

FRAMEWORK ADJUSTMENT 7

TO THE

Atlantic Mackerel, Squid, and Butterfish
Fishery Management Plan

DRAFT

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Mid-Atlantic Fishery Management Council

in cooperation with

the National Marine Fisheries Service (NMFS)

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1.0 EXECUTIVE SUMMARY

In 2010 the Mid-Atlantic Fishery Management Council (Council) approved Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan.

Amendment 10 implemented a real-time butterfish cap (“the cap” hereafter) on the longfin squid fishery to help control overall butterfish mortality. While the assessment and overfished determination that spurred Amendment 10 have since been vacated, there is still a need to directly control butterfish mortality in the longfin squid fishery in real time. Butterfish discards in the longfin squid fishery account for the largest source of butterfish fishing mortality, and if butterfish mortality in the longfin squid fishery is not controlled in real time, substantial overages of the butterfish acceptable biological catch (ABC) could occur. Since ABC overages must be paid back in subsequent years, such overages could substantially disrupt fishing in future years. Landings are tracked and controlled in real-time and the cap tracks and controls most butterfish discards in real time, thereby minimizing the likelihood of a butterfish ABC overage.

The cap currently controls the catch of butterfish in the longfin squid fishery in the following manner. First, longfin squid trips must notify the observer program and observers are randomly placed on longfin squid trips. Second, the ratio of butterfish to total kept catch on observed longfin squid trips is calculated. Third, the ratio is applied to total landings by longfin squid trips to determine butterfish catch. Fourth, the longfin squid fishery is closed once it catches a specified amount of butterfish.

An example may help illustrate the process. Assume that 5 observed longfin squid trips caught 10,000 pounds of butterfish and retained 100,000 pounds of total squid/fish. So for every 10 pounds of squid/fish landed they caught 1 pound of butterfish. If total landings by all squid trips equaled 40,000,000 pounds, then the estimated butterfish catch would be 4,000,000 pounds. If the cap was set to close at 5,000,000 pounds of butterfish, the longfin squid fishery would be getting close to closing in this example.

2011 was the first year of the cap and it proceeded without much incident as the fishery stayed below the cap. A full report is available here: http://www.mafmc.org/meeting_materials/SSC/2012-05/SSC_2012_05.htm. In 2012 there was a brief closure of the longfin squid fishery due to the cap in April 2012. NMFS is in the process of reviewing the estimation methodology for the cap and while that process is still underway, an operational issue has been discovered that this framework seeks to address: There is proposed to be a directed butterfish fishery in 2013. If a directed butterfish trip is observed and lands a high quantity of butterfish and also keeps more than 2,500 pounds of longfin squid, the results of that trip enter into the longfin squid cap calculations. Even though it was a butterfish trip with some retained longfin squid incidental catch rather than a longfin squid trip with butterfish bycatch, the cap would be impacted in an unintended manner. This framework proposes to change the butterfish catch (discards and landings) cap into a butterfish discard cap to account for the proposed directed butterfish fishery. There would be no change to the total control of butterfish catch and the proposed change is primarily an administrative adjustment given the likelihood of directed butterfish fishing in 2013.

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

3.1 PURPOSE AND NEED

The purpose of this framework is to consider changes to the butterfish cap on the longfin squid fishery to account for directed butterfish fishing that is proposed for 2013. This action is needed because directed butterfish fishing may skew the results of the cap as currently designed and make it appear that the longfin squid fishery is catching more butterfish than it actually is. As such, the current cap procedures may result in an apparent need for a closure of the longfin squid fishery when none was appropriate. Given it would be obvious that the cap was not operating in the intended fashion, it is possible that the cap would have to be suspended and control of butterfish mortality would be lost until remedial action was taken. This action seeks to take proactive action to fix this issue before it compromises effective management of the longfin squid and butterfish fisheries.

3.2 HISTORY OF FISHERY MANAGEMENT PLANS DEVELOPMENT

Management of the Atlantic mackerel, longfin squid, *Illex* squid, and butterfish fisheries began through the implementation of three separate fishery management plans (one each for mackerel, squid, and butterfish) in 1978. The plans were merged in 1983. Over the years a wide variety of management issues have been addressed including rebuilding, habitat conservation, bycatch minimization, and limited entry. The original plans, amendments and frameworks that affected management of these fisheries are summarized below. All plan documents are available at: [http://www.mafmc.org/Fishery Management Plan/msb.htm](http://www.mafmc.org/Fishery%20Management%20Plan/msb.htm) and are summarized in the table below.

History of Fishery Management Plans Development

History of the Atlantic Mackerel, Squid and Butterfish Fishery Management Plans		
Year	Document	Management Action
1978-1980	Original Fishery Management Plans (3) and individual amendments	Established and continued management of Atlantic mackerel, squid, and butterfish fisheries
1983	Merged Fishery Management Plans	Consolidated management of Atlantic mackerel, squid, and butterfish fisheries under a single Fishery Management Plans
1984	Amendment 1	Implemented squid optimum yield adjustment mechanism Revised Atlantic mackerel mortality rate
1986	Amendment 2	Equated fishing year with calendar year Revised squid bycatch total allowable level of foreign fishing allowances Implemented framework adjustment process Converted expiration of fishing permits from indefinite to annual
1991	Amendment 3	Established overfishing definitions for all four species
1991	Amendment 4	Limited the activity of directed foreign fishing and joint venture transfers to foreign vessels Allowed for specification of optimum yield for Atlantic mackerel for up to three years
1996	Amendment 5	Adjusted longfin squid maximum sustainable yield; established 1 7/8" minimum mesh size Eliminated directed foreign fisheries for longfin squid, <i>Illex</i> , and butterfish Instituted a dealer and vessel reporting system; Instituted operator permitting Implemented a limited access system for longfin squid, <i>Illex</i> and butterfish Expanded management unit to include all Atlantic mackerel, longfin squid, <i>Illex</i> , and butterfish under U.S. jurisdiction.

1997	Amendment 6	Established directed fishery closure at 95% of domestic annual harvest for longfin squid, <i>Illex</i> and butterfish with post-closure trip limits for each species
		Established a mechanism for seasonal management of the <i>Illex</i> fishery to improve the yield-per recruit
		Revised the overfishing definitions for longfin squid, <i>Illex</i> and butterfish
1997	Amendment 7	Established consistency among Fishery Management Plans in the Northeast region of the U.S. relative to vessel permitting, replacement and upgrade criteria
1998	Amendment 8	Brought the Fishery Management Plans into compliance with new and revised National Standards and other required provisions of the Sustainable Fisheries Act.
		Added a framework adjustment procedure.
2001	Framework 1	Established research set-asides.
2002	Framework 2	Established that previous year specifications apply when specifications for the management unit are not published prior to the start of the fishing year (excluding total allowable level of foreign fishing specifications)
		Extended the <i>Illex</i> moratorium for one year; Established <i>Illex</i> seasonal exemption from longfin squid minimum mesh;
		Specified the longfin squid control rule; Allowed longfin squid specs to be set for up to 3 years
2003	Framework 3	Extended the moratorium on entry to the <i>Illex</i> fishery for an additional year
2004	Framework 4	Extended the moratorium on entry to the <i>Illex</i> fishery for an additional 5 years
2008	Amendment 12	Standardized Bycatch Reporting Methodology
2009	Amendment 9	Extended the moratorium on entry into the <i>Illex</i> fishery, without a sunset provision
		Adopted biological reference points for longfin squid recommended by the stock assessment review committee.
		Designated Essential Fish Habitat for longfin squid eggs based on available information
		Prohibited bottom trawling by Mackerel-Squid-Butterfish-permitted vessels in Lydonia and Oceanographer Canyons
		Authorized specifications to be set for all four MSB species for up to 3 years
2010	Amendment 10	Implemented a butterfish rebuilding program.
		Increased the longfin squid minimum mesh in Trimesters 1 and 3.
		Implemented a 72-hour trip notification requirement for the longfin squid fishery.
2011	Amendment 11	Mackerel limited access
		Essential Fish Habitat Updates
		Commercial/Recreational Mackerel Allocation
2011	Amendment 13	Annual Catch Limit and Accountability Measure Omnibus Amendment
2012	Amendment 14	River Herring Bycatch (ongoing)
2013	Amendment 15	River Herring Management (ongoing)

