

DRAFT Framework 23

to the Scallop Fishery Management Plan

Including a
Draft Environmental Assessment (EA)

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

Updated from Scallop Committee meeting on May 25, 2011
PRELIMINARY PDT AND AP INPUT IN CAPS

Initial Council Meeting: January 25-27, 2011
Final Council Meeting: September 27-29 2011
Submission of Final EA:

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Executive Summary

To be completed after the Council selects preferred alternatives

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List of Acronyms

1.0 BACKGROUND AND PURPOSE

1.1 BACKGROUND

This is not a typical framework to the Scallop FMP that sets fishery specifications for the following fishing years. Instead the Council initiated this framework with a very limited scope to address four specific issues. At the November 2010 Council meeting the Council adopted several work priorities for this action including: requirement of a turtle excluder dredge; review and revise the accountability measure adopted under Amendment 15 for the YT flounder sub-ACL for the scallop fishery, and consider specific changes to the general category NGOM management program.

The Council initiated this action in January 2011 and added one additional issue to consider; modifications to the vessel monitoring system to improve fleet operations. The Council plans to take final action on this framework in September 2011, with implementation before March 1, 2012.

1.2 PURPOSE AND NEED

The primary purpose of this action is to address four very specific issues identified by the public and Council to improve the overall effectiveness of the Scallop FMP. The need is to develop measures to minimize impacts on sea turtles through the requirement of a turtle excluder dredge; to improve the effectiveness of the accountability measure adopted under Amendment 15 for the YT flounder sub-ACL, consider specific changes to the general category NGOM management program to address potential inconsistencies, and to consider modifications to the vessel monitoring system to improve fleet operations.

2.0 MANAGEMENT ALTERNATIVES UNDER CONSIDERATION

2.1 SUMMARY OF THE PROPOSED ACTION

To be completed after Council adopts final action

2.2 NO ACTION

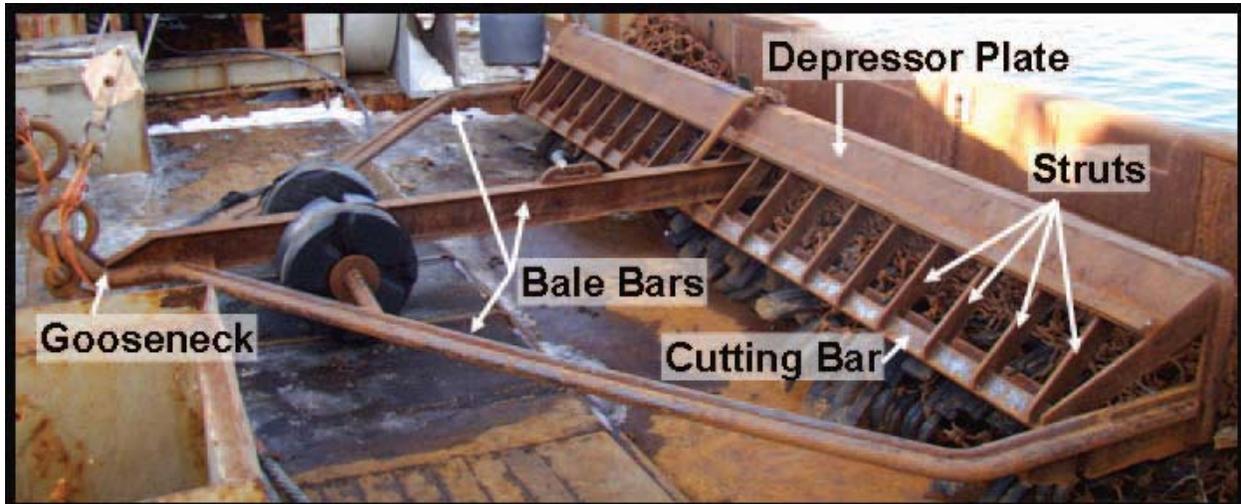
If No Action is taken on Framework 23 no changes will be made to the Scallop FMP relative to the issues considered in this action: dredge gear requirements, accountability measures for the sub-ACL for YT flounder, the NGOM general category management program, and VMS requirements.

2.3 REQUIREMENT OF TURTLE DEFLECTOR DREDGE

For several years researchers have been working with the scallop industry to develop a turtle deflector dredge. The dredge is designed to reduce the likelihood of a turtle passing under the frame when the dredge fishes on the seafloor and getting injured/crushed. Key elements of the modified dredge are: a forward cutting bar, a reduced number of bale bars, and a reduction in the

sources of entrapment between the depressor plate and the cutting bar – reduced spacing of struts (Figure 1).

Figure 1 – Photograph of the modified turtle deflector dredge (Source: Smolowitz et al, 2010)



The PDT reviewed the preliminary analyses available for this gear modification and agreed that it is a viable alternative that would reduce impacts on sea turtle mortality with limited impacts on scallop catch and the fishery. Therefore, the Scallop Committee developed several alternatives for this dredge including a range of options for which areas and seasons the requirement should apply to, and which vessels or permit types.

2.3.1 No Action related to turtle deflector dredge

If this alternative is selected there will be no new gear restrictions proposed in this action.

2.3.2 Require turtle deflector dredge

If this alternative is selected the Council recommends that the turtle deflector dredge be required in the scallop fishery. The specific area, season, and which vessels or permit types would be required to use this dredge are specified in the options considered below.

The dredge requirement itself is described below. There are five overall components of this dredge modification:

1. Cutting bar must be forward of the dredge frame;
2. Angle between the cutting bar and the top of the frame must be less than or equal to 45 degrees;
3. All bale bars must be removed except the outer bale and center support bar; leaving an otherwise unobstructed space between the cutting bar and forward bale wheels;
4. Strut spacing not to exceed 12 inches; and
5. Frame extension or “bump out” required, exceeding 12 inches.

Each element of this dredge is based on direct field research that has been conducted over several years. For example, the first element that the cutting bar must be forward of the dredge frame is

intended to direct turtle up and over dredge, and is based on early field tests conducted in Panama City in 2005. The cutting bar in a standard dredge is behind and under the depressor plate preventing a turtle from rising above the dredge.

The specification that the angle between the cutting bar and the top of the frame must be less than or equal to 45 degrees is intended to provide a smoother transition for a turtle to get over the dredge, but still maintain the same overall height of the standard dredge. This angle has been directly tested in the field and steeper angles provide a greater barrier. Research is currently being conducted using lower angles, or a lower profile dredge to test the impacts of a lower angle.

Third, the requirement that specifies that all bale bars must be removed except the outer bale and center support bar has evolved from several trials different versions of this dredge. This combination of two outside bale bars and one center bar creates an unobstructed space for turtles to escape up and over the dredge; it maximizes escapement upward without compromising the structural integrity of the dredge design.

The requirement that strut spacing not exceed 12 inches has been directly tested in the field, and it has been found that 12 inch spacing is a good compromise that prevents turtles from entering the dredge and does not compromise the integrity of the dredge design.

Lastly, the requirement of a frame extension or “bump out” that must be at least 12 inches is an element that was designed to address a potential hang up point for turtles. By bumping out the dredge frame, a greater area is created for turtles to escape up and over a dredge and not get hung up in the corners of the dredge. This element was also tested directly in the field and showed improved escapement without compromising the integrity of the dredge.

The combination of these elements is designed to reduce the likelihood of a turtle passing under the frame when the dredge fishes on the seafloor and getting injured/crushed. It is possible that these elements could be modified by future actions if additional components or modifications are developed to further minimize impacts on turtles.

