

**FRAMEWORK ADJUSTMENT 5**

**TO THE**

**Atlantic Mackerel, Squid, and Butterfish**  
**Fishery Management Plan**

**DRAFT**

**May 2012**

**Mid-Atlantic Fishery Management Council**

**in cooperation with**

**the National Marine Fisheries Service (NMFS)**

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## 1.0 EXECUTIVE SUMMARY

In 2011 the Mid-Atlantic Fishery Management Council (Council) approved Amendment 11 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. Amendment 11 implemented limited access in the commercial Atlantic mackerel fishery, updated Essential Fish Habitat for Atlantic Mackerel, *Illex* Squid, Longfin Squid (formerly known as *Loligo*), and Butterfish, and established a commercial-recreational mackerel allocation.

Since publication of the implementing regulations for Amendment 11, several issues have been raised by members of the public regarding one provision of the Atlantic mackerel limited access program implemented by Amendment 11. Amendment 11 used a tiered system of permits for mackerel limited access and required the vessels in the two tiers with greatest access, Tiers 1 and 2, to obtain a fish hold measurement from an individual credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors or from an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (alternative 4c in Amendment 11). Vessels that are sealed by the Maine State Sealer of Weights and Measures were also deemed to meet this requirement. These credentialing requirements were developed by staff and the Council through background research, advisory panel meetings, input from several marine surveyors in the Mid-Atlantic and New England Regions, and with input during several rounds of public comment on the amendment.

These fish hold measurements form a baseline specification, and also as part of Amendment 11, Tier 1 and Tier 2 vessels would only be able to alter their vessels so as to increase their fish hold size once, and that one-time increase could not exceed 10 percent of the vessel's baseline specification. This restriction is in addition to existing upgrade limitations: up to 10 percent above of the baseline vessel's length overall, gross registered tonnage, and net tonnage, and up to 20 percent above the baseline vessel's horsepower. Vessels that are upgraded or replacement vessels would have to be resurveyed by a surveyor (accredited as above) unless the replacement vessel already had an appropriate certification, and the documentation would have to be submitted to the National Marine Fisheries Service. The intent of these measures was and is to control future capacity increases in the mackerel fleet that qualifies for the two limited access tiers with greatest access, Tiers 1 and 2. These are the primary vessels that target mackerel in large volumes. Controlling future capacity increases should minimize future racing to fish, and minimize any negative impacts of racing to fish, which was the primary purpose of Amendment 11. The negative biological and socio-economic effects of racing to fish are well documented in fishery management literature and detailed in Amendment 11 (e.g. Section 4 of that Amendment).

Since publication of the final rule for Amendment 11, two marine professionals have raised issues with the credentialing requirements described above. This framework action considers adjusting the hold certification requirements based on these individual's

concerns. Specifically, one marine surveyor believed the credentialing requirements discriminated against independent marine surveyors who may be equally qualified, and one marine architect believed that marine architects would be equally if not more qualified to perform such measurements.

This framework to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan considers alternatives to broaden the scope of individuals who could provide the hold measurements required by Amendment 11. It is anticipated that from a National Environmental Policy Act (NEPA) perspective this action would qualify for a categorical exclusion since it is administrative in nature in that it expands only on the administrative provisions already in the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. This action does not change the operation of the fishery, and is not expected to have any impacts on the human environment, either positive or negative. This document has been prepared in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and presents and evaluates the management alternatives to be considered within this framework.

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### **3.0 PURPOSE AND NEED, MANAGEMENT UNIT, MANAGEMENT OBJECTIVES, AND HISTORY OF FISHERY MANAGEMENT PLAN DEVELOPMENT**

#### **3.1 PURPOSE AND NEED**

The purpose of this framework is to consider changes to the scope of individuals who would be allowed to conduct vessel hold measurements as required under Amendment 11. This action is needed because there are likely additional individuals beyond those specified in Amendment 11 who would be equally or more qualified to conduct the vessel hold measurements required in Amendment 11. As such, the current requirements may discriminate against equally qualified marine professional and may make in unnecessarily burdensome for vessels to obtain such vessel hold requirements by unnecessarily limiting the number of individuals who may be contracted to perform such measurements.

