

Framework 21 to the Atlantic Sea Scallop FMP

Including an Environmental Assessment, an Initial Regulatory Flexibility Analysis and Stock Assessment and Fishery Evaluation (SAFE) Report

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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EXECUTIVE SUMMARY

This framework and Environmental Assessment (EA) presents and evaluates management measures and alternatives to achieve specific goals and objectives for the Atlantic sea scallop fishery. This document was prepared by the New England Fishery Management Council and its Scallop Plan Development Team (PDT) in consultation with the National Marine Fisheries Service (NMFS, NOAA Fisheries) and the Mid-Atlantic Fishery Management Council (MAFMC). This framework was developed in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA, M-S Act) and the National Environmental Policy Act (NEPA), the former being the primary domestic legislation governing fisheries management in the U.S. Exclusive Economic Zone (EEZ). This document also addresses the requirements of other applicable laws (See Section 6.0).

In addition to the No Action alternative, the Council considered various other alternatives to address the purpose and need of this action. The purpose of this action is to achieve the objectives of the Atlantic Sea Scallop Fishery Management Plan (FMP), which is to prevent overfishing and improve yield-per-recruit from the fishery. The primary need for this action is to set specifications to adjust the day-at-sea (DAS) allocations and an area rotation schedule for the 2010 fishing year. This framework adjustment also addresses other issues such as compliance with reasonable and prudent measure required in recent turtle biological opinion and minor adjustments to the observer set aside program.

The proposed action includes:

Summary of alternatives considered and the Council's rationale for the proposed action

Table 1 is a summary of all the alternatives in Framework 21; the proposed action is shaded.

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LIST OF ACRONYMS

A10 – Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan
A13 – Amendment 13 to the Northeast Multispecies Fishery Management Plan
BMSY – Biomass Maximum Sustainable Yield
BO – Biological opinion
CEQ – Council on Environmental Quality
CAI – Closed Area I
CAII – Closed Area II
CV – Coefficient of variation, a standard statistical measure of variation, expressed as a percentage of the mean. Lower CVs indicate more accuracy in the estimates and less variation in data.
CWA – Cape Wind Associates
DAS – Day-at-sea
DMV – Delmarva
DSEIS – Draft Supplemental Environmental Impact Statement
EA – Environmental Assessment
ESA – Endangered Species Act
EFH – Essential Fish Habitat
EFH designation life stages
 A – Adult life stage
 J – Juvenile life stage
 E – Egg life stage
FMP – Fishery Management Plan
FR – Federal Register
FSEIS – Final supplemental environmental impact statement
FW18 – Framework Adjustment 18 to the Atlantic Sea Scallop Fishery Management Plan
GB – Georges Bank
GC – General Category
GOM – Gulf of Maine
HAPC – Habitat Area of Particular Concern
HC(L)(S) – Hudson Canyon (Large) (Small)
LPUE – Landings per unit effort, usually a DAS in this document
IRFA – Initial Regulatory Flexibility Analysis
IVR – Interactive Voice Reporting
LA – Limited access
LIPA – Long Island Power Authority
LNG = Liquefied Natural Gas
MA – Mid-Atlantic
MAFMC – Mid-Atlantic Fishery Management Council
M-S Act – Magnuson Stevens Act
NEFMC – New England Fishery Management Council
NEFSC – Northeast Fisheries Science Center
NEPA – National Environmental Policy Act
NLSA/NL/NLA – Nantucket Lightship Area
NMFS – National Marine Fisheries Service

NOAA – National Oceanographic Atmospheric Administration
RIR – Regulatory Impact Review
SAP – Special access program
SARC – Stock Assessment Review Committee
SAW – Stock assessment workshop
SBNMS – Stellwagen Bank Marine Sanctuary
SBRM – Standardized bycatch reporting methodology
SCH – Great South Channel
SEIS – Supplemental Environmental Impact Statement
SMASST – School of Marine Science and Technology, University of Massachusetts
Dartmouth
SNE – Southern New England
TAC – Total Allowable Catch. This includes discards for finfish species, but not for scallops
which have a much lower discard mortality rate.
PDT – Scallop Plan Development Team
U10 – A classification for large scallops, less than 10 meats per pound.
USGS – United States Geological Survey
VEC – Valued Ecosystem Component
VIMS – Virginia Institute of Marine Science
VMS – Vessel Monitoring System
VTR – Vessel Trip Reports
YTF/YT – Yellowtail flounder

1.0 BACKGROUND AND PURPOSE

1.1 BACKGROUND

In 2004, Amendment 10 introduced rotational area management and changed the way that the Scallop FMP allocates fishing effort for limited access scallop vessels. Instead of allocating an annual pool of DAS for limited access vessels to fish in any area, vessels now have to use a portion of their total DAS allocation in controlled access areas defined by the plan or exchange them with another vessel to fish in a different controlled access area. Vessels can fish their open area DAS in any area that is not designated a controlled access area. Amendment 10 set up this program with a biennial framework process, which means an action is required every two years to allocate fishing effort in both open and access areas. This framework action will only set specifications for a single fishing year, 2010. This framework is for a single year because the Council is working on Amendment 15 which will establish a process for implementing annual catch limits (ACLs) that are required to be in place in 2011 for the scallop fishery. Rather than have a framework with one year pre-ACLs and one year post-ACLs, the Council decided to develop this action for 2010 only and a subsequent framework will set measures for 2011 and 2012.

In addition, the Council recently approved Amendment 11 to the Scallop FMP, which recommends a limited entry program for the general category fishery as well as other measures. Most of that action has been implemented, but the IFQ program for limited access general category vessels is not fully implemented yet, so this action will have to consider measures in case the IFQ program is not implemented in 2010 (See Section ???). A separate hard-TAC and limited entry program for the Northern Gulf of Maine was also adopted in Amendment 11 and the hard-TAC for 2010 will be specified in this action as well.

There are also several other issues that have been included for consideration in this framework that are not directly related to fishery specifications for FY2010. For example, NMFS recently published a biological opinion, pursuant to section 7 of the Endangered Species Act (ESA), that considered the effects of the continued authorization of the Atlantic sea scallop fishery on ESA-listed species. That biological opinion included a specific Reasonable and Prudent Measure (RPM) and accompanying Term and Condition (T/C) to limit the amount of allocated scallop fishing effort by limited access scallop vessels that can be used in the area and during the time of year when sea turtle distribution overlaps with scallop fishing activity. The biological opinion required NMFS to comply with this measure no later than the 2010 fishing year, so this action will consider measures that will comply with the RPM and T/C (See Section 2.7).

In addition this framework is considering minor adjustments to the industry-funded observer set-aside program including an alternative to prohibit vessels from not paying for observers and addressing a loophole for observed general category access area trips in terms of the amount of compensation a general category vessel can get per observed trip.

