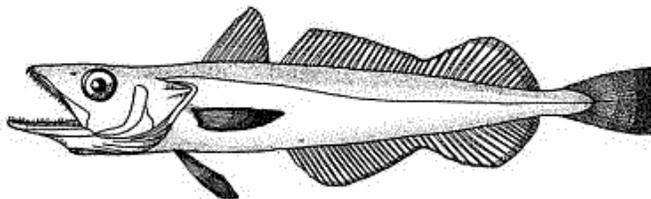
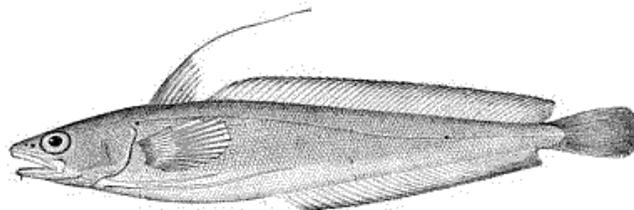
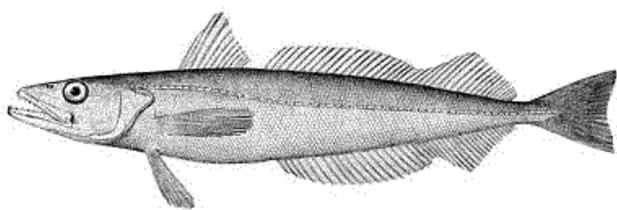


FRAMEWORK ADJUSTMENT 37
to the
NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN
(for Whiting, Red Hake, & Offshore Hake)

**Incorporating an
Environmental Assessment and
Regulatory Impact Review**

**To Eliminate the Year 4 Default Measure and Adjust Other Measures for
Small Mesh Multispecies**



Prepared by the New England Fishery Management Council

in consultation with

National Marine Fisheries Service
Mid-Atlantic Fishery Management Council

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Executive Summary

This framework adjustment proposes to eliminate the Year 4 default measure for small mesh multispecies in both the northern and southern whiting stock areas, and to adjust measures to allow increased opportunities to fish for small mesh multispecies in the northern area. The proposed action is based on technical recommendations from the Council's Whiting Monitoring Committee (WMC) in its third-year review (Appendix I) and includes:

- elimination of the Year 4 default measure in both stock areas;
- reinstatement of the Cultivator Shoal Whiting Fishery season through October 31;
- elimination of the 10% restriction on red hake incidental catch in the Cultivator Shoal Whiting Fishery;
- adjustment of the incidental catch allowances in Small Mesh Areas 1 and 2 so that they are consistent with those in the Cape Cod Bay raised footrope trawl fishery;
- clarification of the transfer at sea provisions for small mesh multispecies for use as bait; and
- minor modification to the Cape Cod Bay raised footrope trawl fishery area.

The northern stock of whiting is considered to be rebuilt and is at 176% of its target biomass level. This stock can support increases in fishing effort. While the southern stock of whiting is not yet rebuilt, it is no longer considered overfished. It has recovered to 71% of its target biomass level and is expected to rebuild under status quo management measures. The potential biological impacts of the measures proposed in this framework adjustment appear insignificant because increases in catch levels are expected to be small. Based on surplus production analyses presented at the 32nd Stock Assessment Workshop (SAW 32), the maximum sustainable yield (MSY) from the northern stock of whiting may be up to 45,000 mt, with an 80% confidence interval of roughly 39,000-52,000 mt (2001 Stock Assessment and Fishery Evaluation (SAFE) Report). The 2002 SAFE Report indicates that landings of whiting from the northern stock averaged about 3,300 mt from 1999-2001. None of the measures proposed in this framework are expected to increase landings to levels anywhere near the MSY estimate for the northern stock, even when factoring in the potential for participation in small mesh multispecies fisheries to increase.

The biological impacts of the proposed management action are analyzed in this framework document and are not expected to be significant. Assessments of the impacts of the proposed action on endangered, threatened, and other protected species as well as essential fish habitat are also provided in this document. The proposed action is not expected to change the determination in Amendment 12 that the small mesh multispecies management program would have negligible impacts on protected species, includes those that are threatened and endangered. This determination is based on the lack of evidence of protected species interactions with mobile fishing gear in the multispecies fishery in the Northeast. The proposed action is deemed to result in adverse effects on essential fish habitat that are less than substantial and does not increase any of the adverse effects as established in the baseline condition under Amendment 12 and Framework 35 to the Northeast Multispecies FMP.

The economic and social impacts of the measures proposed in this framework adjustment are assessed and also are expected to be minor and mostly positive. Positive impacts will result from increased opportunities and catch in the Cultivator Shoal Whiting Fishery through reinstating fishing during the month of October and eliminating the 10% red hake incidental catch restriction. Positive impacts are also expected to result from the minor area modification proposed for the Cape Cod Bay raised footrope trawl fishery. This area modification should promote safety for participating vessels, most of which are smaller and older vessels from Provincetown, Massachusetts.

The only measure proposed in this framework adjustment that may result in some negative economic and social impacts is the modification to incidental catch allowances in Small Mesh Areas 1 and 2. Prohibiting monkfish and lobsters in these fisheries is expected to generate regulatory discards and may affect profitability on some trips for vessels that fish in Small Mesh Areas 1 and 2. The total level of monkfish and lobster landings in Small Mesh Areas 1 and 2 has been so small that prohibiting these species is expected to have no impact on either monkfish or lobster markets. Given the low level of revenues from either monkfish or lobster in the two Small Mesh Areas, it is unlikely that any change in catch allowance would have a substantial impact on gross revenues from all sources of fishing income for participating vessels. However, at a trip-level there may be some occasions where revenues from monkfish or lobster could affect vessel profitability for a given trip. In these cases, eliminating the incidental catch allowance would have a negative economic impact, as the trip may be abandoned.

This framework document discusses how this action is consistent with the National Standards specified in the Magnuson-Stevens Fishery Conservation and Management Act (M-S Act) and other required provisions of the M-S Act. It also includes information about this action's consistency with laws such as the National Environmental Policy Act (NEPA), Regulatory Flexibility Act (RFA), Endangered Species Act (ESA), Marine Mammal Protection Act (MMPA), Coastal Zone Management Act (CZMA), and other applicable laws.

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1.0 INTRODUCTION AND BACKGROUND

1.1 BACKGROUND

Amendment 12 to the Northeast Multispecies Fishery Management Plan (FMP) was implemented on April 28, 2000 to eliminate overfishing of silver hake (whiting) and red hake (ling) and to rebuild the small mesh multispecies resources within a ten-year period in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). This amendment also incorporated offshore hake into the multispecies management unit to provide basic protection for the species, improve the information database, speed the recovery of silver hake stocks, and allow the development of a sustainable fishery. The management program for small mesh multispecies relies primarily on increases in mesh sizes combined with whiting/offshore hake possession limits.

Amendment 12 specifies a “Year 4 default measure” to be implemented at the beginning of Year 4 (May 1, 2003) on a stock-specific basis if the whiting management program is not meeting the fishing mortality objectives set forth in the amendment. The default measure in Amendment 12 reads as follows:

The default measure establishes a Regulated Mesh Area with a 3-inch minimum mesh requirement for all fishing activities. Vessels participating in any fishery in the Regulated Mesh Area may not use less than the minimum 3-inch mesh unless they are fishing in an approved, exempted small mesh fishery. An example of an exempted small mesh fishery may be a loligo squid or herring fishery occurring in a particular area during a specified time of year. “Exempted fisheries” are defined through individuals or groups proposing the exemption by gear, time, area, and species.

The National Marine Fisheries Service (NMFS) will approve small mesh fisheries that may be exempt from the 3-inch minimum mesh requirement based on a determination that the rate of small mesh multispecies catch (combined whiting, offshore hake, and red hake) in these fisheries is less than 10% of the total catch. NMFS is expected to utilize the same process and criteria it currently uses to specify groundfish exempted fisheries, with the only exception being the allowable level of anticipated small mesh multispecies incidental catch for an exempted fishery (10% instead of 5%). However, exempted small mesh fisheries will still be required to meet the small mesh exemption criteria for regulated species bycatch (less than 5%). The northern shrimp fishery in the Gulf of Maine will be defined as an exempted small mesh fishery if the default measures are implemented in the northern area.

Qualified vessels (those possessing a limited access small mesh multispecies permit) that use a minimum 3-inch mesh while fishing in the Regulated Mesh Area will be allowed to possess/land combined whiting and offshore hake up to 10,000 pounds. Vessels possessing a limited access small mesh multispecies possession limit permit, vessels participating in exempted small mesh fisheries,

and vessels possessing an open access multispecies permit will be allowed to possess/land combined small mesh multispecies up to 100 pounds. [Note that the limited access program submitted in Amendment 12 was not implemented.]

The analyses in Amendment 12 predicted that substantial negative economic and social impacts would result from implementing the Year 4 default measure. The default measure was expected to generate large losses of not only small mesh multispecies, but also other small mesh species like squid. Shinnecock NY was projected to experience the largest reductions in landings of all species combined from the Year 4 default measure (39.4%), followed by Greenport NY (36.7%), Point Judith RI (32.8%), Montauk NY (25.9%), Gloucester MA (16.4%), Portland ME (14.8%), Provincetown MA (11.5%), Cape May NJ (9.7%), Point Pleasant NJ (8.0%), and Belford NJ (7.2%). Although CT ports could not be analyzed due to data limitations, it is likely that the default measure would produce similar impacts in the ports of Stonington CT and New London CT.

The language in Amendment 12 states that a determination as to whether or not the default measure is necessary will be made through a third year review by the Council's Whiting Monitoring Committee (WMC). In September 2002, the WMC released the 2002 Stock Assessment and Fishery Evaluation (SAFE) Report for small mesh multispecies, which represents the WMC's third year review and includes recommendations regarding the Year 4 default measure (Appendix I). The conclusions drawn by the WMC include the following:

In this review, the WMC has determined that the fishing mortality objectives of Amendment 12 appear to have been achieved, based on the evaluation of relative exploitation indices as a proxy for fishing mortality...

The northern stock of whiting (as well as the northern stock of red hake) is considered to be "rebuilt," or above its target biomass level according to the Amendment 12 overfishing definition. The relative exploitation of northern whiting is far below the target value that the WMC set as a proxy for F_{MSY} , so overfishing is not thought to be occurring (see Table 19, p.31 of the SAFE Report). The current relative exploitation index is only 11% of the WMC's F_{MSY} proxy. With respect to management thresholds, targets, and biological objectives, exploitation of the northern stock of whiting could increase. The WMC concludes, therefore, that the Year 4 default measure is not necessary to further reduce effort on the northern stock of whiting.

The southern stock of whiting is not considered to be in an overfished condition according to the Amendment 12 overfishing definition. The three-year moving average of the trawl survey increased from 0.63 in 1998 to 1.27 in 2001. Currently, the stock is at 71% of its biomass target. The relative exploitation of southern whiting is below the target value that the WMC set as a proxy for a target fishing mortality rate (see Table 19, p.31 of the SAFE Report), so overfishing is not thought to be occurring on the southern stock. The current relative exploitation index is 47% of the WMC's target for this stock...

While the information that the WMC evaluated suggests that exploitation could increase in the southern area, this stock has not yet rebuilt to its target level, so increases are not recommended. Perceptions about the current biomass status of the southern stock hinge on a very high autumn 2001 survey value, which increased the three-year moving average above the overfishing definition biomass threshold. It is too early to conclude whether the high survey value in autumn 2001 is a product of survey variability or a true indication of increasing biomass in the southern area. Several additional survey points will be necessary to make such a determination...Although the WMC does not support increasing whiting exploitation in the southern area, the Committee agrees that the Year 4 default measure is not necessary to further reduce effort.

Northeast multispecies regulations, including those for small mesh multispecies, are such that Council action (through a framework adjustment or amendment) is required to prevent the Year 4 default measure from becoming effective on May 1, 2003 in both the northern and southern stock areas. In preparation for the third year review by the WMC, and in anticipation of an action to address the default measure, the Council approved the following motion at its March 19-20, 2002 meeting:

That the Council initiate a framework adjustment process to develop a management strategy that responds to the Year 4 management measures contained in the whiting plan and allows for potential development of new whiting fishing areas.

The WMC presented its findings and recommendations to the Council at the September 10-12, 2002 meeting, which was the first meeting for Framework 37. The WMC's findings and recommendations can be found in their entirety can be found in Appendix I of this document.

During the development of this framework adjustment, the Council considered establishing an exempted grate raised footrope trawl fishery in the inshore Gulf of Maine. Experimental data related to this fishery were collected by the Maine Department of Marine Resources in cooperation with the fishing industry. At the final meeting for this framework adjustment, the Council chose to consider the establishment of the grate raised footrope trawl fishery in a separate action. Therefore, establishment of the exempted grate raised footrope trawl fishery will be addressed in Framework 38 to the Northeast Multispecies FMP, with final action by the Council scheduled for early 2003. No additional information about the grate raised footrope trawl fishery is provided in this framework document.

2.0 PURPOSE

The purpose of this framework adjustment is to eliminate the Year 4 default measure in both whiting stock areas and implement FMP adjustments to allow for moderate increases in effort on small mesh multispecies in the northern stock area. The action proposed in this framework adjustment is consistent with the most recent recommendations from the New England Fishery Management Council's WMC, presented in the 2002 SAFE Report for Small Mesh Multispecies (Section 4.0 of Appendix I).

2.1 NEED FOR ADJUSTMENT

The language from Amendment 12 to the Northeast Multispecies FMP states that the default measure is to be applied on a stock-specific basis and implemented at the beginning of Year 4 if the plan is not meeting its objectives, as determined in the third year review by the WMC. The 2002 SAFE Report for Small Mesh Multispecies (Appendix I) serves as the third year review by the WMC. In this review, the WMC determined that the fishing mortality objectives of Amendment 12 appear to have been achieved, based on the evaluation of relative exploitation indices as a proxy for fishing mortality (see Appendix I, Section 2.5).

This adjustment is necessary because current regulations specify that the Year 4 default measure will become effective in both stock areas on May 1, 2003 unless a Council action modifies or eliminates it.

The analysis in Amendment 12 indicated that the default measure would generate substantial losses of not only small mesh multispecies, but also other small mesh species like squid. Shinnecock NY was projected to experience the largest reductions in landings of all species combined from the Year 4 default measure (39.4%), followed by Greenport NY (36.7%), Point Judith RI (32.8%), Montauk NY (25.9%), Gloucester MA (16.4%), Portland ME (14.8%), Provincetown MA (11.5%), Cape May NJ (9.7%), Point Pleasant NJ (8.0%), and Belford NJ (7.2%). Although CT ports could not be analyzed due to data limitations, it is likely that the default measure would produce similar impacts in the ports of Stonington CT and New London CT. As a consequence, this framework action must be implemented to avoid the economic impacts associated with the default measure, which the WMC noted is unnecessary to further reduce effort on small mesh multispecies in both stock areas.

2.2 OBJECTIVES

The objectives of this framework adjustment are to:

- (1) eliminate the Year 4 default measure in both whiting stock areas;
- (2) allow moderate increases in effort on small mesh multispecies in the northern stock area; and
- (3) achieve consistency and simplicity in the regulations where possible.

These objectives may be achieved through the implementation of some or all of the WMC's recommendations from the 2002 SAFE Report (Appendix I). These recommendations form the basis of the action proposed in this framework adjustment.

3.0 PROPOSED ACTION

The following subsections describe the action proposed in this framework adjustment.

3.1 ELIMINATE THE YEAR 4 DEFAULT MEASURE IN BOTH STOCK AREAS

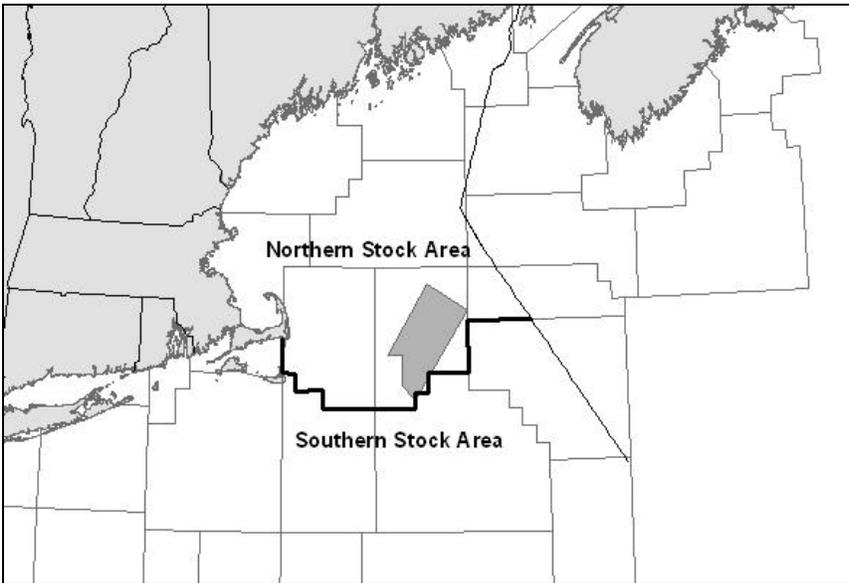
This action eliminates the Year 4 default measure for small mesh multispecies in both whiting stock areas. Fishery regulations specified in CFR 50 §648.80, §648.86, and other relevant sections will be modified to prevent the implementation of the default measure on May 1, 2003. All current regulations for small mesh multispecies (mesh sizes, possession limits, etc.) remain in effect except as modified in this framework adjustment.

Discussion: This action is consistent with the WMC recommendations presented in the 2002 SAFE Report for Small Mesh Multispecies (Appendix I). Because of the healthy status of the northern stock of whiting and the improving status of the southern stock of whiting, the WMC concluded that the default measure is not necessary to further reduce effort on small mesh multispecies in either stock area.

3.2 ADJUSTMENTS TO OTHER MEASURES

Adjustments to other measures proposed in this framework and described in this section affect fishing in the northern stock area for whiting. Consistent with the WMC recommendations (Appendix I), the Council is proposing action to allow for modest increases in effort on the small mesh multispecies stocks in the northern area. For stock assessment purposes, the northern stock area for whiting is defined by the line depicted in Figure 1.

