

Establish a limited entry access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

(A) present participation in the fishery, (B) historical fishing practices in, and dependence on, the fishery, (C) the economics of the fishery, (D) the capability of fishing vessels used in the fishery to engage in other fisheries, (E) the cultural and social framework relevant to the fishery and any affected fishing communities, and (F) any other relevant considerations.

3.0 MANAGEMENT ALTERNATIVES UNDER CONSIDERATION

3.1 MEASURES TO CONTROL CAPACITY AND MORTALITY IN THE GENERAL CATEGORY SCALLOP FISHERY (GOAL #1)

3.1.1 No Action

Under this alternative the general category fishery would remain an open access fishery. No changes to the current permit system for the general category scallop fishery would be implemented under this alternative. Currently there are two general category permit types. A Category 1A scallop permit is for vessels that can possess/land and sell up to 40 pounds of scallop meat per trip. These vessels are not required to have VMS unless required by another FMP they have a permit for. Category 1B scallop permits are required to have VMS and are permitted to possess/land and sell up to 400 pounds of scallop meat per trip. There are numerous other restrictions for general category vessels; some are described in the following paragraph.

Both permit types (1A and 1B) restrict the maximum shell height for in-shell scallops that may be landed to 3.5 inches. There are gear requirements for general category vessels including: maximum dredge width restrictions for certain areas, minimum mesh size for any material on the top of any scallop dredge (10-inch square or diamond mesh), minimum ring size of 4-inch on any scallop dredge, link restrictions, a gear stowage and transit requirement when transiting closed areas, and a seasonal turtle chain mat requirement. Unless fishing in a state water exemption program, general category vessels may only harvest scallops from scallop exemption areas or an open access area. There are four exemption areas (GOM exemption area, Great South Channel exemption area, Southern New England exemption area, and the Mid-Atlantic exemption area). Limited access vessels may fish outside a DAS under general category rules (1A or 1B) after making the correct VMS declaration for the specific trip. All scallop vessels are required to fulfill the observer notification requirements to facilitate the deployment of observers.

Rationale: If the Council determines that current regulations are sufficient to control capacity and mortality in the general category fishery then this alternative would be warranted, but it may not be consistent with all the goals and objectives identified by the Council for this action.

3.1.2 Limited Entry (Objective #2 and #3) (Proposed Action)

In order to fish under general category rules a vessel would have to qualify for a limited access general category permit. All other vessels that do not qualify would be permitted to fish for scallops under incidental catch rules, unless this action adopts specific measures for incidental catch as well. The Council recommends three qualification criteria alternatives, three

qualification time periods, two ways to calculate an allocation amount, and seven overall strategies for allocating access to vessels that qualify for a permit. Figure 2 summarizes the various alternatives and depicts how they can be packaged together.

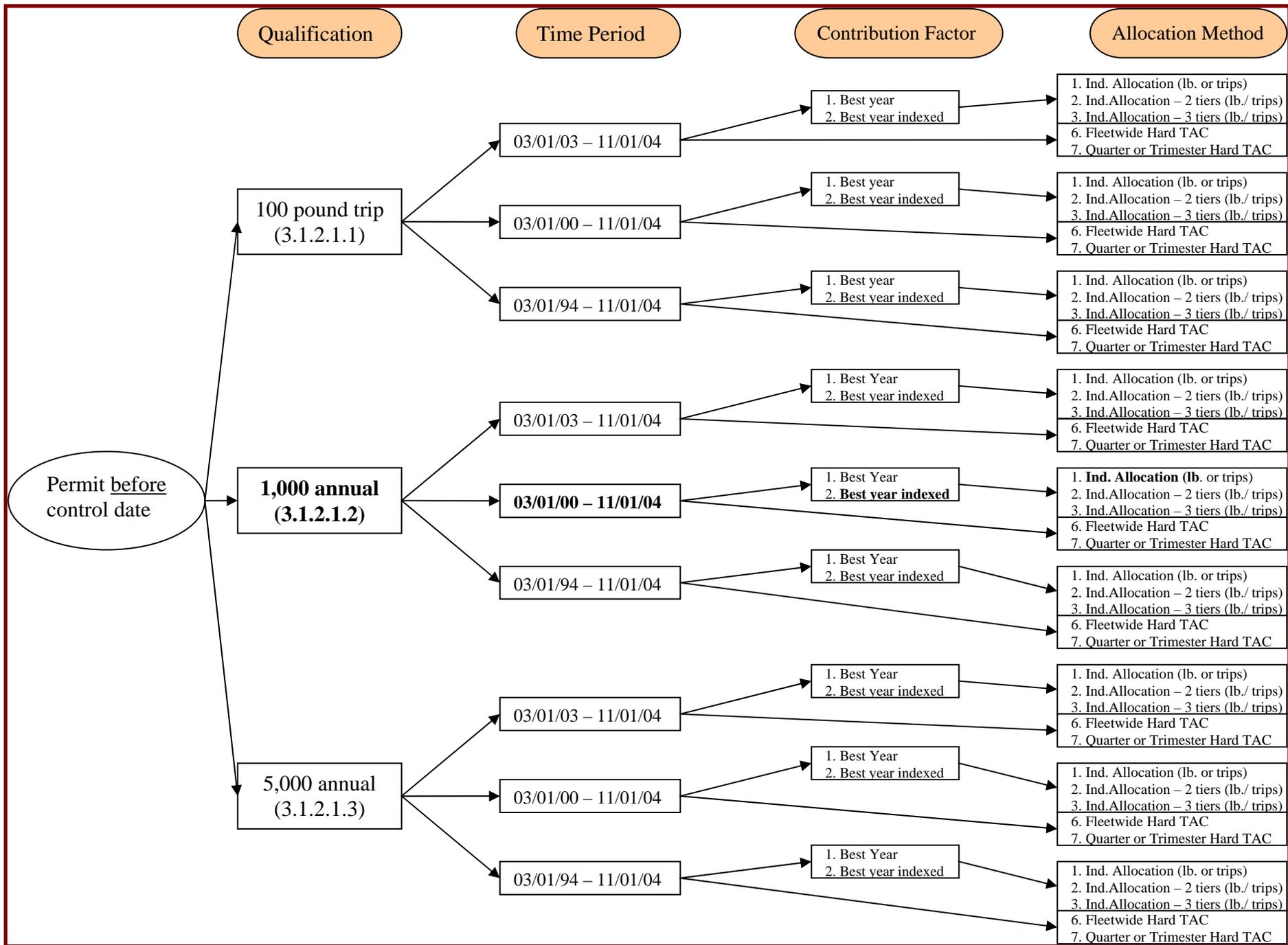
The proposed action includes the 1,000 pound landings criteria during the time period of March 1, 2000 through November 1, 2004. Qualifying vessels will be allocated an individual poundage based on their percent of historical landings from their best year indexed by the number of years they have been active in the general category scallop fishery.

