

AMENDMENT 8 to the MULTISPECIES FISHERY MANAGEMENT PLAN  
AMENDMENT 6 to the AMERICAN LOBSTER FISHERY MANAGEMENT PLAN  
AMENDMENT 6 to the ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN  
and an  
DRAFT ENVIRONMENTAL ASSESSMENT  
for  
RESOLVING GEAR CONFLICT IN  
THE GULF OF MAINE, GEORGES BANK, AND SOUTHERN NEW ENGLAND

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Prepared by the  
New England Fishery Management Council  
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National Marine Fisheries Service

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## 1.0 EXECUTIVE SUMMARY

The Council proposes to amend the Multispecies, the American Lobster, and the Atlantic Sea Scallop Fishery Management Plans (FMP) by including a framework procedure that would provide a process for resolving gear conflicts involving the fisheries managed by this Plan. These amendments would allow the Council and other management bodies to simultaneously change several plans through a framework process for special gear management areas. No management measures will be directly changed by this action. The Council also proposed to modify objectives of the FMP to make them consistent with future gear conflict regulations.

The measures listed below, and any others now included in the FMPs, along with a public process for development of those measures, would constitute the framework adjustment procedure. The preferred alternative includes the following generic management measures to each FMP:

- 1) Mandatory monitoring of a radio channel by fishing vessels,
- 2) fixed gear location reporting and plotting requirements,
- 3) standards of operation when gear conflicts occur,
- 4) fixed gear marking and setting practices,
- 5) gear restrictions for specific areas (including time and area closures),
- 6) vessel monitoring systems,
- 7) restrictions on the number of fishing vessels or amount of gear, and
- 8) special permit conditions.

A more detailed description of the framework process for making regulatory changes to manage gear conflict and a description of the management measures that could be adjusted through this process are given in Section 4.0, beginning on page 11. The beneficial and adverse impacts of the framework adjustment process are discussed on Section 7.4, beginning on page 37.

The intent of the framework procedure is to allow local groups of competing types of fishermen to request management assistance and, through the Council, make changes to the boundaries or rules for fishing in specific gear management areas. This procedure would enable the Council to quickly respond to gear conflicts by making simultaneous regulatory adjustments to one or more of the existing plans. The Council expects the framework adjustment procedure to be more acceptable than separate, stand-alone amendments because the proposed management measures can be introduced and submitted as a single package for Secretarial review.

A framework process to resolve gear conflict is needed because previous efforts to develop gear conflict regulations under a stand-alone amendment or plan have failed. Not only is the Council stymied by the absence of guidance in the Magnuson Act to address gear conflict problems, but previous policy guidance and disapproval of plan amendments have discouraged Council action to resolve these problems.

No management measures will be directly changed by this action. Future efforts to resolve gear conflict through regulatory change would be made via framework adjustments.

Gear conflict has been an historic problem for fishermen. In New England, gear conflict arose as fishermen switched from hook and line gear to trawls to catch groundfish. Foreign fishing also produced gear conflict, because this activity caused competition for the same resource targeted by U.S. fishermen using smaller trawls on single vessels. Foreign fishing also contributed to the loss of offshore lobster trap gear, a more typical gear conflict. During the late 1970's and early 1980's, fishermen using gill nets became more adept at setting their gear on hard bottom, places historically left to fishermen using hook and line gear. This conflict erupted and the Council unsuccessfully tried to manage the problem. From the early 1990's to the present, trawl fishermen have begun to target non-traditional species (monkfish, dogfish, whiting) in areas historically fished by lobster traps and anchored gill nets.

Whenever gear conflict was infrequent, fishermen working close to one another were often able to forge informal agreements to set their gear in certain areas and follow certain guidelines. This method of resolving the problem can be effective as long as the target species do not have a high degree of overlap or when the resource is abundant enough to support the level of fishing effort. When market demand increases, especially for an underutilized species, or when traditional species are not abundant, shifts in fishing effort occur. These shifts can cause gear conflict when vessels using incompatible methods damage other fishing gear.

A combination of the above conditions caused fishermen to target monkfish in Southern New England. Gear conflicts initially increased in 1991-92, but were brought under control by an industry-based voluntary agreement. Declining abundance of groundfish and localized depletion of monkfish caused fishermen to again move into areas used by lobster fishermen and gear conflicts rose to even higher levels during 1994-95.

It is unlikely that the traditional fishery resources will rebuild rapidly and gear conflict will disappear. Under these conditions, voluntary agreements between industry groups will not have enough penalties to dissuade fishermen from working in areas that gear conflicts are likely to occur. The Council is authorized to establish rules that will reduce gear conflict and generate only economic and social benefits. Based on the former experience and precedent set in New England and by other Councils, management measures to reduce gear conflict would be easier to justify and are more likely to be approved if they are associated with regulations having complimentary conservation benefits.

The New England Fishery Management Council therefore proposes to set up a process to enable it to adjust management measures in existing plans. Adjustments made through the framework process will therefore be viewed as part of a larger program already having conservation benefits and preventing overfishing. A package of simultaneous adjustments to one or more FMPs will allow analysis and review of the beneficial and adverse impacts on all affected fisheries, rather than based on their impact on only a particular fishery or sector.



## **2.0 DEFINITION OF GEAR CONFLICT**

The Council will use the NMFS definition of gear conflict for determining whether a controversy or issue should be considered under the proposed framework process. The Council considers gear conflict to be:

"Any incident at sea involving one or more fishing vessels (a) in which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel, and (b) which results in the loss of, or damage to, a fishing vessel, fishing gear, or catch." (50 CFR section 611.2)

Competition between vessels using different gears to target the same species is not a gear conflict, even though gear damage may ensue. The gear conflict framework process is intended to resolve problems where fishermen using dissimilar gear target different species in one area. Allocation of rights to harvest a resource (e.g. groundfish, scallops, lobsters, etc.) will be administered by amendments to those fishery management plans. Efforts to gain a competitive access to a particular fishery through framework adjustments of gear conflict regulations will be discouraged.

## **3.0 PURPOSE AND NEED**

### **3.1 History of Gear Conflict in New England**

#### **3.1.1 Early Council efforts to manage gear conflict during the 1970's and 1980's**

Gear conflict has been an historic problem for fishermen. In New England, gear conflict arose as fishermen switched from hook and line gear to trawls to catch groundfish. Some trawlers, working in particular areas, caused gear damage or excluded hook fishermen from areas where they previously fished. Arguments for or against fishing with various gears in areas which some considered to be inappropriate were mis-characterized as promoting conservation by one or more groups (Alexander 1915, Smith et. al. 1985).

As foreign fishing intensified during the 1960's and early 1970's, gear conflicts with domestic fishermen became more frequent. U.S. fishermen that used lobster traps or bottom longlines in offshore waters often experienced gear loss caused by foreign trawlers. Almost from their beginning the Councils, established by the MFCMA of 1976, tried to resolve these problems. During 1977, the first year of US fishery jurisdiction of the former Fishery Conservation Zone, the New England and the Mid-Atlantic Fishery Management Councils formed committees to explore the nature and extent of gear conflicts in the EEZ north of Cape Hatteras, NC. Hearings were held and the Council sought the advice of coastal states to gather suggestions on how this problem could be resolved.

During 1977 and 1978, the Mid-Atlantic Council developed a discussion document detailing regulations to alleviate gear conflict. These proposed regulations included very detailed fixed gear

marking requirements, procedures for reporting fixed gear locations and requirements for foreign vessels to obtain those positions prior to fishing, and a system for handling reports of conflicts, conflict investigations, and conflict settlements.

The focus of these initial discussions centered on the details of how fixed and mobile gear fishing would be regulated. These regulations were initially intended to be developed and submitted as a single FMP for gear conflict. Early in the process, however, NMFS pointed out that it was necessary to develop these regulations through the FMP process as authorized by Congress. The earliest legal advice on this matter (draft memorandum dated May 1978 from M. Frailey to Eldon Greenberg) concluded that there was "no evidence that Congress contemplated that fishery management regulations could be issued outside the framework of fishery management plans."

These early efforts to develop a separate FMP to relieve gear conflicts were unsuccessful largely because of the difficulty in producing a legally sufficient document to address the conservation and management issues which would comply with section 303 of the MFCMA. In April 1979, Mr. John Dunnigan (GCNE) offered the following advice to the NMFS and the Councils:

"Our initial advice, and still the legally preferable alternative, was that a Fishery Management Plan (FMP) should be prepared for those fixed gear fisheries which conflict with other fisheries. With the possible exception of groundfish fishing, the policy problems presented by this option apparently are still unmanageable."

Mr. Dunnigan offered four alternatives, each with its own problems:

- "1. Amend the Squid FMP (or some other Plan) to include these measures. In order to do this the whole package of regulations would have to be found reasonably necessary for management of the squid (or other) fishery, a somewhat tenuous proposition.
2. Include a fixed gear provision in each FMP and each implementing regulation. A piecemeal approach will leave loopholes. And we all know that despite our most valiant efforts, the regulating regulations will not always be consistent; if not being directly contradictory.
3. Promulgate the regulations under the Secretary's general authority. The Secretary probably does not have any general regulatory authority to implement such a pervasive system of fishery management regulations.
4. Both Councils adopt a generic FMP amendment, not tied to any particular directed fishery. There is no direct provision for this in the FCMA. The authority would somehow have to be implied."

In a memo dated February 1979, Mr. Dunnigan added another alternative in which the Councils could ask the Secretary to promulgate general gear conflict regulations, but they would not apply unless the Councils amended a fishery management plan to "require, as a conservation and management measure that fixed gear fishermen comply with the Secretary's general gear conflict regulations to the extent necessary to resolve the particular conflicts attendant to that fishery."

This advice offered a new potential approach for the Council to develop regulations that would reduce gear conflict. One set of regulations could be developed, and they wouldn't need to meet the standards under Section 303 of the MFCMA until they were put into action by amendment to an existing FMP. The amendments would, however, still be subject to the requirements of the Act. Councils would have to demonstrate how the regulations proposed by the amendment were necessary and appropriate for the conservation and management of the fishery governed by the amended FMP. This approach also appears to be unmanageable precisely because any proposed gear conflict regulations usually benefit another fishery, not the one governed by the amended FMP. Gear conflict regulations that prohibit fishing in a certain fishery invariably increase fishing costs while conveying few benefits to the fishery being regulated.

Subsequent work and meetings were conducted by the Councils during 1978 to 1982. This effort culminated in the approval of a draft discussion document (MAFMC and NEFMC 1982). Its preferred alternative management measures included the following provisions:

- 1) Unlawful to damage reported fixed gear.
- 2) Unlawful for foreign fishing vessels to fish in broadcast fixed gear areas.
- 3) Unlawful to remove the catch from fixed gear owned by others without consent of the owners.
- 4) Requirement for a mandatory fixed gear marking system.
- 5) Mandatory setting patterns for fixed gear fishermen.
- 6) Fixed gear information system which requires reporting of fixed gear located in the active foreign fishing areas, including fixed gear area information broadcasts and printed summaries.

The closest any proposal came to defining mutual benefits to more than one fishery was in this joint Council draft discussion paper:

"The large quantity of fixed and mobile gear being used in the Mid-Atlantic and New England areas inhibits the efficiency of both gear types. The Plans include objectives that relate to catch levels and efficiency. Gear conflicts act to increase costs and decrease efficiency. Amending the Plans to include fixed gear reporting, reporting of conflicts, fixed gear marking, and procedures for setting fixed gear as management measures upon which regulations may be based will enhance the attainment of the above objectives."

The above paragraph describes how the proposed gear conflict regulations would jointly achieve the objectives of the individual FMPs, namely achievement of optimum yield. Implementation of these proposed regulations through amendments to the individual FMPs was still an obstacle however. NOAA's legal review of that discussion paper concluded that there were no indications of "how the very specialized regulations contained therein advance the achievement of plan values or objectives of the FMP's named or in what way they would serve as conservation and management measures for the respective fisheries." (Casey 1983) Legal review by NMFS

concluded that the draft was insufficient to satisfy the legal requirements of the MFCMA. Further development of the generic gear conflict amendment was abandoned.

The Councils continued receiving reports of gear conflicts during 1983 and 1984. The focus of the conflict shifted from a foreign vs. domestic problem to one involving two or more types of domestic fisheries. The MAFMC gear conflict committee subsequently held for fact-finding meetings and concluded in March 1984 (MAFMC 1984) that:

- 1) The NEFMC proposed to develop an amendment to the American Lobster FMP which would include provisions to reduce gear conflict.
- 2) Gear conflicts between domestic fishermen were significant, primarily between fixed gear and squid joint venture boats.
- 3) Gear conflicts are unavoidable and that most can be resolved through voluntary mutual effort.

They reported that fishermen identified the following problems and potential solutions to gear conflict:

- 1) Improve communications between fishermen using different gear types.
- 2) Make more timely information about location of fixed gear available.
- 3) Develop standardized setting patterns through mutual agreement within areas.
- 4) Develop standardized marking requirements.
- 5) The two major causes of deployed, fixed gear damage are ignorance of the area custom on the part of transient mobile gear vessels, and a small segment of willfully careless operators. The transient problem may be corrected through improved communications.
- 6) Fixed gear fishermen supported stringent gear destruction sanctions.
- 7) Several fishery vs. fishery interactions were identified. These various interactions involved fishermen using bottom or pelagic longlines, mid-water and bottom trawls, lobster traps, gillnets, and recreational fishing.

In the end, the Councils found it unmanageable to develop a comprehensive plan, either as an FMP or as a series of amendments, to reduce gear conflict. Council attention was refocused on resolving U.S. fishery issues as domestic vs. domestic gear interactions predominated over the problems caused by foreign fishing. The Council's effort at developing a comprehensive management system to reduce gear conflict ended because no satisfactory implementation process could be found and industry support for mandatory gear conflict regulations evaporated. Key industry support of the 1982 and 1983 proposed amendments disappeared when Atlantic Offshore Fishermen's Association opposed the implementation of federal gear conflict regulations. When they took this position they said, "The primary concern of our members is that a broad set of federal gear conflict regulations will fail to accommodate the very specific and distinct arrangements which fishermen have developed on their own as a practical means of fishing together. Despite the time and effort which has gone into the development of the (draft proposal) regulations, our fishermen

find that the regulations do not fit the successful arrangements which they have worked out" (Atlantic Offshore Fishermen's Association 1983).

During 1986, the NEFMC approved and submitted Amendment 1 to the American Lobster FMP. This amendment included management measures to require uniform gear marking and setting patterns for the offshore lobster fishery in an effort to reduce gear conflicts. The NEFMC substantiated these measures by indicating that they would allow the industry to "efficiently achieve optimum yield specified within the Lobster FMP" (NEFMC 1986). Although the marking regulations would have no direct effect on overfishing, the Council anticipated that the requirements would "have resource conservation benefits stemming from a reduced, although admittedly incalculable, level of 'ghost fishing' mortality." Although not specifically stated in Amendment 1, the management measures related to the FMP objective of allowing full utilization of the resource by the U.S. industry.

The American Lobster FMP currently contains the following provisions to alleviate gear conflict between lobstermen using traps and fishermen using mobile gear:

- 1) Required use of metal radar reflectors on both ends of a lobster trap trawl, plus a flag on the westernmost end. Trawls having three or less traps were required to be marked by a single bouy, and
- 2) Limited the length of a lobster trawl to 1½ miles, measured from bouy to bouy.

Other rules that were primarily intended to reduce gear conflict between fishermen are scattered throughout the regulations for each fishery. They were either developed as part of a larger package of management measures that promote conservation or in other ways contribute to achieving an FMP's values or objectives, were justified on the basis of allowing a fishery to achieve optimum yield, or as a result of Secretarial action that was not related to a particular FMP, for example regulations for foreign fishing.

In the FMP's that regulate northeastern fisheries, gear regulations are contained in:

- 1) The American Lobster FMP as described above.
- 2) The Multispecies FMP - required marking of bottom-tending fixed gear (gill nets and longlines) with 12 inch radar reflectors on both ends, plus a pennant on the westernmost end, limits on the length of gill nets to 6,600 feet between the end bouys, and special marking requirements for nets set in an irregular path in the Gulf of Maine.
- 3) Foreign fishing regulations - standards for gear avoidance and disposal, requirements to obtain and log fixed gear locations broadcast by the Coast Guard, and time/area restrictions.

Three other FMPs are notable for implementing regulations to resolve conflicts between competing uses of a resource or fishing area. They are:

- 1) The Coastal Migratory Pelagic Resources FMP for the Gulf of Mexico and the South Atlantic - delegates authority to the Secretary to temporarily close certain waters off the east coast of Florida to hook and line and/or gill nets when gear conflict occurs.
- 2) The Snapper-Grouper Fishery of the South Atlantic Region FMP - limits the use of sea bass pots, bottom longlines, gill nets, and/or trawls in small, defined Special Management Zones.
- 3) The Stone Crab Fishery FMP - establishes seasons and area where trawling for shrimp or using traps to catch stone crabs are prohibited. It also set up a system to allow localized advisory committees, and the Florida Department of Natural Resources to recommend different boundaries, seasons, and/or restrictions.

### **3.1.2 Failure of voluntary agreements**

Whenever gear conflict was infrequent, fishermen working in proximity to one another were able to forge informal agreements to set their gear in certain areas and follow certain guidelines. This method of resolving the problem is effective as long as the target species do not have a high degree of overlap or when the resource is abundant enough to support the level of fishing effort. When market demand increases, especially for an underutilized species, or when traditional species are not abundant, shifts in fishing effort occur. These shifts can cause gear conflict when vessels using incompatible methods damage gear used by existing fishermen.

From the early 1990's to the present, trawl fishermen have begun to target non-traditional species (monkfish, dogfish, whiting) in areas historically fished by lobster traps and anchored gill nets. A combination of the above events caused fishermen to target monkfish in Southern New England. Gear conflicts initially increased in 1991-92, but were brought under control by an industry-based voluntary agreement. Declining abundance of groundfish and localized depletion of monkfish caused fishermen to again move into areas used by lobster fishermen and gear conflicts rose to even higher levels during 1994-95. These problems appear to be continuing during 1995-96.

Three years ago, the Council helped several groups of fishermen to draft and circulate the "Southern New England Offshore Gear Conflict Resolution" (Appendix I), a voluntary industry agreement meant to reduce gear conflict. It has since been very effective because of its industry-based origin, and because fishermen designed it to allow them to set gear in the most productive areas and seasons. Participants in the agreement included lobstermen, pelagic and bottom longliners, and offshore trawlers targeting monkfish, squid, butterfish, and whiting. Each group gave up access to fishing grounds when they were less productive to gain easier access to grounds during more productive seasons. They felt it was preferable to work toward voluntary industry cooperation and agreement, rather than to be burdened by government regulations that unnecessarily penalize fishermen and often allow little flexibility. Besides setting aside areas and buffers to separate fixed and mobile gear, the resolution stresses cooperation and good communication among the different fishing groups.

Although some problems still exist, the voluntary agreement significantly reduced gear loss and conflicts. Since the 1993-94 season, however, conflicts escalated as fishermen altered their

harvesting practices. The pursuit of alternative species, declining abundances of traditional species, additional regulations to reduce fishing on stressed fish stocks, and changing market conditions all have contributed to the recent change in fishing practices.

### **3.2 Shifts in Fishing Effort**

Gear conflict problems frequently occur when fishing vessels target different species in new areas. Fishermen who are accustomed to using a certain gear in a particular area might be displaced by and/or experience gear damage from the new fishing activity. Allowing fishermen to freely shift effort in an open access fishery greatly contributes to the problem. For example, as markets developed and ex-vessel prices increased for monkfish, fishing effort increase in areas of Southern New England where the fish were most abundant. Since the distribution of monkfish overlapped an area where lobster fishing had occurred, gear conflicts escalated.

In other cases, the abundance of the targeted species declines due to fishing or it is locally depleted and fishing vessels begin searching more marginal fishing areas. This effect might occur from overfishing or from increasing fishing effort as new vessels enter the fishery. Although two groups of fishermen might have a history of cooperation, the introduction of more fishing activity decreases the area that another group can fish without causing problems and tensions rise. Increased gear conflicts between stone crab fishermen and shrimpers on the west coast of Florida were caused by increasing fishing effort rather than effort shifts (GMFMC 1979).

Controlling fishing effort and the potential that vessels have for shifting or concentrating effort is one way to reduce the frequency of gear conflicts caused by the two factors described above. In an ideal situation, the yield from each fishery or resource should slightly exceed or match the harvesting capacity of the fleet. Such a situation would make shifts in fishing effort unnecessary.

Unfortunately, this situation rarely exists. Abundance of stocks fluctuate from natural causes and many fisheries resources are harvested well above the level that would maximize yield. As a result, fishermen have learned to make the most efficient use of their capital and labor by targeting other species, possibly with different fishing gear. This pulse fishing may be economically efficient, especially when an underutilized species serve as a substitute for a depleted species in the marketplace. It may not be so beneficial to the fishery resources or the ecosystem. It certainly concentrates fishing effort in areas where the new targeted species occurs and may disturb fishing activities that already occur in that area.

### **3.3 Economic Loss Caused by Gear Conflict**

It is impossible to capture the full social and economic impacts caused by gear conflict. Intangible costs arise from the displacement of fishermen from the most productive fishing areas, causing fishermen to operate their gear in an inefficient manner, the time and monetary cost of searching for lost gear while at sea, and the cost and burden fishermen incur when they seek compensation for their loss. The only tangible cost is the direct economic impact of lost or destroyed gear which frequently goes unreported.

One source of cost data on gear conflict comes from a program set up to reimburse fishermen for their fixed gear loss. The Gear Compensation Fund (established by the Fishermen's Protective Act of 1967 [PL 95-376]) was originally intended to compensate fishermen for their losses caused by foreign fishing. Practically, it is difficult to distinguish between various types of gear loss and the program also compensates fishermen for fixed gear loss caused by domestic fishermen. The number of claims and the value of gear loss declined as foreign fishing subsided (Table 1 and 2). More recently, gear loss by lobstermen in the EEZ of Southern New England increased during 1991 and 1992 as trawl fishermen began fishing in deeper waters for monkfish (Table 2). The Southern New England Gear Conflict Resolution helped to reduce gear conflict and these losses declined during 1993. The losses again increase in late 1994 as more vessels began targeting monkfish and whiting (Table 3).

These costs prevent the fishery from achieving optimum yield under any resource condition, unless the costs of preventing gear conflict exceed the costs incurred by allowing them to happen.

### **3.4 Management Objectives**

The American Lobster FMP has the following objective that would allow the Council to manage gear conflict and ensure full utilization of the resource:

"To support and promote the development and implementation, on a continuing basis, of a unified, regional management program for American lobster (*Homarus americanus*), which is designed to promote conservation, to reduce the possibility of recruitment failure, and to allow full utilization of the resource by the United States industry. The management program should be sensitive to the need to minimize social, cultural and economic dislocation."