Figure 1 Boundary for Northern and Southern Whiting Stock Areas, Including the Location of the Cultivator Shoal Whiting Fishery



**The shaded portion of the northern stock area represents the Cultivator Shoal Whiting Fishery area.*

3.2.1 Reinstatement of the Cultivator Shoal Whiting Fishery Season through October 31

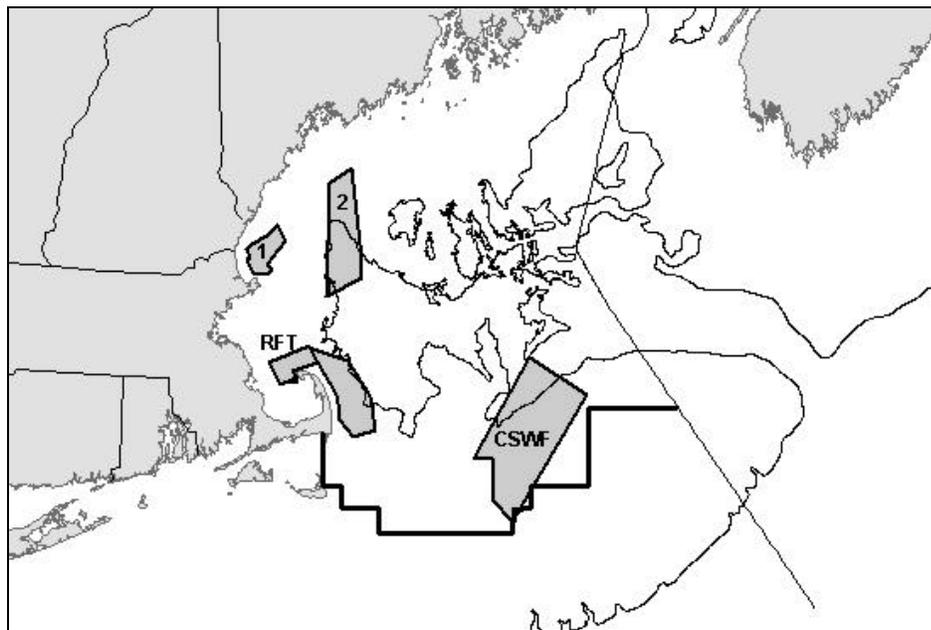
This action reinstates the month of October to the Cultivator Shoal Whiting Fishery (CSWF) season, allowing the season to occur from June 15 – October 31. This is the original season for which the CSWF was exempted under the 5% groundfish bycatch standard.

Discussion: The CSWF is a seasonal exempted fishery in the northern area (see Figure 1) and is a directed whiting fishery with minimal bycatch of non-target species. Participants in the CSWF use 3-inch mesh and are currently limited to 30,000 pounds of whiting. The season for the CSWF currently extends from June 15 to September 30 of each year. Prior to Amendment 12, the season for the CSWF was June 15 – October 31. Amendment 12 shortened the season to September 30 as an effort reduction measure. Additional discussion of this option and related bycatch issues is provided in Section 6.0 of this document.

3.2.2 Adjustments to Incidental Catch Allowances in Northern Exempted Fisheries for Small Mesh Multispecies

Currently, there are four exempted, seasonal fisheries in the northern area in which vessels can target small mesh multispecies. These include: Small Mesh Area 1, Small Mesh Area 2, the Cultivator Shoal Whiting Fishery, and the raised footrope trawl fishery in Cape Cod Bay (see Figure 2). Note that the area for the raised footrope trawl fishery was revised on November 14, 2002 to include additional area east of Cape Cod. The current gear requirements and incidental catch allowances for these fisheries are summarized in Table 1.

Figure 2 Current Exempted Small Mesh Fisheries in the Northern Area



*"CSWF" represents the Cultivator Shoal Whiting Fishery; "RFT" represents the raised footrope trawl fishery; "1" represents Small Mesh Area 1; "2" represents Small Mesh Area 2.

Table 1 Summary of Current Incidental Catch Allowances in Exempted Fisheries for Small Mesh Multispecies

EXEMPTED FISHERY	SEASON	GEAR REQUIREMENTS	ALLOWABLE INCIDENTAL CATCH
Small Mesh Area 1	July 15– Nov 15	<ul style="list-style-type: none"> • Raised Footrope Trawl 	<ul style="list-style-type: none"> • Herring • Sculpin • Squid, Butterfish, Mackerel • Dogfish • Ocean Pout • Scup • Red Hake • Monkfish up to 10% by weight OR 50 lbs. tail/166 lbs. whole, whichever is less • Lobster up to 10% by weight or 200 lobsters, whichever is less
Small Mesh Area 2	Jan 1– June 30	<ul style="list-style-type: none"> • Raised Footrope Trawl 	<ul style="list-style-type: none"> • Herring • Sculpin • Squid, Butterfish, Mackerel • Dogfish • Ocean Pout • Scup • Red Hake • Monkfish up to 10% by weight OR 50 lbs. tail/166 lbs. whole, whichever is less • Lobster up to 10% by weight or 200 lobsters, whichever is less
Cultivator Shoal Whiting Fishery	June 15– Sept 30	<ul style="list-style-type: none"> • Minimum 3-inch mesh 	<ul style="list-style-type: none"> • Herring • Sculpin • Squid, Butterfish, Mackerel • Dogfish up to 10% by weight • Red Hake up to 10% by weight • Monkfish up to 10% by weight OR 50 lbs. tail/166 lbs. whole, whichever is less • Lobster up to 10% by weight or 200 lobsters, whichever is less
Raised Footrope Trawl Cape Cod Bay	Sept 1– Nov 20 entire area; Nov 21-Dec 31 eastern area only	<ul style="list-style-type: none"> • Minimum 2.5-inch mesh • Raised Footrope Trawl 	<ul style="list-style-type: none"> • Red Hake • Squid, Butterfish, Mackerel • Dogfish • Herring • Scup

**Unless otherwise specified in Table 1, incidental catch amounts limited only by the regulations for that species (for example, dogfish is limited to 600 pounds May 1– Oct. 31 and 300 pounds November 1– April 30, or zero pounds if the quota closes).*

In this framework adjustment, the Council is proposing modifications to the incidental catch allowances in the Cultivator Shoal Whiting Fishery and Small Mesh Areas 1 and 2.

3.2.2.1 Red Hake Incidental Catch Allowance in the Cultivator Shoal Whiting Fishery

This action eliminates the 10%-by-weight restriction on the catch of red hake in the CSWF. This means that the red hake incidental catch allowances for the CSWF would become consistent with all other exempted fisheries in the northern area (see Table 1).

Discussion: This action is consistent with the WMC's recommendations in the 2002 SAFE Report (Appendix I). Currently, participants in the CSWF are limited in terms of their red hake landings to 10% by weight of all other fish on board. According to the WMC, there is no biological reason to restrict the catch of northern red hake at this time. Whiting and red hake are usually caught in combination with one another, and the CSWF is known to be a high volume fishery. The current 10% restriction on red hake landings, therefore, may cause discards of red hake in the CSWF. No other exempted small mesh fisheries in the northern area include this kind of restriction on red hake landings. Because of market limitations, it is unlikely that the proposed action would encourage directed fishing on red hake. This action also simplifies and improves the consistency of regulations for exempted fisheries in the northern stock area.

3.2.2.2 Incidental Catch Allowances for Small Mesh Areas 1 and 2

This action modifies the incidental catch allowances for Small Mesh Areas 1 and 2 so that they are consistent with the allowances for the Cape Cod Bay raised footrope trawl (RFT) whiting fishery. This means that monkfish, lobster, ocean pout, and sculpin would be prohibited in Small Mesh Areas 1 and 2. Under this action, the following species would be the only allowable incidental catch species in Small Mesh Areas 1 and 2:

- Red Hake
- Squid, Butterfish, Mackerel
- Dogfish
- Herring
- Scup

Discussion: Three of the four exempted whiting fisheries in the northern area currently require the use of a raised footrope trawl (Table 1). However, the incidental catch allowances for these three fisheries are not consistent with each other. The incidental catch allowances for the Cape Cod Bay raised footrope trawl fishery were established to discourage vessels from rigging the gear improperly and allowing it to fish on the ocean bottom. As a result, bottom-dwelling species like lobster and monkfish are prohibited in the Cape Cod Bay raised footrope trawl fishery. Since Small Mesh Areas 1 and 2 require the raised footrope trawl, it is appropriate to allow the same incidental catch species and provide the same incentives for fishing the gear properly.

3.2.3 Transfer at Sea Provisions for Small Mesh Multispecies

This action modifies regulations specified in CFR 648.13(b)(2) to reflect the current Letter of Authorization (LOA) with which vessels are complying. Under this action, vessels would be allowed to transfer **500 pounds of whiting and unlimited amounts of red hake** at sea for use as bait, provided:

- the transferring vessel possesses a multispecies permit;
- the transferring vessel has a LOA issued by the Regional Administrator on board; and
- the receiving vessel possesses a written receipt for any small-mesh multispecies purchased at sea.

In addition, the transferring vessel will continue to automatically receive a 500-pound deduction from its combined silver hake and offshore hake possession limit for every trip during the participation period specified on the LOA, regardless of whether a transfer of small mesh multispecies at sea occurred or whether the actual amount that was transferred was less than 500 pounds. This deduction will be noted on the transferring vessels' LOA.

Discussion: Currently, there is a discrepancy between fishery regulations (CFR 648.13(b)(2)) and the LOA with which vessels are complying. While regulations specify that vessels are allowed to transfer up to 500 pounds of combined small mesh multispecies at sea for use as bait, the LOA allows the transfer of 500 pounds of whiting and unlimited amounts of red hake. Because the WMC has indicated that there is no biological reason to restrict the catch of northern red hake at this time (Appendix I), the Council intends for the regulations to be modified through this framework adjustment to reflect the language in the current LOA and allow vessels to transfer unlimited amounts of red hake for use as bait. Since vessels are currently complying with the language specified in the LOA, this change to the regulations reflects the “status quo” for vessels engaged in this activity. Additional discussion is presented in Section 6.1.5 of this document.

3.2.4 Exempted Raised Footrope Trawl (RFT) Fishery in Cape Cod Bay

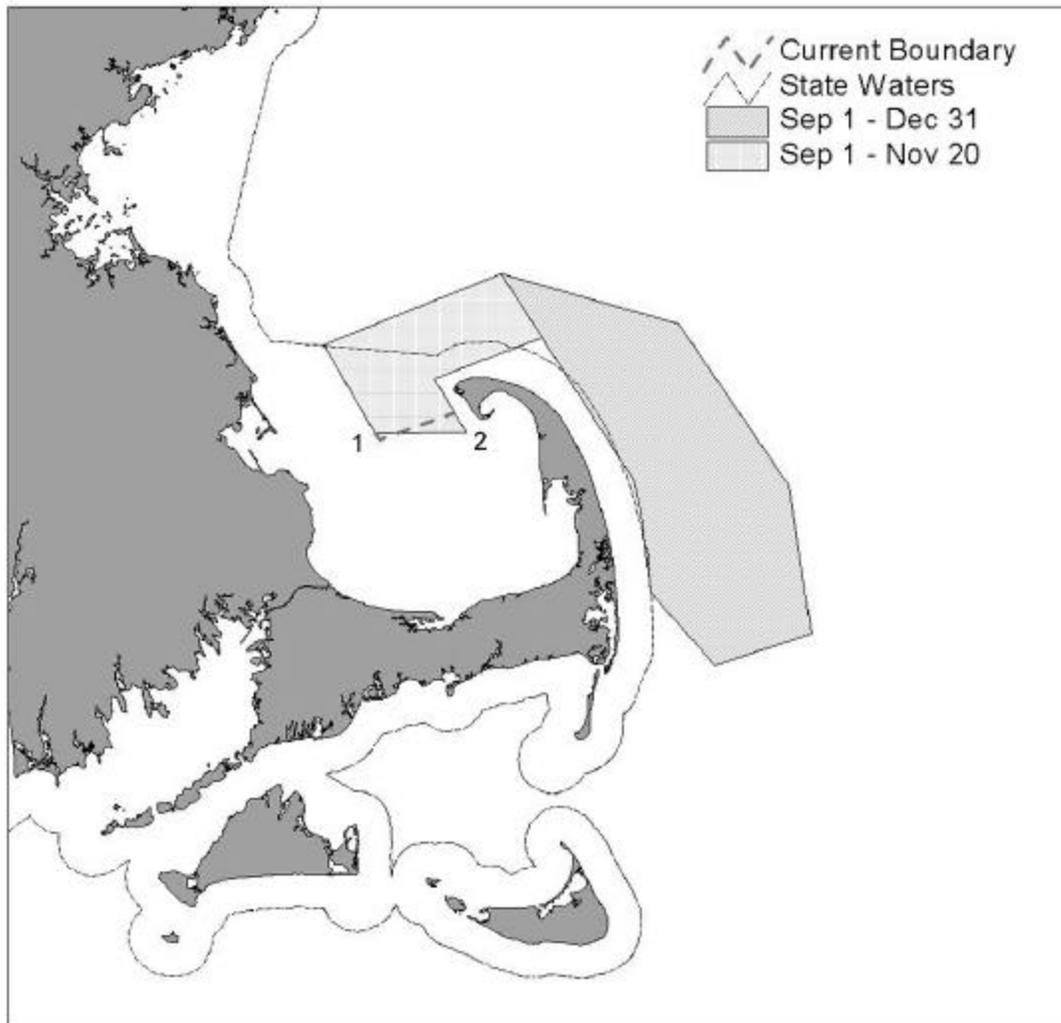
This action slightly modifies the area for the exempted raised footrope trawl fishery in Cape Cod Bay. Note that the area for this fishery was revised on November 14, 2002 to include additional area east of Cape Cod. The modification proposed in this framework adjustment applies to this newly-revised area.

Figure 3 depicts the proposed area modification. Table 2 provides the current and proposed revisions to the two coordinates identified as “1” and “2” in Figure 3.

Table 2 List of Current Waypoints for Raised Footrope Trawl Whiting Fishery Area

Name	Latitude	Longitude
Current 1	41 59.450'	70 23.650'
Current 2	42 01.900'	70 14.700'
Proposed 1	42 00.000'	70 24.076'
Proposed 2	42 00.000'	70 13.225'

Figure 3 Proposed Area Change for Cape Cod Bay Raised Footrope Trawl Fishery



Discussion: Provincetown fishermen active in the Cape Cod Bay raised footrope trawl exempted fishery have contacted the Massachusetts Division of Marine Fisheries (MA DMF) on numerous occasions requesting a slight change the southernmost line delineating the area, making the southern boundary of the area the 42 degrees latitude line instead of the Loran 44100 line. This slight change would open a triangle-shaped area totaling 5.5 square miles. Depths in this area are 145-160 ft., and catch and discard levels are expected to be similar to those documented in the existing open area that was studied by DMF's sea sampling and conservation engineering programs during 1995 through 1999. The benefits of this action would be the re-establishment of an area to fish (especially for smaller trawlers) in rough sea conditions caused by easterly winds, improving safety for participating vessels. The "lee" created by Provincetown's Race Point south to Wood End has been unavailable to the fleet since the whiting fishery was re-established. This has been especially difficult for fishermen operating some of Provincetown's smaller and older vessels.

4.0 ALTERNATIVES TO THE PROPOSED ACTION

During the development of Framework 37, the Council considered many alternatives to the proposed action. These alternatives were thoroughly described and analyzed in the Draft Framework 37 document that was presented to the Council at the final Framework 37 meeting on November 5-7, 2002 in Gloucester, Massachusetts. While the information and analyses presented in this document relate specifically to the proposed action, the Draft Framework 37 document should be referenced for more detailed information about the alternatives that the Council did not select.

4.1 NO ACTION ALTERNATIVE

The no action alternative means that the Council would not take final action to complete this framework adjustment. Current regulations are written such that the default measure would become effective in both stock areas on May 1, 2003 unless the Council takes action to prevent its implementation. Taking no action, therefore, allows the Year 4 default measure to become effective in both whiting stock areas.

If no action is taken and the Year 4 default measure becomes effective in both stock areas, there is no need to adjust most other measures for small mesh multispecies in this framework because the default measure would supersede other measures for small mesh multispecies. The default measure would establish a three-inch Regulated Mesh Area for all fishing activities and a 10,000-pound possession limit for whiting/offshore hake. This would eliminate all opportunities in the CSWF (because it is not financially viable to fish in the CSWF under a 10,000-pound possession limit) and would substantially limit other fishing opportunities for small mesh multispecies. Fisheries that would be exempt from the Year 4 default measure (less than 10% bycatch of combined small mesh multispecies) would be restricted to 100 pounds of whiting/offshore hake. While it would still be possible to adjust incidental catch allowances in Small Mesh Areas 1 and 2 and modify the Cape Cod Bay raised footrope trawl fishery area if no action is taken on the default measure, the Council's intent was to not complete this framework adjustment if the no action alternative was selected for the default measure.

The biological, economic, and social impacts of the Year 4 default measure were analyzed in the EIS for Amendment 12 to the Northeast Multispecies FMP. The analyses in Amendment 12 predicted that substantial negative economic and social impacts would result from implementing the Year 4 default measure. The default measure was expected to generate large losses of not only small mesh multispecies, but also other small mesh species like squid. Shinnecock NY was projected to experience the largest reductions in landings of all species combined from the Year 4 default measure (39.4%), followed by Greenport NY (36.7%), Point Judith RI (32.8%), Montauk NY (25.9%), Gloucester MA (16.4%), Portland ME (14.8%), Provincetown MA (11.5%), Cape May NJ (9.7%), Point Pleasant NJ (8.0%), and Belford NJ (7.2%). Although CT ports could not be analyzed due to data limitations, it is likely that the default measure would produce similar impacts in the ports of Stonington CT and New London CT.

The Council rejected the no action alternative because it is not consistent with the advice from the WMC provided in its third year review (Appendix I). The proposed action is consistent with WMC advice.

4.2 OTHER MEASURES CONSIDERED BUT REJECTED

4.2.1 Year 4 Default Measure

In addition to eliminating the Year 4 default measure in both stock areas and taking no action (see Section 4.1), the Council considered eliminating the default measure only in the northern stock area. The Council rejected this alternative because it is not consistent with the advice from the WMC provided in its third year review (Appendix I). Moreover, many of the communities predicted to experience the largest negative economic and social impacts from the Year 4 default measure are located in the southern stock area.

