

FRAMEWORK ADJUSTMENT 6

TO THE

ATLANTIC MACKEREL, SQUIDS, AND BUTTERFISH
FISHERY MANAGEMENT PLAN

**(Supplemental Environmental Assessment, Regulatory Impact
Review, and Initial Regulatory Flexibility Analysis)**

May 2012

Mid-Atlantic Fishery Management Council

in cooperation with

the National Marine Fisheries Service

First Framework Meeting: February 15, 2012

Second Framework Meeting: April 12, 2012

Final approved by NOAA: XXXXXXXXXX

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



1.0 EXECUTIVE SUMMARY

This framework supplemental environmental assessment (SEA) updates the previously approved environmental assessment (EA; attached) that analyzed the Omnibus Annual Catch Limit (ACL) and Accountability Measure (AM) Amendment (Omnibus Amendment). This Amendment was published by NOAA's National Marine Fisheries service (NMFS) in the *Federal Register* on September 29, 2011 (76 FR 60606), and became effective on October 31, 2011. This framework document is not a stand-alone document, but rather a SEA, intended to be utilized in conjunction with the attached Omnibus Amendment Environmental Assessment (EA), September 2011 approved version. Unless otherwise noted, the initial EA prepared for this action and attached to this SEA remains applicable, including the affected environment. Therefore, sections addressed in this supplement should be considered within the context of the full EA.

This framework presents and evaluates action intended to provide a more clearly defined management process when applying a single provision of the Mid-Atlantic Fishery Management Council (Council) risk policy on overfishing, while retaining the flexibility afforded to the Scientific and Statistical Committee (SSC) in deriving acceptable biological catch (ABC) recommendations when no overfishing limit (OFL) or OFL proxy has been identified. The specific provision to which this action applies is described in section 5.2.2 of the Omnibus Amendment and implemented in §648.21(d) of the Code of Federal Regulations (CFR). This action describes the limited circumstances under which ABC could be increased for stocks without status determination criteria on overfishing.

In response to the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA) that was signed into law by President George W. Bush on January 12, 2007, the Council prepared an Omnibus Amendment to address NOAA's National Marine Fisheries Service (NMFS) revised guidance for implementing National Standard 1 (74 FR 3178; January 16, 2009; NS1 guidelines). To address the MSA¹ requirements and revised guidelines, the Council worked with its SSC to develop recommendations for ABC control rules for all the managed resources subject to this requirement. These ABC control rules establish the pre-agreed process the SSC uses to derive ABC recommendations for the Council that address scientific uncertainty. Scientific uncertainty is essentially imperfect knowledge of the data input into stock assessments, the stock assessment modeling, and the projections to determine what upcoming fishing year catches should be. One required variable in the ABC derivation is the Council tolerance for overfishing of stocks (i.e., probability of overfishing) as expressed through a Council risk policy. Therefore, the Council developed a formal Council risk policy to be used in conjunction with the ABC control rules, and intended to guide the SSC in how to derive ABC. These recommended measures were implemented through the Omnibus Amendment. The ABC control rules and risk policy provisions apply to multiple FMPs and multiple Council species, including Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass,

¹ Magnuson-Stevens Fishery Conservation and Management Act (MSA), portions retained plus revisions made by the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA).

Atlantic surfclam, ocean quahog, and tilefish (referred to collectively as “the managed resources”) contained within the six Council Fishery Management Plans (FMPs²).

The regulations pertinent to the risk policy reside in the CFR Atlantic Mackerel, Squid, and Butterfish section; therefore, the framework would amend that section.

Summary of Alternatives

The following section presents a qualitative summary of expected indirect impacts for the alternatives under consideration (Box 1). No direct impacts are expected as a result of the alternatives. For the purpose of impact evaluation, status quo alternatives are compared to the current condition, while all other alternatives are compared to the status quo alternative. When the proposed action is considered in conjunction with all the other pressures placed on fisheries by past, present, and reasonably foreseeable future actions, it is not expected to result in any significant impacts, positive or negative; therefore, there are no significant cumulative effects associated with the action proposed in this document

Box 1. Overall qualitative summary of the expected indirect impacts of alternatives considered in this document. A minus sign (-) signifies an expected negative impact, a plus sign (+) signifies an expected positive impact, and zero is used to indicate a null impact. A “sl” in front of a sign is used to convey a minor effect, such as slight positive (sl+). An ‘S’ indicates short-term, and an ‘L’ is indicates long-term impacts.					
	Biological	EFH	Protected Resources	Economic	Social
Alternative 1 (No action/status quo)	S(0)/L(0)	0	0	S(0)/L(0)	S(0)/L(0)
Alternative 2 (Clarifies Provision of Council Risk Policy)	S(sl-/0)/L(0)	sl-/0	sl-/0	S(sl+)/L(0)	S(sl+)/L(0)

² Atlantic Mackerel, Squid, and Butterfish FMP, Bluefish FMP, Spiny Dogfish FMP, Summer Flounder, Scup, and Black Sea Bass FMP, Surfclam and Ocean Quahog FMP and Tilefish FMP.

2.0 LIST OF ACRONYMS

ABC	Acceptable Biological Catch
ACL	Annual Catch Limit
ACT	Annual Catch Target
AM	Accountability Measure
CZMA	Coastal Zone Management Act
EA	Environmental Assessment
ESA	Endangered Species Act of 1973
F	Fishing Mortality Rate
FR	Federal Register
FMP	Fishery Management Plan
FONSI	Finding of No Significant Impact
MAFMC	Mid-Atlantic Fishery Management Council
MSY	Maximum Sustainable Yield
NEPA	National Environmental Policy Act
NERO	Northeast Regional Office
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NS1	National Standard 1
MMPA	Marine Mammal Protection Act
MSA	Magnuson-Stevens Act (portions retained plus revisions)
MSRA	Magnuson-Stevens Fishery Conservation and Management Reauthorization Act
OFL	Overfishing limit
PRA	Paperwork Reduction Act
RFA	Regulatory Flexibility Act
RHL	Recreational Harvest Limit
RIR	Regulatory Impact Review
SEA	Supplemental Environmental Assessment
SSC	Scientific and Statistical Committee

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4.0 PURPOSE AND NEED, MANAGEMENT UNIT, MANAGEMENT OBJECTIVES, AND HISTORY OF FMP DEVELOPMENT

Purpose and Need

The purpose of this framework is to provide a more clearly defined management process when applying a single provision of the Council risk policy for overfishing described in section 5.2.2 of the Omnibus Amendment and implemented in §648.21(d) of the Code of Federal Regulations (CFR). Specifically, this action will define the circumstances under which ABC can be increased if no OFL or OFL proxy is available, and eliminate the conflicting policies that were implemented with a more clearly defined alternative. This action is needed to provide the flexibility to adopt an ABC recommended by the SSC under accepted protocols even when no OFL or OFL proxy is available.

