

DRAFT – For Council Review
(June 12, 2007)

Framework 20 to the Atlantic Sea Scallop FMP

Including an
Initial Regulatory Flexibility Analysis

Prepared by the New England Fishery Management Council, in consultation with the
National Marine Fisheries Service and the Mid-Atlantic Fishery Management Council

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Final Submission to NMFS:

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Executive Summary

The Scallop Plan Development Team (PDT) updated scallop resource projections in the fall of 2006, after the most recent survey data were available. These projections indicated that overfishing was expected to occur in fishing year 2007 unless action was taken to reduce scallop mortality. This information was presented to the Council in November 2006 and the Council requested NMFS take interim action to prevent overfishing.

NMFS implemented interim action to reduce overfishing in FY2007 on December 20, 2006 by reducing the number of trips in the Elephant Trunk Access Area (ETAA), delaying the opening until March 1 and prohibiting deckloading before leaving the access area (71 FR 76945). The interim action was justified because the recent projection indicated that overfishing of the scallop resource may occur in FY2007 under status quo measures under Framework 18. The new information presented by the Scallop PDT included previously unforeseen circumstances and potentially serious management problems to the fishery. The interim action states that overharvest of the ETAA in FY2007, and any resulting overfishing, could undermine the goals and objectives of area rotation-the cornerstone of the Atlantic Sea Scallop Fishery Management Plan (FMP). NMFS recently published a second interim action to extend these measures for a second 180-day period through December 23, 2007 (72 FR 29889).

After December 23, 2007 status quo measures implemented under Framework 18 would revert back for the last two months of fishing year 2007 (January and February 2008). If additional effort is taken in January and February that would reduce the effectiveness of the interim action to reduce overfishing for FY2007. In order to prevent overfishing for the entire fishing year, Framework 20 is considering an extension of the same measures implemented by interim action through February 29, 2008. The ETAA has an unprecedented high abundance of scallops, which needs to be husbanded with caution to effectively preserve the long-term health of the scallop resource and fishery.

Framework 18 already assessed the impacts of a reduced level of trips in the ETAA, therefore this extension of interim measures would qualify for a categorical exclusion under the National Environmental Policy Act (NEPA). In summary, Framework 18 concluded that reducing the number of trips in the ETAA would provide long-term benefits to the scallop resource and fishery. The resource could sustain more effort in the future as a result of the biological benefits of the reduction in trips. Furthermore, the scallop industry expressed strong support for interim action to reduce effort in the ETAA in order to prevent overfishing in FY2007.

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List of Acronyms

A10 – Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan
A13 – Amendment 13 to the Northeast Multispecies Fishery Management Plan
BMSY – Biomass Maximum Sustainable Yield
BO – Biological opinion
CEQ – Council on Environmental Quality
CAI – Closed Area I
CAII – Closed Area II
DAS – Day-at-sea
DSEIS – Draft Supplemental Environmental Impact Statement
EA – Environmental Assessment
ESA – Endangered Species Act
EFH – Essential Fish Habitat
EFH designation life stages
 A – Adult life stage
 J – Juvenile life stage
 E – Egg life stage
ETAA – Elephant Trunk Access Area
FMP – Fishery Management Plan
FR – Federal Register
FSEIS – Final supplemental environmental impact statement
FW18 – Framework Adjustment 18 to the Atlantic Sea Scallop Fishery Management Plan
GB – Georges Bank
GOM – Gulf of Maine
HAPC – Habitat Area of Particular Concern
LPUE – Landings per unit effort, usually a DAS in this document
IRFA – Initial Regulatory Flexibility Analysis
MA – Mid-Atlantic
MAFMC – Mid-Atlantic Fishery Management Council
NEFMC – New England Fishery Management Council
NEFSC – Northeast Fisheries Science Center
NEPA – National Environmental Policy Act
NLSA – Nantucket Lightship Area
NMFS – National Marine Fisheries Service
NOAA – National Oceanographic Atmospheric Administration
PDT – Scallop Plan Development Team
RIR – Regulatory Impact Review
SAP – Special access program
SARC – Stock Assessment Review Committee
SAW – Stock assessment workshop
SBNMS – Stellwagen Bank Marine Sanctuary
SEIS – Supplemental Environmental Impact Statement
SMASST – School of Marine Science and Technology, University of Massachusetts
Dartmouth
SNE – Southern New England

TAC – Total Allowable Catch. This includes discards for finfish species, but not for scallops which have a much lower discard mortality rate.