#### ***Management Unit, Management Objectives, and History of Fishery Management Plan Development***

#### **3.2 HISTORY OF FISHERY MANAGEMENT PLANS DEVELOPMENT**

Management of the Atlantic mackerel, longfin squid, *Illex* squid, and butterfish fisheries began through the implementation of three separate fishery management plans (one each for mackerel, squid, and butterfish) in 1978. The plans were merged in 1983. Over the years a wide variety of management issues have been addressed including rebuilding, habitat conservation, bycatch minimization, and limited entry. The original plans, amendments and frameworks that affected management of these fisheries are summarized below. All plan documents are available at: <http://www.mafmc.org/Fishery Management Plan/msb.htm> and are summarized in the table below.

## History of Fishery Management Plans Development

History of the Atlantic Mackerel, Squid and Butterfish Fishery Management Plans		
Year	Document	Management Action
1978-1980	Original Fishery Management Plans (3) and individual amendments	Established and continued management of Atlantic mackerel, squid, and butterfish fisheries
1983	Merged Fishery Management Plans	Consolidated management of Atlantic mackerel, squid, and butterfish fisheries under a single Fishery Management Plans
1984	Amendment 1	Implemented squid optimum yield adjustment mechanism Revised Atlantic mackerel mortality rate
1986	Amendment 2	Equated fishing year with calendar year Revised squid bycatch total allowable level of foreign fishing allowances Implemented framework adjustment process Converted expiration of fishing permits from indefinite to annual
1991	Amendment 3	Established overfishing definitions for all four species
1991	Amendment 4	Limited the activity of directed foreign fishing and joint venture transfers to foreign vessels Allowed for specification of optimum yield for Atlantic mackerel for up to three years
1996	Amendment 5	Adjusted longfin squid maximum sustainable yield; established 1 7/8" minimum mesh size Eliminated directed foreign fisheries for longfin squid, <i>Illex</i> , and butterfish Instituted a dealer and vessel reporting system; Instituted operator permitting Implemented a limited access system for longfin squid, <i>Illex</i> and butterfish Expanded management unit to include all Atlantic mackerel, longfin squid, <i>Illex</i> , and butterfish under U.S. jurisdiction.
1997	Amendment 6	Established directed fishery closure at 95% of domestic annual harvest for longfin squid, <i>Illex</i> and butterfish with post-closure trip limits for each species Established a mechanism for seasonal management of the <i>Illex</i> fishery to improve the yield-per recruit Revised the overfishing definitions for longfin squid, <i>Illex</i> and butterfish
1997	Amendment 7	Established consistency among Fishery Management Plans in the Northeast region of the U.S. relative to vessel permitting, replacement and upgrade criteria
1998	Amendment 8	Brought the Fishery Management Plans into compliance with new and revised National Standards and other required provisions of the Sustainable Fisheries Act. Added a framework adjustment procedure.

2001	Framework 1	Established research set-asides.
2002	Framework 2	Established that previous year specifications apply when specifications for the management unit are not published prior to the start of the fishing year (excluding total allowable level of foreign fishing specifications)
		Extended the <i>Illex</i> moratorium for one year; Established <i>Illex</i> seasonal exemption from longfin squid minimum mesh;
		Specified the longfin squid control rule; Allowed longfin squid specs to be set for up to 3 years
2003	Framework 3	Extended the moratorium on entry to the <i>Illex</i> fishery for an additional year
2004	Framework 4	Extended the moratorium on entry to the <i>Illex</i> fishery for an additional 5 years
2008	Amendment 12	Standardized Bycatch Reporting Methodology
2009	Amendment 9	Extended the moratorium on entry into the <i>Illex</i> fishery, without a sunset provision
		Adopted biological reference points for longfin squid recommended by the stock assessment review committee.
		Designated Essential Fish Habitat for longfin squid eggs based on available information
		Prohibited bottom trawling by Mackerel-Squid-Butterfish-permitted vessels in Lydonia and Oceanographer Canyons
		Authorized specifications to be set for all four Mackerel-Squid-Butterfish species for up to 3 years
2010	Amendment 10	Implemented a butterfish rebuilding program.
		Increased the longfin squid minimum mesh in Trimesters 1 and 3.
		Implemented a 72-hour trip notification requirement for the longfin squid fishery.
2011	Amendment 11	Mackerel limited access
		Essential Fish Habitat Updates
		Commercial/Recreational Mackerel Allocation
2011	Amendment 13	Annual Catch Limit and Accountability Measure Omnibus Amendment
2012	Amendment 14	River Herring Bycatch (ongoing)