4.2.2 Opportunities in the Cultivator Shoal Whiting Fishery

To increase effort in the northern stock area, the Council considered several alternatives related to opportunities in the Cultivator Shoal Whiting Fishery. In addition to reinstating the month of October to the CSWF season, the Council considered a status quo alternative – maintaining a season from June 15 – September 30.

Several options were considered and analyzed to increase the possession limit in the CSWF:

- 50,000 pounds;
- 60,000 pounds;
- 90,000 pounds;
- weekly limit of 100,000 pounds combined with a 50,000-pound possession limit; and
- status quo (30,000 pounds).

The CSWF possession limit options were fully analyzed in the Draft Framework 37 document that was presented to the Council at the November 5-7, 2002 meeting. The Draft Framework 37 document should be referenced for more information about these options and their associated impacts. The Council selected the status quo alternative (30,000 pounds) for the CSWF possession limit because of concerns related to:

1. the sensitivity of the whiting market and the volatility of price fluctuations, and
2. the cumulative effects of management actions in other fisheries like groundfish and the potential for effort in small mesh multispecies fisheries to substantially increase.

The Council was concerned that an increase in the CSWF possession limit would attract a considerable amount of new effort into the fishery, especially if restrictions in other fisheries continue to increase. The additional effort in the fishery under a higher possession limit could result in market gluts that could affect the price of whiting for all vessels, especially if vessels could continue to make back-to-back trips to the CSWF during the season (only one option under consideration included a maximum trip allowance and weekly landing limit). Even worse, the indirect effects of measures in other fisheries (like those proposed in Amendment 13 to the Multispecies FMP) could increase effort on small mesh multispecies to levels that could ultimately jeopardize the health of the small mesh multispecies resources. This outcome would

be more likely with a higher possession limit in the CSWF because the fishery would become more attractive to larger vessels that may seek alternatives to groundfishing.

The Council agreed that maintaining the current possession limit in this fishery is a more precautionary and appropriate approach at this time, given uncertainties related to the cumulative impacts of additional groundfish restrictions and the potential for effort in this fishery to increase. In addition, and for the reasons discussed above, the majority of the fishing industry opposed an increase in the CSWF possession limit.

4.2.3 Incidental Catch Allowances in Northern Exempted Fisheries for Small Mesh Multispecies

The Council considered maintaining the status quo on the incidental catch allowances for both the Cultivator Shoal Whiting Fishery and Small Mesh Areas 1 and 2. To the extent possible, the proposed actions as well as the status quo alternatives were evaluated in the Draft Framework 37 document. The Council selected the proposed actions instead of the status quo alternatives in part to simplify regulations and improve consistency between the regulations for various exempted fisheries in the northern area. In addition, the Council selected the proposed action for incidental catch allowances in the CSWF because the WMC concluded that there is no biological reason to restrict the catch of red hake in the northern stock area.

4.2.4 Transfer at Sea Provisions for Small Mesh Multispecies

The Council considered five alternatives to the current transfer at sea provisions for small mesh multispecies, which are summarized in Table 3.

Table 3 Summary of Options to Modify Current Transfer at Sea Provisions for Small Mesh Multispecies

OPTION	Transfer of Small Mesh Multispecies	Transfer of Whiting/Offshore Hake	Transfer of Red Hake	Deduction from Whiting Possession Limit?
1	Unlimited	Unlimited	Unlimited	NO
2	1,000 pounds combined	See transfer of small mesh multispecies	See transfer of small mesh multispecies	NO
3	1,000 pounds combined	See transfer of small mesh multispecies	See transfer of small mesh multispecies	YES, 1,000 pounds
4	See provisions for whiting/offshore hake and red hake	1,000 pounds	Unlimited	YES or NO, Council will determine
5 – Status Quo	500 pounds combined	See transfer of small mesh multispecies	See transfer of small mesh multispecies	YES, 500 pounds every trip

The Council essentially chose to maintain the status quo for transfers of small mesh multispecies at sea, but clarified that the status quo relates to the current LOA with which vessels are complying, not the current regulatory text. As a result, the proposed action will require a modification to the language specified in the regulations to reflect that unlimited amounts of red hake can be transferred at sea for use as bait. The status quo is reflected in Option 4 with a corresponding deduction from the vessels' possession limit, except that the amount of whiting allowed for transfer (and deducted from the possession limit) under the proposed action is 500 pounds. The Council chose not to increase the amount of small mesh multispecies that can be transferred at sea above current levels primarily due to concerns about the ability to monitor and enforce this activity, especially if effort in the fishery increases.

4.2.5 Raised Footrope Trawl Fishery in Cape Cod Bay

In addition to the proposed action for the Cape Cod Bay raised footrope trawl fishery, the Council considered the status quo alternative – to maintain the current area boundaries. The Council rejected the status quo alternative because analysis in the Draft Framework 37 document suggested that the proposed area modification would have no biological impacts, but would likely have positive social impacts by improving the safety of the fishery.

4.2.6 Options to Adjust Measures in the Southern Stock Area

The Council considered establishing a conservation-neutral enrollment program in the southern stock area east of 70° to allow vessels to take one trip per week or four trips per month to catch 60,000 pounds of whiting per trip. The intent of this program was to mitigate some of the negative economic impacts associated with the 30,000-pound possession limit and allow vessels to reduce their operating expenses in the whiting fishery, thereby increasing their profitability. Analysis of this enrollment program was developed by the NMFS Northeast Regional Office and presented to the Whiting Committee at its meeting on November 4, 2002 and the Council at its meeting on November 5-7, 2002. The analysis suggested that conservation-neutrality was very unlikely to be achieved through the proposed program. For this reason, the Council rejected the alternatives related to establishing this enrollment program in the southern area. The analysis of this program is contained in an addendum to the Draft Framework 37 document that was presented to the Council at the November 5-7, 2002 meeting. This document should be referenced for more information.

5.0 AFFECTED ENVIRONMENT

The physical, biological, and human environment affected by the actions proposed in this framework adjustment are described in detail in Amendment 12 (small mesh multispecies) to the Northeast Multispecies FMP. Section E.6.3 of the Amendment 12 document describes the affected physical environment and habitat. Section E.6.4 describes the affected biological environment, including life history and stock assessment information for the small mesh multispecies stocks. Section E.6.5 of Amendment 12 describes the affected human environment and includes biological, economic, and social characterizations of small mesh multispecies fisheries occurring throughout the region.

Since the implementation of Amendment 12, the Council's WMC has completed two Stock Assessment and Fishery Evaluation (SAFE) Reports. These documents update information regarding the biological and human environments affected by the management of small mesh multispecies. The 2002 SAFE Report for Small Mesh Multispecies was just recently completed by the WMC and has been appended to this framework document to provide the most recent information regarding the affected environment. Information presented in the 2002 SAFE Report is not reproduced within this framework document and should be referenced as necessary (Appendix I).

In addition, updated information about endangered and threatened species is presented in Section 6.1.8 of this document.

6.0 ANALYSIS OF IMPACTS

6.1 BIOLOGICAL IMPACTS

6.1.1 Background from 2002 SAFE Report

Whiting in the southern stock was overfished and below its biomass threshold in 2000. However, based on trends in survey data, stock biomass increased significantly in 2001 to a level that was above the threshold and about 71% of the biomass target. Thus, the southern stock of whiting had not yet rebuilt to the target level in 2001, but was no longer overfished. Relative exploitation indices for whiting in the southern stock indicate that exploitation levels during 1997-2001 averaged less than one-half of the F_{MSY} proxy level and that overfishing did not occur. Recognizing recent improvements, but cognizant of uncertainties in stock condition, the 2002 SAFE Report recommends no increase in catch and fishing effort for southern whiting. Additional surveys and stock assessment work will be required to confirm recent increasing trends in the biomass of southern whiting.

The northern stock of whiting was above its threshold and target levels in 2001. Thus, it was not overfished and was considered rebuilt. In 2001, biomass of northern whiting was relatively high (176% of the biomass target value). Relative exploitation indices for whiting in the northern stock indicate that exploitation levels were low.

The southern stock of red hake was not overfished during 2001, but biological conditions in 2001 were uncertain. Relative exploitation calculations indicate that the exploitation level was low during 1997-2001. However, the trend in survey data indicates that stock biomass declined and was relatively low during the same period. In contrast, conditions in the northern stock of red hake are clear with high and increasing stock biomass and low exploitation rates.

Condition of the offshore hake stock is uncertain although the stock is not overfished. Recruitment appears variable and was high in 2001. Trends in survey data indicate that biomass generally declined during 1982-2000 but increased to a relatively high level in 2001.

6.1.2 Summary of Biological Impacts

As described below, the biological impacts of the proposed action in this framework adjustment appear insignificant for whiting and red hake in northern stock areas. Potential impacts for northern stocks appear insignificant because any increases in catch levels will be small, biomass levels are high, and current exploitation rates are low. In fact, the 2002 SAFE Report for the small mesh multispecies fishery recommended that catch and fishing effort be increased in a cautious manner for northern stock areas because of high biomass and low recent exploitation rates for northern stocks of whiting and red hake (see Appendix I for more information).

Based on surplus production analyses presented in SAW 32, the MSY of the northern stock of whiting may be up to 45,000 mt, with an 80% confidence interval of roughly 39,000-52,000 mt (2001 SAFE Report). The 2002 SAFE Report indicates that landings of whiting from the northern stock averaged about 3,300 mt from 1999-2001. None of the measures proposed in this framework are expected to increase landings to levels anywhere near the MSY estimate for the northern stock, even when factoring in the potential for effort in small mesh multispecies fisheries to increase.

The biological impacts of the action proposed in this framework adjustment are minimal for southern area. None of the proposed measures affect fishing for small mesh multispecies in the southern stock area except for the elimination of the Year 4 default measure. Eliminating the Year 4 default measure in the southern area equates to maintaining the status quo in terms of management of the southern small mesh multispecies resources. This is consistent with the WMC recommendations for the southern area and is not expected to result in any new and/or negative biological impacts.

Negative biological impacts, particularly in the south, could arise if fishing effort on small mesh multispecies increases. However, fishing effort in the southern area is not expected to increase from the measures proposed in this framework adjustment, but rather from external factors such as decreased opportunities in the groundfish fishery. Current markets for whiting, red hake and offshore hake would not support substantial increases in fishing effort. There is no information available to suggest that dramatic changes in whiting markets are likely to occur, at least in the short-term. While the current market may be able to absorb some increased landings of whiting, it is assumed that prices would be affected by increased landings, and over time, entry into the fishery would slow or stop, especially if vessels no longer find it profitable to participate in the fishery. Therefore, recent restrictions in other fisheries like groundfish make increases in fishing effort seem possible, but current market limitations are likely to prevent large increases in catch under the most extreme conditions. For the most part, effort increases resulting from the measures proposed in this framework adjustment are not a significant concern, as any additional opportunities to fish for small mesh multispecies will be in the northern area, which can support increased effort.

6.1.3 Impacts of Reinstating the CSWF Season

The action to change the CSWF season in the northern stock area from June 15 – September 30 to June 15 – October 31 reestablishes the original season used when the CSWF was established. Amendment 12 eliminated the month of October as a means to reduce fishing effort and to help meet fishing mortality objectives for northern whiting and red hake stocks. However, stock biomass levels for whiting and red hake in northern stock areas are currently high, recent exploitation rates are low, effort reduction is no longer a goal for the northern stock area, and increases in catch have been recommended.

Historically, relatively little fishing occurred for whiting/offshore hake and red hake in the Cultivator Shoal area during October. Table 4 summarizes historical landings of silver/offshore hake and red hake from the Cultivator Shoal Whiting Fishery from June 15 – September 30 and separately for the month of October to characterize the level of activity in this fishery during October. The information in Table 4 was presented in the 2001 SAFE Report for Small Mesh Multispecies, and a description of how the data were queried can be found in the 2001 SAFE Report. Note that data for 2000 include elimination of the month of October, as Amendment 12 was implemented prior to the 2000 CSWF season. Hence, landings of silver/offshore hake and red hake in October 2000 were zero.

During 1982-1999, an average of 1,282 mt of whiting/offshore hake were landed annually from the CSWF area. October landings during the same period averaged 4% of the total landings during June 15-October 31. Red hake landings during October averaged 115 mt per year (15% of the total during June 15-October 31). Thus, at fishing effort levels near the levels of historical participation in the CSWF area, it does not appear that fishing during October will substantially increase the catch of either whiting or red hake.

Table 4 Historical Landings of Silver/Offshore Hake and Red Hake in the Cultivator Shoal Whiting Fishery, Including the Month of October

YEAR	Whiting/Offshore Hake 6/15-9/30	Whiting/Offshore Hake October	Red Hake 6/15-9/30	Red Hake October
1982	1,078	88	5	0
1983	272	9	3	0
1984	755	10	2	0
1985	248	90	1	0
1986	503	0	1	0
1987	102	0	4	0
1988	2,152	314	44	14
1989	2,312	134	97	12
1990	2,975	0	105	0
1991	3,483	21	36	5
1992	2,644	351	82	4
1993	2,494	0	63	0
1994	1,242	75	54	5
1995	607	118	22	1
1996	1,623	12	3	2
1997	1,312	39	25	0
1998	1,176	19	57	0
1999	2,252	2	66	72
2000	851	0	37	0

Landings are expressed in metric tons.

It is possible that biological benefits may arise if the extended season for the CSWF in the northern stock area reduces fishing effort on the southern stock of whiting. According to Amendment 12, more than 50% of the vessels that historically participated in the Cultivator Shoal Whiting Fishery were from ports in the southern New England and Mid-Atlantic area (New London, Connecticut; Point Judith, Rhode Island; Greenport, Hampton Bays, and Montauk New York). Because of the distance between southern ports and the CSWF, it is safe to assume the vessels involved are relatively large (>60 feet) and fished for whiting in primarily offshore areas. Currently, these vessels probably fish for whiting in the southern stock area when the CSWF season is not open. Reinstating the month of October may redirect some effort during October from the southern stock area to the northern stock area where whiting and red hake abundance is highest.

There are no new data available to characterize the magnitude and nature of regulated species or other bycatch that may occur in this fishery in the future during the month of October. Since it was exempted through Amendment 4 to the Northeast Multispecies FMP in 1991, very little, if any, sea sampling effort has been directed at monitoring catch in this fishery. According to Amendment 4, data from the experimental Cultivator fishery in the late 1980s show that, overall,

regulated species accounted for 1.1% of the total catch and 0.7% of the total landings. Information in Amendment 4 also indicates that the highest concentrations of whiting in the CSWF area are between June 15 and October 31. The data collected to exempt this fishery do not suggest that bycatch rates or composition in October differ from other times of the season. The status of regulated species has improved since the late 1980s, suggesting that interactions with regulated species in this fishery could be greater than they were when the experimental data were collected. However, no information exists to either support or refute this notion.

6.1.4 Impacts of Adjustments to Incidental Catch Allowances in Northern Exempted Fisheries

6.1.4.1 Eliminating the Restriction on Red Hake Incidental Catch Allowance in the CSWF

Landings of red hake might increase slightly under this option, but biological impacts would be minimal because red hake naturally taken with whiting would be landed, rather than discarded, with relatively little effect on fishing mortality rates. Small increases in red hake catch have no negative biological impact because red hake are currently at a high biomass level in the CSWF, which is part of the northern stock area.

It is unlikely that this measure would encourage directed fishing on red hake due to market limitations. As Amendment 12 describes, the food market for red hake is limited by the perishability of the product. Red hake meat literally disintegrates if it is frozen and cannot be stored or transported very successfully. For these reasons, both the domestic and international markets have remained very small for a long period of time. The market for bait primarily serves the lobster fishery in the Gulf of Maine and has remained relatively small due to the availability of more desirable bait (herring, for example).

6.1.4.2 Modifying Incidental Catch Allowances for Small Mesh Areas 1 and 2

Section 3.2.2.2 of this document proposes to modify incidental catch allowances in Small Mesh Areas 1 and 2 so that they are consistent with the allowances in the Cape Cod Bay raised footrope trawl fishery since all three fisheries require the use of a raised footrope trawl. Modifying the incidental catch allowances in Small Mesh Areas 1 and 2 would prohibit vessels from retaining lobsters, monkfish, sculpin, and ocean pout in these fisheries. The intent of this measure would be to discourage vessels from rigging their gear improperly in order to retain these bottom-dwelling species.

The impacts of this action are discussed in Section 6.4.3 (Economic Impacts, p. 37). The biological impacts of this action are expected to be insignificant because, as Table 6 in Section 6.4.3 indicates, very small amounts of lobster and monkfish are caught in Small Mesh Areas 1 and 2. However, it is important to note that the analysis presented in Section 6.4.3 suggests that based on recent observations, about 20,000 pounds of regulatory discards may be generated annually from prohibiting the landing of monkfish and lobsters in these fisheries. It is likely that lobster discards consist mostly of live animals, but most monkfish discards are assumed to be dead. The majority of catch that will have to be discarded as a result of this measure will be

monkfish. Potential benefits of this measure to the lobster and monkfish resources, therefore, are expected to be minimal.

As the economic analysis indicates, at a trip-level, there may be some occasions where revenues from monkfish or lobster could affect vessel profitability. In these cases, prohibiting landings of these species would have a negative economic impact, as the trip may be abandoned. To the extent that this occurs, decreased catches of small mesh multispecies can be expected. This may have a positive, yet unnecessary, biological impact on the northern stocks of whiting and red hake.

6.1.5 Impacts of Transfer at Sea Provisions for Small Mesh Multispecies

Some vessels transfer small mesh multispecies at sea for use as lobster or tuna bait. Since the implementation of Amendment 12, transferring vessels are required to possess a permit for small mesh multispecies and obtain a letter of authorization from the Regional Administrator. Receiving vessels are required to obtain a written receipt for fish purchased at sea for use as bait.

Table 5 summarizes the vessels that have obtained a letter of authorization to transfer small mesh multispecies at sea for use as bait since the requirement to do so was implemented in 2000. Overall, very few vessels engage in this activity. The vast majority of the vessels that engage in this activity are from smaller ports in the Gulf of Maine (Hampton and Seabrook NH, Southwest Harbor ME, for example). The average vessel characteristics for these ports suggest that the vessels that are transferring small mesh multispecies at sea are small and medium-sized vessels (less than 60 feet), most of which take trips less than 24 hours. It is unlikely that these vessels could ever harvest and transfer enough small mesh multispecies for use as bait to jeopardize the biological status of the northern stocks of whiting and red hake.