U10 – A classification for large scallops, less than 10 meats per pound.

USGS – United States Geological Survey

VIMS – Virginia Institute of Marine Science

VMS – Vessel Monitoring System

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1.0 BACKGROUND AND PURPOSE

1.1 BACKGROUND

Due to uncertainty, Framework 18 included a regulatory mechanism that allowed NMFS to reduce the number of trips in the ETAA if updated biomass estimates indicate that the ETAA biomass is significantly lower than projected levels. This Notice Action procedure includes a review by the Scallop PDT of all available survey data. In October 2006, the Scallop PDT reviewed information from three separate biomass surveys conducted in 2006: The federal dredge survey conducted by NMFS; a dredge survey conducted by VIMS; and a video survey conducted by SMAST. The results from all three surveys were reviewed and the PDT determined that biomass was lower than projected under Framework 18, but it was not low enough to trigger a Notice action to reduce the number of trips allocated for the ETAA.

While the updated biomass estimate did not trigger a notice action to reduce the number of trips in the ETAA, the PDT urged precaution in managing the scallop fishery in 2007 because preliminary fishery projections indicated that overfishing of the scallop resource could occur in 2007 under the scheduled management measures. The updated projection found that biomass was overestimated and FW18 underestimated fishing mortality for a variety of reasons.

Projections in Framework 18 were made using survey and fishery information through 2004. When survey data for 2005 and 2006 and landings data from 2005 were added to the model, biomass was lower, and overall fishing mortality higher, than what had been projected under Framework 18. Several factors may have contributed to the overestimation of biomass and underestimation of mortality. The model projections in Framework 18 assumed future recruitment would follow similar patterns to the observed (past) recruitment time series. Over the past two years, recruitment in Georges Bank has been very poor, and only around average in the Mid-Atlantic, so the Framework 18 projection overestimated the actual recruitment. Additionally, the number of open area DAS allocated under FW18 (20,000 open area DAS) may not have been precautionary enough. The PDT never reached consensus on a number during the Framework 18 process but recommended nothing above 20,000. The 20,000 DAS option chosen by the Council in FW18 allowed for higher than optimal fishing mortality in open areas. Together with the decrease in recruitment, this has led to reduced open area biomass and catch rates. Moreover, the 20,000 DAS estimate was based on an assumption of only modest increases in effort in general category effort. It appears that general category effort may have been higher than assumed. In addition, the model uses an estimate of growth from a rate determined in the 1970s. More recent work suggests that the estimated growth rate for Georges Bank is relatively accurate, but the growth rate for the Mid-Atlantic is slower than the rate used in the model. Other possible contributors to the observed discrepancies include reduced meat weights due to the seasonal spawning cycle, and higher than estimated discard and natural mortality. For these reasons, the PDT was concerned that various assumptions used in the projections combined with unquantifiable factors left to overly optimistic projections and unlikely underestimate of fishing mortality in 2007.

As a result of the issues described above, the PDT developed a memorandum for Council review at the November 2007 Council meeting. The Council in turn recommended that NMFS take

interim action to prevent overfishing in FY2007 by reducing the number of trips in ETAA, delay the opening until March 1 and prohibit deckloading before leaving access areas. NMFS considered this request and implemented interim action on December 22, 2006 for 180 days until June 20 (71 FR 76945). NMFS recently published a second interim action to extend these measures for a second 180-day period through December 23, 2007 (72 FR 29889).

The interim action:

- Reduced the number of trips from five trips to three trips for full-time scallop vessels in the ETAA (scallop possession limit would remain at 18,000 lb);
- Reduced the maximum number of ETAA trips from three trips to two trips for part-time scallop vessels. Part-time scallop vessel owners could choose to take one or both trips in the Closed Area I and Nantucket Lightship Access Areas (i.e., one trip in each area) rather than fishing in the ETAA. The scallop possession limit for part-time vessels would be increased from 16,800 lb per trip to 18,000 lb per trip;
- Reduced the occasional vessel possession limit from 10,500 lb per trip to 7,500 lb per trip;
- Reduced the general category scallop fleet trip allocation from 1,360 to 865 trips in the ETAA;
- Delayed the opening of the ETAA until March 1, 2007;
- Prohibited the retention of more than 50 U.S. bushels of in-shell scallop outside of the boundaries of the ETAA for all vessels on ETAA trips (i.e., prohibit deckloading).

