

**FRAMEWORK ADJUSTMENT 7**

**TO THE**

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

**November 2012**

**Mid-Atlantic Fishery Management Council**

**in cooperation with**

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

**First Framework Meeting: September 14, 2012**

**Second Framework Meeting: October 17, 2012**

**Final approved by National Oceanic and Atmospheric Administration: December 6, 2012**

---

**A Publication of the Mid-Atlantic Fishery Management Council pursuant to  
National Oceanic and Atmospheric Administration (NOAA) Award No.  
NA10NMF4410009**

---



## 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 cap was instituted due to a now invalid assessment and overfished finding, the regulations still require that Annual Catch Limit (“ACL”) overages of butterfish be paid back in following years, and the cap helps to limit annual butterfish mortality to a given amount established by the Scientific and Statistical Committee. 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 acceptable biological catch 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 acceptable biological catch overage. This limitation on total annual butterfish mortality should both protect the butterfish stock and avoid negative socio-economic impacts related to large paybacks if discarding was not monitored and not controlled in each year in near real-time.

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](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. National Marine Fisheries Service 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 (just discards) 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 to account for expected directed butterfish fishing in 2013. The Council approved this framework with Alternative 2 as preferred for submission to the National Marine Fisheries Service at its October 2012 Council meeting.

## **2.0 TABLE OF CONTENTS**

<b>1.0 EXECUTIVE SUMMARY .....</b>	<b>2</b>
<b>2.0 TABLE OF CONTENTS .....</b>	<b>3</b>
<b>3.0 PURPOSE AND NEED, MANAGEMENT UNIT, MANAGEMENT OBJECTIVES, AND HISTORY OF FISHERY MANAGEMENT PLAN DEVELOPMENT.....</b>	<b>4</b>
<b>3.1 PURPOSE AND NEED .....</b>	<b>4</b>
<b>3.3 FISHERY MANAGEMENT PLANS GENERAL MANAGEMENT OBJECTIVES/GOALS.....</b>	<b>6</b>
<b>4.0 MANAGEMENT ALTERNATIVES.....</b>	<b>7</b>
<b>4.1 ALTERNATIVE 1 (STATUS QUO/NO ACTION – CATCH CAP) .....</b>	<b>7</b>
<b>4.2 ALTERNATIVE 2 (DISCARD CAP) .....</b>	<b>7</b>
<b>5.0 DESCRIPTION OF THE AFFECTED ENVIRONMENT AND FISHERIES.....</b>	<b>8</b>
<b>6.0 ENVIRONMENTAL IMPACTS .....</b>	<b>9</b>
<b>6.1 MANAGED RESOURCES .....</b>	<b>9</b>
<b>6.2 NON-TARGET FISH SPECIES .....</b>	<b>9</b>
<b>6.3 PHYSICAL ENVIRONMENT AND ESSENTIAL FISH HABITAT IMPACTS .....</b>	<b>9</b>
<b>6.5 HUMAN COMMUNITIES - SOCIOECONOMIC IMPACTS.....</b>	<b>10</b>
<b>7.0 MAGNUSON-STEVENSON ACT .....</b>	<b>11</b>
<b>7.1 NATIONAL STANDARDS .....</b>	<b>11</b>
<b>7.2 OTHER REQUIRED PROVISIONS OF THE MAGNUSON-STEVENSON ACT.....</b>	<b>12</b>
<b>7.3 DISCRETIONARY PROVISIONS OF THE MAGNUSON-STEVENSON ACT .....</b>	<b>12</b>
<b>7.4 ESSENTIAL FISH HABITAT ASSESSMENT .....</b>	<b>12</b>
<b>8.0 OTHER APPLICABLE LAWS .....</b>	<b>13</b>
<b>9.0 LIST OF AGENCIES AND PERSONS CONSULTED .....</b>	<b>20</b>

### 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> and are summarized in the table below.

**History of Fishery Management Plans Development**

<b>History of the Atlantic Mackerel, Squid and Butterfish Fishery Management Plans</b>		
<b>Year</b>	<b>Document</b>	<b>Management Action</b>
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 species for up to 3 years
2010	Amendment 10	Implemented a butterflyfish 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 butterflyfish (*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) - Preferred

