

FRAMEWORK ADJUSTMENT 24

to the

NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

**To modify the Gulf of Maine cod trip limit system,
to allow vessels to carryover 10 days-at-sea to a following year, and
to provide exemptions for vessels fishing in the NAFO Regulated Area**

incorporating an Environmental Assessment

Prepared by

New England Fishery Management Council

in consultation with

National Marine Fisheries Service

Mid-Atlantic Council

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1. INTRODUCTION

1.1 Executive Summary

The New England Fishery Management Council (Council) proposes three adjustments to the Multispecies Fishery Management Plan. The three adjustments are summarized below and discussed in greater detail in Section 3.1:

- vessels fishing under the Gulf of Maine (GOM) cod trip limit will be required to call either the cod hail line or days-at-sea (DAS) line at least once every 14 days, whichever is appropriate; if a vessel calls the cod hail line (because its landings exceed the trip limit), it must remain in port until sufficient time has elapsed to account for the overage, although a transit provision is included to allow vessels, otherwise required to remain in port, to shift to other ports; the boundary line for the trip limit exemption program is shifted from 42°00' to 42°20' east of 69°30';
- a vessel that has not used its full DAS allotment would be allowed to carryover a maximum of 10 DAS to the following fishing year;
- the requirement to have a Multispecies permit to possess or land species managed under this FMP is waived for vessels fishing for those species in the NAFO (Northwest Atlantic Fisheries Organization) Regulated Area and returning to the U.S. to land the catch; other exemptions for fishing in the NAFO area include exceptions to the DAS program, minimum mesh size and any trip or possession limits; vessels will be required to inform NMFS of their departure to and return from the NAFO area and comply with all NAFO regulations.

The Council expects that these measures will improve the effectiveness of the cod trip limit in the GOM, promote safety, and provide flexibility and opportunity to vessels affected by the groundfish stock-rebuilding program. The Council feels that these adjustments are consistent with the national standards set forth in the Magnuson-Stevens Act, particularly those relating to preventing overfishing, promoting efficiency, accounting for variations among and contingencies in fisheries, minimizing costs, minimizing bycatch mortality, and promoting safety.

Based on an Environmental Assessment, the Council recommends the finding of no significant impact on the environment under the National Environmental Policy Act (NEPA). In the Regulatory Impact Review, the Council has also determined that the proposed action will not have a significant impact on a substantial number of small entities (Executive Order 12866 and the Regulatory Flexibility Act). The measures contain two new collection-of-information requirements which will be analyzed and submitted to the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act (PRA). The measures are consistent with the coastal zone management programs of affected states, and will not have an impact on marine mammals or other protected species.

The Council will continue to monitor the rebuilding plan to insure that its goals are met each year; the review and analysis of measures implemented under Framework 20 will occur this Fall. The most recent stock assessment indicated that while Amendments 5 and 7 are having a measurable and positive impact

on stopping overfishing and rebuilding the resource, the GOM cod stock is still severely overfished. The Council emphasizes the urgency of having the GOM trip limit working as effectively as possible, as soon as possible. Failure to do so would send the stock into further decline and cause the Council to impose additional restrictions in order to stop the overfishing and rebuild the stock.

1.2 Background

1.2.1 Trip limit adjustments

As part of the first annual plan review and adjustment process established in Amendment 7, the Multispecies Monitoring Committee recommended that the Council take steps to significantly reduce effort on GOM cod in order to meet the plan objectives in 1997. In response, the Council submitted Framework 20, implementing a trip limit on cod in the GOM, in early February to be effective at the May 1 start of the 1997 fishing year.

While trip limits have been used in the past, the proposed GOM cod limit contained an innovative approach to minimizing discards: allow vessels to land overages and require the DAS clock to continue to run until sufficient time passed to account for the cod landings at the rate set by the trip limit. Recognizing that the trip limit was controversial, the Council included a provision that the trip limit rules would expire after one year unless, upon technical and public review, it explicitly continued them.

The resulting regulations contained a loophole that threatened the integrity of the entire trip limit measure by allowing vessels to easily and legally violate the spirit of the plan. During the initial weeks under the trip limit, the Council received reports from fishermen and industry representatives that some fishermen were directing effort on GOM cod and then, while their DAS clock continued to run to account for the excess cod catch, were returning to fish for other regulated species. The Council sought supporting information from all sources, including NMFS, the Coast Guard and the industry. While widespread abuse was not evident from the available information, the Council continued to hear about the practice.

Consequently, the Council decided that the potential for circumvention of its intent was enough to warrant immediate action. It was concerned that GOM cod effort might not be reduced as originally planned and that the stock would continue to decline. This situation would require the Council, during its annual review, to impose additional restrictions that potentially would affect a broader range of fisheries. The Council also felt a fair assessment of the trip limit in the upcoming annual review could only be possible if the rules were corrected to reflect its original design, and that the correction occur at the earliest possible time.

The Advisory Report for the 24th Stock Assessment Workshop (SAW 24), presented to the Council in July, bolstered the Council's sense of urgency by recommending that directed fishing effort on GOM cod be practically eliminated. According to the report, fishing mortality rate in 1996 ($F=1.04$) remained well above the plan objectives ($F_{\max} = 0.29$). The management advice stated that "measures should be enacted immediately to minimize all directed fishing and bycatch of this stock." In July, the Council considered a motion requesting that the Secretary of Commerce implement the changes by emergency action but did not approve the motion because the situation did not qualify as an emergency, and

because this framework was already under development. The Council is also continuing to develop other measures, particularly GOM area closures, which may replace the trip limit, particularly if the fishing mortality rate is not reduced to acceptable levels.

1.2.2 10-DAS carryover

The Council began the DAS reduction program in 1994 with the implementation of Amendment 5. The final stages of the reduction program took place under Amendment 7 in 1996 and 1997. By 1997, as allocations became broadly restrictive, vessel owners were developing annual fishing strategies which would maximize their economic benefit from a limited fishing opportunity. For many owners, that meant reserving some DAS for the end of the fishing year when other vessel's would have run out of DAS.

These vessel owners soon realized, however, that if weather, mechanical breakdown or other circumstance prevented them from using all their allotted DAS, those valuable DAS would be lost. That situation greatly increases the risk in their DAS-usage strategy, and potentially could cause some operators to fish under unsafe conditions rather than lose the fishing time. In response, the Council initiated this adjustment to allow the 10-DAS carryover, which it feels will promote safety by reducing the vessel owners' risk and increasing their planning flexibility, while not compromising the conservation impact of the DAS program.

1.2.3 NAFO area exemptions

In June 1996, NAFO awarded the U.S., during its first year as a member nation, with a share of the total quota of some species, particularly redfish, *Illex* squid, and northern shrimp. At the time of the meeting, the U.S. delegation reported that its strategy is to increase conservation and restoration of NAFO-regulated stocks through increased U.S. participation on the Commission and its Scientific Council. One element of that strategy is to increase U.S. participation in NAFO fisheries. In response, the New England Council is taking steps to remove regulatory obstacles in the Multispecies FMP so vessels can fish for, and land in U.S. ports, species currently regulated by that plan.

2. PURPOSE AND NEED

2.1 Need for the adjustment

As noted in the preceding background discussion, the Council is addressing three distinct regulatory issues with this framework. The first issue is a loophole in the trip limit regulations which were implemented to stop the severe overfishing of GOM cod. The second issue is the safety and logistical problem that results from the current rules wherein a vessel could lose valuable DAS due to circumstances beyond its control at the end of a fishing year. The third need being addressed by this framework is the removal of regulatory obstacles to vessels intending to fish in the NAFO Regulated Area for species managed by the Multispecies FMP, particularly redfish.

While other stocks in the Amendment 7 rebuilding plan appear to be responding positively to the management plan, GOM cod remains in need of special attention, with a fishing mortality rate more than

three times the plan objective ($F_{1996}=1.04$, $F_{max}=0.29$). The purpose of the trip limit implemented on May 1 1997, is to stop directed fishing on that stock, but the implementation of the rule leaves open the possibility for vessels to target cod, and land in excess of the trip limit, without a commensurate loss of DAS.

The Advisory Report on SAW 24 noted that through 1996 the GOM cod stock was severely overfished. In 1997, three main management measures have taken effect that address this problem:

- the final step in DAS reductions to 50 percent of the historical baseline
- the implementation of gillnet sector effort control measures, and
- the GOM cod trip limit.

The GOM cod trip limit is a critical part of the Council's effort-reduction strategy, and its effective implementation as early as possible is essential. The current the rules provide a legitimate way for vessels continue to direct their effort on cod, in direct contravention of the Council's intent. This adjustment corrects the situation and makes the trip limit measure work as originally intended.

The purpose of the 10-DAS carryover provision is to allow vessel owners to plan an annual fishing strategy without risking the loss of DAS due to weather, mechanical breakdown or other unforeseen circumstance at the end of the fishing year. The current rules create a safety problem by potentially putting a vessel operator in a situation of having to choose between fishing (under unsafe conditions) or losing valuable DAS.

The purpose of the NAFO exemptions is to eliminate regulatory obstacles so vessels can utilize the U.S. quota of redfish, and any bycatch allowance of other regulated species. Those obstacles include the requirement to have a limited-access permit and to fish under DAS with minimum mesh size, while possessing any regulated species.

2.2 Publication as a proposed rule

The Council recommends that NMFS publish the adjustments as a proposed rule. Since the transit provision for a vessel that has exceeded the GOM cod trip limit (and otherwise is required to remain in port), and the NAFO area exemptions include new collection-of-information requirements, the measures must be cleared by the Office of Management and Budget (OMB) under the authority established by the Paperwork Reduction Act (PRA), see Section 5.6. Publishing these measures as proposed rules and receiving additional public comment, rather than publishing them as final rules, reduces the time required for OMB clearance. Rather than submitting two rule packages (proposed rules for the parts containing new collection-of-information measures, and final rules for the other parts) the Council recommends publication of the entire package as a proposed rule. Notwithstanding the PRA requirements, the Council feels that justification exists for all the measures to be implemented as soon as possible.

Opportunity for public comment

The schedule of meetings in which publicized discussion of alternatives to any of the proposed measures took place is as follows:

DATE	MEETING	AGENDA/DISCUSSION
3/5/97	GF Committee	<ul style="list-style-type: none">• NAFO exemption need identified
3/12-13	Council	<ul style="list-style-type: none">• Initial meeting on NAFO exemptions (advertised but no action taken)
4/16-17	Council	<ul style="list-style-type: none">• Action to initiate NAFO exemptions framework
5/13	GF Committee	<ul style="list-style-type: none">• Cod trip limit issue identified• 10-DAS carryover issue identified• NAFO exemptions discussion
5/28-29	Council	<ul style="list-style-type: none">• Cod trip limit adjustments framework initiated• NAFO exemptions measures approved
6/18	Council (Special)	<ul style="list-style-type: none">• 10-DAS carryover framework initial meeting• Cod trip limit adjustments framework initial meeting• Consideration of emergency action for cod trip limit adjustments
7/9-10	Council	<ul style="list-style-type: none">• Cod trip limit adjustments discussion
7/16	GF Committee	<ul style="list-style-type: none">• Cod trip limit adjustment proposals finalized
8/20-21	Council	<ul style="list-style-type: none">• Framework 24 final meeting

The mailing lists for meeting notices contain approximately 850 and 1,900 interested parties for Groundfish Committee and Council meetings, respectively. Agendas and meeting summaries for the above meetings are available from the Council office.