These measures expire on December 23, 2007 and if no action is taken under Framework 20, then allocations under Framework 18 will become effective and vessels would be permitted to take trips in ETAA starting on January 1, 2008 (including the last two months of FY2007).

1.2 PURPOSE AND NEED

The purpose of this action is to extend the same measures implemented by interim action through February 29, 2008, specifically for a two-month period (January 1 – February 29, 2008) until the start of FY2008. The need for this action is to reduce overfishing for the entire 2007 fishing year. The ETAA has an unprecedented high abundance of scallops, which needs to be husbanded with caution to effectively preserve the long-term health of the scallop resource and fishery.

2.0 GOALS AND OBJECTIVES

There is a timing issue with measures implemented under the interim action to reduce ETAA trips to prevent overfishing in FY2007 and the end of the scallop fishing year. Interim action was taken in December 2006 to prevent overfishing. As requested by the Council, NMFS reduced the number of trips in the Elephant Trunk Access Area for all permit categories, delayed the opening until March 1, and prevented deckloading from the area. That action can only be extended for two 180-day periods (Dec 06 - June 07 and June 07 – Dec 07). After December 23, 2007 status quo measures implemented under Framework 18 would revert back for the last two months of fishing year 2007 (January and February 2008). In order to prevent overfishing for

the entire fishing year, the goal of this action is to extend the same measures implemented by interim action through March 1, 2008.

3.0 MANAGEMENT ALTERNATIVES UNDER CONSIDERATION

3.1 NO ACTION

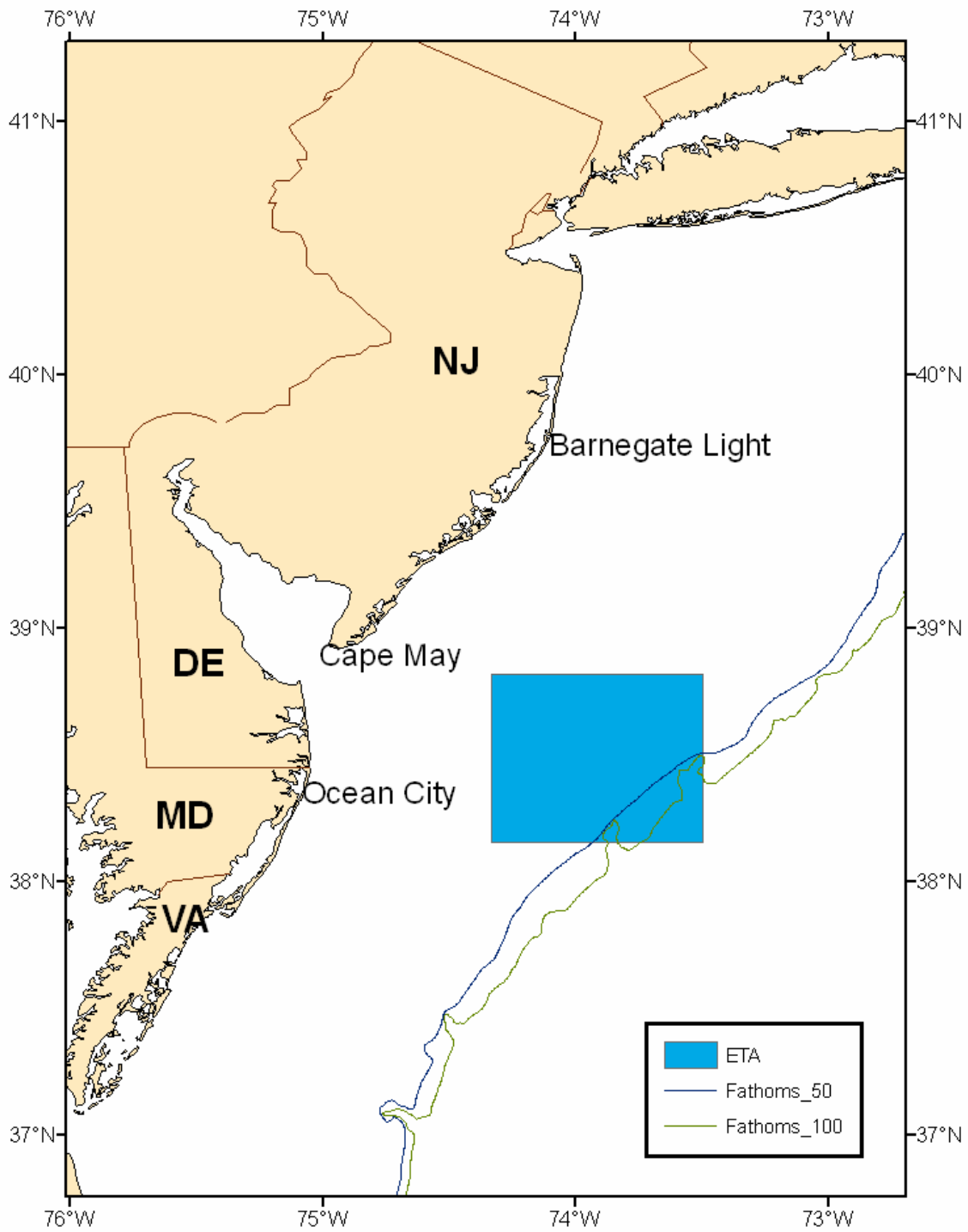
If Framework 20 is not implemented then status quo measures implemented under Framework 18 would revert back for the last two months of fishing year 2007 (January and February 2008). Specifically the original number of trips allocated under Framework 18 for 2007 would be allocated to vessels on January 1, 2008. The allocations per full-time will stay at 5 trips, for part-time vessels at 3 trips, for occasional vessels at one trip (with a 10,500 lb. possession limit) and the general category fishery will be allocated a total of 1360 trips to the EETA. These allocations would be allocated on January 1, 2008.