### **3.3 FISHERY MANAGEMENT PLANS GENERAL MANAGEMENT OBJECTIVES/GOALS**

The objectives, as described in the Fishery Management Plans as currently amended, are listed below.

1. Enhance the probability of successful (i.e., the historical average) recruitment to the fisheries.
2. Promote the growth of the U.S. commercial fishery, including the fishery for export.
3. Provide the greatest degree of freedom and flexibility to all harvesters of these resources consistent with the attainment of the other objectives of this Fishery Management Plans.
4. Provide marine recreational fishing opportunities, recognizing the contribution of recreational fishing to the national economy.
5. Increase understanding of the conditions of the stocks and fisheries.
6. Minimize harvesting conflicts among U.S. commercial, U.S. recreational, and foreign fishermen.

### **3.4 MANAGEMENT UNIT/SCOPE**

The management unit is currently all northwest Atlantic mackerel (*Scomber scombrus*), longfin squid (*Doryteuthis (Amerigo) pealeii*, formerly named *Loligo pealeii*), *Illex illecebrosus*, and butterfish (*Peprilus triacanthus*) under U.S. jurisdiction though an alternative in another amendment (Amendment 14) currently being considered could effectively extend the management unit to include river herrings and shads.

## **4.0 MANAGEMENT ALTERNATIVES**

The management regimes and associated management measures within the Fishery Management Plan for the managed resources have been refined over time and codified in regulation. The *status quo* management measures for the managed resources, therefore, each involve a set of indefinite (i.e., in force until otherwise changed) measures that have been established. These measures will continue as they are even if the actions contained within this framework are not taken (i.e., no action). The no action alternative for these managed resources is therefore equivalent to *status quo*. On that basis, the status quo and no action are presented in conjunction for comparative impact analysis relative to the action alternative. Mackerel-Squid-Butterfish regulations may be found here:

<http://www.nero.noaa.gov/nero/regs/>.

### **4.1 Alternative 1 (Status Quo/no action)**

Under this status quo/no action alternative, no action will be taken to change the individuals approved to conduct the vessel hold measurements as required by Amendment 11. As such, the current requirements would remain in place. The requirements are for individuals to be credentialed as a Certified Marine Surveyor with a fishing specialty by the National Association of Marine Surveyors or from an individual credentialed as an Accredited Marine Surveyor with a fishing specialty by the Society of Accredited Marine Surveyors (alternative 4c in Amendment 11). Vessels that are sealed by the Maine State Sealer of Weights and Measures are deemed to meet this requirement.

### **4.2 Alternative 2 (Marine Surveyor)**

Under this alternative, individuals who have completed training in marine surveying, and document their qualifications along with any hold measurement, would also be approved to conduct the vessel hold requirements required in Amendment 11.

### **4.3 Alternative 3 (Naval Architect)**

Under this alternative, individuals who have completed a degree in naval architecture or a similar field, and document their qualifications along with any hold measurement, would also be approved to conduct the vessel hold requirements required in Amendment 11.

### **4.4 Alternative 4 (Qualified Individual - Preferred)**

Under this alternative, individuals who identify themselves as a qualified individual, and document their qualifications along with any hold measurement, would be approved to conduct the vessel hold requirements required in Amendment 11. While Amendment 11's hold capacity is only a volume measurement and has no meaning in terms of vessel stability, this alternative would borrow from Coast Guard regulations on vessel stability and define a qualified individual to mean an "individual or an organization with formal training in and experience in matters dealing with naval architecture calculations." The National Marine Fisheries Service would only be able to make a basic screening that qualified individuals had appeared to represent their qualifications accurately.

