

FRAMEWORK ADJUSTMENT #1

to the

NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

**Implementation of the effort-reduction program
on a full-year basis**

Prepared by

New England Fishery Management Council

in consultation with

National Marine Fisheries Service

Mid-Atlantic Fishery Management Council

First Framework meeting:	February 16, 1994
Second Framework meeting:	April 7, 1994
Submitted by NEFMC:	April 14, 1994
Action by NMFS:	

1.0	INTRODUCTION	2
2.0	PURPOSE AND NEED	3
2.1	Need for adjustment	3
2.2	Need for final rule	4
2.2.1	Timing of the rule	4
2.2.2	Opportunity for public comment	4
2.2.3	Need for immediate resource protection	5
2.2.4	Continuing evaluation	5
3.0	COUNCIL RECOMMENDATION FOR ACTION	5
3.1	Objectives	5
3.2	Proposed action	5
3.3	Rationale	6
4.0	APPLICABLE LAW- ANALYSIS OF IMPACTS	6
4.1	Magnuson Act- Consistency with National Standards	6
4.2	National Environmental Policy Act (NEPA)	6
4.3	Regulatory Impact Review (Regulatory Flexibility Act and Executive Order 12866)	6
4.4	Endangered Species Act	6
4.5	Coastal Zone Management Act (CZMA)	6
4.6	Paperwork Reduction Act (PRA)	6
5.0	PUBLIC COMMENTS AND RESPONSE	7
APPENDICES		
APPENDIX I	Comments received under framework action .	

**FRAMEWORK ADJUSTMENT
MULTISPECIES FMP**

**Implementation of the effort-reduction program
on a full-year basis in year one**

1.0 INTRODUCTION

The New England Fishery Management Council submitted Amendment #5 to the National Marine Fisheries Service on September 27, 1993 after spending more than two years on its development. The primary purpose of the amendment is to eliminate the overfished condition of the primary stocks of the multispecies complex through an effort-reduction program. The effort reduction program consists of annual reductions in the numbers of days vessels are allowed to fish for groundfish. Vessels have a choice whether to fish under an individual allocation of days at sea based on each vessel's history of fishing for groundfish, or to fish under the fleet-days-at-sea option wherein vessels must declare blocks of time out of the fishery and layover in port for a period proportional to the time fishing for groundfish.

NMFS published the proposed rule for Amendment #5 on October 27, 1993, and informed the Council on January 3, 1994 that the Secretary of Commerce had approved the amendment. In the approval letter, the Regional Director indicated that the expected implementation date for the amendment was to be March 1. The Council immediately realized that the implementation of this comprehensive amendment would require NMFS' starting a number of new administrative programs. The Council acknowledged the procedural and administrative difficulties and stated that it wanted NMFS to implement the effort-reduction program only when the agency was ready. The Council also reaffirmed its intent that the plan be implemented on a full-year basis rather than on a part-year basis for the first year and initiated this action on February 16 to adjust the rule.

The final rule implementing the amendment was published on March 1. Some of the measures in the amendment became effective that date, but other parts, including the effort reduction program, were delayed until May 1. The effect of this delay is that the first-year's effort reduction requirements are compressed into eight months for part of the fleet while another part will be subject to little, if any, effort reduction during this time.

While the Council was deliberating the implementation of the groundfish effort-reduction program, it considered the same issues with regards to the implementation of Amendment #4 to the Atlantic Sea Scallop FMP. The scallop amendment had been approved earlier, but was also scheduled take effect on March 1. The Council has

already submitted a framework adjustment to the scallop plan implementing the effort-reduction on annual basis rather than a part-year basis in the first year.

Many of the issues of the implementation of the two plans are the same, although the problem with not implementing the first year groundfish restrictions on an annual basis is complicated by the two different effort reduction options (one allocating days in the fishery and the other allocating required time out of the fishery). With this action, the Council proposes to correct the regulations to reflect its original intent and to eliminate the problems associated with a part-year implementation as discussed below. Failure to make this adjustment will compromise the conservation benefits of the effort reduction program for one segment of the industry and disproportionately add to the first-year effort reduction requirements of the other.

2.0 PURPOSE AND NEED

2.1 Need for adjustment

When the Council embarked on development of Amendment #5, groundfish stocks were overfished and the prospects were dim for improvement without the effort reduction program. Since that time, the condition of the stocks has deteriorated to the point where NMFS, with Council support, implemented emergency regulations to protect haddock. Each new assessment of groundfish stocks underlines the urgency of implementing rigorous and effective management measures.