3.2 EXTEND INTERIM MEASURES THROUGH FEBRUARY 29, 2008 (OR UNTIL FRAMEWORK 19 IS IMPLEMENTED)

This alternative would extend the interim measures for preventing overfishing for FY2007 through the end of FY2007 (a two-month time period including January and February of 2008). The interim measures currently in place expire on December 23, 2007. The measures include a reduction in the number of trips in ETAA for each scallop permit category and a prohibition on “deckloading” before leaving the access area. These interim measures are expected to help prevent overfishing for the overall scallop resource for FY2007. The ETAA has an unprecedented high abundance of scallops, which needs to be husbanded with caution to effectively preserve the long-term health of the scallop resource and fishery. ETAA is about 35 nautical miles southeast of Delaware Bay and Cape May, NJ (Figure 1).

Although the interim action also delayed the opening of the ETAA to March 1, 2007, such action is not included in this alternative because Framework 18 allowed access to the ETAA for the full fishing year once it opened in the 2007 fishing year (i.e., access to the area for scallop vessels through February 29, 2008). No action has contemplated closing the ETAA in January and February 2008.

Figure 1 – Boundary of the Elephant Trunk Access Area



4.0 IMPACTS OF MANAGEMENT ALTERNATIVES

Framework 18 established management measures for the 2006 and 2007 fishing years under the umbrella of Amendment 10 to the FMP and its EIS. Therefore, NEPA documentation for a reduction in the ETAA trip allocations was previously prepared and is complete. In summary, the prior analyses indicated that reducing the number of trips in the ETAA would provide short-term and long-term benefits to the scallop resource. In addition, while short-term economic impacts may be negative because vessels would be allocated fewer trips, the long-term economic impacts would be positive. The resource could sustain more effort in the future as a result of the biological benefits of the reduction in trips. The impacts of the measures were determined to be insignificant, supporting the Finding of No Significant Impact in the EA for Framework 18.

The prohibition on deckloading (loading the working deck of a scallop vessel with unshucked scallops) for vessels on ETAA trips, which will only be in effect for a maximum of 360 days under the interim rule, does not result in a change in the findings of the Final EIS prepared for Amendment 10 to the Atlantic Sea Scallop FMP or of the EAs for the annual fishing measures for the Atlantic sea scallop fishery. In addition, the scallop industry commented that most of the scallop industry has operated in Access Areas as if there were a prohibition on deckloading. Therefore, NMFS concluded in the interim action that the prohibition on deckloading in the ETAA does not impose additional impacts that have not been considered in prior actions, particularly since it will only be in effect for up to 360 days. Although the benefits are not quantifiable, the prohibition on deckloading is a complementary measure that will help reduce overfishing in 2007.