3. PROPOSED ACTION AND ALTERNATIVES

3.1 Proposed action

3.1.1 Adjustments to the Gulf of Maine cod trip limit

The Council proposes the following adjustments to the Gulf of Maine cod trip limit:

- **Excess cod landings** - A vessel that reports cod landings (on the hail line) in excess of the trip limit must remain in port until sufficient DAS have passed to equate to the cod landed
- **14-day call-in** - A vessel fishing on DAS under the Gulf of Maine cod trip limit, that is, not fishing under the trip-limit exemption program, would be required to call either the cod hail line or the DAS call-out number within 14 days of starting a trip, whichever is appropriate. "Whichever is appropriate" is based on the amount of cod landed, that is, if the trip limit is exceeded, the operator would call the hail line, if not, and at least once every 14 days, the operator must call the DAS number and end the trip.
- **Transit** - A vessel required to remain in port (under the preceding item) may transit to another port, but the operator or owner must first call the cod hail line and report the

time of departure, estimated time of arrival, and destination port. A vessel in transit under this provision would be required to stow all nets and would be prohibited from having fish on board.

- **Gillnet vessel categories** - A vessel may switch gillnet vessel categories once during the 1997 fishing year (rather than waiting until the start of the 1998 fishing year) provided it does so by completing the Gillnet Category Designation and Tag Program Application Form (if switching into the Day Gillnet category) within 30 days of the date of effectiveness of the rule. A vessel switching into the Day Gillnet category must also meet the requirement of taking 120 days out of gillnetting from the time of the switch.
- **Trip limit exemption boundary line adjustment** - The current 42°00' boundary line will be adjusted to 42°20' east of 69°30'. See Figure 3.1-1.

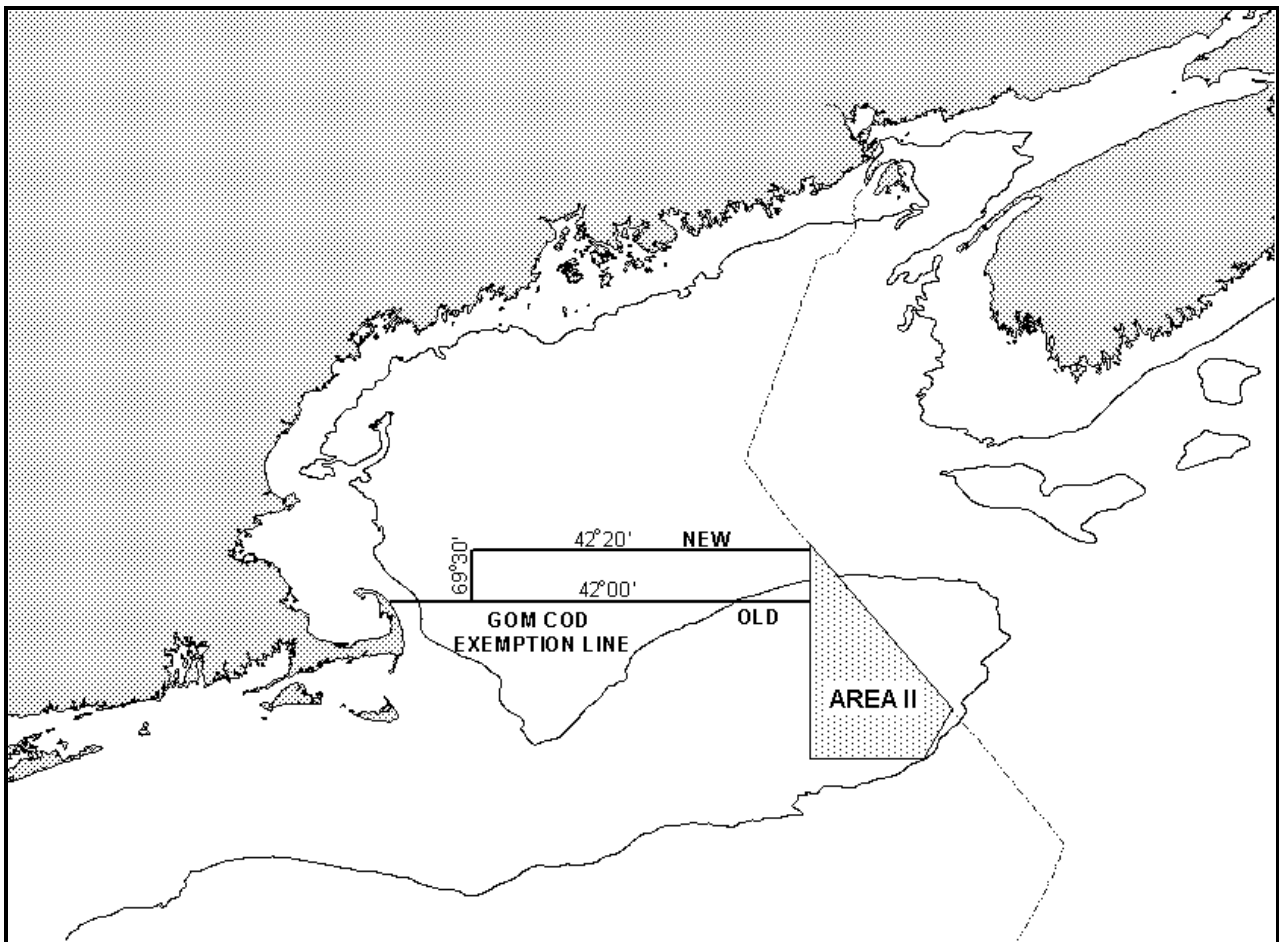


Figure 3.1-1 Cod trip limit exemption area boundary adjustment

Discussion

The Council's intent in establishing the trip limit in Framework 20 was to cause vessels to direct their DAS effort on species other than GOM cod but to allow them to land any incidental catch of cod. The regulations implementing this concept, however, contain a flaw which enables continued directed fishing

effort on GOM cod. Under current rules, vessels can direct their effort on cod at the start of a trip, return to port to land the cod, and then, while the DAS clock is running (to account for the trip limit overage), return to fish for other species. This practice, while within the letter of the regulations is contrary to the Council's intent. The proposed adjustment requires a vessel that exceeds the trip limit to remain in port until sufficient time has elapsed to account for the overage and thereby re-align its DAS usage with its cod landings.

A second issue with the current rules which will be addressed by the proposed adjustment is the increased daily allowance after four days, from 1,000 to 1,500 pounds per day. A vessel running its DAS clock continuously effectively has a trip limit of 1,500 pounds per day. By requiring a vessel to end the trip (call the DAS line) after a maximum of 14 days, or after remaining in port because of landings in excess of the trip limit, the trip limit will be reset to 1,000 for the first four days of the subsequent trip.

Boundary adjustment

The boundary adjustment will eliminate an overlap of the trip-limit area and the northern edge of Georges Bank. Currently, vessels enrolled in the trip limit exemption program, fishing on Georges Bank are prohibited from fishing north of 42°00' even though that area contains the northern edge of Georges Bank and catches from that area are attributed to the Georges Bank stocks in the stock assessments.

Call-in requirement

When fishing on DAS, a vessel operator would have to determine whether to call the hail line or the DAS line. If a vessel exceeds the amount of cod allowed under the trip limit for the time that has elapsed between the start of the trip (when the DAS clock was called) and the time of offloading, the vessel operator must call the hail line and the vessel must remain in port (unless under transit, as specified) for sufficient time to account for the cod landings. A vessel that does not exceed the cod trip limit and calls in to end the trip before the end of the 14th day meets this requirement. The next 14-day period would start at the time of call-in to the DAS line marking the beginning of the next DAS trip.

Gillnet vessel categories

A vessel that has declared into either the Trip Gillnet or Day Gillnet category for the 1997 fishing year would be allowed to make a one-time switch to enable vessel owners to adapt to the adjusted regulations. A vessel switching into the Day Gillnet category would be required to obtain net tags and also be required to fulfill its obligation to take 120 days out of gillnetting in blocks no less than seven days from the date of category switch (time out of gillnetting prior to the switch cannot be applied to meet this requirement).

With this provision, the Council recognizes that some vessel owners declared into the Trip category so they would not fish under the net cap/net tags rules applying to Day Gillnet vessels. These vessels reportedly leave their DAS clock running (that is, do not technically end the trip) and, therefore, are not required to bring their nets to port. In other words, these are vessels that fish as day boats but are enrolled in the Trip Gillnet permit category. Under the proposed rules, these vessels would have to bring

their gear to port at least once every 14 days and end the trip. The Council wants to provide vessel owners the opportunity to reconsider their initial strategy under the revised rules.

3.1.2 10-DAS carryover

Beginning with the transition from the 1997 to 1998 fishing years, a vessel may carryover a maximum of 10 unused DAS to the following fishing year's allocation. NMFS will automatically credit each vessel with the amount of DAS remaining in the prior year's account up to a maximum of 10 DAS. A vessel owner would not have to apply to have the DAS carried forward. This provision only applies to vessels that did not hold a confirmation of permit history for the entire fishing year; any permit held as a confirmation of permit history (that is, a permit without a vessel) during any part of the year would not be credited with the carryover DAS.

Discussion

The Council is concerned that the restrictive DAS system may cause some vessel operators to make decisions about going out or remaining at sea under unsafe conditions rather than lose any allocated DAS. Allowing a vessel to carryover a small number of DAS will let it use its full allocation of DAS where it otherwise might lose DAS because of external factors, such as mechanical problems or weather conditions at the end of the fishing year. Currently, some vessels plan their fishing strategy so they have DAS available at the end of the fishing year, when many other vessels have run out of DAS. These vessels risk losing valuable fishing time if prevented from fishing due to circumstances beyond their control when the fishing year ends. Without the carryover allowance, vessel operators may try to extend trip lengths or start a trip in marginally safe conditions rather than lose the fishing time allocated to the vessel.

The carry-over allowance is a maximum and could not be accumulated year-to-year. The provision would not result in any increase in allocated DAS over what is already allowed for each vessel, it merely allows the vessel to make the transition between fishing years in the safest manner. Thus, over any two-year period, a vessel could still only have 176 DAS (88 each year or 78 and 98 in two consecutive years, or some combination of the two). The DAS that could be carried forward are DAS that have already been allocated; not allowing a carryover may cause vessels to use the DAS before they expire.

The Council does not expect this provision to result in the activation of latent (currently unused) effort nor increase the total DAS used in a subsequent year. Many vessels do not currently use their full allotment of DAS, and would, therefore, probably not increase their effort simply because they are allowed to carryover 10 DAS.

3.1.3 Exemptions for vessels to fish in the NAFO Regulated Area

Any vessel that has a High Seas Fishing Permit from NMFS and intending to fish in the NAFO Regulated Area would be exempt from the requirement to have a limited-access Multispecies permit. A vessel that has a limited-access Multispecies permit and that is fishing in the NAFO area would be exempt from the requirement to use DAS when fishing for, possessing in the EEZ, or landing any of the regulated species. Vessels would also be exempt from any minimum mesh size and possession limit

requirements under the Multispecies FMP while transiting the EEZ and in possession of regulated species.

Any vessel receiving a permit to fish in the NAFO Regulated Area must call NMFS by telephone prior to leaving port to declare its intent to fish in the NAFO area, and call in by marine radio-telephone to NMFS when leaving the NAFO area to return home. The Regional Administrator may require that an exemption certificate issued by NMFS be on board for each trip to aid in the enforcement or administration of the exemption program. In the future when the electronic vessel monitoring system (VMS) is operational, the Council will consider either requiring vessels to use the VMS or offering the option to use the VMS in place of the call-in requirement.

As a condition of the exemption, vessels must fish exclusively in the NAFO area and would not be allowed to fish in the EEZ or possess fish harvested in the EEZ during a NAFO trip. Furthermore, when in the EEZ under this exemption, a vessel must have all its gear properly stowed and not available for immediate use. Vessels must also comply with all NAFO regulations and requirements.

Discussion

As described in the following press release, Figure 3.1-2, the U.S. has only recently become an active participant in NAFO, but has achieved some early successes, including increased quota shares for redfish and *Illex* squid. The first-time U.S. delegation won these increases by convincing the member countries that the U.S. is “willing to reinforce its presence within the Northwest Atlantic fishing community.” The Council’s intent with this measure is to remove obstacles to fishing in the NAFO Regulated Area presented by the Multispecies FMP. This action supports the efforts of the NAFO delegation, as well as provides opportunity for some vessels whose opportunity to fish in New England waters is restricted by stock rebuilding plans.