3.3 FISHERY MANAGEMENT PLANS GENERAL MANAGEMENT OBJECTIVES/GOALS

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

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

3.4 MANAGEMENT UNIT/SCOPE

The management unit is currently all northwest Atlantic mackerel (*Scomber scombrus*), longfin squid (*Doryteuthis (Amerigo) pealeii*, formerly named *Loligo pealeii*), *Illex illecebrosus*, and butterfish (*Peprilus triacanthus*) under U.S. jurisdiction though an alternative in another amendment (Amendment 15) currently being considered could effectively extend the management unit to include river herrings and shads.

4.0 MANAGEMENT ALTERNATIVES

The management regimes and associated management measures within the Fishery Management Plan for the managed resources have been refined over time and codified in regulation. The plan also has provisions whereby the current management measures “roll over” from year to year in the event no further action has yet been taken. The *status quo* management measures for the managed resources, therefore, each involve a set of indefinite (i.e., in force until otherwise changed) measures that have been established. These measures will continue as they are even if the actions contained within this framework are not taken (i.e., no action). The no action alternative for these managed resources is therefore equivalent to *status quo*. On that basis, the status quo and no action are presented in conjunction for comparative impact analysis relative to the action alternative. Current mackerel-squid-butterfish regulations may be found here: <http://www.nero.noaa.gov/nero/regs/>.

4.1 Alternative 1 (Status Quo/no action – Catch Cap)

Under this status quo/no action alternative, no action will be taken to change the cap estimation methodology. As such, the current estimation procedure would remain in place. The current procedure is that a cap ratio is estimated based on all butterfish that are caught by trips landing more than 2,500 pounds of longfin squid. The total of all butterfish caught relative to all catch kept creates the cap ratio. The cap ratio is applied to total landings of all squid/fish on longfin squid trips landing more than 2,500 pounds of squid to estimate total butterfish catch by the directed longfin squid fishery. The longfin squid fishery is closed once it reaches a specified amount of butterfish catch. In 2011 there was a total of 312,279 pounds of observed butterfish catch on all observed longfin squid trips. In 2013, the potential directed butterfish fishing could retain this total amount on a single trip. If a directed butterfish trip was observed and also retained more than 2,500 pounds of longfin squid, those landings would currently be counted against the longfin squid fishery’s cap even though the trip was not really a longfin squid trip and could skew the cap ratio.

4.2 Alternative 2 (Discard Cap)

Under this alternative, the current estimation procedure would be modified such that the cap ratio would be estimated based on all butterfish that are discarded by trips landing more than 2,500 pounds of longfin squid. The total of all butterfish discarded relative to all catch kept creates the cap ratio. The cap ratio would be applied to total landings of all squid/fish on longfin squid trips landing more than 2,500 pounds of squid to estimate total butterfish discards by the directed longfin squid fishery. The longfin squid fishery would be closed once it reaches a specified amount of butterfish discards. To maintain an approximately equal control on total catch of mortality in the longfin squid fishery, the butterfish cap amount would be reduced from the current value based on catch by 13% because in 2011 (the first and only year of available data for the butterfish cap – see: http://mafmc.org/meeting_materials/SSC/2012-05/3-2011-Butterfish-Cap-Report%28May%202012%29.pdf), 13% of butterfish catch in the cap was retained and 87% of butterfish catch in the cap was discarded. The current cap on the longfin squid

fishery is 2,445 mt. The Council has recommended that it be increased to 3,165 mt in late 2012 and 4,500 mt in 2013. Regardless of the amount of the cap in effect at the time of potential implementation of this alternative, the cap amount would be reduced by 13% and the methodology would change to the discard focus described above so that control of overall butterfish mortality is maintained as intended under current regulations.

Note: it is possible that other ways to address this issue exist, such as refining the definition of a longfin squid trip. However, such methods would require analysis that precludes implementation in time for fishing in 2013. The specification process for 2014 will re-examine this issue and propose any appropriate changes.

5.0 DESCRIPTION OF THE AFFECTED ENVIRONMENT AND FISHERIES

The affected environment and fisheries, as defined in Section 6.0 of Amendment 11's Environmental Impact Statement, is incorporated by reference in this framework, and may be downloaded at: [http://www.mafmc.org/Fishery Management Plan/msb.htm](http://www.mafmc.org/Fishery_Management_Plan/msb.htm). Interactions of the managed resources with non-target species, Endangered Species Act (ESA) listed and Marine Mammal Protection Act (MMPA) protected resources, as well as interactions with Essential Fish Habitat, are also described in Amendment 11's Environmental Impact Statement. An update of most relevant data is available in the Environmental Assessment for the 2012 specifications, available at: <http://www.nero.noaa.gov/regs/>.

None of the alternatives in this action should result in a change in the affected environment that is described in the Amendment 11 document. The no action/status quo alternative would maintain the current butterfish cap provisions and the alternative in this document would change the cap to a discard cap rather than a catch cap. Since the cap would be reduced accordingly, the total control of butterfish mortality would not change. The change is designed so that control of overall butterfish mortality is maintained as intended under current regulations.

6.0 ENVIRONMENTAL IMPACTS

The no action/status quo alternative would maintain the current butterfish cap provisions and the alternative in this document would change the cap to a discard cap rather than a catch cap. Since the cap amount would be reduced accordingly based on recent performance of the cap, the total control of butterfish mortality should not change compared to analysis performed for other actions. The change only ensures that the control of the longfin squid fishery occurs as predicted in other actions. The timeframe for this analysis is the time from the start of the 2013 fishing year (Jan 1, 2013) until expected implementation of this action. The problem is that when the fishery starts January 1, 2013, the existing measures may not facilitate operation of the fishery.

6.1 Managed Resources

If the status-quo is maintained, it is possible that the cap would have to be suspended in early 2013 because directed butterfish fishing could skew the cap numbers so much that the results of the cap estimation would be obviously meaningless. However, the current (and expected near-future) cap levels have not caused a closure yet so it is possible that no closure would occur in 2013 when the proposed estimation modification would be implemented, so it is possible that no impacts would occur. If a closure should have occurred but did not, this could negatively affect butterfish (mortality would not be controlled) although the extent is difficult to predict. Overall the impact on butterfish of adjusting the cap methodology (the other managed species should not be impacted because mortality on them is controlled separately) is thus likely low-positive compared to the status quo because the expected operation of the cap would be maintained.