In summary, this framework adjustment will address several primary management issues:

1. Fishery specifications for FY2010 including compliance with the first RPM and T/C required in the recent biological opinion

2. Area rotation adjustments (if necessary) including consideration of a new scallop access area on Georges Bank
3. Other measures including minor adjustments to the observer set-aside program

1.2 PURPOSE AND NEED

The purpose of this action is to achieve the objectives of the Atlantic Sea Scallop Fishery Management Plan (FMP) to prevent overfishing and improve yield-per-recruit from the fishery. The primary need for this action is to set specifications to adjust the day-at-sea (DAS) allocations and area rotation schedule for the 2010 fishing year and to comply with reasonable and prudent measure required in recent turtle biological opinion.

1.3 SCALLOP MANAGEMENT BACKGROUND

To be completed later

1.4 DETAILED BACKGROUND ON ROTATIONAL AREA MANAGEMENT

Amendment 10 introduced area rotation: areas that contain beds of small scallops are closed before the scallops experience fishing mortality, then the areas re-open when scallops are larger, producing more yield-per-recruit. The details of which areas should close, for how long and at what level they should be fished were described and analyzed in Amendment 10. Except for the access areas within the groundfish closed areas on Georges Bank, all other scallop rotational areas should have flexible boundaries. Amendment 10 included a detailed set of criteria or guidelines that would be applied for closing and re-opening areas. Framework adjustments would then be used to actually implement the closures and allocate access in re-opened areas. The general management structure for area rotation management is described in Table 1. An area would close when the expected increase in exploitable biomass in the absence of fishing mortality exceeds 30% per year, and re-open to fishing when the annual increase in the absence of fishing mortality is less than 15% per year. Area rotation allows for differences in fishing mortality targets to catch scallops at higher than normal rates by using a time averaged fishing mortality so the average for an area since the beginning of the last closure is equal to the resource-wide fishing mortality target (80% of Fmax, estimated to be $F=0.20$).

Table 1- General management structure for area rotation management as implemented by Amendment 10

Area type	Criteria for rotation area management consideration	General management rules	Who may fish
Closed rotation	Rate of biomass growth exceeds 30% per year if closed.	<ul style="list-style-type: none"> • No scallop fishing allowed • Scallop limited access and general category vessels may transit closed rotation areas provided fishing gear is properly stowed. • Scallop bycatch must be returned intact to the water in the general location of capture. 	<ul style="list-style-type: none"> • Any vessel may fish with gear other than a scallop dredge or scallop trawl • Zero scallop possession limit
Re-opened controlled access	<p>A previously closed rotation area where the rate of biomass growth is less than 15% per year if closure continues.</p> <p>Status expires when time</p>	<ul style="list-style-type: none"> • Fishing mortality target set by framework adjustment subject to guidelines determined by time averaging since the beginning of the most recent closure. • Maximum number of limited access 	<ul style="list-style-type: none"> • Limited access vessels may fish for scallops only on authorized trips. • Vessels with general category permits will be

Area type	Criteria for rotation area management consideration	General management rules	Who may fish
	averaged mortality increases to average the resource-wide target, i.e. as defined by the Council by setting the annual mortality targets for a re-opened area.	trips will be determined from permit activity, scallop possession limits, and TACs associated with the time-average annual fishing mortality target. <ul style="list-style-type: none"> • Transfers of scallops at sea would be prohibited 	allowed to target scallops or retain scallop incidental catch, with a 400 lb. scallop possession limit in accordance with general category rules.
Open	Scallop resource does not meet criteria to be classified as a closed rotation or re-opened controlled access area	<ul style="list-style-type: none"> • Limited access vessels may target scallops on an open area day-at-sea • General category vessels may target sea scallops with dredges or trawls under existing rules. • Transfers of scallops at sea would be prohibited 	All vessels may fish for scallops and other species under applicable rules.

2.0 MANAGEMENT ALTERNATIVES UNDER CONSIDERATION

2.1 SUMMARY OF THE PROPOSED ACTION

To be completed later

2.2 NO ACTION

This section describes the No Action alternative as well as several other alternatives that are dependent on full implementation of the IFQ program for limited access general category qualifies approved under Amendment 11 and measures that would be in place if this action (Framework 21) were delayed.

2.2.1 No Action

In the alternatives for area rotation management and for open area DAS allocations, “No Action” is exactly what it implies: no additional action will be taken and so the measures and allocations that are specified in the present regulations (CFR §648, Sub-part D) are maintained. The scallop regulations state (paragraph 648.55(b)): “If the biennial framework action is not undertaken by the Council, or if a final rule resulting from a biennial framework is not published...with an effective date on or before March 1...the measures from the most recent fishing year shall continue, beginning March 1 of each year.” Thus, the “No Action” alternative is the same as “Status Quo.”

Under “No Action,” in open areas, full-time limited access scallop vessels would receive the same allocation as FY2009: an allocation of 42 open area DAS. Part-time and occasional vessels would receive a pro-rata share of 40% and 1/12th, respectively, which is equivalent to 17 and 3 open area DAS, respectively. The trip allocations for access areas would also roll over. In terms of Mid-Atlantic access areas, full-time vessels would receive 3 Elephant Trunk Access Area (ETA) trip and one trip in Delmarva, part-time vessels would receive 2 access area trips in the Mid-Atlantic (1 trip in DMV, 1 trip in ETA; or 2 trips in ETA), and occasional vessels would receive one access area trip that could be taken in either area. As for Georges Bank access areas, Closed Area I is scheduled to open in 2010, but no trips would be allocated because none were

allocated in 2009; Closed Area Ii is scheduled to be closed, and NL is scheduled to be open, but again since no trips were allocated in 2009, no trips would be allocated in 2010.

The TACs for all areas would remain as estimated in Amendment 10 and Framework 19. When Georges Bank access areas close due to yellowtail flounder catches, vessels would receive compensation for each access area trip not taken due to the closure. Finally, under “No Action,” the Hudson Canyon Access Area would remain closed.

Table 2 – Open area DAS allocations under No Action

Full-Time		Part-Time		Occasional	
<u>2009</u>	<u>2010</u>	<u>2009</u>	<u>2010</u>	<u>2009</u>	<u>2010</u>
37	42	15	17	3	3

Table 3 -Sea scallop access area allocation schedule under No Action

	2009	2010
CAII	Open	Closed
NLCA	Closed	Open – but no allocation
CAI	Closed	Open – but no allocation
ETAA	Open	Open
HCAA	Closed	Closed
Delmarva	Open	Open

Table 4 – Access area trip allocations under No Action

Area	<u>NLCA</u>		<u>CAI</u>		<u>CAII</u>		<u>ETAA</u>		<u>Delmarva</u>	
	<u>2009</u>	<u>2010**</u>	<u>2009</u>	<u>2010**</u>	<u>2009</u>	<u>2010</u>	<u>2009</u>	<u>2010</u>	<u>2009</u>	<u>2010</u>
Full-time	0	0	0	0	1	0	3	3	1	1
Part-time*	0	0	0	0	Up to 1	0	Up to 2	Up to 2	Up to 1	Up to 1
Occasional*	0	0	0	0	Up to 1	0	Up to 1	Up to 1	Up to 1	Up to 1
General Category	0	0	0	0	0	0	1964	1964	728	728