2.3.2.1 Which area?

2.3.2.1.1 Turtle deflector dredge required in all waters west of 71° W

This area was developed by the PDT to include the majority of overlap of the scallop fishery and expected turtle interactions in the Mid-Atlantic. This area is primarily based on the distribution of the scallop stock found in the Mid-Atlantic, as well as results from Murray, 2011. This area does not include Georges Bank where interactions with turtles are very rare. See Figure 2.

The particular season when turtle dredge would be required in this area is specified in Section 2.3.2.2, and the specific vessels or permit types required to use this dredge will be determined in Section 2.3.2.3.

2.3.2.1.2 Turtle deflector dredge required in “RPM” area only

If this alternative is selected vessels would be required to use the turtle deflector dredge in the same area specified in the 2008 biological opinion. All waters south of the northern boundaries of statistical areas 612, 613, 533, 534, 541, 542, and 543. This area was identified in the 2008 biological opinion primarily as the greatest area of overlap in the distribution of scallop fishing gear and sea turtles. See Figure 2.

The particular season when turtle dredge would be required in this area is specified in Section 2.3.2.2, and the specific vessels or permit types required to use this dredge will be determined in Section 2.3.2.3.

PDT - IDEALLY THE TWO TURTLE RELATED REQUIREMENTS IN THIS FISHERY (THE EXISTING TURTLE CHAIN REQUIREMENT AND THE NEW DREDGE REQUIREMENT) SHOULD HAVE THE SAME BOUNDARY FOR ENFORCEMENT AND OTHER REASONS.

TO DATE, PDT AND AP MOST SUPPORTIVE OF OPTION 1 – 71N BOUNDARY

Figure 2 – Three boundary options under consideration for the turtle deflector dredge: waters west of 71°N (purple line); Mid-Atlantic waters as defined in the biological opinion (pink line); and waters south of turtle chain requirement at 40 09N (blue line) overlaid with observed takes of loggerhead turtles (all gears = green squares and scallop dredge only = red triangles)

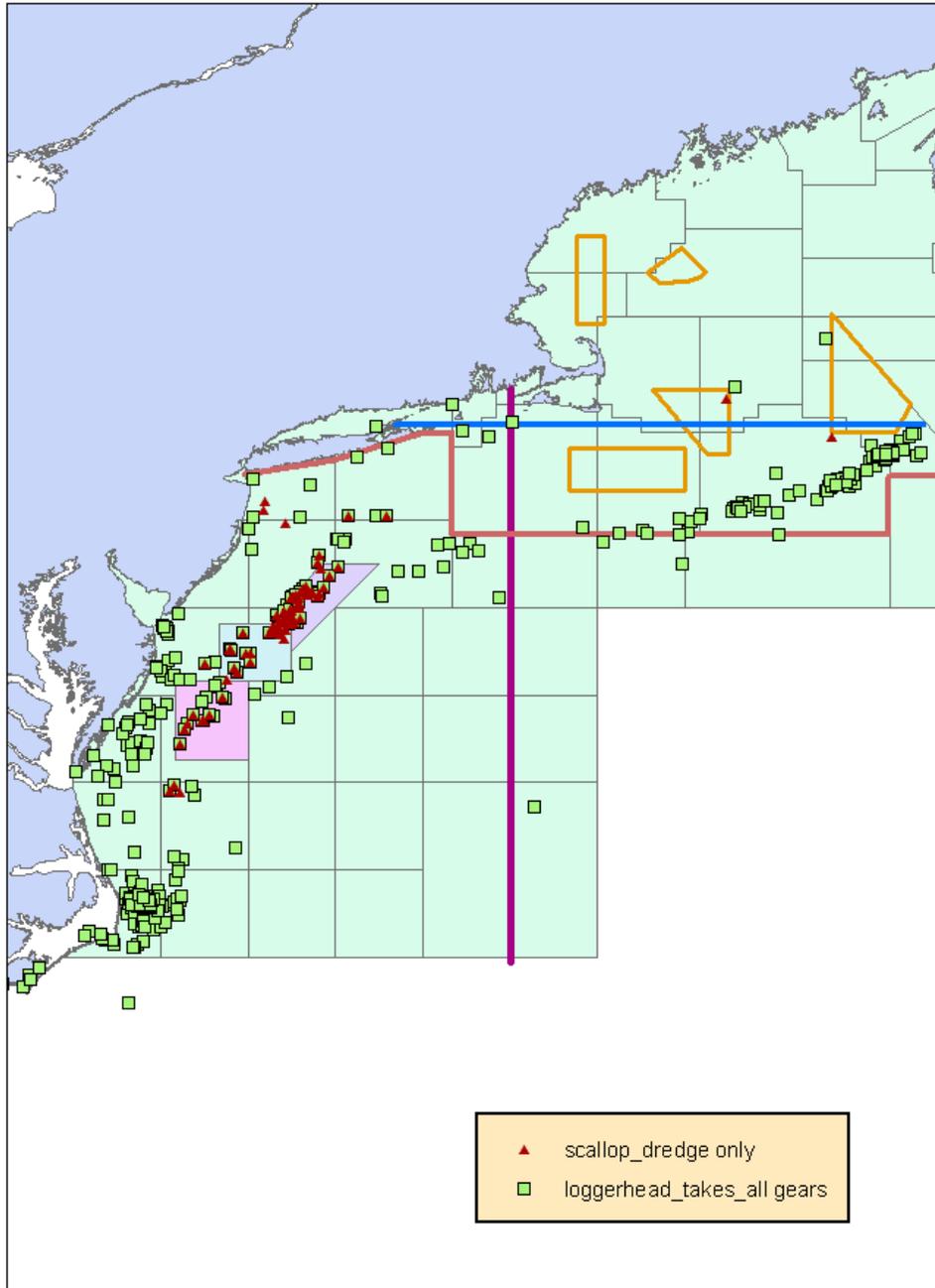


Figure 3 – Three TDD area boundary options with location of all observed loggerhead turtle takes from all gears and location of scallop effort [VTR data for LA (in black) and LAGC (in grey) fleets]