The Council designed the management program using on annual incremental reductions in fishing effort. The result of implementing the effort-reduction program for less than a full year in the first year is that vessels fishing under the individual allocation option will have their annual allocation compressed into eight months while vessels under the fleet-days-at-sea will be required to meet the annual time-out requirement over eight months instead of the full year. Since the vessels in the individual days-at-sea category generally choose to be in that group because of their higher allocation of opportunity than under the fleet group, the conservation benefits of the first-year's reductions in allocation will be negated if the same allocation is distributed over only eight months instead of twelve.

For example, if a vessel's baseline allocation is 250 days, its first year allocation would be 225 days, a ten percent reduction. If allowed to take the same allocation over eight months, the vessel probably would not have to reduce its effort at all and possibly could increase its effort.

On the other hand, vessels in the fleet days-at-sea category will be disproportionately burdened if they are required to declare the same amount of time out of groundfishing over eight months that they would have to take over twelve months

had the plan been implemented on an annual basis. Many of the vessels in this category ordinarily would meet their time-out requirement during the first few months of the year when the weather limits fishing opportunity or when they are in other fisheries such as northern shrimp.

A further need for the proposed adjustment arises from the plan requirement that all vessels declare one twenty-day block out of groundfishing during the spawning months, March, April and May. Since NMFS decided to implement the effort reduction program on May 1, the requirement for all vessels has been compressed into the month of May for the first year. As a result, at least two-thirds of the fleet will be out of groundfishing at the same time. Many fishermen are unable to plan how to best use their time and resources during the required period out of groundfishing given the relatively short notice, and the sudden loss of 2/3 of the domestic supply of groundfish will have uncertain impacts on the processing sector and the market. Finally, the Council views the selection of May 1, as arbitrary, and argues that had NMFS implemented the effort reduction program on another date, fifteen days earlier or later, for example, the impact could be significantly different.

2.2 Need for final rule

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

2.2.1 Timing of the rule

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

If a final rule is not published before May 1, however, two thirds of the groundfish fleet will be out of the fishery at the same time. The Council always intended and did consider that the first year of the effort reduction program be for a full year. If the first year of the program is compressed into the eight months as a result of taking no action, all vessels would be required to take a twenty-day block out of groundfishing during May, 1994, instead of during the three spring months as originally intended. Since the Council never planned for this type of implementation, it did not analyze the economic impacts of an immediate, short-term reduction in fishing effort by two-thirds but it expects the impacts, especially on the market, to be negative and significant. The Council also feels that there would be no lasting conservation benefits of such a short-term reduction in effort.

2.2.2 Opportunity for public comment

The Council and its Groundfish Committee discussed the issue of the part-year implementation of the effort reduction program at the following meetings after NMFS' announcement of the implementation schedule:

January 12-13	Council- discussion of part-year implementation of groundfish and sea scallop amendments;
February 2-3	Groundfish Committee- recommendation to Council;
February 16-17	Council- initiated framework action;
February 24	Groundfish Committee- considered short-term adjustment to 20-day block in May;
March 17	Council- reaffirmed urgency of proposed framework action;
April 6-7	Council- adoption of recommendation.

The issue of Amendment #5 implementation was on the agenda for each of these meetings. The public is notified of all Council meetings by publication of a notice in the *Federal Register* and the agenda is mailed to approximately 1,500 interested parties including local and trade publications and industry associations. The public is informed of Groundfish Committee meetings by a letter to about 500 interested parties, also including the press and industry associations.

2.2.3 Need for immediate resource protection

The need for immediate resource protection is clearly stated in Amendment #5 and has been restated on numerous occasions by the Council and NMFS. Emergency rules are currently in effect to protect haddock stocks. The proposed adjustment is also described in Section 2.1 of this document.

2.2.4 Continuing evaluation

The Council will continue to evaluate and monitor the implementation of Amendment #5, and may make further adjustments as needed through the framework system.

3.0 COUNCIL RECOMMENDATION FOR ACTION

3.1 Objectives

The Council's objective with the proposed action is to implement the effort-reduction on an annual basis as was its original intent.

3.2 Proposed action

The Council proposes to adjust the rule implementing the effort reduction program so that each allocation of days at sea (individual or fleet) is done on a 365-day program year beginning with the first year of the plan.

3.3 Rationale

The rationale for the proposed action is to address the issues identified in Section 2.1, Purpose and Need.

4.0 APPLICABLE LAW- ANALYSIS OF IMPACTS

4.1 Magnuson Act- Consistency with National Standards

See pages 52-57 of Amendment #5 to the Northeast Multispecies FMP, Volume I, for a summary of the Council's determination of consistency with the national standards.