Section 5.2.1 of the Omnibus Amendment affords the SSC the flexibility to deviate from the ABC control rule methods framework or level criteria and recommend an ABC that differs from the result of the ABC control rule calculations. The implementing regulations §648.20 state, "The SSC may deviate from the control rule methods or level criteria and recommend an ABC that differs from the result of the ABC control rule calculation; however, any such deviation must include the following: A description of why the deviation is warranted, description of the methods used to derive the alternative ABC, and an explanation of how the deviation is consistent with National Standard 2." However, section 5.2.2 indicates that if no OFL is available (i.e., No F_{MSY} or F_{MSY} proxy provided through the stock assessment to identify it) and no OFL proxy is provided by the SSC at the time of ABC recommendations, then an upper limit (cap) on allowable increases in ABC will be established. ABC may not be increased until an OFL has been identified. The implementing regulations §648.21(d) state, "If an OFL cannot be determined from the stock assessment, or if a proxy is not provided by the SSC during the ABC recommendation process, ABC levels may not be increased until such time that an OFL has been identified." In summary, while the SSC is permitted to deviate from the ABC control rule methods when recommending an ABC, the risk policy is firm with regards to stocks without an OFL. This conflict has resulted in the need to more clearly define the management process relative to this single provision contained within the Council risk policy. The action proposed is needed to provide both clarity and to retain the flexibility afforded to the SSC in deriving ABC recommendations when no OFL or OFL proxy has been identified.

The Council risk policy and the action proposed apply to the managed resources; therefore, this action would apply to the managed resources contained within six Council FMPs.

Management Unit, Management Objectives, and History of FMP Development

The management units, management objectives, and history of FMP development, as defined in section 4.3 of the EA, for the managed resources and their applicable FMPs is incorporated by reference in this SEA.

5.0 MANAGEMENT ALTERNATIVES

The definition of the no action alternative described in section 5.1 of the EA also applies here and is incorporated by reference in this SEA. The management regimes and associated management measures within the FMPs for the managed resources have been refined over time and codified in regulation. The *status quo* management measures for the managed resources, therefore, each involve a set of indefinite (i.e., in force until otherwise changed) measures that have been established. These measures will continue as implemented, 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.

5.1 Alternative 1 (Status Quo/no action)

Under this status quo/no action alternative, no action will be taken to more clearly define the management process when no OFL or OFL proxy is available. The measures established in the FMPs by the Omnibus Amendment continue in place as described. As such, if the SSC is unable to establish an OFL or OFL proxy for a stock, then the ABC level may not be increased until an OFL or OFL proxy has been identified by the SSC.

5.2 Alternative 2 (Preferred: Clarify Risk Policy Application)

Under this alternative, the flexibility that the Council intended for the SSC to use with the single provision under §648.21(d) will be more clearly defined. This FMP provision specifically addresses the Council risk policy on increasing ABC when no OFL is available (i.e., No F_{MSY} or F_{MSY} proxy provided through the stock assessment to identify it) and no OFL proxy is provided by the SSC.

The SSC already has the flexibility to deviate from the ABC control rule methods, of which the Council risk policy is one component. The SSC must provide a description of why the deviation is warranted, description of the methods used to derive the alternative ABC, and an explanation of how the deviation is consistent with National Standard 2.

The Council intent for the application of this risk policy provision is to prevent overfishing on the managed resources when no OFL or OFL proxy is available. This policy was designed to prevent catch from being increased when there are no criteria available to determine if overfishing will be occurring for the upcoming fishing year (as noted in Section 5.2.2 of the EA). However, it is possible that, under limited circumstances, ABC could be increased for stocks without status determination criteria on overfishing, and still would not be expected to result in overfishing. The SSC may not consider the stock assessment information reliable enough to derive a specific value for an overfishing reference point (OFL or OFL proxy), particularly in data poor situations, but may instead rely on other quantitative or qualitative sources of information to inform the SSC as to the overfishing status of a stock. For example, trends in stock demographics (e.g., compression or expansion of stock age or length structure), fishery

independent or dependent survey information, relative trends in F or biomass (e.g., catch-per-unit effort), or other data sources may not lend themselves directly to a quantitative reference point calculation, but may enable the SSC to determine whether or not the current or projected fishery catch rates are having a negative impact on the stock size or are likely to result in overfishing of the stock. Essentially, alternative 2 would allow the SSC to use all available scientific information when recommending an ABC.

Therefore, the intent of the management process could still be met if ABC was increased and the following two circumstances are met:

1. Biomass-based reference points suggest that the stock is greater than B_{MSY} , and the stock biomass is stable or increasing. If biomass-based reference points are not available, best available science indicates that stock biomass is stable or increasing, and,
2. The SSC must provide a determination that, based on best available science, the proposed increase to the ABC is not expected to result in overfishing of the stock.

Under these circumstances 1 and 2 described above, the SSC must provide a description of why the increase is warranted, describe the method used to derive the increased ABC, and provide a certification that the increase in ABC is not likely to result in overfishing on the stock.

6.0 DESCRIPTION OF THE AFFECTED ENVIRONMENT AND FISHERIES

The affected environment and fisheries, as described in section 6.0 of the EA, is incorporated by reference in this SEA. The following supplements the information provided on the affected environment in the EA. A description of the managed resources, 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 described in the EA's affected environment section. The affected environment section also describes the social and economic environment.

6.1 Description of the Managed Resources

Updates on the status of the U.S. stocks are summarized in a report to Congress quarterly and are available on the following website:

<http://www.nmfs.noaa.gov/sfa/statusoffisheries/SOSmain.htm>

The information provided in this section of the SEA updates Table 8 in section 6.4 of the EA, which summarized information from the 2010 second quarter NMFS status of the stocks report to Congress. Based on the 2012 first quarter update (Box 2), none of the managed resources have overfishing occurring. Butterfish is considered overfished and under a rebuilding plan. Tilefish is under a rebuilding plan. With the exception of butterfish and bluefish, all of the managed resources have stock biomass (either total or spawning stock biomass) above biomass at maximum sustainable yield (BMSY).

Box 2. Stock Status based on NMFS 2012 first quarter Status of Stocks Report to Congress.

FMP	Stock	Overfishing? (Is Fishing Mortality above Threshold?)	Overfished? (Is Biomass below Threshold?)	Management Action Required	Rebuilding Program Progress	B/Bmsy or B/Bmsy proxy
Atlantic Mackerel, Squid and Butterfish	Atlantic mackerel	No	No ^a	N/A	N/A	3.57
Atlantic Mackerel, Squid and Butterfish	Butterfish	No	Yes ^b	Continue Rebuilding	Year 2 of 4-year plan	0.38
Bluefish	Bluefish	No	No	N/A	N/A	0.95
Spiny Dogfish	Spiny dogfish	No	No	N/A	N/A	1.03
Summer Flounder, Scup and Black Sea Bass	Black sea bass	No	No	N/A	N/A	1.11
Summer Flounder, Scup and Black Sea Bass	Scup	No	No	N/A	N/A	2.02
Summer Flounder, Scup and Black Sea Bass	Summer flounder	No	No - Rebuilt	N/A	Rebuilt	1.00
Atlantic Surfclam and Ocean Quahog	Atlantic surfclam	No	No	N/A	N/A	1.62
Atlantic Surfclam and Ocean Quahog	Ocean quahog	No	No	N/A	N/A	1.62
Tilefish	Tilefish	No	No - Rebuilding ^c	Continue Rebuilding	Year 11 of 10-year plan	1.05

^a Although this stock is currently listed as not subject to overfishing and not overfished, the most recent stock assessment conducted for Atlantic mackerel (2010) could not determine the overfishing or overfished status.

^b Although the butterfish stock is listed as overfished, the status of the butterfish stock is unknown because biomass reference points could not be determined in the most recent assessment (SAW 49). Though the butterfish population appears to be declining over time, the underlying causes for population decline are unknown. Despite considerable uncertainty in the recent assessment, no evidence suggests the status of the butterfish stock has improved since the previous assessment (SAW 38). The status of the butterfish stock will remain as overfished in this report until biological reference points can be determined in a future assessment.