6.2 Non-Target Fish Species

The butterfish cap amount determines how the cap impacts non-target species via controls on the longfin squid fishery and related effort. The environmental impacts of the current butterfish cap amount were analyzed in the current 2012 specification's environmental assessment (<http://www.nero.noaa.gov/regs/>) and future butterfish cap amounts will be analyzed in environmental assessments for those actions. This action only ensures that the butterfish cap can remain operational alongside a directed butterfish fishery, which means that non-target species impacts will be neutral compared to the status quo if no closure should have occurred or positive by enabling a closure of the longfin squid fishery (thereby reducing effort) if it should have occurred per the specifications set in other actions. Overall the impact of adjusting the cap methodology is thus likely low-positive compared to the status quo regulations but really just maintains the status quo intent and previously-analyzed anticipated outcomes.

6.3 Physical Environment and Essential Fish Habitat Impacts

The butterfish cap amount determines how the cap impacts habitat via controls on the longfin squid fishery and related effort. The environmental impacts of the current butterfish cap amount were analyzed in the current 2012 specification's environmental

assessment (<http://www.nero.noaa.gov/regs/>) and future butterfish cap amounts will be analyzed in environmental assessments for those actions. This action only ensures that the butterfish cap can remain operational alongside a directed butterfish fishery, which means that habitat impacts will be neutral compared to the status quo if no closure should have occurred or positive by enabling a closure of the longfin squid fishery (thereby reducing effort) if it should have occurred per the specifications set in other actions. Overall the impact of adjusting the cap methodology is thus likely low-positive compared to the status quo regulations but really just maintains the status quo intent and previously-analyzed anticipated outcomes.

6.4 Impacts on Protected Resources (Endangered Species, Marine Mammals)

The butterfish cap amount determines how the cap impacts protected resources via controls on the longfin squid fishery and related effort. The environmental impacts of the current butterfish cap amount were analyzed in the current 2012 specification's environmental assessment (<http://www.nero.noaa.gov/regs/>) and future butterfish cap amounts will be analyzed in environmental assessments for those actions. This action only ensures that the butterfish cap can remain operational alongside a directed butterfish fishery, which means that protected resource impacts will be neutral compared to the status quo if no closure should have occurred or positive by enabling a closure of the longfin squid fishery (thereby reducing effort) if it should have occurred per the specifications set in other actions. Overall the impact of adjusting the cap methodology is thus likely low-positive compared to the status quo regulations but really just maintains the status quo intent and previously-analyzed anticipated outcomes.

6.5 Human Communities - Socioeconomic Impacts

The butterfish cap amount determines how the cap impacts human communities via controls on the longfin squid fishery. The impacts of the current butterfish cap amount were analyzed in the current 2012 specification's environmental assessment (<http://www.nero.noaa.gov/regs/>) and future butterfish cap amounts will be analyzed in environmental assessments for those actions. This action only ensures that the butterfish cap can remain operational alongside a directed butterfish fishery, which means that socioeconomic impacts will be neutral compared to the status quo if no closure should have occurred. By enabling a closure of the longfin squid fishery (thereby reducing longfin squid landings) if it should have occurred per the specifications set in other actions, compared to the status quo the action alternative could reduce short-term longfin squid revenues. However there could be long-term benefits by avoiding overages that would have to be repaid (disrupting future years butterfish and longfin squid landings) and long-term benefits related to protecting the butterfish stock. Overall the impact of adjusting the cap methodology is thus likely low-positive compared to the status quo regulations but really just maintains the status quo intent and previously-analyzed anticipated outcomes.

7.0 MAGNUSON-STEVENSON ACT

7.1 NATIONAL STANDARDS

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

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

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

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

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

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

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

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

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

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

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

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

There should be no impacts relative to the national standards compared to previous assessments of impacts related to the butterfish cap. However, since the cap may not be able to function alongside a directed butterfish fishery as currently designed (to prevent excessive butterfish mortality in the longfin squid fishery), modifying the cap is consistent with the national standards, especially national standard 1.

7.2 OTHER REQUIRED PROVISIONS OF THE MAGNUSON-STEVENSON ACT

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

7.3 DISCRETIONARY PROVISIONS OF THE MAGNUSON-STEVENSON ACT

Section 303b of the Magnuson Stevens Act contains 14 additional discretionary provisions for Fishery Management Plans. They may be read on pages of 59 and 60 of NMFS' redline version of the Magnuson Stevens Act at: http://www.nmfs.noaa.gov/msa2007/MSA_Amended%20by%20Magnuson-Stevens%20Reauthorization%20Act%20%281-31-07%20draft%29.pdf. Given the limited scope of this framework, there are no impacts related to such requirements.

7.4 ESSENTIAL FISH HABITAT ASSESSMENT

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

8.0 OTHER APPLICABLE LAWS

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

This action will likely be categorically excluded from the requirement to prepare an Environmental Assessment or Environmental Impact Assessment under the National Environmental Policy Act. Categorical exclusions are applicable to a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required (40 Code of Federal Regulations 1508.4). This action as proposed would have neither positive nor negative impacts on the human environment compared to the intent of current measures, and is primarily administrative in nature. Because this action is only designed to maintain the effective control of butterfish mortality that previous actions have established, there could be some low-positive impacts as described in Section 7 but no significant impacts.

MARINE MAMMAL PROTECTION ACT (MMPA)

The Council has reviewed the impacts of the action on marine mammals and has concluded that the proposed management actions are consistent with the provisions of the Marine Mammal Protection Act, and will not alter existing measures to protect the species likely to inhabit the management unit. There should be no marine mammal impacts related to any of the alternatives considered in this action because this action is only designed to maintain the effective control of butterfish mortality that previous actions have established.

ENDANGERED SPECIES ACT (ESA)

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

There should be no ESA impacts related to any of the alternatives considered in this action because this action is only designed to maintain the effective control of butterfish mortality that previous actions have established.

COASTAL ZONE MANAGEMENT ACT (CZMA)

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

ADMINISTRATIVE PROCEDURES ACT

Section 553 of the Administrative Procedure Act establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of these requirements is to ensure public access to the Federal rulemaking process, and to give the public adequate notice and opportunity for comment. It should be noted that the Council discussed this action and its alternatives at two of its publicly attended Council meetings, September 2012 and October 2012. The September 2012 meeting was conducted via internet conference but was noticed in the federal register and a physical listening station was made available at the Council office in Dover, DE. Further, NMFS will publish a proposed rule that will solicit public comment on the proposed measures. At this time, the Council is not requesting any abridgement of the rulemaking process for this action.

INFORMATION QUALITY ACT

Utility of Information Product

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

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

Integrity of Information Product

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

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

Objectivity of Information Product

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

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

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

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

The review process for this action involves the Mid-Atlantic Fishery Management Council, the Northeast Fisheries Science Center, the Northeast Regional Office, and NOAA Fisheries headquarters. The Center’s technical review is conducted by senior

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

IMPACTS RELATIVE TO FEDERALISM/ EXECUTIVE ORDER 13132

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

ENVIRONMENTAL JUSTICE/ EXECUTIVE ORDER 12898

This Executive Order provides that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” Executive Order 12898 directs each Federal agency to analyze the environmental effects, including human health, economic, and social effects of Federal actions on minority populations, low-income populations, and Indian tribes, when such analysis is required by the National Environmental Policy Act (NEPA). Agencies are further directed to “identify potential effects and mitigation measures in consultation with affected communities, and improve the accessibility of meetings, crucial documents, and notices.” The alternatives in this action should have no environmental justice implications.