Table 5 Summary of Vessels that Obtained Letter of Authorization to Transfer Small Mesh Multispecies at Sea for Use as Bait

YEAR	PRINCIPAL PORT	NUMBER OF VESSELS
2000	Bremen, ME	2
	Hampton, NH	4
	Newburyport MA	2
	Portland, ME	1
	Rockland, ME	1
	Salisbury, MA	2
	Seabrook, NH	2
	Southwest Harbor, ME	1
2000 TOTAL		15
2001	Bremen, ME	1
	Hampton, NH	1
	Jonesport, ME	1
	Portland, ME	1
	Rockland, ME	1
2001 TOTAL		5
2002	Bremen, ME	2
	Hampton, NH	2
	Portland, ME	1
	Seabrook, NH	2
	Southwest Harbor, ME	1
2002 TOTAL		8

The action proposed in this framework simply modifies regulatory language so that it is consistent with the language in the current LOA. Because the proposed action represents the “status quo” from the fishery perspective, it is expected that there will be no additional impacts resulting from this measure. This activity will continue to be limited by the market for small mesh multispecies as bait. Maintaining the requirement to obtain a letter of authorization for transfers and a receipt for bait purposes should be adequate to monitor the level and extent of this activity in the future.

6.1.6 Impacts of Slight Modification to Cape Cod Bay Raised Footrope Trawl Fishery Area

The proposed adjustment to the Cape Cod Bay raised footrope trawl fishery is not expected to have any significant biological impacts. The change only represents about five square miles. There is no information to suggest that species composition and/or catch rates differ in the area proposed for adjustment. Given the status of whiting and red hake in the northern stock area, this minor change to the Cape Cod Bay raised footrope trawl fishery area is not expected to affect either stock.

6.1.7 Impacts on Other Species

The impacts of the actions proposed in this framework adjustment on other species are expected to be minimal. For the most part, fishing for small mesh multispecies occurs through exempted fisheries, which by their very nature minimize the bycatch of regulated species. The options proposed in this framework adjustment are not expected to substantially increase interactions with regulated species or other species.

Consistent incidental catch allowances for exempted fisheries that require a raised footrope trawl (Section 3.2.2.2) would reduce the number of species that can be landed incidentally from Small Mesh Areas 1 and 2 the same as for the Cape Cod Bay raised footrope trawl fishery. Incidental catch allowances for the raised footrope trawl fishery were designed to discourage vessels from rigging gear improperly and to fish on the ocean bottom. Biological benefits to other species may be positive because the number of species that can be landed would be reduced to red hake, squid, butterfish, mackerel, dogfish, herring and scup. However, it is expected that the biological impact of this measure on monkfish and lobster will be minimal. Most or all lobster that are discarded in these fisheries will be alive, but most discarded monkfish are assumed to be dead.

It is important to note that reducing the allowable incidental catch species in Small Mesh Areas 1 and 2 may generate regulatory discards of monkfish, lobster, sculpin, and ocean pout. Section 6.4.3 of this document presents historical catch data from these areas to provide some perspective on the magnitude of monkfish and lobster discards that may occur if these species are prohibited in Small Mesh Areas 1 and 2. Based on recent observations, this measure is expected to generate about 20,000 pounds of annual regulatory discards.

6.1.8 Impacts on Endangered and Threatened Species and Other Marine Mammals

6.1.8.1 Description and Status of Threatened and Endangered and Other Species

Volume I, Section E.7.2.4 of Amendment 12 to the Northeast Multispecies Fishery Management Plan (whiting, red hake and offshore hake) described the threatened and endangered species and other marine mammals that inhabit the whiting management unit and discussed their potential interaction with the fishery, as well as the impacts of the whiting management measures in that action. Species of particular concern at this time are discussed separately below. Their status and that of other threatened and endangered species, including species descriptions and summary information on their biology, was provided in June 2001 in the Biological Opinion for the Northeast Multispecies Plan. That information is incorporated herein by reference. The impacts of the most recent changes to the management measures for whiting were discussed in Framework Adjustments 32 and 35.

The status of the relevant marine mammal stocks also was updated in the sixth of the series, *U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments - 2001* (Waring *et al.* 2001). The report contains updated assessments for Atlantic strategic stocks and also includes those Atlantic stocks for which important new information was available. A strategic stock is one listed as threatened or endangered under the Endangered Species Act, designated as depleted under the Marine Mammal Protection Act, or for which human-caused mortality and serious injury exceed the potential biological removal (PBR) level calculated for the stock. The report

lists PBR levels and constitutes the most recent information on marine mammal fishery-related serious injury and mortality for fisheries managed by the NEFMC.

Information on sea turtle status can be found in a number of published documents, including several sea turtle status reviews: NMFS and the U. S. Fish and Wildlife Service (1995); Turtle Expert Working Group (1998 and 2000); and biological reports from the U. S. Fish and Wildlife Service (1997). Additional information is also found in the recovery plans for Kemp's ridley (USFWS and NMFS 1992a), leatherback (NMFS and USFWS 1992b), Atlantic green (NMFS and USFWS 1998), and loggerhead sea turtles (NMFS and USFWS 1998).

6.1.8.1.1 Threatened and Endangered Species of Concern

North Atlantic Right Whales - The North Atlantic right whale population, which numbers less than 300 animals ranges from wintering and calving grounds in the southeastern U.S. to summer feeding grounds in New England, the northern Bay of Fundy and the Scotian Shelf. New England waters are a primary feeding ground. Principal prey items include copepods in the genera *Calanus* and *Pseudocalanus*, although they may feed on similar-sized zooplankton and other organisms. Feeding efficiency may depend on the ability of whales to find and exploit dense zooplankton patches. Sources of mortality include ship strikes and entanglement in fixed fishing gear. Considered to be the most endangered whale in the world, the current death rate far exceeds the birth rate in the western North Atlantic population. An increasing calving interval, the relatively large number of female right whales killed and human-related mortality make the probability of right whale extinction in the next 100 years very high (NMFS 2000).

Protection for the right whale is provided principally through the Atlantic Large Whale Take Reduction Plan (ALWTRP) first implemented in 1997. A final rule was published in the *Federal Register* on February 16, 1999 which closes critical habitats during right whale season to lobster and gillnet gear, prohibits certain fishing practices, identifies gear modifications, establishes a network to respond to entangled whales, funds gear research to develop technological solutions to reduce entanglements, and improves outreach efforts to inform fishermen about the problems of right whale entanglements and seeks their input on technical solutions.

The conclusions in the June, 2001 Biological Opinion referred to above stated that the Northeast multispecies fishery is likely to jeopardize the continued existence of the North Atlantic right whale. The Opinion required NMFS to implement a set of Reasonable and Prudent Alternatives (RPAs) to remedy the jeopardy finding. The RPAs called for further action under the ALWTRP. Specifically, there were three key regulatory changes: 1) new gear modifications; 2) implementation of a Dynamic Area Management system (DAM) of short-term closures to protect unexpected concentrations of right whales; and 3) establishment of a Seasonal Area Management system (SAM) of additional gear modifications to protect known seasonal concentrations of right whales. All of the above changes have now been implemented. The new gear modifications (67 FR 1300-1314) became effective February 11, 2002. NMFS established the criteria for implementing the DAM restrictions (67 FR 1133-1142) that became effective February 8, 2002. NMFS also published the interim final regulations for the SAM program (67 FR 1142-1160) that became effective on March 1, 2002.

Several Dynamic Area Management actions have been triggered in the last year and have affected the multispecies fishery. Mobile gear, such as that used in the whiting fishery, has not been implicated in large whale entanglements in the Northeast and, as such, has not been subject to any Take Reduction Plan measures. Furthermore, while right, humpback and other endangered whales inhabit the whiting management unit in both northern and southern stock areas, takes of these animals have not been documented in this fishery (North Atlantic bottom trawl), according to the most recent *List of Fisheries* published by NMFS on January 17, 2002.

Although bottom trawl fisheries in other regions may take large whales, such as the Gulf of Alaska groundfish trawl fishery, takes in the Northeast have not been documented. Recognizing that observer coverage in the whiting fishery has been low, the available information at this writing supports the conclusion that encounters or serious injury to these species are rare, occur principally in fixed gear used in the multispecies fishery, and generally are not associated with small mesh multispecies gear.

Harbor Porpoise – The Gulf of Maine/Bay of Fundy stock of harbor porpoise range from North Carolina to Canadian Atlantic waters, but generally move northward and concentrate in the Bay of Fundy in the summer. During the October-December and April-June periods, they are widely disbursed from New Jersey to Maine with lower densities at the extremes. The most common cetacean species caught in commercial fishing gear in the Northeast, this species is the subject of a Take Reduction Plan (TRP) implemented by NMFS in December 2, 1998. To reduce takes, the plan targets multispecies gillnet, as well as other Atlantic coastal fixed gear fisheries. TRP requirements include the use of acoustic deterrents ("pingers") on nets according to specified protocols, time/area closures and gear modifications. Takes in small mesh multispecies gear are likely very rare and have not been documented, probably because the fishery is prosecuted with mobile gear.

Sea Turtles - Although the possibility of encounters with small mesh otter trawls (the predominant gear type in this fishery) exists, previous observer coverage in the area of Cape Cod Bay where interactions would be likely, documented no takes of threatened, endangered or other protected species, including sea turtles during the 1996 - 1999 seasons.

Takes of turtles have not been documented outside of this area, although again, observer coverage has been extremely low. Lack of encounters could be attributable to the fact the majority of whiting landings occur in fall and winter when turtles are less likely to be present in the Gulf of Maine. Even in the Mid-Atlantic area, where the possibility of encounters would be more likely, the fishery is prosecuted during the colder months because of concern over product quality.

Overall concerns that turtles become entangled in mesh greater than or equal to 4-inches, such as used in the summer flounder and other fisheries, are addressed by the fact that whiting vessels do not use mesh over 3-inches because of the potential for a significant loss of catch. Additionally, the June 2001 Biological Opinion for the Northeast Multispecies FMP determined that there were no observed takes of sea turtles in the multispecies fishery, but also noted the potential for interactions exists.

Right Whale Critical Habitat - The operation of the whiting fishery and the measures proposed will not change the boundaries or associated management measures in the Cape Cod Bay or Great South Channel areas and is highly unlikely to affect right whale utilization of critical habitat. The whiting fishery, except for the raised footrope trawl fishery which has been the subject of considerable observer coverage does not operate to any appreciable extent in these areas.

6.1.8.1.2 Other Protected Species

Atlantic Salmon - The capture of Atlantic salmon has occurred in U.S. commercial fisheries and by research/survey vessels. However, none have been documented after 1992. Whiting landings have not been recorded for the areas adjacent to the Atlantic salmon rivers, nor have NMFS fishery research surveys documented whiting in the nearshore regions adjacent to the Atlantic salmon rivers. Therefore, there appears to be adequate separation between the two species making it highly unlikely that the proposed action will affect Atlantic salmon.

Bottlenose Dolphin (Western North Atlantic Coastal Stock) – This species occurs in shallow, relatively warm waters along the U.S. coast with a seasonal range between central Florida and Long Island, NY. Stock structure is not well understood, but likely complex and is an area of active investigation by NMFS and others. While this stock of bottlenose dolphin is believed to reside south of Cape Hatteras in late winter, some portion migrates north of Cape Hatteras to New Jersey during the summer.

According to the most recent U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments (Waring et al. 2001), PBR for the Atlantic coastal bottlenose dolphin stock is 25 animals. Total annual estimated average fishery-related mortality or serious injury to this stock during 1994-1998 was 45.8 animals (CV=0.67). Documented takes of this species have occurred in gillnets, seines, longlines, shrimp trawls, and crab pots, especially in nearshore areas where densities of dolphins overlap with fishing effort. The coastal stock of bottlenose dolphin is considered to be depleted relative to its Optimum Sustainable Population and is therefore listed as a strategic stock under the MMPA. As with harbor porpoise, takes in small mesh multispecies gear have not been documented.

Barndoor Skate - Barndoor skate occurs from Newfoundland, the Gulf of St. Lawrence, off Nova Scotia, the Gulf of Maine, and the northern sections of the Mid-Atlantic Bight down to North Carolina. It is one of the largest skates in the Northwest Atlantic and is presumed to be a long-lived, slow growing species. Barndoor skates inhabit mud and sand/gravel bottoms along the continental shelf, generally at depths greater than 150 meters. They are believed to feed on benthic invertebrates and fishes (Bigelow and Schroeder 1953).

The abundance of barndoor skate declined continuously through the 1960's. Since 1990, their abundance has increased slightly on Georges Bank, the western Scotian shelf, and in Southern New England, although the current NEFSC autumn survey biomass index is less than 5% of the peak observed in 1963. The species was identified as an overfished species at the 30th Stock Assessment Workshop (NEFSC 2000). Skates are sensitive to overutilization generally because of their limited reproductive capacity, and are relatively slow-growing, long-lived, and late

maturing.

Barndoor skate is often caught as a bycatch species in the offshore otter trawl and sink gillnet fisheries that target multispecies, monkfish, and spiny dogfish. When landed, they are used in the skate wing fishery. Takes could occur in the whiting fishery. Rebuilding of this species is major goal of the Council's draft Skate FMP currently under development.

Barndoor skate is a candidate species under the ESA as a result of two petitions to list the species as endangered or threatened that were received in March and April 1999. In September 2002, the agency declared the petitioned action to be not warranted at this time because of the recent increases in abundance and biomass observed during NMFS surveys, the expansion of known areas where barndoor skate have been encountered, increases in size range, and the increase in the number of small size barndoor skate collected. The species, however will remain on the NMFS list of candidate species.

Other protected species inhabiting the whiting management until were discussed in Amendment 12 to the Northeast Multispecies FMP and were considered to have little or no interactions with this fishery.

6.1.8.2 Impacts of the Framework 37 Management Measures on Protected Species

The overall impacts of the whiting management measures, including the year 4 default measure, were fully analyzed in Amendment 12 to the Northeast Multispecies FMP and were considered to have negligible impacts on protected species, including those that are threatened and endangered. Elimination of the default, and the adjustments described in the proposed action, including modest increases in effort and the addition of the month of October to the Cultivator Shoal season, should not change that determination given the lack of evidence of interactions with mobile fishing gear in the multispecies fishery in the Northeast.

Since increased fishing opportunities are proposed, it is possible that the measures in this action could result in effort shifts from fisheries that are more likely to have interactions with protected species than the whiting fishery, resulting in potentially fewer risks to cetaceans, pinnipeds, and sea turtles. Again, however, and as discussed in Amendment 12, effort shifts depend largely on market conditions, restrictions in other fisheries and other factors that affect vessels owners and operators and cannot be predicted with any degree of certainty. Other benefits to protected species could accrue from a forage base perspective, given the significant level of stock rebuilding now occurring under this FMP.

6.1.8.3 Conclusions

As discussed previously, the operation of the whiting fishery may affect endangered and threatened species and other marine mammals, given the overlap of the range of these protected species and the prosecution of both the raised footrope fishery in upper Cape Cod Bay and the Cultivator Shoal fishery, as well as the fishery in the small mesh areas and in the Mid-Atlantic region.

Right whales, harbor porpoise and sea turtles are species of concern because of low stock status in the case of right whales, for porpoise because of high levels of bycatch in the multispecies fishery and in the case of turtles, because of the cumulative impacts of interactions in a number of fisheries as well as other human impacts. Both cetacean species are managed under established Take Reduction Plans that were discussed here and in Amendment 12. Additional measures implemented in 2002 to reduce the overall risk of entanglement represented by the multispecies fishery apply to the sink gillnet fishery and other fixed gears that have been linked to interactions. To date, few if any interactions have occurred in the small mesh whiting fishery. Also, it is unlikely that the measures proposed in Framework 37 will affect right whale critical habitat or right whale utilization of those areas.

NMFS has previously concluded that measures approved for the whiting fishery fall within the scope of consultations on prior Northeast Multispecies FMP actions for small mesh multispecies. The Council proposes that none of the measures discussed in this document is expected to result in the addition of adverse impacts, which would change the determinations in those consultations. The Council further concludes that actions contained in Framework 37 are not likely to jeopardize the continued existence of any endangered and threatened species, or affect critical habitat.

6.2 IMPACTS ON HABITAT, INCLUDING EFH ASSESSMENT

6.2.1 Introduction and Overview of Habitat Impacts

A comprehensive description of the physical environment and assessment of the impacts to habitat resulting from fishing practices is presented in Amendment 11 to the Northeast Multispecies Fishery Management Plan. The following section describes the potential habitat impacts of proposed measures on whiting EFH, as well as EFH for other species in the Northwest Atlantic. Furthermore, the impact of other management plans in the region that influence whiting EFH are described. Overall, the alternatives and actions proposed in this framework adjustment are not expected to increase any adverse impacts on essential fish habitat (EFH) resulting from fishing activity.

Fishing effort reductions, gear modifications and year-round fishing closures are management measures that could be expected to provide some benefit to the habitat of the region. Reductions in fishing effort have the effect of reducing the frequency and intensity of fishing gear use. The modification of fishing gear works to reduce the weight of fishing gear or the amount of fishing gear in contact with the bottom. Section 4.5 of Amendment 11 describes the potential habitat impacts associated with a raised footrope trawl, concluding that the impacts from this gear configuration may be less than traditional otter trawl configurations due to the reduced direct contact with the sea floor. Measures that do not directly reduce fishing effort, but rather manage how the effort is distributed among the fishing industry or the size class of fish targeted by the industry, such mesh size restrictions, minimum fish size restrictions, bycatch reduction methods, or monitoring programs would not be expected to have a direct effect on the habitat of the region.

An important factor in understanding the potential impacts of the whiting fishery is that almost all fishing effort for whiting is a subset of the fishing effort managed and allowed under the Northeast Multispecies FMP. The Northeast Multispecies FMP indirectly manages the whiting fishery. The Multispecies FMP has closed large areas of Georges Bank and the Gulf of Maine since 1994. These year-round closures are closed to all gears that are capable of catching groundfish, which includes whiting. There are no whiting exempted fisheries that were exempted for the reason of fishing in any of the year-round groundfish closed areas. The whiting fishery is exempted from the seasonal closure of blocks 124 and 125 in October and November. Additionally, the Whiting Raised-Footrope Trawl is allowed in the specified RFT fishery area, which overlaps with Blocks 124 and 125, only if they are complying with the whiting restrictions (RFT, no possession of groundfish, etc.). These are the only exemptions for groundfish closed areas that exists in the Cape Cod Bay raised footrope trawl.