Under this preferred 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](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. 87% of 3,156 is 2754 mt and 87% of 4,500 mt is 3915 mt. 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 butterflyfish 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 (which occurs in the first half of 2013) will re-examine this issue and consider 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%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 change in the affected environment that is described in the Amendment 11 document. The no action/status quo alternative would maintain the current butterflyfish cap provisions and the preferred 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 butterflyfish mortality would not change. The change is designed so that control of overall butterflyfish 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 effective 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 seeks to ensure 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 seeks to ensure 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 seeks to ensure 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 seeks to ensure 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 fishery management plans 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-STEVENSONS ACT**

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

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

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

## **7.4 ESSENTIAL FISH HABITAT ASSESSMENT**

Essential Fish Habitat provisions (50 Code of Federal Regulation 600.920(e)(3)) require that any Federal action which may adversely affect Essential Fish Habitat must include a written assessment of the effects of that action on Essential Fish Habitat. 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 Endangered Species Act requires Federal agencies conducting, authorizing, or funding activities that affect threatened or endangered species to ensure that those effects do not jeopardize the continued existence of listed species. Formal consultation on the Mackerel-Squid-Butterfish fisheries was last completed on October 29, 2010. The October 29, 2010, Biological Opinion concluded that the operation of the Mackerel-Squid-Butterfish fisheries 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 Endangered Species Act, the Endangered Species Act Section 7 consultation for the Mackerel-Squid-Butterfish 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 Endangered Species Act 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, the National Marine Fisheries Service has determined that this action would have no effect on any coastal use or resources of any state. Letters documenting the National Marine Fisheries Service's 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, National Marine Fisheries Service 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; National Oceanic and Atmospheric Administration 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 National Oceanic and Atmospheric Administration 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 National Oceanic and Atmospheric Administration 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 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.



## **EXECUTIVE ORDER 12866**

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be significant. A “significant regulatory action” is one that is likely to: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, safety, or state, local, or tribal Governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order. A regulatory program is “economically significant” if it is likely to result in the effects described above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be “economically significant.”

A complete evaluation of the expected economic effects of implementing the butterflyfish cap is included in Amendment 10, and the economic effects of the butterflyfish cap level is presented each year through the annual specifications. The proposed action is an administrative change to the accounting of the butterflyfish cap necessary to accommodate a directed butterflyfish fishery. This action would not affect the conservation objectives associated with the butterflyfish mortality cap, and simply maintains the effective control of butterflyfish mortality already established through previous actions.

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 Mackerel-Squid-Butterfish fisheries.

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.

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 Executive Order 12866.

Thus, while having no immediate direct economic impact, these actions will provide greater assurance that the previously analyzed flow of commercial economic benefits from the managed fisheries will be maintained.

The Council has determined that, given the information presented above, there would no substantive change in net benefits derived from the implementation of the proposed Omnibus Amendment. Because none of the factors defining “significant regulatory action” are triggered by this proposed action, the action has been determined to be not significant for purposes of E.O. 12866.

## **REGULATORY FLEXIBILITY ACT**

The objective of the RFA is to require consideration of the capacity of regulated small entities affected by regulations to bear the direct and indirect costs of regulation. If an action would have a significant impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis must be prepared to identify the need for action, alternatives, potential costs and benefits of the action, the distribution of these impacts, and a determination of whether the proposed action would have a significant economic impact on a substantial number of small entities. Depending on the nature of the proposed regulations assessment of the economic impacts on small businesses, small organizations, and small Governmental jurisdictions may be required. If an action is determined to affect a substantial number of small entities, the analysis must include:

- 1) A description and estimate of the number of regulated small entities and total number of entities in a particular affected sector, and the total number of small entities affected; and
- 2) Analysis of the economic impact on regulated small entities, including the direct and indirect compliance costs of completing paperwork or recordkeeping requirements, effect on the competitive position of small entities, effect on the small entity's cash flow and liquidity, and ability of small entities to remain in the market.