- Part-time and occasional scallop vessel owners could determine which areas to take their trips, up to the maximum number of trips specified in the table above
- ** Scheduled to be open in 2010, but no trips allocated until FW21 implemented

2.2.2 No Action if IFQ program is not fully implemented before March 1, 2010

If the limited access general category IFQ program is not fully implemented before March 1, 2010 then the fishery reverts to management under the “transition period” to IFQs. The “transition period” would likely continue through the entire 2010 fishing year and the IFQ program would not be implemented until March 1, 2011. The major difference between the transition period and post IFQs is the total allocation for the general category sector is set at 10% of the target scallop catch compared to 5% under IFQs. The Council selected 10% for the transition period to recognize that more vessels will be fishing under appeals so 10% would help reduce impacts on general category qualifiers. In addition, 10% was still lower than recent years before development of Amendment 11, so was not viewed as very restrictive on the limited access fishery.

In addition, the 10% allocation will be divided into quarterly hard TACs similar to how the fishery was managed in 2008 and 2009.

2.2.3 Measures that will be in effect March 1, 2010 until Framework 21 is implemented

If Framework 21 is not implemented by March 1, 2010, several measures implemented by Amendment 10 and Framework 19 will carry-over. For example, open area DAS allocations for limited access vessels would be the same as in FY2009 (37 DAS for full-time, 15 for part-time, and 3 for occasional vessels) and the Elephant Trunk Area would be managed under the same regulations in place in 2009 (three trips for full-time vessels and a total of 1964 general category trips). In addition, under No Action the Mid-Atlantic access area allocations would rollover. Hudson Canyon would remain closed and vessels would get one trip in the Delmarva area.

Because Council final action has been moved back to the November Council meeting, the action may not be implemented before the start of FY2010; therefore, this action will have to assess impacts of the potential delay and consider measures to compensate.

THE LIST OF MEASURES BELOW WERE IN FW19 – IT IS LIKELY THAT SIMILAR MEASURES SHOULD BE INCLUDED IN FW21 IF IT IS DELAYED

The specific measures that are included in this alternative if this action is not implemented by March 1, 2010, are:

1. Any limited access open area DAS used in 2010 above the ultimate value allocated for 2010 will be reduced the following fishing year (2011).
2. Any limited access or general category Elephant Trunk area trips taken in 2010 above the ultimate allocation for 2010 will be deducted from the following fishing year.
3. If the IFQ program is not in place prior to March 1, the LAGC TAC will remain at 10% for the entirety 2010 fishing year. The TAC will remain at 2,082 mt, 10% of 2009 projected catch value of 20,820 mt, until FW 21 implements the 2010 specifications. If the general category quarterly hard TAC for Quarter 1 (March 1-May 31) is exceeded, then those pounds will be removed from Quarter 3 and/or 4. Catch cannot be removed from Quarter 2 because any overage would not be known until the Quarter 2 TAC was allocated. If the 2010 projected catch value differs from 2009, the LAGC TAC will be adjusted and permit holders will be notified.
4. If the IFQ program is in place before March 1, IFQ vessels without a limited access DAS scallop permit will receive an IFQ based on a TAC of 1041 mt, which is 5% of 2009 projected catch value of 20,820 mt. IFQ vessels that have also been issued a limited access DAS scallop permit will receive an IFQ based on a TAC of 104.1 mt, which is 0.5% of the 2009 projected catch value of 20,820 mt. If that differs from 2010 final projected catch values, 2010 IFQs will be adjusted either up or down, depending on the difference in the projected catch. Vessels will receive notice during the fishing year with different IFQs for 2010. If the 2010 projected catch value is less than the 2009 projected catch value, and if a vessel exceeds their ultimate 2010 IFQ before the 2010 IFQs are adjusted, the vessel's 2011 IFQ will be deducted by the same amount. A vessel that increases its IFQ through a lease will use leased IFQ before using its own IFQ, and multiple leases of IFQ will be used in the order that it was leased by the vessel. IFQ for the 2011 fishing year will be deducted from either the leased or the vessel's own IFQ that resulted in the excess catch.
5. Any landings from within the Northern Gulf of Maine (NGOM) area caught in fishing year 2010 above the ultimate TAC for 2010 will be reduced the following year.

2.3 MEASURES FOR LIMITED ACCESS VESSELS

Under current regulations (CFR §648.60), limited access vessels are authorized to take a certain amount of trips to each controlled access area during a fishing year. Each full-time vessel has been authorized to land 18,000 pounds of scallop meat per trip (40% of that for part-time vessels and 8.33% for occasional vessels). Fishing in controlled access areas may be subject to other limits such as seasons or potential closures due to TACs for yellowtail flounder. The maximum number of trips per area will be considered in this action for FY2010 To prevent overfishing and optimize yield. Access areas include areas within the Multispecies closed areas (Closed Area I,

Closed Area II, and Nantucket Lightship), as well as areas specifically closed as scallop rotational closed areas (Hudson Canyon, Elephant Trunk, and Delmarva) (See Figure 1 and Figure 2).

Limited access vessels are also allocated a specific number of open area DAS in biennial frameworks to achieve optimum yield at the target fishing mortality of $F=0.2$ for the total scallop resource. The open area DAS allocations depend on what controlled access areas are available and the number of trips the Council recommends to allocate per area, as well as allocations made to the general category fishery. The open area allocations are also based on the assumption that a part-time vessel receives 40% of a full-time allocation, and an occasional vessel receives 8.33% of a full-time vessel.

Figure 1 – Boundaries of scallop access areas within Multispecies closed areas on Georges Bank