## **5.0 DESCRIPTION OF THE AFFECTED ENVIRONMENT AND FISHERIES**

The affected environment and fisheries, as defined in Section 6.0 of Amendment 11's Environmental Impact Statement, is incorporated by reference in this framework, and may be downloaded at: [http://www.mafmc.org/Fishery Management Plan/msb.htm](http://www.mafmc.org/Fishery%20Management%20Plan/msb.htm).

Interactions of the managed resources with non-target species, Endangered Species Act (ESA) listed and Marine Mammal Protection Act (MMPA) protected resources, as well as interactions with Essential Fish Habitat, are also described in Amendment 11's Environmental Impact Statement.

None of the alternatives in this action would result in a change in the affected environment that is described in the Amendment 11 document. Other than the No Action/Status quo alternative (which would maintain the Amendment 11 provisions), the alternatives in this action merely expand the range of entities that vessel owners can use to certify vessel fish holds.

## **6.0 ENVIRONMENTAL IMPACTS**

This action considers expanding the group of individuals who are qualified to conduct the vessel hold certifications implemented in Amendment 11 to this Fishery Management Plan. The certifications were required as part of implementing limited access in the Atlantic mackerel fishery. As part of limited access, Amendment 11 implemented restrictions on increases to the certified hold capacities of the principal mackerel vessels, in an attempt to control increases in the capacity of the current fleet of vessels that target Atlantic mackerel. The intent was and is to minimize any future racing to fish that occurs related to fleet overcapitalization. Racing to fish involves negative biological and socioeconomic impacts, as detailed in Amendment 11. While the hold certifications should still be useful as part of limited access in the mackerel fishery, the designation of who can perform such certifications may have been overly prescriptive. The sections below describe the impacts of broadening the scope of individuals who may conduct such certifications, which should not impact the initial intent of the vessel hold certifications and related limitations on hold increases.

### **6.1 Managed Resources and Non-Target Species**

There should be no biological impacts related to any of the alternatives considered in this action because the designation of who can perform vessel hold requirements would not be expected to have any impacts on fishing activities or catches.

## **6.2 Physical Environment and Essential Fish Habitat Impacts**

There should be no impacts on the physical environment or essential fish habitat related to any of the alternatives considered in this action because the designation of who can perform vessel hold requirements would not be expected to have any impacts on fishing activities.

## **6.3 Impacts on Protected Resources (Endangered Species, Marine Mammals)**

There should be no protected resource impacts related to any of the alternatives considered in this action because the designation of who can perform vessel hold requirements would not be expected to have any impacts on fishing activities.

## **6.4 Human Communities - Socioeconomic Impacts**

### **Alternative 1 (Status Quo/no action)**

Compared to the Action Alternatives, some individuals who are qualified to perform hold measurements would not be allowed to do so, resulting in less income to them but more income to those who are currently authorized to do so. With relatively few allowed individuals, it might be more difficult for vessel owners to find individuals to perform hold measurements compared to the other alternatives.

### **Alternative 2 (Marine Surveyor)**

Compared to the status quo/no action, more individuals would be authorized to perform the hold measurements, resulting in the work to perform such measurements being more widely distributed. It should be easier for vessels to find an allowed individual and some vessels may already have their vessel hold measurements on file with marine surveyors who are not already allowed to perform the measurements.

### **Alternative 3 (Naval Architect)**

Compared to the status quo/no action, more individuals would be authorized to perform the hold measurements, resulting in the work to perform such measurements being more widely distributed. It should be easier for vessels to find an allowed individual and some vessels may already have their vessel hold measurements on file with naval architects who are not currently allowed to perform the measurements.

### **Alternative 4 (Qualified Individual – Preferred)**

Compared to the status quo/no action, more individuals would be authorized to perform the hold measurements, resulting in the work to perform such measurements being more

widely distributed. It should be easier for vessels to find a qualified individual and some vessels may already have their vessel hold measurements on file with qualified individuals who are not currently allowed to perform the measurements.

