

**DRAFT**

**Amendment 15**  
to the Scallop Fishery Management Plan

Including a  
Draft Environmental Impact Statement (DEIS)  
and  
Initial Regulatory Flexibility Analysis (IRFA)

This document includes changes made at the September 10/11 Committee meeting  
Modifications discussed at the November 3 Committee meeting have not been incorporated yet

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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## **1.0 BACKGROUND AND PURPOSE**

### **1.1 SUMMARY OF PAST MANAGEMENT ACTIONS**

*To be completed later.*

### **1.2 PURPOSE AND NEED**

The primary need for this action is to bring the Scallop FMP in compliance with the re-authorized Magnuson-Stevens Conservation and Management Act (MSA). The Act was reauthorized in 2007 and included several new legal requirements. Foremost, the Act requires that each fishery use annual catch limits (ACLs) to prevent overfishing, including measures to ensure accountability. The Scallop FMP is required to be compliant with these new regulations by 2011 since the stock is not subject to overfishing. Therefore, the primary purpose of this amendment is to consider measures that will implement annual catch limits and accountability measures (AMs) to prevent overfishing.

The secondary need for this action is to address excess capacity in the limited access (LA) scallop fishery and provide more flexibility for efficient utilization of the resource. The secondary purpose of this amendment is to consider measures that address capacity in the limited access scallop fishery and improve overall economic performance while considering impacts on various fisheries and fishing communities. Measures to improve the economic efficiency of the limited access fishery, an objective of National Standard 5, will also take into account the importance of fishery resources to fishing communities to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities (National Standard 8). This action will also include measures to minimize costs and unnecessary duplication (National Standard 7).

The third need for this action is to adjust several aspects of the overall program to make the scallop management plan more effective. This action will include five distinct purposes related to this third overall management need. The first purpose is to consider measures that will adjust the current overfishing definition (OFD) to be more compatible with area rotation. Specifically, the new overfishing definition would average fishing mortality over time and not space; area-specific thresholds would be set based on past fishing mortality rates and area rotation policies. The second purpose is to consider minor adjustments to the recently-implemented limited access general category management program. The specific topics being considered for this second purpose regarding the general category program adjustments are: an allowance of IFQ rollover; allocation of area specific IFQ; a specific general category sector application; modifications to the general category possession limit; and adjusting the restriction on maximum quota per fishing platform from 2% to 2.5% of the total general category allocation.

The third purpose related to the third need of Amendment 15 is to consider measures to address the essential fish habitat (EFH) closed areas under the Scallop FMP if Phase II of the EFH Amendment is delayed. Specifically, this action would consider making the EFH closed areas consistent under both the Scallop and Groundfish FMP for scallop vessels if Phase II of the EFH Omnibus Amendment is delayed. A fourth purpose to make the overall program more effective would be to consider adjustments to the current research set-aside (RSA) program. A range of

options are being considered to address timing concerns and efficient use of resource for the RSA program. The last purpose this action will consider is measures to change the scallop fishing year because it is currently out of sync with the framework adjustment process and the timing of when scallop survey data are available for management decisions. Amendment 15 is considering changing the start of the fishing year from March 1 to May 1.

Table 1 is a summary of the three needs for this action and the handful of purposes associated with those overall management needs.

**Table 1 – Summary of purposes and needs identified for Amendment 15**

<b>Need</b>	<b>Purpose</b>	<b>Description</b>	<b>Section</b>
I – Compliance with MSA 2007	1 - Consider measures that will implement ACLs and AMs to prevent overfishing	This section will include alternatives that identify various fisheries in this FMP and relevant ACLs and AMs	3.2
II - Address excess capacity in the LA scallop fishery	1 – Consider addressing capacity in the LA fishery and improve overall economic performance	This section will consider alternatives to address capacity including permit stacking, leasing, IFQs, and adjustments to the RMA program.	3.3
	1 – Consider adjusting the current OFD to be more compatible with area rotation	This section will consider changes to the OFD so that fishing mortality is averaged over time and not space.	3.4.1
III - Adjust several aspects of the overall program to make the Scallop FMP more effective	2 – Consider adjustments to the limited access general category management program	This section will consider an alternative for IFQ rollover, IFQ allocation by area, a GC sector application, modifications to the GC possession limit and an adjustment to the maximum IFQ per GC vessel restriction.	3.4.2
	3 – Consider addressing the essential fish habitat (EFH) closed areas under the Scallop FMP if Phase II of the EFH Amendment is delayed	This section will consider only one alternative – make the EFH closed areas consistent under both the Scallop and Groundfish FMP for scallop vessels	3.4.3
	4 – Consider adjustments to the current (RSA) program	This section will consider a range of options designed to address timing concerns and other aspects of the RSA program	3.4.4
	5 – Consider adjusting the scallop fishing year	This section will consider changing the scallop FY from March 1 to May 1	3.4.5

### 1.3 NOTICE OF INTENT AND SCOPING

The New England Fishery Management Council published a Notice of Intent (NOI) to announce its intent to develop Amendment 15 and prepare an EIS to analyze the impacts of the proposed management alternatives on March 5, 2008. The purpose of the NOI was to alert the interested



public of the re-commencement of the scoping process and to provide for public participation in compliance with environmental documentation requirements.

The Magnuson-Stevens Act provides a mechanism for identifying and evaluating environmental issues associated with Federal actions and for considering a reasonable range of alternatives to avoid or minimize adverse impacts to the extent practicable. The scoping process is the first and best opportunity for the public to raise issues and concerns for the Council to consider during the development of the amendment. The Council relies on input during scoping to both identify management measures and develop alternatives that meet the objectives of the Scallop FMP.

The Council approved a scoping document at the February 2008 Council meeting. The scoping document was available for the public to use during the scoping period ([www.nefmc.org](http://www.nefmc.org)) and was provided at scoping hearings. Four scoping hearings were held in April 2008 in Virginia, New Jersey, Maine and Massachusetts. Notice of the scoping hearings was mailed to over 500 individuals and was solicited on the Council website as well as regional industry publications. About 25 written comments were submitted during the scoping period which ended on April 4, 2008. Comments received during scoping were considered carefully by the Council when developing the management alternatives under consideration in this amendment. A detailed summary of the scoping hearings and written scoping comments received is provided in **Section ???**. Appendix I includes copies of all the written scoping comments received.

## **2.0 GOALS AND OBJECTIVES**

There are three goals of this action: 1) bring the Scallop FMP in compliance with new requirements of the re-authorized MSA; 2) address excess capacity in the limited access (LA) scallop fishery; and 3) consider measures to adjust several aspects of the overall program to make the scallop management plan more effective.

In order to address these three goals, the Council has developed specific objectives to aid in the identification of a range of alternatives. Seven objectives have been identified:

1. Identify and implement appropriate ACLs and AMs for various components of the scallop fishery
2. Consider addressing capacity in the limited access scallop fishery and improve overall economic performance while considering impacts on various fisheries and fishing communities
3. Consider adjusting the current overfishing definition (OFD) to be more compatible with area rotation
4. Consider adjustments to the limited access general category management program
5. Consider addressing the essential fish habitat (EFH) closed areas under the Scallop FMP if Phase II of the EFH Amendment is delayed
6. Consider adjustments to the current research set-aside (RSA) program to address timing concerns and efficient use of resource for the purposes of research
7. Consider adjusting the scallop fishing year because it is currently out of sync with the framework adjustment process and the timing of when scallop survey data are available for management decisions

### 3.0 MANAGEMENT ALTERNATIVES UNDER CONSIDERATION

#### 3.1 NO ACTION

The National Environmental Policy Act (NEPA) requires that the “No Action” alternative be included and considered in a federal action. (*Add more about no action*). This alternative summarizes the existing management measures in place if the Council does not approve Amendment 15. Subsequent sections also include a No Action alternative, but they are specific to that management topic, whereas this section is a summary of all measures currently in place.

*Add paragraph about A10 and A11 followed by a summary of all current regulations in table below.*

<a href="#">§648.50</a>	Shell-height standard.
<a href="#">§648.51</a>	Gear and crew restrictions.
<a href="#">§648.52</a>	Possession and landing limits.
<a href="#">§648.53</a>	Total allowable catch, DAS allocations, and Individual Fishing Quotas.
<a href="#">§648.54</a>	State waters exemption.
<a href="#">§648.55</a>	Framework adjustments to management measures.
<a href="#">§648.56</a>	Scallop research.
<a href="#">§648.57</a>	Sea scallop area rotation program.
<a href="#">§648.58</a>	Rotational Closed Areas.
<a href="#">§648.59</a>	Sea Scallop Access Areas.
<a href="#">§648.60</a>	Sea scallop area access program requirements.
<a href="#">§648.61</a>	EFH closed areas.
<a href="#">§648.62</a>	Northern Gulf of Maine (NGOM) scallop management area.
<a href="#">§648.63</a>	General category Sectors and harvesting cooperatives.

### **3.2 COMPLIANCE WITH RE-AUTHORIZED MAGNUSON-STEVENSON CONSERVATION AND MANAGEMENT ACT (MSA)**

The MSA was reauthorized in 2007. Section 104(a) (10) of the Act established new requirements to end and prevent overfishing, including annual catch limits (ACLs) and accountability measures (AMs). Section 303(a)(15) was added to the MSA to read as follows: “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.” ACLs and AMs are required by fishing year 2010 if overfishing is occurring in a fishery, and they are required for all other fisheries by fishing year 2011.