4.2 National Environmental Policy Act (NEPA)

The Final Supplemental Environmental Impact Statement (FSEIS) for Amendment #5 contains a complete analysis of the impacts of the proposed action. The adjustment to the rules being proposed here is simply to implement the original plan and to rectify a situation created by the timing of the publication of the final rule on March 1 and the implementation on May 1 of the effort reduction program. The impact of taking no-action is discussed in Section 2.1 of this document, Purpose and Need.

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

See Sections 8.2 and 8.3, Volume IV of Amendment #5 to the Northeast Multispecies FMP.

4.4 Endangered Species Act

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

4.5 Coastal Zone Management Act (CZMA)

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

4.6 Paperwork Reduction Act (PRA)

Copies of the PRA analysis for Amendment #5 to the Northeast Multispecies FMP are available from NMFS Regional Office. The burden-hour estimates are detailed in the

Classification section of the *Federal Register* notice of the final rule implementing the amendment (*Federal Register*, vol. 59, no. 40, p. 9885, March 1, 1994).

5.0 PUBLIC COMMENTS AND RESPONSE

The Council initiated this framework action in response to a number of comments made by individuals or industry association representatives after the amendment had been approved and the implementation target was announced. In response to comments made at both the January 12-13 Council meeting and February 2-3 Groundfish Committee meeting, the Council initiated this action at the February 16-17 meeting.

At the February 24 Groundfish Committee meeting became concerned that the proposed framework action might not be implemented before May 1 with the result that all vessels would be required to take twenty days out of groundfishing in May. The committee recommended that the Council consider a narrower framework action to adjust the May 1994 time-out requirement. On March 17, the Council convened off their regular schedule to address several issues with other FMPs at which time it heard the committee's recommendation on the narrower framework.

In response to public comment and discussions with the Regional Director at the March 17 meeting, the Council decided to move forward with the initial, more comprehensive framework and not to proceed with the committee's recommendation to deal only with the requirement to take twenty days out of the fishery in May, 1994. A transcript of the public comments at that meeting relevant to this action are contained in Appendix I.

The April 6-7 Council meeting was the one originally identified as the second meeting under the framework action. At that meeting one individual submitted additional comments supporting the Council's proposed action (see Appendix I). The Seafood Harvester's Association of New York, in a letter on a separate issue, requested the Council to address the issue of requiring all vessels to take twenty days out of the fishery in May since many vessels in that association had already lost a significant amount of fishing time in March and April due to bad weather. The Provincetown Draggermen's Association submitted a petition with sixteen signatures to the Regional Director, which was forwarded to the Council, urging him to take action similar to that which the Council is taking with this action.

The Council heard no negative comments on this action, only comments in support of it and urging expeditiousness in implementation.

APPENDIX I

Public comments under Framework Action #1

**Framework adjustment #1
Implementation schedule**

**4/12/94
Multispecies FMP**

Public Comments

The following is a verbatim excerpts from the March 17, 1994 Council meeting containing public comment on the implementation of the groundfish effort-reduction program.

Mr. Roe (Regional Director): I think NMFS will support the 365-day process, because we do not have any better ideas either. I thought that at the February meeting you took a position that was the way to deal with the issue which meant that the February meeting was the first meeting of the abbreviated rule making process.

Barbara Stevenson, Maine fishing boat owner: I support Mr. Roe. I don't quite understand what the issues are that you need to address if you go with the 365 day year. Everyone that I know in the industry assumed that whenever it started, it started for 365 days. I see major problems so that is one option. To me your fall-back position is to say, we met? a 20-day block between March and the end of May. It is not our fault. Listen to Mr. Roe. Our fall-back position is this part of the plan will not start until January 1, next year, if you insist on a January 1 start for the year. Those two positions make sense. These are things the industry can deal with. They make sense in the sense that you want 20 days out. What are you going to do with the other 10 days if you take 10 days out. I see major problems if you only go with this one part of it. Are we going to have 10 days out every year from now on. It adds confusion and we have had enough confusion. We need something that is simple and straight forward and we can understand. I have two boats and if you go with the 365 day year plan, I already plan to have one in the shipyard in May this year. Yes, there are people who are planning to take it out this year. I need to plan. I need to have some idea 10 days out and heaven only knows what will happen to the other 10 days. And heaven only knows what you will do next year. I say, support Mr. Roe's position and support your own Council's position that you want 365 day year and tell NMFS that if they can't do this then here is your fall back-- nothing this year and start January 1, 1995.