## **7.0 MAGNUSON-STEVENSON ACT**

### **7.1 NATIONAL STANDARDS**

Section 301 of the MSA requires that FMPs contain conservation and management measures that are consistent with the ten National Standards:

*In General. – Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the...national standards for fishery conservation and management.*

*(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.*

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

*(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.*

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

*(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.*

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

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

*(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 economic impacts 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.*

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

The measures in this framework relate only to NS 7. There should be no biological impacts related to any of the alternatives considered in this action because the designation of who can perform vessel hold requirements would not be expected to have any impacts on fishing activities or catches. Compared to the status quo/no action, more individuals would be authorized to perform the relevant hold measurements, resulting in the work to perform such measurements being more widely distributed. It should be easier for vessels to find a qualified individual and some vessels may already have their vessel hold measurements on file with qualified individuals who are not currently allowed to perform the measurements.

## **7.2 OTHER REQUIRED PROVISIONS OF THE MAGNUSON-STEVENSONS ACT**

Section 303a of the Magnuson Stevens Act contains 15 additional required provisions for Fishery Management Plans. Such provisions are detailed in the DEIS to Amendment 14, which is available at: [http://www.mafmc.org/fmp/msb\\_files/msbAm14current.htm](http://www.mafmc.org/fmp/msb_files/msbAm14current.htm). In general, these provisions detail the measures and monitoring required for federally managed species in order to ensure successful conservation. Given the limited scope of this framework, there are no impacts related to such requirements.

## **7.3 DISCRETIONARY PROVISIONS OF THE MAGNUSON-STEVENSONS ACT**

Section 303b of the Magnuson Stevens Act contains 14 additional discretionary provisions for Fishery Management Plans. They may be read on pages of 59 and 60 of NMFS' redline version of the Magnuson Stevens Act at: [http://www.nmfs.noaa.gov/msa2007/MSA\\_Amended%20by%20Magnuson-Stevens%20Reauthorization%20Act%20%281-31-07%20draft%29.pdf](http://www.nmfs.noaa.gov/msa2007/MSA_Amended%20by%20Magnuson-Stevens%20Reauthorization%20Act%20%281-31-07%20draft%29.pdf). The only discretionary provision relevant for this action is number 6, which allows Councils to enact limited access systems. The hold measurement requirement was originally part of the recently implemented Atlantic mackerel limited access system. This action makes the

hold measurement requirement less burdensome by expanding the number of people who can document such measurements.

#### **7.4 ESSENTIAL FISH HABITAT ASSESSMENT**

The MSA / EFH Provisions (50 CFR 600.920(e)(3)) require that any Federal action which may adversely affect EFH must include a written assessment of the effects of that action on EFH. As described in Section 6, there are not expected to be any habitat impacts related to this action.

### **8.0 OTHER APPLICABLE LAWS**

#### **NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**

This action will likely be categorically excluded from the requirement to prepare an Environmental Assessment or Environmental Impact Assessment under the National Environmental Policy Act. Categorical exclusions are applicable to a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required (40 Code of Federal Regulations 1508.4). This action as proposed would have neither positive nor negative impacts on the human environment, and is primarily administrative in nature. There should be no environmental impacts related to any of the alternatives considered in this action because the designation of who can perform vessel hold requirements would not be expected to have any impacts on fishing activities or catches.

#### **MARINE MAMMAL PROTECTION ACT (MMPA)**

The Council has reviewed the impacts of the action on marine mammals and has concluded that the proposed management actions are consistent with the provisions of the Marine Mammal Protection Act, and will not alter existing measures to protect the species likely to inhabit the management unit. There should be no marine mammal impacts related to any of the alternatives considered in this action because the designation of who can perform vessel hold requirements would not be expected to have any impacts on fishing activities or catches.

#### **ENDANGERED SPECIES ACT (ESA)**

Section 7 of the ESA requires Federal agencies conducting, authorizing, or funding activities that affect threatened or endangered species to ensure that those effects do not

jeopardize the continued existence of listed species. Formal consultation on the MSB fishery was last completed on October 29, 2010. The October 29, 2010, Biological Opinion concluded that the operation of the MSB fishery is not likely to jeopardize the continued existence of listed species. Since the Atlantic sturgeon distinct population segments (DPSs) have been listed as endangered and threatened under the ESA, the ESA Section 7 consultation for the MSB fisheries has been reinitiated, and additional evaluation will be included in the resulting Biological Opinion to describe any impacts of the fisheries on Atlantic sturgeon and define any measures needed to mitigate those impacts, if necessary. It is anticipated that any measures, terms and conditions included in an updated Biological Opinion will further reduce already low impacts to the species.