According to NMFS, overfishing still occurs at various levels in 48 fisheries in US waters. Therefore, the highest priority of the reauthorized MSA was to strengthen the Act to end overfishing. The Act also included new requirements for the role of scientific advice in the management process. Since these new requirements are fishery wide the Council is going to address these new requirements through revised SSC policies and procedures. This amendment will not include measures to comply with these new requirements; they will be implemented across all FMPs under NEFMC jurisdiction. Section ??? is a summary of the new requirements related to SSC responsibilities and how the Council intends to comply with the proposed guidance.

In June 2008, NMFS published proposed guidance on how each Council should comply with new ACL and AM requirements. The proposed rule attempts to clarify the relationship between ACLs, maximum sustainable yield (MSY), optimum yield (OY), and other applicable reference points. The comment period ends in September 2008, and the final rule would be published sometime after that. The Council has identified a number of issues with the proposed guidance as drafted. This guidance will not likely be final before the Council needs to develop specific measures in order to comply with ACL and AM requirements. Therefore, revisions may be considered once final guidance is available so that the Council can approve and NMFS can implement these regulations by 2011. In the meantime, this section will attempt to address provisions in the proposed guidance recognizing that those regulations are not final. In addition, the Council has identified a number of issues with the proposed guidance as drafted and it is currently unclear how the Council will proceed related to some of the proposed guidance (memo attached).

In general, the proposed regulations include details about how FMPs must prevent overfishing while achieving OY on a continuing basis. There are general definitions of several new and existing terms. The rule also describes what is required in an FMP related to National Standard 1 – prevent overfishing. There is guidance on what a “fishery” is and which stocks are and are not required to have ACLs and AMs. There are also detailed descriptions of exceptions to these requirements, guidance for international fisheries, and various requirements for describing data collection and estimation methods.

Before guidance was published, Rosenberg et al., through the Lenfest Ocean Program, published “Setting Annual Catch Limits for U.S. Fisheries: An Expert Working Group Report” in 2007.

This group provided principles to setting ACLs, as well as a process. Their principles are summarized as follows: ACLs should prevent overfishing for all stocks within a fishery and ensure rebuilding requirements are met, ACLs should take into account the consequences of overfishing, uncertainty should be accounted for when setting ACLs as well as stock vulnerability, consider not grouping stocks because that can undermine sustainability, buffers should be increased proportionally with risk of overfishing, and ACLs should be used to compare actual catch to determine how well the management plan controlled fishing.

With some rewording to make this applicable to scallops, the Lenfest working group's guidance on the process for setting ACLs is as follows: scientists should evaluate vulnerability and susceptibility to the fishery and then determine a sensible OFL based on MSY and uncertainties, managers should decide an acceptable level of risk for exceeding OFL considering the consequences of overfishing, scientists should recommend an ABC below OFL that accounts for uncertainties by increasing the buffers, and managers and scientists should evaluate the performance of management regularly with respect to adhering to the ACL in terms of preventing overfishing over multiple years. One thing to note about the report is that the annual catch target (ACT) is not included. The ACT is only included in the proposed rule. Below is a summary of some of the relative terms and proposed requirements.

### **3.2.1 Definitions and integration of new terms with existing reference points**

The following is a list of terms suggested or required (depending on term) by the proposed rule and the PDT's input from the last PDT meeting:

Target stock: Atlantic sea scallops

Non-target species: yellowtail flounder, witch flounder, windowpane flounder, monkfish, fluke, winter flounder, and skates (the Scallop FMP may or may not be allocated a sub-ACL from these other FMPs).

This list is still under development. The PDT is still working on a systematic way to identify which species should be non-target species in terms of ACLs. Need to consider development in other FMPs. *The PDT is waiting for guidance on whether species that are not managed under an FMP should be identified as a non-target species.*

Ecosystem Component Species: The PDT voiced concern over how far down the food web we would need to go with respect to ecosystem component species. To that end, no specific species were listed, but several species were discussed (sponges, turtles and starfish). Current input from NMFS is that turtles would not qualify as an ecosystem component species because they are managed under ESA, thus exempt from ACLs. We discussed that focus should be on whether they should be identified for research reasons, and if identified, bycatch should be minimized. The PDT is still waiting for additional input on this topic before recommendations are made.

State/federal issues: By definition, it appears that the Scallop FMP will not need to include any AMs for state-federal fisheries because the majority of the scallop resource is harvested in federal waters. It was pointed out that much of the NGOM TAC may be harvested in state waters, so the PDT will continue to discuss if that should apply or not.

Overfishing Limit (OFL): Catch limit over which the stock is considered overfished. The catch that results from applying the fishing mortality rate that defines overfishing to a current or projected estimate of stock size. This is usually  $F_{MSY}$  or its proxy.

Acceptable Biological Catch (ABC): The maximum catch that is recommended for harvest, consistent with meeting the biological objectives of the management plan. ABC can never exceed the OFL. The determination of ABC will consider biological uncertainty.

Annual Catch Limit (ACL): Annual amount of catch over which accountability measures are triggered. ACL can be equal to but can never exceed the ABC. ACL should be set lower than the ABC when necessary due to uncertainty over the effectiveness of management measures.

The reauthorized MSA (MSRA) requires the establishment of an overfishing limit (OFL), which is the annual catch over which the stock is considered overfished. This term corresponds to the maximum fishing mortality target (MFMT), which is the rate above which overfishing is occurring. The maximum sustainable yield (MSY) is the long-term average of OFL. In the scallop fishery, the FMP utilizes the  $F_{msy}$  reference point (or  $F_{max}$ , the proxy to  $F_{msy}$  in the scallop fishery), which corresponds to the MSY. Per the scallop FMP, overfishing is occurring if the fishery catches at a rate above  $F_{threshold}$ . Thus, for the Scallop FMP, the OFL is equal to MSY because the FMP established that  $F_{msy}$  equals  $F_{threshold}$ .

The MSRA also requires the implementation of an acceptable biological catch (ABC) and annual catch limits (ACLs), and NMFS guidance recommends an additional annual catch target (ACT). The ABC is the level of annual catch that incorporates scientific uncertainty, and so should be set less than the OFL. The ACLs may or may not be equivalent to the ABC – that is up to the discretion of management. The proposed rule recommends that the ACT is then set below ACLs and ABC to account for management uncertainty, and it is to this that the  $F_{target}$  corresponds. The buffers between the OFL, ABC/ACL, and ACT account for these uncertainties, and thus may be reduced with effective monitoring and quality data.

There are also biomass reference points that are defined in the Scallop FMP:  $B_{msy}$  (or  $B_{max}$ ),  $B_{target}$ , and  $B_{threshold}$ . The minimum sustainable stock threshold is recommended by NMFS guidance to be  $\frac{1}{2} B_{max}$ . The Scallop FMP identifies  $B_{threshold}$ , below which the stock is overfished, to be  $\frac{1}{2} B_{max}$ . Thus, the following is then true for the scallop fishery:  $B_{max} = B_{target} > MSST = B_{threshold}$ .

Although this appears to be a set of new terms vastly different from those we currently employ in the Scallop FMP, they actually just attack biomass and fishing mortality in a different aspect. We currently define our desired/estimated biomass level and assign a fishing mortality estimate that results in the amount of pounds the fishery can harvest (allocations). The MSRA implements the terms associated with those harvestable allocations.

Figure. The following represents how reference point terms potentially interact in the Scallop FMP

### EXAMPLE

$$F_{\text{msy}} = F_{\text{max}} = 0.29$$

$$F_{\text{threshold}} = 0.29$$

$$F_{\text{target}} = 80\% F_{\text{max}} = 0.23 \text{ (can be reduced based on input from the PDT)}$$

$$B_{\text{target}} = B_{\text{msy}} = B_{\text{max}} = 120 \text{ million lbs}$$

$$\text{MSST} = \frac{1}{2} B_{\text{max}} = B_{\text{threshold}} = 60 \text{ million lbs}$$

OFL = lbs over which stock is overfished (creates a biomass  $< B_{\text{threshold}}$ )

MFMT = rate over which overfishing is occurring =  $F_{\text{threshold}}$

### **3.2.2 Description of biological uncertainty**

Biological uncertainty stems from incomplete or inaccurate data, model error, and environmental variation (Rosenberg et al. 2007). It affects estimates within assessments, including mortality, growth rates, and recruitment (SARC 32). Biological uncertainty can arise from variability in growth rates, differences in aging techniques, and also statistical errors (SARC 39). Rosenberg and Restrepo (1994; as quoted in SARC 32) identified 5 types: measurement error (in observed quantities), process error (or natural population variability), model error (mis-specification of assumed values or model structure), estimation error (in population parameters or reference points, due to any of the preceding types of errors), and implementation error (or the inability to achieve targets exactly for whatever reason). Implementation error falls generally under the realm of management uncertainty, discussed in the next section.