NOAA 96-066

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FOR IMMEDIATE RELEASE

9/26/96

UNITED STATES GAINS NEW FISHING OPPORTUNITIES - SUCCESSFUL AT NAFO MEETING

The United States was successful in its initial meeting as a member of the Northwest Atlantic Fisheries Organization. Several U.S.-sponsored initiatives and hard-fought U.S. fish allocations highlighted the U.S. involvement in NAFO's recent meeting in St Petersburg Russia, the Commerce Department's National Oceanic and Atmospheric Administration announced.

"One of the goals for the U.S. at this meeting was to increase conservation and restoration of NAFO-regulated stocks through our participation on the NAFO Fisheries Commission and Scientific Council," said Will Martin, U.S. federal commissioner to NAFO. "To meet this goal, an exceptionally strong team of U.S. scientists will serve on the council as part of the United States' increased commitment to the organization."

The U.S. delegation also led efforts to begin implementing a precautionary approach to fisheries management, much like the approach the U.S. has taken in New England groundfish fisheries, and to allow outside observers access to NAFO meetings and studies. A working group was established to further discuss observer access, with the United States taking a leadership role to pursue this matter prior to next year's meeting.

The increased fish quotas were an unexpected bonus for U.S. fishermen. Prior to the meeting many NAFO member countries indicated to the United States it would be impossible to get additional quota shares during the first year as a member country -- that it would take several years to be included in this system. However, a strong U.S. delegation apparently convinced NAFO members that the United States is willing to reinforce its presence within the Northwest Atlantic fishing community.

The United States has been allocated 90 metric tons of Division 3M redfish (the Flemish Cap area) and 2,000 metric tons of Illex squid in Subareas 3 and 4 (off Canadian federal waters). The subject of quota allocations will also be further discussed as an item on next year's NAFO meeting agenda.

National quotas in the fisheries under the NAFO agreement are decided according to pre-determined quota shares. Although representatives had attended as observers for many years, this was the first time the United States had attended a NAFO meeting as a member country.

The mission of NAFO is to provide for continued multilateral consultation and cooperation with respect to the study, appraisal, and exchange of scientific information and views relating to fisheries of the convention area and to conserve and manage the fishery resource.

Figure 3.1-2 NOAA Press Release on NAFO Participation

The regulatory obstacles to fishing in the NAFO area posed by the Multispecies FMP stem mainly from the following provisions:

- the requirement for a Multispecies Limited-Access Permit when possessing or landing regulated species, (since the U.S. has a quota of 90 mt of redfish, non-permitted vessels would be prohibited from fishing on that resource) and
- the requirement that limited-access vessels be under DAS when possessing regulated species.

To avoid potential enforcement problems created by allowing a non-permitted vessel to land regulated species or allow a vessel when transiting the EEZ to have mesh smaller than the minimum regulated size or to exceed any possession limits, the Council proposes to require a vessel to inform NMFS when it is leaving port to fish in the NAFO Regulated Area and when it is leaving the area to return to the U.S. EEZ. Since only a very small number vessels (probably less than 10) will likely participate in the NAFO fisheries, however, the Council does not expect that this measure will create an enforcement or administrative burden.

3.2 Alternatives to the proposed action

3.2.1 No action

The Council is taking action to address problems and situations described in Section 2, Purpose and Need, and in the preceding discussion of the three proposed measures. The Council rejected the option of taking no action because it would not resolve those problems.

3.2.2 Measures considered and rejected

3.2.2.1 Alternative numbers of DAS in the carryover provision

The Council and Groundfish Committee discussed but did not formally consider fewer than 10 DAS in the carryover proposal. The Council and committee both felt that 10 DAS would provide the most flexibility to work around unforeseen circumstances and, therefore, the greatest margin for safety while not compromising the conservation impact of the DAS program.

3.2.2.2 Change the GOM cod exemption line to 42°20' east of 68°00'

The Council initially considered changing the GOM cod exemption line from 42°00' to 42°20' east of 68°00'. Based on public comment, the Council extended westward to 69°30' the expanded area of the trip limit exemption, thereby adding approximately 1,320 square nautical miles. The boundary line between the GB and GOM stocks used in the assessments runs along 42°20' to 70°00' then south to Cape Cod, and therefore, the boundary shift better aligns the trip limit area boundary with the statistical area boundary. The Council kept the line at 69°30' instead of 70°00', however, to keep the boundary in deeper water and keep the geographical edge (the steep slope from 30 to 100 fathoms) along the northeast part of Cape Cod under the trip limit.

The public commenting to the Council felt that vessels fishing for haddock under the increased trip limit starting September 1 in the expanded area might discard cod bycatch rather than land the cod and then be required to remain in port for a period of time. Keeping the area north of Georges Bank in the exemption area would enable vessels to take advantage of the increased haddock trip limit without increasing the risk to GOM cod. The Council recognizes that by the time this adjustment takes effect, the haddock trip limit may return to the 1,000-pound possession limit for this year, but it wanted to define the exemption boundary for future years, in the event the GOM cod trip limit/exemption program is continued.

3.2.2.3 Allow gillnet vessels switching from Trip to Day categories to count time out of gillnetting prior to the effectiveness date

The Council initially proposed that Trip Gillnet category vessels switching into the Day Gillnet category as provided in this framework would be allowed to count time between trips as meeting the 120-days-out-of-gillnetting requirement provided the time between trips was at least seven consecutive days. The Regional Administrator commented on the extreme difficulty of prorating time out on an individual vessel basis and the accounting work that would be required for little measurable benefit. Based on these comments, the Council changed the proposal so the 120-day-out requirement applies when the rule takes effect. The Council discussed options for applying a uniform time-out requirement other than 120 days but did not adopt such options because of the equity issues and other complications.

3.2.2.4 Require the use of VMS in the NAFO Area exemption

The Council considered requiring the vessels to use the VMS (when it becomes operational) as a condition of participating in the NAFO Area exemption. The purpose of this requirement was to reduce the enforcement burden and administrative costs of the exemption program. However, the analysis of collection-of-information requirements under the PRA for the program-wide VMS is being done separately. To require the VMS in this framework would unnecessarily delay the exemption by triggering a PRA analysis requiring OMB clearance when the VMS is not yet even operational.

4. ANALYSIS OF IMPACTS

4.1 Biological impacts

4.1.1 Impacts of the trip limit adjustment

The Council is proposing the trip limit adjustment so that the 1,000/1,500 pound trip limit implemented under Framework 20 at the start of this fishing year can work as originally intended. With the trip limit, the Council intended for vessels fishing under DAS in the Gulf of Maine to redirect their effort away from cod, and onto other regulated species. Since this adjustment is merely designed to address problems with the implementation of the trip limit and make it work as originally planned, the expected biological impacts of the proposed measure would be the same as those already analyzed for Framework 20.

The Council continues to be concerned with the shifting of effort as effective restrictions are applied to some fisheries, but recognizes that overall groundfish effort has been significantly reduced in the past three years. The Council will continue to monitor the status of all the stocks under the plan to insure that overfishing problems are eliminated, not merely shifted to other species. The Multispecies Monitoring Committee will examine the issue of effort displacement to other regulated species, and make recommendations as needed later this year during its annual review of the plan.

The Council does not expect the shift in the boundary of the trip limit exemption area to have a measurable impact on cod or other stocks. Since the area to be opened up to the exemption program is considered, for assessment purposes, to be in the Georges Bank stock, any increase in landings that might come from that area will be applied to the GB stock, and will not negatively impact meeting the plan objectives for GOM cod.

4.1.2 Impact of the 10-DAS carryover

The proposal will not result in any measurable biological impact in comparison to taking no action. The measure will enable vessels to work around mechanical problems or weather conditions at the end of the fishing year but will not result in any increase in overall DAS allocated.

4.1.3 Impact of the NAFO exemptions

The proposal will not result in any measurable biological impact on stocks in U.S. waters. If anything, the impact on fishery resources and bycatch species in the U.S. EEZ is likely to be positive because vessels fishing in the NAFO area could otherwise be fishing in U.S. waters. Since only a few vessels are likely to fish under this exemption, the Council expects the biological impact to be minimal or undetectable.

As for impacts on stocks in the NAFO Regulatory Area, the U.S. quota shares are small in comparison to the shares owned by other member nations. Even if U.S. vessels caught their limit, the overall impact would be biologically insignificant.

4.1.4 Impacts on habitat, marine mammals and protected species

The trip limit adjustment and 10-DAS carryover are neutral with respect to their impact on habitat, marine mammals or protected species since they will not result in any increase or decrease in total fishing effort. These measures will also probably not result in any significant redistribution of effort geographically or temporally. To the extent that vessels use the opportunity created by the NAFO area exemptions, to fish outside, rather than inside the EEZ, the impacts will be proportional to the reduction in overall fishing effort. Since the Council expects that participation in this exemption program to be minimal, it expects that any impact on habitat, marine mammals or protected species will be insignificant.

4.1.5 Impact of taking no action

Without modification, the trip limit as currently designed could result in disastrous consequences for the GOM cod stock which is severely overfished. If a vessel directs on cod and catches the limit for all its DAS, it could land 59 metric tons (130,000 pounds for a Fleet DAS vessel) or more (for an Individual DAS vessel). In other words, fewer than 45 vessels directing on GOM cod and catching their trip limit for every DAS allocated would exceed the target TAC of 2,605 mt. Given that other vessels fishing in the GOM are likely to have a cod bycatch, the Council finds the potential impact of no action, and the risk to the GOM cod stock to be unacceptable.

4.2 Economic impacts

4.2.1 Impact of the trip limit adjustment

The Council is making these adjustments to insure that the trip limit works as originally planned and analyzed in Framework 20. The Council recognizes, however, that some short-term impacts may result as vessels reconfigure their fishing strategies. At this time, there is insufficient data to estimate the scope or magnitude of this impact. Over the next several months, the Council will review the effort and landings statistics for vessels fishing under the trip limit, both for its effectiveness as a conservation measure and for its economic impact.

Qualitatively, the trip limit adjustments will provide continued opportunity for vessels to continue fishing under their DAS while reducing the risk of exceeding the target catch limits based on the rebuilding plan's conservation objectives. If the objectives are not met, the Council will, during the upcoming annual review and adjustment process, impose additional restrictions that could affect a broader range of vessels than are currently affected. The economic impact of additional restrictions would be reduced revenues (from cod and possibly other species), and increased costs.

The transit provision provides additional flexibility to vessels fishing under the trip limit, thereby reducing short-term costs of the adjustment by enabling them to seek the optimal place to offload their fish (on the basis, for example of best market price or lower transportation costs). Without the transit provision, vessels catching more than the trip limit allows would have to choose between discarding any overage or offloading at a less than optimal location, either reducing revenues or increasing costs.

4.2.2 Impact of the 10-DAS carryover

The Council is making this adjustment primarily out of concern for the safety of vessels which may be in a position at the end of the fishing year that they will lose allocated DAS due to circumstances outside of their control. To the extent that vessels would now be able to operate in a normal way, and not take unnecessary risks in order to not lose DAS, the proposed carryover will have a positive impact.

For vessels in the Fleet DAS category, from the vessel perspective, 10 DAS would represent 11 percent (10/88) of the total annual allocation of DAS. From a fleet-wide perspective, most vessels in the Fleet category will not be affected by this provision since, on average, they do not use DAS to within 10 days of their allocation. The Council projects that only 37 percent of allocated Fleet DAS will

be used in 1997, if vessels use DAS at the same rate as in 1996, when only 29 percent of allocated Fleet DAS were used.