There should be no ESA impacts related to any of the alternatives considered in this action because the designation of who can perform vessel hold requirements would not be expected to have any impacts on fishing activities or catches.

### **COASTAL ZONE MANAGEMENT ACT (CZMA)**

Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972 requires that all Federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. Pursuant to the Coastal Zone Management Act regulations at 15 Code of Federal Regulations 930.35, a negative determination may be made if there are no coastal effects and the subject action: (1) Is identified by a state agency on its list, as described in ' 930.34(b), or through case-by-case monitoring of unlisted activities; or (2) which is the same as or is similar to activities for which consistency determinations have been prepared in the past; or (3) for which the Federal agency undertook a thorough consistency assessment and developed initial findings on the coastal effects of the activity. Accordingly, NOAA Fisheries has determined that this action would have no effect on any coastal use or resources of any state. Letters documenting the NOAA Fisheries negative determination, along with this document, will be sent to the coastal zone management program offices of the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida. A list of the specific state contacts and a copy of the letters will be made available upon request.

### **ADMINISTRATIVE PROCEDURES ACT**

Section 553 of the Administrative Procedure Act establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of these requirements is to ensure public access to the Federal rulemaking process, and to give the public adequate notice and opportunity for comment. It should be noted that the Council discussed this action and its alternatives at two of its publicly attended Council meetings, February 2012 and April 2012. Further, NMFS will publish a proposed rule that will solicit public comment on the proposed measures. At this time, the Council is not requesting any abridgement of the rulemaking process for this action.

## **INFORMATION QUALITY ACT**

### **Utility of Information Product**

This document includes: A description of the management issues, a description of the alternatives considered, and the reasons for selecting the management measures, to the extent that this has been done. This action proposes modifications to the existing Fishery Management Plan. These proposed modifications implement the Fishery Management Plan's conservation and management goals consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as well as all other existing applicable laws.

This proposed framework was developed as part of a multi-stage process that involves review of the action by affected members of the public. The public had the opportunity to review and comment on management measures at two Council meetings (February 2012 and April 2012). The Federal Register notice that announces the proposed rule and the implementing regulations will be made available in printed publication and on the website of the Northeast Regional Office. The notice provides metric conversions for all measurements.

### **Integrity of Information Product**

The information product meets the standards for integrity under the following types of documents:

Other/Discussion (e.g., Confidentiality of Statistics of the Magnuson-Stevens Fishery Conservation and Management Act; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 Code of Federal Regulations 229.11, Confidentiality of information collected under the Marine Mammal Protection Act.)

### **Objectivity of Information Product**

The category of information product that applies for this product is "Natural Resource Plans."

In preparing documents which amend the Fishery Management Plan, the Council must comply with the requirements of the Magnuson-Stevens Act, the National Environmental Policy Act, the Regulatory Flexibility Act, the Administrative Procedure Act, the Paperwork Reduction Act, the Coastal Zone Management Act, the Endangered Species Act, the Marine Mammal Protection Act, the Data Quality Act, and Executive Orders 12630 (Property Rights), 12866 (Regulatory Planning), 13132 (Federalism), and 13158 (Marine Protected Areas).

This framework was developed to comply with all applicable National Standards, including National Standard 2. National Standard 2 states that the Fishery Management Plan's conservation and management measures shall be based upon the best scientific information available.

The management measures proposed to be implemented by this document are supported by the best available scientific information. The management measures contained herein have been designed to meet the conservation goals and objectives of the Fishery Management Plan and ensure a minimal impact on fishing communities.