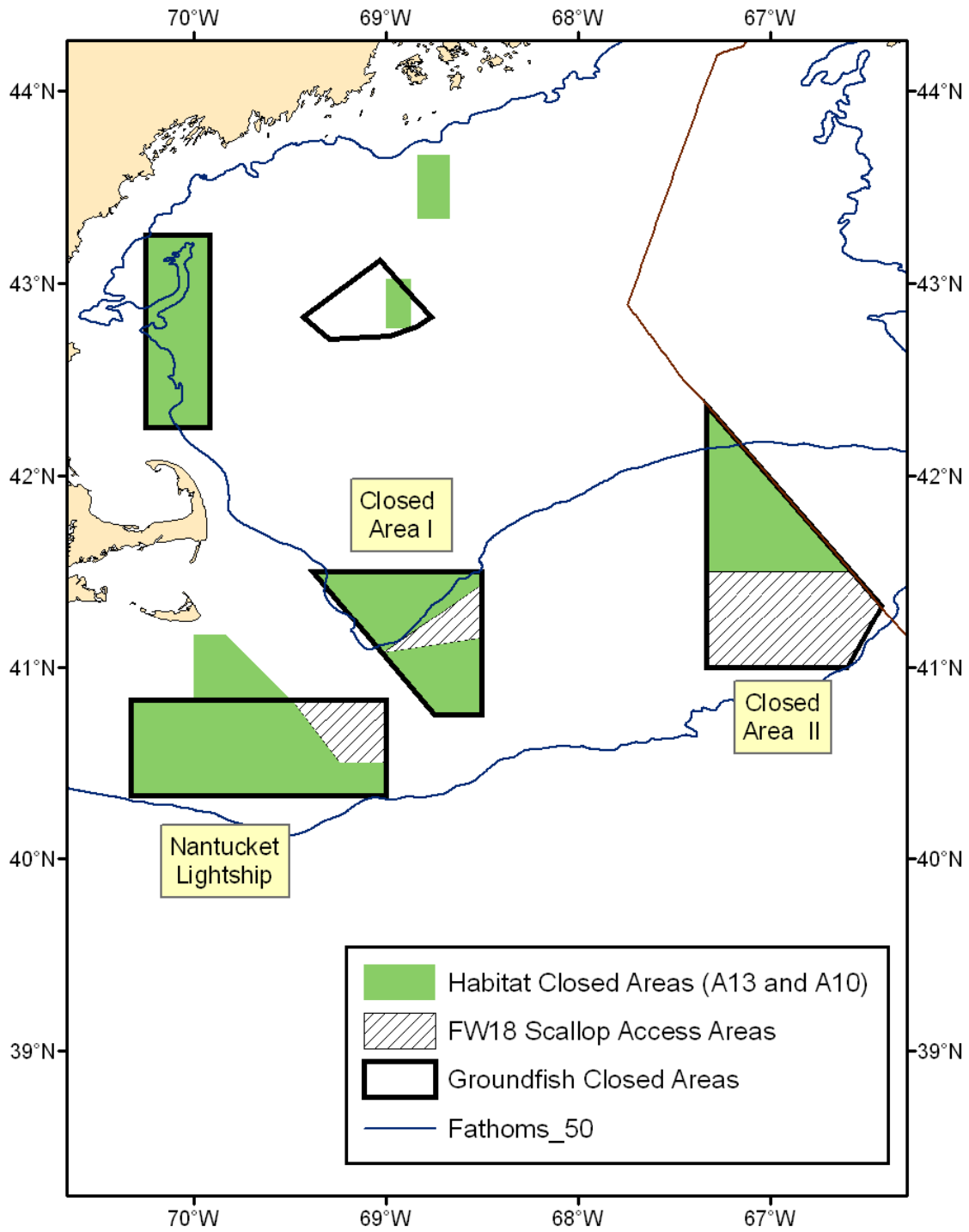
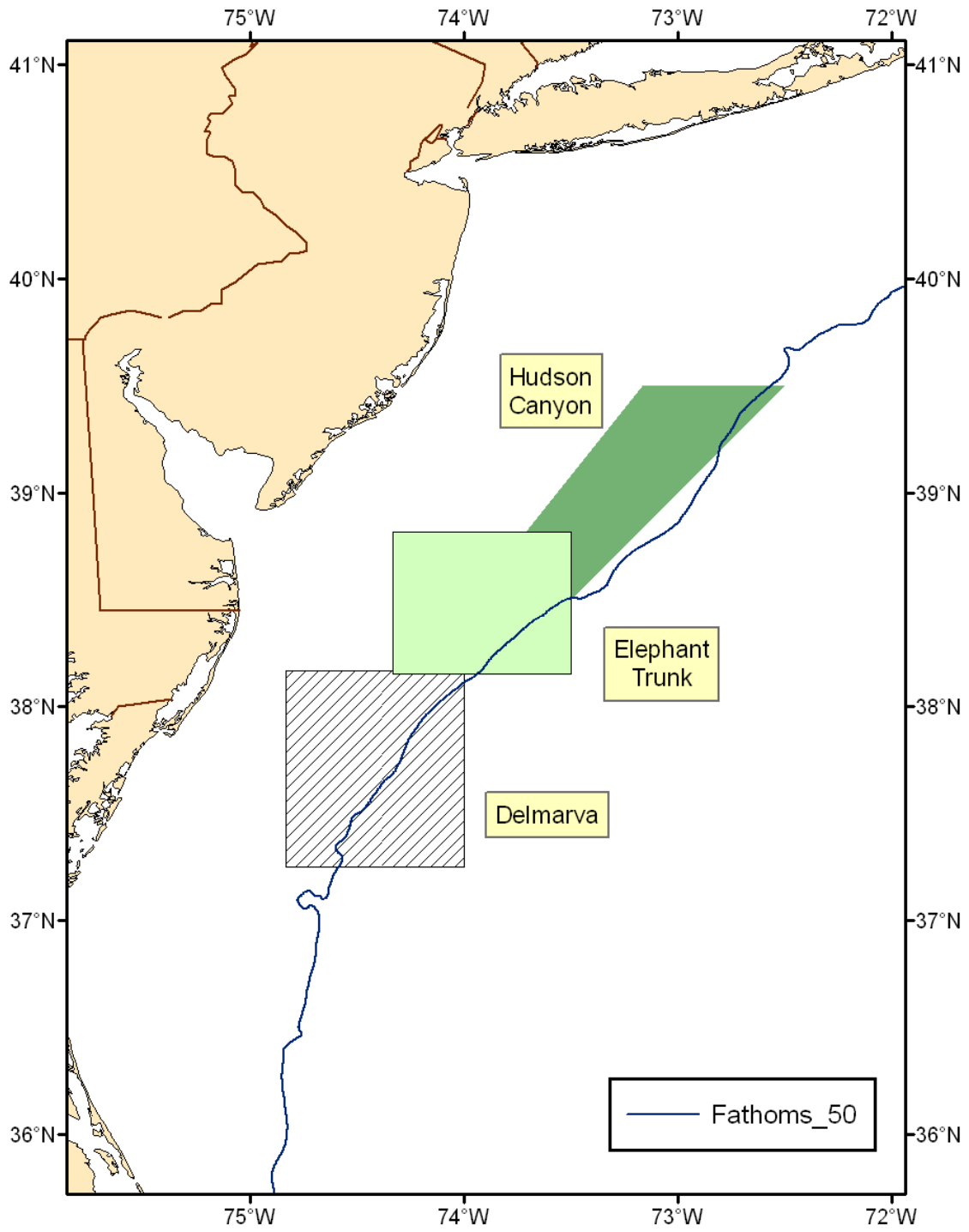


Figure 2 – Boundaries of scallop access areas in the Mid-Atlantic



Summary of scenarios

The alternatives described in this section are separated out by area (i.e. Georges Bank access areas, Elephant Trunk, Delmarva etc.), but due to the interrelated nature of area rotation and how the model projects impacts for the entire resource overall, it is difficult to pull out specific impacts by area. Therefore, the various alternatives under consideration have been combined into a number of scenarios.