Mr. Brancaleone: Then if NMFS tells you to take 20 days in May, you would take this.

Ms. Stevenson: I said that if you do a 365-day year I am planning on having one of my boats taking the 20 days this year rather than waiting until next year. I am saying that just because they say there are procedural problems you take your position and let them deal with their own internal procedural problems.

William Amaru: I don't know exactly how to say this gracefully, but I think the people in the audience feel that this is an issue that the Council should have a grasp of and I am rather disappointed that as Mr. Allen says, there seems to be a lack of

unity or leadership or focus, I guess. We thought that we were coming in to discuss elements that would impact on the conservation of the species and instead we are talking about an issue of what seems to be almost clerical in nature. We would like you to consider the aspect of the fish. It was said a moment ago that something was wanted that was workable for the Council, NMFS and the fishermen. I ask that you include the fish in that as well. Understanding the technical aspects that exist for implementation of the rules and laws, please remember that as community of fishermen we need to have the fish stocks returned to something close to a healthy stock again. Underlying everything that goes down, please try to remember that the fish stocks are ultimately what we are trying to see preserved. I know that leads down the line towards implementing as much of a block as you can. If we could see some unity under the context of conservation mentioned in the idea of the plan. As far as I am concerned, it started March 1 and I thought that was what the whole deal was about. You could take a stand at this point and say, "well its time to start calling the shots in a way that will preserve the fish. That ultimately will help the fish buyers and help the fishermen and will help the Council, because we will have something positive to come in here to talk about.

Robert Tetreault : I am speaking in support of Mr. Roe. He has proposed an avenue and you have to admit that there is a mistake in it. Let's fix it and go to an annual thing. All your other problems will go away. I won't speak to the technical things because I am surprised that everything did not take place on March 1. I had a boat in on March 1, getting ready for six inch mesh. Well, it won't happen again. Jim McCauley is absolutely correct—what will happen if this goes through is everyone in the fleet will wait until the 21st with the hopes that some political power will come in to intercede. The problem that would happen if you didn't, will happen anyway because the only way I am coming back to the dock on the 22 is if you go out and bring me in. That probably wouldn't happen. If you did, you would have the interruption you are talking about with no groundfish in the market place for the last ten days of that month. Lack of notice is the basic problem. Give me enough time and I will adapt to anything, but don't try to push it on my in 20 or 30 days. I am one of the few that came down here to the Groundfish Committee meeting in February. Mr. Odlin told me about having 6 inch mesh on March 1. That's not so. They think they did, but they didn't. Those of us who were conscientious about it and tried to comply were sitting at the dock while the other people were fishing. We found out about it on the 2nd by the radio and officially on the 3rd. Mr. McCauley is absolutely right, no one is going to do anything. Please consider what Mr. McCauley said and what Mr. Roe said.

February 12, 1994

Mr. Richard Roe
N.M.F.S. Northeast Region
One Blackburn Drive
Gloucester, MA 01930

Dear Mr. Roe,

Endurance is a quality that all fishermen share. As March 1 bears down on the smaller boat fleets of Cape Cod, we are being forced to comply with the new effort reduction package. The vast majority of the watermen here have suffered immensely this winter due to the severe cold and harbor freezings. Provincetown harbor has been jammed with ice since January 15; thus, the harbor has virtually been unable to transit safely.

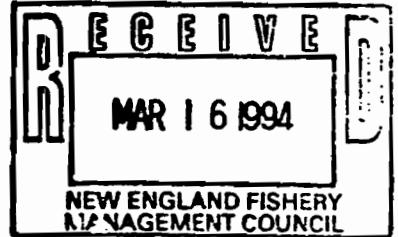
Ninety percent of the dragger fleet in Provincetown consists of boats less than 65 feet. Most are older boats which traditionally are forced to tie-up during January and February due to the severe weather. For these boats, most of which will participate in the fleet DAS multispecies program, this would be the most logical time to utilize at least half of our 20 day blocks. However, the Amendment V effort reduction package which goes into effect on March 1 is requiring us to reduce our fishing effort by 80 days over a 10 month period in 1994 as opposed to a 12 month period in 1995. Not having the option to take some of our twenty day blocks during January and February is placing even more burden on this small harbor community now clinging for survival within the fishing industry.

The undersigned are requesting that you take action immediately on this matter. We would like the option to take at least two of our twenty day blocks for 1994 in January and February. If we are not able to do this, we feel that you are asking more of the vessels participating in the fleet DAS program than the individual DAS program. Vessels participating in the individual DAS are allotted a specific number of days over a 10 month period in 1994 and the same number of days over a twelve month period in 1995.