Individual DAS vessels, on the other hand, could realize a positive economic benefit from the proposal, proportional to the expected lost DAS. At an average 1997 allocation of 106 DAS, the potential of losing 10 DAS equates to just under 10 percent of the total. On a fleet-wide basis, the Council projects that, based on 1996 levels of effort, 91 percent of Individual DAS allocated in 1997 will be used. At an average allocation of 106 DAS, the maximum impact of losing 10 DAS would be approximately 9 percent of the sector total (10/106 times 0.91) if all vessels in this category were to lose all 10 DAS under the no-action alternative. Realistically, vessels adopt varying individual fishing strategies for the year and many use up their DAS well before the last weeks of the season, and are not, therefore, in a position to lose DAS (that is, to realize a benefit from this adjustment).

4.2.3 Impact of the NAFO exemptions

The economic impact of this action will be proportional to the number of vessels that take advantage of the opportunity it creates. The 500-900 mile distance between New England ports and fishing grounds in the NAFO Regulated Area significantly reduces the potential benefit of making a trip due to increased cost of fuel, insurance and other variable costs, as well as the risk to product quality. (**NOTE:** While Canada has a policy of allowing vessels from the European Union to land in Canadian ports, it does not extend that privilege to U.S. vessels. The potential exists, however, for U.S. vessels to land in the French territory of St. Pierre and Miquelon, but the economic impact of that strategy has not been calculated.)

Assuming a vessel owner makes a rational economic decision, if the owner expects to make a greater profit fishing in the NAFO area than what could be made under alternative activities, the vessel will probably make the trip despite the high costs. Given the high costs and risks associated with such a venture, the Council expects that fewer than 10 vessels per year will take advantage of this opportunity. This expectation is substantiated so far by the level of interest expressed by members of the industry to the Council or NMFS. So far 40 vessels have indicated an interest in participating in this fishery on their High Seas permit application, however, the Council expects that most of these indications are speculative and reflect a defensive action against some potential future access limitation (although none is currently under consideration).

No method or data exists to accurately predict the total level of participation in this exemption, nor the costs associated with making a trip. The necessary conditions and characteristics for a vessel to be able to make the trip to the NAFO vary considerably, and the decision to make the trip ultimately rests with the captain. With proper preparation and planning a captain can work around ordinary limitations such as weather and fuel capacity. Fuel capacity can be supplemented by auxiliary tanks, for example, and long-range weather forecasting and communications services can be used to insure safety. General seaworthiness is also an individual vessel characteristic that cannot be assessed from available information. A seaworthy and properly designed 70-foot vessel could be more able and likely to make the trip than a larger vessel that is not designed for long trips or is poorly maintained.

The following table shows the potential total ex-vessel value based on estimated prices and quantities available for quota species. For other species, vessels would be allowed to retain a bycatch based on a percentage of the total weight of fish on board (5-10 percent, depending on the species/area).

	AREA	QUOTA (metric tons)	1996 PRICE (\$/lb)	TOTAL EX- VESSEL VALUE (\$)
REDFISH	3M	90	0.67	133,000
	3LN	66 ¹		97,000
	3O	No restriction		cannot estimate
Illex squid	Subareas 3 & 4	2,000	0.32	1.4 million
Greenland halibut	3LMNO	1,330 ¹		NA
Northern shrimp	3M	100 days of fishing	0.72	cannot estimate

1. Quota allocated to "Other" category, to be shared with other member nations not allocated individual quota

4.2.4 Impact of no action

The economic impact of the no-action alternative results from the following factors:

- vessels are able to take advantage of the loophole in the regulations and direct on GOM cod, a short-term and unintended benefit
- continued overfishing and decline in the GOM cod stock will result minimally in reduced long-term yields and potentially economic collapse of the fishery
- the ineffectiveness of the trip limit will cause the Council to apply more restrictive measures such as area closures for the 1998 fishing year that potentially will affect a broader segment of the industry
- vessels could be in the situation of risking the loss of valuable DAS at the end of the year due to unforeseen circumstances or compromising safety
- limited-access vessels would be required to use DAS to fish in the NAFO area, and vessels that do not have Multispecies permits would be prohibited from landing regulated species such as redfish in the U.S. even if those fish were caught outside the EEZ, and even though the catches have no impact on the stocks that DAS limits were to conserve.

The actual number of affected vessels and the extent to which they are affected by the combination of factors described above cannot be determined. Qualitatively, however, the relative impacts are negative in comparison to the proposed alternatives because of the long-term negative impact of the current trip limit rules and the loss of flexibility and opportunity provided by the other adjustments.

4.3 Social impacts and impacts on communities

Since the purpose of the trip limit adjustment is to make the measure work as the Council originally intended (to cause vessels to direct effort away from GOM cod), the social and community impact is the same as that discussed in Framework 20, where the trip limit was initially implemented. To the extent that the 10-DAS carryover and NAFO area exemptions ease the regulatory burden and provide economic opportunity to fishermen, the social impact should be positive, although probably very small.

5. APPLICABLE LAW

5.1 Magnuson-Stevens Act- Consistency with National Standards

Section 301 of the Magnuson-Stevens Act requires that regulations implementing any fishery management plan or amendment be consistent with the ten national standards listed below. The findings discussed below are based on the analyses contained in this document, particularly Section 4.1, Biological Impacts, Section 4.2, Economic Impact, and Section 4.3, Social Impact, as well as Section 5.3, Regulatory Impact Review.

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

The GOM cod trip limit is a significant part of the Council's overall strategy to stop overfishing. The Council is making the proposed adjustments to increase the measure's effectiveness. The 10-DAS carryover and NAFO area exemptions are, for all practical purposes, conservation neutral.

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

The results of SAW 24 (July, 1997) emphasized for the Council the importance of making the management measures it implemented in Framework 20 (to stop overfishing of Gulf of Maine cod) work as intended. The Council will closely monitor the landings and effort of this fishery to make sure that the plan is achieving its goals, and will make any needed adjustments during the annual plan review to take place later this year. The other actions in this framework are not conservation measures and do not rely on the use of scientific information but are measures developed in response to public comment.

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 adjustment to the trip-limit exemption area boundary is the only measure in this framework affected by this standard. The measure would make the area which is geographically part of Georges Bank more consistent with the Georges Bank stock area as used in the stock assessment (south of 42°20').

4. *Conservation and management measures shall not be discriminated 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 a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

The measures in this framework do not discriminate between residents of different states nor do they allocate fishing privileges among various U.S. fishermen. In the case of the NAFO exemptions, the framework actually exempts non-permit holders from the limited-access requirements of the Multispecies FMP so they may land any catch of regulated species from outside the EEZ.

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

The Council intended, with the trip limit in Framework 20, to cause vessels to redirect fishing effort away from GOM cod to achieve a conservation objective while still allowing them to land cod caught incidentally. Since it has become aware of a loophole in the design of the measure, it is taking the necessary steps to insure that vessels do not circumvent the plan's objectives while still allowing them to exceed the trip limit on a short-term basis, thereby promoting efficiency in the utilization of the resource within the conservation goals.

The 10-DAS carryover also promotes efficiency in that it enables vessel operators to deal rationally with unforeseen circumstances at the end of the fishing year and not risk losing valuable DAS. Likewise, the NAFO exemptions promote efficiency in that they enable vessels to fish while not using DAS and having no impact on U.S. fishery resources.

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

The per-day trip limit (as opposed to a possession limit) that allows for greater catches on trips longer than four days, directly addresses this standard within the conservation goals of the plan. The Council is making the proposed adjustments to the trip limit measure to insure that it works as originally planned, that is to allow vessels to retain a variable bycatch of GOM cod while fishing for other regulated species.

The 10-DAS carryover proposal also makes the current management system more consistent with this standard by allowing individual vessel owners to plan an annual fishing strategy and not risk losing allocated DAS to unforeseen circumstances at the end of the fishing year.

The NAFO area exemption is neutral with respect to this standard. The Council is merely providing a mechanism for U.S. vessels to participate in a high-seas fishery managed under a different authority.

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

As noted in the discussion of this standard under Framework 20, the Council chose a trip limit because it appeared to be the lowest-cost alternative to reaching the conservation requirements of the plan and the Magnuson-Stevens Act. The trip limit allows vessels to continue fishing for other regulated species on DAS in all areas of the Gulf of Maine, and to retain a reasonable bycatch of cod. The adjustments proposed in this framework will help to insure that the trip limit works as the Council originally intended.

The 10-DAS carryover measure minimizes costs to the vessel by providing flexibility and reducing risk in the planning of an annual fishing strategy. The NAFO exemption, in that it provides opportunity for vessels to fish outside of the DAS limits, also minimizes costs. These findings are also discussed in Section 5.3, Regulatory Impact Review.

8. *Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse impacts on such communities.*

As noted in the discussion of this standard in Framework 20, the Council chose to use the trip limit instead of other alternatives to reaching conservation goals of the plan, in part, because it allowed for continued fishing (at a reduced level) and diversification into other fisheries. The same consideration applies to the measures in this framework, including the 10-DAS carryover and NAFO exemptions. For those reasons, the Council feels that this framework allows for the sustained participation of all communities and minimizes the impacts of the conservation program on such communities.

9. *Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.*

The Council designed the trip limit measure to allow vessels to retain their catch of cod in the GOM, while greatly reducing the total effort on that stock. The proposed adjustments continue to allow vessels to land cod, while at the same time make the trip limit system more effective at deterring directed cod effort.

The other two adjustments in this framework are neutral on this standard.

10. *Conservation and management measures shall, to the extent practicable, promote safety of human life at sea.*

The Council has chosen the trip limit system, in part because it provides vessels owners with flexibility to choose when and where to fish while still subject to significant conservation restrictions. Likewise, the 10-DAS carryover provides flexibility and eliminates the situation where a vessel owner might have to take greater risks or otherwise lose valuable DAS at the end of the fishing year. This Council is proposing this measure principally to promote safety while having no effect on the stock-rebuilding program.

The NAFO exemptions are neutral on this standard.

5.2 National Environmental Policy Act (NEPA)

The Council conducted an analysis of the environmental impacts of the stock rebuilding plan under Amendment 7. The Final Environmental Impact Statement (FSIES) indicated that the impacts of Amendment 7 would be significant, particularly the positive biological and long-term economic impacts of rebuilding the stocks. The FSIES for Amendment 7 also discussed the Council's recognition of the potential negative impact of effort displacement on other stocks caused by the DAS reduction program, area closures and other components of the groundfish stock-rebuilding program.

5.2.1 Environmental Assessment

Section 2.1 of this document contains a discussion of the purpose and need for the proposed action. Section 3.0 contains a description of the proposed action and alternatives, including the no-action alternative. Section 4.0 contains an analysis of potential impacts. Based on this analysis, the Council finds that the proposed action will have no significant impact on the environment.

In developing the proposed measures and in reviewing the analysis of impacts contained in this Environmental Assessment, the Council has consulted with NMFS, the Mid-Atlantic Fishery Management Council, Atlantic States Marine Fisheries Commission and the New England state marine fisheries agencies through their participation in Council and Groundfish Committee meetings. The Council has also informed the interested public of the proposed action and review of environmental documents through notice in the *Federal Register* and by mailing of Council meeting notices and agendas to approximately 1,650 persons. About 850 interested parties receive notices of the Groundfish committee meetings.

5.2.2 Finding of No Significant 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 reasonable expected to jeopardize the long-term productive capability of any stocks that may be affected by the action?*

The proposed action is part of an ongoing stock rebuilding program established by Amendment 7 and will not significantly change the impacts on all stocks from the projected impacts under that action. The Council's strategy is to reduce overall effort by fifty percent and to target specific stocks

with additional measures as needed. The trip limit on GOM cod implemented by Framework 20 is one such specific measure, and the proposed adjustment is essentially to increase its effectiveness. The other measures in this action will not result in any measurable increase in fishing effort, and, therefore should have no effect on the stock status.