The following sections are a summary of analyses already prepared in the Framework 18 Environmental Assessment that considered fewer trips in the ETAA and delaying the opening in that area until March, rather than January. This document does not contain new analyses and is categorically excluded from additional analyses under NEPA since the impacts of this action have already been assessed in a previous action (Framework 18). Overall, the impacts described in Framework 18 were found to be positive from these measures. Furthermore, the proposed action in Framework 20 to extend these measures through the end of the 2007 fishing year will help eliminate the need for more conservation actions, which may potentially result in adverse impacts on the scallop resource and industry, if no action is taken to extend these measures to prevent overfishing.

4.1 SCALLOP RESOURCE

The ETAA has been closed to fishing since July 2004 to protect two very strong year classes. The area has an unprecedented high abundance of scallops, which needs to be husbanded with caution to effectively preserve the long-term health of the scallop resource and fishery. Framework 18 analyses suggested that excessive fishing effort in this area would likely have undesirable effects including higher safety risks, greater effects on the bottom environment from discarded scallop viscera and a spike in landings, which may adversely affect price.

As for opening the area in January versus March, the Council originally supported a January opening to give the fleet more flexibility to fish trips over a longer period of time, especially when relatively long seasonal closures were being considered to reduce potential interactions with sea turtles. A January 1 opening would miss growth that occurs during the spring. The

proposed action in Framework 20 to keep the reduced number of allocated trips in effect until March 1, 2008 will increase yield by giving scallops two more months to grow. Shifts of fishing effort to seasons when meat yield is lower increases mortality and fishing time because it takes more scallops to equal 18,000 lbs. of scallop meats. This change can be amplified if effort shifts to an earlier period before seasonal growth has occurred.

Framework 18 explains that Atlantic sea scallops of equal size exhibit seasonal changes in meat weight, related to the annual reproductive cycle. Scallops also exhibit seasonal changes in growth that usually peak during the early spring when the water is clearer and food is plentiful. These seasonal cycles in growth and reproductive activity also vary with latitude, but are important determinants of mortality for a TAC regulated fishery and when recruitment to the fishing year occurs. These factors will also affect how seasonal effort shifts affect scallop fishing mortality.

Summary of discussion at Council level related to request for Interim Action

Based on fishing patterns for the first few months the ETAA opened in 2007, effort is expected to be higher following an opening. So if No Action is taken most if not all general category trips and some limited access trips are expected to be taken in the ETAA starting in January 2007. If that is the case then the overall fishing mortality for FY2007 will increase and may exceed the overfishing threshold for FY2007. Table 1 describes the projections for calendar year 2007 under status quo (Framework 18 measures) and the interim measures recommended by the Council and implemented by NMFS on December 20, 2006 (Alternative 2). These estimated were prepared by the Scallop Plan Development Team and used by the Council and NMFS to justify the need for interim action. The overfishing threshold is $F=0.24$, so under status quo measures the projections suggest that overfishing would occur. Since interim measures were put in place it is likely that overfishing did not occur in 2007, but Alternative 3.2 in this document (extend interim measures) will help ensure that effort does not spike in January – February 2008, the end of the 2007 fishing year. If additional effort is taken in January and February that would reduce the effectiveness of the interim action to prevent overfishing for FY2007.

Table 1 - Summary of projections for calendar year 2007 under status quo (Framework 18 measures) and the interim measures to reduce ETAA trips in 2007 (Alternative 2)

	Status Quo FW18	Alternative 2 (3 ETA trips + no open area DAS reductions)
2007 Fishing mortality (all areas)	F=0.26	F=0.22
2007 ETA Fishing mortality	F=0.22	F=0.13
Landings (all areas)	70 million	61 million
Landings (ETA only)	24.7 million	15.4 million
DAS (open and access area DAS)	37,633	33,653
Exploitable Biomass	330 million	339 million
Total Biomass	425 million	415 million

Overfishing threshold for scallop resource is $F=0.24$

4.2 PHYSICAL ENVIRONMENT AND ESSENTIAL FISH HABITAT

In general, Framework 18 concluded that less effort allocated to the area will have positive impacts on the physical environment and EFH. Prohibition on deckloading has negligible impacts on EFH as well.

4.3 PROTECTED RESOURCES

In general, Framework 18 concluded that less effort allocated to the area will have positive impacts on sea turtles due to reduced potential for interaction with scallop gear. Prohibition on deckloading has negligible impacts on protected resources as well.