The PDT is still finalizing these scenario alternatives and they may change in coming weeks.

Overall four main alternatives are under consideration:

1. No closure in Channel, Overall F = 0.20 (status quo)
2. No, closure in Channel, Overall F = 0.24
3. S. Channel closure, Overall F = 0.20
4. S. Channel closure, Overall F = 0.18

Overall F was reduced to 0.18 for last alternative because the new closure had unpredictable model effects on the overall F, so a lower value (0.18) was made an alternative instead of higher F strategies (F=0.20 or F=0.24).

The following table gives the four alternatives and the resulting landings and DAS associated with each. Again, these may change as the PDT refines these alternatives.

Option	2010 Landings (mt)	2010 DAS
NoCl-0.20	18829	29
NoCl-0.24	21445	38
Cl-0.18	22299	42
Cl-0.20	24269	51

Regarding groundfish closed areas on Georges Bank, the projections estimate a full trip in NLCA and some effort possible in CAI (2600 mt/trip). CAII will be difficult based on yellowtail bycatch issues, but there is exploitable biomass available in that area as well. The pDT is still discussing what allocation strategy is best for the GB access areas, primarily based on how much YT is available for that stock area. Several alternatives for GB access areas are under consideration, and as the Council learns more about how much YT would be needed for the scallop fishery and how much is likely to be allocated to the scallop fishery a more refined list of alternatives will likely be considered.

Regarding the Mid Atlantic access areas the proposed trips are as follows:

- 2010 MA Access – 2 Elephant Trunk, 1 Delmarva
- 2011 MA Access – 1 ET, 2 DMV, 2 Hudson Canyon

- 2012 MA Access – 2 DMV, 2 Hudson Canyon

The following table was put together to illustrate the alternatives for 2010-2012 because that is what is under consideration for the GF specifications package that will identify how much YT will be allocated to the scallop fishery. Framework 21 will only include measures for 2010.

FY	GB Access		Options in GB	MA Access		Open Area
	#	Area		#	Area	
2010	1	NL	full trip in NL (18K or lower)	3	(2 in ET, 1 in DEL)	scenarios differ depending on channel closure and total F
	1	NL/CA2	full trip in NL, CA2 if NL closes	3	(2 in ET, 1 in DEL)	
	1	NL/CA2	most in NL some in CA2	3	(2 in ET, 1 in DEL)	
	1	NL/CA1	most in NL, about 30 in CA1	3	(2 in ET, 1 in DEL)	
2011	1	CA1	if extended	5	(1 ET, 2 Del, 2 HC)	
	1	CA2	if CA1 not extended	5	(1 ET, 2 Del, 2 HC)	
	1	Split NL and CA2	if CA 1 not extended			
2012	1	CA2	if CA1 extended in CA1	4	(2 DEL, 2 HC)	
	1	Split NL and CA2	if CA1 fished in 2011	4	(2 DEL, 2 HC)	

Allocations in 2010 are lower than recent years because of two primary reasons: there are only four access area trips in 2010 compared to five in recent years, and overall effort has to be cut back by about 20% because preliminary estimates of F for 2009 are close to F=0.30, which is above the overfishing threshold of 0.29, and well above the target F of 0.20.

2.4 MEASURES FOR GENERAL CATEGORY VESSELS

2.4.1 Measures if IFQ program is delayed

2.4.1.1 Quarterly hard-TAC for transition period to limited entry (FY2008)

2.4.2 Northern Gulf of Maine (NGOM) Hard-TAC

The Council approved a separate limited entry program for the NGOM with a hard-TAC. Framework 21 will need to consider a separate hard TAC for this area for 2010. Individuals qualified for a permit if their vessel had a general category permit when the control date was implemented (November 1, 2004). There is no landings qualification for this permit. Vessels would be restricted to fish in this area under a 200 pound possession limit until the overall hard-TAC was reached. Currently there are approximately ??? vessels that qualified for this permit.

Amendment 11 specifies that the Scallop PDT will recommend a hard-TAC for the federal portion of the scallop resource in the NGOM. The amendment recommends that the hard-TAC

be determined using historical landings until funding is secured to undertake a NGOM stock assessment. The PDT reviewed landings data from the VTR database and recommends that the **hard-TAC for this area be 70,000 pounds for FY2010.**

While the fishery only landed less than 15% of the NGOM TAC in 2008 and 2009, the PDT still feels this TAC is appropriate until a formal assessment of the area can be completed. A survey of the scallop resource in the NGOM is currently being conducted by RSA funds under the Scallop FMP. That survey was conducted in summer 2009, but results are not available yet. The survey results may be reviewed at the next scallop assessment, and then can be used for management purposes.

2.4.3 Georges Bank access area management

2.4.3.1 Allocations

2.4.3.2 Yellowtail flounder bycatch TAC

Under current regulations, if the 10% yellowtail flounder bycatch TAC is reached and the Georges Bank access areas close, general category vessels are not permitted to fish in the area. Furthermore, since it is a fleetwide allocation, there is no compensation for vessels on an individual basis if the area closes before the total number of general category trips have been taken. The yellowtail flounder bycatch TAC is shared between the two fisheries; therefore, once the TAC is reached the area closes for both fleets. See Section **Error! Reference source not found.** This is currently in the regulations and will not change as a result of this action.

2.4.4 Elephant Trunk

2.4.5 Delmarva

2.5 CONSIDERATION OF NEW ROTATIONAL AREA IN THE GREAT SOUTH CHANNEL

Amendment 10 defines the criteria for closing an area to protect young scallops. Under adaptive area rotation, an area would close when the expected increase in exploitable biomass in the absence of fishing mortality exceeds 30% per year and re-open to fishing when the annual increase in the absence of fishing mortality is less than 15% per year. Identification of areas would be based on a combination of the NEFSC dredge survey and available industry-based surveys. The boundaries are to be based on the distribution and abundance of scallops at size; ten-minute squares are the basis for evaluating continuous blocks that may be closed. The guidelines are intended to keep the size of the areas large enough and regular in shape to be effective, while allow a degree of flexibility. The Council and NMFS are not bound to closing an area that meets the criteria and the Council and NMFS may deviate from the guidelines to achieve optimum yield.

If any areas qualify, the area would close to all scallop vessels and vessels would not be permitted in that area until a later date when biomass estimates project higher yields. The

Council is not required to implement these rotational closed areas just because they meet the criteria recommended in Amendment 10 for new closures, but they should be considered.

Preliminary results from the 2009 survey suggest that small scallops have settled in parts of the Great South Channel. The PDT recommended consideration of an area to the north of the Nantucket Lightship closed area and west of Closed Area I; the top left coordinate of the polygon is 41 20' N and 69 30' W and the bottom left coordinate is 40 50'N and 68 50'W (Figure 3). Recruitment on GB has been below average since 2001 and has only improved in the last few years. High numbers of small scallops (<70 mm) were caught on 2007, 2008 and 2009 survey tows in this area.