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

The proposed action continues an effort-reduction program which the Council expects will have a positive impact on marine and coastal habitats. In response to Magnuson-Stevens Act requirements, the Council has undertaken an separate effort to define essential fish habitat and identify threats to that habitat. The proposed action will not result in a measurable increase in, or redistribution of fishing effort.

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

The Council expects that, since the measures provide flexibility and opportunity within the constraints of the conservation needs of the plan, the proposed measures will have positive impact on safety. In fact, the Council is proposing the 10-DAS carryover specifically to address public concerns about safety.

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

The Council does not expect the proposed action to have an adverse effect on marine mammals or other protected species. The proposed action will not result in a measurable increase in, or redistribution of fishing effort that will might have an effect on protected species.

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 measures in this framework are adjustments to the stock rebuilding program established under Amendment 7. For this reason, the Council does not expect the action to have any cumulative adverse effect on the target resource. In Amendment 7, the Council recognized that effort shifts could occur that may have an adverse impact on other stocks, although the direction and magnitude of that impact could not be predicted. The proposed measures do not substantially change the effect of the stock rebuilding plan on any related stocks nor result in any cumulative adverse effect.

Based on the preceding criteria and analysis, the Council proposes a finding of no significant impact.

FONSI STATEMENT: In view of the analysis presented in this document and in the FSEIS for Amendment #7 to the Northeast Multispecies Fishery Management Plan, the proposed action will 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 for this proposed action is not necessary.

**Assistant Administrator
for Fisheries, NOAA**

Date

5.3 Regulatory Impact Review

This section provides the information necessary for the Secretary of Commerce to address the requirements of Executive Order (EO) 12866 and the Regulatory Flexibility Act (RFA). The statement of the problem and the need for management are described in earlier parts of this document (Section 1.2, Background, and Section 2.1, Purpose and Need). The alternatives to the proposed regulatory action, including the no-action alternative, are described in Section 3.0. The economic impacts are described in Section 4.2, and summarized below under the discussion of how the proposed action is characterized under EO 12866 and the RFA.

5.3.1 Executive Order 12866

The proposed action does not constitute a significant regulatory action under EO 12866 for the following reasons:

1. The management proposals will not significantly impact the landings and revenues of the existing fishery as compared to the levels predicted in Amendment 7 and Framework 20. As indicated in Section 4.2, the proposed adjustments to the GOM cod trip limit may have a short-term impact as vessels reconfigure their fishing strategies under the modified rules, but the long-term impact is expected to be consistent with that projected for the Amendment 7 rebuilding program. The Council also expects that the 10-DAS carryover and NAFO area exemptions will not have a significant economic impact since the measures are not restrictive, do not involve allocation, and will probably affect a relatively small number of vessels.

The overall impact of the measures, while they cannot be assessed quantitatively, is expected to be positive compared to those predicted in Amendment 7. The net impact on the economy will also be positive over the long term. The proposed action will not have an annual effect on the economy of more than \$100 million, given the fact that even under Amendment 7 regulations, annual effect on the economy is not expected to reach that level despite the large reductions in overall fishing effort called for by the amendment.

2. The proposed measures in this framework are designed to achieve the conservation objectives of Amendment 7 and to provide economic relief to the industry wherever possible within the constraints of the stock-rebuilding plan. The modification to the trip limit measures may have a short-term negative impact on some vessels compared to the no-action alternative, as those vessels adjust to the modified rules. But these measures will increase the effectiveness of the trip limit which, over the long term, will result in stock rebuilding, and, therefore, will increase net economic benefits.

By providing flexibility and opportunity, the 10-DAS carryover and NAFO area exemptions will likely have positive short-term and long-term impacts, and may offset some of the short-term negative impacts caused by the stock-rebuilding plan under Amendment 7 and Framework 20. For these reasons, the proposed action will not adversely affect in a material way the economy, productivity, and competition.

The costs of administering and enforcing the proposed measures are not likely to significantly increase in comparison to current costs. The cost to the government of administering the new collection-of-information requirements is expected to be \$2,774 per year (see Appendix II, Supporting Statement, Permit Family of Forms). Enforcement of the proposed measures can be accomplished as part of the routine activities of enforcing the FMP regulations.

3. For the same reasons as above, the proposed action will not significantly affect jobs, the environment, or state, local or tribal governments and communities. The trip limit adjustments and NAFO area exemptions will not affect safety or public health, while the 10-DAS carryover may have a positive impact on public safety by providing flexibility and eliminating the pressure to use DAS by the end of the fishing year rather than lose them.
4. The proposed action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. In fact, the NAFO area exemptions are fully consistent with the strategy of the U.S. NAFO delegation to increase U.S. participation in those fisheries. There are no other actions proposed by other agencies that will impact the same areas and fisheries.
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. Regulations regarding trip limits and DAS reductions have already been used to manage fisheries in the northeast.

5.3.2 Regulatory Flexibility Act (RFA)

The purpose of the RFA is to reduce the impact of burdensome regulations and record-keeping requirements on small entities (small businesses, organizations or governments). The RFA applies to any rule or regulation that must undergo “notice and comment” under the Administrative Procedures Act,

specifically those rules published as proposed rules. When the RFA applies, the Council must assess the effects of the regulations to determine if they will have a “significant economic impact on a substantial number of small entities.” The Council must then either provide an explanation that there is not a significant impact (as described in the guidelines to the RFA), or prepare an initial regulatory flexibility analysis (IRFA). Since the Council is proposing two new collection-of-information requirements in this framework, it will submit proposed rules for those measures, and must then meet RFA requirements described above.

Determination of significance

The NMFS guidelines for determining whether an action will have a significant impact on a substantial number of small entities identifies five criteria, any one of which, if met, would result in a determination that the action is significant under the RFA. For the purposes of analysis of the cod trip limit adjustments and 10-DAS carryover provision, the universe of “small entities” includes all limited-access fishing vessels except those fishing under the under-30 feet exemption to the DAS program, approximately 1,650 vessels.

For the NAFO exemption rule, the universe of vessels for practical purposes is limited to the vessels that are physically capable of making the trip. However, since the exemptions apply to any vessel, not only those that have limited-access Multispecies permits, the “universe” in this case is all U.S. fishing vessels capable of making the trip. The total number of vessels in the universe cannot currently be estimated, however, since numerous variables are involved in determining ability to make the trip, such as vessels size, hull design, crew and captain ability, fuel capacity, and safety equipment, as well as the weather and time of year. As of this writing, 40 vessel owners have indicated an interest in participating in this exemption program.

The cod trip limit adjustments and the 10-DAS carryover will not affect a substantial number of small entities. “A substantial number”, according to the guidelines, is more than 20 percent of those entities, or 330 vessels in the case of the trip limit measure and 10-DAS carryover. The guidelines state that if the effects of the rule fall primarily on a distinct segment, or portion of the industry (including geographical area), that segment would be considered the universe for the purposes of this criterion. Even though the trip limit adjustments only apply to vessels fishing in the GOM, not under the exemption program, that number is not limited, and varies as vessels elect to fish above or below the exemption boundary line throughout the year. Therefore, the Council considers the universe to be all limited access vessels that *could* be affected by this rule if they chose to fish in the GOM.

Based on the best available information, the Council does not feel that this rule will affect 330 vessels. Based on recently provided information, most vessels are already re-directing their effort away from GOM cod, and are not catching it at rates in excess of the trip limit, where they would be affected by this measure. According to preliminary reports from NMFS Enforcement (letter to the Council July 8), 250 calls were made to the cod hail line compared to 5,300 DAS notification calls during the first two months of the 1997 fishing year (fewer than 5 percent of the trips resulting in a call to the hail line). Besides the occasion when a vessel lands more than allowed under the trip limit, there is actually a strong incentive to call-in and end the trip because the DAS allocations are limited.

The 10-DAS carryover will also not affect a substantial number of small entities. The Council predicts, based on 1996 DAS utilization rates, that far fewer than 20 percent of the vessels will use DAS to within 10 DAS of their annual allocation. Of those that do, only a subset will be in a situation that they will need to carryover any DAS. The Council, therefore, does not expect that this measure will affect a substantial number of small entities.

The NAFO exemption, in contrast, will affect all vessels in the universe of entities affected by this rule, although the impact is positive because it provides opportunity to fish, to be taken at the discretion of the vessel owner. The Council expects, however, that the impact of this rule will not be significant. The five criteria for determining significance, and the relationship of this proposal to them are as follows:

1. *The regulations are likely to result in a reduction or an increase in annual gross revenues by more than 5 percent.* This exemption does not impose any restrictions that result in a reduction in revenues. It may result in an increase in revenues if a vessel owner elects to take advantage of the opportunity created by the exemption, although the increase is not likely to exceed 5 percent of annual gross revenues because of the relatively low value of species available under the NAFO quota. A vessel owner would only choose to make the trip to the NAFO area, and incur the increased costs, if there was a strong expectation that the profits would exceed those made in alternative fisheries.
2. *Annual compliance costs (annualized capital, operating, reporting, etc.) increase total costs of production for small entities by more than 5 percent.* The exemptions impose only one compliance cost, that of the call-in to notify NMFS of leaving and returning to the U.S. EEZ, which does not represent more than 5 percent of the total costs of production.
3. *Compliance costs as a percent of sales for small entities are at least 10-percent higher than compliance costs as a percent of sales for large entities.* No large entities are affected by this exemption.
4. *Capital costs of compliance represent a significant portion of capital available to small entities, considering cash flow and external financing capabilities.* The exemption imposes no capital costs of compliance.
5. *The requirements of the regulations are likely to result in a number of the small entities affected being forced to cease business operations (generally 2 percent of the businesses).* The exemptions will not result in any entities being forced to cease operations.

Based on the above analysis, the Council does not expect that the NAFO area exemptions will have a significant impact on a substantial number of small entities.

Nevertheless, in other sections of this document, particularly Section 4.2, Economic Impacts, the Council has analyzed alternatives and the impacts of the proposed measures on small entities since all vessels are considered small entities.

5.4 Endangered Species Act (ESA)

An adequate discussion of protected species is contained in Section E.6.3.4, Endangered Species and Marine Mammals, of the Amendment 5 FSEIS and Amendment 7 FSEIS, and the associated NMFS Biological Opinions issued in November, 1993, February, 1996, and December 13, 1996.

5.5 Coastal Zone Management Act (CZMA)

Upon the submission of Amendment 7, the Council conducted a review of the FMP for its consistency with the coastal zone management plans of the affected states. All the states concurred with the Council's consistency determination. See Section 8.5, Volume II, of Amendment 7 to the Northeast Multispecies FMP for the Council's consistency determination. The response letters of 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 for consistency with states' CZM plans and is, therefore, consistent with those plans. The Council has notified potentially affected states of this action and of its determination that the action is consistent with its earlier consistency determination.

5.6 Paperwork Reduction Act (PRA)

The following section describes the new collection-of-information requirements which are analyzed in Appendix II for review by the Office of Management and Budget under the authority established in the Paperwork Reduction Act.

5.6.1 Trip limit adjustment

The only new collection of information requirement is for the transit provision for vessels which have exceeded the trip limit. A vessel that has reported to the cod hail line landings of cod in excess of the trip limit (as already required) and that wishes to transit to another port must provide the following information:

- date and time of departure
- destination port
- estimated time of arrival.

When NMFS submitted the initial PRA analysis of the DAS measure, it considered that a vessel would call in after every trip. There was a strong incentive to run the DAS clock for as short a period as possible because the DAS allocations were limited. Only after implementation of the flawed trip limit rule in Framework 20, did any incentive exist for a vessel to run the DAS clock beyond the end of the trip (vessel's return to port). Therefore, the other part of the call-in requirement in this framework (to call the DAS line at least once every 14 days, if a vessel has not called the cod hail line during that period) is not a new collection-of-information requirement requiring PRA analysis.

5.6.2 10-DAS carryover

This measure contains no new collection of information or record-keeping requirements.