4.4 ECONOMIC AND SOCIAL IMPACTS

Framework 18 explains that if updated survey information suggests that a reduction in trips in the ETAA is necessary to ensure landings and economic benefits are kept to sustainable levels then overall positive economic impacts are expected from preventing overfishing. Furthermore, the interim measures to prohibit deckloading on ETAA trips are expected to help prevent additional scallop mortality associated with discarding and thus, will result in greater yield, revenues and economic benefits from the scallop resource. Therefore, vessels that participate in the scallop fishery will benefit over the long-term as overfishing of the scallop resource is prevented under the proposed action in Framework 20.

Summary of discussion at Council level related to request for Interim Action

While many limited access vessels would not be expected to fish in January and February, additional effort during that time could lead to overfishing in the 2007 fishing year. However, since trips allocated to the general category fishery are fleetwide, these vessels would be more inclined to fish in January/February, potentially increasing mortality in the fishing year 2007 above the overfishing threshold and thus, reducing scallop biomass. In addition, deckloading could have more scallops on board than are necessary to achieve the possession limit. Although the excess scallops are discarded, scallops remain on deck longer, which may increase discard mortality especially for small scallops. As a result of these negative impacts on scallop biomass, the scallop landings, revenues and total economic benefits could decline in the future years with negative economic impacts on the vessels that participate in the scallop fishery if no action were taken.

4.5 NON-TARGET SPECIES

In general, Framework 18 concluded that less effort allocated to the area will have positive impacts on non-target species due to reduced potential for interaction with scallop gear.

As the Council discussed the request for interim action, it was noted that the prohibition on deckloading may have positive impacts on non-target species by reducing additional time scallop gear may be fished above the possession limit, and then discarded.

5.0 CONSISTENCY WITH APPLICABLE LAWS

5.1 MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

5.1.1 National Standards

[to be completed after final action selected]

Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act requires that fishery management plans (FMPs) contain conservation and management measures that are consistent with the ten National Standards:

- (1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.*
- (2) Conservation and management measures shall be based upon the best scientific information available.*
- (3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.*
- (4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.*
- (5) Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.*
- (6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.*
- (7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.*
- (8) Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to*

(A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.

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

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

5.1.2 Other Required Provisions of the M-S Act

[to be completed after final action selected]

Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act contains 14 additional required provisions for FMPs, which are discussed below. Any FMP prepared by any Council, or by the Secretary, with respect to any fishery, shall:

- (1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are-- (A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery; (B) described in this subsection or subsection (b), or both; and (C) consistent with the National Standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law;*
- (2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;*
- (3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;*
- (4) assess and specify-- (A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3); (B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and (C) the capacity and extent to which United States fish processors, on an annual basis,*

will process that portion of such optimum yield that will be harvested by fishing vessels of the United States;

- (5) specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, charter fishing, and fish processing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, economic information necessary to meet the requirement and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors;*
- (6) consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery;*
- (7) describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat;*
- (8) in the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan;*
- (9) include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on-- (A) participants in the fisheries and fishing communities affected by the plan or amendment; (B) participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants; and (C) the safety of human life at sea, including weather and to what extent such measures may affect the safety of participants in the fishery;*
- (10) specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is*

approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery;

- (11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority-- (A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided;*
- (12) assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish;*
- (13) include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery, including its economic impact, and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors;*
- (14) to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate, taking into consideration the economic impact of the harvest restrictions or recovery benefits on the fishery participants in each sector, any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery and;*
- (15) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability.*

5.1.3 Executive order 12866 (Regulatory Impact Review)

[to be completed after final action selected]

5.1.4 Regulatory flexibility analysis

[to be completed after final action selected]

5.2 NATIONAL ENVIRONMENTAL POLICY ACT

The proposed action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement because the action will not have any impacts not already assessed, and the impacts would not have the potential to pose significant effects to the quality of the human environment. The changes in the ETAA trip allocations and opening date

were contemplated and analyzed in the Environmental Assessment supporting Framework 18 to the Scallop FMP and are summarized in Section 4.0.

5.3 MARINE MAMMAL PROTECTION ACT (MMPA)

Section 6.4 of Framework 18 contains a description of marine mammals potentially affected by the Scallop Fishery and Section 4.3 above provides a summary of the impacts of the proposed action as analyzed in Framework 18. A final determination of consistency with the MMPA will be made when the Council adopts final measures for Framework 20.