Roughly 5,800 nm² have been closed in the region, and when Cashes' Ledge became a year-round closure rather than a seasonal closure in 2002, an additional 400nm² became closed to fishing by gears capable of catching groundfish. The groundfish fishery has also experienced significant reductions in effort over the last few years, and Amendment 13 will reduce direct fishing effort even more. Numerous gear restrictions have been implemented as well, which have had a direct impact on the habitats of the region. With regards to whiting fishing, the only areas that are allowed for whiting fisheries are those that have been exempted by the groundfish plan because they meet the 5% bycatch criteria. Whiting fisheries are exempted so that they do not have to use DAS to fish for whiting and so that they can fish with smaller mesh.

6.2.2 Impacts of Proposed Alternatives on Essential Fish Habitat

The NMFS Final Rule for EFH defines an adverse effect as “an impact that is more than minimal and not temporary in nature” (600.815). The significance of a fishing gear-related impact to habitat, and whether it is considered adverse, can depend on several factors, including: (1) the type of habitat; (2) the effect of the gear on the habitat; (3) the recovery rate of the habitat; (4) the location of the habitat and impact; (5) the natural disturbance regime; and (6) the functional elements of the habitat to managed species. The Magnuson-Stevens Act requires each FMP to minimize gear effects from the fishery. Amendment 13 to the Northeast Multispecies FMP is currently in development and includes a comprehensive evaluation of any adverse impacts to habitat associated with all fishing gear types utilized in any fishery managed under the Northeast Multispecies FMP, including the raised footrope trawl used in the whiting fishery. Amendment 13 includes consideration of a wide variety of potential management measures intended to minimize the identified adverse effects on EFH. This framework document evaluates the potential impacts to habitat associated with the specific measures proposed in this action. As summarized in the EFH Assessment that follows, there are no adverse impacts to EFH associated with the particular measures proposed in this action. Therefore, this framework document does not include any specific measures developed and proposed solely for the purpose of minimizing any adverse impacts to EFH associated with this action.

6.2.2.1 Proposed Action

6.2.2.1.1 Eliminate the Year 4 Default Measure in Both Stock Areas

This measure eliminates the Year 4 default measure for small mesh multispecies in both whiting stock areas. All current regulations for small mesh multispecies (mesh sizes, possession limits, etc.) would remain in effect unless otherwise modified in this framework adjustment.

Current regulations allow for the possession and landing of up to 30,000 lbs of silver and offshore hake using 3 inch or greater mesh nets. The Year 4 default measure would reduce this to 10,000 lbs. There were no adverse impacts on habitat found for current management measures (see Amendment 12 and Framework Adjustment 35 to Northeast Multispecies Fishery Management Plan). As this option proposes to maintain current management measures, there are no associated habitat impacts above and beyond those accounted for in Amendment 12 and Framework Adjustment 35.

6.2.2.1.2 Reinstate the Cultivator Shoal Whiting Fishery Season through October 31

Gear used in the silver hake/offshore hake fisheries has a less significant detrimental impact on habitat than gears used in most other bottom-tending fisheries. This is, in part, because small-mesh trawls are designed, rigged, and used differently than large-mesh fish trawls. The gears tend to be lighter and employ smaller ground gears (cookies, rollers), as contact with the bottom is less important for this fishery. The Cultivator Shoal Whiting Fishery does not require a raised footrope trawl but, as discussed above, small mesh multispecies trawls have a reduced impact on benthic habitats as compared to their large mesh brethren. Because there are only a small number of vessels participating in this fishery, increases in the duration of the season (by one month) should have no significant impact on habitat.

6.2.2.1.3 Adjustments to Incidental Catch Allowances in Northern Exempted Fisheries for Small Mesh Multispecies

In this framework adjustment, the Council is proposing modifications to the incidental catch allowances in the Cultivator Shoal Whiting Fishery and Small Mesh Areas 1 and 2.

6.2.2.1.3.1 Red Hake Incidental Catch Allowance in the Cultivator Shoal Whiting Fishery

This measure is not expected to alter current fishing practices except that it will likely reduce regulatory discards of red hake. This option would not be expected to have any effect on the habitat of the region.

6.2.2.1.3.2 Incidental Catch Allowances for Small Mesh Areas 1 and 2

This measure restricts incidental catch allowances for Small Mesh Areas 1 and 2 to the same species as currently authorized for the Cape Cod Bay raised footrope trawl fishery. It is intended to eliminate potential incentives to fish the gear improperly (i.e. on the bottom) by limiting the species that may be retained. This measure is not likely to change the intensity or frequency of fishing activities in the Small Mesh Areas. This option would not be expected to have any effect

on the habitat of the region.

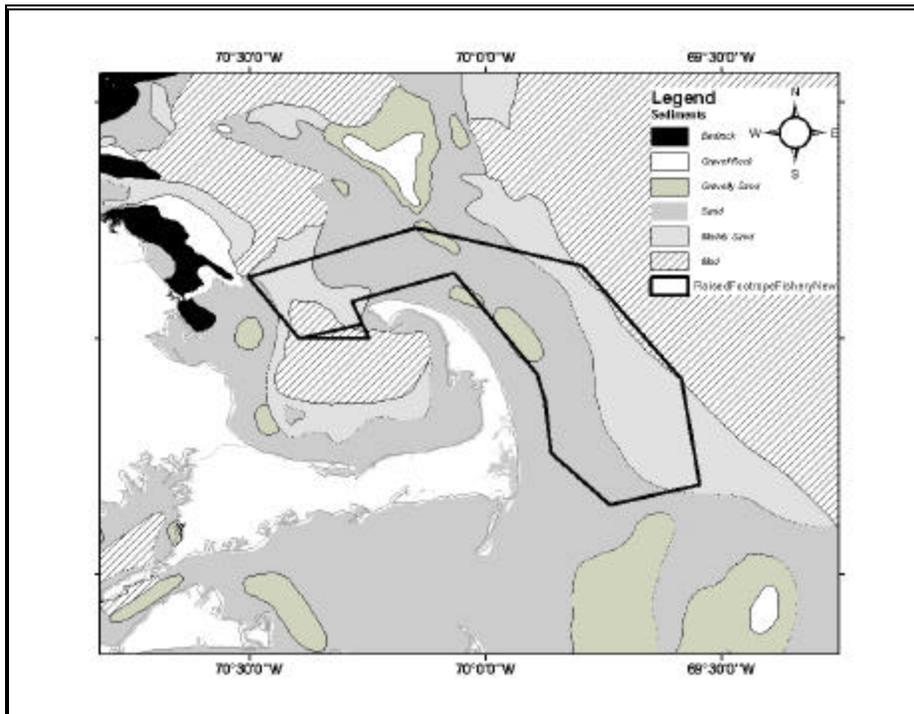
6.2.2.1.4 Transfer at Sea Provisions for Small Mesh Multispecies

This action is not expected to increase the intensity or frequency of fishing activities in the whiting fishery. This option would not be expected to have any effect on the habitat of the region.

6.2.2.1.5 Exempted Raised Footrope Trawl Fishery in Cape Cod Bay

This action slightly modifies the area for the exempted raised footrope trawl fishery in Cape Cod Bay. Figure 4 details the bottom sediments found in this area.

Figure 4 Bottom Sedimentation of Area Affected by the Modification of the Area for the Exempted Raised Footrope Trawl Fishery in Cape Cod Bay (modified from Poppe, et al. 1989)



The area affected by this change contains mud, muddy sand and sand bottom sediments. As this fishery employs a raised footrope trawl, if fishing properly only the doors and the sweep will come in contact with the bottom. Given the extremely small total area affected and the reduced impact of this gear, no significant impacts to habitat are anticipated.

6.2.2.2 Alternatives Considered but Rejected

6.2.2.2.1 Eliminate the Year 4 Default Measure in the Northern Stock Area Only

This option would eliminate the Year 4 default measure for small mesh multispecies only in the northern stock area (north of the GOM/GB Regulated Mesh Area boundary). All current regulations for small mesh multispecies (mesh sizes, possession limits, etc.) would remain in effect in the northern area unless otherwise modified in this framework adjustment.

This measure may provide minimal habitat benefits over Option 1, as the reduced trip limits in the southern stock area would reduce fishing effort. Due to the non-linear relationship between fishing effort and habitat impacts (i.e. a 50 percent reduction in fishing effort on one species or stock does not translate into a 50 percent reduction in habitat impacts) the magnitude of this reduction cannot be quantified. In fact, if vessels shift from utilizing small mesh multispecies gear (particularly in raised footrope exemption areas) to other gears with more significant impacts on habitat, such as scallop (state waters), groundfish or shrimp gear, the overall impacts of such a trip limit reduction may have some adverse impacts on habitat.

6.2.2.2.2 No Action on the Year 4 Default Measure

Under this option, the Year 4 default measure would become effective in both the northern and southern stock areas on May 1, 2003.

This would result in a significant reduction in landings (and consequently, revenues) for affected fishermen, who would likely look to other fisheries to compensate for their losses. As discussed above, the gear employed in the whiting fishery has a reduced impact on EFH as compared to other otter trawl gears that fish hard on the bottom. The raised-footrope trawl was designed especially for fishing for whiting and this gear operates about 1.5-2 ft above the seafloor bottom. Although the doors of the trawl still ride on the bottom, the raised footrope sweep has much less contact with the sea floor than does the traditional cookie sweep that it replaces.

For these reasons, measures likely to displace effort from the small mesh multispecies fishery may have detrimental effects on habitat as effort by higher-impact gears is increased. The magnitude of this increase is not quantifiable, but is not likely to be significant.

6.2.2.2.3 Opportunities in the Cultivator Shoal Whiting Fishery

A range of options were proposed, covering management measures that may extend the length of the Cultivator Shoal Whiting Fishery and increase trip limits.

The Cultivator Shoal Whiting Fishery does not require a raised footrope trawl but, as discussed above, small mesh multispecies trawls have a reduced impact on benthic habitats as compared to their large mesh brethren. Because there are only a small number of vessels participating in this fishery, increases in the duration of the season (by one month) should have no significant impact on habitat.

Increases in trip limits (anywhere from a weekly limit of 50,000 lbs to 100,000 lbs) could increase the amount of effort directed at this portion of the fishery. Given the relatively small number of boats expected to participate, however, and the fact that trip limit increases could induce vessels to shift from other (presumably high-impact) fisheries/gear types, would likely result in minimal impacts on habitat.

6.2.2.2.4 Incidental Catch Allowances in Northern Exempted Fisheries for Small Mesh Multispecies

This action is not expected to increase the intensity or frequency of fishing activities in the whiting fishery. This option would not be expected to have any effect on the habitat of the region.

6.2.2.2.5 Transfer at Sea Provisions for Small Mesh Multispecies

This action is not expected to increase the intensity or frequency of fishing activities in the whiting fishery. This option would not be expected to have any effect on the habitat of the region.

6.2.2.2.6 Options to Adjust Measures in the Southern Stock Area

Option 1 - Conservation-Neutral Enrollment Program to Increase the Possession Limit for Vessels Targeting Whiting with 3-Inch Mesh in the Southern Stock Area

This action is not expected to increase the intensity or frequency of fishing activities in the whiting fishery. This option would not be expected to have any effect on the habitat of the region.

Option 2 – No Additional Action in the Southern Stock Area

This action is not expected to increase the intensity or frequency of fishing activities in the whiting fishery. This option would not be expected to have any effect on the habitat of the region.

6.2.3 EFH Assessment

This essential fish habitat (EFH) assessment is provided pursuant to 50 CFR 600.920 of the EFH Interim Final Rule to initiate EFH consultation with the National Marine Fisheries Service.

6.2.3.1 Description of the Proposed Action

See Section 3.0 for a description of the action proposed in this framework adjustment. The activity described by this proposed action, fishing for whiting and red hake in the Cultivator Shoals, Cape Cod Bay and Small Mesh Exemption (1 and 2) Areas, occurs across designated EFH for most Council-managed species (all but offshore hake—see Amendments 11 and 12 to the Northeast Multispecies FMP). The range of this activity also occurs across the designated EFH of most species managed by the Mid-Atlantic Fishery Management Council (all but ocean

quahog and tilefish) and species managed under the NMFS Highly Pelagic Species FMP.

6.2.3.2 Analysis of the Effects of the Proposed Action

This action proposes to eliminate the year 4 default measures, re-instate the Cultivator Shoals whiting fishery season through October 31, increase red hake incidental catch allowances for the Cultivator Shoal Whiting Fishery, increase incidental catch allowances for Small Mesh Areas 1 and 2, raise the amount of red hake authorized to be transferred at sea, and increase the area of the exempted raised footrope trawl fishery area for Cape Cod Bay.

The elimination of the year 4 default measures has no impact on current fishing practices. While the whiting trawl fishery may be associated with some adverse impacts to bottom habitat, this measure does not increase these impacts. The extension of the Cultivator Shoals whiting fishery through October 31 will slightly increase the intensity and frequency of whiting trawl gear effort on habitats in this area. However, due to the limited number of vessels engaged in this fishery and the “high energy” environments of Cultivator Shoals, the increase is expected to be minimal with no corresponding adverse impacts EFH in this area. Increases in incidental catch allowances and transfer at sea allowances have no impact on fishing practices or fishing effort and therefore have no impact on the EFH of affected areas. The expanded area of the Cape Cod Bay whiting fishery is small, and the use of a raised footrope trawl (a reduced impact gear relative to traditional otter trawl gear) in this fishery mitigates the slight increase in affected area.

This framework does not propose to increase current levels of overall fishing activity in the U.S. EEZ. None of the proposed actions will have any direct adverse impacts on the EFH of any managed species relative to the baseline conditions established under Amendments 11 and 12, and Framework Adjustment 35.

6.2.3.3 Conclusions

The action has adverse effects on EFH that are less than substantial and does not increase any of the adverse effects as established in the baseline condition under Amendment 12 and Framework 35. Since the adverse effects are not increased, the Council has determined that the adverse effects of fishing on EFH from this action have been minimized to the extent practicable. An abbreviated EFH consultation is required.

6.2.3.4 Proposed Mitigation

None required.

6.3 CUMULATIVE EFFECTS

Cumulative effects result from the proposed action's incremental impacts when these impacts are added to the impacts of other past, present, and reasonably foreseeable future actions. These impacts can result from individually minor but collectively significant actions taking place over a period of time.

In 1997, the Council on Environmental Quality (CEQ) published a handbook entitled, *Considering Cumulative Effects Under the National Environmental Policy Act*. The CEQ identified the following eight principles of cumulative effects analysis, which will be considered in the discussion of the cumulative effects of this proposed action:

1. Cumulative effects are caused by the aggregate of past, present, and reasonably foreseeable future actions.
2. Cumulative effects are the total effect, including both direct and indirect effects, on a given resource, ecosystem, and human community of all actions taken, no matter who (federal, non-federal, or private) has taken the actions.
3. Cumulative effects need to be analyzed in terms of the specific resource, ecosystem, and human community being affected.
4. It is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.
5. Cumulative effects on a given resource, ecosystem, and human community are rarely aligned with political or administrative boundaries.
6. Cumulative effects may result from the accumulation of similar effects or the synergistic interaction of different effects.
7. Cumulative effects may last for many years beyond the life of the action that caused the effects.
8. Each affected resource, ecosystem, and human community must be analyzed in terms of its capacity to accumulate additional effects, based on its own time and space parameters.

This framework adjustment builds on actions taken in Amendment 12, Framework 32, and Framework 35 to the Northeast Multispecies FMP. Based on the information and analyses presented in these documents, this framework document, and the 2002 SAFE Report for Small Mesh Multispecies (Appendix I), there are no significant cumulative effects associated with the proposed action. Cumulative effects, as they relate to small mesh multispecies, are reflected in the present status of the small mesh multispecies resources, the biological impacts of the proposed action, and the rebuilding program for small mesh multispecies implemented in Amendment 12. The action in Amendment 12 was intended to end overfishing and rebuild small mesh multispecies stocks to their target levels. Recent information indicates that the measures in Amendment 12 were effective in rebuilding small mesh multispecies stocks so that the action proposed in this framework is possible. The effects of Framework 37 are not expected to jeopardize the success of the Amendment 12 measures and should, in fact, allow for continued rebuilding of the small mesh multispecies stocks. Future actions for small mesh multispecies will consequently build on the action in this framework adjustment as well as past actions for

small mesh multispecies. Foreseeable future actions include those that provide access to the small mesh multispecies resources to continue to achieve the objectives of the whiting management program in Amendment 12.

Since it is not practical to analyze the cumulative effects of this action on the universe, the most meaningful and relevant considerations for this framework adjustment include:

- the direct effects of the proposed action on the small mesh multispecies resources;
- the indirect effects of the proposed action on other fishery resources; and
- the indirect effects of management measures in other fisheries on the small mesh multispecies resources.

Section 6.1 of this document discusses the direct biological impacts of the proposed action on small mesh multispecies. The biological impacts of the proposed action are expected to be insignificant for both the northern and southern stocks of small mesh multispecies. Action taken through this framework adjustment essentially maintains status quo management conditions for small mesh multispecies in the southern area.

Section 6.1.7 of this document discusses the indirect effects of the proposed action on other fishery resources. Overall, the impacts of the proposed action on other species are expected to be minimal. The implementation of the Year 4 default measure, on the other hand, is predicted to result in substantial impacts on other fisheries and fishery resources (see Amendment 12). There may be some marginal positive benefits for monkfish and lobsters as a result of the proposed changes to the incidental catch allowances in Small Mesh Areas 1 and 2. The lobster resource should benefit more than monkfish because most monkfish discarded in these fisheries is not likely to survive.

The indirect effects of management measures in other fisheries on the small mesh multispecies resources are discussed in detail in the 2002 SAFE Report for Small Mesh Multispecies (Appendix I). Industry representatives on the WMC expressed concern about the potential for effort to increase in the whiting fishery, especially as a result of increasing groundfish restrictions and the upcoming Amendment 13 to the Northeast Multispecies FMP. Allocated Multispecies days-at-sea (DAS) were recently reduced in an interim action resulting from the Framework 33 lawsuit and may be reduced again in Amendment 13. DAS allocations for many vessels may become so low that groundfishing is no longer a viable option for these vessels. Because whiting is an open access fishery, many participants fear that either the stock condition or their future ability to prosecute the fishery (or both) will be compromised by an influx of vessels as a response to additional groundfish restrictions.