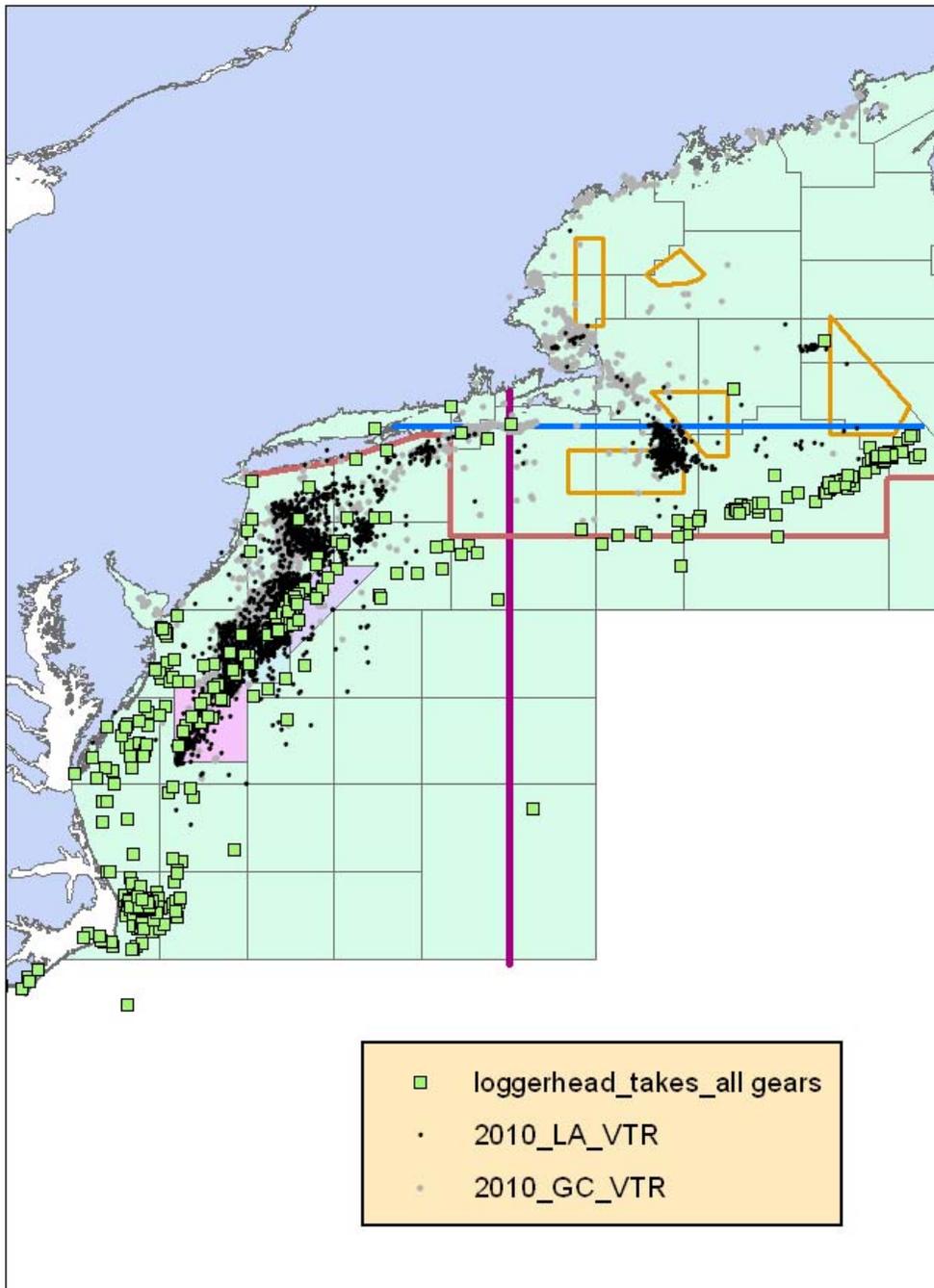
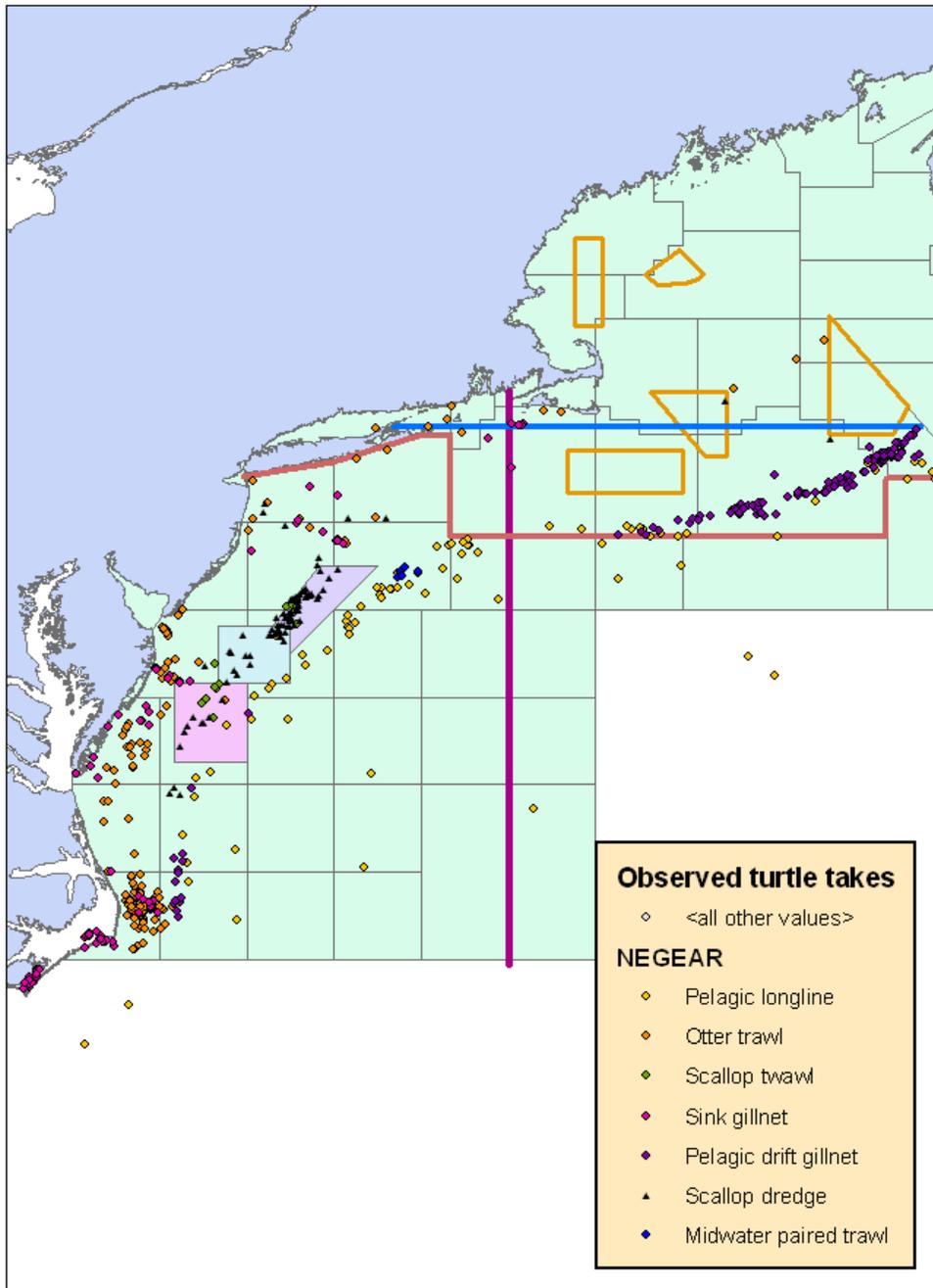


Figure 4 - Three TDD area boundary options with location of all observed loggerhead turtle takes by gear type



2.3.2.2 Which season?

2.3.2.2.1 June 15 – October 31

Season Council recommended for RPM measures adopted in Framework 21 and Framework 22.

2.3.2.2.2 June 1 – October 31

One of the two time periods contemplated in the original biological opinion for the scallop fishery in 2008. This season includes the months with the highest risk of interactions between turtles and the scallop fishery.

2.3.2.2.3 May 1 – November 30

This is the second time period contemplated in the original biological opinion. This is the time period that the turtle chain regulations are in effect.

THE COMMITTEE AGREED TO LET THE PDT CONTINUE WORKING ON THE MOST APPROPRIATE RANGE OF SEASON ALTERNATIVES. PDT PLANS TO INCLUDE ADDITIONAL ANALYSES OF SATELLITE DATA AND BYCATCH ANALYSES OF ALL GEARS. RANGE WILL LIKELY BE FROM MAY TO NOVEMBER, WITH SEVERAL VARIATIONS WITHIN THAT OVERALL TIME PERIOD.

AP – WAITING FOR FINAL RANGE OF SEASONS BEFORE IDENTIFYING PREFERENCE

2.3.2.3 Which vessels?

2.3.2.3.1 Limited access vessels only

If this alternative is selected the turtle gear restriction will only apply to limited access vessels – all full-time, part-time and occasional vessels.

2.3.2.3.2 All limited access and LAGC IFQ vessels

If this alternative is selected the turtle gear restriction will apply to both limited access vessels (full-time, part-time and occasional vessels) as well as limited access general category IFQ vessels. Vessels with a limited access NGOM and limited access incidental scallop catch permit would not be subject to this gear restriction; NGOM vessels are not allowed to fish in this area and vessels with incidental catch permits do not generally fish with scallop dredges.