The review process for this action involves the Mid-Atlantic Fishery Management Council, the Northeast Fisheries Science Center, the Northeast Regional Office, and NOAA Fisheries headquarters. The Center's technical review is conducted by senior level scientists with specialties in population dynamics, stock assessment methods, demersal resources, population biology, and the social sciences. The Council review process involves public meetings at which affected stakeholders have the opportunity to provide comments on the document. Review by staff at the Regional Office is conducted by those with expertise in fisheries management and policy, habitat conservation, protected species, and compliance with the applicable law. Final approval of this document and clearance of any associated the rule is conducted by staff at NOAA Fisheries Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget.

#### **IMPACTS RELATIVE TO FEDERALISM/ EXECUTIVE ORDER 13132**

This amendment does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order (E.O.) 13132.

#### **ENVIRONMENTAL JUSTICE/ EXECUTIVE ORDER 12898**

This Executive Order provides that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” Executive Order 12898 directs each Federal agency to analyze the environmental effects, including human health, economic, and social effects of Federal actions on minority populations, low-income populations, and Indian tribes, when such analysis is required by the National Environmental Policy Act (NEPA). Agencies are further directed to “identify potential effects and mitigation measures in consultation with affected communities, and improve the accessibility of meetings, crucial documents, and notices.”

The alternatives in this action will broaden the group of individuals authorized to conduct the relevant vessel measurements and should have no environmental justice implications.

## **REGULATORY FLEXIBILITY ACT/ EXECUTIVE ORDER 12866**

The intent of this action is to solely broaden the group of individuals authorized to conduct the relevant vessel measurements and should have no negative impacts on any industry. If anything, fishery participants will have greater options for obtaining services to conduct the relevant vessel measurements. Therefore, this action will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act.

NMFS Guidelines provide criteria to be used to evaluate whether a proposed action is significant. A significant regulatory action means any regulatory action that is likely to result in a rule that may:

1. *Have an annual effect on the economy of \$100 million or more, or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.*

The proposed actions are not expected to have any effect on the economy. The intent of this action is to solely broaden the group of individuals authorized to conduct the relevant vessel measurements and should have no negative impacts on any industry.

2. *Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.*

The proposed actions will not create a serious inconsistency with or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will interfere with the MSB fisheries in the EEZ.

3. *Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.*

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 participants.

4. *Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.*

The considered actions do not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

## **Description and Number of Small Entities to Which the Rule Applies**

The Regulatory Flexibility Act (RFA) requires the Federal rulemaker to examine the impacts of proposed and existing rules on small businesses, small organizations, and small governmental jurisdictions. In reviewing the potential impacts of proposed regulations, the agency must either certify that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities or prepare a final regulatory flexibility analysis. The Small Business Administration (SBA) defines a small business in the commercial fishing sector as a firm with receipts (gross revenues) of up to \$4.0 million. Party/charter small businesses are included in NAICS code 487210 and are defined as a firm with gross receipts of up to \$7 million.

The measures in this action would impact vessels that qualify for Tier 1 or Tier 2 mackerel limited access permits. These are the vessels that must get hold measurement certifications. Analysis in Amendment 11 estimated that 74 vessels could qualify for limited access permits. The final number may vary slightly from 74 but initial applications support 74 as being close to the number of vessels that will qualify. Depending on the year, all of these vessels may qualify as small businesses, or a few may be above the 4.0 million dollar threshold depending on their landings in a given year. However, there are no negative impacts on any fishery participants related to this action, as described above in Section 6.

## **PAPERWORK REDUCTION ACT (PRA)**

The purpose of the PRA is to control and, to the extent possible, minimize the paperwork burden for individuals, small businesses, nonprofit institutions, and other persons resulting from the collection of information by or for the Federal Government. The preferred alternative proposed in this amendment does not propose to modify any existing collections, or to add any new collections; therefore, no review under the PRA is necessary.

## **9.0 LIST OF AGENCIES AND PERSONS CONSULTED**

In preparing this document, the Council consulted with NMFS, New England and South Atlantic Fishery Management Councils, U.S. Fish and Wildlife Service, and the states of Maine through North Carolina through their membership on the Mid-Atlantic and New England Fishery Management Councils. The advice of NMFS NERO personnel was sought to ensure compliance with applicable laws and procedures.