Effort could increase in the whiting fishery as a result of increasing groundfish restrictions through:

1. effort from new entrants in the whiting fishery;
2. re-activation of effort from historical participants in the fishery; and/or
3. increased effort by current participants in the fishery.

Most of the WMC members believe that because of market conditions, new entrants in the fishery may encounter difficulty generating profits in the fishery, as the market is very limited, and most vessels have established relationships with buyers for whiting. An influx of new entrants, therefore, may only be a short-term occurrence. However, an influx of effort into the fishery could compromise the health of the resource, even if it is only a short-term response to Amendment 13. The potential loss of market share for current participants is also a critical issue. Because whiting markets are so limited, there is concern that an influx of effort in the fishery will decrease the price of whiting for all vessels. Current participants worry that their very small market share will be divided between an increasing number of vessels, reducing profits in the fishery across the board.

In this framework adjustment, the Council responded to concerns about the cumulative effects of Amendment 13 as well as increasing restrictions in other fisheries by taking a precautionary approach for allowing effort in the northern stock area to increase. Even though information suggests that effort on small mesh multispecies could increase substantially in the northern area, the Council limited the action in this framework adjustment to those measures that may only marginally increase effort. An increase in the possession limit for the Cultivator Shoal Whiting Fishery was rejected due, in part, to concerns about cumulative effects and the indirect impacts of groundfish restrictions on the small mesh multispecies fisheries.

In documenting concerns about the indirect effects of increased groundfish restrictions, the WMC established a baseline of entry and exit patterns in small mesh multispecies fisheries for further investigation in the future. This baseline is presented in Appendix I and should be referenced for additional information.

6.4 ECONOMIC IMPACTS

6.4.1 Impacts of Reinstating the CSWF Season

Historical data indicate that the month of October accounted for only a small percentage of total fishery activity in the Cultivator Shoal Whiting Fishery (see Section 6.1.3). For this reason, reinstating the month of October is not expected to have a significant impact on landings and would not, therefore, have any appreciable market impacts. Nevertheless, reinstating October would have beneficial economic effects for vessels that had traditionally prosecuted the fishery during October and would open up increased economic opportunity for other vessels as well.

6.4.2 Impacts of Eliminating the Restriction on Red Hake Incidental Catch Allowance in the CSWF

Landings data for red hake do not indicate that the current incidental catch allowance is a constraint to increased retention of red hake. For this reason, removal of the incidental catch allowance would not be likely to result in any market effects but would permit vessels to increase trip income on the occasions where the current allowance would be exceeded.

6.4.3 Impacts of Modifying Incidental Catch Allowances for Small Mesh Areas 1 and 2

Section 3.2.2.2 of this document proposes to modify incidental catch allowances in Small Mesh Areas 1 and 2 so that they mirror allowances in the Cape Cod Bay raised footrope trawl fishery since all three fisheries require the use of a raised footrope trawl. Modifying the incidental catch allowances in Small Mesh Areas 1 and 2 would prohibit vessels from retaining lobsters, monkfish, sculpin, and ocean pout in these fisheries. The intent of this measure would be to discourage vessels from rigging their gear improperly in order to retain these bottom-dwelling species.

VTR data from Small Mesh Areas 1 and 2 were examined to gain perspective on how much of the species proposed for prohibition are caught in these fisheries. This helps to assess the potential economic impacts of prohibiting these species as well as the potential to generate regulatory discards from the prohibitions. Because of the low commercial value of sculpin and ocean pout, only landings and discards of lobster and monkfish were examined.

VTR records were queried for otter trawl trips using mesh smaller than regulated groundfish mesh (6 inches) in Statistical Areas 513 and 514. It is assumed that the resulting records reflect only trips that occurred in Small Mesh Areas 1 and 2, as there are no other fisheries within these statistical areas that allow mesh smaller than 6-inches. The shrimp fishery occurs in this area, but shrimp vessels report through a different gear code (otter trawl/shrimp, instead of otter trawl/fish), which was not queried. Table 6 summarizes reported landings and discards of whiting, red hake, monkfish, and lobster from Small Mesh Areas 1 and 2.

The requirement to use a raised footrope trawl in Small Mesh Areas 1 and 2 was implemented on May 1, 1998. Data for 1998 therefore include some time during which the raised footrope trawl was not required. The data in Table 6 indicate that very small quantities of monkfish and lobster are either kept or discarded in Small Mesh Areas 1 and 2, and for the most part, landings of monkfish and lobsters have decreased since 1998.

The data in Table 6 do not suggest that vessels are rigging their gear improperly to retain large amounts of lobsters and monkfish, or to compensate for potential losses of these species that would occur by rigging the raised footrope trawl properly. Average landings of lobster per trip have decreased since 1998, while average landings of monkfish per trip have just slightly increased. Overall, activity in the areas has decreased since 2000. In terms of potential impacts, prohibiting the retention of lobsters and monkfish in Small Mesh Areas 1 and 2 has the potential to generate about 20,000 pounds of regulatory discards annually, based on reported landings of these species in 2000 and 2001.

Table 6 Summary of VTR Landings and Discards of Monkfish and Lobster in Small Mesh Areas 1 and 2 (Number of Trips in Parentheses)

	1998 (2,373)	1999 (2,200)	2000 (1,312)	2001 (1,495)
MONKFISH				
Landings	23,957	32,093	15,397	19,741
Discards	927	503	597	1,030
MONKFISH LIVERS				
Landings	737	546	245	437
Discards	100	0	0	0
MONKFISH TAILS				
Landings	7,287	0	3,261	49
Discards	0	0	14	0
LOBSTER				
Landings	2,775	3,189	1,088	675
Discards	1,220	1,945	483	568
WHITING				
Landings	1,521,871	2,003,516	1,819,748	1,891,126
Discards	23,927	77,703	30,946	13,708
RED HAKE				
Landings	273,382	271,754	370,837	283,367
Discards	24,747	30,092	10,780	11,478

Landings and discards are expressed in pounds, as reported in vessel logbooks.

The relative share of monkfish and lobster in total fishing revenues in Small Mesh Areas 1 and 2 have declined each year since 1998 (Table 7). Over these years, the level of landings was so small that any change in the incidental catch allowance would have no impact on either monkfish or lobster markets. Further, given the low level of revenues from either monkfish or lobster in these two small mesh areas it seems unlikely that any change in catch allowance would have any significant impact on gross revenues from all sources of fishing income for vessels participating in this fishery. However, at a trip-level there may be some occasions where revenues from monkfish or lobster could affect vessel profitability for a given trip. In these cases, eliminating the incidental catch allowance would have a negative economic impact, as the trip may be abandoned.

Table 7 Estimated Landed Value of Small Mesh Multispecies, Monkfish, and Lobster in Small Mesh Areas 1 and 2

	1998	1999	2000	2001
Whole Monkfish (\$)	22,999	45,251	22,942	25,861
Monkfish Livers (\$)	2,823	2,948	997	1,136
Monkfish Tails (\$)	10,858	0	7,435	68
Lobster (\$)	10,573	13,139	4,678	2,754
Whiting (\$)	608,748	961,688	782,491	851,007
Red Hake (\$)	68,346	81,526	89,001	73,675
Total Value (\$)	724,347	1,104,552	907,544	954,501

6.5 SOCIAL IMPACTS

6.5.1 Background

This assessment was prepared in accordance with NEPA and the Magnuson-Stevens Fishery Conservation and Management Act, as well as other applicable laws. NEPA requires that economic and social impacts of regulatory actions be considered and evaluated through a decision-making process that involves the public. National Standard 8 of the Magnuson-Stevens Act states that:

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.

A complete description of the affected human environment (small mesh multispecies fisheries) is contained in Amendment 12 to the Northeast Multispecies FMP. The social impacts of the whiting management program, including the Year 4 default measure, are described in Section E.7.4 of the Amendment 12 document. Updated information about small mesh multispecies fishing activity in most ports is presented in the 2001 and 2002 SAFE Reports for Small Mesh Multispecies. Information about the ports engaged in small mesh multispecies fisheries is being updated for the Amendment 13 EIS and should be available for the next amendment addressing small mesh multispecies.

6.5.2 Social Factors to Consider

To the extent possible, the four social impact factors described below will be considered relative to the proposed management action. Use of these kinds of factors in social impact assessment is discussed in Burdge's *Conceptual Approach to Social Impact Assessment* (Burdge 1998). The selection of these factors for consideration is based on similar work being completed for Amendment 13 to the Northeast Multispecies FMP (see Draft Amendment 13 DSEIS).

Regulatory Discarding

Regulatory discarding is an important social problem, just as it is an ecological problem. Low trip limits resulting in excessive discarding leave fishermen feeling demoralized and disgusted with fishing, which is more than just a job to most fishermen. Fishermen recognize that discarding marketable and oftentimes dead fish does nothing to benefit them or their families, the health of the resource, their disappearing hold on local fresh fish markets, or seafood consumers. Fishing is a family business, so the impacts of this are felt throughout the entire family and the entire fishing community.

Safety

The safety of fishermen and fishing operations at sea is an extremely important social impact factor, as decreased safety often increases stress at the individual and family level, which can exacerbate many other family and societal problems. In addition, the impacts of fishing-related

casualties can be felt throughout fishing communities, many of which are close-knit groups with longstanding family and social networks.

Disruption in Daily Living

Consideration of this factor includes vessel flexibility and the ability of fishermen to switch between fisheries, areas, and gears seasonally and/or in response to market conditions. Year-round and seasonal fishing opportunities are important to consider. These opportunities also relate to fishermen's chances to successfully adapt to new regulations. Impacts on this factor are associated with the ability of affected industry members to develop both short-term and long-term business plans. Another related impact can be experienced through the loss of crew and/or the inability to retain reliable crew members on a year-round basis.

Changes in Occupational Opportunities

Changes in occupational opportunities can lead to changes in household/family income, classes, and lifestyles. In assessing this variable, both the short- and long-term shifts in job opportunities should be considered. This includes changes to year-round and seasonal fishing opportunities, short-term and long-term dislocation from the fishery, employment opportunities, and the ability to find and keep crew. Flexibility for the fishing fleet and the ability to plan business ventures over the short-term and long-term also are related factors. Changes in occupational opportunities are not only important to consider for the commercial fishing fleet, but also the recreational and party/charter fleet.

External forces (status of economy, community shifts away from fishing and towards tourism, etc.) can influence the magnitude and direction of changes in occupational opportunities. Emphasis should be placed on identifying potential changes in the unique social and family arrangements that characterize the communities under consideration, particularly on changes in household employment patterns, trends in family-run fishing businesses, and participation in job retraining programs. Special consideration should also be given to social and cultural values and norms that may be affected by changes in opportunity, such as long-term family involvement in the fishery, job satisfaction, and respect for fishing as an occupation and a way of life.

Changes in occupational opportunities tend to be more long-term and far-reaching in nature and tend to result from significant management adjustments, not minor adjustments like those proposed in this framework adjustment.

6.5.3 Social Impacts of the Proposed Action

When predicting social impacts of management measures, it is important to consider impacts on the following components of fishing communities:

- the fishing fleet (vessels grouped by fishery, primary gear type, and/or size);
- boat owners and captains;
- crew;
- fish buyers (dealers);
- seafood markets;

- community cooperatives;
- fishing industry associations;
- cultural components of the community;
- fishing families.

The communities likely to experience positive social impacts from the action proposed in this framework adjustment are those with at least one of the following characteristics:

- an active, large, and/or dependent small mesh multispecies fleet;
- vessels that participate in the Cultivator Shoal Whiting Fishery; and
- vessels that were predicted to be most negatively impacted from the implementation of the Year 4 default measure.

Overall, none of the measures proposed in this framework are likely to have substantial effects on *disruption in daily living* and/or *changes in occupational opportunities*. Most of the social impacts will result from effects on *regulatory discarding* and *safety*.

6.5.3.1 Elimination of the Year 4 Default Measure

The social impacts of implementing the Year 4 default measure are discussed in Amendment 12 to the Northeast Multispecies FMP. The social impacts of eliminating the default measure are expected to be positive in both the short-term and long-term.

The analyses in Amendment 12 predicted substantial negative economic and social impacts from the Year 4 default measure. The default measure was expected to result in large losses of not only small mesh multispecies, but also other small mesh species like squid. Shinnecock NY was projected to experience the largest reductions in landings of all species combined from the Year 4 default measure (39.4%), followed by Greenport NY (36.7%), Point Judith RI (32.8%), Montauk NY (25.9%), Gloucester MA (16.4%), Portland ME (14.8%), Provincetown MA (11.5%), Cape May NJ (9.7%), Point Pleasant NJ (8.0%), and Belford NJ (7.2%). Although CT ports could not be analyzed due to data limitations, it is likely that the default measure would produce similar impacts in the ports of Stonington CT and New London CT.

The positive impacts resulting from not implementing the Year 4 default measure will be associated with avoiding effects on *disruption in daily living*, *changes in occupational opportunities*, and *regulatory discarding*, all of which can be expected if the default measure is implemented in either stock area. The communities that are likely to benefit most from the elimination of the Year 4 default measure are those that are identified above as likely to experience the most negative impacts from the default measure. It should be noted that while the social impacts of eliminating the default measure are positive, stock recovery in the southern area must continue to ensure that additional management restrictions are not necessary.

6.5.3.2 Cultivator Shoal Whiting Fishery Season

The positive social impacts from reinstating the month of October to the CSWF are related to increased opportunities and economic returns for participating vessels. Most vessels that fish in the CSWF are large vessels that depend on small mesh multispecies for a substantial proportion of their income in a given year. Most of the participating vessels are from communities like New London CT, Boston MA, Gloucester MA, Point Judith RI, Montauk NY, Greenport NY, and Hampton Bays NY.

Additional fishing opportunities during the month of October will positively affect *disruption in daily living* and *changes in occupational opportunities*. Increased fishing revenues and opportunities may help to stabilize crew for participating vessels and, in some cases, may provide a better chance of maintaining fishing operations on a year-round basis. The positive impacts will be especially important for vessels that experience reduced opportunities in the groundfish fishery as a result of Amendment 13.

In addition, if this measure decreases effort on the southern stock of whiting during the month of October, positive impacts could result from expediting the continued recovery of the southern stock of whiting. To the extent that this occurs, the possibility of implementing additional restrictions in the southern area is reduced.

6.5.3.3 Eliminating the Restriction on Red Hake Incidental Catch in the CSWF

This measure is most likely to reduce *regulatory discarding* and may result in positive social impacts for participating vessels and affected communities. Participants may also benefit from increased revenues in the CSWF, although the increases are likely to be marginal because the commercial value of red hake is relatively low. The communities most likely to benefit from this measure are those whose vessels participate in the CSWF, as identified above (see Section 6.5.3.2).

6.5.3.4 Modifying Incidental Catch Allowances for Small Mesh Areas 1 and 2

This measure will most likely affect *regulatory discarding* and *disruption in daily living*. Unlike the other measures proposed in this framework adjustment, this measure is likely to produce some negative social impacts, as it is predicted to reduce revenues and increase *regulatory discarding* for some vessels fishing in Small Mesh Areas 1 and 2. While the overall amount of regulatory discards (and revenue losses) created by this measure is expected to be small, some individual vessels may experience larger effects and increased stress resulting from the regulatory discards. The vessels that fish in Small Mesh Areas 1 and 2 already were impacted by the low Gulf of Maine cod trip limits in recent years and have experienced loss of morale and increased stress from regulatory discarding.

6.5.3.5 Transfer at Sea Provisions for Small Mesh Multispecies

The proposed action represents the status quo for vessels that currently are engaged in this activity. Therefore, additional social impacts are not expected.

6.5.3.6 Cape Cod Bay Raised Footrope Trawl Fishery Area Modification

The social impacts of the proposed modification to the Cape Cod Bay raised footrope trawl fishery area are expected to be positive and will most likely affect *safety*. Provincetown fishermen should have improved access to this fishery in times of inclement and unpredictable weather, thereby promoting the safety of the fishery. This is especially important for Provincetown vessels, which tend to be smaller and older vessels.

6.5.4 Summary and Conclusions

Overall, the social impacts resulting from the measures proposed in this framework adjustment are expected to be positive for affected vessels and communities. None of the measures proposed in this framework are likely to have significant effects on *disruption in daily living* and/or *changes in occupational opportunities*. Most of the social impacts will result from marginal effects on *regulatory discarding* and *safety*.

In terms of *regulatory discarding*, the positive impacts associated with eliminating the red hake restriction in the CSWF and the negative impacts associated with changing the incidental catch restrictions in Small Mesh Areas 1 and 2 will not be experienced by the same vessels and communities. As a result, some vessels/communities will experience positive impacts from the Framework 37 measures, while some will experience negative impacts.

7.0 RELATIONSHIP TO APPLICABLE LAW

7.1 MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT (MSFCMA)

7.1.1 Consistency with the National Standards

Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act requires that FMPs contain conservation and management measures that are consistent with the ten National Standards. The following section summarizes, in the context of the National Standards, the analyses and discussion of the proposed action that appear in various sections of this framework adjustment document.

(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.

Whiting/offshore hake possession limits have been important components of the Council's strategy, implemented in Amendment 12, to end overfishing and rebuild the northern and

southern stocks of whiting. According to the WMC's third year review, this strategy appears to be working, as the northern stock is considered rebuilt, and the southern stock has recovered to a level that is no longer considered overfished. The WMC also concluded that overfishing does not appear to be occurring on either stock (Appendix I). This framework adjustment is intended to continue to achieve the optimum yield from the fishery by not implementing the default measure in either stock area and increasing some opportunities for small mesh multispecies fishing in the northern area, as recommended by the WMC. The action is consistent with the objectives of the small mesh multispecies management program set forth in Amendment 12 to the Northeast Multispecies FMP.

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

The technical basis for this framework adjustment as well as the analyses of the proposed action are based on the best scientific information available. The WMC includes technical experts from the New England and Mid-Atlantic Council staffs, NMFS NERO, the Northeast Fisheries Science Center, the State of Massachusetts, and the State of Maine, as well as industry representatives from northern New England, southern New England, and the Mid-Atlantic regions. As specified in Amendment 12, the WMC's third year review (Appendix I) serves as the basis for the action proposed in this framework adjustment.

