

3.2.2 General category fleet and state waters exemption

Any fishing vessel may obtain an open access general category scallop permit that enables it to retain more scallops than the 40-pound (meat weight) personal use limit. Vessels may retain and land up to 400 pounds (meat weight) or 50 US bushels of scallops per day or trip (if longer than 24 hours). Any legal fishing gear may be used, but scallop dredge and trawl size and configurations are regulated the same as those for limited access vessels, unless the vessel is fishing in an exempted groundfish fishery or a state-exempted scallop fishery. In addition, the scallop possession limit for vessels that fish in the Hudson Canyon and VA/NC Areas with a general category scallop permit or vessels not on a scallop day-at-sea is 100 pounds (meat weight), or 12½ US bushels of in-shell scallops. This 100-pound/12.5 bushel possession limit expires on March 1, 2004.

According to the Northeast Multispecies FMP regulations, vessels with general category permits using a scallop dredge may fish in the Mid-Atlantic regulated mesh area or in the Gulf of Maine Northern Shrimp Fishery Exemption Area. If fishing in the latter area, vessels using scallop dredges may not use dredges with a combined width greater than 10½ feet.

The original purpose of this permit and fleet category was meant to accommodate vessels that opportunistically or seasonally targeted sea scallops, but could not qualify for a limited access scallop permit. The Council also intended that this permit would accommodate incidental scallop catches on longer trips, such as those that target squid and summer flounder.

Under the Sea Scallop FMP, vessels fishing for sea scallops exclusively within state waters are exempt from the day-at-sea restrictions and scallop possession limits, if the state's scallop fishing does not jeopardize the fishing mortality and effort reduction objectives of the Sea Scallop FMP. The Regional Administrator has determined that scallop fishing in the state waters of ME, NH, and MA meet this requirement.

3.2.3 Incidental catches

If a vessel has an open access general category permit, it may retain and land up to 400 pounds (meat weight) or 50 US bushels of sea scallops on any trip, including those targeting other species. In addition, any vessel without a scallop permit may retain and land up to 40 pounds of scallop meats or 5 US bushels of in-shell scallops for personal use.

3.3 *Development of Amendment 10*

Amendment 10 for the Atlantic Sea Scallop FMP was initiated in 2000 to introduce a formal area rotation system for scallop management, building on the results that were observed from the Georges Bank groundfish closed areas in 1994, which coincidentally promoted rebuilding of scallop biomass from an overfished condition, and from the Hudson Canyon and VA/NC Area closures in 1998, which postponed mortality on the strong 1997 and 1998 year classes and led to higher yield and net benefits when re-opened. A system of controlled access with day-at-sea tradeoffs, implemented by Frameworks 11, 13, and 14, were mostly successful and allowed the industry to catch large, valuable scallops during specific seasons (to avoid bycatch problems) while reducing scallop exploitation elsewhere.

NMFS published a Notice of Intent on February 11, 2000 and the Council held Amendment 10 scoping hearings on February 15 to 17, 2000. Three hearings were held in Fairhaven, MA; Norfolk, VA;

and Cape May, NJ. A summary of the salient concerns and recommendations on scallop management issues are shown below.

Fairhaven, MA – February 15, 2000

1. Broad support for using rotational area management to boost yield, i.e. increase the size of the pie.
2. Support for increasing research to improve scallop productivity.
3. Broad support for increasing crew size to improve safety, possibly through a training program for the extra crewmember.
4. Support for reducing discard mortality by prohibiting deck-loading.
5. Majority opposed to new measure that would allocate the resource, since this would bog down Amendment 10 and possibly give fishermen a smaller piece of the pie.
6. All but one were opposed to developing an ITQ system for scallop management.

Virginia Beach, VA – February 16, 2000

1. Support for area-based management to keep the industry from harvesting the seed piles, when and where they occur.
2. Some expressed concern that an area would not reopen to fishing once it was closed to rebuild scallop biomass or allow habitat to recover.
3. Strong support for a change allowing vessels to transit to fishing areas without counting days-at-sea, provided that fishing gear is properly stored.
4. Some spoke in favor of an ITQ system.
5. Support given for a buyback program.
6. 50/50 split about balancing mortality in for a day-at-sea used by a vessel using trawls vs. vessels using dredges. Some thought that bycatch amounts and habitat impacts were less for vessels using trawls, although the trawls caught small scallops better than dredges when the small scallops are abundant.

Cape May, NJ – February 17, 2000

1. Amendment 4 is working, so large changes are unnecessary.
2. Should have access to the Mid-Atlantic closed areas when the scallops are at marketable size.
3. Support given for quota management, with additional research and improved enforcement and monitoring.
4. A buyback program is needed to remove inactive vessel capacity.
5. Support for sorting machines or other methods that would increase survival of discarded scallops.

Following these hearings, the Council began developing an area rotation and other alternatives to improve scallop management. At the time, the resource was rebuilding but had not yet reached the biomass targets. Moreover, several concerns over the scallop access program for the Georges Bank closed areas in 1999 and 2000 arose and the Council intended to address the concerns, allowing future access via Amendment 10. Subsequently, the Omnibus EFH Amendment lawsuit had been settled (see below), which required the Council to address the deficiencies in the Omnibus Amendment in the next amendment to its plans.

After developing and considering a range of area rotation alternatives, the Scallop Oversight Committee recommended one area rotation alternative to the Council in the fall of 2000. This alternative had been proposed by the Fisheries Survival Fund, involving an adaptive area management approach with

flexible boundaries. Other area rotation alternatives were considered, but the committee recommended rejecting them before public hearings due to the perceived superiority of the adaptive, flexible boundary approach.

