear in the following area shall be 6 inches (15.24 cm) square mesh in the last 50 bars of the codend and extension piece for vessels 45 ft (13.7 m) and less, and in the last 100 bars of the codend and extension piece for vessels greater than 45 ft (13.7 m), except as provided for in paragraphs (e) and (f) of this section.

(i) The SB/JL juvenile protection area is defined by straight lines connecting the following points in the order stated:

**STELLWAGEN BANK JUVENILE PROTECTION AREA**

Point	Latitude	Longitude	Approximate Loran coordinates
SB1	42°34.0' N.	70°23.5' W.	13737 44295
SB2	42°28.8' N.	70°28.0' W.	13651 44295
SB3	42°18.8' N.	70°22.0' W.	13610 44200
SB4	42°05.5' N.	70°23.5' W.	13680 44135
SB5	42°11.0' N.	70°04.0' W.	13737 44185
SB1	42°34.0' N.	70°23.5' W.	13737 44295

**JEFFREYS LEDGE JUVENILE PROTECTION AREA**

Point	Latitude	Longitude	Approximate Loran Coordinates
JL1	43°12.7' N.	70°00.0' W.	13380 44445
JL2	43°09.9' N.	70°08.0' W.	13437 44445
JL3	42°57.0' N.	70°08.0' W.	13512 44384
JL4	42°52.0' N.	70°21.0' W.	13631 44384
JL5	42°41.5' N.	70°32.9' W.	13752 44352
JL6	42°34.0' N.	70°26.2' W.	13752 44300
JL7	42°55.2' N.	70°00.0' W.	13474 44362
JL1	43°12.7' N.	70°00.0' W.	13380 44445

(ii) Fishing for northern shrimp in the SB/JL juvenile protection area is allowed, subject to the requirements of paragraph (a)(7) of this section.

(8) *Transiting.* Vessels subject to the mesh requirements specified in paragraph (a)(6) of this section may transit through the Northern Shrimp Exemption Area defined in paragraph

(a)(7) of this section with nets on board with mesh smaller than the minimum size specified in paragraph (a)(6) of this section, provided that the nets are stowed in accordance with the



provisions of paragraph (c)(7) of this section, and provided the vessel has no fish on board.

(10) *Addition or deletion of exemptions.* The Regional Director may add exemptions if he/she makes a determination that the exempted fishery, gear, and/or area has a catch of less than 5 percent by weight of regulated species. The Regional Director may delete an existing exemption if he/she makes a determination that the catch of regulated species is greater than or equal to 5 percent by weight. Notification of additions or deletions will be made through publication of a rule in the Federal Register.

(b) \* \* \*

(3) *Mesh-size restriction.* Except as provided in paragraphs (e) and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl on a vessel or used by a vessel fishing in the Nantucket Lightship regulated mesh area shall be 6 inches (15.24 cm) square or diamond mesh throughout the net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) X 3 ft (0.9 m) (9 ft<sup>2</sup> (0.81 m<sup>2</sup>)).

(c) \* \* \*

(5) *Mesh-size restriction.* Except as provided in paragraphs (c)(6), (e), and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl in use, or available for use as described under paragraph (c)(7) of this section, by a vessel fishing in the Southern New England regulated mesh area, shall be 6 inches (15.24 cm) square or diamond mesh throughout the net. This restriction does not apply to vessels that have not been issued a Federal multispecies permit under § 651.4 and are fishing exclusively in state waters.

(6) *Exemptions.*

(i) *Fisheries exempt.* The butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, squid, summer flounder, whiting, and weakfish fisheries in the Southern New England regulated mesh area have been found to meet the exemption qualification requirements specified in paragraph (c)(8) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (c)(5) of this section may fish for, harvest, possess or land any of the above mentioned species with nets of mesh smaller than the minimum size specified in paragraph (c)(5) of this section in the Southern New England regulated mesh area, provided such vessels comply with the requirements specified in paragraph (c)(6)(ii) of this section.

(ii) *Possession and net storage requirements.* Vessels may possess

regulated species while in possession of nets with mesh less than the minimum size specified in paragraph (c)(5) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(7) of this section, and provided that regulated species were not harvested by nets of mesh size smaller than the minimum mesh size specified in paragraph (c)(5) of this section. Vessels may only fish for butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, *Loligo* squid, *Illex* squid, summer flounder, whiting and/or weakfish with nets of mesh smaller than the minimum size specified in paragraph (c)(5) of this section. Vessels fishing for these species may also possess and retain the following species as incidental take to these exempted fisheries: conger eels, scrobins, and black sea bass.