The current stock assessment determines biomass, recruitment, biological reference points, and fishing mortality. Each has its own associated uncertainty. The most recent scallop assessment (2007) used a size-structured forward projecting assessment model (CASA), which produced more accurate results than previous models (rescaled F approach). The most recent assessment took into account more sources of data and updated research results to provide a more precise and less bias estimate.

The sources of data include: the NEFSC dredge survey, the winter bottom trawl and SMAST small camera video surveys, commercial landings, shell height measurements for landed scallops from port and sea sampling, commercial landings per unit of effort, and growth increment data from growth rings on scallop shells. In addition, the recent assessment used new growth data for the first time, which indicate that Mid-Atlantic sea scallops do not grow as large but reach their

maximum size faster than previously assumed. Lastly, new shell height/meat weight relationships for survey and commercial catches were used. The shell height-meat weight relationships for catches were adjusted to account for shucking practices, water absorption and transport, as well as seasonal patterns in meat weights during each year.

There is some degree of uncertainty related to all these parameters as well as the estimates used for natural mortality (estimate based on clapper data (SARC 39)) and estimates from fishing, incidental, and bycatch mortality. However, overall the scallop assessment process is advanced in terms of the data sources available and body of research available for the various parameters used in the assessment.

To account for uncertainties associated with determining biomass, abundance, and mortality, many simulations of different models were run in the recent assessment for comparison. Since the results generated similar results, the conclusion is that biological uncertainty in terms of data and models used for assessments and projections is relatively low. Therefore, the PDT recommends that the difference between OFL and ABC be relatively small since biological uncertainty is relatively small.

### **3.2.3 Description of management uncertainty**

Management uncertainty encompasses factors such as efficacy of management controls and monitoring effectiveness. It also includes implementation error, described above as the inability to achieve targets exactly for whatever reason (Rosenberg and Restrepo 1994 in SARC 32). If the allocations are highly controlled and high quality data is collected, management uncertainty will be low, which allows the difference between the ACL and ACT to be minimized or eliminated.

With respect to the limited access fishery divisions into full-time, part-time, and occasional, the only part with some level of management uncertainty is the open area DAS allocation to the full-time vessels. The effort from the part-time and occasional vessels does not contribute enough to warrant consideration in the identification of sources of management uncertainty because there are very few vessels left in this category. The PDT uses a sophisticated model to predict the catch per day from open area DAS, but it varies by vessel, area and time of year. For example, in 2007 the average LPUE per DAS was about ???, and the projection in FW18 was ???. The number of open area DAS are less in recent years compared to earlier, so the degree of uncertainty is less compared to several years ago. But since there is no output restriction on the catch for a vessel in open areas, there is not 100% certainty that a vessel or the fleet overall will not catch more than projected levels per DAS.

In recent years, the majority of limited access fishing is in access areas compared to fishing under open area DAS. Vessels are allocated a set number of trips with a possession limit. Thus, there is high management certainty for access area effort in terms of actual versus projected catch. These trips are not an allocation of quota so vessels may end up harvesting less per trip or not take trips for whatever reason. But, there is a maximum catch per area that has a high degree of certainty due to a possession limit.

There are currently several “carry-over” provisions that increase management uncertainty in terms of controlling the maximum catch per year. For example, each limited access vessel is permitted to carry over up to 10 DAS to the next fishing year. Most DAS are used each year, but there is potential for this effort to be carried over to the next fishing year, so ACLs for the second year could be impacted. In addition, limited access vessels are permitted to take an access area trip or compensation trip in an access area within the first 60 days of the next fishing year if the area is open the following year. This was implemented as a way to promote safety at sea so vessels are not in a use it or lose it situation at the end of the fishing year. However, measures like this add some degree of uncertainty in terms of when catch will be harvested. It is not additional catch, but could increase catch to a small degree in the subsequent fishing year.

There are also two rollover measures proposed in Amendment 15 that might contribute to management uncertainty: 1) potential IFQ rollover in the LAGC fishery, and 2) potential RSA rollover for the overall fishery RSA program. Generally, the management uncertainty associated with these two measures would be very low because it is such a small portion of the overall fishery. IFQ vessels would be restricted to carry over a limited portion of their IFQ and the RSA program is a small portion of the overall catch to start with. Therefore, these measures are not likely to significantly affect the certainty of catch for a given fishing year.

There are also several measures in the FMP that have the ability to prevent an ACL from being achieved. For example, if an access area is closed due to the YT TAC being reached before all allocated trips are taken, that expected catch or possibly ACL for that area will not be reached. Other measures? These measures could be viewed as measures that reduce overall risk of exceeding an ACL.

One way to measure management uncertainty would be to compare historical projected and actual catch. Scallop actions generally estimate catch levels for several years in the future. The estimates get less precise the further out they are, but comparing the last estimate available per year to what the fishery actually landed is one way to measure management certainty. Table 2 and Figure 1 depict the projected versus actual landings for each year, and the calculated difference in percent and pounds between the two landings values. Some years are closer than others, and the method for estimating projected catch has evolved over time as well. Note the value for 2002 is missing because the updated value could not be located. Projections from 1999 and earlier are not included because these were projected with a different model (SAMS is the current projection model). The higher value for actual landings in 2004 comes from an explosion in the general category fishery. There was an over-projection in FW18 that was subsequently changed in an emergency action from 78 million lbs to 66 million lbs (reduction of 2 ETAA trips).

Overall, there is some management uncertainty in this scallop fishery, but it is relatively low because the majority of the fishery is managed under output controls that cap catch (access area trips and IFQ for general category fishery). Therefore, the PDT recommends that the distance between ACL and ACT (if one is defined) should be relatively small.



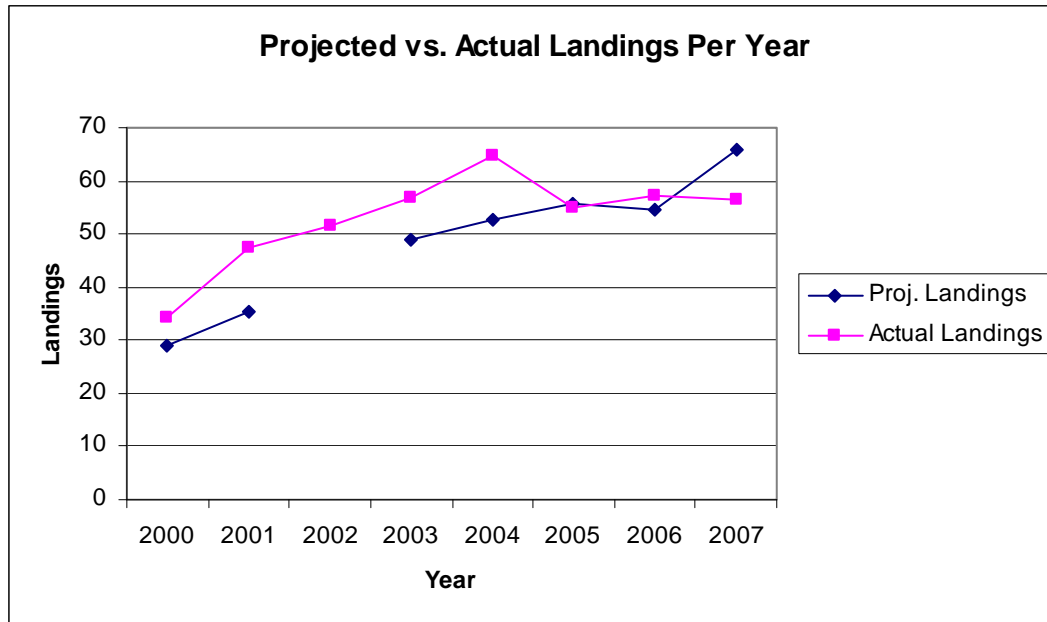
**Table 2 – Comparison of projected and actual scallop catch from 1999 through 2007**

Management Action	Fishing Year	Proj. Landings	Actual Landings	Difference (%)	Difference (lbs)
F12-Dec.99	2000	29.1	34.3	-18%	-5.2
F13-March 00	2001	35.3	47.5	-35%	-12.2
A7 - Oct. 98*	2002	51.7	51.7	-488%	
F15-Dec00	2003	49	56.9	-16%	-7.9
A10-Dec03	2004	52.6	64.8	-27%	-13.7
F16-April04	2005	55.8	54.9	2%	0.9
F16-April04	2006	54.4	57.3	-5%	-2.9
F18**	2007	66	56.4	28%	21.6

\*The projected landings for 2002 have been removed because an updated value could not be found.

\*\*The projected landings for 2007 were changed in an emergency rule from 78 to 66 million lbs.