2.3.2.3.3 All limited access scallop vessels and all limited access general category vessels that use a dredge greater than 10.5 feet

If this alternative is selected any scallop dredge greater than 10.5 feet fishing in the area and season identified above would be required to use a turtle deflector dredge. Regardless of scallop permit type, if the vessel is towing a dredge that is more than 10.5 feet it will need to conform with the restrictions described in Section 2.3.2.

LAGC vessels that use a dredge 10.5 or less would be exempt from this restriction except when fishing in an access area in the Mid-Atlantic. All scallop vessels, regardless of permit type or

dredge width, would be required to use a TDD while fishing in access areas in the Mid-Atlantic (i.e. Delmarva, Elephant Trunk and Hudson Canyon).

PDT INPUT – THE TDD EITHER BE REQUIRED FOR DREDGES 10.5 FEET OR LARGER, OR IF SMALLER DREDGES INCLUDED AS WELL, THE BUMP OUT SHOULD NOT BE REQUIRED. THE BUMP OUT IS NOT FEASIBLE FOR SMALLER DREDGES.

AP RECOMMENDED THE THIRD OPTION – ALL VESSELS WITH DREDGE 10.5 FEET OR GREATER, BUT ALL VESSELS REGARDLESS OF DREDGE SIZE WHEN FISHING IN MID-ATLANTIC ACCESS AREAS.

2.3.2.4 Timing of TDD requirement

2.3.2.4.1 Effective 90-180 days after Framework 23 is implemented

All vessels would be required to use a turtle deflector dredge based on Section 2.3.2.3 during the season per Section 2.3.2.2, and in the area specified in Section 2.3.2.1. If this alternative is selected, vessels would be required to use a TDD 90-180 days after FW23 is implemented. The Council will determine the precise length of time, between 90-180 days, the delay of effectiveness would be for this gear requirement.

This alternative was developed to recognize that it may be advantageous to have this gear requirement in place as soon as possible if NMFS reinitiates the biological opinion of this fishery related to impacts on sea turtles. The status of this gear could influence the ultimate estimate of take for this fishery, which is related to the reasonable and prudent measures developed. Therefore, a shorter delay of effectiveness was considered in addition to a longer period of time (2 years).

2.3.2.4.2 Effective March 1, 2014; two years after Framework 23 is scheduled to be implemented

All vessels would be required to use a turtle deflector dredge based on Section 2.3.2.3 during the season per Section 2.3.2.2, and in the area specified in Section 2.3.2.1. If this alternative is selected, vessels would be required to use a TDD two years after FW23 is implemented. Currently Framework 23 is expected to be implemented by March 1, 2014, so if that is the case this requirement would be by March 1, 2014.

PDT – SUPPORTIVE OF SOME DELAY SO DREDGES CAN BE BUILT

AP MOTION: The required implementation of the new Turtle Deflector Dredge (TDD) should be phased in over 2 to 3 years from implementation of FW23. If a vessel does outfit itself with a TDD before it is required, that vessel would be exempt from any seasonal closures or restrictions on Mid-Atlantic Access Area Trips west of the TDD boundary.

The Committee did not agree that the incentive included at the end of the AP motion was feasible under a Council framework.

THE COMMITTEE REQUESTED THAT THE PDT AND AP FURTHER REFINE THE TIMING DATES TO INCLUDE ALTERNATIVES THAT MAKE SENSE FOR TIME NEEDED FOR GEAR PRODUCTION, AS WELL AS HOW TIMING COULD IMPACT FUTURE BIOLOGICAL OPINIONS IF REINITIATED.

2.3.3 Clarification about how this alternative impacts RMP #1

The current RPM #1, see italics below, will still be required until it is eliminated, or replaced by a new Section 7 consultation completed on the scallop fishery. If this dredge is required through Council action it would change the estimate of take in terms of severity and impact on turtles, but the number of takes are expected to remain the same. Requiring this dredge would not automatically trigger a new consultation. NMFS has voiced that it will likely reinitiate Section 7 consultation as a result of other issues. It is not clear at this point if RPM#1 would change, how long the consultation process would take, and how the timing would impact FW23.

Therefore, it is possible that RPM#1 will still be required in the near future even if this is adopted. Note that adopting a turtle deflector dredge complies with RPM #2, see italics below. In order to be exempt from the prohibitions of section 9 of the ESA, and regulations issued pursuant to section 4(d), NMFS must comply with the terms and conditions, which implement the reasonable and prudent measures described below. These terms and conditions are non-discretionary.

RPM #1: NMFS must limit the amount of allocated scallop fishing effort by “Limited access scallop vessels” as such vessels are defined in the regulations (50 CFR 648.2), that can be used in the area and during the time of year when sea turtle distribution overlaps with scallop fishing activity (amended February 5, 2009).

Term and Condition for RPM #1: To comply with 1 above, no later than the 2010 scallop fishing year, NMFS must limit the amount of allocated limited access scallop fishing effort that can be used in waters south of the northern boundaries of statistical areas 612, 613, 533, 534, 541-543 during the periods in which turtle takes have occurred. Restrictions on fishing effort described above shall be limited to a level that will not result in more than a minor impact on the fishery. (amended February 5, 2009)

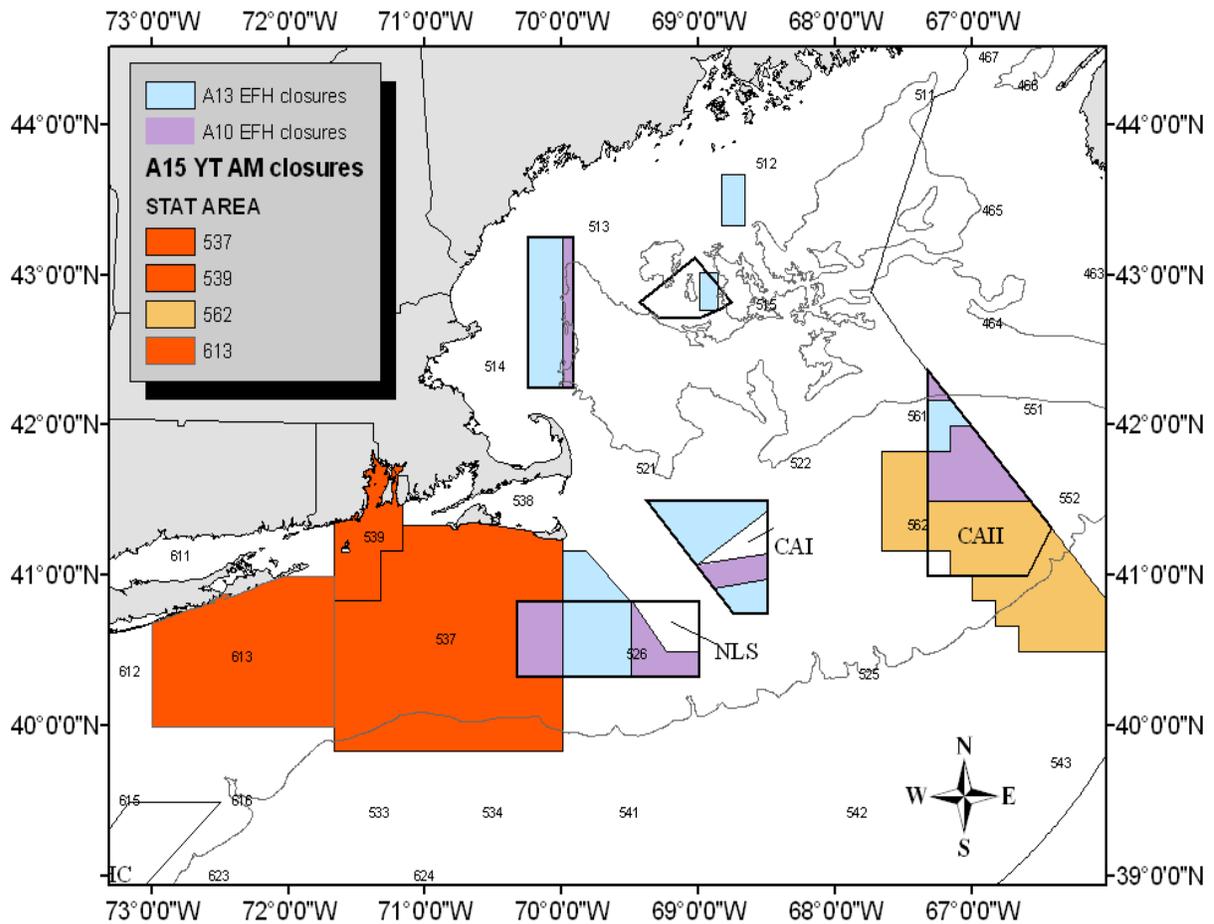
RPM #2: NMFS must continue to investigate and implement, as appropriate, gear modifications for scallop dredge and trawl gear to reduce the capture of sea turtles and/or the severity of the interactions that occur.