The Atlantic Sea Scallop and the Multispecies FMPs do not have objectives for full utilization of the resource or for maximizing efficiency. The following objective is added to these plans, enabling the Council to reduce gear conflicts through fishery regulation:

"To promote efficiency in the utilization of regulated fishery resources by resolving gear conflicts where possible."



#### **4.0 PROPOSED MANAGEMENT ACTION**

There are four broadly-classified strategies open to the Council for responding to gear conflict. The Council is proposing one option, amending existing Plans with a framework adjustment procedure to enable management bodies to address gear conflicts in a timely manner, as its preferred alternative. There are no management measures that will be directly changed by this action. Future efforts to resolve gear conflict through regulatory change will be made via framework adjustments. These strategies and their relative merits are discussed below.

#### **4.1 Framework procedure**

The Council is amending the FMPs to adjust management measures and resolve gear conflicts via a framework process. This process (Figure 1) would function similar to the frameworks currently in place for management measures designed to meet conservation objectives. At least two publicly announced meetings would be held to discuss and receive comment on any proposal to resolve gear conflict via regulation. Following approval of the proposed management measures at the second meeting, the Council would prepare and submit the final documents to the Secretary. The pre-planned process, the public notice, and advanced availability of the proposals would give the Secretary sufficient justification to waive the customary 15 to 30 day public comment period. If the Council's submission is approved and the Council met the requirements for public comment, the management measures could be published as final rules and take immediate effect. Only gear conflicts occurring in Federal waters would be addressed by framework adjustments to an FMP.

Unlike frameworked management measures to achieve conservation objectives, the Council may not have specific measures ready for discussion when a gear conflict problem first arises. Since these measures for gear conflict would work best when various fishing sectors agree on them, the Council believes that initiatives to resolve gear conflicts should come from the affected fishermen. Without the initial commitment, it is unlikely that fishermen would comply with the management measures without extensive compliance monitoring by law enforcement.

The initial phase of the proposed framework process will begin when fishermen bring the matter to the Council.

The initial meeting would not be considered the first of two required Council meetings under the framework procedure. During this initial meeting, the Council would initially define the area under consideration. A potential gear conflict management area should address a specific problem and, therefore, be no larger than 2700 square nautical miles, equivalent to one degree square of latitude and longitude. The proposed gear management area can be changed during the initial development phase, but would be defined before scheduling and announcing the first framework meeting. The Council may, where conditions call for similar gear conflict management, develop parallel gear conflict regulations for contiguous gear conflict management areas. The framework adjustments, in this case, could be administered in tandem to affect a single set of regulations covering an area larger than 2700 square miles. A single framework adjustment may be submitted for multiple, contiguous gear management areas, but the Council will seek broader industry participation, possibly through multiple ad hoc advisory committees.

The affected fishermen may or may not have a solution to recommend at this initial meeting, but they would ask the Council to assist them in opening a dialogue with the other affected fishermen for a defined area. The Council will seek industry advice by holding public meetings where the fishing industry can discuss possible solutions, by forming an ad hoc industry advisory committee for each gear management area, or by referring the matter to its standing industry advisory committee for gear conflict. If the Council forms an ad hoc committee, the Council will attempt to involve all affected parties and seek balanced representation under its Statement of Organization, Practices, and Procedures (SOPP).

Either through a third party (e.g., industry associations) or by assisting the fishermen directly at these negotiating meetings, the Council would help fishermen to devise a solution. The object of the industry negotiations would be to reduce potential gear loss, to improve operating

efficiency, and to give fishermen access to the most productive fishing grounds during the most productive seasons. This policy would allow other fishermen to use the area when it was more productive to them versus another group. The fishermen would agree on a set of rules by choosing from the measures outlined by the framework process.

Following these meetings, the industry representatives will report the outcome of their discussions to the oversight committee. The recommendations could be developed through majority vote, consensus, or by a sense of the industry committee or meeting. After considering the industry recommendation, or at any other time the Council determines that adjustments are necessary, the Council will develop and analyze the recommended management actions over the span of at least two Council meetings. The meeting where the industry and oversight committee makes the formal recommendations to the Council would be the first framework meeting. The Council will provide the public with advance notice of the time, date and place of the meeting and will include a detailed description of the action under consideration. Notice will be announced in the Federal Register at least two weeks prior to this first framework meeting. The Council will also inform interested parties of the meeting by sending a notice to them.

If more than one management authority (Mid-Atlantic Fishery Management Council, Atlantic States Marine Fisheries Commission, NMFS for pelagic species) is involved and has incorporated a gear conflict framework procedure into its plans, the negotiated measures would be formally proposed by the New England Fishery Management Council to the other authority. In the case of multiple management authority, framework adjustments would ultimately submitted only if all authorities agree to take action. If there is disagreement between these authorities, the Council will return the proposed framework adjustments to it's gear conflict committee for further review and discussion.

After accepting public comment at the first framework meeting, the Council could 1) refer the issue back to the gear conflict committee for further consideration, 2) make adjustments to the measures that were proposed, or 3) approve of the measures and begin developing the necessary documents to support the framework adjustments. If the Council approves the proposed framework adjustments, the Council will identify, at this meeting, a preferred alternative and/or identify the possible alternatives. This decision will enable the Council to develop a framework document that discusses and shows the impacts of the alternatives. It will be available to the public at least ten days prior to the second or final framework meeting.

Notice of the second or final meeting will be published in the Federal Register at least two weeks prior to the meeting. The notice will include a discussion of the proposed action, the date that the framework document having alternatives and analyses will be available to the public at the Council office, and a request for written public comments. These written public comments will be due at the Council office two days prior to the final framework meeting. If the Council cannot meet its requirements, it will schedule another meeting and follow the same procedures outlined above for the final framework meeting. The final framework meeting will be a full Council meeting, but interim meetings may be scheduled to receive public comment.

If the Council approves the framework action, it will submit documents describing the supporting rationale, and include an analysis of impacts, and a recommendation on whether the Secretary should publish the management measures as a final rule. If the Council recommends that the management measures should be published as a final rule, the Council will consider the following factors and submit the necessary support and analysis for each:

- 1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;
- 2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommendation;
- 3) Whether there is an immediate need to impose management measures to resolve gear conflict and reduce economic loss; and
- 4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

If the Council's recommendation includes adjustments or additions to management measures, and if after reviewing the Council's recommendation and supporting information, the Regional Director may:

- 1) Concur with the Council's recommended management measures and determine that the recommended measures may be published as a final rule based on the four factors specified above. The recommended management measures will be published in the Federal Register as a final rule,
- 2) Concur with the Council's recommendation, but determine that the recommended measures should be published first as a proposed rule. The action will be published as a proposed rule in the Federal Register. After additional public comment, if the Regional Director concurs with the Council recommendation, the action will be published as a final rule in the Federal Register, or
- 3) Disapprove of the Council's recommendation. The Council will be notified, in writing, or the reasons for the non-concurrence.

If the Secretary of Commerce approves a framework action, the Council will appoint affected fishermen to a monitoring committee. The committee would function as a watchdog over the gear conflict area. Although this group would have no enforcement authority, they should bring problems or general infractions to the attention of law enforcement or the Council. If adjustments to the gear conflict measures were anticipated by the monitoring committee, they could bring this matter to the Council's attention and re-initiate the framework process.

A framework procedure having the following generic management measures will amend the FMP. These potential framework management measures and the process set up by amending the FMP constitutes the framework adjustment process.

Management measures to resolve gear conflicts:

- 1) Mandatory monitoring of a radio channel by fishing vessels
- 2) Fixed gear location reporting and plotting requirements
- 3) Standards of operation when gear conflict occurs
- 4) Fixed gear marking and setting practices
- 5) Gear restrictions for specific areas (including time and area closures)
- 6) Vessel monitoring systems
- 7) Restrictions on the maximum number of fishing vessels or amount of gear
- 8) Special permitting conditions

## **4.2 Framework Management Options to Reduce Gear Conflict**

There are many ways fishermen can reduce gear conflict. Many of the alternatives discussed below are already embodied within informal industry agreements or have been included in existing FMPs. Each fishing area is unique and what works in one, may not work in another. This list is intended to be a nearly exhaustive list of actions that might be taken to reduce gear conflict. They are meant to show how one or several of these options might be used in a given area rather than to evoke negative opinions that the measures would over-regulate the industry.

Local advisory committees made of affected fishermen could choose from these management measures to adjust regulations and alleviate gear conflict in specific gear conflict management areas. These defined areas should address a specific problem and, therefore, be no larger than one degree of latitude and longitude, or 2700 square miles.

Some problems may be transient or the Council may want to let gear conflict regulations expire, unless renewed. The Council may therefore add sunset provisions to any and all measures contained in any framework adjustment. A sunset clause would enable the Council to respond to seasonal gear conflict problems and let them expire without amending the FMPs. If the Council needed to re-address a seasonal gear conflict, the proposed regulations could then be changed as part of a revised proposal. A sunset provision would also prevent some measures from later becoming permanent regulations and causing problems when they no longer apply to the current situation. Under both potential outcomes, sunset provisions would potentially reduce government paperwork and burdens on fishermen when the rules no longer apply.

### **4.2.1 Mandatory monitoring of a radio channel by fishing vessels**

Vessels fishing within a gear conflict management area would be required to continuously monitor a certain radio channel. These vessels also could be required to have an audible on-deck speaker. Violations would occur if a vessel was fishing within a gear conflict management area and could not be raised by the USCG on the specified radio channel.

### **4.2.2 Gear location reporting by fixed gear fishermen and mandatory plotting by mobile gear fishermen**

A more pro-active system could involve a reporting system and monitoring of fixed gear locations and notification of those locations to mobile gear vessels working in specified areas. Under this system records would be maintained of fixed gear locations. Whenever fixed gear was moved into or removed from an area, fixed gear fishermen would be required to provide notification of their gear's location. When a mobile gear fishermen wanted to fish in a specific area, he would be required to provide notification of his intent. The locations of fixed gear in the area would be provided and the vessel would be required to note them in his vessel log and plot their locations. Fixed gear vessels within a gear management area that failed to report the gear's location or mobile gear vessel's that failed to record the reported location of fixed gear would be in violation of this provision.

Most of this reporting and logging of fixed gear locations could be automated in fisheries where vessel monitoring systems are required. Under potential gear conflict regulations, fishermen could be required to send a message and location report when fixed gear is deployed. This message data could be stored at a central site for downloading to other vessels upon request. The printed copy of the fixed gear locations, downloaded via the vessel monitoring system, could be a required element of a fishing vessel's log. Vessel monitoring systems will be required when the system is implemented on all limited access sea scallop vessels and on multispecies vessels fishing under individual days at sea. Lobster vessels are not currently required to have on board vessel monitoring systems.

#### **4.2.3 Standards of operation when gear conflict occurs**

The following list of alternatives illustrates how the rules might be changed to encourage cooperation and at least minimize the loss caused by gear conflict.

##### **4.2.3.1 Release or retention of entangled gear**

Examples of rules that the Council might consider are:

- 1) When disentangling another vessel's gear, it should be removed in a way that minimizes damage to the major components of the gear. For example, it might be acceptable to cut the groundline to remove the tangled gear, but it should be re-tied once it is returned to the water. Individual traps should not be discarded unless they are attached to the rest of the gear.
- 2) If gear is returned to the water, fishermen should discard it or repair it so that it is marked by a float and anchored so that it shouldn't drift away.
- 3) If the gear cannot be returned to the water in the above condition, or if a vessel can stow the gear and is nearing the end of its trip, the damaged gear should be retained on-board and returned to the owners vessel at sea or brought to shore.

- 4) Whenever gear is returned to the water or retained for eventual return to its owner, the captain should attempt to contact the owner of the damaged gear to let him know of its location.
- 5) If unmarked or rogue gear is found by fishermen, they might be able to retain the gear and turn it in, or if authorized by law enforcement, render the gear inoperable so it cannot catch and retain fish, crabs, or lobsters.
- 6) In some or all of the above cases, the vessel might be required to notify law enforcement of accidental gear damage, its condition and location, and whether the owner can be identified from the gear markings. If the gear is fishing in areas set aside for mobile gear, law enforcement might be authorized to take enforcement action against its owner.

#### **4.2.4 Fixed gear marking and setting practices**

##### **4.2.4.1 Marking requirements**

The Council could consider improved marking requirements for fixed gear to ensure visibility under normal and adverse conditions. The marking requirements could also be designed as a form of communication, for example marking the offshore end of a set differently than the markings in the middle or inshore end. The marking requirements would be developed for each gear type, since some type of markings may not be practical for all situations. The types of markings that could be considered include colored polypropylene balls, flags on a buoyed mast, radar reflectors, lights, active responders, and any other device which would alert a vessel to the gear's location. The Council could also consider requirements for fishermen to space markers at appropriate distances from one another.

##### **4.2.4.2 Length of gear**

The Council could adjust rules for this management measure to limit the amount of fishing area taken up by fixed gear.

##### **4.2.4.3 Deployment**

Adjustments to management measures could require fishermen to set gear in a certain direction or along specified bottom contours. Mobile gear fishermen might be required to fish their gear within defined lanes through a gear management area.

##### **4.2.4.4 Monitoring of fixed gear**

In place of requirements to improved marking of untended gear, or of setting requirements, or of separate gear management areas, fishermen using fixed gear might be required to continuously monitor their gear. Continuously monitoring gear might mean being within a short distance (e.g. ½ nautical mile) of an end buoy or marker. It also might allow fishing other gear as

long as the vessel was within radio range. At the very least, vessels would have to bring all its gear to port when the vessel returns to shore.

#### **4.2.5 Gear restrictions for specific areas (including time and area closures)**

Fishing areas would be set aside for specified periods to allow access by one or more gears. Fishermen using an incompatible gear type would be given access to those grounds during other seasons.



#### **4.2.5.1 Separation buffers**

To reduce the potential for gear damage and allow for minor errors in fixing a position or controlling the location of gear, the Council would be able to establish boundaries around adjacent gear management areas where fishing is prohibited.

#### **4.2.5.2 Transitions**

The Council could consider various options to reduce gear damage during these transitional times if gear management areas were established. For example, mobile gear fishing might be suspended for a few days or a couple of weeks to allow fixed gear fishermen to relocate gear. Other options such as assistance programs to relocate gear (transfer barges, assistance from mobile gear vessels) or gear location reporting could also be considered.

#### **4.2.6 Vessel monitoring systems**

Any vessel fishing within a gear conflict management area would be required to have functioning VMS equipment aboard. The capabilities of this system could allow vessels to report and receive the locations of fixed gear on a certain schedule. Vessels that transit the management area might be required to properly stow fishing gear so that it was unavailable for immediate use.

#### **4.2.7 Restrictions on the maximum number of fishing vessels**

One potential option for controlling the density of fishing effort might be to set a ceiling on the amount of fixed gear and trawling activity that is permitted in a defined area. The Council would base this decision on physical factors, such as the amount of trawlable bottom, the amount of bottom that is available for setting fixed gear, or on the strength of the prevailing tidal currents. Limiting the amount of fishing gear or the frequency of a type of fishing would be based on reducing gear conflict and not on conservation or localized abundance of the target species.

Unlike a limited entry system, a fixed number of fishing permits would expire and be reissued as long as a given type of fishing were allowed in a gear management area. When permits became available or the area re-opened to a type of fishing, the permits could be re-issued on a first-come, first-serve or lottery basis. No pre-qualification conditions would be required via a framework adjustment.

#### **4.2.8 Special permitting conditions**

This management option would revise the permitting procedures so that special conditions or industry agreements would become an integral part of a vessel's permit and apply when it fished within a gear conflict management area. NMFS would distribute the industry-based agreements and require fishermen to acknowledge receipt of these agreements or conditions before the vessel could fish within an affected area. Failing to have a special permit on-board while fishing within an identified gear management area would be a violation of this provision.

### **5.0 Consistency with National Standards**

**5.1 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.**

These amendments do not detract from the FMPs' goals to prevent overfishing and achieve optimum yield. The determination of whether the Fishery Management Plans will prevent overfishing and achieve optimum yield is discussed in Amendment 7 to the Multispecies FMP, Amendment 5 to the American Lobster FMP, and Amendment 4 to the Atlantic Sea Scallop FMP. Overfishing definitions exist for all species regulated by the three plans and management measures are in place to achieve conservation objectives.

The framework process and the types of actions contemplated under this process will not increase fishing effort on overexploited stocks. It is, however, possible that effort will be displaced during less productive seasons and in less productive areas. The Council intends that reduced access to the resource, if it occurs, will be offset by less encumbered access when fishing is more productive.

Potential actions under the gear conflict framework process may, however, reduce mortality caused by lost fishing gear. To the extent there is a reduction in gear lost due to conflict incidents, the potential gear conflict regulations will have resource conservation benefits stemming from a reduced, although incalculable, level of 'ghost fishing' mortality.

**5.2 Conservation and management measures shall be based upon the best scientific information available.**

Documented gear loss is sketchy, although reported gear conflict has increased significantly in recent years. Most gear damage goes unreported and reported loss data are not usually compiled. A summary of claimed losses and compensation from the NMFS Gear Compensation Fund is given in Table 2. The U.S. Coast Guard has begun since January 1995 to keep records on reported gear conflicts (Table 4). The total monetary loss from gear conflict is unknown, but substantial losses by individual fishermen occur (Table 3). The reduction of gear loss by managing gear conflict problems via framework actions depends largely on the scope of future actions. The effect of each action will be estimated, using the best scientific information, when the future framework actions are proposed.

No new data collection requirements are proposed by these amendments. The U.S. Coast Guard has begun compiling records of reported gear conflict incidents that would be sufficient for monitoring the progress and impact of a framework action. The costs of maintaining these records would be minimal.

For a particular gear conflict management area, however, the Council may propose a framework adjustment that requires fishermen to report the locations of fixed gear (Section 4.2.2). The primary purpose of this potential action is to improve communications between fixed and mobile gear fishermen, not to collect data about fishing activity. The administration costs of this

program could be substantial, but would probably be borne by fishermen operating in these areas and would be weighed against the anticipated benefits. Future technology may greatly reduce the costs of reporting and monitoring fixed gear locations, making the costs reasonable.

**5.3 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.**

The gear conflict framework process amends existing plans that manage marine resources throughout their range. As such, future framework actions may address specific localized problems, but are part of a larger program that meets this standard. If other management authorities also implement a compatible framework process by amending their management plans, a gear conflict framework action could be coordinated and submitted as a joint proposed action.

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

The framework process itself does not allocate or assign fishing privileges. Each future framework action, if it allocates fishing rights by closing areas to an identified group of fishermen, will be evaluated to ensure that it meets this standard. Fishermen of all states will have the opportunity to initiate a framework action and establish a gear conflict management area if the fishery is under the jurisdiction of this Council or other management authorities, if they also have a compatible framework process for gear conflict.

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

Reductions in fishing costs, including lost gear, will promote efficiency if the measures taken do not cause greater reductions in revenue. Efficiency will also be promoted if fishermen gain easier access to productive fishing areas that might otherwise be inaccessible because of fishermen using other types of gear. The relative benefits and costs caused by future framework adjustments will be estimated when these actions are proposed.

The Council does not intend for future framework actions to cause economic reallocations. The most problematic potential actions, in this regard, are gear restrictions for specific areas (Section 4.2.5). Even in this case, the intention of this potential rule is to give fishermen access to the most productive grounds during the most productive seasons. Conceptually, fishermen would share a fishing area so that each group had access at the most advantageous time. Attempts to gain competitive access and exclusive rights to an area would not meet this objective, nor the definition of what the Council considers a gear conflict (Section 2.0).

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

Unanticipated variations and contingencies are the essential reason the gear conflict framework process is proposed. The Council cannot anticipate future gear conflicts caused by changes in technology, fisheries regulations, or resource abundance and distribution. When changes occur, framework adjustments can be made quicker than amending the fishery management plans. In addition, industry participation is an integral part of the framework process. This participation would incorporate the industry knowledge of short to intermediate-term changes on the fishing grounds, well before these issues are apparent from other sources of information.

**5.7 Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.**

The gear conflict framework process is designed to minimize costs and avoid duplication, because a framework action will be undertaken and submitted simultaneously to adjust one or more fishery management plans. There are many alternatives to be considered that have a wide range of cost implications. Whenever possible, the Council will try to take advantage of existing regulations and monitoring programs to reduce gear conflict.

The Council does not intend to create gear conflict management areas for all regions, only for those areas where efforts to avoid gear conflict has failed and when the industry requests regulatory assistance. The initial step to start a framework action is for the industry to bring the issue to the Council's attention. Fishermen are naturally reluctant to regulate every aspect of fishing activity. Prior to requesting Council action, the industry probably will have already attempted to manage gear conflict through industry cooperation and formal, voluntary agreements.

A notable example of these industry efforts is the history of conflict management for the offshore waters of Southern New England (Section 3.1.2).

**6.0 RELATIONSHIP TO OTHER APPLICABLE LAW**

The following sections describe how the proposed action relates to and is affected by other applicable laws. Section 7.0 is the Environmental Assessment required by the National Environmental Policy Act if there is a Finding of No Significant Impact (FONSI, page 49). Section 8.0 gives the Regulatory Impact Review required by Executive Order 12866. Section 9.0 gives the Initial Regulatory Flexibility Analysis required by the Regulatory Flexibility Act. Section 10.0 describes how the proposed action will affect endangered species. Section 11.0 gives the Council's determination of consistency with the Coastal Zone Management Plans of coastal states affected by the action and the Council's correspondence with those states. Section 12.0 describes how the proposed action complies with the Paperwork Reduction Act. Section 13.0 describes how the proposed action complies with the Marine Mammal Protection Act.

## 7.0 ENVIRONMENTAL ASSESSMENT

### 7.1 Description of Affected Fisheries

#### 7.1.1 Commercial fisheries

##### 7.1.1.1 Fixed gear fisheries

Fixed gear is not generally defined within the regulations that govern fisheries. Many of the individual FMPs, however, define specific gears used in certain fisheries. For the purposes of discussion, the fixed gear definition adopted by the gear conflict industry advisory committee in Southern New England is used here.

"Fixed gear consists of fishing equipment which remains stationary on the bottom or within the water column for greater than 3 hours via an anchor or weight. This gear typically remains detached from the vessel for extended periods and is often unattended. Lobster traps, bottom tending longline, and anchored gill nets are considered to be fixed gear."