5.6.3 Exemption to fish in the NAFO Regulated Area

The provision requiring a vessel to call NMFS before leaving on a trip to the NAFO Regulated Area, and to call again upon leaving the NAFO area, are new collection-of-information requirements requiring analysis under the PRA, see Appendix II.

APPENDIX I - DRAFT PROPOSED RULE

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

Northeast Multispecies Fishery Management Plan; Framework 24

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

ACTION: Proposed rule.

SUMMARY:

The New England Fishery Management Council (Council) proposes three adjustments to the Multispecies Fishery Management Plan. The three adjustments are: 1) vessels fishing under the Gulf of Maine (GOM) cod trip limit will be required to call either the cod hail line or days-at-sea (DAS) line at least once every 14 days, whichever is appropriate; if a vessel calls the cod hail line (because its landings exceed the trip limit), it must remain in port until sufficient time has elapsed to account for the overage, although a transit provision is included to allow vessels required to remain in port to shift to other ports; the boundary line for the trip limit exemption program is shifted from 42°00' to 42°20' east of 69°30'; 2) a vessel that has not used its full DAS allotment would be allowed to carryover a maximum of 10 DAS to the following fishing year; 3) the requirement to have a Multispecies permit to possess or land species managed under this FMP is waived for vessels fishing for those species in the NAFO (Northwest Atlantic Fisheries Organization) Regulated Area and returning to the U.S. to land the catch; other exemptions for fishing in the NAFO area include exceptions to the DAS program, minimum mesh size and any trip or possession limits; vessels will be required to inform NMFS of their departure to and return from the NAFO area and comply with all NAFO regulations.

The Council expects that these measures will improve the effectiveness of the cod trip limit in the GOM, promote safety, and provide flexibility and opportunity to vessels fishing under the groundfish stock-rebuilding program. The Council feels that these adjustments are consistent with the national standards set forth in the Magnuson-Stevens Act, particularly those relating to preventing overfishing, promoting efficiency, accounting for variations among and contingencies in fisheries, minimizing costs, minimizing bycatch mortality, and promoting safety.

DATES: Comments must be received by [DATE]

ADDRESSES: Comments on the rule should be sent to Dr. Andrew A. Rosenberg, NMFS Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930, Attention: Susan A. Murphy. Comments regarding burden hour estimates for collection-of-information requirements contained in this proposed rule should be sent to Dr. Andrew A. Rosenberg, NMFS Regional Administrator, 1 Blackburn Drive,

Gloucester, MA 01930, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

Copies of the Framework 24 document can be obtained by calling or writing Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906, Telephone (781) 231-0422.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978-281-9252.

SUPPLEMENTARY INFORMATION:

Background

Trip limit adjustments

As part of the first annual plan review and adjustment process established in Amendment 7, the Council's Multispecies Monitoring Committee recommended that the Council take steps to significantly reduce effort on Gulf of Maine (GOM) cod in order to meet the plan objectives in 1997. In response, the Council submitted Framework 20, implementing a trip limit on GOM cod, in early February to be effective at the May 1 start of the 1997 fishing year.

While trip limits have been used in the past, the proposed GOM cod limit contained an innovative approach to minimizing discards: allow vessels to land overages and require the DAS clock to continue to run until sufficient time passed to account for the cod landings at the rate set by the trip limit. Recognizing that the trip limit was controversial, the Council included a provision that the trip limit rules would expire after one year unless, upon technical and public review, it explicitly continued them.

The resulting regulations still enabled vessels to easily and legally violate the spirit of the plan. During the initial weeks under the trip limit, the Council received reports from fishermen and industry representatives that some fishermen were directing effort on GOM cod and then, while their DAS clock continued to run to account for the excess cod catch, were returning to fish for other regulated species. Consequently, the Council decided that the potential for circumvention of its intent was enough to warrant immediate action.

The Advisory Report for the 24th Stock Assessment Workshop (SAW 24), presented to the Council in July, bolstered the Council's sense of urgency by recommending that directed fishing effort on GOM cod be practically eliminated. According to the report, fishing mortality rate in 1996 ($F=1.04$) remained well above the plan objectives ($F_{max} = 0.29$). The management advice stated that "measures should be enacted immediately to minimize all directed fishing and bycatch of this stock." In July, the Council considered requesting that the Secretary of Commerce implement the changes by emergency action but rejected that alternative because the situation did not qualify as an emergency, and because this framework was already under development. The Council is also continuing to develop other

measures, particularly GOM area closures, which may replace the trip limit, particularly if the fishing mortality rate is not reduced to acceptable levels.

10-DAS carryover

The Council began the DAS reduction program in 1994 with the implementation of Amendment 5. The final stages of the reduction program took place under Amendment 7 in 1996 and 1997. By 1997, as allocations became broadly restrictive, vessel owners were developing annual fishing strategies which would maximize their economic benefit from a limited fishing opportunity. For many owners, that meant reserving some DAS for the end of the fishing year when other vessel's would have run out of DAS.

These vessel owners soon realized, however, that if weather, mechanical breakdown or other circumstance prevented them from using all their allotted DAS, those valuable DAS would be lost. That situation greatly increases the risk in their DAS-usage strategy, and potentially could cause some operators to fish under unsafe conditions rather than lose the fishing time. In response, the Council initiated this adjustment to allow the 10-DAS carryover, which it feels will promote safety by reducing the vessel owners' risk and increasing their planning flexibility, while not compromising the conservation impact of the DAS program.

NAFO area exemptions

In June 1996, NAFO awarded the U.S., during its first year as a member nation, with a share of the total quota of some species, particularly redbfish, *Illex* squid, and northern shrimp. At the time of the meeting, the U.S. delegation reported that its strategy is to increase conservation and restoration of NAFO-regulated stocks through increased U.S. participation on the Commission and its Scientific Council. One element of that strategy is to increase U.S. participation in NAFO fisheries. In response, the New England Council is taking steps to remove regulatory obstacles in the Multispecies FMP so vessels can fish for, and land in U.S. ports, species currently regulated by that plan.

Purpose and need

The Council is addressing three distinct regulatory issues with this framework. The first issue is a loophole in the trip limit regulations which were implemented to stop the severe overfishing of GOM cod. The second issue is the safety and logistical problem that results from the current rules wherein a vessel could lose valuable DAS due to circumstances beyond its control at the end of a fishing year. The third need being addressed by this framework is the removal of regulatory obstacles to vessels intending to fish in the NAFO Regulated Area for species managed by the Multispecies FMP, particularly redbfish.

While other stocks in the Amendment 7 rebuilding plan appear to be responding positively to the management plan, GOM cod remains in need of special attention, with a fishing mortality rate more than three times the plan objective ($F_{1996}=1.04$, $F_{max}=0.29$). The purpose of the trip limit implemented on May 1 1997, is to stop directed fishing on that stock, but the implementation of the rule leaves open the possibility for vessels to target cod, and land in excess of the trip limit, without a commensurate loss of DAS.

The Advisory Report on SAW 24 noted that through 1996 the GOM cod stock is severely overfished. In 1997, three main management measures have taken effect that address this problem: 1) the final increment in DAS reductions to 50 percent of the historical baseline; 2) the implementation of gillnet sector effort control measures; and 3) the GOM cod trip limit.

The GOM cod trip limit is a critical part of the Council's effort-reduction strategy, and its effective implementation as early as possible is essential. The current rules provide a legitimate way for vessels to continue to direct their effort on cod, in direct contravention of the Council's intent. This adjustment corrects the situation and makes the trip limit measure work as originally intended.

The purpose of the 10-DAS carryover provision is to allow vessel owners to plan an annual fishing strategy without risking the loss of DAS due to weather, mechanical breakdown or other unforeseen circumstance at the end of the fishing year. The current rules create a safety problem by potentially putting a vessel operator in a situation of having to choose between fishing (under unsafe conditions) or losing valuable DAS.

The purpose of the NAFO exemptions is to eliminate regulatory obstacles so vessels can utilize the U.S. quota of redfish, and any bycatch allowance of other regulated species. Those obstacles include the requirement to have a limited-access permit and to fish under DAS with minimum mesh size, while possessing any regulated species.

Adjustment to the GOM cod trip limit

The Council proposes the following adjustments to the Gulf of Maine cod trip limit: 1) a vessel that reports cod landings (on the hail line) in excess of the trip limit must remain in port until sufficient DAS have passed to equate to the cod landed; 2) a vessel fishing on DAS under the Gulf of Maine cod trip limit, that is, not fishing under the trip-limit exemption program, would be required to call either the cod hail line or the DAS call-out number within 14 days of starting a trip, whichever is appropriate. "Whichever is appropriate" is based on the amount of cod landed, that is, if the trip limit is exceeded, the operator would call the hail line, if not, and at least once every 14 days, the operator must call the DAS number and end the trip; 3) a vessel required to remain in port (under the preceding item) may transit to another port, but the operator or owner must first call the cod hail line and report the time of departure, estimated time of arrival, and destination port. A vessel in transit under this provision would be required to stow all nets and would be prohibited from having fish on board; 4) a vessel may switch gillnet vessel categories once during the 1997 fishing year (rather than waiting until the start of the 1998 fishing year) provided it does so by completing the Gillnet Category Designation and Tag Program Application Form within 30 days of the date of effectiveness of the rule; and 5) the current 42°00' boundary line will be adjusted to 42°20' east of 69°30'.

10-DAS carryover

Beginning with the transition from the 1997 to 1998 fishing years, a vessel may carryover a maximum of 10 unused DAS to the following fishing year's allocation. NMFS will automatically credit each vessel with the amount of DAS remaining in the prior year's account up to a maximum of 10 DAS. A vessel owner would not have to apply to have the DAS carried forward. This provision only applies

to vessels that did not hold a confirmation of permit history for the entire fishing year; any permit held as a confirmation of permit history (that is, a permit without a vessel) during any part of the year would not be credited with the carryover DAS.

NAFO Area exemptions

Any vessel that has a High Seas Fishing Permit from NMFS and intending to fish in the NAFO Regulated Area would be exempt from the requirement to have a limited-access Multispecies permit. A vessel that has a limited-access Multispecies permit that is fishing in the NAFO area would be exempt from the requirement to use DAS when fishing for, possessing in the EEZ, or landing any of the regulated species. Vessels would also be exempt from any minimum mesh size and possession limit requirements under the Multispecies FMP while transiting the EEZ and in possession of regulated species.

Any vessel receiving a permit to fish in the NAFO Regulated Area must call in by telephone to NMFS prior to leaving port to declare its intent to fish in the NAFO area, and call in by marine radio-telephone to NMFS when leaving the NAFO area to return home. The Regional Administrator may require that an exemption certificate issued by NMFS be on board for each trip to aid in the enforcement or administration of the exemption program.

Classification

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

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains two new collections of information requirements. The collection of information requirements have been approved under OMB control number 0648-0202 and the estimated response times are as follows:

1. Declaration of intent to transit to another port under the exception to the cod trip limit requirement to remain in port (1min/response when made in conjunction with a cod hail call, 3 min/response when made as a separate call)
2. Declaration of intent to fish in the NAFO Regulated Area and of intent to leave the NAFO Regulated Area (3 min/response for initial call, 5 min/response for second call)

The estimated response times include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding: whether this collection of information is necessary for the proper performance of the functions of this agency, including whether the information has practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity

of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding any of these burden estimates or any other aspect of the collection of information to NMFS and OMB (see addresses).

The Council prepared an EA for this proposed rule with a preliminary finding of no significant impact on the human environment. In addition a draft RIR was prepared with a preliminary finding of no significant impact.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements

Dated [DATE]

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

Subpart F- Management measures for the Northeast Multispecies Fishery

1. Section 648.2 is amended to read as follows:

§ 648.2 Definitions.

* * *

NAFO means the Northwest Atlantic Fisheries Organization.

2. Section 648.4 is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

* * *

(a) Fishery specific permit information.