Term and Condition for RPM#2: To comply with 2 above, NMFS must continue to investigate modifications of scallop trawl and dredge gear. Within a reasonable amount of time following completion of an experimental gear trial from or by any source, NMFS must review all data collected from the experimental gear trials, determine the next appropriate course of action (e.g., expanded gear testing, further gear modification, rulemaking to require the gear modification), and initiate action based on the determination. The goal of this RPM is ultimately to require modification of fishing gear used in the scallop fishery operating under the Atlantic Sea Scallop FMP within a reasonable timeframe following sound research that demonstrates that the gear modification is reasonable and feasible and will help to minimize the number and/or severity of sea turtle interactions with scallop fishing gear.

2.4 REVIEW AND REVISE ACCOUNTABILITY MEASURES FOR THE YELLOWTAIL FLOUNDER SUB-ACL

The Council recently approved Amendment 15, which included an AM for the YT sub-ACLs (GB and SNE/MA stocks) for the scallop fishery. If a sub-ACL is exceeded, starting March 1 the following fishing year a pre-identified area (Figure 5) would close to all limited access scallop vessels for a specified period of time. Because the area for the Southern New England/Mid-Atlantic spans a large amount of the LAGC fishing grounds in that area and bycatch by the fleet is low since the fleet is only allocated 5.5% of the projected scallop catch, the Council decided that the LAGC should be exempt from this AM in areas where they are allowed to fish under NE Multispecies FMP exempted fisheries.

Figure 5- Map showing statistical areas subject to closure under Option A of this alternative (Orange is SNE/MA stock area, and yellow is GB, Note that GB AM area includes the access area in CA2).



While the amendment considered several AM alternatives over the last few years, much of the details of the proposed action were developed later in the Amendment 15 process. Therefore, it has been discussed that the effectiveness could be improved with additional work.

The Scallop Committee met on March 1, 2011 and requested that the PDT and AP continue developing several ideas that have been raised so far, as well as any others that may surface during the discussion. Based on meetings held in May 2011, the Committee further refined the range of alternatives to the following list: refine the seasonal closure AM schedule; develop a separate AM for the LAGC fishery; and develop a description of the proactive AMs already in place that reduce YT bycatch. In addition to the range of options included in this section, the Scallop Committee passed a motion to forward several potential options to the full Council for future work priorities for 2012 under the Groundfish FMP. These ideas would require modification to the Groundfish plan; therefore cannot be developed in this framework to the Scallop FMP.

COMMITTEE MOTION 4: Tooley/Avila:

Forward two topics to the full Council for consideration during 2012 priority setting:

- a. Consideration of LAGC as “other subcomponent” for YT ACLs under the GF FMP**
- b. Section 2.4.5 in Draft FW23**

Vote: 7:0:1

Section 2.4.5 referenced in the above motion is no longer in the document, but it was related to an alternative that would allocate a hard-TAC of YT to the scallop fishery equivalent to 100% of the estimated catch, rather than 90%, or a certain percent or baseline of the total YT ACL, not based on projected catch. For the second option the allocation could vary in pounds, but the percent of the total YT ACL would remain the same.

The specific AM associated with this different way to allocate the sub-ACL would be a reduction in DAS the subsequent year. If the estimated catch of YT from the limited access and limited access general category fisheries exceeds the overall YT sub-ACL allocation, there would be a reduction in DAS the following year.

The Committee was in favor of developing this idea further, but did not think FW23 was the appropriate place. The Committee did not want to pursue a DAS cut AM as a strategy until the overall allocation discussion occurred under the GF plan first. Therefore, the Committee decided to forward this issue to the full Council for the 2012 priority setting meeting in November 2011 as a possible priority item for a future GF action.

2.4.1 Refine the seasonal closure AM schedule

The PDT re-evaluated all observer data from scallop trips from 2003 to 2010 and determined that there are more opportune times that AMs could be effective rather than starting on March 1 and being closed consecutively by month. In order to determine this, a general linear model (GLM) was developed to evaluate if there are year and month effects that are influencing the bycatch rates. In addition, there are some holes in observer data from periods of time when the industry

funded observer program was interrupted, and for other reasons. The PDT also completed a “missing cells analyses” to address the fact that there are some periods of time with little or no observer data.

Lastly, information about fishing behavior impacting these bycatch rates will also be evaluated by reviewing the annual allocations and fishing patterns in access areas in more detail. For example, in some years multiple trips were allocated to an area, in some years the area closed prematurely because the YT bycatch TAC was reached, and in some years access areas were not open at all. A discussion of relative abundance of scallop and YT by area will also be conducted. A summary of these issues will hopefully help qualify changes in bycatch rates over time and space. The PDT is still working on these last two aspects of the analyses.

If there is time the PDT is also going to evaluate the monthly and annual meat weight yield variations by area. In the recent scallop assessment there is a calculated monthly meat weight anomaly for GB and MA. A monthly meat weight anomaly is calculated by comparing the meat weights collected on the annual federal survey (July/August) to the meat weights collected by observers. The PDT may be able to create a monthly meat weight anomaly for CA 2 specifically, but it is not expected to be very different than the values for GB overall. It should also be pointed out that this variation is already factored into the bycatch rates in access areas since vessels are fishing under a possession limit. It will take fewer scallops to reach 18,000 pounds during higher meat weight yield months like May and June compared to lower meat weight yield months. Less fishing time presumably means lower YT bycatch.

- **The PDT reviewed some of these analyses on May 4.**

For SNE, YT bycatch rate has been increasing over time maybe due to rebuilding (?), and is highest in March and lowest in August, but there are substantial area, month, and year effects. Bycatch rate higher in 537 than 613. For GB analyses were presented for open and access areas separately. But it was requested that the areas be combined for the final assessment of bycatch rates by month. There are significant year and month effects, but the data is variable and there are some months with no observed trips. Bycatch rates were highest in 2008, and in the fall. Yellowtail bycatch rates appear to be the highest in the SNE/MA AM area during winter/spring, and in the fall in the GB AM area. The PDT will generate new AM closure tables for GB (access and open combined) and SNE with associated percent gain amounts by month; a work in progress schedule is presented in Table 1.

It was also pointed out that the entire process is because these projections have error. For example, if there is a 20% standard error around the projection of YT catch, which means that almost 50% of the time the projected catch level is going to be exceeded. If the sub-ACL is set equal to that point estimate, there is a good chance the catch will be exceeded because of all the error in the estimates.