##### 7.1.1.1.1 Lobster traps

A few as six to as many as 50 lobster traps, made from plastic coated wire, are usually attached to one another by  $\frac{1}{2}$  to  $\frac{3}{4}$  inch polypropylene rope. In addition to the weights placed in the individual traps, each end of the rope (or "backbone") is anchored to keep the gear from drifting along the bottom. Bouy lines, often with a 2:1 or 3:1 scope, are usually made of the same material as the backbone. The scope of the bouy lines is often higher when the tidal currents are stronger. The scope is usually lower in deeper water. These bouy lines rise to the surface and are attached to one or two polypropylene balls which provide floatation. The scope on the bouy lines and the floatation provided by the poly balls prevent the ends from being pulled under by high currents. To aid in relocating the gear and making the gear observable to other fishermen, each end has a mast topped by a tetrahedral radar reflector. As required by law, the westernmost end of the gear is also marked by a single pennant. The end lines, bouys, traps, and backbone line are called a 'lobster trawl'.

Fishermen use traps to target American lobster (*Homarus americanus*) in U.S. waters from the U.S. Canadian boundary to the waters offshore of Chesapeake Bay. Most of the fishing occurs in the Gulf of Maine, Georges Bank, and Southern New England as far west as Hudson Canyon. Eighty seven percent (87%) of the 1992 landings occur in Rhode Island, Massachusetts, New Hampshire, and Maine (NEFMC 1994). Seventy-three percent (73%) of the landings come from catches inside of three miles from shore, but the Massachusetts and Rhode Island lobster industries respectively derive 36% and 55% of their lobsters from offshore waters. Since these offshore waters also have high fishing activity by mobile gear fishermen, most of the gear conflicts involving lobster trap fishermen occur offshore.

Setting traps for lobsters occurs year around in the offshore waters, while fishing is seasonal inshore. The offshore traps, however, are fished more frequently during the summer and fall months due to the increased lobster activity (availability) during that time. From June through November, lobsters are generally fished between 60 and 140 fathoms. During the remainder of the year, offshore lobstermen set their traps in 100 to 200 fathoms as lobsters move offshore. Due in part to rapidly changing bottom depths, lobster trawls are often set along bottom contours or around bottom features that attract lobsters. Offshore lobstermen fish as many as 40 to 60 trawls at a time, alternating tending different trawls on a given trip. Traps may fish on the bottom for seven to ten days between hauls, depending on the season and weather conditions. The amount of gear fished and the long set times make continuous monitoring of gear or bringing the gear back to shore impractical.

#### **7.1.1.1.2 Anchored or sink gill nets**

Fishermen use anchored gill nets to target a wide variety of species including cod, pollock, white hake, flounders, monkfish, and dogfish. The catch of these gill nets is influenced mainly by location, season, mesh size, and the height of the headrope from the bottom.

Anchored gill net fishing is frequently conducted with small vessels in inshore waters or on shallow banks that occur further offshore. Fishing with gill nets occurs along the coast of Maine, on Jeffries, Stellwagen, and Georges Banks, and along coastline of Southern New England, Block Island, Long Island and New Jersey. The number of vessels setting gill nets has generally increased from 1986 to 1991. Four hundred and sixty-six (466) vessels were permitted to use gill nets during 1991 and 253 reported landings to NMFS.

The amount of gear used by these fishermen varies with the target species, the operational characteristics of the vessel, and the season and area being fished (NEFMC 1993). Nets are set in strings of ten to fifteen nets per string; individual vessels may deploy up to 15 strings. These vessels often set between 70 and 100 nets on these strings. Nets are usually hauled each day or every other day, but are not monitored continuously.

#### **7.1.1.1.3 Bottom longline**

Bottom longlines are used by fishermen in the Northeast to target cod-like finfish (cod, pollock, haddock) and tilefish. Bottom longline vessels typically monitor their gear while fishing and return to port with the gear aboard. During 1991, 503 vessels were permitted to fish for Multispecies with bottom longline gear.

Two types of longline gear are used, tub trawls and hard cable. Tub trawls, where a backbone line of 1/4 or 3/16 inch treated cotton, the gangions and hooks are laid into a tub before deployment, are the more common gear type. Several tub trawls are tied together when the gear is set to form a long continuous set of gear. Anchors and bouys are attached between some of the trawls and at the end lines to ensure the gear stays on the bottom and to aid in locating gear. Sometimes cable or thicker rope is used on a large drum, especially in rocky or difficult bottom.

The gangions are placed every 10 to 20 feet and can either be permanently attached or temporarily attached with snaps to the backbone line.

### **7.1.1.2 Mobile gear fisheries**

Mobile gear is also not defined within the fisheries regulations, but covers a wide variety of fishing activities managed by various FMPs. Gear that drifts through the water or is pulled or pushed by a vessel is generally considered to be mobile gear. In the northeast region, vessels using mobile gear use various type of trawls, dredges, or pelagic longlines.

For the purposes of discussion the mobile gear definition adopted by the gear conflict industry advisory committee in Southern New England is used here.

"Mobile gear is attached to a vessel at all times and maneuvers with that vessel. Trawls (including pair trawl) and dredges are considered to be mobile gear. Drifting gear may or may not be attached to a vessel, but is typically monitored by the fishing vessel at all times. The vessel is maneuverable, but the gear is subject to ocean currents. Drifting gear includes pelagic longline and drift gill-nets."

#### **7.1.1.2.1 Whiting, squid, mackerel, and butterfish trawling**

Vessels that fish for whiting, squid, mackerel, and butterfish form a diverse fishery that ranges from Maine through New Jersey. Vessels range in size from 30-40 feet day boats to large (90+ feet) freezer-trawlers. Fishermen predominately target these species with 1½ to 3 inch mesh and the species they catch depends largely on the season and the area fished. Some fishermen target mainly whiting all year, while others switch back and forth between squid, mackerel, and butterfish, or other species.

Fishermen tow nets for 1 to 3 hours and focus their fishing in areas where their target species are most concentrated. This area might occur along a certain depth range, a zone of common water temperature, or along a boundary of dislike water masses (defined by temperature and salinity). Vessels in these fisheries use variations of the standard two-seam and four-seam nets. Otter trawls used by fishermen to target these species are as wide as 120 feet. The nets are usually towed from outriggers via cables with approximately a 4:1 scope. In depths deeper than 100 fathoms, this scope places the net slightly more than 2300 feet behind the stern. Trawl nets that are fished further from the boat become more difficult to maneuver and take longer to respond to changes in a vessel's direction. More floats in the headrope and less weight along the ground cable and doors are used than in a standard groundfish or flounder net. This modification causes the net to fish higher in the water column and decreases the amount of net or its weight on the bottom. Even with these modifications, the nets are fished near enough to the bottom to become entangled in fixed gear.

Most of the time, the wheelhouse or a helm on deck is continuously manned. At some times, however, the captain might leave the boat on auto-pilot to help the crew manage the gear or to oversee the fish processing. Because of the difficulty in preserving quality of soft-bodied species, vessels targeting these species generally make shorter trips than trawlers that target groundfish. Inshore boats normally return to port daily and offload their day's catch. Offshore boats, and



especially those equipped with special processing equipment and freezers, make trips of 3-4 days or longer.

#### **7.1.1.2.2 Monkfish trawling**

Slight modifications to the large mesh multispecies trawl are made to target monkfish. Some vessels use larger mesh to obtain better size selection and reduce the amount of non-target ("trash") fish. Most fishermen, however, are using six inch mesh due to its wide availability as a standard groundfish mesh. Monkfish trawlers frequently add mesh to the wings of the net to cover more bottom and to help herd the monkfish into the net.

Monkfish are frequently caught by trawlers targeting other species from the shoreline out to 100 fathoms. Since 1990 more directed fishing has occurred on monkfish as markets developed and prices became attractive to fishermen. As a result, a deep-water directed monkfish fishery conducted by large trawl vessels has developed. Most of this directed trawling is concentrated along the shelf edge in Southern New England and in the Gulf of Maine. Monkfish trawling occurs in waters as deep, and occasionally deeper, as 200 fathoms. At this depth, the net would be over 4600 feet, or nearly one mile, behind the trawler when the scope on the towing cable is 4:1.

Monkfish hold up fairly well to at-sea processing and storage. Trip lengths in deeper waters is similar to those when vessels target cod and flounders. Some vessels, however, make shorter trips when they can get better prices for quality livers and fish. Tow times vary, but generally range from 3-6 hours in deep water.

#### **7.1.1.2.3 Multispecies trawling**

Fishermen use large mesh (5 - 6 inches) otter trawls to target various finfish throughout the northeast region. From Southern New England to the Canadian boundary, large mesh trawl vessels land primarily cod, haddock, pollock, American plaice, witch flounder, winter flounder, and yellowtail flounder. Large mesh trawl vessels also target summer flounder, scup, and black sea bass from Southern New England to Cape Hatteras, NC.

Trawling for these species is similar to other trawl fisheries and occurs from shallow near-shore areas out to roughly 100 fathoms. Fishermen generally use variations of the standard two-seam or four seam net. The gear used on the net is somewhat heavier (less floats, more weight on the ground cable and heavier doors) than trawls used to target whiting, squid, and butterfish. The actual configuration of the net depends largely on the bottom type, the target species, the size of the net, and the vessel's horsepower. Fishermen that target flounders generally use heavier gear to keep the net down hard on the bottom. Other fishermen that target haddock adjust their nets so that the headrope fishes higher off the bottom.

The duration of trips is generally longer than those for whiting, butterfish, and squid, often 5 to 14 days long. Longer trips are possible because these species tend to be more resistant to processing and on-board storage on ice. Inshore trips lasting 1 to 3 days are often made by smaller vessels. Large mesh trawl vessels also tend to tow for longer periods, up to 3-6 hours. Again, these tow lengths vary depending on bottom and weather conditions, abundance of target species, and

the size of the nets under tow. At approximately 50 fathoms with a tow cable scope of 4:1, the net would be nearly 1200 feet behind the fishing vessel.

#### **7.1.1.2.4 Pelagic longlines**

Pelagic longlines are used by fishermen in the northeast to target mainly swordfish, and secondarily tunas. Due to the migratory nature of these species, this fishery occurs from June through November in Southern New England and Georges Bank. Vessels usually set longline gear before nightfall and let the gear fish, or "soak" overnight. This gear is sometimes set within a certain water temperature or along a boundary between distinct water masses. The gear often drifts many miles while it fishes overnight. Although the fishing vessel stays in the general vicinity of the gear, much of it is not continuously monitored as it fishes. Vessels generally begin hauling in the early morning, usually hauling gear and packing fish all day until the distant end of the gear is retrieved.

The gear's configuration is very similar to bottom longline gear, except that pelagic longlines are 300 to 400 pound test monofilament, and the gangions and baited hooks are snapped onto the gear as it is deployed. Pelagic longline fishermen frequently use automatic baiting machines. The monofilament longline is retrieved by the vessel by a large hydraulically driven drum mounted on the aft deck or wheelhouse. Gangions, with or without fish, and bouys are removed from the longline as it is retrieved.

The total length of the gear often exceeds 20 miles. End bouys with radar reflectors and poly balls are attached to each end of the gear to aid in location and recovery. Poly balls, and sometimes radar reflectors are also located along the longline every mile or so. This allows the vessel to monitor the shape of the gear as it drifts (and becomes entangled with gear, sharks, etc.) and retrieve the gear if it is parted. The longline gear is set in the water column, the depth of the hooks often varies from set to set due to oceanographic conditions and concentrations of fish.

Pelagic longline vessels travel long distances in search of fish, and often stay at sea for extended periods, usually 10 to 30 days. During the fishing trip, the vessel may fish a single, large area again and again if fishing is successful. If not successful, the vessel may search wide areas of the ocean in search of fish. During the summer and fall, pelagic longline vessels usually work in deeper water, off the edge of the continental shelf. This fishing area is often in or offshore of the Gulf Stream. Fishing inshore of these areas, however, may be productive at certain times when warm water eddies or the Gulf Stream itself work its way up onto the edge of the shelf.

### **7.1.2 Recreational fisheries**

#### **7.1.2.1 Charter boats**

Charter boats take passengers fishing by charging groups of passengers a boat fee for the fishing trip. Usually a single group of associated anglers pay the entire fee for the boat and number no more than six passengers, due to U.S. Coast Guard regulations. Anglers aboard charter vessels in the U.S. EEZ seek pelagic game fish to make the higher charter fares worthwhile.

Fishing is usually conducted by trolling with lures and bait, or drifting with baits or casted lures. The charter boats follow schools of pelagic fish that can be concentrated by water conditions and the location of prey. They are not, therefore, restricted to certain locations to fish on hard bottom. Sometimes concentrations of pelagic fish occur near floating debris (including bouys marking fixed gear) or over hard bottom areas. Charter boats will, for a time, fish in proximity to fixed gear, but most encounters can be avoided. Gear conflict with either fixed or mobile commercial fishing vessels is usually low.

### **7.1.2.2 Party boats**

Party boats take passengers fishing by charging individual anglers a fare for the fishing trip. Some passengers know each other, but mostly the anglers pay individual fares for the trip. The capacity of party boats ranges from 20 to 120 passengers, although the boats are seldom filled to capacity. Largely due to the number of anglers aboard, the party boats can charge lower fares per passenger than charter boats. They mainly fish for demersal finfish on hard bottom (e.g. wrecks, rock outcroppings, gravel beds, etc.). They catch cod, haddock, pollock, winter and summer flounders, sea bass, red hake, and scup, depending on area and season. Bottom rigs with hooked baits or jigs are often used by party boat anglers.

Gear conflict between mobile gear commercial fishing vessels and party boats is low, because mobile gear vessels avoid high-profile hard bottom (e.g. wrecks and large rock outcroppings). Although there is often competition for the same species of fish, they do not frequently compete for the same location ("piece of bottom").

Competition with commercial fixed gear vessels is another matter, however. Commercial gill net fishermen frequently target demersal finfish (e.g. cod, pollock, white hake, flounders, and monkfish) on or near hard bottom. Commercial vessels fishing with fish (e.g. sea bass) traps or lobster pots also target these species near hard bottom areas. These fixed-gear vessels often leave their gear unattended. Angler's bottom rigs and hooks easily snare gill net meshes and warp connecting fish or lobster traps. In the latter case, newer material in rope enables commercial vessels to fish closer to wrecks and large rock outcroppings without losing gear. The amount of fixed gear and its proximity to available fishing areas for party boats are often problematic.

Gear conflict between party boats and gill net vessels intensified during the mid-1980s. The Council temporarily tried to resolve this gear conflict, without much success. This failure of management to resolve gear conflict by amending its management plans was partly caused by the difficulty in amending a single plan directly with gear conflict measures. This difficulty is more fully discussed in Section 3.1.1 (page 3).

### **7.1.2.3 Private boats**

Anglers using private boats in the EEZ frequently target coastal pelagic finfish (e.g. bluefish, striped bass, etc.) and large pelagic finfish (e.g. tunas, jacks, wahoo, marlins, etc.). Trolling and casting with artificial lures are the primary fishing methods for many of these species. Although

occasional entangles occur with drifting commercial fishing gear or fixed gear bouy lines, these encounters are largely avoidable and gear conflict is low.

## **7.2 Evaluation of Preferred Alternative**

Most of the fisheries in Southern New England and the Gulf of Maine are covered by a fishery management plan. Lobster fishing is managed by the NEFMC's American Lobster FMP. The Squid, Mackerel, and Butterfish FMP controls fishing activity for squid. Fishing for whiting is governed by the NEFMC's Multispecies FMP. Shrimp trawling falls under the ASMFC's Northern Shrimp FMP. The secretarial FMP for Atlantic Swordfish governs fishing with pelagic longlines. Only fishing for monkfish, dogfish, and tilefish occurs in areas having frequent gear conflicts and are not covered by an existing FMP. The New England Fishery Management Council is actively working to develop regulations for the monkfish fishery by amending one or more of its plans. Dogfish and tilefish fisheries are under the authority of the Mid-Atlantic Fishery Management Council. Discussions are underway to develop regulations for these fisheries as well.

Nearly all vessels fishing in the EEZ in an unregulated fishery have federal permits to fish in another regulated fishery. In the monkfish and dogfish fisheries, most vessels could be regulated to reduce gear conflicts through an amendment to the Multispecies or Atlantic Sea Scallop FMPs. Many boats in the tilefish fishery, however, are not permitted or regulated under another FMP. There have been few conflicts between tilefish vessels and those fishing with mobile gears up to this date.

Although it could require cooperation of several management authorities, gear conflicts could be managed by simultaneous framework adjustments to one or more of these plans. Reviewed as a package, net benefits to positive actions could be clearly demonstrated.

By having a gear conflict framework procedure in its FMPs, the Council could respond to gear conflict problems more quickly than if it developed several amendments for each gear conflict. Frameworks are an abbreviated, pre-planned process to make adjustments to a FMP's management measures. This abbreviated process for changing management measures is possible because of the high degree of public involvement in the Council process. The involvement of the public in the Council ensures public access and opportunity to comment in the decision-making process, therefore substituting for the normal comment period of federal rulemaking procedures. Additionally the planned framework process that includes a mechanism for industry discussion and compromise, coupled with the framework meetings is expected to shorten the time required by the Council to develop management measures.

These amendments would establish the necessary amount of public review and comment and, therefore, dictates the procedure that the Council will follow in making its recommendations. This framework procedure is not intended to derogate from the Secretary's authority to take emergency action under section 305(e) of the Magnuson Act.

The Administrative Procedure Act (APA) [5 U.S.C. 551 et seq.] establishes rules and procedural requirements that govern the decisionmaking process of Federal agencies. These rules ensure public access and the opportunity to comment on proposed Federal regulations. This law,

as it relates to regulations established by fishery management plans (FMPs), requires a 15- to 30-day public comment period for proposed rules and a 30-day delay in making final rules effective. The APA also provides for possible justification to waive or shorten both requirements. A framework process, amended to an FMP and published as a final rule after appropriate opportunities for public comment, would allow the Council to justify waiving the required comment periods and make quicker, more flexible adjustments to the FMP's management measures.

Waiving the customary public comment periods would be justified by the discussion, analysis, and review of the measures that the Council might implement through a framework adjustment. Where there is sufficient opportunity for public comment, the framework procedure would also allow the Council to substitute the public comment opportunity during the development phase for the public comment periods required for Federal rulemaking. The measures being proposed by the framework adjustment, therefore, must have been included and analyzed within the original plan amendment. These adjusted measures must reasonably fall within the scope of the options analyzed by the original amendment documents. More detailed analyses would be required if the proposed management measures deviated from those proposed in the amendment. Greater deviations from the management measures contemplated within the framework process would also increase the need for a regular plan amendment and a full review process.

Management measures included in a gear conflict framework would be difficult to analyze. The magnitude of the problem could be demonstrated, but the actual cost savings, loss of revenue, and social benefits would depend largely on the area and the specific measures being proposed as a framework adjustment. A qualitative discussion of the benefits and costs associated with the framework management measures are provided in section 7.3 on page 37.

A generic framework process for gear conflict however could allow the Council, with the assistance of fishermen, to amend FMPs and change predefined management measures via an abbreviated process. Rather than using a procedure that requires a public hearing at two Council meetings, this process has been tailored to be more useful and productive in resolving gear conflicts. The framework process incorporates organized meetings between different groups of fishermen. These meetings would allow affected fishermen to agree on the recommended measures prior to the Council officially seeking public comment on the proposals.

The Council expects the framework procedures to enable it to quickly develop and recommend management measures for alleviating gear conflicts. FMP amendments often take one to three years to develop and implement. Although no cost data are currently available, framework adjustments are more responsive and less burdensome. The procedure that would be established by these amendments is expected to limit the number of meetings needed to address these issues. The reduced development time and fewer meetings will generate cost savings to government.

The amount of gear loss due to these conflicts has been substantial (Table 1). The Councils on several occasions have tried to develop amendments and regulations to resolve gear conflicts. Most efforts have failed. The Council expects that the framework process, if approved, will enable it to overcome the hurdles previously encountered. More rapid development of gear conflict

management measures is expected to greatly reduce the continuing gear loss. The amount of savings cannot be calculated at this time, partly due to incomplete data. The actual cost savings will largely depend on what measures are actually introduced via the framework and their effectiveness.

Other benefits of the framework process and the measures promulgated as framework adjustments will be derived from reduced mortality which would otherwise be caused by lost gear. Ghost (lost but still fishing) gear continues to catch fish, invertebrates, and other species. There are few studies of damage caused by ghost fishing gear. The actual damage will depend on the areas and conditions where the gear is lost. Lobster trap gear currently requires bio-degradable escape vents to limit the gear's ability to fish after loss. Nets, on the other hand, have no such devices and are capable of catching (and drowning) fish, invertebrates, birds, and marine mammals.

### **7.2.1 Council Authority to Manage Gear Conflicts and Establish Special Management Zones**

The eight regional fishery management councils derive their authority to manage fisheries from the Magnuson Fishery Conservation and Management Act (MFCMA, P.L. 95-265 as amended). Other laws, for example the National Environmental Policy Act (NEPA, PL 91-190 as amended) require the councils to justify the actions they recommend and conduct public hearings. Other laws also call for council review of projects that affect the environment in the EEZ and the fisheries conducted in those waters. The MFCMA and regulations established by NMFS (Part 600, Code of Federal Regulations) however that provide the primary guidelines for council policy in managing fisheries.

Although the council's primary management focus is to prevent overfishing and achieve optimum yield (conservation objectives), three national standards defined in Section 301 of the MFCMA (16 U.S.C. 1851) relate to management of fisheries for the purposes of reducing fishing costs and conflicts. They are:

- (5) Conservation and management measures shall, where practicable, promote 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.

Adding to the concept of managing fisheries for objectives not related to conservation, Section 303(b)(4) of the MFCMA (16 U.S.C. 1853) states that a fishery management plan prepared by any Council may:

"prohibit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act."

Section 307(1)(k) of the MFCMA (16 U.S.C. 1857) makes it unlawful for any person to:  
"to knowingly steal, or without authorization, to remove, damage, or tamper with  
(i) fishing gear owned by another persons, which is located in the exclusive economic zone,  
or  
(ii) fish contained in such fishing gear, or to attempt to do so."

Special management zones, or areas, are permitted by Section 303(b)(2) of the MFCMA by authorizing the councils to:

"designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear."

While NOAA guidance (50 CFR, Chapter VI) gives little guidance to the councils about special management zones, it does specify that a FMP must identify what it is designed to achieve (Section 605.14) and must be consistent with the national standards set forth in the MFCMA (Section 602.10). National standard 1 (optimum yield) requires the councils to define overfishing and specify optimum yield, both being conservation objectives.