^c Although the most recent B/Bmsy = 1.05, this stock has not been declared rebuilt. SARC 48 notes the following: *The biomass estimates for recent years from the ASPIC model are likely over-optimistic because trends in commercial VTR CPUE declined recently in a manner consistent with the passage of the strong 1999 cohort through the population (an interpretation further supported by the length frequency data). The current assessment model (ASPIC) does not account for those factors. Much of the confidence interval around the 2008 biomass estimate falls below the updated BMSY listed above. Based on these considerations there is no convincing evidence that the stock has rebuilt to levels above.*

6.2 Endangered and Protected Resources

The information provided in this section of the SEA updates the information provided in the affected environment of the EA on Endangered Species Act (ESA) listed and Marine Mammal Protected Act (MMPA) protected resources.

River Herring

On August 5, 2011, NMFS received a petition requesting that alewife (*Alosa pseudoharengus*) and blueback (*Alosa aestivalis*) be listed under the Endangered Species Act (ESA) as threatened throughout all or a significant portion of their range. On November 2, 2011, NMFS published a 90-day finding for the petition (76 FR 67652), and announced the initiation of a status review of alewife and blueback to determine if the petition is warranted. Alewife and blueback are now considered candidate species. Within 12 months of the receipt of the petition, NMFS will make a finding as to whether listing alewife or blueback as threatened or endangered is warranted. If listing either species is warranted, NMFS will publish a proposed listing determination and solicit public comments before deciding whether to publish a final determination to list them under the ESA.

Atlantic Sturgeon

A status review for Atlantic sturgeon was completed in 2007 which indicated that five distinct population segments (DPS) of Atlantic sturgeon exist in the United States (ASSRT 2007). On October 6, 2010, NMFS proposed listing these five DPSs of Atlantic sturgeon along the U.S. East Coast as either threatened or endangered species (75 FR 61872 and 75 FR 61904). Final listing rules were published on February 6th, 2012 (77 FR 5880 and 75 FR 5914). The GOM DPS of Atlantic sturgeon has been listed as threatened, and the New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPSs of Atlantic sturgeon have been listed as endangered. Atlantic sturgeon from any of the five DPSs could occur in areas where the MSB fisheries operate.

Atlantic sturgeon is an anadromous species that spawns in relatively low salinity, river environments, but spends most of its life in the marine and estuarine environments from Labrador, Canada to the Saint Johns River, Florida (Holland and Yelverton 1973, Dovel and Berggen 1983, Waldman et al. 1996, Kynard and Horgan 2002, Dadswell 2006, ASSRT 2007). Tracking and tagging studies have shown that subadult and adult Atlantic sturgeon that originate from different rivers mix within the marine environment, utilizing ocean and estuarine waters for life functions such as foraging and overwintering (Stein et al. 2004a, Dadswell 2006, ASSRT 2007, Laney et al. 2007, Dunton et al. 2010). Fishery-dependent data as well as fishery-independent data demonstrate that Atlantic sturgeon use relatively shallow inshore areas of the continental shelf; primarily waters less than 50 m (Stein et al. 2004b, ASMFC 2007, Dunton et al. 2010). The data also suggest regional differences in Atlantic sturgeon depth distribution with sturgeon observed in waters primarily less than 20 m in the Mid-Atlantic Bight and in deeper waters in the Gulf of Maine (Stein et al. 2004b, ASMFC 2007, Dunton et al. 2010). Information on population

sizes for each Atlantic sturgeon DPS is very limited. Based on the best available information, NMFS has concluded that bycatch, vessel strikes, water quality and water availability, dams, lack of regulatory mechanisms for protecting the fish, and dredging are the most significant threats to Atlantic sturgeon.

Comprehensive information on current abundance of Atlantic sturgeon is lacking for all of the spawning rivers (ASSRT 2007). Based on data through 1998, an estimate of 863 spawning adults per year was developed for the Hudson River (Kahnle et al. 2007), and an estimate of 343 spawning adults per year is available for the Altamaha River, GA, based on data collected in 2004-2005 (Schueller and Peterson 2006). Data collected from the Hudson River and Altamaha River studies cannot be used to estimate the total number of adults in either subpopulation, since mature Atlantic sturgeon may not spawn every year, and it is unclear to what extent mature fish in a non-spawning condition occur on the spawning grounds. Nevertheless, since the Hudson and Altamaha Rivers are presumed to have the healthiest Atlantic sturgeon subpopulations within the United States, other U.S. subpopulations are predicted to have fewer spawning adults than either the Hudson or the Altamaha (ASSRT 2007). It is also important to note that the estimates above represent only a fraction of the total population size as spawning adults comprise only a portion of the total population (e.g., this estimate does not include subadults and early life stages).

Atlantic sturgeon are known to be captured in sink gillnet, drift gillnet, and otter trawl gear (Stein et al. 2004a, ASMFC TC 2007). Of these gear types, sink gillnet gear poses the greatest known risk of mortality for sturgeon bycatch (ASMFC TC 2007). Sturgeon deaths were rarely reported in the otter trawl observer dataset (ASMFC TC 2007). However, the level of mortality after release from the gear is unknown (Stein et al. 2004a).

In a review of the Northeast Fishery Observer Program (NEFOP) database for 2001-2006, bycatch rates were calculated using observed Atlantic sturgeon bycatch to fishing effort to estimate total commercial fishery bycatch of Atlantic sturgeon. This review indicated sturgeon bycatch occurred in statistical areas abutting the coast from Massachusetts (statistical area 514) to North Carolina (statistical area 635) (ASMFC TC 2007). Based on the available data, participants in an ASMFC bycatch workshop concluded that sturgeon encounters tended to occur in waters less than 50 m throughout the year, although seasonal patterns exist (ASMFC TC 2007). The ASMFC analysis determined that an average of 650 Atlantic sturgeon mortalities occurred per year (during 2001 to 2006) in sink gillnet fisheries. Stein et al. (2004a), based on a review of the NMFS Observer Database from 1989-2000, found clinal variation in the bycatch rate of sturgeon in sink gillnet gear with lowest rates occurring off of Maine and highest rates off of North Carolina in all months.

There was an average of 114 estimated encounters and 11 estimated Atlantic sturgeon mortalities in small-mesh otter trawl from 2006-2010. Interactions are at the lowest levels in Quarter 1 (January – March) and Quarter 3 (July-September) for small-mesh otter trawl. This is likely due to both how the fisheries that use small-mesh otter are prosecuted

and the biology of the target species. Atlantic sturgeons are the least active during their overwintering period, which includes Quarter 1.

In an updated, preliminary analysis, the Northeast Fisheries Science Center (NEFSC) used data from the NEFOP database to provide updated estimates for the 2006 to 2010 timeframe by fishery management plan. Data were limited by observer coverage to waters outside the coastal boundary (fzone>0) and north of Cape Hatteras, NC. Sturgeon included in the data set were those identified by federal observers as Atlantic sturgeon, as well as those categorized as unknown sturgeon. Limited data collected in the At-Sea Monitoring Program were not included, although preliminary views suggest the incidence of sturgeon encounters was low. The analysis estimates that between 2006 and 2010, a total of 15,587 lb of Atlantic sturgeon was taken in bottom otter trawl (7,740 lb) and sink gillnet (7,848 lb) gear. These gear types are used in the prosecution of several Mid-Atlantic fisheries, including Atlantic mackerel, longfin squid, *Illex* squid, butterflyfish, bluefish, spiny dogfish, summer flounder, scup and black sea bass. The total take numbers for bottom otter trawl and sink gillnet includes takes in fisheries under the jurisdiction of the New England Fisheries Management Council.