THE PDT IS STILL EVALUATING THE FINAL AM SCHEDULE AND “YT SAVINGS” ASSOCIATED WITH EACH MONTH THE AREAS ARE CLOSED. THE TABLE BELOW IS STILL A WORK IN PROGRESS; AREAS WOULD NOT CLOSE ON MARCH 1 AND REMAIN CLOSED CONSECUTIVELY; INSTEAD THEY WOULD CLOSE DURING THE MONTHS WITH HIGHEST BYCATCH RATES FIRST.

Table 1 – Revised YT AM seasonal closure schedule for each YT stock area (still being developed)

SNE/MA		GB		
Month	D/K	Month	D/K Access	D/K Open
Mar	0.19	Oct	0.242	0.497
Feb	0.18	Nov	0.240	0.492
Apr	0.16	Sep	0.224	0.460
Jan	0.13	Dec	0.222	0.455
May	0.11	Jan	0.195	0.401
Dec	0.09	Aug	0.188	0.386
Jul	0.08	Feb	0.168	0.344
June	0.08	Mar	0.144	0.294
Nov	0.06	Jul	0.143	0.294
Aug	0.06	Apr	0.125	0.256
Sep	0.05	May	0.113	0.232
Oct	0.05	June	0.110	0.225

2.4.2 Separate AM for the LAGC IFQ fishery

Currently the LAGC IFQ fishery is exempt from YT AMs. If the sub-ACL of YT is estimated to be exceeded based on catch from both the LA and LAGC fisheries, the seasonal closure AMs are triggered, but they only apply to the LA fishery. When the Council developed these final measures the seasonal closure in SNE/MA was described as too onerous because these vessels are not able to . Therefore, rather than the entire area closing to the LAGC fishery, the Committee wants the PDT to develop an alternative where only a portion of the SNE/AM area closes to this fleet and/or a maximum amount of time the area will be closed to this fishery. For example, of the three statistical areas in the seasonal closure, areas 537 and 539 have higher bycatch rates than 613.

THE PDT AND AP NEED MORE TIME TO DEVELOP THIS ALTERNATIVE – IT WAS ONLY ADDED AT THE MAY 25 COMMITTEE MEETING.

THE COMMITTEE DID PASS ANOTHER MOTION RELATED TO THIS TOPIC. IT PASSED A MOTION TO FORWARD AN ISSUE TO THE FULL COUNCIL THAT WOULD CONSIDER PUTTING THE LAGC IFQ FISHERY UNDER “OTHER SUBCOMPONENT” IN THE GF PLAN, RATHER THAN PART OF THE SCALLOP FISHERY SUB-ACL, SEE MOTION ON PAGE 16.

2.4.3 Description of proactive AMs already in place in Scallop FMP

There are currently several measures in the Scallop and Northeast Multispecies Fishery Management Plans that were designed to reduce finfish bycatch, specifically yellowtail flounder in the scallop fishery. These measures can be considered “proactive” AMs, even though they were implemented well before AMs were required under the reauthorized MSA (2007). A

proactive AM is an in-season measure designed to help ensure that an ACL, or sub-ACL in this case, is not exceeded. A rotational area management plan was implemented to concentrate scallop fishing effort in areas of high catch-per-unit-effort, effectively reducing the area swept of the fishery on an annual basis (Amendment 10 - NEFMC, 2004). Effort reductions to manage scallops and yellowtail flounder have reduced the number of days at sea to approximately 50-55 days per year (Framework 21 - NEFMC, 2010). The rotational access area boundaries of Closed Areas I, II and the Nantucket Lightship were defined based on scallop biomass and productivity as well as overlap with historic finfish distributions and essential fish habitat (Framework 16/39 - NEFMC, 2004). The specific access areas were chosen to minimize groundfish bycatch and mortality, and protect essential fish habitat for juvenile finfish without significantly affecting access to the scallop resource.

The access areas on Georges Bank open on June 15th to minimize groundfish bycatch during peak spawning times in the spring. Only scallop dredge gear is allowed in these areas in order to minimize groundfish bycatch, specifically due to the potential of reaching the yellowtail flounder TAC before the scallop target with the use of trawl gear (Framework 16/39 - NEFMC, 2004). Scallop dredges are required to use 4" rings in the dredge bag, which has reduced the bycatch of juvenile finfish (Amendment 10 - NEFMC, 2004). This gear does not fully select for yellowtail flounder <35 cm (Legault et al., 2010 - TRAC, 2010 DRAFT). Dredges must use 10" mesh twine top to reduce finfish bycatch, specifically flatfish like yellowtail flounder (Framework 11/29 - NEFMC, 1999). The scallop fishery is limited to 10% of the yellowtail flounder ACL in the Georges Bank access areas (Framework 16/39 - NEFMC, 2004). In-season closures of scallop rotational areas occur when the projected estimate of yellowtail flounder allocation is reached. These measures have been implemented separately since 1998; however all have been in place in combination since 2004. In combination, all of these measures have reduced bycatch in the scallop fishery, in particular YT bycatch in access areas on GB.

In addition, voluntary bycatch reduction measures have been employed by the scallop fleet for several years. Voluntary gear modifications and altered fishing behavior, including a reduction in the hanging ratio to 2:1, reduction of number of rings between the club stick and twine top, shorter tow distance/duration and hanging the dredge at the side of the vessel before haul back to allow yellowtail escapement, have greatly reduced the amount of yellowtail bycatch in the scallop fishery. In 2010, a bycatch avoidance program was started in the Nantucket Lightship access area. The SMAST Yellowtail Flounder Bycatch Avoidance System is a voluntary program to exchange real-time, spatially-specific information on yellowtail flounder bycatch in the scallop rotational areas of Georges Bank. The system uses fishery-dependent data to provide advice on bycatch hotspots. The system was implemented in 2010 with 35% of limited access scallop vessels participating. Thirty-five percent of the limited access scallop vessels participated in the program in 2010, and the Nantucket Lightship access area fishery harvested the full target of scallops while catching less than 32% of the yellowtail TAC, based on final estimates of YT bycatch (NMFS NERO website http://www.nero.noaa.gov/ro/fso/Reports/ScallopProgram/YT_bycatch_20110303.pdf).

The program will be used in 2011 in Closed Areas I and II as well. The hope is that the more vessels that participate and voluntarily choose to fish in areas with lower YT bycatch rates based

on real-time data, this voluntary proactive AM will help prevent the GB YT sub-ACL from being exceeded overall.

Extensive research has been conducted on reducing bycatch in the scallop fishery. The Scallop Research Set-Aside Program has consistently funded cooperative research to examine gear modifications and fishing behaviors that reduce bycatch of yellowtail flounder, and has included “Identification and evaluation of methods to reduce bycatch of all managed species (i.e. gear research)” as a top priority for 2011. An RSA funded survey to examine seasonal yellowtail flounder bycatch rates in Closed Areas I and II is currently underway. Additionally, the scallop fleet funds observer coverage in the closed areas of Georges Bank through the Industry-Funded Observer program, which allows near real-time monitoring of the area-specific yellowtail flounder TACs. All of these required and voluntary measures are considered proactive AMs, which further reduce the chance of a sub-ACL from being exceeded. However, since the current guidance of the AM requirement is that there must be an automatic measure in place that is triggered and implemented as soon as possible to correct for an ACL overage, this FMP must also include “reactive” AMs if a fishery exceeds an ACL or sub-ACL.