(7) *Net storage requirements.* Except as provided in paragraphs (c)(6) and (d)(5) of this section, a vessel holding a valid Federal multispecies permit under this part and fishing in the Southern New England or Mid-Atlantic regulated mesh areas may not have available for immediate use any net, or any piece of a net, not meeting the requirements specified in paragraphs (c)(5) and (d)(4) of this section; and a vessel holding a valid multispecies permit while in the areas and for the times specified under § 651.32(c), and any vessel while in the EEZ portion of the areas and for the times specified under § 651.32(c), may not have available for immediate use any sink gillnet gear. A net that conforms to one of the following specifications and that can be shown not to have been in recent use is considered to be not "available for immediate use":

(i) A net stowed below deck, provided:

(A) It is located below the main working deck from which the net is deployed and retrieved;

(B) The towing wires, including the leg wires, are detached from the net; and

(C) It is fan-folded (flaked) and bound around its circumference; or

(ii) A net stowed and lashed down on deck, provided:

(A) It is fan-folded (flaked) and bound around its circumference;

(B) It is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net; or

(iii) A net that is on a reel and is covered and secured, provided:

(A) The entire surface of the net is covered with canvas or other similar material that is securely bound;

(B) The towing wires, including the leg wires, are detached from the net; and

(C) The codend is removed from the net and stored below deck; or

(iv) Nets that are secured in a manner authorized in writing by the Regional Director.

(8) *Addition or deletion of exemptions.* The Regional Director may add exemptions if he/she makes a determination that the exempted fishery, gear, and/or area has a catch of less than 5 percent by weight of regulated species. The Regional Director may delete an existing exemption if he/she makes a determination that the catch of regulated species is greater than or equal to 5 percent by weight. Notification of additions or deletions will be made through publication of a rule in the Federal Register.

(d) \* \* \*

(4) *Mesh-size restrictions.* Except as provided in paragraphs (d)(5), (e), and (f) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine, or midwater trawl in use, or available for use as described under paragraph (c)(7) of this section, by a vessel fishing in the Mid-Atlantic regulated mesh area shall be that specified in the summer flounder regulations at § 625.24(a) of this chapter. This restriction does not apply to vessels that have not been issued a multispecies fishery permit under § 651.4 and are fishing exclusively in state waters.

(5) *Exemptions.* (i) *Fisheries.* The butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, squid, summer flounder, whiting, weakfish, and scallop fisheries in the Mid-Atlantic regulated mesh area have been found to meet the exemption qualification requirements specified in paragraph (d)(6) of this section. Therefore, vessels subject to the mesh restrictions specified in paragraph (d)(4) of this section may fish for, harvest, possess or land any of the above mentioned species with nets of mesh smaller than the minimum size specified in paragraph (d)(4) of this section in the Mid-Atlantic regulated mesh area, provided such vessels comply with the requirements specified in paragraph (d)(5)(ii) of this section.

(ii) *Possession and net storage requirements.* Vessels may possess regulated species while in possession of nets with mesh less than the minimum size specified in paragraph (d)(4) of this section, provided that the nets are stowed and are not available for immediate use in accordance with paragraph (c)(7) of this section, and provided that regulated species were not harvested by nets of mesh size smaller

than the minimum mesh size specified in paragraph (d)(4) of this section. Vessels may only possess butterfish, dogfish, herring, mackerel, ocean pout, scup, shrimp, *Loligo* squid, *Illex* squid, summer flounder, whiting and/or weakfish fisheries while fishing with nets of mesh smaller than the minimum size specified in paragraph (d)(4) of this section. Vessels fishing for these species may also possess and retain the following species as incidental take to these exempted fisheries: conger eels, searobins, and black sea bass.

(6) *Addition or deletion of exemptions:* The Regional Director may add exemptions if he/she makes a determination that the exempted fishery, gear, and/or area has a catch of less than 5 percent by weight of regulated species. The Regional Director may delete an existing exemption if he/she makes a determination that the catch of regulated species is greater than or equal to 5 percent by weight. Notification of additions or deletions will be made through publication of a rule in the Federal Register.

(e) . . .  
(1) . . .