(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.

Stock delineation is a source of uncertainty regarding the whiting resource. The traditionally-accepted boundary between the northern and southern stocks of whiting is a straight line drawn over southern Georges Bank (see Figure 1, p. 5). However, it is recognized that whiting mix to a considerable degree across the biological boundary. Measures proposed in this framework adjustment that are specific to the northern stock area are consistent with the stock areas used in the biological assessment of the whiting resource and depicted in Figure 1. However, to avoid problems resulting from uncertainties about stock delineation, the principal aspects of the whiting management program (mesh sizes and possession limits) continue to apply across both stock areas. This is consistent with the approach adopted in Amendment 12.

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

The proposed action does not discriminate between residents of different states, nor does it allocate fishing privileges among various sectors of the fishery. Unless the Council adopts a limited access program for small mesh multispecies in the future, this fishery will remain open to any federally-permitted vessels that wish to participate.

(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 considered efficiency in the utilization of fishery resources when developing the proposed action. The proposed action is intended to provide opportunities for vessels in the northern area to better achieve OY from the fishery and for vessels in the southern area to maintain a fishery for small mesh multispecies during the remainder of the rebuilding program. Elimination of the red hake incidental catch restriction in the Cultivator Shoal Whiting Fishery will likely reduce discards, minimizing waste and improving yield from the fishery.

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

The Council first accounted for variations in fisheries, fishery resources, and catches by developing three mesh size/possession limit categories for vessels to choose from in Amendment 12. This approach maximizes opportunities in the fishery and flexibility for the fleet while reducing fishing mortality and whiting exploitation. Changes in fisheries occur continuously, both as the result of human activity (for example, new technologies or shifting market demand) and natural variation (for example, oceanographic perturbations). In Amendment 12, the Council established a process to annual review and adjust the whiting management measures according to such variations.

The third year review by the WMC serves as the technical basis for the action proposed in this framework adjustment. In this review, and in developing the proposed action, the Council considered variations among and contingencies in fisheries, resources, and catches. The proposed action represents the Council's attempt to ensure whiting stock recovery while allowing for variations among fisheries of which whiting is a component.

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

As always, the Council considered the costs and benefits associated with several alternatives to the proposed action when developing this framework adjustment. Administration and enforcement costs were especially considered in relation to the options for the CSWF possession limit, modifications to transfer at sea provisions, and the conservation-neutral enrollment program in the southern area (see Section 4.0 for a description of the alternatives to the proposed action). The proposed action allows for greater fishing opportunity (in the northern stock area) and planning flexibility at minimal administration and enforcement costs.

(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.*

The social and community impacts of the proposed action are discussed in Section 6.5 of this document. The measures proposed in this framework adjustment are not likely to result in significant adverse impacts on affected fishing communities. The proposed action is intended to

allow for continuing access to both whiting and other small mesh resources (squid, for example) by eliminating the Year 4 default measure, as recommended by the WMC. Eliminating the Year 4 default measure in both stock areas ensures that adverse economic impacts on affected fishing communities resulting from the small mesh multispecies management program are minimized. Reinstating the month of October to the CSWF and eliminating the 10% red hake incidental catch restriction improves access to and opportunities in this fishery. The minor area modification proposed for the Cape Cod Bay raised footrope trawl fishery promotes safety and improves access to the whiting resources for participating vessels.

In Amendment 12, the Council developed an ongoing process of monitoring and adjusting management measures in which members of affected communities actively participate. Public comments, in conjunction with socio-economic analyses and technical advice from the WMC, help the Council to identify and select measures which minimize the adverse impacts on affected communities to the extent practicable. Three industry representatives serve as members of the WMC, one from each affected region. The industry representatives on the WMC actively participated in the third year review and the development of measures for this framework adjustment.

(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 whiting management program implemented in Amendment 12 minimizes bycatch in small mesh multispecies fisheries by providing vessels with an incentive to use larger mesh and rewarding them with a larger whiting/offshore hake possession limit. As the mesh size used to target whiting increases, the incidental catch of other small mesh species decreases (although this varies spatially and seasonally).

The measures proposed in this framework adjustment build on the philosophy of the management program set forth in Amendment 12. Eliminating the Year 4 default measure means that the Year 1-3 measures (mesh sizes and possession limits) remain effective, except as modified by this framework adjustment. In addition, the proposed action eliminates the 10% red hake incidental catch restriction in the Cultivator Shoal Whiting Fishery, which should reduce regulatory discards.

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

Issues related to safety are discussed in Section 6.5 of this document. The Council is aware of the safety implications of its management decisions, both through extensive public comment and the practical experience of many of its members. The management measures implemented through Amendment 12 promote safety at sea by maximizing the flexibility of fishermen to choose where and how they want to fish. In some cases, the action proposed in this framework adjustment increases flexibility and opportunity for the fishing fleet and should therefore have no adverse impacts on safety at sea. In addition, the proposed modification to the Cape Cod Bay raised footrope trawl fishery area is specifically intended to promote the safety of vessels operating in this fishery, many of which are smaller and older vessels from Provincetown, Massachusetts.

7.1.2 Other Required Provisions of the MSFCMA

Section 303 of the MSFCMA contains fourteen additional required provisions for FMPs, which are discussed below. Any FMP prepared by any Council, or by the Secretary, with respect to any fishery, shall:

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are-- (A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery; (B) described in this subsection or subsection (b), or both; and (C) consistent with the National Standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;

None of the measures proposed in this framework adjustment apply to foreign fishing vessels. Relative to domestic vessels, Section 3.0 of this document contains a description of the action proposed in this framework adjustment. Section 7.1.1 discusses the framework adjustment's consistency with the National Standards of the MSFCMA.

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

The Amendment 12 document and Supplemental EIS contains a comprehensive description of the fishery, including, but not limited to, a brief history of the fishery, historical and recent landings and revenue information, fishing vessel information, descriptions of the marketing and processing sectors, description of the recreational fishery, and projections of the costs likely to be incurred in management. Much of this information is contained in Sections E.6.4 and E.6.5 of the amendment document. Frameworks 32 and 35 to the Multispecies FMP supplement the information presented in Amendment 12.

In addition, the Council's WMC has completed two Stock Assessment and Fishery Evaluation (SAFE) Reports since the implementation of Amendment 12. These documents update information regarding the biological and human environments affected by the management of small mesh multispecies. The 2002 SAFE Report for Small Mesh Multispecies was just recently completed by the WMC and has been appended to this framework document to provide the most recent information regarding the affected environment. Information presented in the 2002 SAFE Report is not reproduced within this framework document and should be referenced as necessary (Appendix I).

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

Sections 4.2 and 4.3 of the Amendment 12 document contain definitions of overfishing and a description of optimum yield for small mesh multispecies. Overfishing definitions are based on maximum fishing mortality and minimum biomass thresholds for each of the small mesh multispecies. This framework adjustment builds on the Amendment 12 management measures to rebuild overfished whiting stocks to levels that will produce maximum sustainable yield over the long-term based on the most recent and best scientific information available. The measures proposed in this framework adjustment are intended to better achieve optimum yield from the small mesh multispecies fisheries.

(4) assess and specify-- (A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3); (B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and (C) the capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

Optimum yield is specified in Section 4.3 of the Amendment 12 document. No portion of the allowable catch is available for foreign fishing. The measures proposed in this framework adjustment do not change the Council's specification for optimum yield in this fishery. They are intended to better achieve OY from the small mesh multispecies fisheries, primarily by enhancing opportunities to harvest small mesh multispecies from the northern stock area.

(5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;

Section E.6.2 of the Amendment 12 document describes the amendment's data considerations and the Council's participation in stock assessments and the Atlantic Coastal Cooperative Statistics Program (ACCSP). These data considerations are still applicable to the measures proposed in this framework adjustment. The Council has initiated efforts to organize and compile all of the data requirements for managing the stocks in a manner consistent with the Sustainable Fisheries Act. These efforts include calling on NMFS to prepare an annual publication of a Stock Assessment and Fishery Evaluation (SAFE) Report, activation of the Council's Scientific and Statistical Committee, Experimental Fisheries and Research Program Steering Committee, and Social Sciences Advisory Committee.

(6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;

The framework adjustment process allows for temporary and/or real-time adjustments to management measures to address these issues as they arise. The Council is taking advantage of the framework adjustment process to modify whiting management measures to ensure that these issues are addressed while not affecting conservation efforts in other fisheries or discriminating among participants in small mesh multispecies fisheries. Specifically in this framework adjustment, the Council is slightly modifying the area for the Cape Cod Bay raised footrope trawl fishery to promote safety for participating vessels.

(7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;

Amendment 11 to the Northeast Multispecies FMP addresses the essential fish habitat requirements for silver hake and red hake. The Amendment 12 document and supplement describe and identify EFH for offshore hake. The Council conducted an EFH consultation for the measures proposed in this framework adjustment pursuant to 50 CFR 600.920 of the EFH Interim Final Rule. The results of that assessment are presented in Section 6.2 of this document (p. 27).

(8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;

The data considerations specific to Amendment 12 are applicable to this framework adjustment and are identified in Section E.6.2.5 of the Amendment 12 document. Obtaining updated stock assessment information for all three small mesh multispecies is critical to achieving the objectives of the whiting management plan. A stock assessment for whiting was conducted in 2000 and provides more information since Amendment 12. A stock assessment for red hake is scheduled for 2003.

The Council is working closely with the National Marine Fisheries Service to coordinate the reporting of scientific information in a timely manner so that it coincides with the annual plan review and adjustment process. Since small mesh multispecies are part of the multispecies complex, annual plan review and adjustments (as necessary) generally occur along the same timeline as other multispecies stocks.

(9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on-- (A) participants in the fisheries and fishing communities affected by the plan or amendment; and (B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants;

This framework document includes an Environmental Assessment and contains analyses and discussion of the impacts of the proposed action on the affected human environment, including fishery participants and fishing communities. The majority of the impacts on the human environment of this proposed action, especially elimination of the Year 4 default measure, are likely to be positive. The Council developed the measures proposed in this framework adjustment in consultation with the Mid-Atlantic Fishery Management Council through the participation of its members on the Whiting Monitoring Committee and the Whiting Committee, as well as attendance at Council meetings.

(10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

The Amendment 12 overfishing definitions for each of the small mesh multispecies specify objective and measurable criteria for identifying when these stocks are overfished or when overfishing is occurring on these stocks. Where possible, the reference points in the overfishing definitions are based on maximum fishing mortality and minimum biomass criteria. If these reference points could not be estimated, the Council developed risk-averse overfishing definitions based on rates of change in survey levels that may be indicative of overfishing. For more information, see Section 4.2 and Appendix I of the Amendment 12 document. Nothing proposed in this framework adjustment changes these criteria.

According to the criteria specified in the overfishing definitions in Amendment 12, none of the five small mesh multispecies stocks are considered to be overfished at this time. Overfishing is not occurring on northern red hake and remains unknown for the other stocks, although the WMC concluded that overfishing does not appear to be occurring on either stock of whiting.

(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority-- (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided;

Vessels fishing for small mesh multispecies are required to submit Vessel Trip Reports (VTRs, logbooks). NMFS uses VTR information in conducting stock assessments. In addition, the Council and the National Marine Fisheries Service are both participating in the ACCSP (Section E.6.2.4 of the Amendment 12 document), which is a long-term effort to improve the collection

and utility of fisheries data, including bycatch information. Some of the measures proposed in this framework (eliminating the red hake incidental catch restriction in the CSWF, for example) are intended to minimize bycatch.

- (12) *assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;*

Similar to Amendment 12, this framework adjustment proposes no recreational fishery management measures for small mesh multispecies. Information suggests that participation in recreational whiting and red hake fisheries has decreased to minimal levels. The Council intends to promote the re-emergence of recreational whiting and ling fisheries, particularly in the southern New England and Mid-Atlantic areas, by rebuilding small mesh multispecies stocks to their target levels. If it becomes necessary in the future, the Council may implement management measures for the recreational fishery and a catch-and-release program to assess the type and amount of fish caught and released alive during recreational fishing.

- (13) *include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;*

The Amendment 12 document contains an extensive description of the commercial and recreational fishing sectors and quantifies the trends in landings by these sectors of the fishery. The history of small mesh multispecies fisheries is described in Section E.6.5.1 of the Amendment 12 document. Commercial landings information by state and by port is provided in Section E.6.5.2. Information specific to small mesh multispecies fisheries throughout New England and the Mid-Atlantic is provided in Section E.6.5.3. The sociocultural characteristics of the fishery as well as port-specific fishery information is provided in Section E.6.5.5. The recreational whiting and red hake fisheries are described in Section E.6.5.6.

In addition, the Council's WMC has completed two Stock Assessment and Fishery Evaluation (SAFE) Reports since the implementation of Amendment 12. These documents update information regarding the biological and human environments affected by the management of small mesh multispecies. The 2002 SAFE Report for Small Mesh Multispecies was just recently completed by the WMC and has been appended to this framework document to provide the most recent information regarding the affected environment. Information presented in the 2002 SAFE Report is not reproduced within this framework document and should be referenced as necessary (Appendix I).

- (14) *to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.*

The Council adopted whiting management measures that apply equally to all sectors of the commercial fishery in Amendment 12. The measures proposed in this framework adjustment do not relate to a need to reduce the overall harvest from the fishery, but rather to allow for the

harvest in the northern stock area to increase. The recovery benefits in the northern stock area are allocated fairly and equitably and apply to all vessels that participate in small mesh multispecies fisheries in the northern area. If it becomes necessary in the future, the Council may develop management measures to address sectors of the commercial fishery differently or to address the recreational sector of the fishery.

7.2 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

7.2.1 Environmental Assessment

- Section 2.0 of this framework document contains a discussion of the purpose and need for the proposed action.
- Section 3.0 contains a description of the proposed action and the options under consideration in this framework adjustment.
- Section 4.0 includes a description of the alternatives to the proposed action.
- Section 6.0 contains an analysis of the potential biological, economic, and social impacts of the proposed action, including the impacts on habitat, other stocks, threatened and endangered species, and marine mammals.

In developing the proposed action and in reviewing the analyses of impacts contained in this document, the Council consulted with NMFS, the Mid-Atlantic Fishery Management Council, the Atlantic States Marine Fisheries Commission, and the state marine fisheries agencies (New England and the Mid-Atlantic) through their participation at Whiting PDT, Committee, and Council meetings. The Council also informed the interested public of the proposed action and review of environmental documents through notice in the *Federal Register* and by mailings of meeting notices and agendas for Committee and Council meetings two to three weeks in advance. Approximately 1,650 persons receive mail notification of Council meetings.

7.2.2 Finding of No Significant Impact (FONSI)

NOAA Administrative Order 216-6 provides guidance for the determination of significance of the impacts resulting from the management measures contained in fishery management plans, their amendments, and framework adjustments. The nine criteria to be considered are addressed below:

- 1. Can the proposed action be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action?*

The biological impacts of the proposed action are discussed in Section 6.1 of this framework document. The proposed action is not expected to jeopardize the sustainability of any target species. Eliminating the Year 4 default measure in this framework adjustment is a response to small mesh multispecies stock recovery in the northern area and substantial progress towards rebuilding in the southern area. Other measures proposed in this framework adjustment represent minor plan adjustments to the whiting management program implemented through Amendment 12 to the Multispecies FMP. These adjustments are intended to sustain

opportunities in the small mesh multispecies fisheries without compromising continued stock recovery. The proposed action is consistent with the biological objectives set forth in Amendment 12.

2. *Can the proposed action be reasonably expected to jeopardize the sustainability of any non-target species?*

As discussed in Section 6.1 of this document, the proposed action is not expected to jeopardize the sustainability of any non-target species. If the Year 4 default measure is eliminated, then status-quo fishery conditions will exist, with the exception of a few minor adjustments to increase opportunities in the northern stock area.

- Reinstating the month of October to the CSWF is not expected to jeopardize the sustainability of any non-target species. Data from the experimental CSWF in the late 1980s show that regulated species (large-mesh groundfish) accounted for 1.1% of the total catch and 0.7% of the total landings. There is no information to suggest that bycatch rates or composition in October will differ from the rest of the season.
- Modifying incidental catch allowances in Small Mesh Areas 1 and 2 to prohibit lobsters and monkfish helps to promote their long-term sustainability by ensuring that they will not be targeted in Small Mesh Areas 1 and 2. The lobster resource will likely benefit more from this measure than the monkfish resource because it is believed that most monkfish that are discarded are dead.
- There is no information to suggest that species composition and/or catch rates differ in the raised footrope trawl fishery area proposed for modification (Section 3.2.4). This action should not affect the catch of non-target species.

3. *Can the proposed action be reasonably expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and identified in FMPs?*

The proposed action is not expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and for small mesh multispecies in Amendments 11 and 12 to the Northeast Multispecies FMP. The habitat-related impacts of the action proposed in this framework adjustment are discussed in Section 6.2 of this document. The Council expects that the proposed action will be neutral relative to causing or allowing substantial damage to ocean and coastal habitats as the small mesh multispecies fisheries have been ongoing. The proposed action will not have any adverse impacts on the EFH of any managed species relative to the baseline conditions established under Amendments 11 and 12.

According to the EFH assessment (Section 6.2.3), the actions proposed in this framework adjustment have no potential adverse effects on the EFH of any species managed by the New England, Mid-Atlantic or South Atlantic Fishery Management Councils. Because there are no potential adverse impacts associated with this action, an EFH consultation and a proposed mitigation plan are not required.

4. *Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?*

When developing management measures, the Council usually receives extensive comments from affected members of the public regarding the safety implications of various alternatives under consideration. The action proposed in this framework adjustment is not likely to have an adverse impact on either public health or safety. The action has been found to be consistent with National Standard 10 of the MSFCMA, which requires management measures to promote the safety of human life at sea. In fact, the proposed area change for the Cape Cod Bay raised footrope trawl fishery is intended to promote and maximize the safety of participating vessels.

5. *Can the proposed action be reasonably expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?*

Section 6.1.8 of this document discusses the potential impacts of the proposed action on threatened, endangered, and other protected species. There have been no documented takes of threatened, endangered, or other protected species in the small mesh multispecies fisheries. Therefore, the proposed action is not expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species.