Although the councils are given the authority to establish special management zones and to develop management regulations that do not, by themselves, promote conservation of marine species, it would therefore be difficult to justify a separate gear conflict FMP that only reduces costs to fishermen without some conservational value. Framework adjustments to existing plans, however, are likely to overcome this limitation.

### **7.2.2 Management objectives**

The FMP management objectives (Section 3.4) specifically allow the Council to manage the fishery and reduce gear conflict to promote efficiency or to allow full utilization of the resource. Gear conflict causes fishermen to loose gear, to maintain gear that has been damaged, to loose valuable time searching for lost gear, and to loose potential landings that have been captured by the lost gear. Any reduction in gear conflicts that exceed the cost of preventing them will promote efficiency and/or allow a greater resource utilization. These potential costs and benefits of any particular gear conflict framework action would be evaluated based on the parameters at hand and the recommended fishery regulations. Adding an objective to promote efficiency (Section 3.4) will not, by itself, increase the administrative costs. The objective will, however, streamline the process and enable the Council to more effectively manage the fishery.

There are also conservation benefits that could be realized by reducing gear conflicts. To the extent that gear conflict increases the amount of damaged gear that continues to fish, the management measures that might be considered for a framework adjustment would have additional justification beyond those related to the above efficiency objective.

### **7.2.3 Definition of gear conflict**

Conflicts between vessels occur when competition for a resource or fishing area intensifies to the point when fishermen are physically excluded from fishing in an area, when gear loss or damage is caused by a competing fishing activity, or when cooperation ceases to be the norm. On the other hand, competition may arise because fishermen target the same species and occur when fishermen fear being excluded from a 'right' to fish, when fishermen vie for a larger share of a resource allocation, or when fishermen increase their vessel's fishing power to gain (or keep from losing) a larger share of the available fish.

Gear conflict is a special case of the above conflict for the right to fish productive areas and occurs when fishing gear is physically damaged or destroyed. It also occurs when vessels and their crew are physically harmed or in jeopardy of being physically harmed. Gear conflicts are much more intense than simple competition to catch fish.

Officially, NMFS has defined gear conflict as:

"Any incident at sea involving one or more fishing vessels (a) in which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel, and (b) which results in the loss of, or damage to, a fishing vessel, fishing gear, or catch." (50 CFR section 611.2)

Two FMPs include some limited management strategies to cope with potential gear conflict. In one case, gear conflict was given a more specific, but broader definition that includes management of competition as well as gear conflict. The Gulf of Mexico and the South Atlantic Fishery Management Councils defined conflict, in their Fishery Management Plan for the Coastal Migratory Pelagic Resources, as:

"Any incident at sea involving one or more fishing vessels (a) in which one fishing vessel or its gear comes into contact with another vessel or the gear of another vessel which results in the damage or destruction of fishing gear, loss of gear and associated catch through disappearance of the gear or its location bouys, preemption of fishing grounds, removal of catch from the gear, or vessel collision; or (b) in which there is imminent threat of one fishing vessel or gear coming into contact with another vessel or the gear of another vessel; or (c) competition for a resource between one fishing vessel or gear and another vessel or gear such that (1) it results in displacement of a traditional fishery by new gear, (2) it results in reduced catches to the traditional fishery, or (3) it leads the Councils to conclude that the situation will lead to (1) and/or (2) as described above. Competition is not in and of itself conflict; however, when competition is intensified, it can lead to conflict." (GMFMC 1990)

The Council has adopted the NMFS definition to identify when a gear conflict framework adjustment is appropriate. The Council does not intend to manage competition through framework adjustments of gear conflict regulations. Although the Coastal Migratory Pelagic Resources FMP



definition was meant to describe the gear and user conflicts that occur between mackerel gill net and hook and line fishermen, it may have some unintended implications for the use of framework procedures to manage gear conflicts.

## **7.2.4 Biological, Economic, and Social Impacts**

The proposed action is expected to reduce gear conflict and, therefore, the amount of damaged and lost fishing gear. The anticipated reduction resulting from this action is unquantifiable and depends largely on future framework adjustments.

Lost fishing gear usually continues to fish until removed from the environment by water currents, other fishing activity, or decay. There have been no studies that would enable the Council to estimate the impact of lost gear on the resource. Fishing mortality caused by lost fishing gear is expected to decline with a reduction in gear conflict. Fish that would otherwise be captured by lost gear will increase yield and will be more likely to contribute to spawning potential.

Fish caught by lost gear also represents an immediate economic loss, similar to that caused by discarding. Estimates of the amounts of fish captured by lost fishing gear are unavailable. Lost and damaged fishing gear also create a direct economic loss. Conservative estimates of this loss is given in Tables 1 and 2 and in written statements provided in Section 16.0. The reduction in gear damage and loss will depend on the nature and scope of future framework adjustments. Quantitative analyses that estimate the economic impacts of proposed management adjustments will be completed for each framework action.

The proposed action is expected to have a beneficial social impact. Conditions that promote gear conflict often arise more quickly than the Council can respond through the standard FMP amendment process. The inability of the Council to address these issues causes industry frustration if the informal, voluntary agreements about how and where to fish fail. The framework process requires the industry to bring the issue to the Council and encourages the industry to propose its own solution. The flexibility of framework adjustments and the inclusion of industry contributions within the process will encourage cooperation within the various fishery sectors.

## **7.3 Alternatives Considered, but Rejected**

### **7.3.1 No action**

The Council could choose not to take specific action to resolve gear conflicts that have arisen and are likely to continue. This policy has been followed in the past, whether gear conflicts arose from increased fishing effort, declining abundance of target species, or management-induced changes in fishing behavior. Although the Councils have not tried directly to resolve gear conflict caused by changes to management, the Council is obliged to take these potential impacts into account when formulating management policy to conserve resources. This requirement is mandated by Section 303(a) of the Magnuson Act [PL 95-265 as amended] formally requires the Council to prepare a Fishery Impact Statement when it submits an FMP or amendment.

In place of formal regulations, fishermen in areas of gear conflict have developed informal working rules, either by custom or through written agreements. The Council supports management policies that do not aggravate potential gear conflicts whenever possible. It also

expects fishermen to continue to work out their differences through informal agreements. Only when these efforts fail, are regulations needed to limit economic loss and maintain order.

These "gentlemen's agreements" among fishermen have existed for many years. In its most basic form, the concept of prior use usually prevails. For example, a fishermen whose gear is set in a certain area has exclusive use of that area until he removes his gear. This concept puts mobile gear fishermen at a distinct disadvantage in some ways. The situation can be aggravated when fixed gear becomes numerous or when fixed gear is set to "hold bottom" during unproductive seasons.

To allow each other access to productive fishing grounds, fishermen have often entered into informal agreements that govern when and how they fish. For example, fishermen in a certain area may agree that they will set fixed gear along specific loran lines or depth contours. This action might be intended to allow trawlers to fish between the fixed gear within lanes. In other cases, fishermen have made agreements to fish in one area during a certain season, and move their gear to other areas during other seasons. This gear separation usually works satisfactorily as long as both groups have access to the more productive areas throughout the fishing season as their target species move. When a target species becomes unavailable except in the set-aside area (i.e. localized depletion), these agreements begin to fall apart. A small number of fishermen start to abandon the agreement because they can make a profit only by fishing in the area restricted by the agreement. By fishing in these restricted areas, they may cause additional gear loss which causes fixed gear fishermen to abandon the agreement and begin fishing outside the areas on which they originally agreed.

If fish were plentiful or fishing effort was substantially curtailed, these gentlemen's agreements would probably suffice. This situation no longer exists. Without meaningful penalties to ensure compliance with the agreements, gear conflicts will significantly decrease catch per unit effort and increase the cost of fishing, because of lost gear, to unacceptable levels.

Taking no action assumes that current and potential gear conflicts are acceptable or that another process, like informal industry agreements, will suffice. This approach is not acceptable due to the increasing frequency of gear conflicts caused by declining resource abundances and more restrictive management of these fisheries.

### **7.3.2 Council support of a vessel buy-out program**

A vessel buy-out program could be developed to reduce effort in overcapitalized and overfished fisheries. This management option is being evaluated as a means to remove fishing effort from the groundfish fleet. The Council supports this program for its intended purpose, that is to remove excess fishing effort and minimize the economic impact of this reduction. Indirectly, it may also aid in reducing gear conflict by limiting competition. A vessel buy-back program, however, appears to be very costly compared to other options for resolving gear conflicts.

This action would lessen the shifts in fishing effort caused by regulations meant to prevent overfishing and to achieve optimum yield from a subset of marine resources. The Council,

unfortunately, does not have the authority to establish programs to allocate funds to or tax fishermen to fund this type of program. They can, however, set up systems where vessel buy-out programs can be effective in removing excess fishing effort. The Councils can additionally recommend how a potential vessel buy-out program should be implemented. For example, the Council might amend its FMPs to specify how fishing effort should be compared between any two vessels. In doing so, the Council could specify whether a vessel buy-out would favor removing fewer large vessels (at a higher cost per vessel) versus removing more small vessels. This decision may directly influence the amount and type of gear conflicts that develop or continue. An alternative strategy that the Council could employ is to allow consolidation of effort and/or catch quotas so that fewer vessels remain in the fisheries.

The Councils could thus guide how vessel buy-out or consolidation programs would shape the future characteristics of the fisheries. By amending its FMPs to make these programs effective in reducing fishing effort and by recommending important elements of a potential effort reduction system, the Council can actively support vessel buy-out or implement consolidation systems for some of its fisheries. Funding and implementation of a vessel buy-out would, however, require Congressional approval and appropriation.

Since the problem described in this document is the conflict caused by competing uses of common fishing grounds, a vessel buy-out program may only have an indirect effect on gear conflicts. It is very unlikely that a vessel buy-out or consolidation would remove enough vessels from the fleet to eliminate gear conflicts. Mainly they would help to reduce the direct impact on other fisheries from effort shifts caused by regulations. Unless fishing effort is substantially reduced and the fishery resources recover to the point where there is insufficient harvesting capacity (i.e. the resource becomes underutilized), gear conflicts will continue to be a problem. Under a large-scale vessel buy-out or consolidation program, however, gear conflicts might be reduced to levels where informal agreements between fishermen once again become effective and a viable option.

A vessel buy-out or consolidation program will probably reduce fishing effort on target species and may also reduce effort shifts into different fishing grounds to target other species. They are unlikely to reduce effort to levels where there is insufficient fishing capacity to harvest the potential catch, thus greatly reducing the contention for common fishing grounds.

### **7.3.3 Active Council support of industry-sponsored agreements**

The Council, with the assistance of NMFS, would increase and improve its support of industry-based voluntary agreements. Similar documents to the one for Southern New England (Appendix II) could be developed, with industry consensus, in other areas. Perhaps improvements could be made to existing efforts by employing a professional facilitator to bring the various factions into the negotiations. Additionally, if funds were available, the Council would recommend that NMFS set up a system of binding arbitration to resolve individual gear conflict cases where evidence was insufficient to prosecute for criminal actions under the Magnuson Act or to sue through the existing legal system.

The Council has been effective in bringing various industry groups together to hammer out compromise positions in managing fisheries. In one case, the Council has brought fishermen together to agree to certain fishing practices to avoid gear conflict.

This industry-based and Council supported agreement was initially very effective. Reports of gear loss and damage decreased dramatically. As abundance of traditional finfish declined and more restrictive management measures were put into place, fishermen began fishing in other areas. Some fishermen recognized and tried to work within the gear conflict resolution. Others were either unaware of the agreement or had no other productive fishing grounds as an alternative. Gear conflicts increased as a result.

It has been suggested that if the standards to prove someone liable for gear loss or damage were reduced, it might be possible to take legal action based on wide-spread knowledge that fixed gear was in particular areas. This change in policy would require a change to the MFCMA to make a fishermen liable for gear loss when he was negligent in avoiding fixed gear. For example, a fishermen might be found to be negligent in causing damage to someone else's gear when an area was restricted to fixed gear and the mobile gear fishermen was well inside the area when the gear conflict occurred. Likewise, a fixed gear fishermen might be found to be negligent if an area or zone was set aside for mobile gear access and his gear was set within it. In this case he might be liable for gear damage when his gear was entangled in the mobile gear or for lost fishing time.

It was easy for these fishermen to ignore the agreement if they chose to do so. Because it was a voluntary agreement, carried no penalties, and high standards of proof were required under the Magnuson Act, there were no effective penalties for mobile gear fishermen when they operated in areas set aside for fixed gear. One fishermen said it best when he uttered, "we need these agreements to mean something in order for them to work."

Previous experience has shown that industry-sponsored voluntary agreements work if they provide benefits to all fishermen working in an area. As soon as a few fishermen begin to ignore a voluntary agreement, its benefits begin to rapidly decline.

Industry-based voluntary agreements can be effective when resources are plentiful and fishing effort is low. When the reverse condition exists, the penalty for not abiding by and supporting these "gentlemen's agreements" is insufficient to overcome the benefits that a few fishermen perceive if they break these informal rules. When this perception exists, industry agreements become meaningless and compliance is low.

#### **7.3.4 Stand-alone fishery management plan or amendments to existing plans to directly establish regulations for resolving gear conflict**

Although no legislation or guidance prevents the Council from developing regulations via a stand-alone gear conflict FMP or as an amendment to an existing plan, it would be far easier to justify measures to mitigate gear conflict if they were linked to conservation and optimum yield objectives. This linkage is difficult to show unless it were contained within the package of management measures being submitted to the Secretary. A separate FMP for gear conflict, unrelated to measures to achieve conservation objectives and optimum yield, might enable the

Council and fishermen to focus on local or regional solutions to the problems that occur in a specific area. If the management measures for gear conflict were submitted as an amendment, they would, of course, need to be consistent with the management objectives of the related fishery FMPs.

There are also unmanaged fisheries or fisheries for which no FMP exists, for example dogfish, monkfish, and tautog. In this case, a separate gear conflict FMP could be more effective in reducing gear conflict with these fisheries. If a separate gear conflict FMP were permitted under the Magnuson Act, the regulations could control how fishermen in these unmanaged fisheries could operate in specific gear management areas.

The only FMP that has a primary management provision which establishes areas where fixed gear can be fished without contending with mobile gear fishing is the Stone Crab FMP. It also establishes catch limits (including a minimum claw size), gear requirements, and closed seasons which provides conservation benefits to the stone crab resource. This FMP sets up several areas on the west coast of Florida where trawling for shrimp is prohibited during certain seasons (50 CFR Section 654.23). It prohibits fishing with stone crab traps in some of the areas during other seasons. There are no buffer zones and no provisions for transporting traps between areas. Partly because these areas fall within Florida's territorial limits and partly to give fishermen flexibility to modify these areas and seasons, the FMP also has a procedure or framework for county advisory committees (composed of affected fishermen) and the state of Florida to make changes "to allow for optimum production by the user groups affected." The regulations affecting the stone crab fishery are contained in Appendix II.

A separate FMP or amendment to manage a gear conflict might be the most straightforward and uncomplicated means to address this issue. It could also make it easier to justify special gear management areas and/or other costly measures as a single package.

The Councils, however, are not authorized by the Magnuson Act to prepare FMPs or amendments that have little or indirect conservation benefits to the resource. It also does not enable the Council to develop FMPs that partially manage one aspect of the fisheries, without managing all other issues as well.

## **7.4 Beneficial and Adverse Impacts of Frameworked Management Measures**

### **7.4.1 Mandatory monitoring of a radio channel by fishing vessels**

One of the more frequent complaints heard from fishermen is that they couldn't contact another vessel involved in a gear conflict. One reason that vessels do not respond to another vessel involved in a gear conflict is that the MFCMA prohibits a vessel from knowingly damaging another's gear. If the latter vessel responds, fishermen feel that part of his response might be interpreted that the location of the gear was known and that he knowingly caused the gear damage. This perspective and series of actions is counterproductive to knowing where gear is set and avoiding damage in the first place. At other times, valid reasons prevent a vessel's crew from hearing or responding to a vessel about a gear conflict. The entire crew may be on deck and out of audible range of their radio.

Many informal industry agreements stipulate that fishermen communicate their gear locations or problems via a common channel. This concept is embodied in the Southern New England Gear Conflict Resolution (Appendix I). Fishermen in that area agreed to communicate about gear problems via VHF channel 13. This particular channel may have conflicting uses in other areas and another channel might be selected for specific areas.

Communications, whether by bell, foghorn, radio, vessel monitoring systems, satellite broadcasts, or semaphore, are an integral component of any system to manage gear conflict. Although there are many forms of communication, the most standard and prevalent form is the most practical for resolving gear conflicts. Nearly all fishermen use a VHF radio and many use scanners to monitor several channels at once. Selecting a channel as a common carrier for gear conflict communication and requiring the use of an audible on-deck speaker would help to improve communications. At the very least, a vessel fishing in a gear management area could presume that another vessel was aware of gear location if broadcast over a common channel. It could therefore be presumed that a vessel was aware of gear location and knowingly caused gear damage if the loran coordinates were broadcast over the channel and the equipment was in good working order. Other vessels within radio range could verify the time of the broadcast (and should note them in the vessel's log) in case gear damage occurred.

#### **7.4.2 Gear location reporting by fixed gear fishermen and mandatory plotting by mobile gear fishermen**

Although mandatory fixed gear reporting is more cumbersome, it would reduce the need to have witnesses attest to proper communications as would be required in the above management option. Both the gear location data base and the vessel's logs would show the time of the gear location report and the time that a vessel was in the area. This system of gear monitoring, depending on how a monitoring system would be developed, could be costly for law enforcement agencies to administer. These costs, however, would be partially offset by the reduced need to investigate reports of gear conflicts via at-sea observation.

Some of this program might be contracted with third parties or automated if vessel monitoring systems were required by a framework action or for other management reasons. An automated system, possibly tied into the VMS equipment, could substantially reduce the administrative cost compared to a system of manual data administration. It might, furthermore, be administered under contract with a third party with little or no daily involvement by law enforcement agencies.

#### **7.4.3 Standards of operation when gear conflict occurs**

The law currently discourages fishermen from returning gear to the water in a manner where its owners can easily retrieve it. Retention of gear to move it back to its original location might be construed as 'removal'. Tying a bouy to a section of gear might be construed as 'tampering'. In any case, fishermen perceive that preserving damaged gear for recovery by its original owner may increase the likelihood of being prosecuted for intentional damage to gear. As a result, the law encourages fishermen to discard ensnared gear in whatever condition they find it.

This certainly makes it more difficult to find (either the markers are gone or it has been towed some distance from its original location) and greatly increases the amount of ghost gear.

#### **7.4.3.1 Release or retention of entangled gear**

Fishermen who catch fixed gear should be allowed to make minor repairs or move it back to its original location so that the original owner can retrieve and repair it. Nothing is more frustrating to a fishermen than spending hours or days searching and grappling for missing gear. Many fishermen have said they would prefer a little bit of damage rather than the loss of an entire set of gear or spending otherwise productive time searching extensively for lost gear.

#### **7.4.4 Fixed gear marking and setting practices**

Most FMPs that govern fisheries which use fixed gear require it to be properly marked and sometimes specify how the gear may be set (e.g. continuous monitoring). The reasons for these rules are usually to enhance law enforcement (making sure someone using fixed gear is using legal gear or that only permitted fishermen have set gear in a limited access fishery) to increase size or species selectivity (mesh size limits), to reduce marine mammal mortality (maximum set times or continuous monitoring) and sometimes to make the gear more visible to fishermen and reduce gear conflict (requiring radar reflectors, orientation of gear). In some cases or in certain areas, these provisions might be improved to reduce gear conflict. Several fisherman have, for example, reported that mobile gear fishermen assume that they can fish around fixed gear by avoiding a straight line drawn between the ends of the gear. Some fixed gear fishermen might have extra warp on the bouy lines to allow for tidal fluctuations and currents. Some gear might be set along an irregular depth contour or in a semi-circle, thereby avoiding a hang or abrupt change in depth. Adding a bouy line to the center of the trawl or using colored balls to represent differing ways of setting gear might help mobile gear fishermen to avoid the gear.

Lobster trap gear and bottom-tending gill nets are two of the predominant fixed gears used in New England waters. The fishery using the first gear type is governed by the Atlantic Lobster FMP and by state regulations when they are fished in state waters. The American Lobster FMP requires lobster trap fishermen to uniquely identify their gear with numbers authorized by the Regional Director, mark their gear with radar reflectors and flags, and limit the length of each trawl to no more than 1½ miles (50 CFR §649.21).

Fishermen using bottom-tending or anchored gill nets mainly target groundfish, monkfish, and dogfish. Vessels that have a federal permit to fish for groundfish under the Multispecies FMP are required to uniquely identify their gear with the official number of the vessel, mark their gear with radar reflectors and flags, and limit the length of each continuous gill net to no more than 6,600 feet (50 CFR §651.25).

Fishermen in certain areas sometimes agree to set their gear a certain way to allow trawlers and other types of mobile gear to operate between and around adjacent fixed gear. They might agree to set aside a particular area, or side of a bank that might be untrawlable but better suited to



fixed gear. They might agree to set fixed gear along certain orientations (compass headings) or on certain loran lines, thereby creating trawlable "lanes".

Fixed gear, when improperly marked or during adverse conditions, could be considered a hazard to navigation or at least an obstruction to fishing vessels towing gear. Fixed gear left unattended is also subject to loss caused by poor maintenance and bad weather. Sometimes it is left unattended for periods greatly exceeding the "shelf-life" of the bait or of the fish captured by the gear. When the gear is lost and not recovered, it often continues to fish. No benefits are derived (except by reducing the costs of tending fishing gear) from this mortality and the result is the same as discarding dead fish. The ability to set unattended gear might also confer an inequitable advantage, i.e. exclusive access to that fishing area, to fixed gear fishermen.

U.S. laws and regulations are full of examples where a burdened vessel (with some type of equipment or anchor on the bottom) must behave in a certain way, e.g. displaying different navigational lights or responding to another vessel in a specific way.

Continuous monitoring may not effect vessels capable of carrying all its gear and that make short trips. These day-trip vessels are less likely to be affected by bad weather and can when necessary retrieve their gear and return to port. This requirement would have adverse impacts on fishermen that make long trips and set lots of gear which has an optimum soak time of several days. Nearly all lobster boats, for example, are incapable of stowing more than a small percentage of its traps on-board. The practice of bring gear back to shore is so cumbersome, in fact, that lobstermen have been known to leave gear at sea in an unfished condition, i.e. "wet storage."