(1) NE multispecies vessels. Except as provided in §648.88(e) any vessel of the United States, including a charter or party boat, must have been issued and have on board a valid multispecies permit to fish for, possess or land multispecies finfish in or from the EEZ. Multispecies frames used as, or to be used as, bait on a vessel fishing exclusively with pot gear are deemed not to be multispecies finfish for purposes of this part provided that there is a receipt for the purchase of those frames on board the vessel.

* * *

(c) Permit applications.

* * *

(2) Vessel permit information requirements

* * *

(iii) An application for a limited access multispecies permit must also contain the following information:

* * *

(B) (1) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in §648.80(j). Vessel owners electing a Day gillnet designation must indicate the number of gillnet tags that they are requesting and must include a check for the cost of the tags. A permit holder letter will be sent to all eligible gillnet vessels informing them of the costs associated with this tagging requirement and directions for obtaining tags. Except as provided in paragraph (c)(2)(iii)(B)(2) of this section, once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

(2) For the remainder of the 1997 fishing year, a vessel owner that has already elected into one of the two gillnet categories may change categories provided the vessel owner submits a Gillnet Category Designation and Tag Program Application Form to NMFS within 30 calendar days of the effectiveness date of this provision.

3. Section 648.10 is revised to read as follows:

§ 648.10 DAS notification requirements.

* * *

(f) Additional NE multispecies call-in requirements:

* * *

(3) A vessel subject to the cod landing limit restrictions described in §648.86(b)(1) that is not subject to the call in requirement described in §648.86(b)(1)(ii)(B) must call out of the DAS program not more than 14 calendar days after calling in to start a trip.

4. Section 648.14 is revised to read as follows:

§648.14 Prohibitions.

* * *

(12) Fish for, take, catch, harvest or land any species of fish regulated by this part in or from the EEZ, unless the vessel has a valid and appropriate permit issued under this part and the permit is on board the vessel and has not been surrendered, revoked, or suspended, or unless the vessel is fishing in accordance with the NAFO Area exemption described in §648.88(e).

(13) Purchase, possess or receive for a commercial purpose or attempt to purchase possess or receive for a commercial purpose any species regulated under this part unless in possession of a valid dealer permit issued under this part, except that this prohibition does not apply to species that are purchased or received from a vessel not issued a permit under this part and fishing exclusively in state waters or in the NAFO Regulated in accordance with §648.88(e).

* * *

(31) Fish for, possess, or land NE multispecies unless:

* * *

(iv) , the vessel is fishing in accordance with the NAFO Area exemption described in §648.88(e).

* * *

(33) Sell, barter, trade, or otherwise transfer; or attempt to sell, barter, trade, or otherwise transfer for a commercial purpose any NE multispecies from a trip, unless the vessel is holding a multispecies permit, or a letter under §648.4(a)(1), and is not fishing under the charter/party vessel restrictions specified in §648.89, or unless the NE multispecies were harvested by a vessel without a multispecies permit that fishes for NE multispecies exclusively in state waters or unless the vessel is fishing in accordance with the NAFO Area exemption described in §648.88(e).

(34) Operate or act as an operator of a vessel fishing for or possessing NE multispecies in or from the EEZ, or holding a multispecies permit without having been issued and possessing a valid operator's permit unless the vessel is fishing in accordance with the NAFO Area exemption described in §648.88(e).

(35) Fish with, use, or have on board within the area described in §648.80

(a)(1), nets of mesh whose size is smaller than the minimum mesh size specified in §648.80(a)(2), except as provided in §648.80(a)(3) through (6), (a)(8), (a)(9), (d), (e) and (i), unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless the vessel is fishing in accordance with the NAFO Area exemption described in §648.88(e).

* * *

47) Fish for the species specified in §648.80 (d) or (e) with a net of mesh size smaller than the applicable mesh size specified in §648.80(a)(2), (b)(2), or (c)(2), or possess or land such species, unless the vessel is in compliance with the requirements specified in §648.80 (d) or (e), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless the vessel is fishing in accordance with the NAFO Area exemption described in §648.88(e).

* * *

(53) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with §648.80(i) and from or within the areas described in §648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in §648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of §648.51 (a)(2)(ii) and (e)(2), or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless the vessel is fishing in accordance with the NAFO Area exemption described in §648.88(e).

(54) Possess or land fish caught with nets of mesh smaller than the minimum size specified in §648.51, or with scallop dredge gear on a vessel not fishing under the scallop DAS program described in §648.54 of this chapter, or fishing under a general scallop permit, unless said fish are caught, possessed or landed in accordance with §§648.80 and 648.86, or unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters, or unless the vessel is fishing in accordance with the NAFO Area exemption described in §648.88(e).

* * *

(b) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel holding a multispecies permit, issued an operator's permit, or issued a letter under §648.4(a)(1)(i)(H)(3), to land, or possess on board a vessel, more than the possession or landing limits specified in §648.86(a) and (c), or to violate any of the other provisions of §648.86 unless the vessel is fishing in accordance with the NAFO Area exemption described in §648.88(e).

(c) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any person owning or operating a vessel issued a limited access multispecies permit or a letter under §648.4(a)(1)(i)(H)(3), unless the vessel is fishing in accordance with the NAFO Area exemption described in §648.88(e), to do any of the following:

* * *

(20) if the vessel is subject to the cod landing limit restrictions in §648.86(b), to leave port after landing cod in excess of the limit specified in that paragraph unless sufficient time has elapsed as specified in §648.86(b)(1)(ii)(A), or unless transiting under the exemption provided in §648.86(b)(1)(ii)(C).

(21) if the vessel is subject to the cod landing limit restrictions in §648.86(b), to fail to call the DAS number or cod hail line within 14 calendar days of the issuance of the DAS authorization number at the start of the trip.

* * *

(t) In addition to the general prohibitions specified in §600.725 of this chapter and in paragraphs (a) through (h) of this section, it is unlawful for any person owning or operating a vessel issued a nonregulated multispecies permit to possess or land any regulated species as defined in §648.2, or violate any applicable provisions of §648.88, unless the vessel is fishing in accordance with the NAFO Area exemption described in §648.88(e).

5. Section 648.80 is revised to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing. Except as provided in §648.88(e) all vessels must comply with the following minimum mesh size, gear and methods of fishing requirements, unless otherwise exempted or prohibited.

* * *

6. Section 648.82 revised to read as follows:

§ 648.82 Effort Control program for limited-access vessels.

* * *

(j) Carryover of unused DAS. Vessels that do not use their entire allocation of DAS in any fishing year will be allotted additional DAS for the following year equal to the number of unused DAS but not to exceed 10 DAS for any year. The allotment of carryover DAS does not affect the calculation of annual allocations described in paragraph (b) of this section, which are either fleet-wide allocations or are based on the individual vessel's history which remains unchanged.

* * *

(l) Exemption for vessels fishing in the NAFO Regulated Area. A vessel while lawfully fishing under the exemptions provided in §648.88(e) is exempt from the requirement to use DAS allocations while possessing in the EEZ or landing regulated species.

7. Section 648.86 is revised to read as follows:

§ 648.86 Possession restrictions.

Except as provided in paragraph (d) of this part, the following possession restrictions apply:

* * *

(b) Cod. The following landing restrictions apply May 1, 1997, through April 30, 1998:

(1) Landing limit.

* * *

(ii) A vessel subject to the cod landing limit restrictions described in paragraph (b)(1)(i) of this section may come into port with and offload cod in excess of the landing limit as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that:

(A) Except as provided for transit between ports in paragraph (b)(1)(ii)(C) of this section, the vessel remains in port and the vessel operator does not call-out of the DAS program as described under §648.10(c)(3) until sufficient time has elapsed to account for and justify the amount of cod harvested at the time of offloading regardless of whether all of the cod on board is offloaded at which time the operator will call-out of the DAS program and end the trip. (e.g., a vessel that has called-in to the multispecies DAS program at 3 p.m. on Monday may fish and come back into port at 4 p.m. on Wednesday of that same week with 4,000 lb (1,814.4 kg) of cod, and offload some or all of its catch, but cannot call out of the DAS program until 3:01 p.m. the next day, Thursday (i.e., 3 days plus one minute)); and

(B) * * *

(C) A vessel required to remain in port under paragraph (b)(1)(ii)(A) of this section may transit to another port provided the operator, when calling to report the information required under paragraph (b)(1)(ii)(B) of this section or at a later time but prior to departure, also provides the following information: destination port, time of departure and estimated time of arrival. A vessel in transit under this provision may not have fish on board and must have all gear properly stowed and not available for immediate use.

(iii) * * *

(iv) A vessel subject to the cod landing limit restrictions described in paragraph (b)(1)(I) of this section that is not subject to the call in requirement described in paragraph (b)(1)(ii)(B) of this section must come into port and call out of the DAS program no longer than 14 calendar days after calling in to start a trip.

(2) Exemption. (I) a vessel fishing under a NE multispecies DAS is exempt from the landing limit described in paragraph (b)(1) when fishing south of the trip limit exemption boundary line described in paragraph (b)(2)(ii) of this section provided that it does not fish north of this exemption area for a minimum of 30 consecutive days (when fishing under the multispecies DAS program), and has on board an authorization letter issued by the Regional Administrator. Vessels exempt from the landing limit requirement may transit the GOM/GB Regulated Mesh Area north of the trip limit exemption boundary line described in paragraph (b)(2)(ii) of this section, provided that their gear is stowed in accordance with one of the provisions of §648.81(e).

(ii) The trip limit exemption boundary line is a line running eastward along 42°00' North Latitude beginning at the Massachusetts coast at Cape Cod to 69°30' West Longitude then northward to 42°20' North Latitude then eastward to the U.S.-Canada maritime boundary.

(d) Exemption for vessels fishing in the NAFO Regulated Area. The possession restrictions of this section do not apply to vessels fishing under the exemptions provided in §648.88(e) for vessels fishing in the NAFO Regulated Area.

8. Section 648.88 is amended with the following language:

§ 648.88 Open access permit restrictions.

* * *

(e) NAFO area fishing exemption. (1) A vessel issued a valid High Seas fishing permit under **[insert section number]** is exempt from the requirement to have a limited access multispecies permit under §648.4 while possessing in the EEZ or landing regulated species caught while fishing in the NAFO Regulated Area, outside the EEZ, provided the conditions described in paragraph (e)(3) of this section are met. A vessel fishing under this exemption is also exempt from the minimum mesh size under §648.80 and possession restrictions under §648.86.

(2) A vessel issued a valid High Seas fishing permit under **[insert section number]** that also has a limited access Multispecies permit under §648.4 is exempt from the requirements to be fishing in the DAS program under §648.82 while possessing in the EEZ or landing regulated species caught while fishing in the NAFO Regulated Area, outside the EEZ, provided the conditions described in paragraph (e)(3) of this section are met. A vessel fishing under this exemption is also exempt from the minimum mesh size under §648.80 and possession restrictions under §648.86.

(3) A vessel issued a valid High Seas fishing permit may fish under the exemptions provided in paragraphs (e)(1) and (e)(2) of this section provided:

- (i) prior to departure on the trip to fish in the NAFO Regulated Area the vessel operator informs the NMFS Northeast Regional Office by calling **[insert telephone number]** of the intent to fish outside the EEZ under this exemption
- (ii) prior to leaving the NAFO Regulated Area the return to the EEZ the vessel operator informs the NMFS Northeast Regional Office via telephone, marine-radio telephone or other voice communications system of the intent to return to the EEZ, the destination port and estimated time of arrival
- (iii) the vessel has on board an exemption certificate if the Regional Administrator requires and issues such a certificate
- (iv) while in the EEZ all gear is properly stowed and not available for immediate use
- (v) the vessel does not harvest fish, or possess fish harvested in the EEZ during the trip.