**Figure 1 – Comparison of projected and actual scallop catch from 1999-2007**



### 3.2.4 Alternatives under consideration

#### 3.2.4.1 No Action

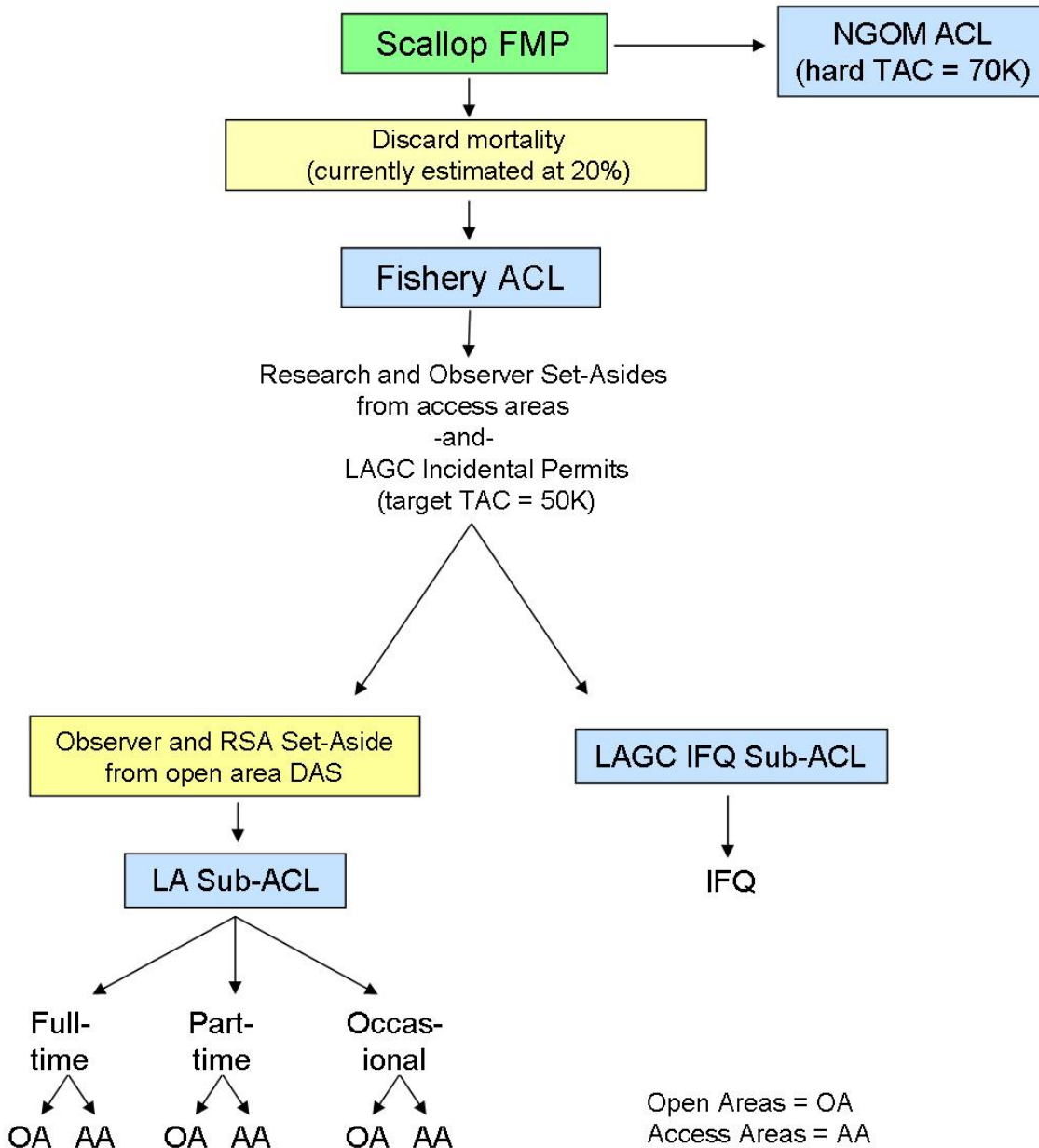
If this option is selected, a process for implementing Annual Catch Limits (ACLs) will not be adopted in this action.

#### 3.2.4.2 ACL structure if no additional measures adopted in Amendment 15

If no measures are adopted in Amendment 15, an overall ACL will be applied to the overall scallop fishery with two sub-ACLs for the LAGC and limited access permits (after taking into account discard mortality). Research and observer set-asides (2%) and LAGC incidental permits

are allocated off the top before allocating the sub-ACLs. Additionally, an NGOM ACL is a hard TAC that is operated somewhat separately from the rest of the scallop fishery. Because most of the NGOM scallop fishery happens within state waters, whether their allocation is considered an ACL, and thus needs AMs, is still being deliberated. The sub-ACLs for the LA and LAGC fisheries will have accountability measures associated with them such that the fisheries cannot shut one another down. The overall ACL will be lower than the OFL to take into account scientific uncertainty attributed to a less precise mortality estimate.

**Figure 2 - A suggested flow chart for ACLs for the scallop fishery.**



### **3.2.4.3 ACL structure if certain measures are adopted in Amendment 15**

Various measures being presented in Amendment 15 will affect the ACL, particularly because some of the management measures will decrease scientific and/or management uncertainty. If some or all of these are adopted, the distance between ACL and ACT (if adopted) and ABC and OFL should be reduced, depending on the measure because uncertainty will be reduced.

#### **3.2.4.3.1 If the measure to change the fishing year is approved**

If the measure that changes the fishing year is approved, then the scientific uncertainty is reduced because results from the latest surveys can be incorporated.

#### **3.2.4.3.2 If the measure to alter the overfishing definition is approved**

If the overfishing definition revision is approved, the buffer between the ACL and ACT could likely be reduced due to decreased management uncertainty. Management uncertainty with respect to the overfishing definition (OFD) stems from the fact that the current OFD generalizes over space, which is not as precise. This is because the OFD is being applied to areas that are closed as well as access and open areas, creating an artificially higher allowable fishing mortality rate resulting in overfished open areas and underfished access areas (with no fishing in closed areas). The scallops in the open areas are growth overfished in the open areas. If the altered OFD is approved, sub OFDs for access areas and open areas can be created without influence from closed areas.

#### **3.2.4.3.3 ACL framework if open area DAS are converted into trips**

Access areas in the scallop FMP are subject to particular poundage removals as opposed to DAS that the open areas are subject to, thus the management uncertainty would be reduced if all open areas were converted. Additionally, scientific uncertainty would be reduced because the region from which the scallops are fished would be more definitive. Therefore, the buffer between the ACL and ACT could be reduced or even eliminated.

This alternative would create two new access areas: “open area New England” and “open area Mid-Atlantic.” The purpose of this alternative is to get rid of open area DAS and replace them with access area trips into larger areas that are outside of the rotational area management program. For example, rather than 40 open area DAS, a vessel would be allocated 2 Mid-Atlantic trips and 2 New England trips. **The boundaries of these areas would need to be determined as well as the appropriate possession limits for these trips.** This would convert DAS into trips with possession limits. An individual vessel would still not receive a quota; this system would be allocated in trips with possession limits.

Depending on how this alternative is developed it may or may not qualify as a LAPP. For example if an individual vessel is allocated a certain number of trips per year (regular access area trips as well as these trips in open areas) than their full allocation would be in trips with an associated possession limit. In addition, if each vessel is given an unlimited opportunity of trips to harvest the possession limit per trip (broken trips) this alternative may be a de facto IFQ. The Council is waiting for more legal guidance on this issue – but the devil is in the details depending on how the alternative is developed. The Council could continue to develop this alternative but it may in the end trigger requirements for a referendum vote and cost recovery plan if it is decided that it is a LAPP and/or form of IFQ management.

#### **3.2.4.4 Scallop ACL for other fisheries**

The scallop fishery may want to consider implementing ACLs for the fisheries in which scallops are appreciably caught as bycatch. Based on input from PDT so far, there are no fisheries that catch an appreciable amount of scallops as discards (2% of all scallop discards are from other fisheries and when that is compared to total scallop landings that is about 0.5% - using info from SBRM for CY2005). At this point, scallop sub-ACLs in other fisheries are probably not necessary.

#### **3.2.4.5 ACLs set in other FMPs for the scallop fishery**

To date the only ACL under another FMP that may be set for the scallop fishery is a yellowtail flounder ACL under the groundfish (multispecies) FMP. The GF Committee is considering other species, but that action is not complete yet. The PDT reviewed some discard analysis and for the time being has listed several species that may need further consideration: winter flounder, witch flounder, windowpane flounder, and monkfish. Fluke and skates were mentioned at the PDT level, but were not included in the source document the PDT utilized to generate the list. This list is inclusive to date, and may be refined later before final recommendations are made.

### **3.2.5 Accountability measures (AMs)**

#### **3.2.5.1 AMs in the Scallop FMP for scallop ACLs**

The PDT has not discussed potential AMs yet.

#### **3.2.5.2 AMs in the scallop fishery for ACLs of other species**

It is not clear yet if AMs for other fishery ACL (i.e. YT) will be included in this FMP or the GF FMP. To date this is the only species that has a specific AM for the scallop fishery.

### **3.2.6 Administrative process for setting ACLs in the Scallop FMP**

This section describes the administrative process for setting ACLs for Atlantic sea scallops. The ACL process will become an element of the existing periodic adjustment process. The biennial adjustment process requires the PDT to prepare a SAFE report every year. Every two years, the PDT evaluates whether management measures need to be revised in order to meet mortality objectives. The PDT is required to submit suggested measures to the Council by September 1 if revisions are necessary. The Council will then consider adjustments over the course of two Council meetings. The first meeting, in September, will be the first framework meeting for any revisions. The second framework meeting will take place in either October or November.