#### **7.4.5 Gear restrictions for specific areas (including time and area closures)**

Many FMPs establish unique management restrictions in specific areas to manage the fisheries. Infrequently, these areas are designated as "Special Management Zones", a specific designation allowed under the Magnuson Act. Most often, however, they are undesignated and instead defined by area closures, seasons, and/or gear restrictions limited to specific fishing areas. In all but one case, these "Special Management Zones" are related to certain environmental or resource protection objectives. They are classified by the following objectives:

- a) Habitat protection or areas of particular concern (e.g. Reef fish fishery of the Gulf of Mexico FMP)
- b) Refugia for a particular vulnerable stage of development (e.g. Western Pacific crustacean fisheries FMP)
- c) Direct impact on controlling fishing effort (e.g. Reef fish fishery of the Gulf of Mexico, the northeast multispecies fishery, Western Pacific bottomfish and seamount groundfish fisheries FMPs)
- d) Area specific quotas to prevent localized depletion (e.g. Western Pacific precious corals FMP)
- e) Prevention of excessive by-catch (e.g. Groundfish of the Bering Sea and the Aleutian Islands area, and the northeast multispecies fishery FMPs)

- f) Allocations to defined fishing groups (e.g. Snapper-grouper fishery of the South Atlantic, and the Pelagic fisheries of the Western Pacific region FMPs)
- g) Reduction of gear conflicts between competing fishing groups (e.g. Stone crab fishery FMP)

Even though the last two categories improve benefits (by allocating exclusive use of areas to fisheries that derive the highest net benefit from that resource) or reduce costs (by avoiding gear loss and damage), nearly all have identified conservation benefits from the area closures or restrictions.

Areas that have restrictions on when certain gears may be used and how they shall be fished are one of the most frequently used management options to achieve conservation and reduce gear conflicts. In the former case, the seasonal gear restrictions might protect concentrations of spawning or juvenile fish when they would be vulnerable to capture by a certain type of gear. If incompatible or competing uses of the fishable bottom occur, "gentlemen's agreements" or, in the case of one federal FMP, specific areas may be set aside seasonally to give exclusive access to a certain type of fishing. Fishermen are not granted exclusive rights to a fishing area, because in most cases they can opt to use another type of gear and target the other species.

The intention of these rules are to give fishermen access to the most productive grounds during the most productive seasons. This approach works best when different groups of fishermen are targeting different species. Often one or both of these target species migrate, allowing an area to be re-opened to the competing use. When different target species are found together or when fishermen target the same species with different gear, fishermen will find it considerably more difficult to agree on area separations. The marginal cost of giving fishing rights to another group compared to the benefits gained by exclusive access to another area increases as the distribution of the target species overlaps.

The following two examples of gear management zones grant exclusive access to fishermen using defined gears. Stone crab fishermen using traps and shrimp fishermen using trawls target species that overlap along the west coast of Florida. In the past, these fishermen competed for the same fishing grounds and significant gear loss occurred. During 1978, fishermen requested the state of Florida and the Gulf of Mexico Fishery Management Council to assist them by setting aside fishing areas for their exclusive use. These restrictions were established by the Stone Crab FMP (GMFMC 1979). Selection of designated gear management areas was based on making the most productive and economic use of the fishing grounds. The FMP also set up a process to allow fishermen serving on advisory committees to make quick changes to the area boundaries and seasons as fishery conditions changed.

The Southern New England Gear Conflict Resolution (Appendix I) is another example of a management program to seasonally set aside fishing areas for specific gears. In this case, however, the agreement was established by an industry-based resolution that the New England Fishery Management Council supported and facilitated industry consensus. Again as lobster seasonally migrated inshore and offshore, and as other species became available to fishermen inshore and offshore of where the lobster were concentrated, fishermen could agree on areas defined by depth contours that would allow the most productive use of the fishing grounds. As fishing conditions

changed, however, the agreement had no formal rules that could be used for law enforcement actions and the costs of not being able to fish in an area began to outweigh the benefits of not causing gear damage as areas became depleted of targeted species. Even after boats began ignoring the resolution and fishing in the other areas, fishermen still felt that the area boundaries were appropriate to the distribution of the target species.

#### **7.4.5.1 Separation buffers**

In certain cases, boundary zones which separate fishing areas can be useful. Sometimes vessels might have different perceptions of where they are relative to the restricted gear areas. For example, when boundaries are based on latitude/longitude a vessel's loran may not be tuned to the loran station and properly calibrated. If the boundaries are based on depth contours, as they are in the Gear Conflict Resolution, the fathometer might not be correctly calibrated. In some areas, rapidly changing bottom depths or rapid tides might carry a vessel into a restricted area, or the gear might not be set entirely within the boundary. This is one of the more costly aspects of an area restriction, since the area would be closed to all types of fishing.

#### **7.4.5.2 Transitions**

When gear restrictions in the managed areas change, fishermen need time to relocate their gear. This time is critical because fishermen who were excluded from an area during the preceding season are anxious to begin fishing. It also causes a pulse of localized fishing activity just when fixed gear fishermen leave some of their gear behind. At the same time, the area to which they are to move their gear may still be open to mobile gear fishing and therefore they are vulnerable to gear loss there too. If they move their gear early, they are vulnerable to gear loss in the new area. If they move late, mobile gear vessels that move into the newly opened area will undoubtedly cause unintentional gear damage.

#### **7.4.6 Vessel monitoring systems (VMS)**

The intent of using vessel monitoring systems to reduce gear conflicts would be to monitor the location of vessels relative to gear management areas and known fixed gear locations. If gear loss from other fishing activity occurred, VMS reported vessel positions would reduce the number of possible vessels that caused the loss. Because vessels fishing in a gear management area would be reporting their position via the VMS, the system would be expected to act as a deterrent to fishing in areas where fixed gear was dense. Assigning liability for gear loss, or proving a vessels innocence, would be much easier than is presently the case if enforcement could show that the position of the gear at the time of its loss or damage and the position of the alleged offender coincided. Using a VMS to reduce gear conflicts might also allow the Council to define smaller areas for exclusive fixed gear use, thereby keeping more areas open to both types of fishing.

Several problems arise from using VMSs to monitor fishing effort and deter gear conflict. Requiring vessels that fish in specified areas to use a VMS would require enforcement monitoring at sea. Without monitoring, vessels that had no VMS could fish in the area at will. Secondly, it is not clear whether placing an alleged offending vessel near the lost gear is sufficient to prove

liability. Another vessel without a VMS could have caused the damage. Obviously other evidence must be brought into play to show liability and negligence or intent to cause gear damage. The costs of requiring VMS monitoring and tracking may not be worth the benefits gained by reducing gear loss compared to the other alternatives.

Requiring VMSs for vessels fishing in gear management areas may be very costly, depending on the number of vessels fishing in the area which already use a VMS. Vessel monitoring systems (VMS, aka VTS or black boxes) are used voluntarily by some owners to track the locations of their vessels. Recent amendments to the Multispecies FMP and the Atlantic Sea Scallop FMP additionally call for mandatory use of VMS on certain vessels to monitor fishing effort. The system that will be used by NMFS to monitor fishing effort has not been finalized, but it is expected to be in place soon.

The NMFS VMS will be required only for vessels in the scallop fleet that qualify for full-time or part-time limited access. Presently there are 247 permitted full-time vessels and 95 part-time vessels. Occasional vessels account for an additional 119 permits. Compared to the multispecies trawl fleet (including fisheries for cod, haddock, yellowtail flounder, monkfish, scup, squid, whiting, and summer flounder), the number of vessels in the sea scallop fleet is very small. Few of the full-time scallop vessels are permitted as combination vessels that fish for scallops and northeast multispecies. More vessels targeting other managed species land scallops under a general access provision with a 400 pound trip limit. Unless required by another FMP, few of these vessels are required to use VMSs.

Only vessels permitted under the individual days provision of the Multispecies FMP will be required to use a VMS (or another system such as a call-in program). Only 190 of the 1695 vessel owners holding limited access multispecies permits have opted for the individual days program. The majority of permitted vessels have opted to be permitted under a system that requires certain tie-up periods when the vessels cannot fish during specified blocks of time.

Although most of the vessels required to use a VMS are permitted in the limited access sea scallop fishery, gear conflicts between these vessels are infrequent. Most permitted scallop vessels tow two 15-foot dredges and harvest sea scallops in areas where fixed gear is sparse. The relatively narrow sweep of the scallop gear and the infrequent geographical overlap of the targeted species by the two types of fishing greatly reduce gear conflicts.

Trawl vessels, on the other hand, use gear with large sweeps and target species (e.g. whiting, monkfish, dogfish, cod, white hake, and pollock) which overlap with those targeted by fixed gear fishermen (monkfish, dogfish, white hake, pollock, and lobster). Relatively few of these vessels will be required to carry a VMS to monitor fishing effort. Those vessels that will be required to have a VMS are usually larger and fish longer trips in offshore waters. They are therefore better able to afford the cost of the units.

If the Council establishes gear management areas, it would be less costly to require VMS in offshore areas than inshore. Many more vessels fishing in inshore waters would need to purchase a

VMS to reduce gear conflicts, instead of using one they already own to serve two purposes. The use of VMSs to reduce gear conflicts should, therefore, be considered on a case by case basis.

The present effort monitoring system via a VMS only requires NMFS to determine whether a vessel was at sea or in port. Reporting by a vessel's VMS can be somewhat infrequent (e.g. twice per day if whole days are counted) since the fishing grounds for the above two fisheries are usually distant from the fishing ports. The actual tracking system does not need to retain an accurate fix of all vessels, only that they were in or out of port. Monitoring possible gear conflicts, on the other hand, would require more frequent reporting and accurate position monitoring. Reporting by a VMS might need to be as frequent as every 30 minutes to have a sufficient track of vessels fishing within a gear management area. The more frequent reporting and higher data requirements may add significant costs to the program.

#### 7.4.7 Restrictions on the maximum number of fishing vessels

Gear conflict is directly related to the amount of differing fishing activities on a fishing ground. Restricting the amount of fishing activity within a gear conflict management area would help fishermen to maintain manageable distances and reduce the chance causing damage to another fisherman's gear.

Although it might seem unenforceable, this type of restriction could be administered by requiring a fishing stamp. Fishing in a defined gear conflict area without a fishing stamp would be a violation that law enforcement could monitor and enforce. The specific provisions of a fish stamp program could be recommended by the gear conflict committee and approved by the Council. One reasonable approach might be to issue a set number of fishing stamps with expiration dates. Issuance of stamps would be on a first-come, first-serve basis until the maximum number of unexpired stamps was issued. New stamps would become available as older stamps expired.

#### 7.4.8 Special permitting conditions

If the standards to prosecute a fishermen who caused gear loss were reduced, this would help build a case for negligently caused gear loss. It would improve the ability to show that a fishermen was presumed to know about fixed gear being in the area. Special permitting would also allow administration of limits on fishing effort within specified gear conflict management areas.

In addition to administering a program to limit fishing effort within gear management areas, a special permit or stamp could make gear conflict rules easier to monitor and enforce. Vessels would be allowed to fish in a gear management area if they complied with the conditions of a special permit issued for a given area. It could list the rules that a vessel must follow while fishing in the area, serving to inform law enforcement of these special rules.

Table 1. Gear conflicts reported to the US Coast Guard (MAFMC and NEFMC 1983).

Year	Caused by Foreign Fishing	Total
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1971	38	N/A
1972	60	N/A
1973	31	N/A
1974	39	N/A
1975	41	65
1976	41	60
1977	15	39
1978	13	29
1979	3	21
1980	5	12
1981	21	62
1982	38	58

Table 2. Claims for reimbursement from the Gear Compensation Fund for trawler-caused gear losses incurred by lobstermen in the EEZ. (MAFMC and NEFMC 1983, C. Chapman, pers comm).

Year	Cause	Number of Claims	Claimed Loss	Documented Losses	Total Compensation
1979	Foreign	2		\$18,134	\$14,690
1979	Domestic	14		\$68,937	\$50,238
1980	Foreign	5		\$42,825	\$30,335
1980	Domestic	29		\$214,927	\$192,957
1981	Foreign	13		\$187,659	\$144,992
1981	Domestic	62		\$412,304	\$309,402
1982	Foreign	1		\$9,360	\$6,206
1982	Domestic	25		\$138,092	\$129,682
1991	Domestic	56	\$746,136	\$346,994	\$333,114
1992	Domestic	63	\$316,791	\$116,029	\$111,388

1993	Domestic	NA <sup>1</sup>			
1994	Domestic	NA <sup>1</sup>			
1995	Domestic	NA <sup>1</sup>			

Table 3. Gear losses reported to the NEFMC by eight lobster vessels for 1994-1995.

Summary of lobster gear losses								
	Set over days	Traps lost	Traps per day	Ends lost	Value	Value per set over day	Traps per end	
Total loss	847	3211	3.4	141	\$292,921	346	23	
Average per boat	121	401		24	\$36,615			
Average per SOD		3.4		0.14	\$304			
Summary of lobster gear losses by month								
From:	To:	Set over days	Traps lost	Traps per day	Ends lost	Value	Value per set over day	Traps per end
10/07/94	10/26/94	54	16	0.3	1	\$1,712	32	16
10/27/94	11/26/94	144	709	4.9	25	\$68,624	477	28
11/27/94	12/24/94	187	1075	5.7	41	\$109,490	585	26
12/25/94	1/24/95	253	487	1.9	34	\$50,533	200	14
1/25/95	3/3/95	209	590	2.8	20	\$62,562	299	30

Table 4. Reports of gear conflict incidents to the U.S. Coast Guard (U.S. Coast Guard Enforcement Statistics, LCDR Donald Bruzdinski, Law Enforcement Branch).

	1995	1996	Percent Change
January	6	5	-17
February	6	8	+33
March	10	9	-10

April	15	5	-67
May	14	5	-64
June	11	3	-73
July	13		
August	4		
September	10		
October	16		
November	19		
December	16		

## 7.5 Rationale for Adoption of the Preferred Alternative

The Environmental Impact Statements prepared for the existing FMPs thoroughly describe the environment that would be affected by this proposal. The Supplementary Environmental Impact Statements prepared for Amendment 7 to the Multispecies FMP, Amendment 4 to the Atlantic Sea Scallop FMP, and Amendment 4 to the American Lobster FMP provide recent information on the fisheries that will be affected by this action. The proposed framework adjustment process will not significantly alter the natural or human environment. The environmental consequences of the proposed framework process, especially beneficial or adverse economic impacts and impacts on public health and safety, fall within the scope of those previously analyzed. Specific framework adjustments to resolve certain gear conflicts, however, may require supplementary analyses depending on the scope of the actions being proposed under the framework. It is impossible, at this time, to forecast what specific measures will be needed in the future. The Council, therefore, will analyze the types and amounts of beneficial and adverse impacts that may occur when it submits a framework adjustment under these amendments.



## **7.6 Finding of No Significant Impact (FONSI)**

The goals of the National Environmental Policy Act (NEPA) of 1969 as amended are to provide for the protection, maintenance, and enhancement of the environment. All federal agencies must examine the environmental consequences of proposed actions and conduct a decision-making process that incorporates public input. The Council's Statement of Organization, Practices, and Procedures provide for this environmental review and the opportunity for public input.

Under these procedures, the Council prepared an Environmental Assessment for the proposed action and sought comments during public hearings. The Council distributed the Environmental Assessment and sought public comment on the environmental review during public hearings. These comments are included in Sections 15.0 and 16.0. No comments were made that disputed the Council determination that the proposed action would not have a significant effect on the human environment.

The Environmental Assessment (Section 7.0) serves as the environmental review and supports the conclusion that the proposed action will not have a significant effect on the human environment. The final determination is made by the Assistant Administrator for Fisheries and is circulated to all interested government agencies and interested parties for formal written comment during the agency review period. If the AA determines that a significant effect on the human environment exists, an Environmental Impact Statement is necessary.

This public review and the Environmental Assessment (Section 7.0) gives the Assistant Administrator for Fisheries sufficient justification to determine that the proposed action will not have a significant effect on the human environment. A Finding of No Significant Impact is, therefore, warranted.

## **7.7 List of Contributors**

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A special thanks is extended to the staff of the NEFMC for providing critical review of the documents and the management action's relationship to individual FMPs and to the administrative staff of the NEFMC for their assistance in this effort.

**7.8 Draft Environmental Assessment Circulation List**















## **8.0 EXECUTIVE ORDER 12866, REGULATORY IMPACT REVIEW (RIR)**

### **8.1 Introduction**

The Regulatory Impact Review (RIR) provides an assessment of the costs and benefits of the proposed regulations and other alternatives in accordance with the guidelines established by Executive Order 12866. The regulatory philosophy of Executive Order 12866 stresses that, in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives and choose those approaches that maximize net benefits to the society.

The RIR also serves as a basis for determining whether any proposed regulations are a "significant regulatory action" under the criteria provided in Executive Order 12866 and whether the proposed regulations will have a significant economic impact on a substantial number of small entities in compliance with the Regulatory Flexibility Act of 1980 (RFA).

This RIR describes the effects of the various alternatives considered in this amendment to meet the objectives of the FMP and to reduce gear conflict. Quantitative analysis of impacts are not possible, because they depend on the number and scope of actions taken via framework adjustments to the plan's management measures. A qualitative analysis of the expected benefits and cost of the proposed regulations compared to taking no action is presented and supplies the information necessary for the Secretary of Commerce to address the requirements of Executive Order 12866. The Regulatory Flexibility Analysis, which evaluates the impacts of management alternatives on small businesses, is provided in Section 9.0.

### **8.2 Problem Statement**

The purpose and need for management (statement of the problem) is fully described in Section 3.0 of the amendment document.

### **8.3 Objectives**

The management objectives are explained in Section 3.4 of the amendment document.

### **8.4 Management Alternatives**

The proposed action is described in Section 4.0 of the amendment document. Alternatives to the proposed action are summarized in Section 7.3 of the Environmental Assessment.

### **8.5 Impacts of the Management Alternatives**

The qualitative impacts of the proposed action are discussed in Section 7.4 of the Environmental Assessment. The qualitative impacts of the non-selected alternatives are discussed in Section 7.3. A formal, quantitative cost-benefit analysis is not possible because the expected benefits depend on the frequency and characteristics of future gear conflicts that would be addressed through framework action. The costs and benefits of a particular framework action to

address a specific gear conflict will be analyzed in greater detail at the time the framework action is contemplated.

There are no data comparing the costs of developing regulations through the amendment process versus a framework action. There are, however, differences in administrative and industry costs. Amendments typically take at least one to two years to develop, from scoping to publication of final regulations. Framework actions, on the other hand, take four to six months. This difference occurs for the following reasons:

- a) Scoping for framework actions has taken place in association with this amendment;
- b) The public hearing process and proposed rulemaking for this amendment notified the public of the shortened public review process for gear conflict framework actions;
- c) Framework actions are an adjustment to a more comprehensive program to manage the fisheries. Each action is therefore less extensive and controversial and;
- d) Regulations are published as final rules, rather than proposed rules, because of the advanced notice of the framework process and the integration of the opportunity for public comment into the process itself.

There is an obvious reduction in the administrative cost from a framework action versus amending one or more fishery management plans. Delays in addressing gear conflicts through amendments versus through a framework action also creates costs to the fishing industry. The costs described in Section 7.2 continue to accrue during the time it takes the Council to address these issues through the standard rulemaking process. Reducing the time it takes to address gear conflicts correspondingly reduces costs to industry.

## **8.6 Enforcement Costs**

There will be no significant change to enforcement costs from taking this action. Future framework actions, however, may impact enforcement costs. Provisions to monitor and enforce gear location reporting requirements or area closures may increase these costs. Reduced gear conflict, on the other hand, may reduce enforcement costs from investigating and monitoring fishery conditions relative to the gear conflict provisions of the Magnuson Act. The relative effect on enforcement costs will be evaluated for each framework action proposed for a gear conflict management area.

## **8.7 Identification of Overlapping Regulations**

The proposed action does not create overlapping regulations with any state regulations or federal laws.

## **8.8 Conclusion**

The preceding Regulatory Flexibility Analysis and the relevant sections of the RIR indicate that the regulations proposed by these amendments will not have "significant impacts" on a substantial number of small businesses.

## **9.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS (IRFA)**

The purpose of the Regulatory Flexibility Act is to minimize the adverse impacts of burdensome regulations and recordkeeping requirements on small businesses. To achieve this goal, the RFA requires government agencies to describe and analyze the effects of regulations and possible alternatives on small business entities.

The Regulatory Impact Review (RIR) of the previous section qualitatively analyzed the expected net benefits of these amendments to the fishing industry and the economy as a whole. The following discussion focuses specifically on the consequences of preferred and non-preferred management actions for small entities. It describes the businesses involved in the fisheries of the Northeast Region and estimates the number of small businesses that would be affected by the regulations. On the basis of this information, Regulatory Flexibility Analysis determines whether the proposed action would have a "significant economic impact on a substantial number of small entities."

### **9.1 Problem Statement**

The purpose and need for management (statement of the problem) is fully described in Section 3.0 of the amendment document.

### **9.2 Objectives**

The management objectives are explained in Section 3.4 of the amendment document.

### **9.3 Management Alternatives**

The proposed action is described in Section 4.0 of the amendment document. Alternatives to the proposed action are summarized in Section 7.3 of the Environmental Assessment.

### **9.4 Determination of Significant Economic Impact on a Substantial Number of Small Entities**

The RFA recognizes three kinds of small entities: small businesses, small organizations, and small government jurisdictions. It defines a small business in any fish-harvesting or hatchery business as a firm with receipts of up to \$2 million annually. The proposed action amends three fishery management plans, the Multispecies Fishery Management Plan, the American Lobster Fishery Management Plan, and the Atlantic Sea Scallop Fishery Management Plan.

The Northeast Multispecies Groundfish industry directly affected by the proposed action is composed primarily of small business entities. The number of multispecies permits totaled 4,702 in November 1995. Section E.6.4.1 of Amendment 7 provides a description of the industry in terms of the size and characteristics of individual operating units. The annual revenues of these units are less than the \$2 million RFA threshold and, therefore, the majority of vessels in the Northeast Multispecies Fishery are small entities according to the SBA criteria. Further information on the vessels (in terms of gear, tonnage, port and other demographic characteristics) in commercial and recreational fisheries is provided in Section E.6.4 (Human Environment) of Amendment 7. This section also describes the processing sector.

As of 1993, there were 4,084 federally-endorsed lobster permits outstanding. The majority of permitted vessels have gross revenues less than \$2 million and are small entities according to the SBA criteria. Further information on these vessels and the processing sector is given in Sections VIII and XI.A of Amendment 5 to the American Lobster Fishery Management Plan.

As of May 1996, there were 464 limited access scallop permits issued according to Amendment 4 to the Atlantic Sea Scallop Fishery Management Plan. Total landings vary considerably, due to large fluctuations in recruitment, and recently averaged 25 to 30 million pounds. At an ex-vessel price of \$4.00 per pound, total revenues are approximately \$110 million, or about \$237,000 per permitted vessel. The largest, most active vessels may exceed the \$2 million criterion, but most do not. Further information on these vessels and the processing sector is given in Section VI.D of Amendment 4.