APPENDIX II - PRA SUPPORTING STATEMENT

**SUPPORTING STATEMENT FOR REVISIONS TO
OMB NUMBER 0648-0202
PERMIT FAMILY OF FORMS
Federal Fisheries Permits
Northeast Region**

INTRODUCTION

The Magnuson-Stevens Act authorizes the Secretary of Commerce to adopt such regulations as may be necessary to carry out the conservation and management objectives of fishery management plans (FMPs). Section 402 (a) of the Act authorizes the Council to request that the Secretary implement collection-of-information programs if such programs are beneficial to the FMP. The Council proposes two new collection-of-information programs in Framework 24 which it feels are necessary and justified as discussed below.

The Northeast Multispecies FMP contains measures to rebuild overfished stocks including limited access, restrictive numbers of days-at-sea (DAS), area closures, trip or possession limits, and gear restrictions (minimum mesh size and number of gillnets fished, for example). The FMP also contains an annual review and adjustment procedure to insure that the rebuilding plan remains on track.

The adjustments to the FMP proposed in Framework 24 include modifications to the Gulf of Maine cod trip limit, a provision to carryover up to 10 unused DAS to a subsequent fishing year, and exemptions to the multispecies regulations for vessels fishing outside the U.S. Exclusive Economic Zone (EEZ) in the NAFO Regulated Area. The two new collection-of-information requirements included in these adjustments are:

- a vessel required to remain in port under the Gulf of Maine cod trip limit may transit to another port provided it calls the cod hail line and indicates the destination port, time of departure and estimated time of arrival, and
- a vessel operator intending to fish in the NAFO Regulated Area under the exemptions provided in Framework 24 must inform NMFS prior to the start of the trip and upon leaving the NAFO Regulated Area; the Regional Administrator of NMFS may require a vessel to have on board a letter of authorization.

This submission requests revisions of OMB approval for existing NMFS Northeast Region requirements previously approved under Control [ADD NUMBER], Permits. That submission currently covers the Northeast Region's permit requirements for fishing vessels, vessel operators and dealers. This submission extends the existing requirements to include two notification requirements and one exemption permit category.

A. JUSTIFICATION

1. Why is the information necessary?

The conservation measures implemented by the stock rebuilding program impose an economic burden on vessels by limiting or prohibiting certain activities. The exemption and transit provisions in this framework adjustment will reduce some of the costs to the industry of the regulations without compromising the conservation impacts. Additionally, the exemptions for vessels fishing in the NAFO Area are necessary to implement the strategy of the U.S. delegation to NAFO to increase participation in the regional fisheries. The information collection requirements are necessary to administer and enforce the exemptions so that the conservation objectives of the multispecies rebuilding plan are met.

The transit provision for vessels otherwise required to remain in port under the GOM cod trip limit will enable those vessels to shift to their home port or to another port, for example, to obtain repairs after offloading cod in excess of the trip limit. The information being collected (destination port, time of departure and estimated time of arrival) will enable enforcement agents to monitor the movement of a vessel that is prohibited from fishing until sufficient time has elapsed for any cod catch in excess of the trip limit.

The requirement to report to NMFS that a vessel is intending to fish in the NAFO Regulated Area, and is intending to return to the EEZ with fish on board, is necessary to administer the exemption to the DAS program, and to facilitate exemptions to the minimum mesh size, possession limits and DAS program for vessels which may have regulated species on board. Furthermore, the notification requirement will enable NMFS to distinguish the landings of regulated species on those trips from the landings of regulated species caught in the EEZ and attributed to one of the stocks being monitored under the Multispecies FMP. The provision that the Regional Administrator may require a letter of authorization will enable enforcement agents at sea to determine that a vessel is participating in the exemption program and has notified NMFS.

2. How and by whom will the information be used?

The information requested in the transit provision will be used by enforcement agents to determine whether a vessel that is otherwise required to remain in port under the cod trip limit may transit to another port, and where and when that vessel is expected to arrive. The notification and letter-of-authorization provisions of the NAFO area exemption will enable enforcement agents to determine participating vessels. Furthermore, the notification will enable NMFS to distinguish landings on these trips from landings of regulated species caught in the EEZ.

3. Can improved technology reduce the burden?

The transit provision involves a notification by telephone under circumstances where a telephone call is already required (to report cod in excess of the trip limit). The NAFO area exemption notification also requires two telephone calls, one of which must be made by marine radiotelephone or other wireless technology. The use of facsimile in lieu of an original letter of authorization is at the discretion of the Regional Administrator. The use of electronic vessel

monitoring systems (VMS) may reduce the burden, but such a system is not yet fully operational and available for use at this time.

4. Describe any duplication of effort.

The information being collected is the minimum necessary to distinguish exemption program (both transit exemption and NAFO area exemption) participants from other vessels, and is the only information collected to make such a distinction.

5. How are the impacts on small businesses minimized?

The Council has conducted a regulatory impact review (RIR) of Framework 24 for the purposes of determining the impact on small entities, and has found that the proposed measures, including the collection-of-information requirements will not have a significant impact. The Council is proposing the exemptions, of which the collection-of-information requirements are a part, to reduce the burden of the stock rebuilding plan on vessels by providing flexibility and opportunity without compromising the conservation impact of the plan. Only the minimum data necessary to allow for administration and enforcement of the exemption programs will be collected.

6. Could the collection-of-information be eliminated or conducted less frequently?

The need for the collection-of-information is described in item 1 above. The information is collected only when a vessel operator intends to participate in one of the exemptions, in other words the participation is voluntary and the information is only collected *ad hoc*.

7. Explain any inconsistencies with OMB Guidelines.

The collection-of-information programs proposed here are consistent with 5 CFR 1320.6 except that the information is collected more frequently than quarterly as described in item 6 above.

8. What efforts were made to consult affected parties outside of the agency?

The Council developed these proposals in a formal public process that included direct notification of all affected state fisheries agencies, industry associations, the Mid-Atlantic Fishery Management Council, USCG, and approximately 1,650 interested parties. In addition, all Council meeting agendas are published in the *Federal Register* two weeks prior to the meeting.

9. Explain any payment or gifts provided to respondents.

Neither payments nor gifts are given to respondents.

10. Describe any assurances of confidentiality.

Data about a vessel's activity is kept confidential as required by NOAA Directive 88-30, Confidentiality of Fisheries Statistics and is only released to the public in aggregate form. Confidentiality is also required by §402(b) of the Magnuson-Stevens Act. Information about *whether* a vessel is participating in an exemption program, however, is not a matter of

confidentiality, and is publicly available.

10. Provide justification for questions of a sensitive nature.

The proposed collection-of-information programs do not involve questions of a sensitive nature.

11. Provide an estimate in hours of the burden of the collection of information.

The following information is summarized in Table 1. Regulatory changes contained in this action alter previously approved burden estimates for this family of forms. This submission adds estimates of the new burdens associated with these changes. New numbers reflect estimates for the multispecies fishery only, thus previously approved estimates for other species (e.g. sea scallops are unaffected).

The indication of intent to transit to another port will be made by telephone to the cod hail line either at the time of reporting the amount of cod landed or at in a separate call. Vessels currently required to call and report the amount of cod landed already provide the vessel name and permit number, the caller name, DAS confirmation number, the hail weight of cod onboard and any amount of cod to be offloaded. Vessels indicating transit intent would also provide at the same time, the departure and destination port, time of departure and estimated time of arrival.

Since the cod trip limit has not been in effect for a full year, estimates of participation are variable. The PRA analysis for the cod trip limit estimated a public burden of 12,000 calls per year with an estimated average call time of 3 minutes. Only some of vessels required to report under the cod trip limit will also be transiting to other ports, and, therefore, the Council estimates the public burden of the proposed action for this analysis to be 3,000 calls. Of those calls, the Council estimates the proposed requirement would add 1 minute to calls where the transit intent is stated in calls made to report cod catches, and would be 3 minutes long when made separately. For the purpose of this analysis, the Council estimates that the 3,000 calls would be split evenly into the two types.

The Council expects that no more than 10 vessels per year will make the trip to the NAFO Regulated Area, and the total number of trips will not likely exceed 15. A vessel owner or operator will notify the NMFS Regional Office by telephone of the intent to make a trip to the NAFO Regulated Area, providing vessel name and documentation number, caller name, whether or not the vessel has a multispecies permit, and, if applicable, the permit number. If required by the Regional Administrator, the caller will also request a letter of authorization. The public burden of this call is approximately 45 minutes based on 15 calls at 3 minutes per call.

The vessel operator must also call NMFS by marine radio-telephone to indicate the vessel's departure from the NAFO Regulated Area and intent to return to the U.S. EEZ. Since this call involves connection through the marine operator, the call length is estimated to be 5 minutes, for a total public burden of 75 minutes.

The estimated annualized cost to respondents for the hour burden of this collection assumes a

respondent wage of \$15.00/hour.

12. Provide estimates of the total annual cost burden to the respondents.

Regulatory changes contained in this action alter previously approved cost burden estimates for this family of forms. This submission adds estimates of the new burdens associated with these changes. New numbers reflect estimates for the multispecies fishery only, thus previously approved estimates for other species (e.g. sea scallops) are unaffected.

This information collection does not require respondents to purchase new or additional equipment or services. Most computers, telephones, marine radiotelephones and/or facsimile machines used by respondents would have already been purchased as part of customary and usual business practices. Thus, there are no start-up costs associated with these programs.

The costs of telephone and marine radiotelephone calls to NMFS will be borne by the respondent. Estimated telephone costs for the declaration of intent to transit are \$0.35/call, or \$0.10/call for those calls where the declaration is made concurrent with the call made to report landings. Total annualized costs, therefore, are $1,500(0.35)+1,500(0.10)=\675.00 . Estimated costs for the NAFO Area exemption are based on 15 calls at \$0.35/call for the initial call, and 15 calls at \$10.00/call for marine radiotelephone calls using the services of a marine operator. Total estimated annual costs, therefore, are $15(0.35)+15(10.00)=\$155.25$.

13. Provide estimates of annualized costs to the federal government.

The following information is summarized in Table 1. Regulatory changes contained in this action alter previously approved burden estimates for this family of forms. This submission adds estimates of the new burdens associated with these changes. New numbers reflect estimates for the multispecies fishery only, thus previously approved estimates for other species (e.g. sea scallops) are unaffected.

The cost to the government of administering the calls to indicate intent to transit is based on an hourly rate of \$25.00. The time required is estimated to be equal to the time of the call which is three minutes for calls made separately from the call to report cod landings, and one minute when the transit information is provided in conjunction with a hail call. These times translate to a cost of \$1,875 and \$750 for the two types of calls, respectively.

The cost to the government of administering the calls indicating intent to fish in the NAFO Regulated Area is also based on the same hourly rate and burden hour estimate. The costs of administering the calls, therefore are \$18.75 and \$31.25 for calls prior to leaving on the trip and upon leaving the NAFO Regulated Area, respectively. In addition, the Regional Administrator may require that vessels have on board a letter of authorization which will add \$98.55 to the government cost as follows: preparation of 15 letters at 0.25 hours per letter (3.75 hours@ \$25.00/hour) and \$0.32 postage.

14. Will the results of the collection be published for statistical use?

NMFS may monitor fishing vessel activity and participation in exemption programs through compilation of data gathered in the proposed collection-of-information programs. This monitoring of activity will help the Council and NMFS review the programs for efficacy and efficiency, and provide a quantitative basis for improving the FMP and reducing the regulatory burden on the public while achieving the plan’s conservation goals.

	Number of participants	Items/ entity	Total # of items	Response time (hrs.)	Total Burden (hrs.)	Costs to govt. (\$)
Transit (during cod hail call)	400	37.5	1,500	0.017	25.5	637.50
Transit (separate call)	400	37.5	1,500	0.05	75	1,875
NAFO exemption (first call)	10	1.5	15	0.05	0.75	117.30
NAFO exemption (call for return to U.S.)	10	1.5	15	0.083	1.25	31.25
Totals					107	2,661.05

TABLE 1- Summary of estimated burden of information collections required under Framework 24.