The PDT will develop recommendations for Acceptable Biological Catch (ABC) for the scallop stock based on mortality objectives ( $F_{max}$ ,  $F_{threshold}$ ,  $F_{target}$ ). These recommendations form the basis for setting ACLs. The PDT recommendations will include the following elements:

- OFL estimate for the next two fishing years based on the point estimate of  $F_{max}$  and the point estimate of future stock size. While it is expected that the OFL will be

determined every two years, the PDT will recommend it for three years in case of a delay of updates.

- ABC recommendation for the next three fishing years based on  $F_{\text{target}}$ . The PDT recommendation should report the catch that results from the point estimates of the target fishing mortality rate and projected stock size. If the PDT recommends a lesser amount for the ABC than the OFL, the recommendation should include an explicit discussion of the scientific uncertainties that are taken into account in developing the recommendation. In order to evaluate these uncertainties, the PDT will develop an informal document that describes the issues that will be considered. This information will be provided for the consideration of the SSC and the Council. It is not intended to be binding on either body. While it is expected that ABCs will be determined every two years, the PDT will recommend them for three years in case of a delay in implementation.
- An evaluation whether the ABC's have been exceeded in earlier years.
- As part of the biennial adjustment process, the PDT should evaluate whether rebuilding is needed and adjust as necessary to account for exceeding the OFL should that occur. In that instance,  $F_{\text{rebuild}}$  will be used instead of  $F_{\text{target}}$ .

The PDT will also develop a recommendation to the Council for setting ACLs. Similar to the setting of ABCs during which scientific uncertainty is taken into account, the PDT will consider management uncertainty when developing this ACL recommendation. In order to evaluate these uncertainties, the PDT will develop an informal document that describes the issues that will be considered. The Council may ask the SSC to comment on the PDT recommendations. Should the SSC recommend an ACL that differs from that originally recommend by the PDT, the PDT will revise its ACL recommendations if necessary to be consistent. The PDT's ACL recommendations will include:

- A summary indicating whether ACLs have been exceeded in recent years.
- A recommendation for setting ACLs for the next three years. The PDT will describe the uncertainties and risks considered when developing these recommendations. While it is expected that ACLs will be determined every two years, the PDT will recommend them for three years in case of a delay in implementation.

The PDT recommendations for setting ABCs and ACLs will be provided to the SSC prior to the September Council meeting. Guided by terms of reference prepared by the Council, the SSC will review the PDT recommendations and will either approve those recommendations or will provide an alternative recommendation. In either case, the SSC will explicitly describe the elements of biological uncertainty that were considered in developing its recommendation. If requested by the Council, the SSC may comment on the uncertainty and risk that should be considered by the Council when setting ABCs and ACLs and whether the PDT has identified those elements sufficiently for Council consideration. If the SSC recommends an ABC that differs from the PDT recommendation, the PDT will revise its ACL recommendations using the new ABCs (the same holds true for the PDT should the SSC recommend a different ACL).

The Council will consider the ABC recommendations of the SSC and the ACL recommendations of the PDT (Do we not want the SSC to comment on the ACLs and make recommendations

too?) and will make a decision on those recommendations prior to December 1. If the Council questions the SSC recommendation, it can ask for a more detailed explanation from the SSC, but the Council must establish ACLs that are equal to or lower than the ABC recommended by the SSC. When setting ACLs, the Council will consider the advice of the SSC and the PDT and will provide the rationale used for setting the ACLs.

Once the Council has approved ACLs, they will be submitted to NMFS prior to December 15 for approval and implementation. ACLs can be implemented in several ways. If the Council is submitting a management action as part of the periodic adjustment process, the ACLs can be included in that document. Alternatively, the ACLs can be submitted as part of a specification package supported by the appropriate NEPA document. It should be noted that in many instances ACLs merely reflect the catch associated with the mortality targets determined by the management plan and therefore the impacts are consistent with those evaluated when the mortality targets were adopted. For this reason, in those instances that an ACL is not revised, it is anticipated that there will not be a need for a new supporting NEPA document.

After receipt of the Council decision for ACLs – either as part of a new management action or as part of a specification package – NMFS will review the Council’s decision and, if consistent with applicable law, will implement the ACL consistent with the Administrative Procedures Act (APA).

#### **3.2.6.1 Monitoring ACLs**

Current monitoring techniques already used in the sea scallop fishery will be used to monitor ACLs. These include daily monitoring of catch in the access areas and yearly estimates of catch in the open areas. This could also include the quarterly monitoring that is currently ongoing in the general category fishery while they convert to the limited access general category fishery.

### **3.3 MEASURES TO ADDRESS EXCESS CAPACITY IN THE LIMITED ACCESS SCALLOP FISHERY**

There is currently excess capacity in the limited access scallop fishery; that is, the capacity of individual vessels and the fleet as a whole is greater than what is needed to harvest sustainable levels of catch. Since the limited access program was implemented in 1994, the number of DAS has reduced steadily. Due to effort reductions in Amendment 4 (1994) and Amendment 7 (1999), DAS allocations were reduced almost by half from 204 DAS in 1994 to 120 DAS in 1999. Since 1999 more effort has been allocated to access areas rather than open areas, so the number of open area DAS allocated has continued to decline. Today open area DAS allocations are closer to 40 DAS and five access area trips for a full-time vessel. For an average full-time vessel, that represents about 80 DAS per year – about 40 in open areas and 40 in access areas. Members of the industry have approached the Council explaining that this level of effort is insufficient to maintain vessels and crew throughout the year with increasing costs. Therefore, the Council is considering a range of options to reduce excess capacity in the limited access fishery and increase efficiency of the fishery overall.

### **3.3.1 No Action**

If this alternative is selected, then no additional measures would be implemented to reduce capacity in the limited access scallop fishery. All current restrictions would remain in place.

**Rationale:** This alternative would be selected if the Council determines that there is no need to reduce capacity in the limited access scallop fishery. The Council would determine that current permit restrictions, gear and crew restrictions, vessel upgrade restrictions, possession limits and other effort controls are sufficient to control capacity of this fleet.

### **3.3.2 Permit Stacking**

This group of alternatives would allow a single limited access vessel to have more than one limited access scallop permit. There are various options below including a restriction on the number of permits that can be “stacked” and specific adjustments that would be “charged” if a vessel decides to stack permits in order to reduce capacity.

This alternative is not applicable to limited access general category permits, only full-time, part-time and occasional limited access scallop permits (permit categories 2 through 9).

#### **3.3.2.1 Restrict stacking to two permits only**

This alternative would allow a limited access scallop vessel to have up to two limited access permits. Specifically, the vessel would be permitted to fish the allocations for both permits. Both permits could be of unlike permit categories and unlike vessel baselines in terms of horsepower and length.

The purchase of a permit would be permanent – no leasing would be permitted unless leasing is also permitted by this action (Section 3.3.3.1). One individual who currently owns two permits on two separate vessels would be permitted to stack those two permits on one vessel. This action may place additional restrictions on stacking in terms of fishing power adjustments and other provisions – See Sections 3.3.2.2, 3.3.2.2 and 3.3.2.3.

**Rationale:** This alternative would reduce the size of the scallop fleet by allowing a limited level of permit stacking. Idled vessels could be sold or scrapped and future investments could be made into one vessel instead of two. It has been argued that limited stacking would prevent excessive consolidation in the fishery, compared to unrestricted permit stacking.

#### **3.3.2.2 Fishing power adjustment for stacking permits**

In order to address the concern that stacking could move effort from less powerful or lower-performing vessels to more powerful or higher-performing vessels, potentially increasing capacity and fishing mortality, the Council is considering alternatives for adjusting stacked permits.

The PDT has explored three types of fishing power adjustments. And the Committee included an alternative that would limit stacking to permits in the same vessel baseline category with no specific adjustment.

**Option 1** – vessels with different HPs would be subject to an adjustment (on an individual basis or in groups of different HP classes)

**Option 2** – vessels with different fishing power would be subject to an adjustment. Fishing power is currently a function of horsepower, crew size, dredge size, number of dredges, etc. These variables could be modified.

**Option 3** – permits could only be stacked that are in the same horsepower and length category and no adjustment would be applied.

**Rationale:** This alternative is designed to keep the program at least conservation neutral or reduce overall capacity by charging a “tax” for buying a permit. Specifically, if an individual wanted to buy a permit, the allocation for that permit would be reduced by a certain amount to ensure that capacity does not increase as a result of stacking permits.

### **3.3.2.3 Status of stacked permits**

At the September 2008 Committee meeting it was clarified that this alternative would restrict a vessel so that stacking a second permit could only occur once. A vessel could not stack two permits one year and then stack a third permit in the future. A vessel could only participate in stacking once. Only 2 permits can be stacked at any one given time per vessel. If vessel A stacks permit B (2<sup>nd</sup> permit) one year, that vessel cannot stack permit C (3<sup>rd</sup> permit) the following year. If de-stacking is also permitted, vessel A can de-stack permits A and B; vessel A would then be permitted to subsequently stack a different permit (A and C, for example). It was further clarified that all permits (all species) from vessel B would need to be stacked with vessel A.

It was also clarified that de-stacking would be permitted. A vessel owner could decide to de-stack permits at a later date – permits will keep their identity even if stacked. In addition, individual permits will count toward the 5% ownership restriction. One vessel with two permits would count as two permits in terms of the ownership maximum.