According to the Regulatory Flexibility Act, if more than 20 percent of the small businesses in a particular industry are affected by the regulations, the regulations are considered to have an impact on a "substantial number" of these entities. The proposed action potentially affects 9,250 entities regulated under the three fishery management plans. Most are considered to be small businesses according to SBA criteria. This figure does not include businesses dependent on recreational fishing. Since the proposed action has the potential to affect all vessels that are permitted under any of the three fishery management plans, the "substantial number" criterion will potentially be exceeded.

The economic impacts on small business entities are considered to be "significant" if the proposed regulations are likely to cause any of the following: a) a reduction in annual gross revenues by more than 5 percent; b) an increase in total costs of production by more than 5 percent as a result of an increase in compliance costs; c) an increase in compliance costs as a percent of sales for small entities at least 10 percent higher than compliance costs as a percent of sales for large entities; d) costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or e) a number (two percent as a "rule of thumb") of small business being forced to cease business operations.

The proposed action, by itself, will have no impact on overall revenues. The intent of the framework process and the actions taken under the process is to reduce costs associated with fishing. There may be some increases in production costs, e.g. supply costs to properly mark gear, but these will be offset by the anticipated reduction in gear loss. The compliance costs are

qualitatively described in the next section. The proposed action is unlikely to materially reduce annual revenues or increase production and compliance costs. The economic impacts on small business entities are, therefore, not considered to be "significant".

## **9.5 Compliance Costs**

There are no compliance costs associated with the amendments and the framework process established by these amendments. There may, however, be compliance costs that arise because of future framework actions. The scope of a future gear conflict framework action is limited and compliance costs will therefore be confined to those fisheries that operate in a gear conflict management area. These costs will be furthermore quantitatively evaluated at the time a framework action is contemplated.

## **9.6 Determination of Significant Regulatory Action**

Executive Order 12866 defines a "significant regulatory action" as one that is likely to result in: a) an annual effect on the economy of \$100 million or more, or one which adversely affects in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; b) a serious inconsistency or interference with an action taken or planned by another agency; or c) novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

The preceding analysis shows that this amendment would not constitute a "significant regulatory action" since it will not, by itself, adversely affect in a material way a sector of the economy, i.e., the fishing industry and the jobs in this industry. The proposed regulations will not have, however, an annual impact on the economy of \$100 million or more, and will not adversely affect the productivity, environment, public health or safety, or state, local, or tribal governments or communities in the long run. The proposed action also does not interfere with an action planned by another agency. It does not raise any novel legal and policy issues, because it relies on and slightly modifies a framework process already in place for all three fishery management plans being amended.

## 10.0 ENDANGERED SPECIES ACT

### 10.1 Summary

The Endangered Species Act provides for the conservation of endangered and threatened species of fish, wildlife, and plants. The program, jointly administered by the Department of the Interior and the Department of Commerce, calls for an evaluation of all federal projects for their impact on endangered and threatened species. The New England Council initiated formal consultation with the National Marine Fisheries Service pursuant to Section 7(a)(2) of the Act for Amendment 7 to the Northeast Multispecies Fishery Management Plan (FMP), Amendment 5 to the American Lobster FMP and Amendment 4 to the Atlantic Sea Scallop FMP. NMFS subsequently issued a Biological Opinion for each plan amendment which concluded in each case that management measures might affect, but were not likely to jeopardize, the continued existence of any populations of listed or threatened species or adversely affect critical habitat.

Because this amendment only proposes a structure under which specific actions may be taken in the future, an evaluation of the impacts of management measures has not been undertaken at this time. Once a framework adjustment is proposed, however, the Council will re-initiate consultation with NMFS and provide a complete assessment.

### 10.2 Anticipated Impacts

A description of affected species and impacts was included in the supporting documents for the multispecies, lobster and sea scallop amendments discussed above. The most common endangered or threatened species involved in fishery interactions or otherwise potentially affected by those management actions included the loggerhead turtle (*Caretta caretta*), leatherback turtle (*Dermochelys coriacea*), humpback whale (*Megaptera novaeangliae*), fin whale (*Balaenoptera physalus*), northern right whale (*Eubalaena glacialis*), and harbor porpoise (*Phocoena phocoena*) which is proposed to be listed as threatened. All could be subject to entanglement with damaged and lost gear caused by gear conflicts and could be affected by the management measures available for inclusion in future framework adjustments. Under this amendment those measures are limited to:

- 1) Mandatory monitoring of a radio channel by fishing vessels,
- 2) fixed gear location reporting and plotting requirements,
- 3) standards of operation when gear conflicts occur,
- 4) fixed gear marking and setting practices,
- 5) gear restrictions for specific areas (including time and area closures),
- 6) vessel monitoring systems,
- 7) restrictions on the number of fishing vessels or amount of gear, and
- 8) special permit conditions.

## **11.0 COASTAL ZONE MANAGEMENT ACT, CONSISTENCY DETERMINATION AND CORRESPONDENCES**

### **11.1 States Contacted and Council Determination of Consistency with State Programs**

The Coastal Zone Management Plans of the following states were reviewed to determine the consistency of the amendments with the state programs: North Carolina, Virginia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, and Maine. The amendment documents and the following letters giving the Council's determination were mailed to all affected states.

NC



VA

MD

DE

PA

NJ

NY

CT

RI



MA

NH

ME

## **11.2 State Concurrences**

No state concurrences with the Council's determinations have been received at the time of submittal of these amendments.

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

No new data collection requirements are proposed by these amendments. The U.S. Coast Guard has begun compiling records of reported gear conflict incidents that would be sufficient for monitoring the progress and impact of a framework action. The costs of maintaining these records are minimal. The proposed action, therefore, does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

For a particular gear conflict management area, however, the Council may propose a framework adjustment that requires fishermen to report the locations of fixed gear (Section 4.2.2). The primary purpose of this potential action would be to improve communications between fixed and mobile gear fishermen, not to collect data about fishing activity. The administration costs of this program could be substantial, but would probably be borne by fishermen operating in these areas and would be weighed against the anticipated benefits. Future technology may greatly reduce the costs of reporting and monitoring fixed gear locations, making the costs reasonable. In any case, the administrative cost and the reporting burden hours would be highly dependent on the type of information to be reported, the frequency of those reports, and the means for making those reports. The costs of any new reporting requirements will be estimated when framework actions are contemplated.

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

The proposed action will not have any adverse affect on marine mammals that occur within the range of species in the management unit of the fishery management plans being amended. Commercial fishing operations and vessels which have valid fishing permits issued in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act are subject to the provisions of the MMPA and specifically Section 114 which governs the incidental take of marine mammals.

## **14.0 REFERENCES CITED**

Alexander, A.B., H.F. Moore and W.C. Kendall. 1915. Report on the otter trawl fishery. U.S. Bureau of Fisheries.

Atlantic Offshore Fishermen's Association. 1983. Letter to Mr. Patrick Carroll dated December 8, 1983.

Casey, Elizabeth C. 1983. Implementation of Gear Conflicts Regulations. NOAA memo dated January 18, 1983 to Frank Grice. 13 pp.

- Gulf of Mexico Fishery Management Council (GMFMC). 1979. Stone Crab Fishery Management Plan.
- Mid-Atlantic Fishery Management Council (MAFMC). 1984. Summary of March 1984 fact finding meetings.
- Mid-Atlantic Fishery Management Council (MAFMC) and New England Fishery Management Council (NEFMC). 1982. Draft Discussion Paper for Gear Conflict Amendments to the Surf Clam and Ocean Quohog, Atlantic Mackerel, Squid, and Butterfish, Atlantic Herring, Atlantic Sea Scallop and Atlantic Groundfish Fishery Management Plans, 12 January 1982. 12 pp.
- MAFMC and NEFMC. 1983. Gear Conflict Amendments to the Surf Clam and Ocean Quohog, Atlantic Mackerel, Squid, and Butterfish, Atlantic Sea Scallop, Swordfish and Atlantic Groundfish Fishery Management Plans. 33 pp.
- New England Fishery Management Council (NEFMC). 1986. Amendment 1 to the Fishery Management Plan for Atlantic Lobster. 27 pp.
- NEFMC. 1993. Final Amendment #5 to the Northeast Multispecies Fishery Management Plan Incorporating the Supplemental Environmental Impact Statement. Volume 1: 361 pp.
- NEFMC. 1994. Amendment 5 to the Atlantic Lobster Fishery Management Plan Incorporating a Final Supplemental Environmental Impact Statement. Volume 1: 133 pp.
- Smith, E.M. and L.L. Stewart, ed. 1985. A study of lobster fisheries in the Connecticut waters of Long Island Sound with special reference to the effects of trawling on lobsters. CT DEP, The Univ. of CT, and NOAA Sea Grant Marine Advisory Service. 100 pp.

SECTION 15.0

PROPOSED REGULATIONS

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**Northeastern Fisheries of the United States**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments

**SUMMARY:**

**DATES:** Comments on this proposed rule must be received by [**insert 30 days after the date of publication in *Federal Register***].

**ADDRESSES:** Comments should be sent to Dr. Andrew A. Rosenberg, Director, Northeast Regional Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on Gear Conflict Framework Adjustment Process."

**FOR FURTHER INFORMATION CONTACT:** Douglas G. Marshall, Executive Director, New England Fishery Management Council, 617-231-0422 or Paul H. Jones, Fishery Policy Analyst, Northeast Regional Office, 508-281-9273.

**SUPPLEMENTARY INFORMATION:** Gear conflict has been an historic problem for fishermen. In New England, gear conflict arose as fishermen switched from hook and line gear to trawls to catch groundfish. Some trawlers, working in particular areas, caused gear damage or excluded hook fishermen from areas where they previously fished. Arguments for or against fishing with various gears in areas which some considered to be inappropriate were mischaracterized as promoting conservation by one or more groups.

As foreign fishing intensified during the 1960's and early 1970's, gear conflicts with domestic fishermen became more frequent. U.S. fishermen that used lobster traps or bottom longlines in offshore waters often experienced gear loss caused by foreign trawlers. Almost from their

beginning the Councils, established by the MFCMA of 1976, tried to resolve these problems. During 1977, the first year of US fishery jurisdiction of the former Fishery Conservation Zone, the New England and the Mid-Atlantic Fishery Management Councils formed committees to explore the nature and extent of gear conflicts in the EEZ north of Cape Hatteras, NC. Hearings were held and the Council sought the advice of coastal states to gather suggestions on how this problem could be resolved.

During 1977 and 1978, the Mid-Atlantic Council developed a discussion document detailing regulations to alleviate gear conflict. These proposed regulations included very detailed fixed gear marking requirements, procedures for reporting fixed gear locations and requirements for foreign vessels to obtain those positions prior to fishing, and a system for handling reports of conflicts, conflict investigations, and conflict settlements.

The focus of these initial discussions centered on the details of how fixed and mobile gear fishing would be regulated. These regulations were initially intended to be developed and submitted as a single FMP for gear conflict. Early in the process, however, NMFS pointed out that it was necessary to develop these regulations through the FMP process as authorized by Congress. The earliest legal advice on this matter concluded that there was "no evidence that Congress contemplated that fishery management regulations could be issued outside the framework of fishery management plans."

These early efforts to develop a separate FMP to relieve gear conflicts were unsuccessful largely because of the difficulty in producing a legally sufficient document to address the conservation and management issues which would comply with section 303 of the MFCMA.

### **Voluntary Industry Agreements**

Whenever gear conflict was infrequent, fishermen working in proximity to one another were able to forge informal agreements to set their gear in certain areas and follow certain guidelines. This method of resolving the problem is effective as long as the target species do not have a high degree of overlap or when the resource is abundant enough to support the level of fishing effort. When market demand increases, especially for an underutilized species, or when traditional species are not abundant, shifts in fishing effort occur. These shifts can cause gear conflict when vessels using incompatible methods damage gear used by existing fishermen.



From the early 1990's to the present, trawl fishermen have begun to target non-traditional species (monkfish, dogfish, whiting) in areas historically fished by lobster traps and anchored gill nets. A combination of the above events caused fishermen to target monkfish in Southern New England. Gear conflicts initially increased in 1991-92, but were brought under control by an industry-based voluntary agreement. Declining abundance of groundfish and localized depletion of monkfish caused fishermen to again move into areas used by lobster fishermen and gear conflicts rose to even higher levels during 1994-95. These problems appear to be continuing during 1995-96.

Three years ago, the Council helped several groups of fishermen to draft and circulate the "Southern New England Offshore Gear Conflict Resolution" (Appendix I), a voluntary industry agreement meant to reduce gear conflict. It has since been very effective because of its industry-based origin, and because fishermen designed it to allow them to set gear in the most productive areas and seasons. Participants in the agreement included lobstermen, pelagic and bottom longliners, and offshore trawlers targeting monkfish, squid, butterfish, and whiting. Each group gave up access to fishing grounds when they were less productive to gain easier access to grounds during more productive seasons. They felt it was preferable to work toward voluntary industry cooperation and agreement, rather than to be burdened by government regulations that unnecessarily penalize fishermen and often allow little flexibility. Besides setting aside areas and buffers to separate fixed and mobile gear, the resolution stresses cooperation and good communication among the different fishing groups.

Although some problems still exist, the voluntary agreement significantly reduced gear loss and conflicts. Since the 1993-94 season, however, conflicts escalated as fishermen altered their harvesting practices. The pursuit of alternative species, declining abundances of traditional species, additional regulations to reduce fishing on stressed fish stocks, and changing market conditions all have contributed to the recent change in fishing practices.

### **More Recent Efforts**

During the spring of 1995, it became apparent that the voluntary industry agreement was no longer adequate to limit the gear conflict to acceptable levels in Southern New England. The Council responded by holding meetings during April and May 1995 to determine how regulations could be implemented to address this problem. Amending the fishery management

plans for each gear conflict was not satisfactory, partly due to the failure of previous efforts to manage gear conflicts this way. Clearly, the problem with amending fishery management plans was that two or more plans usually would need to be amended and the costs caused by the proposed regulations for a single amendment would exceed the benefits for the fishery managed under that plan. In place of these flawed mechanisms, the Council proposed amending its plans with a unified framework process that would amend more than one plan. A single framework adjustment would amend more than one fishery management plan, therefore, be judged on the benefits and costs for all affected fisheries.

While the Council developed and evaluated the gear conflict framework procedure, gear conflict in Southern New England intensified. The Council foresaw greater problems during the fall season and, in August 1996, asked the Regional Director to take emergency action. This initial request was denied, primarily for technical reasons. The Council modified its request to address the technical difficulties and resubmitted its request for emergency action on November 16, 1995. The Regional Director indicated his approval for taking emergency action and an environmental assessment for the emergency action was prepared in January 1995.

During September, October, and November 1995, the Council held several oversight committee meetings to develop a public hearing document and environmental assessment for managing gear conflicts. The Council approved of final versions of these documents on December 1995 and directed the staff to schedule public hearings. Efforts to schedule these public hearings and to implement emergency action were delayed because of staff furloughs and budgetary uncertainty.

Emergency action was taken on March 27, 1996. Fishermen reported good compliance with the emergency action regulations and significantly reduced gear conflict. The emergency action expired on June 25, 1996 and was not extended for a second 90 day period. Meanwhile, the Council scheduled public hearings for May 21-30, 1996 after funding for fiscal year 1996 was approved. Public hearing comments were considered by the Gear Conflict Oversight Committee on June 4, 1996 and the Council approved a final amendment on June 6, 1996.

### **Framework Adjustments**

The Council is amending the FMPs to adjust management measures and resolve gear conflicts via a framework process. This process (Figure 1) would function similar to the frameworks

currently in place for management measures designed to meet conservation objectives. At least two publicly announced meetings would be held to discuss and receive comment on any proposal to resolve gear conflict via regulation. Following approval of the proposed management measures at the second meeting, the Council would prepare and submit the final documents to the Secretary. The pre-planned process, the public notice, and advanced availability of the proposals would give the Secretary sufficient justification to waive the customary 15 to 30 day public comment period. If the Council's submission is approved and the Council met the requirements for public comment, the management measures could be published as final rules and take immediate effect. Only gear conflicts occurring in Federal waters would be addressed by frameworked adjustments to an FMP.

Unlike frameworked management measures to achieve conservation objectives, the Council may not have specific measures ready for discussion when a gear conflict problem first arises. Since these measures for gear conflict would work best when various fishing sectors agree on them, the Council believes that initiatives to resolve gear conflicts should come from the affected fishermen. Without the initial commitment, it is unlikely that fishermen would comply with the management measures without extensive compliance monitoring by law enforcement.

The initial phase of the proposed framework process will begin when fishermen bring the matter to the Council. The initial meeting would not be considered the first of two required Council meetings under the framework procedure. During this initial meeting, the Council would initially define the area under consideration. A potential gear conflict management area should address a specific problem and, therefore, be no larger than 2700 square nautical miles, equivalent to one degree square of latitude and longitude. The proposed gear management area can be changed during the initial development phase, but would be defined before scheduling and announcing the first framework meeting. The Council may, where conditions call for similar gear conflict management, develop parallel gear conflict regulations for contiguous gear conflict management areas. The framework adjustments, in this case, could be administered in tandem to affect a single set of regulations covering an area larger than 2700 square miles. A single framework adjustment may be submitted for multiple, contiguous gear management areas, but the Council will seek broader industry participation, possibly through multiple ad hoc advisory committees.

The following definition of gear conflict will be used: "Any incident at sea involving one or more fishing vessels (a) in which one fishing vessel or its gear comes into contact with another

vessel or the gear of another vessel, and (b) which results in the loss of, or damage to, a fishing vessel, fishing gear, or catch." (50 CFR section 611.2)

Competition between vessels using different gears to target the same species is not a gear conflict, even though gear damage may ensue. The gear conflict framework process is intended to resolve problems where fishermen using dissimilar gear target different species in one area. Allocation of rights to harvest a resource (e.g. groundfish, scallops, lobsters, etc.) will be administered by amendments to those fishery management plans. Efforts to gain a competitive access to a particular fishery through framework adjustments of gear conflict regulations will be discouraged.

### **Classification**

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended, requires NMFS to publish implementing regulations proposed by a Council within 15 days of the receipt of an amendment and proposed regulations. At this time, NMFS has not determined whether the amendment this rule would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. NMFS, in making that determination, will take into account the information, views and comments received during the comment period.

The Council prepared an Environmental Assessment for these amendments and the Assistant Administrator concluded that there will be no significant impact on the human environment as a result of this rule. A copy of the environmental assessment is available from the Council (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

In compliance with the Regulatory Flexibility Act, the Council has prepared an IRFA as part of the RIR contained in the amendment documents that concludes that this proposed rule would not have significant economic impacts on a substantial number of small entities. A copy of this analysis is available from the Council (see **ADDRESSES**).

This rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

The Council determined that this rule does not affect the coastal zone of any state with an approved coastal management program. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. The Council has not yet received comments from the state agencies within the statutory time period.

An informal consultation under the Endangered Species Act was concluded for Amendment 8 to the Multispecies Fishery Management Plan, Amendment 6 to the American Lobster Fishery Management Plan, and Amendment 6 to the Atlantic Sea Scallop Fishery Management Plan. As a result of the informal consultation, the Regional Director determined that fishing activities conducted under this rule are not likely to adversely affect endangered or threatened species or critical habitat.

Adverse impacts on marine mammals resulting from fishing activities conducted under this rule are discussed in the amendment documents. Adverse impacts from this action are not expected, but adverse impacts caused by a framework adjustment will be estimated at the time future adjustments are considered.

#### **List of Subjects in 50 CFR Part 648**

Gear conflict, framework adjustment process.

Authority: 16 U.S.C. 1801 *et seq.*

Dated:

**Rolland A. Schmitten**

Assistant Administrator for Fisheries, National Marine Fisheries Service

For the reasons set out in the preamble, 50 CFR Parts 648 and 649 are proposed to be amended as follows:

#### **PART 648 -- FISHERIES OF THE NORTHEASTERN UNITED STATES**

**SUBPART A -- GENERAL PROVISIONS**

1. In § 648.2, the following definitions are proposed to be added:

\* \* \* \* \*

Beam trawl means gear consisting of a twine bag attached to a beam attached to a towing wire designed so that the beam does not contact the bottom. The beam is constructed with sinkers or shoes on either side that support the beam above the bottom or any other modification so that the beam does not contact the bottom. The beam trawl is designed to slide along the bottom rather than dredge the bottom.

\* \* \* \* \*

Fixed gear means lobster pot trawls and sink gillnets

\* \* \* \* \*

Mobile gear means trawls, beam drawls, and dredges that are attached to a vessel at all times and which maneuver with that vessel.

\* \* \* \* \*

Trawl means gear consisting of a net that is towed, including but not limited to beam trawls, pair trawls and Danish and Scottish seine gear.

\* \* \* \* \*

**SUBPART D -- MANAGEMENT MEASURES FOR THE ATLANTIC SCALLOP FISHERY**

2. In § 648.55, paragraphs (d) through (f) are proposed to be redesignated as paragraphs (h) through (j), respectively, newly redesignated paragraph (h) is proposed to be revised, and new paragraphs (d) through (g) are proposed to be added as follows:

§ 648.55 Framework specifications

\* \* \* \* \*

(d) A framework action to address a gear conflict may be initiated by the Council when affected fishermen request regulatory assistance to manage a conflict defined under 50 CFR §600.10. If the Council initiates a framework action, it shall define a gear management area, not to exceed

2700 square nautical miles, and seek industry advice by holding public meetings to solicit comment from affected fishermen, by forming an ad hoc industry advisory committee for each gear management area, or by referring the matter to its standing industry advisory committee for gear conflict. The Council shall attempt to involve all affected parties and seek balanced representation under its Statement of Organization, Practices, and Procedures. The industry may develop its recommendation by majority vote, consensus, or by a sense of the participants. The industry will make its formal recommendation to the Council at the first framework meeting. The Council shall provide the public with advance notice of the time, date, and place of the meeting and shall include a detailed description of the action under consideration. Notice shall be announced in the *Federal Register* at least two weeks prior to this first framework meeting.

(e) If more than one management authority (Mid-Atlantic Fishery Management Council, Atlantic States Marine Fisheries Commission, NMFS for pelagic species) is involved and has incorporated a gear conflict framework procedure into its plans, the negotiated measures shall be formally proposed by the New England Fishery Management Council to the other authority. A majority vote of each management authority is necessary to approve of making a framework adjustment. If there is disagreement between these authorities, the Council may return the proposed framework adjustment to its gear conflict committee for further review and discussion.