REGULATORY FLEXIBILITY ACT/ EXECUTIVE ORDER 12866

The intent of this action is only designed to maintain the effective control of butterfish mortality that previous actions have established. Therefore, this action will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act.

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

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

The proposed actions are not expected to have any effect on the economy. The intent of this action is to maintain the effective control of butterfish mortality that previous actions have established. The potential impacts of the cap and current and proposed cap amounts have been or will be analyzed in other actions.

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

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

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

The proposed action will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs, or the rights and obligations of their participants.

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

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

Description and Number of Small Entities to Which the Rule Applies

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

The measures in this action could have some impact on the approximately 375 vessels with limited access butterfish/longfin squid permits. Depending on the year, all of these vessels usually qualify as small businesses, or a few may be above the 4.0 million dollar threshold depending on their landings in a given year. However, the intent of this action is to maintain the effective control of butterfish mortality that previous actions have established. The potential impacts of the cap and current and proposed cap amounts have been or will be analyzed in other actions.

PAPERWORK REDUCTION ACT (PRA)

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

9.0 LIST OF AGENCIES AND PERSONS CONSULTED

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

FRAMEWORK ADJUSTMENT 8

TO THE

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

DRAFT

October 2012

Mid-Atlantic Fishery Management Council

in cooperation with

the National Marine Fisheries Service (NMFS)

First Framework Meeting: October 17, 2012

Second Framework Meeting: XXXXXXXXXX (Likely December 2012)

Final approved by NOAA: XXXXXXXXXX

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1.0 EXECUTIVE SUMMARY

The Mid-Atlantic Fishery Management Council (Council) has a butterfish cap for the longfin squid fishery that was implemented in 2011 via Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. While the assessment and overfished determination that spurred Amendment 10 have since been vacated, there is still a need to directly control butterfish mortality in the longfin squid fishery in real time. Butterfish discards in the longfin squid fishery account for the largest source of butterfish fishing mortality, and if butterfish mortality in the longfin squid fishery is not controlled in real time, substantial overages of the butterfish acceptable biological catch (ABC) could occur. Since ABC overages must be paid back in subsequent years, such overages could substantially disrupt fishing in future years. Landings are tracked and controlled in real-time and the cap tracks and controls most butterfish discards in real time, thereby minimizing the likelihood of a butterfish ABC overage.

The cap currently controls the catch of butterfish in the longfin squid fishery in the following manner. First, longfin squid trips must notify the observer program and observers are randomly placed on longfin squid trips. Second, the ratio of butterfish to total kept catch on observed longfin squid trips is calculated. Third, the ratio is applied to total landings by longfin squid trips to determine butterfish catch. Fourth, the longfin squid fishery is closed once it catches a specified amount of butterfish. An example may help illustrate the process. Assume that 5 observed longfin squid trips caught 10,000 pounds of butterfish and retained 100,000 pounds of total squid/fish. So for every 10 pounds of squid/fish landed they caught 1 pound of butterfish. If total landings by all squid trips equaled 40,000,000 pounds, then the estimated butterfish catch would be 4,000,000 pounds. If the cap was set to close at 5,000,000 pounds of butterfish, the longfin squid fishery would be getting close to closing in this example.

The cap is broken out by Trimesters, like the directed longfin squid fishery, although there is no authority to close the longfin squid fishery in Trimester 2 as butterfish catch rates have historically been low in Trimester 2. Underages and overages from Trimesters 1 and 2 roll over into Trimester 3.

2011 was the first year of the cap and it proceeded without much incident as the fishery stayed below the cap. A full report is available here: http://www.mafmc.org/meeting_materials/SSC/2012-05/SSC_2012_05.htm. In 2012, preliminary data suggests that much more of the butterfish cap was utilized in Trimester 2 than was anticipated by Amendment 10. While NMFS is investigating if the apparent high catches of butterfish were real or an artifact of the estimation procedure, the issue of not being able to close Trimester 2 because of the cap was nonetheless highlighted. Theoretically the potential exists for the entire annual cap, or more than the entire cap, to be used up in Trimester 2. This could lead to a variety of negative outcomes including exceeding the butterfish ABC, closing all of Trimester 3, and/or deductions from future years if the ABC is exceeded (this is issue one).

During the specifications process a second issue was highlighted in that there could be substantial unused landings or cap quota and it could be advantageous for industry if NMFS was able to transfer a certain amount of quota between landings and the cap near the end of the year in order to optimally utilize the butterfish that is available for fishing each year. This framework action considers alternatives relative to each of these two issues.

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

3.1 PURPOSE AND NEED

The purpose of this framework is to consider changes to the butterfish cap on the longfin squid fishery to improve the accountability of the cap in Trimester 2 and to optimize use of available quota in the butterfish and longfin squid fisheries if it appears that there will be excessive unused quota toward the end of the year in one or the other. This action is

needed because without such actions the butterfish ABC could be exceeded, or there could be substantial underages in either the cap or landings while the other becomes unnecessarily constraining, unnecessarily restricting the fisheries.

3.2 HISTORY OF FISHERY MANAGEMENT PLANS DEVELOPMENT

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

History of Fishery Management Plans Development

History of the Atlantic Mackerel, Squid and Butterfish Fishery Management Plans		
Year	Document	Management Action
1978-1980	Original Fishery Management Plans (3) and individual amendments	Established and continued management of Atlantic mackerel, squid, and butterfish fisheries
1983	Merged Fishery Management Plans	Consolidated management of Atlantic mackerel, squid, and butterfish fisheries under a single Fishery Management Plans
1984	Amendment 1	Implemented squid optimum yield adjustment mechanism Revised Atlantic mackerel mortality rate
1986	Amendment 2	Equated fishing year with calendar year Revised squid bycatch total allowable level of foreign fishing allowances Implemented framework adjustment process Converted expiration of fishing permits from indefinite to annual
1991	Amendment 3	Established overfishing definitions for all four species
1991	Amendment 4	Limited the activity of directed foreign fishing and joint venture transfers to foreign vessels Allowed for specification of optimum yield for Atlantic mackerel for up to three years
1996	Amendment 5	Adjusted longfin squid maximum sustainable yield; established 1 7/8" minimum mesh size Eliminated directed foreign fisheries for longfin squid, <i>Illex</i> , and butterfish Instituted a dealer and vessel reporting system; Instituted operator permitting Implemented a limited access system for longfin squid, <i>Illex</i> and butterfish Expanded management unit to include all Atlantic mackerel, longfin squid, <i>Illex</i> , and butterfish under U.S. jurisdiction.