Since the Atlantic sturgeon DPSs have been listed as endangered and threatened under the ESA, the ESA Section 7 consultation for the the Summer Flounder, Scup and Black Sea Bass fishery, the Atlantic Mackerel, Squid Butterflyfish, Bluefish, and Spiny Dogfish FMPs have 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.

Biological Opinions are not being reinitiated for the Surfclam/Ocean quahog and Tilefish FMPs, as very few interactions are expected between Atlantic sturgeon and gears deployed to prosecute these fisheries. Atlantic sturgeon are not known to interact with hydraulic clam dredgegear, which is the only gear type used in the surfclam and ocean quahog fishery. Hydraulic clam dredge gear is not known to pose a bycatch risk for Atlantic sturgeon. No documented Atlantic sturgeon interactions with surfclam and ocean quahog gear have been documented (Stein *et al.* 2004; ASMFC TC 2007). Atlantic sturgeon are not known to interact with longline gear, which is the primary gear type used in the tilefish fishery. Otter trawl gear is known to capture Atlantic sturgeon, but it makes up a very small percentage of the tilefish fishery effort. There have been no documented Atlantic sturgeon interactions with tilefish gear. In addition, Atlantic sturgeon prefer shallower waters, with a higher preference for depths less than 50 meters in the Atlantic Ocean (ASMFC TC 2007). Tilefish gear is set in deeper canyons and outcroppings (250-1,200 feet) on the outer continental shelf and upper slope of the U.S. Atlantic coast.

7.0 SUPPLEMENTAL ENVIRONMENTAL IMPACTS

Consistent with the findings of the EA, the actions proposed in this SEA are administrative and have no direct impacts on the valued ecosystem components VECs (i.e., biological, habitat, ESA listed and MMPA protected resources, socioeconomic

environment). The Omnibus Amendment established measures in the FMPs to formalize the process of addressing scientific and management uncertainty when setting catch limits for the upcoming fishing year(s) and to establish a comprehensive system of accountability for catch for the managed resources. The Council risk policy is one component of that process and intended to be used as a variable in the ABC derivation and recommendation process used by the SSC. Clarification of the application of the Council risk policy through the action contained in this SEA does not result in direct impacts because the existence of the risk policy within the FMP and implementing regulations does not result in direct impacts (as described in the EA). It is through the application of this administrative process in the future with respect to catch limits, that impacts will be realized; therefore, indirect impacts are anticipated and described in the sections that follow.

7.1 Biological Impacts

None of the alternatives analyzed in the EA or the proposed measures contained in this SEA would result in direct biological impacts on any of the managed resources. Because alternative 2 more clearly describes the application of a provision of the risk policy that has already been implemented, the indirect impacts of this alternative and the no action/status quo alternative 1 are not expected to differ substantially. Under either alternative, the SSC would be expected to derive an ABC which prevents overfishing on the managed resources and stocks. Neither of these alternatives is expected to alter how the fishery interacts with non-target species in a manner not previously considered nor is it expected to increase encounter rates with other non-target species.

Under the status quo alternative, if a stock does not have an OFL or OFL proxy, the SSC cannot recommend an increase in the ABC relative to the status quo. In addition, the Council would be unable to increase the ACL or associated annual catch targets (ACTs), even if the scientific information suggests the risk of overfishing the stock is sufficiently low and the stock biomass is stable and/or increasing.

Under the action alternative, the SSC can recommend ABC increases for such stocks in limited circumstances with sufficient scientific basis. There could be indirect impacts associated with the resulting catch limits that are derived from the application of a Council risk policy by the SSC that results in higher catch levels relative to the status quo. However, these impacts would not be expected to depart substantially from those levels associated with status quo.

The short-term impacts on the managed resources range from slight negative to neutral, and are directly related to the unquantifiable risk associated with increasing the ABC for such stocks. If the SSC recommends an ABC increase that does not ultimately result in overfishing of the stock, the impacts to the managed resource are neutral as the risk of overfishing was not increased. If the SSC recommends an increase in ABC that does ultimately result in overfishing, the impacts to the managed resource could be negative because this alternative allowed for a higher risk of overfishing. The NS1 Guidelines indicate the upper limit on the probability of overfishing at a given catch should not

exceed 50 percent and should be something lower. The Council risk policy indicates a maximum tolerance for the probability of overfishing a typical stock at 40 percent and an atypical stock at 35 percent. These provisions and the SSC responsibility to provide the Council with an ABC which prevents overfishing mitigate these indirect negative biological impacts on the managed resources. As such, the potential indirect biological impacts that result from an increase in ABC would be considered slight negative as the SSC must certify that the proposed increase in ABC is not expected, based on the best scientific information available, to result in overfishing of the stock.

Future catch levels for the managed resources that result from the SSC recommended ABC and reduce the risk of overfishing would be expected to result in indirect long-term positive biological impacts. As such, the anticipated indirect biological impacts associated with alternative 2, would range from slight negative to neutral short-term, and neutral long-term impacts, when compared to the status quo.

7.2 Habitat Impacts

None of the alternatives analyzed in the EA or the proposed measures contained in this SEA would result in direct impacts on habitat. Because alternative 2 more clearly describes the application of the risk policy, the indirect impacts of this alternative and the no action/status quo alternative 1 are expected to be similar. Under either alternative, the SSC would be expected to derive an ABC which prevents overfishing on the managed resources and stocks. There could be indirect impacts on habitat associated with the resulting catch limits that are derived from the application of a Council risk policy by the SSC that results in lower or higher fishing effort depending on how the managed resource fisheries respond, and associated gear contact with habitat, relative to the status quo. Increases in catch limits (as could occur under alternative 2), do not necessarily translate to increased fishing effort as the fleet may opt to fish more efficiently in response to regulation changes (i.e., catch more fish in fewer trips; less effort) or changes in fish availability may alter the catch per unit effort. Therefore, these habitat impacts would not be expected to depart substantially from those levels associated with status quo. The NS1 Guidelines indicate the upper limit on the probability of overfishing at a given catch should not exceed 50 percent and should be something lower, and the Council risk policy indicates a maximum tolerance for the probability of overfishing a typical stock at 40 percent and an atypical stock at 35 percent. These provisions and the SSC responsibility to provide the Council with an ABC which prevents overfishing would prevent unconstrained increases in catch levels and associated unconstrained fishing effort. As such, the anticipated indirect habitat impacts associated with alternative 2 would be neutral to slight negative, when compared to the status quo.