(f) After accepting public comment at the first framework meeting, the Council may refer the issue back to the gear conflict committee for further consideration, make adjustments to the measures that were proposed, or approve of the measures and begin developing the necessary documents to support the framework adjustments. The Council shall identify, at the first framework meeting, a preferred alternative and/or identify the possible alternatives. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

- (1) mandatory monitoring of a radio channel by fishing vessels.
- (2) fixed gear location reporting and plotting requirements.
- (3) standards of operation when gear conflict occurs.
- (4) fixed gear marking and setting practices.



- (5) gear restrictions for specific areas (including time and area closures).
- (6) vessel monitoring systems.
- (7) restrictions on the maximum number of fishing vessels or amount of gear.
- (8) special permitting conditions.
- (g) Following the first framework meeting, the Council shall prepare a framework document that discusses and shows the impacts of the alternatives. It shall be available to the public at least ten days prior to the second or final framework meeting. Notice of the second or final meeting shall be published in the *Federal Register* at least two weeks prior to the meeting. The notice shall include a discussion of the proposed action, the date that the framework document having alternatives and analyses will be available to the public at the Council office, and a request for written public comments. These written public comments will be due at the Council office two days prior to the final framework meeting. If the Council cannot meet its requirements, it shall schedule another meeting and follow the same procedures outlined above for the final framework meeting. The final framework meeting shall be a full Council meeting, but interim meetings may be scheduled to receive public comment.

(h) \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflict and reduce economic loss.

(4) \* \* \*

(i) \* \* \*

(j) \* \* \*

**SUBPART F -- MANAGEMENT MEASURES FOR THE NORTHEAST MULTISPECIES FISHERY**

3. In § 648.90, paragraphs (b)(2) and (b)(3) are proposed to be redesignated as paragraphs (b)(6) and (b)(7), respectively, newly redesignated paragraph (b)(6) is proposed to be revised, and new paragraphs (b)(2) through (b)(5) are proposed to be added as follows:

§ 648.90 Framework specifications

\* \* \* \* \*

(b) Within season management action. the NEFMC may, at any time, initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the NE Multispecies FMP. A framework action to address a gear conflict may be initiated by the Council when affected fishermen request regulatory assistance to manage a conflict defined under 50 CFR §600.10.

(1) \* \* \*

(2) Adjustment process for gear conflicts. If the Council initiates a framework action to address a gear conflict, it shall define a gear management area, not to exceed 2700 square nautical miles, and seek industry advice by holding public meetings to solicit comment from affected fishermen, by forming an ad hoc industry advisory committee for each gear management area, or by referring the matter to its standing industry advisory committee for gear conflict. The Council shall attempt to involve all affected parties and seek balanced representation under its Statement of Organization, Practices, and Procedures. The industry may develop its recommendation by majority vote, consensus, or by a sense of the participants. The industry will make its formal recommendation to the Council at the first framework meeting. The Council shall provide the public with advance notice of the time, date, and place of the meeting and shall include a detailed description of the action under consideration. Notice shall be announced in the *Federal Register* at least two weeks prior to this first framework meeting.

(3) If more than one management authority (Mid-Atlantic Fishery Management Council, Atlantic States Marine Fisheries Commission, NMFS for pelagic species) is involved and has incorporated a gear conflict framework procedure into its plans, the negotiated measures shall be formally proposed by the New England Fishery Management Council to the other authority. A majority vote of each management authority is necessary to approve of making a framework adjustment. If there is disagreement between these authorities, the Council may return the proposed framework adjustment to it's gear conflict committee for further review and discussion.

(4) After accepting public comment at the first framework meeting, the Council may (iv) refer the issue back to the gear conflict committee for further consideration, (v) make adjustments to the measures that were proposed, or (vi) approve of the measures and begin developing the necessary documents to support the framework adjustments. The Council shall identify, at the first framework meeting, a preferred alternative and/or identify the possible alternatives. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

- (i) mandatory monitoring of a radio channel by fishing vessels.
- (ii) fixed gear location reporting and plotting requirements.
- (iii) standards of operation when gear conflict occurs.
- (iv) fixed gear marking and setting practices.
- (v) gear restrictions for specific areas (including time and area closures).
- (vi) vessel monitoring systems.
- (vii) restrictions on the maximum number of fishing vessels or amount of gear.
- (viii) special permitting conditions.

(5) Following the first framework meeting, the Council shall prepare a framework document that discusses and shows the impacts of the alternatives. It shall be available to the public at least ten days prior to the second or final framework meeting. Notice of the second or final meeting shall be published in the *Federal Register* at least two weeks prior to the meeting. The notice shall include a discussion of the proposed action, the date that the framework document having alternatives and analyses will be available to the public at the Council office, and a request for written public comments. These written public comments will be due at the Council office two days prior to the final framework meeting. If the Council cannot meet its requirements, it shall schedule another meeting and follow the same procedures outlined above for the final framework meeting. The final framework meeting shall be a full Council meeting, but interim meetings may be scheduled to receive public comment.

- (6) \* \* \*
- (i) \* \* \*
- (ii) \* \* \*

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflict and reduce economic loss.

(iv) \* \* \*

(7) \* \* \*

## **PART 649 -- AMERICAN LOBSTER FISHERY**

### **SUBPART B -- MANAGEMENT MEASURES**

1. In § 649.44, paragraphs (e) through (g) are proposed to be redesignated as paragraphs (i) through (k), respectively, newly redesignated paragraph (i) is proposed to be revised, and new paragraphs (e) through (h) are proposed to be added as follows:

#### § 649.44 Framework specifications

\* \* \* \* \*

(e) A framework action to address a gear conflict may be initiated by the Council when affected fishermen request regulatory assistance to manage a conflict defined under 50 CFR §600.10. If the Council initiates a framework action, it shall define a gear management area, not to exceed 2700 square nautical miles, and seek industry advice by holding public meetings to solicit comment from affected fishermen, by forming an ad hoc industry advisory committee for each gear management area, or by referring the matter to its standing industry advisory committee for gear conflict. The Council shall attempt to involve all affected parties and seek balanced representation under its Statement of Organization, Practices, and Procedures. The industry may develop its recommendation by majority vote, consensus, or by a sense of the participants. The industry will make its formal recommendation to the Council at the first framework meeting. The Council shall provide the public with advance notice of the time, date, and place of the meeting and shall include a detailed description of the action under consideration. Notice shall be announced in the *Federal Register* at least two weeks prior to this first framework meeting.

(f) If more than one management authority (Mid-Atlantic Fishery Management Council, Atlantic States Marine Fisheries Commission, NMFS for pelagic species) is involved and has

incorporated a gear conflict framework procedure into its plans, the negotiated measures shall be formally proposed by the New England Fishery Management Council to the other authority. A majority vote of each management authority is necessary to approve of making a framework adjustment. If there is disagreement between these authorities, the Council may return the proposed framework adjustment to its gear conflict committee for further review and discussion.

(g) After accepting public comment at the first framework meeting, the Council may refer the issue back to the gear conflict committee for further consideration, make adjustments to the measures that were proposed, or approve of the measures and begin developing the necessary documents to support the framework adjustments. The Council shall identify, at the first framework meeting, a preferred alternative and/or identify the possible alternatives. The Council's recommendation on adjustments or additions to management measures must come from one or more of the following categories:

- (1) mandatory monitoring of a radio channel by fishing vessels.
- (2) fixed gear location reporting and plotting requirements.
- (3) standards of operation when gear conflict occurs.
- (4) fixed gear marking and setting practices.
- (5) gear restrictions for specific areas (including time and area closures).
- (6) vessel monitoring systems.
- (7) restrictions on the maximum number of fishing vessels or amount of gear.
- (8) special permitting conditions.

(h) Following the first framework meeting, the Council shall prepare a framework document that discusses and shows the impacts of the alternatives. It shall be available to the public at least ten days prior to the second or final framework meeting. Notice of the second or final meeting shall be published in the *Federal Register* at least two weeks prior to the meeting. The notice shall include a discussion of the proposed action, the date that the framework document having alternatives and analyses will be available to the public at the Council office, and a request for written public comments. These written public comments will be due at the Council office two days prior to the final framework meeting. If the Council cannot meet its requirements, it shall schedule another meeting and follow the same procedures outlined above

for the final framework meeting. The final framework meeting shall be a full Council meeting, but interim meetings may be scheduled to receive public comment.

(i) \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflict and reduce economic loss; and

(4) \* \* \*

(j) \* \* \*

(k) \* \* \*

**SECTION 16.0**  
**PUBLIC HEARING COMMENTS**

**May 21, 1996 at 7:30 p.m.**  
Holiday Inn at the Crossings  
801 Greenwich Avenue  
**Warwick, RI 02886-1855**

**May 22, 1996 at 7:00 p.m.**  
Ramada Inn  
Long Island Expressway and Route 25  
**Riverhead, NY 11901**

**May 23, 1996 at 7:30 p.m.**  
Massachusetts Maritime Academy  
101 Academy Drive  
**Buzzards Bay, MA 02532**

**May 28, 1996 at 7:30 p.m.**  
Urban Forestry Center  
45 Elwyn Road  
**Portsmouth, NH 03801**

**May 30, 1996 at 4:00 p.m.**  
NJ Marine Advisory Service  
Cape May County Extension Office  
Dennisville Road, Route 657  
**Cape May Courthouse, NJ 08210**

GEAR CONFLICT PUBLIC HEARING  
HOLIDAY INN - CROSSINGS  
WARWICK, RI  
MAY 21, 1996

**Summary of Comments**

The public hearing, chaired by Mr. Jim McCauley, began at 7:35 pm. The audience consisted of eighteen people, about two-thirds represented the offshore lobster industry and the remaining members represented the inshore and offshore trawl industry. Fifteen were from RI, one from MA, one from ME, and one from the NEFSC. Council member Mr. James O'Malley, staffer Mr. Andrew Applegate, and staffer Mr. Chris Kellogg were also present. Mr. McCauley opened the meeting with a brief introduction and asked for comments on the proposed framework management measures, beginning on page 23 of the public hearing document. The following summary lists the person making the comment and the main points of their comment. The meeting was recorded on audio tape, which serves as the record of verbatim minutes.

Mr. Mike Tarasevich made the following general comment:

Mr. Tarasevich cited his efforts to gain Council support for resolving gear conflict in inshore waters, referring to a letter written in October 1995. He said that industry wants to have a meeting to deal with inshore conflicts in Southern New England. He asked for a meeting several times, but felt that his request was ignored. He revealed that there has been an industry-sponsored gentleman's agreement, but up to 10 percent of fishermen in the area have not cooperated.

**4.2.1 Mandatory monitoring of a radio channel by fishing vessels**

Mr. Paul Tarasevich - He supported this measure. He thought that this measure would help resolve numerous problems when fishermen do not respond to calls about gear conflict issues.

Mr. Mark McSally - representing offshore lobstermen:

He said that there was often no response when vessels try to hail one another. Mandatory monitoring would reduce potential conflict.

**4.2.2 Gear location reporting by fixed gear fishermen and mandatory plotting by mobile gear fishermen**

Mr. McCauley noted that the Coast Guard has said they would have a problem administering such a system.



Mr. Richard Allen - Mr. Allen said that the industry and the Council have talked about this measure for a long time. He thought that this measure would not be so burdensome on the Coast Guard, because better technology automates most of the data collection and monitoring. He felt that this measure should be available to the Council for possible future consideration. He noted that the Council would not be able to consider it later even though it might be feasible.

Mr. John Riemer - Mr. Riemer asked how big is a gear management area? He thought that it should not be too big, but rather a reasonable area related to a specific gear conflict. He feared being limited to one specific area when fishing because of gear conflict regulations or needing to comply over the entire Atlantic because of a small, well-defined conflict.

Mr. McSally - He wants to keep this management measure as an option. He didn't think it would be a problem if areas were well defined. He emphasized that the Council should define general locations for reporting, but not require a vessel to report a change in location whenever a trawl moves 100 yards.

#### ***4.2.3 Standards of operation when gear conflict occurs***

Mr. McSally - He thought that this measure should be one that could be considered via framework. Having gear on-board creates a potential for criminal legal action under Magnuson. He felt that the Council should be able to set standards via framework so that trawlers could have fixed gear on deck if they were trying to return it to its owner. He thought that this measure should lessen potential criminal penalties if a mobile gear vessel was cited for having fixed gear.

Mr. Riemer - He agreed with Mr. McSally. He related a case when a mobile gear boat had lobster gear on board, and was treated harshly by the Coast Guard.

Mr. Roy Campanale - He verified that the incident, related by Mr. Riemer, did occur and the mobile gear boat notified the lobster boat. Mobile gear boats do bring in fixed gear that was accidentally encountered, but it is currently against the law. He said that regulations need to change to accommodate returning the gear to its owner.

Mr. Mark Tarasevich - He thought that the rules should allow a dragger to call in an report an accidental encounter and to return gear. He asked if the law have any teeth, can it be enforced? He supported having equal enforcement actions against fixed gear fishermen if they are fishing in an area that they should not be fishing.

#### ***4.2.4 Fixed gear marking and setting practices***

Mr. McSally - He noted that most fishermen are complying with the marking requirements.

Mr. Paul Tarasevich - He asked what are the marking requirements for inshore? He pointed out that most fixed gear are not suitably marked inshore. Most only have bouys attached. If marking requirements exist, they are not being enforced.

Mr. Allen - He noted that gear marking requirements only apply outside specific distances from shore, approximately 25 miles.

Mr. Mark Tarasevich - He felt that gear marking requirements should be changed. He said that bamboo poles are impossible for fishermen to see. He supported improved marking requirements so that there was a higher, uniform standard.

#### **4.2.4.4 Continuous monitoring**

Mr. Mark Tarasevich - He thought that this management measure should be evaluated for gill netters. Gear conflict arrangements and communication with other fishermen cannot work when their boat is not on the fishing grounds.

Mr. McSally - He said that this measure was not practical for the offshore lobster industry, but it may be good for other fishing sectors. Concerning deployment (4.3.3.3), it may not make sense if fishermen do not fish in a straight line.

Mr. Paul Tarasevich - He said that industry groups have talked about adhering to standard setting practices and some may be in favor of working out conflicts by setting their gear in particular ways.

#### **4.2.5 Gear restrictions for specific areas**

Mr. Mark Tarasevich - He said that industry also talked about this option. He supported retaining it as a framework measure, especially for inshore areas.

Mr. McSally - He stated that this regulation is the one that would potentially follow the Emergency Action. His clients are particularly interested in this measure. They believe it is working. He supported this framework measure to give the Council this ability to manage gear conflict. He thought that area restriction is the key to make gear conflict management work.

Mr. Riemer - He asked how do you figure who gets to fish where? He was concerned about other groups of fishermen than lobstermen. He didn't want to be "blind-sided" by other groups needing the fishing ground during the same time of year needed by the fishery he participates in. He wants to retain ability to defend his position before future action would be taken.

Mr. Tim Handrigan - He said that separation buffers seem to be working out fine and should be retained as a framework management action. He added that he lost \$100,000 of gear prior to Emergency Action, but lost only \$100 afterwards.

Mr. Paul Tarasevich - He is concerned with the size of the buffer zone. He noted that the framework should have different parameters for inshore than for offshore. He emphasized that large buffer zones are not needed inshore.

Mr. McSally - He said that transitions and buffers make sense in some areas. He noted that industry needed time to move gear between areas, the transition is therefore important. He said that this measure would give the Council more flexibility.

Mr. Campanale - He stated that offshore lobster boats are allowed to move gear as of May 1 into area that draggers are still working, but haven't experienced losses. He said that Emergency Action has helped out because it has kept draggers out of areas that have not yet been vacated by the lobster gear.

Mr. Riemer - He said that, if transitions are needed, the Council should suspend mobile gear fishing by a section at a time, i.e. by area. This staggered transition time would give mobile gear vessels a place to fish during the transitions.

Mr. Mark Tarasevich. - He saw a problem with the transitions, for example scup fishermen have to be in an area within a few weeks, before the season is over and the fish move to other areas. He thought that the transition times should be less than a few weeks, that is as short as possible.

#### **4.2.6 Vessel monitoring systems**

Mr. Paul Tarasevich - He said that this measure wouldn't make any sense if the vessel is at port. He felt that the monitoring device should be on the gear, not on the vessel. He was opposed to VMS, no one should have to have it on-board.

Mr. Campanale - He supported the VMS measure so that it would give law enforcement an idea of who might be working in the area and who may have caused gear damage. He would not have a problem putting it on his vessel. He thought that both sides should be required to maintain VMS on-board. He supported this option and said that it should be left in the frameworkable measures.

Mr. Richard Spencer - He asserted that the VMS option is one of the most important aspects of the plan, because it would ease the burden of law enforcement. He said that there should be a greater effort to get it online.

Mr. Jim Odlin (Portland ME offshore trawlers) - He is concerned about a boat being in an area and being found guilty of gear conflict. He is totally opposed to this option.

Mr. Campanale - He re-emphasized that a VMS program would not be used as a means of finding guilt, but could be used to defend against accusations that a vessel caused gear conflict. He sees potential that the VMS could be a means of finding a few people who might have caused a gear conflict, not as an enforcement tool in and of itself.

Mr. Mike Tarasevich - He is opposed to using VMS for gear conflicts. He also stated substantial opposition by inshore vessel owners and captains. According to Mr. Tarasevich, a VMS system would not address problems with gill netters when the vessel leaves the gear in the water and returns to port. He doesn't understand how VMS would work to prevent gear conflict. It

wouldn't tell him whether gear was absent from an area and whether it is available for dragging.

Mr. Paul Tarasevich - The VMS program appears to be a system that would make a vessel operator guilty until proven innocent. He is very opposed to this option.

Mr. McSally - He maintained that information about vessel position will not prove a gear conflict case. He believes that a VMS program would only provide confirmation of other evidence. He saw the system as something that could determine who was in the area and it could also be used to store location of tows. He saw it as being particularly useful if it was capable of saving the tow paths made by a vessel.

Mr. Mike Tarasevich - He sees a VMS program as assigning the burden on the mobile gear operators. He foresees problems caused by tracking vessels when they are slowly transiting an area, especially under heavy seas. He is afraid of getting blamed for gear conflict when his vessel didn't cause it.

Mr. Allen - He stated that the frameworks are a list of tools, and it does not mean that all of the management measures would eventually be implemented. It doesn't mean that anyone must use or apply that management measure. VMS on draggers or sea scallopers are currently required under the individual days-at-sea program. These vessels are required to use a VMS as soon as one is approved by NMFS.

Mr. Tarasevich - A VMS should not even be an option for managing gear conflict. He said that he is afraid of the VMS being used to assign guilt. He believes that the Coast Guard is going to push for mandatory use of VMS.

Mr. Campanale - He thinks that a VMS may help out under certain conditions, especially offshore. It would be helpful to know what vessels were on ground when gear conflict occurred. He believes that the Coast Guard should be able to monitor where gear and fishing boats are located. He stated that mobile gear vessels can cause damage within a very short period of time. He thought a simpler system is necessary to allow the Coast Guard to monitor what vessels are within the area.

#### ***4.2.7 Restrictions on the maximum number of vessels.***

Mr. Odlin - He is very opposed to this measure. He said that under such a system, he could not plan for operations and justify loans and financing. He believes that the number of boats have nothing to do with the amount of gear in an area.

Mr. Mike Tarasevich - He is also opposed to this measure. Other measures could be used to solve gear conflicts, this measure is therefore not needed.

Mr. Allen - He said that this option hasn't been discussed with any problems he has been involved with, but he didn't foresee a danger caused by leaving it as a potential management option. He thought that the last paragraph on page 27 is too specific. The specificity creates

concern by saying how it might be done. He thought that at most, it should say that a license limitation program would not be developed as a traditional limited entry system.

#### **4.2.8 Special permitting conditions.**

Mr. McSally - He thought that having a conditional approval on permits would be a good idea. It makes permit holders knowledgeable about certain special conditions in a gear management area. He thought that it would serve as an additional enforcement tool, an additional mechanism to get notice out.

Mr. Paul Tarasevich - He first thought that this measure is a good idea, but special permit is not needed. He thinks that permit conditions should be more general, saying that a permit holder agrees to abide by gear conflict regulations in all areas. Perhaps it should be open ended so that the permit condition does not expire.

Mr. Mike Tarasevich - He thought that the special condition should be administered in a simpler way so that there is a have paragraph or line stating a permit holder's general agreement with gear conflict rules.

Mr. McCauley opened the discussion to general comments.

Mr. Bill Palumbo (lobster vessel and dragger owner) - He is in support of the whole framework process, because it provides a process for dealing with these issues. He is opposed to the management option allowing the Council to specify the maximum number of vessels in a gear management area.

Mr. Geir Monsen - He noted that the highest claimed loss that the document cited was \$746,000, \$336,000 was noted as an annual total. He saw the framework process as an outline of a management scheme that would cost millions of dollars. According to Mr. Monsen, the framework process amounted to government for the sake of government. Most fishermen are honest, he said. Some are doing causing gear damage intentionally, others leave fixed gear to claim bottom. He believes that gear conflict management should be geared to catch these few perpetrators that do not abide by rules. He said that the document has no demonstrated net benefits compared to the costs and administrative burden. Trawlers do not want to get entangled in fixed gear, due to possible mobile gear damage and lost time that could otherwise be used productively to fish.

Mr. Odlin - He believes that the problem is that there is more fixed gear, a fact that is not noted in document. The amount of fixed gear has easily doubled in the last 10 years, both gillnets and lobster pots. He also noted that no cost analysis is included.

Mr. McSally - He said that he agrees that 95% of fishermen do not cause the gear conflict problems, but help is needed for the other 5%. He maintained that there have been massive financial loss in the last 5 years absorbed by offshore lobster fishermen. Many fishermen have lost hundreds of thousands of dollars. Some are threatened with going out of business due to gear losses. He said that a sampling of these losses are identified in an October 1995 letter to the Council. He noted that the emergency action expires on June 25, and the Council therefore needs to establish process for managing gear conflicts. The emergency action seems to be working and the regulations makes the gear conflict rules enforceable. He thought that the

industry would be satisfied with having future regulations, if both sides are agreeable. No regulations to manage gear conflict problems would, on the other hand, put 5-6 of his clients out of business.

The summary table, noted Mr. McSally, lists only claimed losses. Some fishermen do not submit claims, or they are unable to estimate their losses. He thinks that establishing a maximum size (2700 square miles) for a gear conflict management area is a good idea. He wanted to be sure that it would allow the Council the flexibility to manage different shaped polygons, not just one degree square. He is also concerned about the possible inability for the industry to reach a consensus on what gear conflict management was necessary. This might stop the process and not allow the Council the flexibility to establish regulations without this consensus. The framework should allow flexibility for one group to continue the discussion and have the Council ultimately decide whether to apply regulations for a gear conflict. He wanted to make part of the official hearing record a letter written to the Council during October 1995 outlining clients losses and the Environmental Assessment for the recent Emergency Action. He also offered an excerpt of a video tape showing a gear conflict problem between his client and a vessel from out of state. The tape shows the problem caused by lack of communication, Coast Guard's inability to communicate with the vessel, and safety concerns. The video tape, he maintained, supports the need for regulations.