1997	Amendment 6	Established directed fishery closure at 95% of domestic annual harvest for longfin squid, <i>Illex</i> and butterfish with post-closure trip limits for each species
		Established a mechanism for seasonal management of the <i>Illex</i> fishery to improve the yield-per recruit
		Revised the overfishing definitions for longfin squid, <i>Illex</i> and butterfish
1997	Amendment 7	Established consistency among Fishery Management Plans in the Northeast region of the U.S. relative to vessel permitting, replacement and upgrade criteria
1998	Amendment 8	Brought the Fishery Management Plans into compliance with new and revised National Standards and other required provisions of the Sustainable Fisheries Act.
		Added a framework adjustment procedure.
2001	Framework 1	Established research set-asides.
2002	Framework 2	Established that previous year specifications apply when specifications for the management unit are not published prior to the start of the fishing year (excluding total allowable level of foreign fishing specifications)
		Extended the <i>Illex</i> moratorium for one year; Established <i>Illex</i> seasonal exemption from longfin squid minimum mesh;
		Specified the longfin squid control rule; Allowed longfin squid specs to be set for up to 3 years
2003	Framework 3	Extended the moratorium on entry to the <i>Illex</i> fishery for an additional year
2004	Framework 4	Extended the moratorium on entry to the <i>Illex</i> fishery for an additional 5 years
2008	Amendment 12	Standardized Bycatch Reporting Methodology
2009	Amendment 9	Extended the moratorium on entry into the <i>Illex</i> fishery, without a sunset provision
		Adopted biological reference points for longfin squid recommended by the stock assessment review committee.
		Designated Essential Fish Habitat for longfin squid eggs based on available information
		Prohibited bottom trawling by Mackerel-Squid-Butterfish-permitted vessels in Lydonia and Oceanographer Canyons
		Authorized specifications to be set for all four MSB species for up to 3 years
2010	Amendment 10	Implemented a butterfish rebuilding program.
		Increased the longfin squid minimum mesh in Trimesters 1 and 3.
		Implemented a 72-hour trip notification requirement for the longfin squid fishery.
2011	Amendment 11	Mackerel limited access
		Essential Fish Habitat Updates
		Commercial/Recreational Mackerel Allocation
2011	Amendment 13	Annual Catch Limit and Accountability Measure Omnibus Amendment
2012	Amendment 14	River Herring Bycatch (ongoing)
2013	Amendment 15	River Herring Management (ongoing)

3.3 FISHERY MANAGEMENT PLANS GENERAL MANAGEMENT OBJECTIVES/GOALS

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

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

3.4 MANAGEMENT UNIT/SCOPE

The management unit is currently all northwest Atlantic mackerel (*Scomber scombrus*), longfin squid (*Doryteuthis (Amerigo) pealeii*, formerly named *Loligo pealeii*), *Illex illecebrosus*, and butterfish (*Peprilus triacanthus*) under U.S. jurisdiction though alternatives in another amendment (Amendment 15) currently being considered could effectively extend the management unit to include river herrings and shads.

4.0 MANAGEMENT ALTERNATIVES

The management regimes and associated management measures within the Fishery Management Plan for the managed resources have been refined over time and codified in regulation. The plan also has provisions whereby the current management measures “roll over” from year to year in the event no further action has yet been taken. The *status quo* management measures for the managed resources, therefore, each involve a set of indefinite (i.e., in force until otherwise changed) measures that have been established. These measures will continue as they are even if the actions contained within this framework are not taken (i.e., no action). The no action alternative for these managed resources is therefore equivalent to *status quo*. On that basis, the status quo and no action are presented in conjunction for comparative impact analysis relative to the action alternatives. Current mackerel-squid-butterfish regulations may be found here: <http://www.nero.noaa.gov/nero/regs/>.

4.1 Alternative 1 (Status Quo/no action – Catch Cap)

Under this status quo/no action alternative, no action will be taken to enable closure authority in Trimester 2 related to the butterfish cap or to enable NMFS to shift butterfish catch between butterfish landings and the butterfish cap (which is mostly discards).

The cap would continue to close Trimester 1 longfin squid fishing when 80% of the Trimester 1 cap is caught (Trimester 1 is 65% of the annual cap), and would continue to close Trimester 3 longfin squid fishing when 90% of the total annual cap was caught. Other actions (2013 specifications) may change this threshold to 90% in Trimester 1 and if that is the case then the threshold would remain at 90%. If 90% or more of the annual cap was landed at some point in Trimester 2, there would be no Trimester 3 longfin squid fishery. Amendment 10 did not provide for Trimester 2 closures because it appeared that incidental catch rates of butterfish by the longfin squid fishery were typically much lower in Trimester 2 than the rest of the year. If the lack of control of butterfish mortality in Trimester 2 led to an ABC overage then the lack of control in Trimester 2 could also cause ABC reductions in future years to compensate for the overage.

While the key value that impacts closures is the 65% that is allocated to Trimester 1, there technically is 3.3% allocated to Trimester 2 and 31.7% allocated to Trimester 3. Since Trimester 2 cannot close currently and Trimester 3 closes based on the annual cap after any earlier overages and underages are accounted for, the 3.3% and 31.7% are generally not directly noticeable to interested parties but they do underlie the basic allocation.

There would also still be the possibility that at the end of the year substantial butterfish landings quota remained and the longfin fishery had been shut down because of the butterfish cap or vice-versa, where a substantial amount of cap was left unused but butterfish landings had been shut down. In either case, one fishery could be unnecessarily limited because the assignment of quota between the two had been made more than a year in advance and no provisions currently exist for NMFS to routinely shift quota between one purpose (landings) to another (the cap/discards in the longfin squid fishery).

4.2 Alternative 2 (Cap Allocation A)

Under this alternative the cap could be closed in any trimester because of the butterflyfish catch in that trimester. The cap would be allocated between the Trimesters as per the longfin squid allocation, 43% to Trimester 1, 17% to Trimester 2, and 40% to Trimester 3 (i.e. the butterflyfish cap allocation would be the same as the longfin squid allocation). Trimester 1 longfin squid fishing would be closed when 95% of the Trimester 1 allocation had been used. Trimester 2 would be closed when 95% of the Trimester 2 allocation had been used. Trimester 3 would be closed when 95% of the annual allocation had been used. 5% buffers are used because the shutdown of the longfin squid fishery in 2012 demonstrated that the cap is utilized at a very slow rate during a longfin squid fishery closure. That closure occurred in the summer and during trimesters 1 and 3 one would expect even less cap to be utilized during a closure as the fishery is offshore at that time and incidental squid landings should be less in those Trimesters during a closure compared to Trimester 2.

Like the current situation with longfin squid, any underages of the cap for Trimester 1 that are greater than 25 percent of the Trimester 1 cap will be reallocated to Trimesters 2 and 3 of the same year. The reallocation of cap from Trimester 1 to Trimester 2 is limited, such that the Trimester 2 cap may only be increased by 50 percent; the remaining portion of the underage will be reallocated to Trimester 3. Any underages of the cap for Trimester 1 that are less than 25 percent of the Trimester 1 cap will be applied to Trimester 3 of the same year. Any overages of the cap for Trimesters 1 and 2 will be subtracted from Trimester 3 of the same year.