(v) The vessel does not fish for, possess or land multispecies finfish.

(vi) The vessel only fishes for, possesses or lands Atlantic herring, blueback herring, mackerel, or squid in areas south of 42°20' N. latitude, and Atlantic herring, blueback herring or mackerel in areas north of 42°20' N. latitude.

(3) For the GOM/GB and IL/SB regulated mesh areas north of 42°20' N. lat., fishing for Atlantic herring or blueback herring and for mackerel may take place throughout the fishing year with midwater trawl gear of mesh size less than the regulated size, provided that the requirement of paragraphs (e)(1)(i) through (v) of this section are met.

(f) . . .

(5) The vessel does not fish for, possess, or land multispecies finfish.

(6) The vessel only fishes for, possesses, or lands Atlantic herring, blueback herring, mackerel, or menhaden.

4. In § 651.21, paragraphs (a), (b), and (c) are temporarily suspended, and paragraph (d) is temporarily added, effective December 12, 1994, through March 12, 1995, to read as follows:

§ 651.21 Closed areas.

(d) *Closed areas.* (1) *Closed Area I.* (i) No fishing vessel or person on a fishing

vessel may fish or be in the areas known as Closed Area I (Figure 5), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (d)(1)(ii) of this section:

Point	Latitude	Longitude
C11	41°30' N.	69°23' W.
C12	40°45' N.	68°45' W.
C13	40°45' N.	68°30' W.
C14	41°30' N.	68°30' W.; and
C11	41°30' N.	69°23' W.

(ii) Paragraph (d)(1)(i) of this section does not apply to persons on fishing vessels or fishing vessels fishing with or using pot gear designed and used to take lobsters, and which have no other gear on board capable of catching multispecies finfish.

(2) *Closed Area II.* (i) No fishing vessel or person on a fishing vessel may fish or be in the area known as Closed Area II (Figure 5), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (d)(2)(ii) of this section:

Point	Latitude	Longitude
C11	41°00' N.	67°20' W.
C12	41°00' N.	66°35.8' W.
B5	41°18.8' N.	66°24.8' W. (the U.S.- Canada Maritime Boundary)
C13	42°22' N.	67°20' W. (the U.S.- Canada Maritime Boundary); and
C11	41°00' N.	67°20' W.

(ii) Paragraph (d)(2)(i) of this section does not apply to persons on fishing vessels or fishing vessels:

(A) Fishing with or using pot gear designed and used to take lobsters, and which have no other gear on board capable of catching multispecies finfish;

(B) Soaking safe haven from storm conditions in waters adjacent to the western edge of the closed area. Such fishing vessels may transit through the closed area providing that:

(1) Gale, storm, or hurricane conditions are posted for the area by the National Weather Service;

(2) Such vessels do not fish in the area;

(3) Fishing gear is stowed in accordance with paragraph (c)(7) of § 651.20; and

(4) The vessel provides notice to a patrolling U.S. Coast Guard aircraft or vessel in the vicinity of Georges Bank by high frequency radio (2.182 KHz) of its

intention of transiting the closed area, the time and position when the vessel enters the area and the time and position when the vessel exits the closed area.

(3) *Nantucket Lightship Closed Area.* (i) No fishing vessel or person on a fishing vessel may fish or be in the area known as the Nantucket Lightship Closed Area (Figure 5), as defined by straight lines connecting the following points in the order stated, except as specified in paragraph (d)(3)(ii) of this section:

Point	Latitude	Longitude
B10	40°50' N.	69°00' W.
CN1	40°20' N.	69°00' W.
CN2	40°20' N.	70°20' W.
CN3	40°50' N.	70°20' W.; and
B10	40°50' N.	69°00' W.

(ii) Paragraph (d)(3)(i) of this section does not apply to persons on fishing vessels or fishing vessels:

(A) Fishing with or using pot gear designed and used to take lobsters, and which have no other gear on board capable of catching multispecies finfish;

(B) Fishing with or using dredge gear designed and used to take ocean quahogs or surf clams, and which have no other gear on board capable of catching multispecies finfish.

5. In § 651.22, paragraphs (d)(2)(i) and (d)(2)(ii) are temporarily suspended, and paragraphs (d)(2)(iv) and (d)(2)(v) are temporarily added, effective December 12, 1994, through March 12, 1995, to read as follows:

§ 651.22 Effort-control program for limited access vessels.