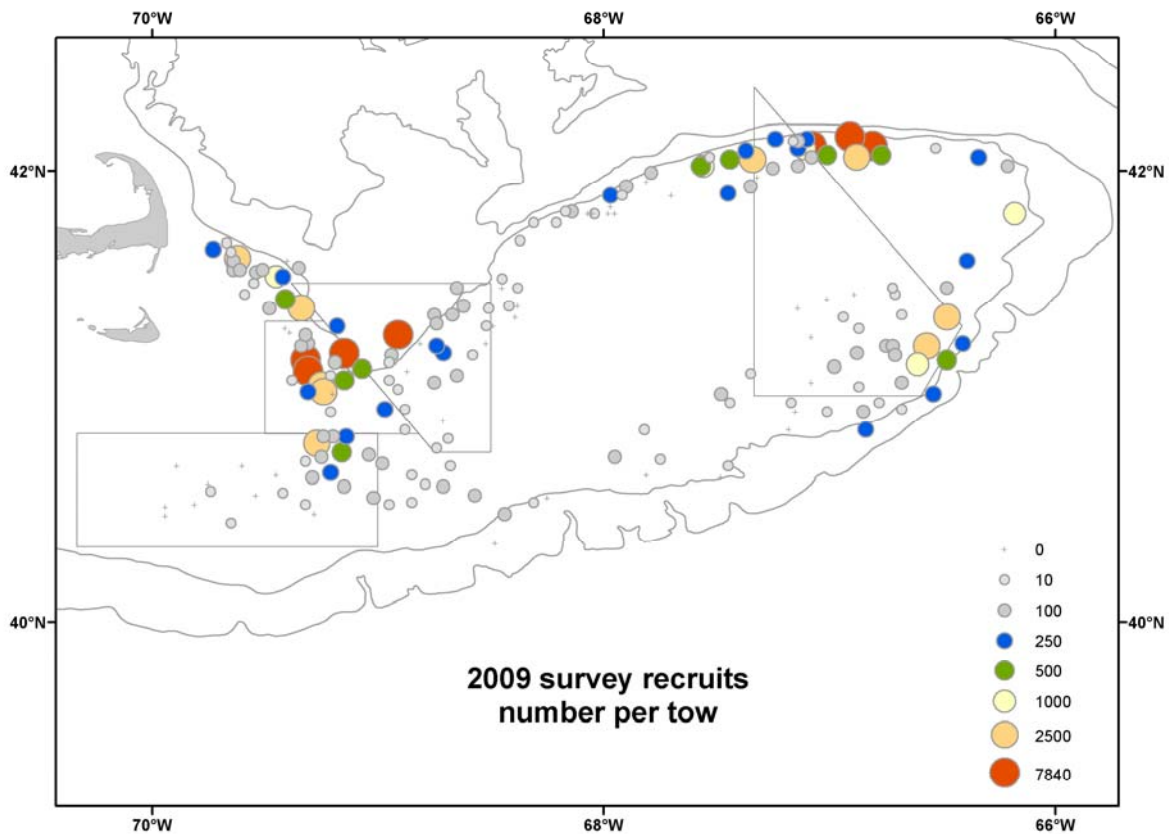
2.5.1.1 No Action

No new rotational area would close in this action in the Great South Channel vicinity.

2.5.1.2 New rotational area in the Channel north of Nantucket Lightship and west of Closed Area I

An area to the north of the Nantucket Lightship closed area and west of Closed Area I would close to scallop fishing for at least FY2008 and 2009; the top left coordinate of the polygon is 41 20' N and 69 30' W and the bottom left coordinate is 40 50'N and 68 50'W (Figure 3).

Figure 3 – Scallop recruitment on Georges Bank from the 2009 federal survey (scallops less than 70mm) with potential boundaries for a scallop rotational area within the Great South Channel



2.6 ESTIMATE OF MORTALITY FROM INCIDENTAL CATCH

Amendment 11 includes a provision that the Scallop FMP should consider the level of mortality from incidental catch and remove that from the projected total catch before allocations are made. If approved, the amendment requires the PDT to develop an estimate of mortality from incidental catch and remove that from the total. This section includes a summary of the PDT estimate and the value that was removed from the total projected catch before allocations to the limited access and general category fisheries were made. If this provision is not approved in Amendment 11 then this amount of scallop would not be allocated back to the scallop fishery. It is a source of non-harvest mortality; therefore would be reduced before allocations are made to the fishery.

The PDT reviewed incidental landings from previous years (<40 pounds per trip) to estimate what level of projected catch should be removed in future years. According to the dealer database, approximately 10,000 to 27,000 pounds of scallops have been landed on trips with less than 40 pounds (**Error! Reference source not found.**). According to the VTR database, closer to 30,000 pounds have been caught in previous years in increments less than 40 pounds (**Error! Reference source not found.**). The PDT discussed that it is more appropriate to use the VTR

data as a starting point for this estimate since incidental catch is not always sold to a dealer (i.e., it is consumed for personal use). The PDT also recommended that the average landings from the VTR database should be increased to some degree to account for an expected increase in scallop landings by incidental catch. Since many vessels are not going to qualify for a limited entry general category permit under Amendment 11, landing scallops under incidental catch may be the only other alternative for some vessels (assuming the vessels had a general category permit before the control date). **Therefore, the PDT recommends taking recent VTR landings as a starting point for an estimate of mortality from incidental catch and increasing that to 50,000 pounds to account for an expected increase due to measures implemented by Amendment 11. The Council recommends this value as part of the proposed action for incidental catch. This amount will be removed from the total projected catch whether Amendment 11 approves this measure or not.**

2.7 COMPLIANCE WITH REASONABLE AND PRUDENT MEASURE IN RECENT BIOLOGICAL OPINION

On March 14, 2008, NMFS completed an ESA Section 7 Consultation on the Atlantic Sea Scallop Fishery Management Plan.¹ Under the ESA, each Federal agency is required to ensure its actions are not likely to jeopardize the continued existence of any listed species or critical habitat. If a Federal action is likely to adversely affect a listed species, formal consultation is necessary. Five formal Section 7 consultations, with resulting biological opinions, have been completed on the Atlantic sea scallop fishery to date. All five have had the same conclusion: the continued authorization of the scallop fishery may adversely affect, but is not likely to jeopardize the continued existence of four sea turtles (loggerheads, green, Kemp's ridley, and leatherback). In the accompanying Incidental Take Statement, NMFS is required to identify and implement non-discretionary reasonable and prudent measures (RPMs) necessary or appropriate to minimize the impacts of any incidental take, as well as Terms and Conditions (T/C) for implementing each RPM. RPMs and T/C cannot alter the basic design, location, scope, duration, or timing of the action and may involve only minor changes. Five RPMs and T/Cs were identified in the March 2008 biological opinion. One RPM requires a limit of effort in the Mid-Atlantic during times when sea turtle distribution is expected to overlap with fishing activity; the other four are related to ongoing research needs and identification of measures to reduce interactions and/or the severity of such interactions.