### **3.3.2.4 Sideboard for bycatch**

**This alternative needs more development**, but the Committee is interested in pursuing an alternative to include a “bycatch sideboard” associated with stacking a permit. This would ensure that bycatch does not increase as a result of permit stacking. A permit would include the historical bycatch level of that permit in other fisheries, so that if that permit was stacked on a different vessel, the new vessel would be limited by the historical level of bycatch of the original permit; i.e. impacts on bycatch of other species would not increase above historical levels.

### **3.3.3 Leasing**

This group of alternatives would allow a limited access vessel to lease fishing effort from another limited access permit. There is one option for DAS leasing, leasing of access area trips, or leasing of an entire permit. There are several alternatives for fishing power adjustments that would be “charged” if a vessel decides to lease effort in order to reduce capacity.

This alternative is not applicable to limited access general category permits, only full-time, part-time and occasional limited access scallop permits (permit categories 2 through 9).



### 3.3.3.1 Permit leasing

This alternative would allow a vessel to lease all of its allocation (open area DAS and access area trip allocations) on an annual basis. This alternative would prohibit a vessel from separating its allocation to fish part of it and sell the rest.

**Rationale:** This alternative provides an option for an individual to lease access. Compared to selling a permit or permit stacking, this option is more flexible and may be a more feasible option for a larger group of individuals because leasing access is less expensive than having to purchase a scallop permit with a vessel and all other permits that may be associated with that vessel.

### 3.3.3.2 Leasing of open area DAS

This alternative would allow a vessel to lease part of their open area DAS allocation on an annual basis. DAS would need to be leased in at least **10 DAS blocks**. DAS leasing could occur between permit types and gear types with certain restrictions. **Details still need development.**

The AP advice to the Committee is that the AP would prefer having the ability to lease as little as a single day, rather than blocks, to improve flexibility.

**Rationale:** This alternative provides an option for an individual to lease access. Compared to leasing of a full permit, this option is more flexible because it allows smaller units of access to be leased compared to a full permit. Some individuals may only want to lease some access in order to make a full year, i.e. 20 DAS compared to a full DAS allocation and access area trips. This option may be more realistic for a larger group of individuals because leasing some access is less expensive than having to lease an entire scallop permit.

### 3.3.3.3 Leasing of access area trips

This alternative would allow a vessel to lease one or more access area trips on an annual basis. Portions of access area trips could not be leased, the entire trip and associated possession limit for that trip would have to be leased as one unit. Leasing of access area trips could occur between permit types and gear types with certain restrictions. **Details still need development.**

**Rationale:** This alternative provides an option for an individual to lease access. Compared to leasing of a full permit, this option is more flexible because it allows smaller units of access to be leased compared to a full permit. Some individuals may only want to lease some access in order to make a full year, i.e. 2 access area trips compared to access for an entire limited access permit (DAS and access area trips). This option may be more realistic for a larger group of individuals because leasing some access is less expensive than having to lease an entire scallop permit.

### 3.3.3.4 Fishing power adjustment for leasing permits, DAS, or access area trips

In order to address the concern that leasing could move effort from less powerful or lower-performing vessels to more powerful or higher-performing vessels, potentially increasing capacity and fishing mortality, the Council is considering an alternative for adjusting leased allocations of permits, DAS or access area trips. This alternative could permit leasing of access area trips between different permit and gear categories with certain restrictions. **Details still need development – could consider same alternatives for stacking – Section 3.3.2.3.**

### **3.3.3.5 Sideboard for bycatch**

**This alternative needs more development**, but the Committee is interested in pursuing an alternative to include a “bycatch sideboard” associated with leasing. This would ensure that bycatch does not increase as a result of leasing permits, DAS, or access area trips. A permit would include a specific historical bycatch level in other fisheries, so that if that permit was leased, or DAS or access area trips were leased onto a different vessel, the new vessel would be limited by the historical level of bycatch of the original vessel; i.e. impacts on bycatch of other species would not increase above historical levels.

### **3.3.3.6 Other leasing provisions**

AP input:

The Committee will have to discuss if ownership caps are needed with leasing and determine if existing ownership caps need to be revisited or adjusted in light of leasing.

### **3.3.4 Individual fishing quota (IFQ) management**

**This alternative needs much more development.**

In general, permit owners would be allocated scallop catch in pounds rather than DAS and access area trips. It has not been defined if the allocation would be equal for permits within the same permit category, based on historical catch levels, or some combination of the two. It has not been determined if quota would be transferrable or if any other restrictions would be considered like maximum ownership restrictions, vessel upgrade restrictions, etc.

THE SCALLOP COMMITTEE RECOMMENDS THAT THIS ALTERNATNIVE BE MOVED TO THE CONSIDERED AND REJECTED SECTION.

## **3.4 MEASURES TO ADJUST SPECIFIC ASPECTS OF FMP TO MAKE OVERALL PROGRAM MORE EFFECTIVE**

This section contains alternatives for various measures that are already in place. The topics include adjustments to the overfishing definition, modifications to the limited access general category program, revision of the EFH closed areas if Phase II to the Habitat Omnibus Amendment is delayed, improvements to the research set-aside program, and changing the fishing year.

### **3.4.1 Measures to adjust the current overfishing definition (OFD) to be more compatible with area rotation**

#### **3.4.1.1 No Action**

### **3.4.1.2 Time-averaged overfishing definition**

## **3.4.2 Minor adjustments to the limited access general category management program**

These alternatives include several potential modifications to the limited entry program recently implemented for the general category fishery. Amendment 11 to the Scallop FMP limited access in the general category fishery and implemented an IFQ program for qualifying vessels. Several specific ideas were raised during that process but were delayed for consideration because they would require more time for development and analysis. This action is currently considering alternatives to address the following specific issues: rollover of IFQ, allocation of IFQ by area, consideration of a general category sector application, modification of the general category possession limit, and modification of the maximum quota restriction one vessel can harvest. Other modifications related to Amendment 11 will not be considered in this action.

### **3.4.2.1 Provision to allow IFQ rollover**

The Council is considering a rollover allowance for general category IFQ permit holders. If for some reason a vessel is unable to harvest their full IFQ in a given fishing year, a rollover allowance authorizes a vessel to carry forward unused quota for use in the following fishing year.

#### **3.4.2.1.1 No Action**

This alternative would maintain that IFQ expires at the end of a fishing year. A permit owner would be prohibited from carrying forward any unused IFQ into the following fishing year.

#### **3.4.2.1.2 Allow IFQ rollover up to 15%**

This alternative would allow an IFQ permit holder to carry forward up to 15% of their IFQ to the proceeding fishing year. Is this automatic (NMFS carries forward 15% of IFQ if unused – or would an individual have to notify NMFS the amount they want to carry forward up to 15%)?

### **3.4.2.2 Consideration of a general category sector application**

No specific applications have come forward at this time. In order for them to be considered in this action they would have to be included in the document before the Council approves the range of alternatives for analysis (scheduled for the February 2009 Council meeting). Staff is aware of one official application that should be submitted to the Committee soon.

### **3.4.2.3 Modify the general category possession limit**

The Council is considering a modification to the general category possession limit in response to requests from some of the industry that the current possession limit is not economically feasible.

#### **3.4.2.3.1 No Action**

This alternative would maintain the 400 pound possession limit.

#### **3.4.2.3.2 Modify the possession limit up to 1,000 pounds**

This alternative would modify the possession limit up to 1,000 pounds; the Council would be permitted to identify the final possession limit up to 1,000 pounds at the final meeting.

**Rationale:** This alternative was included to respond to requests from the industry that the current possession limit is not economically feasible due to increased costs. This possession limit would recognize that the Council supports that the general category permit remain a “small boat” permit, but due to changes implemented by A11 that altered the fishery, as well as increased costs (e.g., fuel), a moderate increase in possession would be justified.

#### **3.4.2.3.3 Eliminate the possession limit**

This alternative would eliminate the possession limit for general category vessels.

**Rationale:** This alternative was included to respond to requests from the industry that the current possession limit is not economically feasible due to increased costs. In addition, this alternative was added to recognize that A11 changed the general category fishery and since it is managed by IFQs, a possession limit is not needed. This alternative would support that A11 was a wholesale change to the permit category and the possession limit should be eliminated.

#### **3.4.2.4 Modify the maximum quota one general category vessel can fish**

The Council is considering this alternative to respond to input from the industry that the current ownership restrictions are not consistent. There are currently two ownership restrictions in place: 1) a restriction on the maximum amount of quota an individual can own (5%); and 2) a restriction on the maximum amount of quota that can be harvested from one platform (2%).

##### **3.4.2.4.1 No Action**

This alternative would maintain the current restriction of 2% maximum quota allocation on each general category vessel.

##### **3.4.2.4.2 Modify the maximum quota one vessel can fish from 2% to 2.5% of total general category allocation**

This modification would change the 2% maximum quota per vessel restriction to 2.5% of the total general category allocation.

**Rationale:** It has been argued that the two ownership restrictions together require an individual to own more than two vessels for no substantial reason if they want to own 5% of the general category fishery. This alternative would make the restrictions more compatible.