Mr. Mike Tarasevich - believes that the framework process should go forward. Offshore and inshore areas need regulatory assistance to manage gear conflict. The document does not show any monetary loss caused by gear conflict, he noted. He cited the losses caused by wasted time (lost fishing time) when gear conflict occurs. Inshore draggers are losing a lot of money. He also noted that the document does not identify increased amount of fixed gear causing displacement of mobile gear fisheries.

Mr. Allen - At first he favored not having mandatory regulations and letting industry, voluntary agreements solve the gear conflict problem. The public hearing document does a good job relating the history of gear conflict and the Councils efforts to resolve the problems. He noted that it does not identify changes in fishing patterns caused by management regulations. Rules will be mandatory if implemented under a framework adjustment, he added, but the rules should be uncomplicated and can be tailored to the situation. The costs from gear conflicts are borne by society as a whole. Labor and capital are wasted and the net benefits are, therefore, reduced. Mr. Allen stated that the Magnuson Act requires Councils to maximize the net benefits to the nation, and it is therefore obligated to address gear conflict problems.

Mr. Campanale - also representing Mr. Eric Winn and Mr. John Eddy at the hearing:

They agree with Mr. Mike Tarasevich's view that the framework should go forward and would benefit everybody. Lobstermen may have displaced mobile gear fisheries and fixed gear fishermen have absorbed shifts offshore mobile gear effort. Lobstermen experience tangible losses as well as potential losses due to the wastage of otherwise productive fishing effort. Mobile gear fishermen do not experience the same type of loss unless they lose trawls and doors on many trips.

Mr. Spencer - He felt that it is unfortunate that this action is necessary. On the other hand, he thinks that the industry has been given every opportunity for the voluntary agreement to work. He believes that the Council is obliged to establish a framework process to address the ramifications of Amendment 5 and Amendment 7.

Mr. Robert Smith - He tried to work with mobile gear fishermen to cooperate on gear conflict problems. The framework process, he believes, is a good direction to go in and is a necessary step. Most fishermen have worked well together to avoid gear conflict problems, but the other 5-10 percent ignore these efforts. The regulations would bring those people in line.

Mr. Paul Bennett - He expressed his support for the framework measures. From 1994 to present, he lost 1,000 traps costing \$100 each. He hasn't applied for gear compensation and the losses have come right out of his pocket. The agreement worked well in the beginning, but fell apart after additional restrictions were placed on multispecies fishermen and the gear conflict later intensified as more boats targeted monkfish. He only sees the problem getting worse with no other relief in sight. Since the emergency action was taken, his gear damage has dropped to negligible levels.

Mr. Paul Tarasevich - He supports the Council's efforts to establish the framework process for resolving gear conflict. Under current laws, he pointed out that trawl vessels cannot go through and damage fixed gear. Amendment 7 exacerbates the cost from gear conflict, because it often eats into days-at-sea usage.

Mr. Monsen - Trawlers also experience gear loss, most often caused by catching ghost lobster pots. Two years ago, he estimated, gear damage cost \$150 -200 thousand dollars per vessel annually.

Mr. Mike Tarasevich - He is supportive of the framework process, but believes that the Coast Guard would want the VMS tracking system to get something with teeth. VMS is a flawed system for dealing with gear conflicts, he believes. He would prefer stricter penalties, rather than imposing a costly VMS program.

No more comments were offered and Mr. McCauley adjourned the hearing.



GEAR CONFLICT PUBLIC HEARING  
RAMADA INN  
RIVERHEAD, NY  
MAY 22, 1996

**Summary of Comments**

The public hearing, chaired by Mr. Anthony DiLernia, began at 7:10. The audience consisted of three people, one represented the offshore lobster industry, one is an owner of a trawl vessel, and the third owns and operates a pelagic longline vessel. Two were from NY, and one was from RI. An additional trawl vessel owner and operator arrived toward the end of the meeting. Council member Mr. James O'Malley, and staffer Mr. Andrew Applegate were also present. Mr. DiLernia opened the meeting with a brief introduction and asked for comments on the proposed framework management measures or on the process proposed by the Council. The following summary lists the person making the comment and the main points of their comment. The meeting was recorded on audio tape, which serves as the record of verbatim minutes.

Mr. Richard Bahr - noted that the official NMFS definition of gear conflict does not include pre-emption of fishing grounds, which he believes is a gear conflict problem. The Gulf of Mexico and the South Atlantic Fishery Management Councils' definition includes pre-emption of fishing ground and should be included in the one addressed by the proposed framework process.

Mr. Brian Trepkala (sp?) - asked how did the Council get involved in basically a policing action? From his point of view, only lobstermen asked the Council to try to resolve the gear conflict.

Mr. DiLernia - replied that possible regulatory action was contemplated since the Council became involved in the Southern New England problem, but the need to take action was temporarily averted by the voluntary industry agreement. He pointed out that the Council believes that it is necessary to begin taking regulatory action because the voluntary agreement has failed despite substantial efforts to make it work.

Mr. Trepkala - does not see an unmanageable gear problem off of Long Island. Most of the problem is happening to the east, he said. There are occasional problems offshore of Long Island, but the industry has worked together voluntarily. The concept of managing gear conflict problems via a framework process is acceptable, if mobile gear fishermen would be allowed to work in areas where there was no fixed gear. He is concerned, however, that under the gear reporting provision lobstermen could stake ground by simply reporting gear in the area, whether or not it existed.

Mr. Bahr - noted that the framework action is a result of only a few uncooperative fishermen.

Mr. Allen - said that he has been active in attempting to resolve gear conflicts since 1972. The desire to address this problem was the primary reason that Atlantic Offshore was formed. After trying the their best to avoid regulations aimed at resolving gear conflict, they finally concluded that regulations are needed to enforce the rules so that everyone complies, including the fishermen that thumb their noses at the voluntary agreements. It is appropriate, he believes, for the Council to manage gear conflict problems because of its mandate to maximize the net benefits to the nation. He supports the Council establishing the framework process that it can take timely action to limit present gear conflicts and avert future problems.

No additional comments were offered and Mr. DiLernia adjourned the hearing.

During an informal discussion, following the meeting, one of the trawler operators expressed his dissatisfaction with the emergency action regulations. He found the area closures difficult to follow, because the area boundaries were not compatible with the way he fished. He said that he often follows depth contours and works very close to the edge of the boundaries when defined by depth. He said it is impossible to work with the jagged boundaries imposed by defining the areas by points of longitude and latitude. He also noted that lobster fishermen were not vacating the offshore winter area as they had under the voluntary agreement.

GEAR CONFLICT PUBLIC HEARING  
MASSACHUSETTS MARITIME ACADEMY  
BUZZARDS BAY, MA  
MAY 23, 1996

**Summary of Comments**

The public hearing, chaired by Mr. Jim McCauley, began at 7:45 pm. The audience consisted of seven people, four represented the lobster industry and two were offshore trawl owner/operators. Three were from RI, three from MA, and one from the NEFSC. Council member Mr. Bill Amaru, and staffer Mr. Andrew Applegate were also present. Mr. McCauley opened the meeting with a brief introduction and asked for comments on the proposed framework management measures or on the process proposed by the Council. The following summary lists the person making the comment and the main points of their comment. The meeting was recorded on audio tape, which serves as the record of verbatim minutes.

Mr. Bill Adler - Executive Director Mass lobstermen's association:

He said that he basically supports the proposed amendments and he understood the flexibility of the framework process. The industry had concerns, however, about potential for pre-emption and declared traditional use of fishing grounds. It would be easy to contend, he thought, that an area has been pre-empted or had a traditional use. He asserted that empty areas (ones without fixed gear in them) could be 'claimed' by mobile gear vessels. He is concerned about how that might work and who would decide how to divide the fishing grounds. He also wanted to know how someone would determine that mobile gear was damaged as a result of gear conflict. He remarked that it would be difficult to tell if a net was damaged by a trap or by another means. When lobster FMP was amended to include gear marking requirements, the lobster fishery has two distinct components, inshore and offshore. He said that the distinction has worked well. Applying the marking requirement to inshore areas, he thought, would amount to 'bamboo' city, simply because of the amount of gear located there. He commented that the inshore vs offshore distinction should be maintained for the gear conflict management options.

Mr. Adler thinks that most of the eight proposed management measures would not work for the inshore fishery. He urged the Council to include a ninth management measure that would include any other means of resolving a gear conflict. He noted that the Council should clarify what offshore means in the document.

Mr. David Spencer - strongly supports the proposal. He urged the Council to take action by any means possible at the June meeting. The future offshore fishery, he remarked, looks like escalating gear conflict, law suits, and the potential for violence, especially with a lack of groundfish and days-at-sea reductions under Amendment 7.

Mr. Paul Bennett - also urges the Council to act on the framework at the June meeting. He wants to see something in place for the fall season, beginning Oct 1, 1996. The emergency action, he claimed, has eliminated 99% of the gear loss caused by gear conflict. No more comments were offered and Mr. McCauley adjourned the hearing.

During an informal discussion, following the meeting, Mr. Matt Stommel stated his strong opposition to the framework process and the Council's approach to resolving gear conflicts. He believes that the process is biased toward fixed gear fishermen and is fearful of loosing productive bottom because of gear conflict issues. He is opposed to setting aside any bottom, even on a temporary or seasonal basis, to a particular group of fishermen.

GEAR CONFLICT PUBLIC HEARING  
URBAN FORESTRY CENTER  
PORTSMOUTH, NH  
MAY 28, 1996

**Summary of Comments**

The public hearing, chaired by Mr. John Nelson, began at 7:45 pm. The audience consisted of nine people, slightly more than half represented the gill net industry and the remaining members represented the lobster industry. Two were from RI, one from MA, one from ME, five from NH, and one from the University of New Hampshire Sea Grant Office. Council member Mr. Eric Anderson and staffer Mr. Andrew Applegate were also present. Mr. John Denning, from Congressman Zelif's office, and Mr. Chris Schoppmeyer, NMFS-Special Agent, also attended the meeting. Mr. Nelson opened the meeting with a brief introduction and asked for comments on the proposed framework management measures or on the process proposed by the Council. The following summary lists the person making the comment and the main points of their comment. In some cases, the commenter asked questions about the process that were answered by Mr. Nelson or staff. The meeting was recorded on audio tape, which serves as the record of verbatim minutes.

Mr. David Spencer - He attributes the gear conflict problem largely due to depletion of the groundfish resource, continued reduction of days-at-sea under Amendments 5 and 7, and a significant redirection of fishing effort. He believes that the proposed framework process is a reasonable and responsible way for the Council to deal with problem. He urges the Council to approve the framework process at the June meeting, rather than delaying until July meeting. He feels it is necessary to have a framework adjustment for Southern New England in place by October. The VTS system is critical to managing gear conflict in offshore waters, he said. He strongly supports getting the VTS system on-line.

Mr. Rollie Barnaby - UNH Sea Grant:

He asked, how would all affected parties be included in the proposed industry meetings? The framework process, as proposed, would be an exciting process if it works as forecast. He suggested that the Council be careful in how it developing the process for gaining industry consensus. He thinks the framework process for managing gear conflicts is a very exciting concept because it proposes to address these issues area by area and fishery by fishery.

Mr. Pat White - He supports the proposed framework process. He thought the document discussion was vague on whether a framework adjustment would pertain to specific areas or to all federal waters. He encourages using the framework mechanism to adjust regulations for specific gear management areas, but he is cautious about using the process to address an issue over the entire area of management authority.

Mr. Chris Schoppmeyer - Specifically regarding section 4.2.2 (fixed gear reporting), he asked if the proposals have undergone law enforcement review. He explained that about 1/2 of his law

enforcement caseload deals with gear conflict between sink gill net and trawler fishermen. There is a limited number of agents to handle these problems. He is therefore concerned about the administration of the reporting requirements. He asked, how will it be handled? Will it be incorporated into a VTS system? He said that there has been industry discussion of establishing a delineation line (separation zone) for nighttime dragging to separate this activity from the gill net sets. The number of fixed gear vessels inshore is much larger than encountered inshore and may therefore be more of a reporting burden, he offered. He commented that any gear reporting requirements should be incorporated into tracking systems that already exist.

Mr. Spencer - replied that gear reporting may not be as cumbersome as many believe. He pointed out that lobster fishermen have reported offshore lobster trawl locations to the Coast Guard in New York and this information has been broadcast in blocks to other fishermen. A gear reporting system is doable in some areas, he believes, but possibly not in all areas. New technology, he explained, may make mandatory gear location reporting much easier to monitor and enforce.

Mr. Barnaby - The reporting system may not be possible inshore, but should be a framework option so that it can be used in offshore fishing areas where it might be more workable.

Mr. Nick Jenkins (Shaftmaster) - He experiences continual gear conflicts with the same group of boats. He very strongly supports having VMS available as a gear conflict management tool, because it will target "bad apples". Gear reporting requirements will not be that difficult, he emphasized, especially where VMS already is required. He noted that a VMS program for gear conflict will help a Coast Guard cutter to locate gear and vessels in an area.

Mr. Paul Bennett - strongly supports the framework process. He urges the Council to approve it and develop the documents as quickly as possible.

Bobby Brown - He explained that his boat fishes inshore (10 mi). Over the last several years, he noted increased lobster effort. In the last two years, he lost 60 - 180 traps annually. He reported that mobile gear vessels are dragging on hard bottom and act as if they have a right to fish the area, no matter what gear presently exists there. He foresees continual gear conflict because draggers do not presently have anything to loose when they fish in areas having fixed gear. He supports the Council's efforts to manage gear conflict through regulations.

Mr. Schoppmeyer - There has been outreach efforts by law enforcement to make fishermen better witnesses when gear conflict occurs. He said that these efforts have resulted in more successful cases. Having cameras onboard fishing vessels has helped considerably.

Mr. Barnaby - asked about makeup of advisors and who the 'affected' fishermen would be. He emphasized the need to get everyone to sign onto the industry discussions of possible frameworks.

Mr. Jenkins - does not understand the timetable for processing framework adjustments. He asked, how long would it take to conduct framework meetings and get approval for a framework adjustment?

Mr. Barnaby - asked, what happens if there isn't a consensus? What will make people come to the table? What is the Council's alternative if there is no consensus? He suggested that the framework process allow the Council to take unilateral action if the industry is unable to reach a consensus.

Mr. Erik Anderson - believes that the threat of unilateral action by the Council, if no consensus is reached, will bring people to the table for discussion of a proposal.

Mr. White - asked, will the possibility of unilateral action create the "hammer" to resolve something if industry does not? He remarked that the Council should be obligated to act in some manner if industry brings a gear conflict problem before it.

Mr. Barnaby - emphasized that getting a consensus with right people is time consuming and tough. It may be misleading, he explained, to expect a framework adjustment to be a very quick process.

Mr. Spencer - replied that the a gear conflict framework adjustment would be timely even though the process may take several months, because the offshore lobster industry has been dealing with this problem since 1991.

Mr. Anderson - the process for selecting individuals for the industry committee of affected parties should be left open-ended. In other words, the Council should have flexibility to obtain representatives that are appropriate to the individual gear conflict. When seasonality exists, he asked, can the predictability of a future gear conflict initiate a framework adjustment? He believes that the Council should be able to be proactive and avoid predictable events.

Mr. Jenkins - asked about how the American Lobster FMP would be amended via framework when the Atlantic States Marine Fisheries Commission will have management authority?

No more comments were offered and Mr. Nelson adjourned the hearing.

GEAR CONFLICT PUBLIC HEARING  
CAPE MAY COUNTY EXTENSION OFFICE  
**CAPE MAY COURTHOUSE, NJ 08210**  
MAY 30, 1996

**Summary of Comments**

The public hearing, chaired by Mr. Charles Bergman of the Mid-Atlantic Fishery Management Council, began at 4:00 pm. The audience consisted of sixteen people, most represented the squid industry and the remaining members represented the lobster industry. Thirteen were from NJ, one from PA, one from RI, and one from the Rutgers University Ecopolicy Center. Council staffer Mr. Andrew Applegate and Mr. Bruce Halgren of the NJ Dept. of Marine Fisheries were also present. Mr. Bergman opened the meeting with a brief introduction and asked for comments on the proposed framework management measures or on the process proposed by the Council. The following summary lists the person making the comment and the main points of their comment. In some cases, the commenter asked questions about the process that were answered by Mr. Bergman or staff. The meeting was recorded on audio tape, which serves as the record of verbatim minutes.

Mr. Nils Stolpe - asked if the proposed framework would be adopted by the Mid-Atlantic Council or the Atlantic States Marine Fisheries Commission, how would it be decided what body would be responsible for a given gear conflict? Mr. Applegate replied that both management authorities would need to approve of an adjustment for it implemented via regulations.

Mr. Bruce Halgren - noted that the proposed framework addresses fixed vs. mobile conflicts. He asked if it included conflicts between recreational and commercial anglers. Mr. Applegate replied that it could if the framework process were amended to plans governing recreational anglers.

Mr. Eric Axelsson - asked, what is the problem generating the need for a framework mechanism? Gear conflict problems are not so bad, he claimed, and the framework is not needed in the Mid-Atlantic. He doesn't see the need for this action. He favors resolving gear conflict problems through common sense and logic. So far, he explained, the industry has been able to resolve it among themselves. He favors the no action alternative.

Mr. Paul Bennett - explained that industry tried the common sense approach in Southern New England, but the days at sea program and Amendment 7 has contributed to the gentlemen's agreement falling apart. He believes that the framework is a very necessary procedure to implement.

Mr. Stolpe - asked if an agreement would apply throughout the management area, or would be confined to specific areas. Mr. Applegate replied that future framework adjustments under this process would apply to specific gear management areas, rather than the whole coastline.



Mr. Axelsson - noted that on gear conflict in the Mid-Atlantic was being addressed through the Point Pleasant agreement between scallopers and lobstermen.

Mr. Michael Loper - remarked that lobster pots should be required to have high-flyers and orange polyballs. Smaller boats using fixed gear from Point Pleasant need to have better marking requirements, he said. Mandatory high-flyers would be the best thing to do for the lobster fishery and the mobile gear fisheries and would reduce the possibility of gear conflict. Area closures would be too restrictive, he thought. He mentioned that it would be helpful for his boat to receive a print out of fixed gear locations in an area. They could be plotted on the plotter and it would help him to steer around the fixed gear.

Mr. Eric Axelsson - contended that the fixed gear reports may not be accurate, because vessels frequently move their gear.

Mr. Lars Axelsson - explained that he normally fishes for Illex and Loligo, Hudson Canyon and south. Due to changes to the east, he sees a lot of effort spilling over into more southern areas, in "non-traditional" areas. So far, he said gear conflicts can be avoided by communicating verbally and by forming informal agreements. He is concerned about how much more effort is going to spill over from New England. He fears that vessels from other areas may force the Councils to impose gear conflict rules that would force him from his traditional fishing areas. "Can I be edged out of traditional fisheries by gear conflict framework adjustments?", he asked. "Who is going to be the ruling body? Would the NEFMC set rules that are mainly beneficial to their fishermen?" He noted that recreational interests are increasing on the shelf edge where he traditionally fishes for Illex. He asked, "Can the system be manipulated to force commercial fishermen off the grounds?" He is fearful of the outcome of an across the board framework process that might choke out his way of making a living. He recommends that the framework process only apply to areas north of the Hudson Canyon. He is fearful of the process since a framework adjustment could be accomplished very quickly, before he would be aware of the issue.

Mr. Bergman - asked, how do you handle other fisheries that are involved? In other words, how would the Council include the interests of all affected fishermen.

Mr. Mike Genovese - noted that the definition of gear conflict is open-ended. He asked, "Who is to recognize whether there is a perceived or real gear conflict?" Mr. Applegate answered that the Councils would make that determination when it evaluated the problem brought to it by the fishing industry.

Mr. Pat Simmons - The industry in the Mid-Atlantic gets along with pot fishermen, he explained, and they don't need the framework. He is fearful that others would try to manipulate the process to gain an advantage.

Mr. George Simmons - The Council will not allow him to have a vessel large enough to move gear during a short transition, he claimed.

Mr. Brad Gillman - noted that the fishing methods of New England lobstermen are different than those used south of Hudson. He said the Council should try something for resolving gear conflict in New England, and it could later be implemented down here if it is needed. Negotiated rule making, he added, is not a gear conflict problem in the Mid-Atlantic. "Don't shove the infrastructure down everyone's throat", he protested.

Mr. Halgren - noted that the document explains that gear conflict would be considered area by area. Specific conflicts would be brought before the Council for discussion in all areas, he added, and that it may have no bearing in the Mid-Atlantic.

Mr. Bennett - The framework might be used to preserve traditional fishing areas, as well, if mobile gear fishermen were being pushed out of an area by the fisheries using fixed gear or by recreational fishermen. The framework, he maintained, is for the mobile gear sector, too.

Mr. Gillman - asked if the proposals would be subject to review under the National Standards. Mr. Applegate replied that any framework adjustment would be basically an amendment to the governing plans and they would, therefore, be required to comply with the National Standards under Magnuson.

Mr. Eric Axelsson - thought that the process was too vague. "Tell us what you will do, not what you might do.", he said.

Mr. Jeff Reichle - Most of the fishermen are accustomed to informal give and take, he said. There have been problems, but the industry always knew that pot fishermen would have problems if they fished in certain areas, and the mobile gear fishermen would have problems fishing in other areas. He recommends no action and doesn't think the framework is detailed enough to know what is going to happen.

Mr. Gillman - asked what would happen with squid fishermen if the Mid-Atlantic did not adopt the framework process and the New England Council adopted gear management rules that affected the squid boats.

Mr. Stolpe - He is concerned with duration of the gear conflict measures. "What happens if conditions change and a new fishery develops or migration patterns change?", he asked. The resolution might not be confined to the two parties that come into it originally. He thinks that this possibility and inflexibility of gear conflict regulations could cause problems.

No additional comments were offered and Mr. Bergman closed the hearing.

Mr. Daniel Cohen, who arrived late, believes that the framework process is a pre-mature step. He thinks the Councils should take steps to make the existing rules more uniform across plans and easier to administer. Some of these efforts would help with the gear conflict problems. He also is fearful about people being able to abuse the framework process to get exclusive access in areas that are now open to all fishermen.

SECTION 17.0

WRITTEN COMMENTS