4.3 Alternative 3 (Cap Allocation B)

Under this alternative the cap could be closed in any trimester because of the butterflyfish catch in that trimester. The cap would be allocated between the Trimesters as per the longfin squid allocation, 54% to Trimester 1, 10.15% to Trimester 2, and 35.85% to Trimester 3. These are the midpoints between the current cap allocation and the current longfin squid trimester allocation described in Alternative 2. It could be unfair to Trimester 2 longfin squid fishery participants to close Trimester 2 under the status quo allocation (3.3 %) because this trimester was initially allocated a low percentage of the butterflyfish cap due to historically low levels of butterflyfish bycatch in this period. Such a closure allocation would amount to penalizing Trimester 2 longfin squid fishery participants for historically maintaining low interactions of butterflyfish during this period. Trimester 1 longfin squid fishing would be closed when 95% of the Trimester 1 allocation had been used. Trimester 2 would be closed when 95% of the Trimester 2 allocation had been used. Trimester 3 would be closed when 95% of the annual allocation had been used. 5% buffers are used because the shutdown of the longfin squid fishery in 2012 demonstrated that the cap is utilized at a very slow rate during a longfin squid fishery closure. That closure occurred in the summer and during trimesters 1 and 3 one would expect even less cap to be utilized during a closure as the fishery is offshore at that time and incidental squid landings should be less in those Trimesters during a closure compared to Trimester 2.

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4.4 Alternative 4 (In-Season Transfers)

Under this alternative, NMFS would be able to transfer a certain amount of quota between landings and the quota near the end of the year in order to optimally utilize the butterfish that is available for fishing each year.

In each November, NMFS would make a projection regarding the likely trajectories of butterfish landings and the butterfish cap. If one appears likely to constrain the relevant fishery and another would appear unlikely to be impacted at all by a shift in quota away from the other and to the one, then NMFS could transfer up to 50% of the landings or cap to optimize the use of overall butterfish landings generally on November 15. For example if it appeared that reducing the landings quota by 200 mt would not impact landings for the rest of the year but 200 additional mt might allow the longfin squid fishery to continue longer (or reopen), then such a switch would be made. While NMFS could make such projections a little earlier in the year, waiting until November will minimize projection errors. NMFS will consult the Council leadership and staff on any transfers. If it appeared that a relevant closure might occur right around November 15 then NMFS could make the adjustments slightly earlier (if a transfer appeared likely one would want to avoid a few day or one week closure).

5.0 DESCRIPTION OF THE AFFECTED ENVIRONMENT AND FISHERIES

The affected environment and fisheries, as defined in Section 6.0 of Amendment 11's Environmental Impact Statement, is incorporated by reference in this framework, and may be downloaded at: [http://www.mafmc.org/Fishery Management Plan/msb.htm](http://www.mafmc.org/Fishery%20Management%20Plan/msb.htm). Interactions of the managed resources with non-target species, Endangered Species Act (ESA) listed and Marine Mammal Protection Act (MMPA) protected resources, as well as interactions with Essential Fish Habitat, are also described in Amendment 11's Environmental Impact Statement. An update of most relevant data is available in the Environmental Assessment for the 2012 specifications, available at: <http://www.nero.noaa.gov/regs/>.

None of the alternatives in this action should result in a significant change to the affected environment that is described in the Amendment 11 document. The no action/status quo alternative would maintain the current butterfish cap provisions and the alternatives in this document would make small changes. The impacts will likely be analyzed within the context of an environmental assessment, which will be provided at the second framework meeting.

6.0 ENVIRONMENTAL IMPACTS

6.1 Managed Resources

Mackerel, longfin squid, and Illex squid should not be affected by the status quo or the action alternatives as mortality is controlled separately for those species. If the status-quo is maintained, it is possible that the lack of closure authority could result in a butterfish ABC overage which could harm the butterfish stock, but the overage probably would not be that large and the current information on butterfish suggests that a small ABC overage probably would not have any impact on the butterfish stock. Nonetheless, it is possible that the butterfish stock could be negatively impacted under the status quo.

Also under the status quo, the inability to automatically shift quota between the cap and landings (the two controls on butterfish mortality) should help keep butterfish below its ABC which would continue positive benefits for butterfish.

Instituting in-season closure authority for the cap in Trimester 2 should have a small positive benefit for butterfish compared to the status quo because it would reduce the possibility of ABC overages. The ability to automatically shift quota between the cap and landings should have no impact on butterfish because it still should not lead to ABC overages as if one goes up, the other would go down.

6.2 Non-Target Fish Species

Non-target interactions in the longfin squid fishery and butterfish fisheries are the relevant non-target issues for this potential action because the alternatives affect the butterfish cap, which can limit longfin squid fishery effort, as well as butterfish landings and effort.

Various species are caught incidentally by these fisheries and will be impacted to some degree by the status quo prosecution of the fishery. For non-target species that are managed under their own FMP, incidental catch/discards are also considered as part of the management of that fishery.

Longfin Squid

The primary database used to assess discarding is the NMFS Observer Program database, which includes data from trips that had trained observers onboard to document discards. One critical aspect of using this database to describe discards is to correctly define the trips that constitute a given directed fishery. Presumably some criteria of what captains initially intend to target, how they may adjust targeting over the course of a trip, and what they actually catch would be ideal. Thus to begin this process, staff first reviewed 2009-2011 trips in the dealer weighout database to see if a certain trip definition could account for most longfin squid landed. Since fisheries evolve over time, and the implementation

and expectation of the butterfish cap (began on 2011) has likely changed behavior recently, a more recent, three-year time period was examined, versus the five-year time period examined in prior specifications.

The result of this review resulted in the following definition for longfin squid trips using landings: All trips that had at least 50% longfin squid by weight and all trips that had at least 10,000 pounds of longfin squid regardless of the ratio to other species. This definition results in capturing over 89% of all longfin squid landings in the dealer weighout database 2009-2011. This definition was applied to the observer database to examine discards in the longfin squid fishery. The resulting set of trips in the observer database included 152 on average for each year 2009-2011. These trips made 5307 hauls of which 93% were observed. Hauls may be unobserved for a variety of reasons, for example transfer to another vessel without an observer, observer not on station, haul slipped (dumped) in the water, etc.

The observed longfin squid caught on these trips accounted for approximately 8.8% of the total longfin squid caught. While a very rough estimate, especially given the low observer coverage in small mesh fisheries and non-accounting for spatial and temporal trends, one can use the information in Table 19 and the fact that about 8,701 MT of longfin squid were caught annually 2009-2011 to generally and roughly estimate annual incidental catch for the species in the table. This is the last column in the table and while this information is provided, readers are strongly cautioned that while this is a reasonable approach for a general, rough, and relative estimate given the available data, it is highly imprecise. Note also that even the estimates that can be calculated would only really be valid for the 89% of landings captured by the chosen directed trip definition. It is even more difficult to assess the other 11% because to some degree the longfin squid is being caught incidental to other fisheries in those cases. Nonetheless, the longfin squid-to-other-species ratios were scaled up to the 100% of longfin squid catch to keep calculations relatively simple.

Table 1. Discards and Incidental Catch in the Longfin Squid Fishery 2009-2011.