7.3 Impacts on ESA Listed and MMPA Protected Resources

None of the alternatives analyzed in the EA or the proposed measures contained in this SEA would result in direct impacts on ESA listed or MMPA protected resources. Because alternative 2 more clearly describes the application of the risk policy, the indirect impacts of this alternative and the no action/status quo alternative 1 are expected

to be similar. Under either alternative, the SSC would be expected to derive an ABC which prevents overfishing on the managed resources and stocks. There could be indirect impacts on ESA listed or MMPA protected resources associated with the resulting catch limits that are derived from the application of a Council risk policy by the SSC that results in lower or higher fishing effort depending on how the fishery responds, and associated interactions with protected resources, relative to the status quo. Increases in catch limits (as could occur under alternative 2), do not necessarily translate to increased fishing effort as the fleet may opt to fish more efficiently in response to regulation changes (i.e., catch more fish in fewer trips; less effort) or changes in fish availability may alter the catch per unit effort. Therefore, these impacts would not be expected to depart substantially from those levels associated with status quo. The NS1 Guidelines indicate the upper limit on the probability of overfishing at a given catch should not exceed 50 percent and should be something lower. The Council risk policy indicates a maximum tolerance for the probability of overfishing a typical stock at 40 percent and an atypical stock at 35 percent. These provisions and the SSC responsibility to provide the Council with an ABC which prevents overfishing would prevent unconstrained increases in catch levels and associated unconstrained fishing effort. As such, the anticipated indirect ESA listed or MMPA protected resources associated with alternative 2 would be neutral to slight negative, when compared to the status quo.

7.4 Socioeconomic Impacts

None of the alternatives analyzed in the EA or the proposed measures contained in this SEA would result in direct impacts on social and economic environment. Because alternative 2 more clearly describes the application of the risk policy, the indirect impacts of this alternative and the no action/status quo alternative 1 are expected to be similar. Under either alternative, the SSC would be expected to derive an ABC which prevents overfishing on the managed resources and stocks. There could be indirect impacts on fishing vessels, fleets, or ports associated with the resulting catch limits that are derived from the application of the Council risk policy by the SSC, depending on the resulting catch limits that are derived. However, these impacts would be expected to be similar to those under the status quo. The NS1 Guidelines indicate the upper limit on the probability of overfishing at a given catch should not exceed 50 percent and should be something lower. The Council risk policy indicates a maximum tolerance for the probability of overfishing a typical stock at 40 percent and an atypical stock at 35 percent. These provisions and the SSC responsibility to provide the Council with an ABC which prevents overfishing would be expected to ensure the resource is managed sustainably and should result in long-term positive social and economic impacts under either the status quo or alternative 2. Under the action alternative, the SSC can recommend ABC increases under limited circumstances with sufficient scientific basis, which could result in slight short term positive social and economic impacts if the increase results in additional landings of the target species. As such, the anticipated indirect impacts on the social and economic environment associated with alternative 2 would be neutral to slight positive short-term, and neutral long-term when compared to the status quo.

7.5 Cumulative Impacts

The Cumulative Effects Assessment, as described in section 7.0 of the EA, is incorporated by reference in this SEA. The following supplements the information provided on the cumulative effects in the EA which indicated that all the actions that have been implemented from that document were expected to result in neutral to positive impacts on biological, habitat, and protected resources, and long-term positive impacts on the socioeconomic environment.

Alternative 2 would not have a significant cumulative effect on any of the valued ecosystem components (VECs) outlined and described in section 6.0 of the EA. This is consistent with the findings of the EA, which considered the cumulative effects of the previous Council risk policy, of which the action alternative in this SEA more clearly describes. It is expected that the cumulative impacts under this action are merely an extension of those impacts considered when evaluating the comprehensive administrative program to set annual catch limits that address both scientific and management uncertainty, with a system of catch accountability, of which the risk policy is one component. Therefore the patterns of expected positive cumulative effects from those actions would be expected by extension from this action.

When the proposed action in this SEA (i.e., alternative 2) is considered in conjunction with all the other pressures placed on fisheries by past, present, and reasonably foreseeable future actions, it is not expected to result in any significant impacts, positive or negative (Box 3).

Box 3. Magnitude and significance of the cumulative effects; the additive and synergistic effects of the proposed action, as well as past, present, and future actions.				
VEC	Status in 2010	Net Impact of P, Pr, and RFF Actions	Impact of the Proposed Action in this SEA	Significant Cumulative Effects
Managed Resource	Complex and variable (Section 6.1)	Positive (Sections 7.4.4 and 7.4.5.1)	Short-term slight negative to neutral; Long-term neutral (Sections 7.1-7.3)	None
Non-target Species	Complex and variable (Section 6.2)	Positive (Sections 7.4.4 and 7.4.5.2)	Neutral to slight negative (Sections 7.1-7.3)	None
Habitat	Complex and variable (Section 6.3)	Neutral to positive (Sections 7.4.4 and 7.4.5.3)	Neutral to slight negative (Sections 7.1-7.3)	None
Protected Resources	Complex and variable (Section 6.4)	Positive (Sections 7.4.4 and 7.4.5.4)	Neutral to slight negative (Sections 7.1-7.3)	None
Human Communities	Complex and variable (Section 6.5)	Positive (Sections 7.4.4 and 7.4.5.5)	Short-term slight positive to neutral; Long-term neutral (Sections 7.1-7.3)	None

8.0 APPLICABLE LAWS

8.1 Magnuson-Stevens Fishery Conservation and Management Act (MSA) and National Standards

Section 301 of the MSA requires that FMPs contain conservation and management measures that are consistent with the ten National Standards. The most recent FMP amendments for the managed resources address how the management actions implemented comply with the National Standards. First and foremost, the Council continues to meet the obligations of National Standard 1 by adopting and implementing conservation and management measures that will continue to prevent overfishing, while achieving, on a continuing basis, the optimum yield for the managed resources and the U.S. fishing industry.

Specifically, this action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. The risk policy implemented from the EA and the action described in this SEA were developed to address the revised NS1 guidelines; therefore, the Council action, when taken in conjunction with existing measures, is part of a complex process of setting catch limits which address both scientific and management uncertainty, consider the Council risk policy for overfishing of stocks, and applies a comprehensive system of accountability for all components of the catch for each of the managed resources. By addressing both scientific and management uncertainty, and considering the Council's risk policy and its provisions when setting catch limits less than the OFL, the risk of overfishing these managed resources will be reduced and OY can be achieved in these fisheries. The Council uses the best scientific information available (National Standard 2) and the Council's SSC will continue to provide advice such that the Council's decisions are informed by the best science available, and all sources of available science as a result of this more clearly described risk policy provision addressed within this document. The Council manages all of its resources throughout their range (National Standard 3) and this action does not alter the management units or management jurisdictions for any of these resources. These management measures do not discriminate among residents of different states (National Standard 4) because the application of catch limits, of which the risk policy is one variable, and accountability measures, are applied to the fishery as a whole or to the fishing sectors (i.e., recreational or commercial). The positive impacts which result from preventing overfishing and achieving OY should be realized by all fishery participants, irrespective of state of residency. The actions taken within this document do not have economic allocation as their sole purpose (National Standard 5); these measures specifically address the NS1 objectives of preventing overfishing and achieving OY, by providing for a more clearly described Council risk policy, and the catch limits and system of accountability merely overlay the fishery allocations that were previously established and deemed consistent with these National Standards. These measures account for variations in these fisheries (National Standard 6) through consideration of the inherent scientific and management uncertainty associated with assessing these

resources, as well as the variability in scientific information and Council tolerance for risk of overfishing the stocks, when implementing fishery management measures and establishing catch limits for these fisheries. This action avoids unnecessary duplication (National Standard 7) and more clearly describes a provision of the Council risk policy which will be applied in conjunction with existing FMP measures to address any inconsistencies with existing regulations. This action would not impose or result in any changes to fishing operations, fishing behavior, fishing gears used, or areas fished, and therefore should not alter the manner in which fishing communities participant in these fisheries. This action considers fishing communities (National Standard 8); this system of catch limits, and associated risk policy, is designed to prevent overfishing, rebuild stocks that are overfished, and to maintain stocks at a level that produces OY. Achieving these objectives will provide the greatest social and economic benefits to fishery participants and fishing communities. This action does not propose any measures that would affect safety at sea (National Standard 10). Finally, actions taken are consistent with National Standard 9, because the proposed measures more clearly describes the application of a provision of the risk policy that has already been implemented as part of the comprehensive process of addressing scientific uncertainty and management uncertainty when setting catch limits, which consider all components of the catch, including bycatch.