6. *Can the proposed action be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?*

Cumulative effects related to the proposed action are discussed in Section 6.3 of this document. As previously mentioned, the proposed action consists of relatively minor adjustments to the whiting management program implemented through Amendment 12 to the Multispecies FMP. None of the actions contained in this framework adjustment are likely to have a significant impact on the recovery and long-term viability of the whiting stocks. Furthermore, none of the actions proposed in this framework adjustment are likely to affect fishing mortality rates on whiting or other small mesh multispecies.

7. *Can the proposed action be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships)?*

The proposed action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area. Eliminating the Year 4 default measure essentially equates to maintaining the status quo for small mesh multispecies management, with the exception of a few modifications to increase opportunities in the northern stock area. The proposed modifications to increase opportunities in the northern stock area have been analyzed in this framework adjustment and are not expected to result in any significant biological and/or habitat-related impacts.

8. *Are significant social or economic impacts interrelated with significant natural or physical environmental effects?*

There are no significant social or economic impacts, nor are there any significant natural or physical environmental effects expected to result from the measures proposed in this framework

adjustment.

9. *To what degree are the effects on the quality of human environment expected to be highly controversial?*

Social impacts are changes to the quality of life associated with the affected human environment. The social impacts of the proposed action are discussed in Section 6.5 of this document and are expected to be positive overall. The most controversial effects of the small mesh multispecies management program would be expected from implementation of the Year 4 default measure in either stock area, especially given the technical advice provided by the WMC.

Based on the preceding criteria and analyses presented in this document, the Council proposes *a finding of no significant impact* for the management adjustments contained in this framework adjustment to the Northeast Multispecies FMP.

FONSI STATEMENT: In view of the analyses presented in this framework adjustment document and in the FSEIS for Amendment #12 to the Northeast Multispecies FMP, the proposed action will not significantly affect the quality of the human environment with specific reference to the criteria contained in NOAA Administrative Order 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

7.2.3 List of Agencies and Persons Consulted

During the development of this framework adjustment, the Council worked with the National Marine Fisheries Service and the Northeast Fisheries Science Center to complete the required analyses. The Whiting Monitoring Committee prepared the 2002 SAFE Report (Appendix I) and developed the recommendations on which the action in this framework adjustment is based. The Whiting Plan Development Team analyzed the alternatives under consideration and prepared the framework document. The Whiting Committee consulted with the Whiting Advisory Panel when selecting final measures for inclusion in this framework adjustment. Members of the groups identified above are listed below.

Whiting Monitoring Committee

Lori Steele, Co-Chairman, Fishery Analyst, NEFMC Staff

David Goethel, Co-Chairman, Fisherman, Hampton NH

Eric Thunberg, Economist, NEFSC Social Sciences

Larry Jacobson, Biologist, NEFSC Population Dynamics

Dan Schick, Marine Scientist, Maine Department of Marine Resources

Dan McKiernan, Deputy Director, Massachusetts Division of Marine Fisheries

Marty Jaffe, Policy Analyst, NMFS NERO
Gary Yerman/Tom Swim, Fisherman, New London CT
Dan Farnham, Fisherman, Montauk NY

Whiting Plan Development Team

Lori Steele, Chairman, Fishery Analyst, NEFMC Staff
Eric Thunberg, Economist, NEFSC Social Sciences
Larry Jacobson, Biologist, NEFSC Population Dynamics
Dan Schick, Marine Scientist, Maine Department of Marine Resources
Dan McKiernan, Deputy Director, Massachusetts Division of Marine Fisheries
Marty Jaffe, Policy Analyst, NMFS NERO

Whiting Advisory Panel

Vincent Balzano, Saco ME
Joe Branin, Highlands NJ
Dan Farnham, Montauk NY
Sima Freierman, Montauk NY
Spencer Fuller, Freeport ME
David Goethel, Hampton NH
Rick Lofstad, New York NY
William Phoel, PhD., Toms River NJ
Peter Previty, Charlestown RI
Russell Sherman, Gloucester MA
Russell Smith, Phippsburg ME
Robert Taber, Narragansett RI
Gary Yerman, New London CT

7.2.4 Opportunity for Public Comment

The initial meeting for this framework adjustment occurred at the September 10-12, 2002 Council meeting where the WMC presented the 2002 SAFE Report for Small Mesh Multispecies, including its recommendations for action in this framework adjustment (see Appendix I). Opportunity for public comment regarding this action occurred during Whiting Committee and Council meetings that addressed Framework 37 to the Multispecies FMP. Table 8 lists meetings for which public notice included discussion of Framework 37.

Table 8 Opportunity for Public Comment on Framework 37 Measures

Date	Meeting	Location
March 19-20, 2002	Council	Mystic, CT
June 17, 2002	Whiting Monitoring Committee	Mansfield, MA
July 26, 2002	Whiting Monitoring Committee	Mansfield, MA
August 23, 2002	Whiting Monitoring Committee	Mansfield, MA
September 10-12, 2002	Council	Providence, RI
September 19, 2002	Whiting PDT	Mansfield, MA
October 9, 2002	Whiting Committee	Mansfield, MA
October 25, 2002	Whiting PDT	Mansfield, MA
November 4, 2002	Joint Whiting Committee and Advisory Panel	Danvers, MA
November 5-7, 2002	Council	Gloucester, MA

The mailing lists for meeting notices contain approximately 190 and 1,600 interested parties for Whiting Committee and Council meetings respectively. Notices are mailed at least two weeks in advance of Committee meetings and three weeks in advance of Council meetings. Council and Committee meeting notices are also published in the Federal Register three weeks prior to the meeting. Agendas, meeting summaries, and minutes for the above meetings are available from the Council office or from the Council's website at www.nefmc.org.

7.3 REGULATORY FLEXIBILITY ACT (RFA)

7.3.1 Executive Order 12866

The Regulatory Impact Review (RIR) provides an assessment of the costs and benefits of proposed action and other alternatives in accordance with the guidelines established by Executive Order (E.O.) 12866. The regulatory philosophy of Executive Order 12866 stresses that, in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives and choose those approaches that maximize net benefits to the society. The RIR also serves as a basis for determining whether any proposed regulations are a "significant regulatory action" under the criteria provided in Executive Order 12866 and whether the proposed regulations will have a significant economic impact on a substantial number of small entities in compliance with the Regulatory Flexibility Act of 1980 (RFA), as amended in 1996.

This RIR summarizes the effects of the proposed action and other options considered in this framework adjustment. This framework document contains all of the elements of the RIR/RFA. NOAA's "Guidelines for Economic Analysis of Fishery Management Actions" (August 2000) states that if elements of the RIR are included in another section of the document, the appropriate

section must be referenced within the RIR. The following RIR elements are referenced accordingly:

- Statement of the problem: Section 2.0, p.3
- Description of the proposed action: Section 3.0, p. 5
- Economic effects of the proposed action relative to the status quo: Section 6.4, p. 36

In addition, the alternatives considered but rejected by the Council in this framework adjustment are discussed in Section 4.0, p. 11 of this document. Analyses of the alternatives to the proposed action are presented in the Draft Framework 37 document.

Executive Order 12866 defines a “significant regulatory action” as one that is likely to result in:

- (1) an annual effect on the economy of \$100 million or more or one which adversely affects in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- (2) a serious inconsistency or interference with an action taken or planned by another agency;
- (3) alteration of the budgetary impact of entitlement, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

The economic impacts of the proposed action are discussed in Section 6.4 of this document. Overall, the economic impacts of the measures proposed in this framework adjustment are expected to be minor and mostly positive. Eliminating the Year 4 default measure avoids negative economic impacts that were analyzed and discussed in Amendment 12 to the Northeast Multispecies FMP. Reinstating October to the CSWF season would have beneficial economic effects for vessels that had traditionally prosecuted the fishery during October and would open up increased economic opportunity for other vessels as well. Elimination of the red hake incidental catch allowance in the CSWF would not be likely to result in any market effects but would permit vessels to increase trip income on the occasions where the current allowance would be exceeded. Adjustments to transfer at sea provisions equate to the status quo, so no additional impacts are expected.

The proposed modifications to the incidental catch allowances in Small Mesh Areas 1 and 2 may have some negative economic impacts since monkfish and lobster would be prohibited. In the past, the landed value of lobster and monkfish from these fisheries has averaged about \$30,000. Given the low level of revenues from these species in Small Mesh Areas 1 and 2, it seems unlikely that any change in catch allowance would have any significant impact on gross revenues from all sources of fishing income for vessels participating in this fishery. However, at a trip-level there may be some occasions where revenues from monkfish or lobster could affect vessel profitability for a given trip. In these cases, eliminating the incidental catch allowance would have a negative economic impact, as the trip may be abandoned. The biological impact of this measure on the monkfish and lobster resources is expected to be insignificant.

The economic impacts of the proposed action fall nowhere near an annual effect on the economy greater than \$100 million. In 2001, revenues from all small mesh multispecies fishing were about \$13.3 million dollars. Only marginal changes from status quo conditions are predicted to result from the action proposed in this framework adjustment.

The second criterion specified in E.O. 12866 is whether the proposed action would create a serious inconsistency or otherwise interfere with actions taken or planned by another agency. The activity proposed under this action involves commercial fishing for small mesh multispecies in the federal waters of the U.S. EEZ. NOAA Fisheries, in consultation with the Council, is the sole agency responsible for regulating this activity; therefore, there is no interference with actions taken by another agency. This proposed action would create no inconsistencies in the management and regulation of commercial fisheries in the Northeast region. The activities proposed under this action represent minor modifications to actions already codified through Amendment 12 to the Northeast Multispecies FMP. Thus, this proposed action would not be considered to be significant under the second criterion specified in E.O. 12866.

The third criterion for significance is whether the action would materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients. The proposed action is to modify some regulations governing the small mesh multispecies fisheries. This action is unrelated to any entitlements, grants, user fees, or loan programs, and therefore cannot be considered to be significant under the third criterion specified in E.O. 12866.

The fourth criterion specified in E.O. 12866 is whether the proposed action would raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. The proposed action is a relatively minor and routine regulatory change to provide fishing opportunities for an abundant resource (whiting) that the relevant science indicates is able to absorb increased fishing pressure. The context for this regulatory change is firmly established in the NE multispecies regulations, which grant the Council the ability to initiate a framework adjustment to modify small mesh multispecies management measures upon review of the appropriate information. The proposed action would not be considered significant under the fourth and final criterion specified in E.O. 12866.

Because the proposed action represents a relatively minor and routine regulatory change to the small mesh multispecies management program, it is not significant under any criteria specified in E.O. 12866. The most recent and best available scientific information presented in Appendix I indicates that the resource in the north can absorb increased fishing pressure, while status quo conditions in the south should continue to rebuild the resources in the south to their target levels. The context for this regulatory change is established in the Northeast Multispecies FMP through the framework adjustment process.

7.3.2 Initial Regulatory Flexibility Analysis (IRFA)

The purpose of the RFA is to reduce the impacts of burdensome regulations and record-keeping requirements on small businesses. To achieve this goal, the RFA requires government agencies to describe and analyze the effects of regulations and possible alternatives on small business entities. On the basis of this information, the Regulatory Flexibility Analysis determines whether the proposed action would have a “significant economic impact on a substantial number of small entities.” Note that the term "substantial number" has no specific statutory definition and the criterion does not lend itself to objective standards. A determination of substantial depends on the context of the proposed action, the problem to be addressed, and the structure of the regulated industry. Standards for determining significance are discussed below.

The RFA applies to any rule or regulation that must undergo “notice and comment” under the Administrative Procedures Act (APA), specifically those rules published as *proposed rules*. When the RFA applies, the Council must assess the impacts of the regulations to determine if they will have a significant economic impact on a substantial number of small entities. During the development of this framework adjustment, the Council carefully considered the potential impacts of the proposed action on small entities, alternatives to the proposed action (and their potential impacts), as well as how to minimize negative impacts on affected small entities.

- The statement of the problem/need for management action is presented in Section 2.0 of this framework document (p. 3).
- The objectives of this framework adjustment are specified in Section 2.2 (p. 4).
- The proposed action is described in Section 3.0 of this document (p. 5).
- The economic analysis of the proposed action is contained in Section 6.4 of this document (p. 36). The economic analysis focuses on the effects of the proposed action versus the effects of the “status quo” or “no action.” Relevant subsections of the economic analysis are as follows:

Section 6.4.1	Impacts of Reinstating the CSWF Season
Section 6.4.2	Impacts of Eliminating the Restriction on Red Hake Incidental Catch in the CSWF
Section 6.4.3	Impacts of Modifying Incidental Catch Allowances for Small Mesh Areas 1 and 2

A brief summary of the Affected Human Environment (the small entities to which this rule applies) is provided in Section 5.0 of this document (p. 14). Much of this information is incorporated by reference from Amendment 12, Framework 32, and Framework 35 to the Northeast Multispecies FMP, as well as the 2001 and 2002 SAFE Reports for Small Mesh Multispecies. The 2002 SAFE Report includes the most recent information about the small entities to which this rule applies, and it is provided as Appendix I to this document. To the extent possible, the analyses in this document characterize the entities to which the proposed action applies.

NMFS' guidelines for RFA analysis suggests two criteria to consider in determining the significance of regulatory impacts, namely disproportionality and profitability.

- Disproportionality – Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities?
- Profitability – Do the regulations significantly reduce profit for a substantial number of small entities?

According to SBA standards, any fish harvesting or hatchery business is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has annual receipts of not in excess of \$3.5 million. All entities affected by the proposed action meet the criteria for “small entities,” so issues related to disproportionality do not apply. Profitability is discussed within the context of the economic impacts of the proposed action (Section 6.4). Eliminating the Year 4 default measure avoids imposing significant negative economic impacts that would affect a substantial number of small entities. The effects of the Year 4 default measure are thoroughly analyzed in Amendment 12 to the Northeast Multispecies FMP.

Adjustments to measures in the Cultivator Shoal Whiting Fishery increase economic opportunities for affected entities. An average of 16 vessels participated in the CSWF from 1995-2001; 25 vessels participated in the fishery during 2001. Reinstating October to the CSWF season would have beneficial economic effects for vessels that had traditionally prosecuted the fishery during October and would increase economic opportunity for other vessels that are able to participate. Elimination of the red hake incidental catch allowance in the CSWF would permit vessels to increase trip profits on the occasions where the current incidental catch allowance would be exceeded.

Adjustments to transfer at sea provisions equate to the status quo, so no additional impacts are expected. An average of nine vessels obtained a letter of authorization (LOA) to transfer small mesh multispecies at sea from 2000-2002. Eight vessels obtained a LOA during 2002. Vessel trip reports suggest that even fewer vessels (less than three) actually engage in this activity.

The proposed modifications to the incidental catch allowances in Small Mesh Areas 1 and 2 may have some negative economic impacts since monkfish and lobster would be prohibited (78 vessels fished in Small Mesh Areas 1 and 2 during 2000). In the past, the landed value of lobster and monkfish from these fisheries has averaged about \$30,000 annually on about 1,800 trips. Given the low level of revenues from these species in Small Mesh Areas 1 and 2, it is not expected that this action will significantly affect a substantial number of small entities. It is unlikely that the proposed change in catch allowances would have any significant impact on gross revenues from all sources of fishing income for vessels participating in this fishery. However, at a trip-level, there may be some occasions where revenues from monkfish or lobster could affect vessel profitability for a given trip. In these cases, eliminating the incidental catch allowance would have a negative economic impact, as the trip may be abandoned. This outcome is difficult to predict.

The measures considered but rejected by the Council during the development of this framework adjustment are discussed in Section 4.2 of this document (p. 11). In addition to the elements

contained within the proposed action, the Council considered increasing the possession limit in the CSWF, as recommended by the WMC. The Council selected the no action alternative (30,000 pounds) for the CSWF possession limit because of concerns related to:

1. the sensitivity of the whiting market and the volatility of price fluctuations, and
2. the cumulative effects of management actions in other fisheries like groundfish and the potential for effort in small mesh multispecies fisheries to significantly increase.

The Council was concerned that an increase in the CSWF possession limit would attract a significant amount of new effort into the fishery, especially if restrictions in other fisheries continue to increase. The additional effort in the fishery under a higher possession limit could result in market gluts that could affect the price of whiting for all vessels, especially if vessels could continue to make back-to-back trips to the CSWF during the season (only one option under consideration included a maximum trip allowance and weekly landing limit). Even worse, the indirect effects of measures in other fisheries (like those proposed in Amendment 13 to the Multispecies FMP) could lead increase effort on small mesh multispecies to levels that could ultimately jeopardize the health of the small mesh multispecies resources. This outcome would be more likely with a higher possession limit in the CSWF because the fishery would become more attractive to larger vessels that may seek alternatives to groundfishing.

The Council agreed that maintaining the current possession limit in the CSWF fishery is a more precautionary and appropriate approach at this time, given uncertainties related to the cumulative impacts of additional groundfish restrictions and the potential for effort in this fishery to increase. In addition, and for the reasons discussed above, the majority of the fishing industry opposed an increase in the CSWF possession limit.

7.4 ENDANGERED SPECIES ACT (ESA)

Section 7 of the Endangered Species Act 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. The Council has concluded, at this writing, that Framework 37, as proposed, and the prosecution of the whiting fishery is not likely to jeopardize any ESA-listed species or alter or modify any critical habitat, based on the discussion of impacts in this document. The Council is seeking the concurrence of the National Marine Fisheries Service in this matter. For further information on the potential impacts of the fishery and the proposed management action on listed species, see Section 6.1.8 of this document.

7.5 MARINE MAMMAL PROTECTION ACT (MMPA)

The Council has reviewed the impacts of the framework adjustment on marine mammals and has concluded that the management actions proposed are consistent with the provisions of the MMPA, and will not alter existing measures to protect the species likely to inhabit the management unit. For further information on the potential impacts of the fishery and the proposed management action on marine mammals, see Section 6.1.8 of this document.

7.6 COASTAL ZONE MANAGEMENT ACT (CZMA)

The Council has reviewed the coastal zone management (CZM) programs for states whose coastal waters are within the range of areas affected by the proposed action, including: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina. The Council has determined that the proposed action is consistent with the CZM programs of those states and has sent notification of this determination, along with a copy of the framework document, for their concurrence. Copies of the correspondence are on file at the Council office.

7.7 PAPERWORK REDUCTION ACT (PRA)

There are no analyses required by the Paperwork Reduction Act relative to this framework adjustment.

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