NMFS Northeast Regional Administrator sent the Council a letter on April 9, 2008 requesting that the Council take the opportunity to develop the measures to meet RPM#1 through FW21 taking into consideration the impacts of possible effort shifts of the fishery and other potential impacts. The Council reviewed the biological opinion and RPM and found some issues with how the agency developed the first RPM and T/C, namely the reasonableness of the measures and the justification for selecting certain percentages in the T/C. On August 1, 2008, the agency submitted a second letter to the Council to clarify these issues and in that letter requested that the "Council should conduct an analysis to: (a) Determine whether the RPM and Term and Condition provided in the March 14, 2008, Opinion is reasonable and prudent in light of the regulatory and statutory guidance provided, and if not, then (b) identify what revisions are

¹ The full biological opinion can be found at http://www.nero.noaa.gov/prot_res/section7/.

necessary to make it reasonable and prudent or identify why there is no acceptable revision that would make it meet the standard.” On November 26, 2008, the Council developed a response to the agency with such analyses and found that the first RPM and T/C were not reasonable and prudent as they would cause more than a minor change to the scallop fishery. As such, the Council recommended revisions to the first RPM and T/C.

Based on the Council’s response, the agency did revise the language of the first RPM and term and condition and replaced them with the text below:

Reasonable and Prudent Measures

NMFS has determined that the following reasonable and prudent measures are necessary or appropriate to minimize impacts of incidental take of sea turtles:

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).

Terms and Conditions

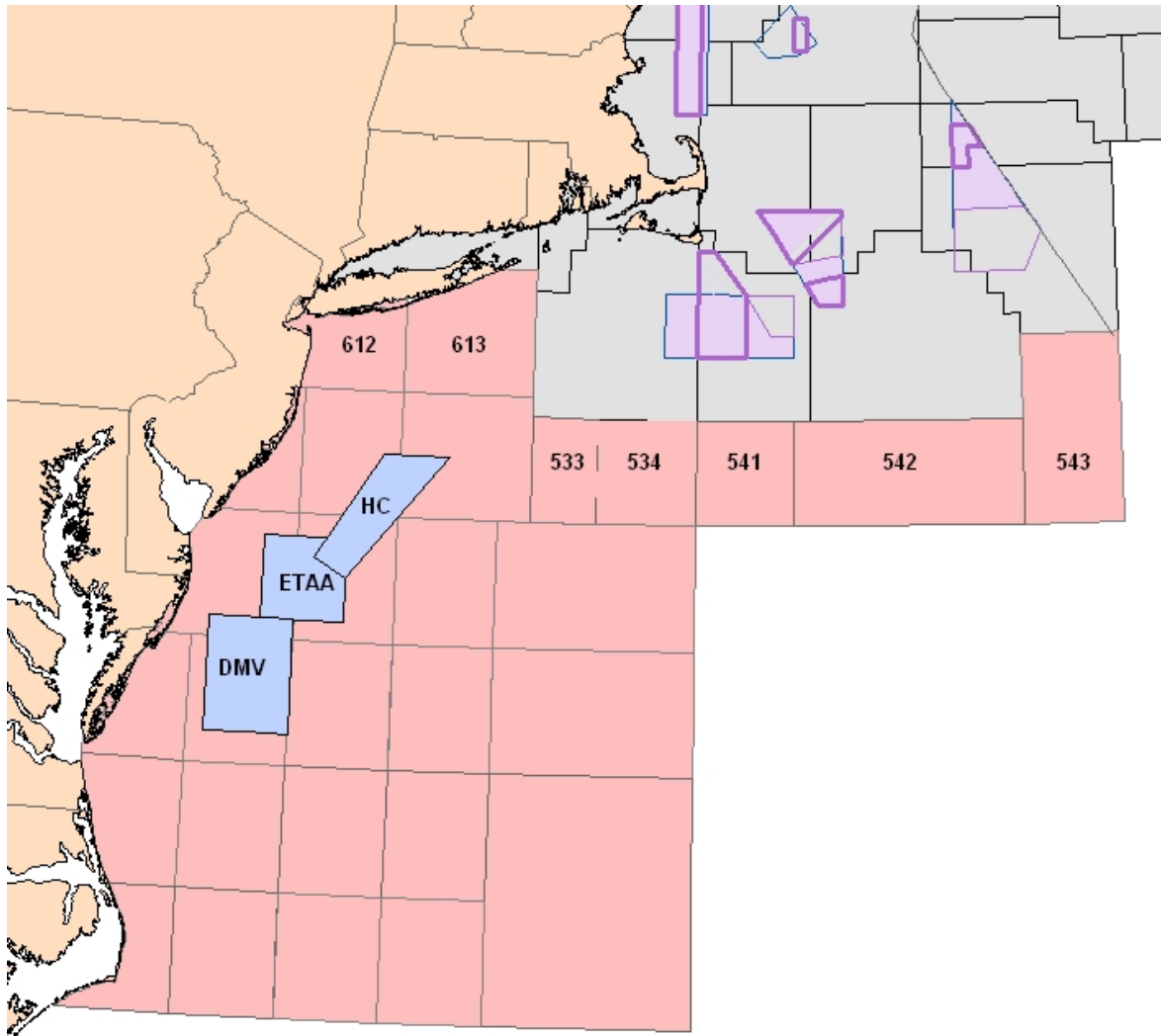
In order to be exempt from the prohibitions of section 9 of the ESA, and regulations issued pursuant to section 4(d), NMFS must comply with the following terms and conditions, which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.

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)

The alternatives in this section have been developed to comply with the RPM and T/C above. The figure below depicts the area that is referenced in the first Term and Condition. It is referenced as the “Mid-Atlantic” within this document.

Figure 4 – Area defined as the “Mid-Atlantic” in the 2008 biological opinion

Waters south of the northern boundaries of statistical areas 612, 613, 533, 534, 541, 542, and 543.



2.7.1 Alternatives to comply with RPM

2.7.1.1 Restrict the number of open area DAS an individual vessel can use in the Mid-Atlantic during a certain window of time

This alternative would set a maximum on the number of allocated open area DAS each limited access vessel can use in the area defined as the Mid-Atlantic during the time periods under consideration (June 16-October 14 or June 15-October 31). The maximum number of DAS that can be used will be identified as the maximum number of DAS before any less DAS would have “more than a minor impact” on the fishery as defined by the PDT analyses in Section 2.7.2. Measures to comply with a reasonable and prudent measure cannot have more than a minor impact on the fishery. This particular measure is expected to have differential impacts on vessels from the north and the south because in general, most open area DAS are used in areas closer to

a vessel's homeport. So this restriction will likely have the potential to have more impacts on vessels in the south that tend to use most of their DAS in southern areas. The actual values will be included in this document before final decisions are made.