The Council has implemented many regulations that have indirectly acted to reduce fishing gear impacts on EFH. By continuing to meet the National Standards requirements of the MSA through future FMP amendments, FMP framework adjustments, and specifications, the Council will insure that cumulative impacts of these actions will remain positive overall for the ports and communities that depend on these fisheries, the Nation as a whole, and certainly for the resources.

8.2 NEPA (FONSI)

National Oceanic and Atmospheric Administration Administrative Order 216-6 (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. In addition, the Council on Environmental Quality regulations at 40 C.F.R. §1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant to making a finding of no significant impact and has been considered individually, as well as in combination with the others. The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

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

The proposed action is not expected to jeopardize the sustainability of any target species affected by the action (section 6.0 of the SEA and EA). The action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits with a comprehensive system of accountability for catch (including both landings and discards) for each of the managed resources. As such, the impacts of these alternatives on any species that may be affected by the measures are administrative

in nature; there are no significant physical or biological impacts associated with the alternatives (section 7.0 of the SEA and EA).

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

The proposed action is not expected to jeopardize the sustainability of any non-target species (section 6.0 of the SEA and EA). These measures would not impose or result in any changes to fishing operations, fishing behavior, fishing gears used, or areas fished. The proposed action is administrative in nature and will therefore have no direct physical or biological impacts, and only insignificant indirect and cumulative impacts (section 7.0 of the SEA and EA).

3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs?

The proposed action is not expected to cause substantial damage to the ocean, coastal habitats, and/or EFH as defined under the Magnuson-Stevens Act and identified in the FMP. In general, bottom-tending mobile gear, primarily otter trawls and hydraulic dredges, has the potential to adversely affect EFH for the species as detailed in section 6.0 of the SEA and EA. The action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits with a comprehensive system of accountability for catch (including both landings and discards) for each of the managed resources. The direct impacts of the preferred alternatives on habitat are wholly administrative in nature; there are no direct impacts, and only insignificant indirect and cumulative effects associated with the preferred alternatives (section 7.0 of the SEA and EA and 9.0 of the EA).

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

The proposed action would not alter the manner in which the industry conducts fishing activities for the managed resources (section 6.0 of the SEA and EA). Therefore, no changes in fishing behavior that would affect safety are anticipated. The overall effect of the proposed actions on these fisheries, including the communities in which they operate, will not impact adversely public health or safety (section 7.0 of the SEA and EA). NMFS will consider comments received concerning safety and public health issues.

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

The proposed action is not expected to adversely affect ESA listed, threatened, or endangered, marine mammals, or critical habitat of these species (section 6.0 of the SEA and EA). These measures would not impose or result in any changes to fishing operations, fishing behavior, fishing gears used, or areas fished. As such, the impacts of the alternatives on any species that may be affected by the measures are wholly

administrative in nature; there are no expected significant impacts on ESA proposed, threatened, or endangered, and MMPA protected species associated with the alternatives (section 7.0 of the SEA and EA).

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

The proposed action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area (section 6.0 of the SEA and EA). The action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. These measures would not impose or result in any changes to fishing operations, fishing behavior, fishing gears used, or areas fished. As such, the impacts of the preferred alternatives on biodiversity and ecosystem function within the affected area are administrative in nature; there are no significant impacts on biodiversity and ecosystem function associated with the alternatives (section 7.0 of the SEA and EA).

7) Are significant social or economic impacts interrelated with natural or physical environmental effects?

The proposed action is not expected to have a substantial impact on the natural or physical environment (section 6.0 of the SEA and EA). The action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. These measures would not impose or result in any changes to fishing operations, fishing behavior, fishing gears used, or areas fished. As such, the impacts of the preferred alternatives are administrative in nature and not expected to result in significant social or economic impacts interrelated with natural or physical environmental effects (section 7.0 of the SEA and EA).

8) Are the effects on the quality of the human environment likely to be highly controversial?

The impacts of the proposed measures on the human environment are described in section 7.0 of this SEA and the EA. The action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. These measures are administrative in nature and build on measures contained in the FMP which have been in place for many years. Thus, the measures contained in this action are not expected to be highly controversial.

9) Can the proposed action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?

The action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. The fisheries for the managed resources are not known to be prosecuted in any unique areas such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas (section 6.0 of the SEA and EA). Therefore, the alternatives are not expected to have a substantial impact on any of these areas (section 7.0 of the SEA and EA).

10) Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?

The impacts of the proposed measures on the human environment are described in section 7.0 of the SEA and the EA. The action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. These measures are administrative in nature and build on measures contained in the FMP which have been in place for many years. The measures contained in this action are not expected to have highly uncertain effects or to involve unique or unknown risks on the human environment.

11) Is the proposed action related to other actions with individually insignificant, but cumulatively significant impacts?

As discussed in section 7.0 of the SEA and EA, the proposed action is not expected to have individually insignificant, but cumulatively significant impacts. The synergistic interaction of improvements in the efficiency of the fishery is expected to generate positive impacts overall. The proposed actions, together with past, present, and future actions, are not expected to result in significant cumulative impacts on the biological, physical, and human components of the environment.

12) Is the proposed action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?

The impacts of the proposed measures described in section 5.0 of the SEA on the human environment are provided in section 7.0 of the SEA and the EA. The action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. The fisheries for the managed resources are not known to be prosecuted in any areas that might affect districts, sites, highways, structures, or objects listed in, or eligible for listing in, the National Register of Historic Places or cause the loss or destruction of significant scientific, cultural or historical resources (section 6.0 of the SEA and EA). Therefore, the proposed action is not expected to affect any of these areas.

13) Can the proposed action reasonably be expected to result in the introduction or spread of a nonindigenous species?

The action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. There is no evidence or indication that the managed resources fisheries have ever resulted in the introduction or spread of nonindigenous species. None of the proposed measures is expected to substantially change the manner in which these fisheries are prosecuted. Therefore, it is highly unlikely that the proposed action would be expected to result in the introduction or spread of a non-indigenous species.

14) Is the proposed action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?

The action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. The performance of the fisheries relative to catch limits and the entire system of catch limits and accountability will be monitored and measures contained within the FMP will be adjusted in response to those conditions in the future. Therefore, these actions are not expected to result in significant effects, nor do they represent a decision in principle about a future consideration.

15) Can the proposed action reasonably be expected to threaten a violation of federal, State, or local law or requirements imposed for the protection of the environment?

The action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. The action is not expected to alter fishing methods or activities such that they threaten a violation of federal, State, or local law or requirements imposed for the protection of the environment. In fact, the proposed measures have been found to be consistent with other applicable laws (see sections 8.2-8.11 below in this SEA and EA).

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

The impacts of the proposed alternatives on the biological, physical, and human environment are described in section 7.0 of this SEA and the EA. The cumulative effects of the proposed action on target and non-target species are detailed in section 7.0 of the SEA and the EA. None of the proposed measures are expected significantly alter the manner in which the fishery is prosecuted. The synergistic interaction of improvements in the manner in which scientific and management uncertainty is addressed when specifying catch limits for the managed resources fisheries is expected to generate positive impacts overall.