2.5 MODIFICATION TO THE NGOM LAGC PROGRAM

In Amendment 11 the Council approved a separate LAGC program for the NGOM. The program was designed to provide continued access for vessels from Northern New England that would likely not qualify for a LAGC IFQ permit because of the sporadic booms and busts of the scallop resource in that area. Therefore, a separate limited entry program was developed for this area with a reduced possession limit (200 pounds) and no landings criteria. In order to satisfy NMFS that this program was going to provide conservation benefit, have minimal administrative burden, and adequate enforceability several provisions were included in this program that have caused concern for permit holders. First, the provision that all catch by NGOM vessels count against the federal TAC even if scallops were caught in state waters has been viewed as inconsistent since the TAC is supposed to be based on the federal resource only. Second, once the NGOM TAC is reached all NGOM permitted vessels are prohibited from all scallop fishing, even in state waters. This too has been viewed as inconsistent and unfair for NGOM permitted vessels that also hold state scallop permits.

To date, these issues have not been included for consideration in recent scallop actions primarily because of other demands. The Council decided to include possible modifications to the NGOM program in this action so long as the specific alternatives developed do not trigger an amendment, and are frameworkable changes.

Several specific issues raised during Amendment 15 scoping were:

- Landings from state waters should not count against NGOM TAC so that people can still fish in state waters after the federal TAC has been reached.
- GC scallops caught in the NGOM should not count against IFQ tailored to scallops outside the NGOM.
- All scallop vessels should need to abide by the 200 lb daily limit in the NGOM, instead of allowing the LA vessels 18000 lbs while restricting only those with state permits.

The Council discussed these precise aspects of the program during development of Amendment 11 and decided that in order to ensure that the TAC is not exceeded all landings in the area would have to count against the TAC (including landings on IFQ and limited access vessels fishing, and from state waters on all federal vessels). Amendment 11 was specific in what catch should be considered in calculating the TAC and what catch should count against the TAC once the fishery begins. Advice at the time was that the actual TAC can be changed by framework, but the foundation of what catch history is used, what catch is applied against the TAC, and what catch is not applied should potentially be considered in an amendment. So depending on where these alternatives go this topic may or may not have to be considered in an amendment.

The PDT discussed these issues and recommended that one way to address the issue of catch from state waters counting against the federal TAC is to allow a vessel with a federal NGOM permit to fish in state waters and not have that catch count toward the federal NGOM TAC, but restrict that vessel to only fish in state waters for the entire trip. If a vessel wants to fish all or part of a trip in federal waters all scallop catch from those trips will have to count against the federal NGOM TAC.

2.5.1 No Action related to NGOM management program

If this alternative is selected there will be no changes to the NGOM management program.

2.5.2 Require that if a vessel with a federal NGOM wants to fish in state waters and not have that catch apply to the federal NGOM TAC, that vessel is restricted to fish in state waters only for that trip

A vessel with a federal NGOM permit will have to declare before it leaves on a trip whether it will be fishing exclusively in state waters or not. If it decides to fish exclusively in state waters, on a trip by trip basis, the scallop catch from state water only trips will not be applied against the federal NGOM TAC. On a trip by trip basis, each vessel can decide which area it is going to fish in. A vessel can still fish in both state and federal waters on a single trip, but if it does, that vessel needs to declare a federal trip before leaving, and the entire catch from that trip would be applied to the federal TAC, even if some of it was harvested in state waters.

2.5.3 Which vessels?

The impacts of this measure could impact state fisheries differently so the Committee decided to develop several alternatives in terms of which states this change would apply to.

2.5.3.1 This exemption would only be for vessels with a federal NGOM permit that are homeported in Maine

2.5.3.2 This exemption would be for all vessels with a federal NGOM permit, regardless of homeport state

PDT STILL NEEDS TO DO AN ASSESSMENT OF STATE WATER SCALLOP PLANS TO ASSESS IMPACTS OF POTENTAIL FISHING BEHAVIOR CHANGES AS A RESULT OF THIS MODIFICATION, AS WELL AS THE POTENTIAL IMPACT OF THE ALTERNATIVE BELOW (2.5.5) IFQ VESSELS FISHING IN STATE WATERS AND THAT CATCH NOT APPLYING TOWARD ANNUAL QUOTA.

2.5.4 Adjust the 2012 NGOM hard-TAC

If Alternative 2.5.2 is selected, the Council may want to adjust the 2012 federal NGOM hard-TAC set in Framework 22. FW22 set the TAC at 70,000 pounds for FY2012. That TAC includes an estimate of 31,000 pounds from the federal resource, and an additional 39,000 pounds to recognize that a substantial portion of catch in the NGOM comes from state waters. If the alternative above is selected that would allow a vessel with a federal NGOM permit to declare that it is fishing exclusively in state waters, and that catch will no longer be applied against the federal TAC. Therefore, the Council may want to consider whether the federal TAC should be adjusted downward to prevent excess fishing in the NGOM if that alternative is chosen.

2.5.4.1 No Action

The federal NGOM hard TAC will remain at 70,000 pounds regardless of whether Alternative 2.5.2 is adopted.

2.5.4.2 Reduce the federal NGOM hard TAC to 31,000 pounds, as analyzed in Framework 22, if Alternative 2.5.2 is selected

Since catch from vessels with a federal NGOM permit that declare they are fishing exclusively in state waters per trip will not be applied against the federal TAC in this area, the federal TAC would be reduced to equal 31,000 pounds. That is the value recommended by the PDT during Framework 22 that is equal to the estimate of exploitable biomass in federal waters in the NGOM from a 2009 survey, using the lower 25th percentile at a 0.25 exploitation rate and 0.5 dredge efficiency. Section 2.6.2.3.1 of Framework 22 summarizes the updated survey information that supports setting the TAC at 31,000 pounds.

2.5.4.3 Reduce the federal NGOM hard TAC to ??? (still to be analyzed), if Alternative 2.5.2 is selected

At the May 25, 2011 Committee meeting the Committee requested that the PDT evaluate if other options are TAC options for 2012 are warranted. A member of the audience argued that the PDT should review the different assumptions used for dredge efficiency and other precautionary decisions related to that estimate to see if 31,000 pounds is still the best estimate of biomass in the federal portion of NGOM. It was suggested that SMAST has new biomass data from portions of NGOM that could be used in the estimate as well. Without objection the Committee requested that the PDT pursue this and report back to the Committee so it can assess risk and identify the best hard TAC for 2012 based on new analyses, if available.

AP MOTION TO SUPPORT ALTERNATIVE 2.5.2 AND 2.5.4.2.

2.5.5 Allow LAGC IFQ vessels to fish in state waters and that catch not apply against their individual allocation of scallops under the federal IFQ program

The Scallop Committee discussed this alternative and offered that since LA vessels can declare out of DAS and fish in state water fisheries, federal IFQ vessels should have the same opportunity. It was argued that future IFQ allocations are not based on biomass in state waters, it is a portion of the total estimated federal TAC (ACL) in federal waters, so should not make a difference if these vessels participate in both the LAGC IFQ fishery and state fisheries. One

Committee member argued that the State of Maine has taken substantial steps to increase regulation of scallop fishing in state waters, so all vessels in ME should have the potential to benefit from those efforts, not just vessels with state permits only and LA vessels that declare out of the LA fishery.

2.5.5.1 No Action for LAGC IFQ vessels fishing in state waters

If a LAGC IFQ vessel decides to fish in state waters that catch will still be applied toward their IFQ. And if that vessel fished in state waters within the NGOM management area, that catch would be applied against their annual quota, as well as the NGOM hard TAC. The LAGC IFQ vessel will have to follow all other area specific regulations if it decides to fish in the NGOM, such as the reduced possession limit and gear requirements.