#### **3.4.3 Measures to address EFH closed areas if Phase II of the EFH Omnibus Amendment is delayed**

One component of Phase II of the EFH Amendment is to develop alternatives for minimizing adverse impacts of fishing on EFH to the extent practicable. This will include a review and possible modification of existing EFH closed areas as well as other measures that are in place to minimize impacts of fishing on EFH. The Council is expected to approve a final range of alternatives in early 2009, and the final EIS is scheduled to be submitted later that summer. If this timeline remains in place, then the Scallop Committee and Council will know what areas will most likely be available as potential scallop rotational areas before the fall of 2009 when measures would have to be developed for the 2010 fishing year (Framework 21). However, if

the Phase II EFH timeline is delayed, then access into Georges Bank closed areas would still be limited to areas not closed to the scallop fishery for EFH under both the Scallop FMP and the Groundfish FMP.

Framework 16/39 (2004) proposed to make the two plans consistent in terms of closed areas to minimize adverse impacts on EFH, but that action was challenged and, as a result, areas closed for EFH under both Amendment 10 and Amendment 13 still apply to the scallop fishery. In most cases the two plans are consistent, with two important differences in terms of areas with relatively high scallop abundance: the northern part of Closed Area II north of the cod HAPC, and the central portion of Closed Area I south of the original scallop access area (See Figure 3). This action is considering alternatives to address the inconsistent EFH areas currently closed to the scallop fishery under both the Scallop and Groundfish FMPs.

**3.4.3.1 No Action**

This alternative would maintain the measures in place to minimize impacts on EFH. Specifically, areas closed in Amendment 10 and Amendment 13 to minimize impacts on EFH would apply to the scallop fishery unless modified under Phase II of the EFH Omnibus Amendment (Amendment 14 to the Scallop FMP).

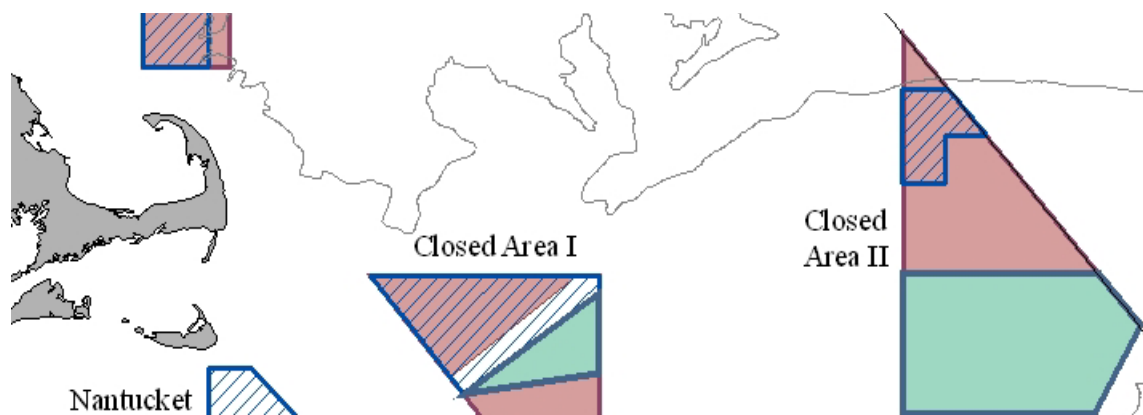
**3.4.3.2 Modify the EFH areas closed to scallop gear under Scallop Amendment 10 to be consistent with Multispecies Amendment 13**

This alternative would consider making the EFH closed areas consistent under both FMPs if Phase II of the EFH Omnibus Amendment timeline is delayed. Rather than both the shaded and hatched areas in Figure 3 being closed to the scallop fishery for EFH, just the hatched areas would be closed to minimize impacts on EFH (consistent with A13 to the Groundfish FMP).

**Rationale:** This alternative was included in this action as a placeholder if the Habitat Omnibus Amendment is delayed. The Council discussed that the most appropriate place to evaluate habitat closed areas in Phase II, but if that action is delayed, this alternative would make the habitat areas consistent between the Groundfish and Scallop FMP as Framework 16/39 intended. The Council did not support closing both areas to scallop gear, but that has been the result of the legal challenge on this issue being considered in a framework rather than an amendment. Therefore, if Phase II is delayed then this alternative would make the areas consistent in the 2011 fishing year and beyond, unless modified by Phase II. Thus, the specification process for the scallop fishery could consider access to areas within the GF closed areas that are outside of the hatched areas, provided there is ample scallop resource to support access and all impacts are considered on finfish bycatch.

**Figure 3 – EFH areas closed to scallop gear**

*Hatched areas would be the only EFH areas closed to scallop gear if this alternative is selected – consistent with areas closed under A13 to the Multispecies FMP*



### **3.4.4 Measures to improve research set-aside program**

#### **3.4.4.1 No action**

No changes would be made to the existing research set-aside program.

#### **3.4.4.2 Publish federal funding opportunity as early as possible**

In recent years the federal funding opportunity announcement (FFO) has been published late. This alternative would request that NMFS publish the announcement by June before the beginning of the following fishing year.

**Rationale:** Most research under the RSA program is time sensitive (biomass surveys of access areas before openings, research during or before a seasonal closure for turtles etc). If the process starts late because the FFO is after the start of that fishing year, then the effectiveness of the RSA program and the selected research projects is compromised; timing of the FFO is critical so that research projects fulfill management needs. If the FFO could be published by June, then all the necessary procedural steps could be taken before the start of the fishing year, maximizing time for research and compensation trips before the end of the fishing year. Even if final specifications are not approved to be included in the FFO, the Council requests that the agency include ranges for TACs so that the announcement can be published as soon as possible.

#### **3.4.4.3 Extend the RSA program to be multi-year**

Currently research priorities, TACs for RSAs, and approved research projects are limited to one year. This alternative would modify that to be the length of time within a specification action. For example, this action will include specifications for FY2011 and FY2012; therefore the RSA TACs available and research proposals could also span up to two years. The solicitation would span a two year time frame, corresponding with the framework process. Projects could be awarded for one or two years.

**Rationale:** This alternative would increase flexibility for the applicant, reduce time and resources spent on the application and review process, and provide funding for some longer term projects. There are certain management needs that would benefit from two years of work rather than a single year. This alternative would also reduce the burdens associated with the application process, review process, and issuance of experimental fishing permits (EFPs) when necessary.

#### **3.4.4.4 Modify open area RSA allocation from DAS to pounds**

Currently 2% of open area DAS are set aside for the RSA program. This alternative would change the way open area effort is allocated for research from DAS into pounds. The framework document would include an estimate of catch per DAS and that value would be converted into a total poundage available for research, equivalent to 2% of the total effort available in open areas. The recommended value to start with is 1.0 million pounds. This value could be changed in a future framework action (increase or decrease).

**Rationale:** Fewer research proposals request funds from open areas because catch in open areas is lower than access areas and catch rates vary such that there is potentially more risk if catch

rates are lower than expected. If the RSA allocation from open areas was in pounds rather than DAS, then catch from compensation trips would be more straight-forward and vessels would have a set amount of catch rather than DAS.

#### **3.4.4.5 Modify entire RSA allocation to a fixed poundage rather than a percent**

Currently 2% of access area TACs and open area DAS are set aside for the research set-aside program. That amount of TAC and DAS varies depending on the total TAC and DAS for the fishery, but the percent stays the same (2%). This alternative would modify the program so that a set amount of catch was available year to year, rather than a set percentage of catch. For example, 1.0 million pounds would be set aside for research rather than a set percent of the total estimated catch (one million pounds is 2% of 50 million pounds). The one million pounds would be broken down by area, but it would not necessarily equal 2% of each area open to the fishery. **The Council will have to determine how the poundage would be divvied up by area; i.e. a set amount from each area open, or a total amount from any access area open in a particular year.**

**Rationale:** Allocating a fixed amount (in pounds rather than a percent) would enable the announcement to come out earlier because the agency would know the total amount of TAC available for research before the specification package is approved – it would be a set amount that is the same poundage every year.

#### **3.4.4.6 Separate RSA TAC into 2 subsets (survey and other)**

This alternative would separate the RSA TAC into 2 subsets – 1) survey related work and 2) other research priorities. The Council identified survey related work as the topic with highest priority in the recent research priorities for 2008 and 2009, and dividing the research TAC will provide more emphasis and funding for survey work.

**Rationale:** The Scallop PDT has voiced that assessment of biomass in access areas is critical for the rotational system to work effectively. This change will not ensure that all areas are surveyed, but it should increase emphasis on survey related research proposals since at least one half of the research TAC will be reserved for that topic.

#### **3.4.4.7 Remove additional TAC specific for survey work in addition to 2% set-aside**

This alternative would add an additional 1% set-aside for access area surveys. The existing 2% set-aside would remain, but it would focus on other projects related to other research priorities. Therefore, there would be a total of 3% set-aside; 2% for general research topics and an additional 1% that would be reserved for survey work in access areas ready to re-open. It is understood that if an alternative is selected that converts % set aside into a poundage that would apply to this alternative as well.

**Rationale:** This alternative would recognize that assessing biomass in access areas is critical and 1% of the catch per year should be dedicated to that purpose. This alternative would also recognize that other research topics are also important, and 2% of the total catch should still be set aside to fund those research topics.

#### **3.4.4.8 Rollover of RSA TAC**

This action includes five alternatives for rollover of RSA TAC.