DETERMINATION

In view of the information presented in this supplemental Environmental Assessment framework and the analysis contained in the original Environmental Assessment prepared

for the Omnibus Amendment document, it is hereby determined that the proposed actions in this framework will not significantly impact the quality of the human environment as described above and in the Environmental Assessment. In addition, all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

Regional Administrator for NERO, NMFS, NOAA

Date

8.3 Endangered Species Act

Sections 6.2 in this SEA and 6.4 of the EA should be referenced for an assessment of the impacts of the proposed action on endangered species and protected resources. None of the actions proposed in this document are expected to alter fishing methods or activities. On February 9, 2012, formal consultations were reinitiated for the Summer Flounder, Scup and Black Sea Bass fishery, the Atlantic Mackerel, Squid Butterfish, Bluefish, and Spiny Dogfish FMPs. NMFS determined that there will not be any irreversible or irretrievable commitment of resources under section 7(d) of the ESA during the consultation period that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures. NMFS also determined that the continued authorization of these fisheries during the consultation period, including the authorization of the fishery to operate under the measures proposed in this action, is not likely to jeopardize the continued existence of ESA-listed species or result in the destructive or adverse modification of critical habitat. NMFS will implement any appropriate measures outlined in the Biological Opinion to mitigate harm to Atlantic sturgeon. Therefore, this action is not expected to affect proposed, threatened, or endangered species or critical habitat in any manner not considered in previous consultations on the fisheries. As detailed above, the five Atlantic sturgeon DPSs listed under the ESA do not meet the criteria to reinitiate consultation on Tilefish, Surfclam and Ocean Quahog FMPs.

8.4 Marine Mammal Protection Act

Sections 6.2 in this SEA and 6.4 of the EA should be referenced for an assessment of the impacts of the proposed action on marine mammals. None of the actions proposed in this document are expected to alter fishing methods or activities. Therefore, this action is not expected to affect marine mammals or critical habitat in any manner not considered in previous consultations on the fisheries.

8.5 Coastal Zone Management Act

The Coastal Zone Management Act (CZMA) of 1972, as amended, provides measures for ensuring stability of productive fishery habitat while striving to balance development pressures with social, economic, cultural, and other impacts on the coastal zone. It is

recognized that responsible management of both coastal zones and fish stocks must involve mutually supportive goals. The Council has developed this document and will submit it to NMFS; NMFS must determine whether this action is consistent to the maximum extent practicable with the CZM programs for each state (Maine through North Carolina) and forward this consistency determination to those states for concurrence prior to the publication of a proposed rule.

8.6 Administrative Procedure Act

Sections 551-553 of the Federal Administrative Procedure Act establish procedural requirements applicable to informal rulemaking by federal agencies. The purpose is to ensure public access to the federal rulemaking process and to give the public notice and opportunity to comment before the agency promulgates new regulations.

The Administrative Procedure Act requires solicitation and review of public comments on actions taken in the development of an FMP and subsequent FMP amendment and framework adjustments. Development of this framework provided many opportunities for public review, input, and access to the rulemaking process. This proposed action and the document were developed through multi-stage process that was open to review by affected members of the public. The public had the opportunity to review and comment on this action at Council meetings from February 14-16, 2012 (Virginia Beach, VA) and April 10-12, 2012 (Duck, NC). In addition, the public will have further opportunity to comment on this document once NMFS publishes a request for comments notice in the Federal Register (FR).

8.7 Section 515 (Data Quality Act)

Utility of Information Product

The action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. This document includes: a description of the alternatives considered, the Council-preferred action and rationale for selection, and any changes to the implementing regulations of the FMP. As such, this document enables the implementing agency (NMFS) to make a decision on the actions proposed and this SEA and the EA serves as a supporting document for the proposed rule.

The action contained within this document was developed to be consistent with the FMP, MSA, and other applicable laws, through a multi-stage process that was open to review by affected members of the public. The public had the opportunity to review and comment on management measures during the same meetings listed above in section 8.6. The public will have further opportunity to comment once NMFS publishes a request for comments on the proposed regulations in the FR.

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 MSA; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 CFR 229.11, Confidentiality of information collected under the Marine Mammal Protection Act).

Objectivity of Information Product

The category of information product that applies here is “Natural Resource Plans.” This section (section 8.0) describes how this document was developed to be consistent with any applicable laws, including MSA with any of the applicable National Standards. The analyses used to develop the alternatives (i.e., policy choices) are based upon the best scientific information available and the most up to date information is used to develop the SEA and EA which evaluates the impacts of those alternatives (see sections 5.0, 6.0, and 7.0 of this document for additional details). The specialists who worked with these core data sets and population assessment models are familiar with the most recent analytical techniques and are familiar with the available data and information relevant to the Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, Atlantic surfclam, ocean quahog, and tilefish fisheries.

The review process for this document involves MAFMC, NEFSC, NERO, and NMFS headquarters. The NEFSC technical review is conducted by senior level scientists with specialties in fisheries ecology, population dynamics and biology, as well as economics and social anthropology. The MAFMC review process involves public meetings at which affected stakeholders have the opportunity to comments on proposed management measures. Review by NERO is conducted by those with expertise in fisheries management and policy, habitat conservation, protected resources, and compliance with the applicable law. Final approval of the Framework action and clearance of the rule is conducted by staff at NOAA Fisheries Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget.

8.8 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 currently associated with this action do not propose to modify any existing collections, or to add any new collections; therefore, no review under the PRA is necessary.

8.9 Impacts of the Plan Relative to Federalism/EO 13132

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

8.10 Environmental Justice/EO 12898

This EO 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.” EO 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 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 action contained within this document are not expected to affect participation in the Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, Atlantic surfclam, ocean quahog, and tilefish fisheries. Since the proposed action represents no changes relative to the current levels of participation in these fisheries, no negative economic or social effects in the context of EO 12898 are anticipated as a result. Therefore, the proposed action is not expected to cause disproportionately high and adverse human health, environmental or economic effects on minority populations, low-income populations, or Indian tribes.

8.11 Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA)

A Regulatory Impact Review (RIR) is required by NMFS for all regulatory actions that either implement a new FMP or significantly amend an existing FMP. An RIR is required by NMFS for all regulatory actions that are part of the “public interest.” The RIR is a required component of the process of preparing and reviewing FMPs or amendments and provides a comprehensive review of the economic impacts associated with proposed regulatory actions. The RIR addresses many concerns posed by the regulatory philosophy and principles of E.O. 12866. The RIR serves as the basis for assessing whether or not any proposed regulation is a “significant regulatory action” under criteria specified by E.O. 12866. The RIR must provide the following information: (1) A comprehensive review of the level and incidence of economic impacts associated with a proposed regulatory action or actions; (2) a review of the problems and policy objectives prompting the regulatory proposals; and (3) an evaluation of the major alternatives that could be used to meet these objectives. In addition, an RIR must ensure that the regulatory agency systematically and comprehensively consider all available alternatives such that the public welfare can be enhanced in the most efficient and cost effective manner. Under the Regulatory Flexibility Act (RFA) of 1980, as amended by Public Law 104-121, new FMPs or amendments also require an assessment of whether or not proposed regulations would have a significant economic impact on a substantial number of small business entities. The primary purposes of the RFA are to relieve small businesses, small organizations, and small Government agencies from burdensome regulations and record-keeping requirements, to the extent possible.