Your immediate attention to this matter is of grave importance to the boats participating in the fleet DAS program. With your help we may be able to endure this initial year of effort reduction within our means.

Sincerely,

Provincetown Draggermen's Association



- Christopher W. King F/V Seund Effort
- ~~Don Quits~~ F/V Richard & Arnold
- ~~Joe James~~ F/V NAUSET
- ~~Samuel R. Macara~~ F/V Ruthy J.
- Isaac da Bomba F/V LITTLE NATALIA
- Michael Silva F/V JOAN TOWN
- Christopher K. Sotima F/V PAT-SEA
- ~~Phil Chas CHAR~~ F/V Amyard
- ~~Henry J. S...~~ F/V Charlotte G
- June da Bomba F/V GALE WINDS
- ~~John T. Valgusa~~ F/V GALE
- ~~Tony Jackett~~ F/V Josephine G
- ~~Francis or Barbara~~ F/V PAUL C-MARC
- - - - - F/V SILVER MINK

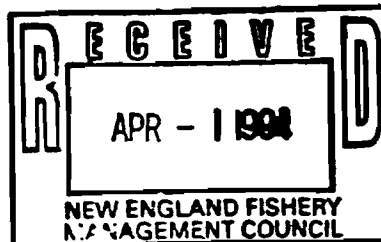
P.O. Box 259
PROVINCETOWN, MA 02657

MAR 16 1994

SEAFOOD HARVESTERS ASSOCIATION OF NEW YORK
P. O. Box 428
Greenport, New York 11944

9 March 1994

New England Council
Suntaug Office Park
Saugus, Massachusetts 01908



Gentlemen:

We urge the Council to allow an exemption in New York state waters for the winter flounder fishery. This would allow fishermen to abide by state laws in state waters. Extensive work sessions between the commercial fishermen and the NYS DEC have resulted in plans for 1994 and 1995 which meet the requirements of the ASMFC. New York's inshore stock of winter flounder mature at an age of 2 to 3 years and length of 8 to 10 inches (Cornell Cooperative Extension, all data from NMFS 1979-1989).

Current state regulations require a 4 1/2" mesh and 11" winter flounder for 1994 increasing to 5" nominal mesh and 12" winter flounder in 1995. Both these meshes will allow more than 50% of undersized fish to escape and allow 50 to 80% of mature fish to escape (NOAA Technical Report, NMFS 75, March 1989 - Cod End Selection of Winter Flounder in Long Island Sound). The 5 1/2" cod end requirement that was implemented on March 1, 1994 has already resulted in a 60% to 80% reduction in catches for inshore boats in New York State waters.

The Seafood Harvesters Association of New York agrees with the Fisherman's Dock Cooperative, Incorporated in Pt. Pleasant Beach, New Jersey, that "Those boats in the inshore mixed trawl fishery should be managed separately from the offshore boats especially in the Mid-Atlantic region, with separate gear requirements for those vessels in State waters."

Amendment 5 has been designed to "eliminate overfished conditions of the principal ground fish stocks (cod, haddock and yellowtail flounder) by reducing fishing mortality by 50% over the next five to seven years." Winter flounder has been added to the plan. The studies done on the principal groundfish stocks by NOAA in the Gulf of Maine and Southern New England areas do not take into account the fish stocks in the Mid-Atlantic area, particularly the inshore winter flounder stocks in state waters. The effort reduction developed in New York will reduce winter flounder mortality by 45% in 1995 - a faster rate than Multi-Species Amendment 5.

* We also request that the New England Council allow states to keep track of groundfish "days out of the fishery" in March or April 1994. Due to the severe weather conditions this

* winter, most of the small and medium size boats have not been able to fish in January and February. Many have been iced into their berths for 30 to 40 days depending on the port. To force boats not to fish in May would be an economic disaster for these inshore boats.

The 72 degree 30 minute line separating 5 1/2' bag from 5 1/2' net has nothing to do with groundfish. That line was established to exempt fishermen from using a 5 1/2' bag (75 meshes) in the fluke fishery during certain seasons. We suggest that the line separating 5 1/2' bag from 5 1/2' net be moved east to the 71 degree 00 minute line to separate the Mid-Atlantic from the Southern New England areas in order to more closely agree with the ASMFC established boundary between winter flounder stock units.

Sincerely,



Robert Hamilton
Board of Directors
Seafood Harvesters Association of New York

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

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

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

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

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

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

Sincerely,

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

FM/pm