(d) . . .  
(2) . . .

(iv) A sink gillnet vessel greater than 45 ft (13.7 m) in length is exempt from the DAS effort reduction program of this part on all fishing trips during which the vessel fishes for multispecies exclusively with sink gillnet gear, and does not have other gear available for immediate use as described in § 651.20(c)(7), if the vessel owner or owner's authorized representative complies with monitoring requirements set forth in § 651.22(c), unless effort reduction measures are implemented pursuant to subpart C of this part.

(v) A sink gillnet vessel greater than 45 ft (13.7 m) in length that intends to fish for, possess or land, or does possess or land, more than the possession limit of regulated species as specified in § 651.27(a) with gear other than sink gillnet gear, or has other gear on board

that is not stowed as described in § 651.20(c)(7), at any time during a calendar year may fish under and shall be subject to the DAS effort reduction program of this part, except on trips that qualify for the exemption set forth in paragraph (d)(2)(iv) of this section.

6. In § 651.27, paragraphs (a) introductory text and (a)(1) through (a)(4) are temporarily suspended, and paragraphs (a)(5) and (a)(6) are temporarily added, effective December 12, 1994, through March 12, 1995, to read as follows:

**§ 651.27 Possession limits.**

(a) \* \* \*

(5) *Small-mesh possession restriction.* Unless otherwise restricted pursuant to § 651.20(a)(6), (b)(3), (e) or (f), vessels with Federal multispecies permits issued under this part and vessels in the EEZ that possess nets smaller than the minimum size specified in § 651.20 are prohibited from fishing for regulated species, and are prohibited from possessing on board or landing regulated species, unless said net is stowed in accordance with the provisions of § 651.20(c)(7).

(6) *Large-mesh possession restriction.* Vessels that are subject to minimum possession restrictions that are fishing with nets that conform to the minimum mesh size requirements specified in § 651.20 may possess and land up to 800 lb (226.8 kg) of regulated species subject to the requirements of paragraphs (a)(6)(i) through (iii) of this section, provided that the regulated species were not harvested by nets of mesh size smaller than the minimum size specified in § 651.20.

(i) Vessels subject to the large-mesh possession restriction shall have on

board the vessel at least one standard box or one standard tote.

(ii) The regulated species stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the regulated species in a standard box or standard tote if requested by an authorized officer.

(iii) The maximum possession limit of regulated species, as specified in paragraph (a)(6) of this section, is equal to 500 lb (226.8 kg) or its equivalent as measured by the volume of four standard boxes or five standard totes.

7. In § 651.32, paragraph (a) is temporarily suspended, and paragraph (c) is temporarily added, effective December 12, 1994, through March 12, 1995, to read as follows:

**§ 651.32 Sink gillnet requirements to reduce harbor porpoise takes.**

(c) *General.* (1) In addition to the measures specified in §§ 651.20 and 651.21, persons owning or operating vessels using, possessing on board a vessel (unless stowed in accordance with § 651.20(c)(7)), or fishing with sink gillnet gear are subject to the restrictions in paragraph (c)(2) of this section, unless otherwise authorized in writing by the Regional Director:

(2) *Areas closed to sink gillnets.* (i) All persons owning or operating vessels must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with, or possess on board a vessel (unless stowed in accordance with § 651.20(c)(7)), a sink gillnet in the EEZ portion of the areas and for the times specified in paragraph (c)(2)(ii) of this section; and all persons owning or operating vessels issued a Federal

multispecies limited access permit must remove all of their sink gillnet gear from, and may not use, set, haul back, fish with or possess on board a vessel (unless stowed in accordance with § 651.20(c)(7)), a sink gillnet in the entire area at the times specified in paragraph (c)(2)(ii) of this section.

(ii) *Massachusetts Bay Closure Area.* During the period March 1 through March 30 of each fishing year, the restrictions and requirements specified in paragraph (c)(2)(i) of this section shall apply to an area known as the Massachusetts Bay Closure Area, which is an area bounded by straight lines connecting the following points in the order stated (see Figure 4 of this part).