5.4 ENDANGERED SPECIES ACT (ESA)

Section 6.3 of Framework 18 contains a description of marine mammals potentially affected by the Scallop Fishery and Section 4.3 above provides a summary of the impacts of the proposed action as analyzed in Framework 18. A final determination of consistency with the MMPA will be made when the Council adopts final measures for Framework 20.

5.5 ADMINISTRATIVE PROCEDURE ACT (APA)

The Council has held two meetings open to the public on Framework 20. After submission to NMFS, a proposed rule and notice of availability for Framework 20 under the M-S Act will be published to provide opportunity for public comment.

5.6 PAPERWORK REDUCTION ACT (PRA)

Framework 20 does not have any new collection of information requirements subject to the PRA.

5.7 COASTAL ZONE MANAGEMENT ACT (CZMA)

Once the Council has adopted final measures and submitted Framework 20 to NMFS, NMFS will request consistency reviews by CZM state agencies.

5.8 DATA QUALITY ACT

Utility of Information Product

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

This proposed framework is being developed as part of a multi-stage process that involves review of the document by affected members of the public. The public has had the opportunity to review and comment on management measures during several meetings. In addition, the public will have further opportunity to comment on this framework through the 45-day public

hearing process, and again after the NMFS publishes a request for comments notice in the Federal Register.

The Federal Register notice that announces the proposed rule and the implementing regulations will be made available in printed publication and on the website for the Northeast Regional Office. The notice provides metric conversions for all measurements.

Integrity of Information Product

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

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

Objectivity of Information Product

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

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

This framework is being developed to comply with all applicable National Standards, including National Standard 2. National Standard 2 states that the FMP's conservation and management measures shall be based upon the best scientific information available. Despite current data limitations, the conservation and management measures proposed to be implemented under this framework are based upon the best scientific information available. This information includes complete NMFS dealer weighout data through 2005, and includes incomplete dealer weighout data for 2006. Dealer data is used to characterize the economic impacts of the management proposals. The specialists who worked with these data are familiar with the most recent analytical techniques and with the available data and information relevant to the scallop fishery.

The policy choices (i.e., management measures) proposed to be implemented by this specifications document are supported by the available information. The management measures contained in the framework document are designed to meet the conservation goals and objectives of the FMP.

The supporting materials and analyses used to develop the measures in the framework are contained in the document and to some degree in previous amendments and/or FMPs as specified in this document.

The review process for this framework involves the New England Fishery Management Council, the Northeast Fisheries Science Center, the Northeast Regional Office, and NOAA Fisheries headquarters. The document was prepared by staff of the Council and Center with expertise in scallop resource issues, habitat issues, economics, and social sciences. The Council review process involves public meetings at which affected stakeholders have opportunity to provide comments on the specifications document. Review by staff at the Regional Office is conducted by those with expertise in fisheries management and policy, habitat conservation, protected species, and compliance with the applicable law. Final approval of the specifications document and clearance of the rule is conducted by staff at NOAA Fisheries Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget.

5.9 E.O. 12866 AND REGULATORY FLEXIBILITY ACT (RFA)

The economic impacts section of this document (Section 4.4) provides the basis for the Regulatory Flexibility Analysis and consideration of impacts relative to EO 12866. The Initial RFA will be prepared for the final action and will summarize impacts of the proposed action and its alternatives. The economic impacts of the proposed action will be evaluated relative to EO 12866.

Regulatory Flexibility Act

Under Section 603(b) of the RFA, each initial regulatory flexibility analysis is required to address:

1. Reasons why the agency is considering the action,
2. The objectives and legal basis for the proposed rule,
3. The kind and number of small entities to which the proposed rule will apply,
4. The projected reporting, record-keeping and other compliance requirements of the proposed rule, and
5. All Federal rules that may duplicate, overlap, or conflict with the proposed rule.

E.O. 12866

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

1. *Have an annual effect on the economy of \$100 million or more, or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.*
2. *Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.*
3. *Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.*

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

5.10 E.O. 13132 (FEDERALISM)

This framework does not contain policies with federalism implications warranting preparation of a federalism assessment under EO 13132.

5.11 E.O. 12898 (ENVIRONMENTAL JUSTICE)

The alternatives in this framework are not expected to cause disproportionately high and adverse human health, environmental or economic effects on minority populations, low-income populations, or Native American peoples.