NE Fisheries Science Center Common Name	Pounds Observed Caught	Pounds Observed Discarded	For every metric ton of longfin caught, pounds of given species caught.	For every metric ton of longfin caught, pounds of given species discarded.	D:K Ratio (Ratio of species discarded to longfin Kept)	Of all discards observed, percent that comes from given species	Percent of given species that was discarded	Rough Annual Catch (pounds) based on 3-year average of longfin catch (8,701 mt)
Directed Longfin Trip Bycatch and Discards								
BUTTERFISH	614,073	575,395	272.9	255.7	0.12	17.6%	93.7%	2,374,461
DOGFISH SPINY	417,734	412,649	185.6	183.4	0.08	12.6%	98.8%	1,615,268
HAKE, SILVER	609,489	364,962	270.9	162.2	0.07	11.2%	59.9%	2,356,735
HAKE, SPOTTED	293,294	286,218	130.3	127.2	0.06	8.8%	97.6%	1,134,092
SQUID (ILLEX)	1,101,544	236,393	489.5	105.1	0.05	7.2%	21.5%	4,259,384
SCUP	291,838	170,420	129.7	75.7	0.04	5.2%	58.4%	1,128,460
SKATE, LITTLE	165,023	164,687	73.3	73.2	0.03	5.0%	99.8%	638,101
HAKE, RED	136,495	129,085	60.7	57.4	0.03	4.0%	94.6%	527,792
SQUID (LOLIGO)	4,960,828	92,926	2204.6	41.3	0.02	2.8%	1.9%	NA
CRAB, LADY	81,086	81,086	36.0	36.0	0.02	2.5%	100.0%	313,536
FLOUNDER, FOURSPOT	68,055	67,900	30.2	30.2	0.01	2.1%	99.8%	263,151
FLOUNDER, SUMMER	96,220	46,789	42.8	20.8	0.01	1.4%	48.6%	372,058
DOGFISH SMOOTH	60,132	46,336	26.7	20.6	0.01	1.4%	77.1%	232,514
SKATE, BIG	46,876	43,806	20.8	19.5	0.01	1.3%	93.5%	181,256
SCALLOP, SEA	47,424	40,953	21.1	18.2	0.01	1.3%	86.4%	183,377
BASS, STRIPED	36,742	36,097	16.3	16.0	0.01	1.1%	98.2%	142,070
SEA ROBIN, NORTHERN	32,653	32,558	14.5	14.5	0.01	1.0%	99.7%	126,259
BLUEFISH	82,341	27,910	36.6	12.4	0.01	0.9%	33.9%	318,390
FLOUNDER, WINTER	27,338	27,032	12.1	12.0	0.01	0.8%	98.9%	105,708
SEA WEEDS	26,041	26,041	11.6	11.6	0.01	0.8%	100.0%	100,694
HADDOCK	24,727	24,727	11.0	11.0	0.01	0.8%	100.0%	95,612
SEA ROBIN, STRIPED	22,261	21,927	9.9	9.7	0.00	0.7%	98.5%	86,077
MACKEREL, ATLANTIC	46,229	21,537	20.5	9.6	0.00	0.7%	46.6%	178,757
HERRING, ATLANTIC	405,494	20,689	180.2	9.2	0.00	0.6%	5.1%	1,567,941
SEA BASS, BLACK	30,837	20,404	13.7	9.1	0.00	0.6%	66.2%	119,240
DORY, BUCKLER (JOHN)	50,134	18,824	22.3	8.4	0.00	0.6%	37.5%	193,855
ANGLER	29,592	12,792	13.2	5.7	0.00	0.4%	43.2%	114,426
LOBSTER	16,241	12,033	7.2	5.3	0.00	0.4%	74.1%	62,798
HAKE, NK	12,848	11,126	5.7	4.9	0.00	0.3%	86.6%	49,681
SKATE, BARNDOR	6,497	6,450	2.9	2.9	0.00	0.2%	99.3%	25,121
SHAD, AMERICAN	7,081	6,199	3.1	2.8	0.00	0.2%	87.5%	27,378
WINDOWPANE	6,162	6,162	2.7	2.7	0.00	0.2%	100.0%	23,825
DOGFISH CHAIN	4,955	3,661	2.2	1.6	0.00	0.1%	73.9%	19,159
TAUTOG	2,373	2,373	1.1	1.1	0.00	0.1%	100.0%	9,176
HERRING (NK)	2,344	2,344	1.0	1.0	0.00	0.1%	100.0%	9,065
SKATE, ROSETTTE	2,139	2,139	1.0	1.0	0.00	0.1%	100.0%	8,271
FLOUNDER, WITCH	1,275	1,275	0.6	0.6	0.00	0.0%	100.0%	4,930
SKATE, CLEARNOSE	1,182	1,182	0.5	0.5	0.00	0.0%	100.0%	4,569
SKATE, NK	2,381	1,036	1.1	0.5	0.00	0.0%	43.5%	9,208
FISH, NK	1,208	806	0.5	0.4	0.00	0.0%	66.8%	4,670
ALEWIFE	775	761	0.3	0.3	0.00	0.0%	98.1%	2,997

Butterfish

A list of species taken incidentally and discarded in the butterfish fishery has not been calculated recently because currently there is very limited directed fishing for butterfish because of regulations and market demand. It is also very difficult to identify a directed butterfish trip in the observer database and double counting with other fisheries would likely occur due to the incidental nature of the fishery. Prior specifications identified red hake, silver hake, spiny dogfish, scup, unclassified skates, fourspot flounder, longfin squid, mackerel, and little skate as primary bycatch and/or discard species in the butterfish fishery. However, in previous years when the butterfish fishery operated there was no minimum mesh and the attitude toward discarding fishery-wide was different. It is expected that the 3” minimum mesh proposed as part of the re-establishment of the butterfish fishery would minimize bycatch (further reducing the applicability of previous analyses), and any observer data from trips targeting butterfish will be examined to describe non-target interactions and to determine if additional bycatch minimization measures are needed in the future. For non-target species that are managed under their own FMP, incidental catch/discards are also considered as part of the management of that fishery.

Impacts

The alternatives to institute Trimester 2 in-season closure authority would tend to result in positive impacts for non-target species because they could reduce overall effort by closing longfin squid fishing earlier than would have otherwise occurred. Depending on the allocations chosen there could be some redistribution of effort but it would probably be small compared to the natural variability in squid abundance and the fishery effort that tracks that variability.

The alternative to shift quota at the end of the year would facilitate some additional butterfish fishing or additional longfin squid fishing. The maximum transfer amount is 50% of the original quota, i.e. 50% of one could be transferred to the other. It is not possible to predict how much extra effort this could result in over time. It would probably be more than zero but probably much less than the fishery overall since the transfer would only be in place after November 15th, which is approximately 12% of the year and the transfer would only take place if the fishery appeared to be limited which would mean that a substantial amount of effort would have already taken place earlier in the year. Thus non-target species impacts are likely “low-negative” compared to the status quo for the alternative that facilitates routine quota transfer by NMFS.

6.3 Physical Environment and Essential Fish Habitat Impacts

Managed Species' EFH

EFH for the managed species generally consists of the water column which is not significantly impacted by fishing activity. The exception to the EFH location being the water column is longfin squid eggs, which are attached to sand, mud, or bottom structure (manmade or natural). However, as determined in Amendment 9, there is no indication that squid eggs are preferentially attached to substrates that are vulnerable to disturbance from fishing, so no impacts on EFH for longfin squid eggs are expected from any increase or decrease in fishing effort by bottom trawls. Thus the impact is neutral for the managed species' EFH for any level of MSB fishing, which means that the impact of any of the status quo or action alternatives on the managed species' EFH is neutral.

Other Species' EFH

Under the status quo, bottom trawling activity related to longfin squid and butterfish fishing may impact EFH for other federally-managed species, but these impacts have been reduced to the extent practicable via other actions.

The alternatives to institute Trimester 2 in-season closure authority would tend to result in positive impacts for habitat because they could reduce overall effort by closing longfin squid fishing earlier than would have otherwise occurred. Depending on the allocations chosen there could be some redistribution of effort but it would probably be small compared to the natural variability in squid abundance and the fishery effort that tracks that variability.