If it is clear that an action would not have a significant economic impact on a substantial number of small regulated entities, the RFA allows Federal agencies to certify the proposed action to that effect to the SBA. The decision on whether or not to certify is generally made after the final decision on the preferred alternatives for the action and may be documented at either the proposed rule or the final rule stage.

Based on the information and analyses provided in earlier sections of this Framework, it is clear that this action would not have a significant economic impact on a substantial number of small entities, and that certification under the RFA is warranted. The remainder of this section establishes the factual basis for this determination, as recommended by the Office of Advocacy at the SBA.

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

The Regulatory Flexibility Act 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 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 North American Industry Classification System 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 butterflyfish/longfin squid permits.

### **Economic Impact on Small Entities**

The Council conducted a comprehensive evaluation of the potential socioeconomic impacts of Framework 7 and determined that this rule will not have a significant economic impact on a substantial number of number entities. While Framework Adjustment 7 adjusts the butterflyfish mortality cap on the longfin squid fishery by changing what portion of butterflyfish mortality counts towards the cap, and adjusts the butterflyfish mortality cap level for the 2013 fishing year to account for the change in the cap accounting, the action does not establish annual catch limits for butterflyfish or change the annual allocation for any of the MSB species. This action simply means that the cap no longer limits butterflyfish landings on longfin squid trips.

Assuming that a directed butterflyfish fishery is allowed, that there is a market for butterflyfish, and that vessels targeting squid will continue to do so as they have in past years (i.e. the nature of a directed longfin squid trip does not change), Framework Adjustment 7 will have no impact on which vessels catch butterflyfish, or what and what the overall profit from butterflyfish will be for these vessels. Under the existing butterflyfish mortality cap (i.e. a butterflyfish mortality cap that takes into account both landings and discards), a vessel targeting longfin squid that catches butterflyfish incidentally will land butterflyfish if there is some profit to be made from the butterflyfish landings. The same would occur under Framework Adjustment 7, where only the butterflyfish mortality cap only takes into account discards. If butterflyfish landings occur while a vessel is targeting longfin squid, the vessel will likely land that butterflyfish if there is some profit to be made from the butterflyfish landings.

The economic impacts of the total level of both butterflyfish landings and discards for the 2013 fishing year is unchanged by Framework Adjustment 7, and has already been analyzed in the 2013 MSB specifications. Further, the body of permit holders that has the potential to directly target butterflyfish is unchanged by Framework Adjustment 7 alone. Under both the status quo butterflyfish mortality cap and the discard only mortality cap, the total level of butterflyfish landings will be limited by the previously analyzed butterflyfish quota. The total allowed level of butterflyfish discards in the longfin squid fishery is capped through the butterflyfish mortality cap on the longfin squid fishery. Finally, the effects of a potential closure of the longfin squid fishery based on exceeding the butterflyfish mortality cap is analyzed in MSB Amendment 10, and the effects of the specific cap level set for 2013 is analyzed in 2013 MSB specifications. Thus, there are no economic impacts to evaluate. This action is only designed to maintain the effective control of butterflyfish mortality established in Amendment 10 and the annual specifications for the butterflyfish mortality cap.

## **Criteria Used to Evaluate the Action**

The RFA requires Federal agencies to consider two criteria to determine the significance of regulatory impacts: Disproportionality and profitability. If either criterion is met for a substantial number of small entities, then the action should not be certified. All of the commercial fishing entities were determined to be small regulated entities based on the SBA size standard. The proposed action would more clearly describe the application of a provision of the risk policy. Since these actions are administrative in nature, no marginal economic impacts associated with these processes are anticipated. Therefore, the proposed action would not create any disproportionate impacts between small and large entities. If in the future, the implementation of the butterfish mortality cap indirectly results in any disproportional economic impacts, those would be identified and analyzed in the future management action. Since the proposed action would have no economic impact on small entities there would no change in expected profitability.

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

The purpose of the paperwork reduction act 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 paperwork reduction act is necessary.

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

In preparing this document, the Council consulted with National Marine Fisheries Service, 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 National Marine Fisheries Service Northeast Regional Office personnel was sought to ensure compliance with applicable laws and procedures.