**MASSACHUSETTS BAY CLOSURE AREA**

Point	Latitude	Longitude
MB1	42°30' N.	Massachusetts shoreline
MB2	42°30' N.	70°30' W.
MB3	42°12' N.	70°30' W.
MB4	42°12' N.	70°00' W.
MB5	Cape Cod shoreline	70°00' W.
MB6	42°00' N.	Cape Cod shoreline
MB7	42°00' N.	Massachusetts shoreline

Figure 3 to Part 651 (Temporarily Suspended)

8. Figure 3 to part 651 is temporarily suspended effective December 12, 1994, through March 12, 1995, and Figure 5 is temporarily added effective December 12, 1994, through March 12, 1995, to read as follows:

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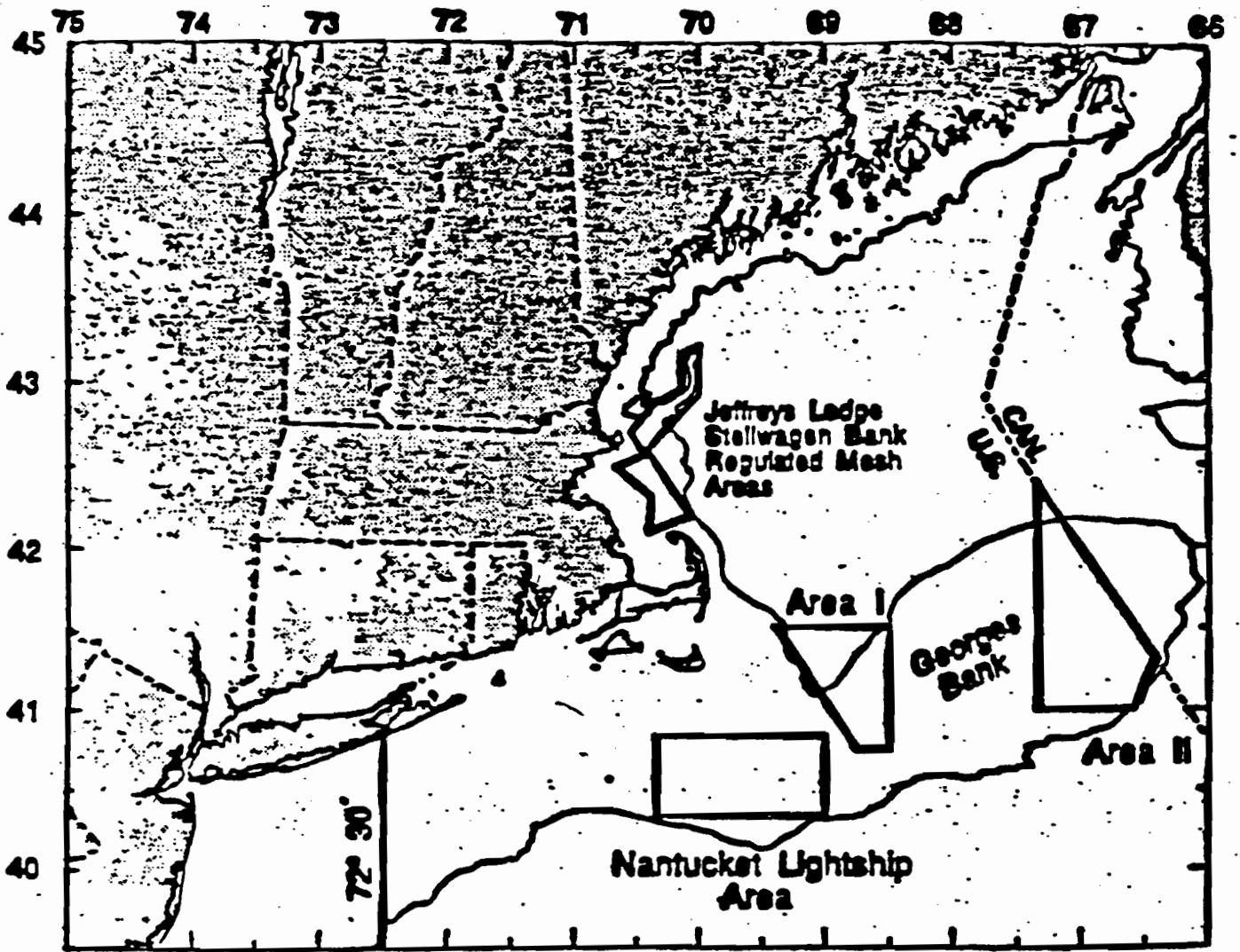


Figure 5 to 50 CFR part 651--Closed areas

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