The alternative to shift quota at the end of the year would facilitate some additional butterfish fishing or additional longfin squid fishing. The maximum transfer amount is 50% of the original quota, i.e. 50% of one could be transferred to the other. It is not possible to predict how much extra effort this could result in over time. It would probably be more than zero but probably much less than the fishery overall since the transfer would only be in place after November 15th, which is approximately 12% of the year and the transfer would only take place if the fishery appeared to be limited which would mean that a substantial amount of effort would have already taken place earlier in the year. Thus habitat impacts are likely minimally "low-negative" compared to the status quo for the alternative that facilitates routine quota transfer by NMFS.

6.4 Impacts on Protected Resources (Endangered Species, Marine Mammals)

The environmental assessment for this action will review the protected resources that are impacted by the status quo operation on the longfin squid and butterfish fisheries. In general there can be some marine mammal, turtle, sturgeon, and river herring (candidate species) interactions but lower levels than occur with other fisheries.

The alternatives to institute Trimester 2 in-season closure authority would tend to result in positive impacts for protected resources because they could reduce overall effort by closing longfin squid fishing earlier than would have otherwise occurred. Depending on the allocations chosen there could be some redistribution of effort but it would probably be small compared to the natural variability in squid abundance and the fishery effort that tracks that variability.

The alternative to shift quota at the end of the year would facilitate some additional butterfish fishing or additional longfin squid fishing. The maximum transfer amount is 50% of the original quota, i.e. 50% of one could be transferred to the other. It is not possible to predict how much extra effort this could result in over time. It would probably be more than zero but probably much less than the fishery overall since the transfer would only be in place after November 15th, which is approximately 12% of the year and the transfer would only take place if the fishery appeared to be limited which would mean that a substantial amount of effort would have already taken place earlier in the year. Thus protected resource impacts are likely “low-negative” compared to the status quo for the alternative that facilitates routine quota transfer by NMFS.

6.5 Human Communities - Socioeconomic Impacts

The environmental assessment for this action will review the human community benefits that accrue from the status quo operation of the longfin squid and butterfish fisheries. In general the longfin squid fishery has recently generated around \$15-\$25 million in ex-vessel revenues and butterfish has generated around \$1 million in ex-vessel revenues. Multiplier effects exist because landings stimulate a variety of economic activity.

The alternatives to institute in-season Trimester 2 closure authority would tend to result in positive socioeconomic impacts because they will 1) avoid ABC overages that could reduce long-term butterfish productivity; 2) avoid distributional issues that would occur if Trimester 2 used up all of the cap and Trimester 3 never opened; and 3) avoid future disruptions of the fishery if the status quo led to an ABC overage that had to be repaid.

The alternative to shift quota at the end of the year would facilitate some additional butterfish fishing or additional longfin squid fishing. The maximum transfer amount is 50% of the original quota, i.e. 50% of one could be transferred to the other. It is not

possible to predict how much extra landings this could result in over time. It would probably be more than zero but probably much less than the fishery overall since the transfer would only be in place after November 15th, which is approximately 12% of the year and the transfer would only take place if the fishery appeared to be limited which would mean that a substantial amount of effort would have already taken place earlier in the year. Thus socio-economic impacts are likely “low-positive” compared to the status quo for the alternative that facilitates routine quota transfer by NMFS, but this could still potentially result in several million dollars of extra ex-vessel revenues in some years compared to the status quo.

Note: A cumulative impact analysis will be added before the second framework meeting.

7.0 MAGNUSON-STEVENSON ACT

7.1 NATIONAL STANDARDS

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

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

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

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

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

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

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

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

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

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

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

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

Impacts should be consistent with the goals of the national standards and will be further detailed at the second framework meeting.

7.2 OTHER REQUIRED PROVISIONS OF THE MAGNUSON-STEVENSONS ACT

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

7.3 DISCRETIONARY PROVISIONS OF THE MAGNUSON-STEVENSONS ACT

Section 303b of the Magnuson Stevens Act contains 14 additional discretionary provisions for Fishery Management Plans. They may be read on pages of 59 and 60 of NMFS' redline version of the Magnuson Stevens Act at: http://www.nmfs.noaa.gov/msa2007/MSA_Amended%20by%20Magnuson-Stevens%20Reauthorization%20Act%20%281-31-07%20draft%29.pdf. Given the limited scope of this framework, there are no significant impacts related to such provisions and additional detail will be provided at the second framework meeting.

7.4 ESSENTIAL FISH HABITAT ASSESSMENT

The MSA / EFH Provisions (50 CFR 600.920(e)(3)) require that any Federal action which may adversely affect EFH must include a written assessment of the effects of that action on EFH. As described in Section 7, only minimal EFH impacts are expected.

8.0 OTHER APPLICABLE LAWS

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

This action will likely require an Environmental Assessment under the National Environmental Policy Act as impacts do not appear significant. This document will be refined into the Environmental Assessment.

MARINE MAMMAL PROTECTION ACT (MMPA)

The Council has reviewed the impacts of the action on marine mammals and has concluded that the proposed management actions are consistent with the provisions of the Marine Mammal Protection Act, and will not alter existing measures to protect the species likely to inhabit the management unit.

ENDANGERED SPECIES ACT (ESA)

Potential protected resource impacts are described in Section 7 and additional detail will be provided at the second framework meeting.

COASTAL ZONE MANAGEMENT ACT (CZMA)

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

Georgia, and Florida. A list of the specific state contacts and a copy of the letters will be made available upon request.

ADMINISTRATIVE PROCEDURES ACT

Section 553 of the Administrative Procedure Act establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of these requirements is to ensure public access to the Federal rulemaking process, and to give the public adequate notice and opportunity for comment. At this time, the Council is not requesting any abridgement of the rulemaking process for this action.

INFORMATION QUALITY ACT

Utility of Information Product

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

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

Integrity of Information Product

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

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

Objectivity of Information Product

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

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

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

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

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

IMPACTS RELATIVE TO FEDERALISM/ EXECUTIVE ORDER 13132

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

ENVIRONMENTAL JUSTICE/ EXECUTIVE ORDER 12898

This Executive Order provides that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.”

Executive Order 12898 directs each Federal agency to analyze the environmental effects, including human health, economic, and social effects of Federal actions on minority populations, low-income populations, and Indian tribes, when such analysis is required by the National Environmental Policy Act (NEPA). Agencies are further directed to “identify potential effects and mitigation measures in consultation with affected communities, and improve the accessibility of meetings, crucial documents, and notices.” The alternatives in this action should have no environmental justice implications.

REGULATORY FLEXIBILITY ACT/ EXECUTIVE ORDER 12866

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

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

The proposed actions are expected to have positive impacts as discussed in Section 7.

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

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

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

The proposed action will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs, or the rights and obligations of their participants.

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

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

Description and Number of Small Entities to Which the Rule Applies

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

The measures in this action could have some impact on the approximately 375 vessels with limited access butterfish/longfin squid permits. Depending on the year, all of these vessels usually qualify as small businesses, or a few may be above the 4.0 million dollar threshold depending on their landings in a given year. However, this proposed action is expected to have positive impacts related to the relevant fisheries.

PAPERWORK REDUCTION ACT (PRA)

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

9.0 LIST OF AGENCIES AND PERSONS CONSULTED

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