The Council received the committee recommendations and remanded the issue back to committee, with a charge to develop a broader range of management alternatives, addressing a broader range of issues, including measures to minimize impacts on habitat (see EFH discussion below). Essentially restarting the Amendment 10 process, the Council adopted a set of goals and objectives in January 2001 for Amendment 10, charging the Scallop Plan Development Team (PDT) with developing management alternatives for consideration. The PDT developed a 60-page document with a broad range of alternatives (including measures to minimize bycatch and habitat impacts) and area rotation strategies in July 2001, which were later approved by the Oversight Committee and Council for analysis in the Amendment 10 DSEIS.

NMFS published a Notice of Intent (NOI) to prepare a supplemental EIS for the EFH components of the Northeast Multispecies and Atlantic Sea Scallop Fishery Management Plans on February 1, 2001 (66 FR 8568). The public comment period was open until April 4, 2001. NMFS (and/or the Council) solicited public comment to identify a range of alternatives for identifying and describing EFH and HAPCs and requested information on adverse effects of fishing activities on EFH and HAPCs. NMFS (and/or the Council) solicited public comment on appropriate management measures and alternatives to minimize, to the extent practicable, any adverse effects of fishing on EFH. NMFS (and/or the Council) held one public scoping meeting. The meeting occurred in Gloucester, MA on February 22, 2001. A summary of the public comments and primary issues raised during the meetings is in the Scoping Report (Appendix 2).

While developing a broader range of alternatives and following the EFH scoping hearings, it became apparent that more work was needed on the alternatives to minimize habitat impacts. This issue was remanded back to the PDT for more work, in coordination with other PDTs and technical teams, leading to a joint meeting of the Scallop PDT, the Groundfish PDT, and the Habitat Technical Team (HTT) in January 2002. Further communication between the Council's technical teams led to an approach that the Council adopted in March 2002 and further developed during the rest of 2002. Working with the Council's Habitat Technical Team, several alternatives were developed, including an objective model-based approach whose concept the Council approved for analysis in March 2002. Both model-based and ad hoc closure alternatives were recommended for inclusion and analysis in the DSEIS, which the Council approved in September 2002.

3.4 Definition of Overfishing

Following a two-meeting review by the Council's Scientific and Statistical Committee of the proposed overfishing definition and the status quo overfishing definition, the Committee reached the following conclusions:

1. Under the current overfishing definition policy, while the current closed areas are likely protecting the stock from recruitment overfishing, the stock will not be protected from growth overfishing, that is loss of yield due to excessive fishing mortality rates will occur in the open areas. In particular, closed areas do not justify excessive fishing mortality rates in the open areas. What matters (from a yield per recruit perspective) are the fishing mortality rates in the open areas, not the average fishing mortality (averaged over the open and closed areas).

2. Under the overfishing definition guidelines, we need to define targets and thresholds. The biomass reference points should provide primary protection against recruitment overfishing. The fishing mortality rate reference points should protect against overfishing the stock as well as loss of yield per recruiting scallop (growth overfishing).
3. Permanently closed areas clearly offer a way to help keep the total biomass above minimum biomass thresholds but potentially restrict fishing opportunities. A system of temporarily closed areas (i.e., a system of rotating closures) is likely to enhance fishing opportunities.
4. The proposed overfishing definition developed by the PDT provides an appropriate scheme for addressing area rotation and protects against the loss of yield due to excessive fishing in the open areas. It allows management flexibility both in terms of which areas are opened and the time frame over which the stock is utilized. The committee felt that substantial benefits could be gained from the use of area rotation.
5. The technical details of the overfishing definition and control rule need to be continually evaluated as new information becomes available and new analyses are done concerning issues such as the form of the stock-recruitment relationship and the relationship between yield per recruit based reference points and B_{MSY} .
6. There are some reasonable arguments for moving toward a real time monitoring scheme on an area-by-area basis, but a lot more work needs to be done to take advantage of such a scheme. To do this, real time management is needed in addition to real time assessments.

The DSEIS presented two potential overfishing definitions and evaluated them in a way that provided the Council with a basis to consider a new overfishing definition. The presentation was intended to identify to the Council that its decision to use an area rotation scheme might benefit from the selection of a new overfishing definition designed specifically for area rotation. However, it was not intended to force the Council to select the proposed overfishing definition if management measures selected by the Council, combined with the status quo overfishing definition, could continue to achieve the FMP's objectives and comply with the requirements of the Magnuson-Stevens Act and other applicable laws. Section 3.4 remains unchanged from the DSEIS so that the original choices in front of the Council are not lost. Section 5.1.1 explains the Council's rationale for recommending that the current overfishing definition remains in effect and Section 6.1.1 explains how the management measures proposed in Amendment 10, along with the status quo overfishing definition, would continue to comply with National Standards of the Magnuson-Stevens Act.

3.4.1 Proposed Overfishing Definition

3.4.1.1 Biological reference points and control rule

The biological reference points associated with the overfishing definition control rule are based on F_{max} , the fishing mortality rate that produces maximum yield per recruit, and B_{max} , the average stock biomass that results when fishing is held constant at F_{max} . Current estimates of F_{max} remain unchanged and the fishing mortality target is 80% of F_{max} . Estimates of B_{max} have been updated to include the recruitment (40 – 72 mm observed in the survey from 1982 to 2001).