2.5.5.2 Catch on LAGC IFQ vessels in state waters will not count against IFQ if that vessel declares that it is fishing exclusively in state waters

A vessel with a LAGC IFQ permit will have to declare before it leaves on a trip whether it will be fishing exclusively in state waters or not. If it decides to fish exclusively in state waters, on a trip by trip basis, the scallop catch from state water only trips will not be applied against the individual quota for that LAGC IFQ vessel. On a trip by trip basis, a LAGC IFQ vessel can decide if it is going to fish exclusively in state waters or not. A vessel can still fish in both state and federal waters on a single trip, but if it does, that vessel needs to declare a federal trip before leaving, and the entire catch from that trip would be applied to their annual quota, even if some of it was harvested in state waters.

AP MOTION: Recommend that Alternative 2.5.5 remain in the document for analysis; allow LAGC IFQ vessels to fish in state waters and that catch not apply against their IFQ. There are concerns for increased catch and accountability in state waters, but it could provide additional opportunities for small boats.

2.6 MODIFICATION TO VESSEL MONITORING SYSTEM

The Council added an additional issue to consider in this action related to modifying the current VMS regulations to improve scallop fleet operations. This issue is related to how DAS are charged and how a vessel declares into a fishery, and not related to the cost of VMS units and polling frequency. Polling frequency and costs associated with VMS were considered in a previous action, Framework 22, and the Council decided not to change those provisions.

Initially it was not clear exactly what issue was being raised related to VMS. It was later clarified that a handful of vessels homeported on the margins of the primary fishing grounds raised issue with not being able to declare out of the fishery for their long steam back to port. It was explained that when a vessel starts a trip it can leave port and wait to declare into the fishery when it is closer to fishing grounds so it does not get charged DAS for steaming to the grounds. But on its way back to port a vessel cannot be declared out of fishery with scallops onboard, so it has to wait until it is back at port. Therefore, the steam time back to port counts toward their annual DAS allocation.

Other members of the industry have explained that this is not a new issue and has always been a concern for vessels homported on the margins of the fishery since DAS were adopted in 1994. However, vessels choose where they want to land and if they do not want to be charged for a steam back to port they can land closer to the primary open area fishing grounds. It was also discussed by the Committee that any change to how vessels are charged DAS will ultimately impact future allocations for the entire fleet, not just vessels homeported on the margins of the fishery.

Currently, total “DAS used” in the fishery is the value incorporated in the LPUE models by the PDT to calculate future DAS allocations. The value for DAS used comes from the field “DAS charged” from the DAS database. DAS charged is based on the time a vessel crossed the VMS demarcation line going out on a trip, and the time it crossed again coming back from a trip, so the majority of steam time is currently included in the calculation. If vessels could declare out of fishery earlier and the time spent steaming back to port was eliminated, the PDT would have to adjust how DAS are calculated for future allocations. For example, if the 89 vessels homeported from VA, NC, and, FL each took 4 open area trips in 2011, and each had an average steam time of 20 hours to return to port that equals 7,120 hours or 296.7 DAS. These “additional” days would need to be factored in the current estimate of LPUE somehow and would likely result in a reduction across the fleet. For this example, about one DAS per LA vessel would potentially have to be reduced to account for an increase in overall LPUE for the fishery.

The Advisory Panel discussed this issue and recommended that steam time back to port raises too many issues related to enforcement and impacting how DAS are determined since some of that steam time vessels are actually cutting scallops, which is still considered “fishing”. Instead, the advisors recommended that vessels be allowed to declare into the limited access scallop fishery west of the demarcation line not necessarily from a port. This addresses the concern about steaming time to the grounds, but not steam time from the grounds. The Committee agreed with this input and developed the range of options below.

2.6.1 No action

Vessels have to declare in and out of the scallop fishery as currently required by VMS regulations (Sections 648.9 and 648.10). Once a vessel crosses the VMS demarcation line it is deemed to be fishing under the current DAS program. When a vessel declares into the fishery it must do so from a port, or from a “port identification” area, as defined in the Port Identification table on the NOAA Fisheries Northeast Regional Office website:
<https://www.nero.noaa.gov/nero/vms>.

2.6.2 Limited access and limited access general category vessels can declare into the scallop fishery west of the demarcation line, not necessarily from a port area

Some scallop vessels want the ability to declare into the fishery inshore of the demarcation line, instead of from port; having to declare from port raises safety concerns. Scallop vessels used to be able to declare from inshore of the demarcation line and it is not clear when and why this provision changed.

AP MOTION: Vessels be allowed to declare into the limited access scallop fishery west of the demarcation line not necessarily from a port area due to safety concerns.

Table 2 – Permitted limited access scallop vessels with homeports in Virginia, North Carolina and Florida (1994-2009)

Homeport	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Newport News, VA	8	9	10	10	12	17	19	21	21	21	22	23	19	19	18	18
New Bern, NC	1	2	2	4	4	6	6	8	8	8	8	13	13	14	11	11
Norfolk, VA	65	67	63	58	51	42	35	27	27	27	22	13	12	11	11	11
Wanchese, NC	4	3	2	2	2	1	4	8	7	7	6	6	8	8	8	8
Lowland, NC	6	6	7	6	6	8	7	7	7	8	9	8	8	8	7	7
Hampton, VA	15	15	11	11	8	7	6	6	6	6	7	5	7	7	7	6
Seaford, VA	1	1	1	0	0	0	0	2	3	4	4	5	6	5	5	6
Beaufort, NC	6	6	3	2	1	1	1	1	1	0	0	0	0	1	2	5
Oriental, NC	2	2	3	2	4	5	4	5	5	7	9	9	14	11	7	4
Bayboro, NC	1	1	1	3	1	2	2	2	4	3	3	2	3	2	2	2
Cape Canaveral, FL	3	4	4	3	3	1	2	3	2	2	2	2	2	2	2	2
Carrollton, VA	2	3	2	1	2	2	3	2	2	2	2	2	2	2	2	2
Swan Quarter, NC	1	1	1	1	1	2	2	2	3	3	3	3	1	1	2	2
Jacksonville, FL	1	0	0	1	1	1	1	1	1	0	1	1	1	1	1	1
Key West, FL	0	0	1	1	0	0	0	0	1	1	1	1	1	1	1	1
Newport, NC	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Poquoson, VA	0	0	0	0	0	2	2	1	1	2	2	2	2	2	1	1
Suffolk, VA	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1	1
Total Permits from VA, NC and FL	117	121	112	106	97	98	95	97	100	102	102	96	100	97	89	89

2.7 CONSIDEREED AND REJECTED ALTERNATIVES

2.7.1 Turtle deflector dredge required in same location as the turtle chain requirement – south of 41° 09 N

If this alternative is selected vessels would be required to use the turtle deflector dredge in the same area as the current turtle chain requirement. All waters south of 41° 09N would be included in this alternative, the same area as the turtle chain requirement. This area was originally identified in the turtle chain process based on bycatch reports and fishing effort. Since fishing effort is more dynamic these boundaries may not still include the majority of fishing effort in the scallop fishery. See Figure 2.

The particular season when turtle dredge would be required in this area is specified in Section 2.3.2.2, and the specific vessels or permit types required to use this dredge will be determined in Section 2.3.2.3.

Rationale for Rejection: The Scallop Committee discussed that there are a handful of reasons why this boundary does not make sense. It was implemented under ESA and not the Council process, so it did not have the benefit of ample public input and debate. This boundary is not a natural boundary for the resource or the fishery and is probably further north that is currently justified. It was based on scallop effort patterns around 2003, and those are now out of date. More updated analyses of turtle takes in the scallop fishery were completed in Murray, 2010, and those analyses are based on 71W as a boundary separating the Mid-Atlantic where turtle takes are more likely to occur, and the rest of the scallop fishery to the north on Georges Bank and the Gulf of Maine. Just because the 41 09N boundary already exists, that should not be the driving factor for why it should continue to be used. Even if it would ease enforcement to have the two turtle boundaries be the same, the turtle chain and TDD boundary, this boundary is not as feasible as the other two options considered in this action.