This section of the Framework provides an assessment and discussion of the potential economic impacts, as required of an RIR and the RFA, of various proposed actions consistent with the purpose of this action.

8.11.1 Basis and Purpose for the Action

The legal basis for this Framework can be found in the MSA (16 U.S.C. §1853(a)(15)), which includes requirements for ACLs and AMs and other provisions regarding preventing and ending overfishing including a Council risk policy. This is described further in section 4.0. The action is needed to provide both clarity and to retain the flexibility afforded to the SSC in deriving ABC recommendations when no OFL or OFL proxy has been identified. The purpose of the action is to more clearly describe the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. The purpose, need, and objectives of this Framework are described further in section 4.0.

8.11.2 Evaluation of E.O 12866 Significance

8.11.2.1 Description of the Management Objectives

A complete description of the purpose and need and objectives of this action is found under section 4.0. This action is taken under the authority of the MSA and regulations at 50 CFR part 648.

8.11.2.2 Description of the Fishery

A description of the managed resources fisheries is presented in section 6.0 of the SEA and EA and includes information on landings, ex-vessel prices, and an analysis of permit data. Detailed descriptions of the economic aspects of the commercial and recreational fisheries for the managed resources, descriptions of important ports and communities, as well as the management regimes are available in the respective FMPs.

8.11.2.3 A Statement of the Problem

A statement of the problem for resolution is presented under section 1.0. The purpose and need for this amendment is found in section 4.0.

8.11.2.4 A Description of Each Alternative

A full description of the alternatives analyzed in this section is presented in section 5.0.

Description of the Affected Entities

A description of the affected entities is provided in section 8.11.3.1 of the IRFA. As noted in earlier sections (see section 5.0), this action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. Thus, the scope of the impacts associated with this Framework is atypical.

Most actions focus on changes to fishing regulations in order to effect a direct change in either fishing effort or fishing practices, and these regulatory changes generally result in direct effect on fishing vessel operations (by modifying where, when, and/or how fishing may take place). These types of changes to fishing vessel operations almost always have socio-economic impacts on the participants of the subject fisheries.

However, as the focus of this Framework is on more clearly describing and aspect of the administrative processes that have already been developed to be consistent with NS1 and implemented, there are therefore no direct impacts. Although this Framework addresses all fisheries operating for the managed resources, the actual economic impacts associated with this Framework are considered to be negligible. More details on these fisheries are available in section 6.0 of the SEA and EA.

8.11.2.5 Determination of Significance under E.O. 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 the various alternatives, including cumulative impacts, is presented throughout sections 7.0. The proposed action more clearly describes the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. These actions would not affect the conservation objectives associated with each of the managed fisheries. Thus, while having no immediate direct economic impact, these actions will provide greater assurance that the current and future flow of commercial and recreational 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.

8.11.3 Initial Regulatory flexibility Analysis

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.

8.11.3.1 Description and Estimate of Number of Small Entities to Which the Action Applies

The implementation of this action will result in a more clearly described provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits. Because this action would modify the Council risk policy which is part of the process to set catch for all the Council managed resources fisheries described in this SEA and EA, the small entities to which this action applies include all federally permitted fishing vessels for the managed resources operating in the Northeast Region. These vessels include both small regulated entities engaged in either commercial harvesting or a party/charter business activity. The small business size standard for commercial fishing (NAICS 1411) is \$4 million in gross sales while the size standard for party/charter businesses (NAICS

487210) is \$6.5 million in gross sales. During fishing year 2011, the total number of Federal fishing permits issued either a recreational or a commercial permit for the managed resources in the Northeast Region were 13,874 and 3,533, respectively (Northeast Federal permit database, as of May 9, 2012). However, since many vessels are issued multiple permits the number of unique fishing entities totaled 2,875. Of these vessels, 2,113 held only a commercial harvesting permit, 167 held only a party/charter permit, while the remaining 595 operating units held at least one commercial harvest permit and at least one party/charter permit. Nearly 60 percent (1,720 vessels) of the 2,875 permitted vessels did report at least some sales of commercially caught species in the Northeast region. In addition, 164 vessels that did not hold a commercial permit for the managed species under the FMP reported landings of the managed species covered by the proposed action resources since they may have held other commercial permits. However, only about one-third of these vessels (934) reported landing of at least one pound of the managed species covered by the proposed action. Based on total sales, none of the 934 participating regulated commercial fishing entities that had sales exceeding \$4 million (Northeast Federal dealer database, as of April 27, 2012).

A total of 762 vessels were issued at least one recreation party/charter permit during 2011. Of these small entities 506 carried for-hire passengers on at least one occasion of which 483 retained at least one pound of any of the species managed under the proposed action (Northeast Federal trip report database, as of May 10, 2012). Note that this number includes 91 of the 167 permitted vessels that only held recreational permits and 314 of the 597 permitted vessels that held both commercial and recreational party/charter permits. Based on average passenger fees of \$64.46³ none of the participating party/charter operators would exceed \$6.5 million so all participating entities were determined to be small entities under the SBA size standards.

8.11.3.2 Economic Impacts on Small Entities

The economic impacts associated with each alternative considered in the development of this Framework are evaluated throughout section 7.0. For the purposes of the RFA certification review, the following addresses the economic impacts associated with each element of the proposed action.

This element of the proposed action focuses on more clearly describing the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits (see section 5.0). Because the actions proposed in this section are focused on methods and procedures, of which the Council risk policy is one component, to specify ABC, and are administrative in nature, there are no marginal changes to the economic impacts on small entities associated with this element (see section 7.0). If in the future, the implementation of the administrative processes described in this document indirectly results in any economic impacts, those would be identified and analyzed in the future management action.

³ The 2006 party/charter average expenditure estimate (\$57.76; Table 12) was adjusted to its 2011 equivalent using the Bureau of Labor's Consumer Price Index.

8.11.3.3 Criteria Used to Evaluate the Action

8.11.3.3.1 Significant Economic Impacts

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.

8.11.3.3.1.1 Disproportionality

All of the commercial and recreational 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 administrative processes described in this Framework indirectly results in any economic impacts, those would be identified and analyzed in the future management action.

Since all party/charter operators were determined to be small the disproportionality standard does not apply.

8.11.3.3.1.2 Profitability

As noted above, none of the elements of this proposed action are associated with economic impacts on small entities. This is the case for both small regulated entities engaged in either commercial fishing or recreational party/charter activities. Since the proposed action would have no economic impact on small entities there would no change in expected profitability.

8.11.3.4 Substantial Number of Small Entities

Indirectly, the methodologies established by this action apply generally across all of the managed resource fisheries under the subject FMPs. However, although a substantial number of entities are involved in these fisheries, none of these entities are expected to incur any economic impacts as a result of this action.

8.11.3.5 Description of and Explanation of, the Basis for All Assumptions Used

Because the actions proposed in this Framework are all are focused on more clearly describing the application of a provision of the risk policy that has already been implemented as part of the process of addressing scientific uncertainty and management uncertainty when setting catch limits, there are no direct economic impacts associated with this Framework. No assumptions are necessary to conduct the analyses in support of this conclusion.

9.0 LITERATURE CITED

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10.0 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 NMFS formatting requirements.

Copies of the Framework Supplemental Environmental Assessment, the Omnibus ACL/AM Environmental Assessment, and other associated documents are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901 and Daniel Morris, Acting Regional Administrator, NMFS Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930