- *Option A for Area: in the entire area defined by the RPM*
The restriction on DAS used would apply to all statistical areas south of the northern boundaries of statistical areas 612, 613, 533, 534, 541, 542, and 543 (Figure 4).
- *Option B for Area: in a subset of the area where turtle interactions are more likely to occur based on sea surface temperature data*
The PDT is analyzing sea surface temperature data to determine if the area defined by the RPM can be refined at all to maximize benefits for turtles and minimize impacts on the fishery. For example, the PDT is considering an option that would refine the line for the month of June by two criteria: 1) waters where mean sea surface temperature is greater than 17.9°C, the minimum temperature loggerhead turtles have been observed, and 2) waters that do not overlap any observed takes in the fishery. So far it looks like this approach could allow fishing in the statistical areas that are just south of the boundary for the month of June, but would revert back to the original RPM line in July-October.
- *Option A for time window: June 16-October 14*
This time period is consistent with the full range of dates for all observed turtle takes in the scallop fishery. From 2003-2008 a total of 59 turtles have been observed between these dates for both gear types on both on and off watches.
- *Option B for time window: June 15 – October 31*
This time period is slightly longer than Option A to recognize that turtle migration patterns change over time and space and turtles may be in this area earlier and later than have been observed to date. It has also been noted that one turtle was observed on a research trip in late October 2002 in waters west of the Elephant Trunk Area.

2.7.1.2 Restrict the number of access area trips in the Mid-Atlantic that can be used during a certain window of time

This alternative would restrict the number of allocated access area trips that can be taken in the Mid-Atlantic during the two time periods under consideration. In 2010, each limited access scallop vessel is expected to be allocated three trips in access areas within the Mid-Atlantic. This alternative would restrict when those trips can be taken in terms of placing a maximum on the number that can be taken during either June 16-October 14, or June 15 – October 31. The maximum number of trips that can be taken in this window of time will be identified as the maximum number of trips before any fewer trips would have “more than a minor impact” on the fishery as defined by the PDT analyses in Section 2.7.2. Measures to comply with a reasonable and prudent measure cannot have more than a minor impact on the fishery. Most likely this alternative will consider the impact of restricting the fishery to 2 trips, 1 trip and zero trips during these time period. Based on the results of the more than minor analyses, the final alternative will be identified. This restriction would not change any seasonal closures already in place for Elephant Trunk, or under consideration for Delmarva.

- *Option A for time window: June 16-October 14*
This time period is consistent with the full range of dates for all observed turtle takes in the scallop fishery. From 2003-2008 a total of 59 turtles have been observed between these dates for both gear types on both on and off watches.
- *Option B for time window: June 15 – October 31*
This time period is slightly longer than Option A to recognize that turtle migration patterns change over time and space and turtles may be in this area earlier and later than have been observed to date. It has also been noted that one turtle was observed on a research trip in late October 2002 in waters west of the Elephant Trunk Area.

2.7.1.3 Consider a seasonal closure for Delmarva

This alternative would consider a seasonal closure of the entire access area to both general category and limited access scallop vessels. While the RPM only specifies that these measures need to limit effort for the limited access fishery, the PDT recommends this restriction for both fleets to be consistent with the seasonal closure in Elephant Trunk and to further minimize impacts on turtles. Which season is selected and how much this alternative is expected to affect the fishery will need to be evaluated. Measures to comply with a reasonable and prudent measure cannot have more than a minor impact on the fishery.

- *Option A: September 1 – October 31*
- *Option B: October 1 – October 31*

2.7.1.4 Reduce possession limits in ETA and/or Delmarva to reduce fishing time per trip

In most cases a fulltime limited access vessel is allocated a maximum of 18,000 pounds per access area trip. The length of time it takes a vessel to catch that allowance varies, but in high density areas gear is fishing on the bottom a fraction of the time compared to open areas. If the possession limit is reduced, gear will be on the bottom that much less. For example, a 16,000 pound trip is 11% less than an 18,000 pound trip, so it is conceivable that gear will be fishing 11% less on that trip. That is a form of limiting the amount of effort that can be used in access areas in the Mid-Atlantic. The actual possession limits and how many trips should be reduced for this measure will depend on the results of the more than minor analyses (Section 2.7.2). Measures to comply with a reasonable and prudent measure cannot have more than a minor impact on the fishery.

2.7.2 More than minor impact on the fishery

In the Council response to the biological opinion last year, the PDT decided to base “more than minor” change on the percent change in effort shift caused by a specific limitation on effort, and the resulting impact that shift would have on overall fishing mortality imposed by the RPM and Term and Condition. A model was developed last year that estimated changes in F, efforts shifts and impacts on revenue when limitations are placed on the scallop fishery by season and/or area. The PDT recommends that this same approach be used for Framework 21 in terms of assessing which measures meet the requirements of an RPM in terms of whether they have more than a

minor impact on the fishery. After final projections are available for 2010 the PDT will estimate effort shifts from these various alternatives and identify which ones qualify under RPM and what the expected impacts are from each.

2.8 IMPROVEMENTS TO THE OBSERVER SET-ASIDE PROGRAM

Over the last few years several concerns have been raised about the industry funded observer program. Primarily due to timing the Council has not been able to address most of these issues. The PDT identified a few adjustments that could be considered with limited work and analyses.

2.8.1 Prohibit vessels from not paying for observers

Currently there is no official prohibition so a vessel can continue to fish with an outstanding balance. If an observer provider refuses to go on a future trip because of non-payment, NMFS is in the position of having to issue a waiver. The current requirement to pay for an observer does not have sufficient “teeth”; if vessels were not permitted to fish or get a permit the following year because of non-payment of an observer, the incentive to pay would be much higher. This alternative would prohibit a vessel from fishing until all outstanding bills were paid by not issuing a permit to fish in a fishing year after an outstanding bill is due.

2.8.2 Limit the amount of observer compensation general category vessels can get per observed trip in access areas

In recent years there has been an increase in the amount of pounds general category vessels are compensated for observed trips in access areas. The Council was informed that a growing number of vessels seem to be taking advantage of a “loophole” for how compensation is granted. Some vessels seem to leave right before midnight on day 1 and return at some point on day 2 with 400 pounds for the trip plus 400 pounds for each day carrying an observer (total 1200 pounds). This alternative would create a ceiling to discourage overages by limiting the amount of compensation to two fishing days, whatever the daily compensation rate is for an access area.

The PDT discussed several possible ways this could be worded and it was discussed that staff from the Regional Office and Observer Program should discuss what would make the most sense for the regulations. Once final language is recommended it will be brought to the Committee.

3.0 CONSIDERED AND REJECTED ALTERNATIVES

4.0 DESCRIPTION OF AFFECTED ENVIRONMENT – SAFE REPORT

5.0 ENVIRONMENTAL CONSEQUENCES OF ALTERNATIVES