##### **3.4.4.8.1 Rollover of unused RSA TAC to the next fishing year**

Unused RSA TAC would rollover to the RSA funding announcement the following year.

##### **3.4.4.8.2 Rollover of unused RSA TAC to second solicitation in same fishing year**

Unused RSA TAC would rollover to a second announcement for the same year. All TAC would still need to be harvested by the end of that fishing year.

##### **3.4.4.8.3 Rollover of unused RSA TAC to same individuals for program development funds**

Unused RSA TAC would be allocated to the same individuals that received TAC that year so that those individuals could use small amounts of TAC to support investigation of smaller research projects related to the same projects.

##### **3.4.4.8.4 Rollover of unused TAC to help fund observer program**

Unused RSA TAC would rollover to the industry funded observer program.

##### **3.4.4.8.5 Rollover of unused TAC to compensate awarded projects**

If updated analyses suggest that the price per pound estimates used in the FFO were low, this alternative would allow the agency to allocate unused TAC to compensate. A project would be permitted to apply for compensation TAC if the price per pound was less than estimated and there is available TAC to allocate.

#### **3.4.4.9 Extension for harvesting compensation TAC**

Currently all RSA TAC has to be harvested by the end of that fishing year. This measure would allow a grace period during which the applicant could harvest compensation TAC beyond the end of the fishing year if an applicant cannot harvest their RSA pounds because, for example, their vessel broke. The Scallop Committee suggests a limited time period of one month to one quarter of the year.

#### **3.4.4.10 Increase public input of RSA review process**

This is not an alternative that would require changes to the current regulations, but two specific suggestions were made about how public input could be increased in this process. First, it was suggested that the Scallop Advisory Panel could recommend research priorities directly to the Scallop Committee to consider. Second, more advisory panel members could participate in the management review panel of research proposals.

#### **3.4.4.11 Regulations from which RSA projects are exempt**

This section includes a list of the measures from which research projects may be exempt. This list is restricted to measures implemented by the Scallop FMP. A researcher would not need to apply for an experimental fishing permit if the project wanted to be exempt from the following restrictions. The project would need to list the measures it wants to be exempt from in its research proposal.



The list of measures includes: *(AP also discussed gear restrictions, turtle chains)*

- Crew restrictions
- Seasonal closure in Elephant Trunk
- Requirement to return to port if fishing in more than one area

### **3.4.5 Measures to change the scallop fishing year**

The scallop fishing year is out of sync with the framework adjustment process and the timing of when the scallop survey data become available for analysis. As a result, actions have not been implemented at the start of the fishing year, TACs have been misestimated due to reliance on older data, and extra actions have been required to compensate. The Council has considered changing the scallop fishing year several times in the past, but each time the Council decided to maintain the status quo of March 1. One reason the Council is again considering modifying the scallop fishing year is in response to new requirements for ACLs. If the Council decides to allocate ACLs across various FMPs, it may be useful for FMPs to be on the same fishing year to the extent practicable (i.e., May 1 to be consistent with the Groundfish FMP).

#### **3.4.5.1 No Action**

This alternative would maintain the March 1 start date for the scallop fishing year.

#### **3.4.5.2 Change start of fishing year from March 1 to May 1**

This alternative would modify the start of the scallop fishing year to May 1.

**Rationale:** This alternative would improve integration of best available science into the management process. Moving the start of the fishing year back even two months allows for needed time to process, analyze, and integrate survey data from the current year into management decisions for fishery specifications the following year. This alternative would be most effective if the federal survey can be moved earlier in the year and data were available earlier in the summer (June rather than September).

## **3.5 ITEMS TO BE ADDED TO THE LIST OF FRAMEWORKABLE ITEMS IN THE FMP**

### **3.5.1 Modify the general category possession limit**

Regardless of whether Alternative 3.4.2.3.2 or 3.4.2.3.3 are selected (modifications to the general category possession limit) this alternative would add modifications to the possession limit to the list of frameworkable items so that issue could be considered by framework action in the future.

### **3.6 CONSIDERED AND REJECTED ALTERNATIVES**

#### **3.6.1 Measures to revise how the NGOM TAC is calculated**

All three of these options were recommended for rejection by the Scallop Committee at their meeting on July 8, 2008.

**3.6.1.1 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**

**3.6.1.2 GC scallops caught in the NGOM should not count against IFQ tailored to scallops outside the NGOM.**

**3.6.1.3 All scallop vessels should abide by the 200 lb daily limit in the NGOM, instead of allowing the LA vessels 18,000 lbs while restricting all others.**

#### **3.6.2 Stacking alternatives**

**3.6.2.1 Restrict stacking to 2 permits and both would have to be from vessels within the same vessel baseline (10:10:20 for HP:LEN:GRT)**

**3.6.2.2 Restrict stacking to 2 permits and both would have to be from the same permit category (FT, PT, OCC) but not necessarily the same vessel baseline**

**3.6.2.3 Fishing power adjustment alternative based on gear and wheel size**

**3.6.2.4 Equal fishing power adjustment alternative that would be a flat tax or percentage reduction regardless of permits being stacked**

All vessels would be subject to an adjustment regardless of whether permits are from different vessel baselines. For example, allocations from the second permit would be reduced by some percent (i.e. 5% or 10%) if stacked with another permit. The same percentage would apply for all permits.

#### **3.6.3 No fishing power adjustment for permit stacking or leasing**

The Scallop Committee recommended that this alternative be rejected.

#### **3.6.4 No restrictions on number of permits that can be stacked**

This alternative would allow a limited access scallop vessel to have multiple limited access permits stacked on one vessel – no restriction on the number of permits that could be stacked. A vessel would be permitted to have any combination of full-time, part-time and/or occasional limited access scallop permits.

The Council recommended that this alternative be rejected at the October Council meeting.

### 3.6.5 Allocation of general category IFQ by area

Under Amendment 11, a limited access general category vessel is allocated an annual IFQ based on their contribution to historical landings. The allocation is not area-specific and a vessel is authorized to harvest their quota from any area (open areas or access areas until the fleetwide maximum number of trips is reached for that area). This section is considering allocating IFQ specific to each area so a vessel would be restricted to catch (or trade) their IFQ by area.

#### 3.6.5.1.1 No Action

This alternative would maintain the current IFQ allocation program as an overall allocation that is not area specific. A vessel is authorized to harvest their quota from any area (open areas or access areas until the fleetwide maximum number of trips is reached for that area).

#### 3.6.5.1.2 All IFQ permit holders would receive area-based allocations

All qualifying IFQ general category vessels would receive area-based IFQ based on their contribution to historical landings. For example, if a vessel's contribution factor is 0.25% of the total general category fishery then that vessel would receive 0.25% of the TAC available to the general category fishery in all areas open to that fishery in a given year. Hypothetically, in 2009 if 0.25% equals a total allocation of 6,250 pounds, rather than receiving an overall allocation of 6,250 pounds, a vessel would receive 3,250 pounds from open areas, 500 pounds from Closed Area I, 500 pounds from Delmarva, and 2,000 pounds from Elephant Trunk.

#### 3.6.5.1.3 Only IFQ permit holders above a certain contribution factor level would receive an area-based allocation

The Committee developed this alternative to reduce administrative burden of Alternative 3.6.5.1.2. This alternative would only allocate area-specific quota to individuals that qualify for IFQ above a certain percentage. **The exact amounts have not been identified yet**, but for example, all qualifiers would receive a general IFQ (not area specific quota) unless they qualify for **1%** or more of the total general category allocation. The table below shows several hypothetical examples of how this alternative would work for different vessels.

<b>Contribution Percentage</b>	<b>Open Area</b>	<b>Elephant Trunk</b>	<b>Delmarva</b>	<b>Closed Area I</b>	<b>Total</b>
<b>0.10%</b>	N/A	N/A	N/A	N/A	2,500
<b>0.25%</b>	N/A	N/A	N/A	N/A	6,250
<b>1.0%</b>	13,000	8,000	2,000	2,000	25,000
<b>2.0%</b>	26,000	16,000	4,000	4,000	50,000

N/A – Since these vessels qualify for less than 1% of the total general category allocation they would receive an IFQ allocation that is not area specific.

**Rationale:** This alternative was designed to provide the benefits of access areas to individual general category vessels that are more “directed” and have a greater dependence on the scallop resource compared to other general category vessels that fish for other species. General category vessels that qualify for lower amounts may not be as inclined to fish in access areas, and in some cases may not want area allocations in various access areas up and down the coast. There would be a burden associated with trading area access and more administrative burden as well. This alternative intends to reduce that burden on both sides; therefore it would only allocate area

specific IFQ to general category vessels that qualify for higher allocations, assuming these vessels would be more inclined to fish in various access areas.

### **3.6.6 Separation of YTF incidental catch TAC between LA and LAGC fisheries**

## **4.0 AFFECTED ENVIRONMENT**

## **5.0 ENVIRONMENTAL IMPACTS**

## **6.0 CONSISTENCY WITH MAGNUSON-STEVENSON CONSERVATION AND MANAGEMENT ACT**

## **7.0 RELATIONSHIP TO OTHER APPLICABLE LAW**

## **8.0 LIST OF PUBLIC MEETINGS**

## **APPENDICES**