Rationale: This alternative is consistent with the primary goal of this amendment to control capacity and mortality in the general category scallop fishery, as well as Objective #2 to establish criteria to qualify a number of vessels for a limited entry general category permit.

Figure 2 – Summary of alternatives under consideration for a limited entry general category permit (qualification criteria, qualification time period, contribution factor alternatives, and allocation methods) (Proposed action in bold)

(Note: Two stand alone allocation alternatives are not included in this matrix because the qualification criteria and time periods are specified in the alternative - Alternative 3.1.2.4.4 and Alternative 3.1.2.4.5).

(Figure on the next page)



3.1.2.1 Qualification criteria alternatives

The Council recommended that three qualification criteria alternatives be considered. All three alternatives include having a general category scallop permit before the control date and some level of historical landings criteria. If a vessel meets the criteria selected from this section, and its landings are during the qualification time period selected in Section 3.1.2.2, then it will be considered for a limited access general category permit. Qualifying landings must be from the same year a vessel had a federal general category scallop permit. If a vessel does not meet the criteria selected in this section, it can possess scallops under incidental rules, or even possess/land and sell scallops if an incidental scallop permit is adopted under this action (Alternative 3.1.8.2).

Rationale: Three alternatives were considered. The first, landings of 100 or more pounds of scallop meat on one trip, is intended to include vessels with at least one trip above an incidental level of scallop catch while fishing for most other species. This alternative is the most inclusive. The second alternative is annual landings of 1,000 pounds in any fishing year during the qualification time period selected. The intent of this alternative is to include vessels that would be above an annual level of incidental scallop catch while fishing for other species. The last alternative is annual landings of 5,000 pounds in any fishing year during the qualification time period selected. This poundage was selected as an amount that would further reduce capacity as compared to the other alternatives under consideration, and it is the most restrictive in terms of the number of vessels that could qualify.

3.1.2.1.1 Permit before the control date and landings of 100 pounds or more on any one trip during the qualification time period

In order to qualify under this alternative a vessel would have to have had a permit before the control date (November 1, 2004) and landed at least one trip with 100 pounds or more of scallops (in meat weight). This poundage was selected as an amount that would be above an incidental level of scallop catch while fishing for most other species. A vessel would qualify for a limited access permit if it had a permit before the control date and at least one trip of 100 pounds of scallops or more during the qualification time period selected in Section 3.1.2.2.

3.1.2.1.2 Permit before the control date and annual landings of 1,000 pounds in one or more years during the qualification time period (*proposed action*)

In order to qualify under this alternative a vessel would have to have had a permit before the control date (November 1, 2004) and landed at least 1,000 pounds of scallops (in meat weight) during one fishing year. This poundage was selected as an amount that would be above an annual level of incidental scallop catch while fishing for most other species. A vessel would qualify for a limited access general category permit if it had a permit before the control date and could prove scallop landings above 1,000 pounds in any one year during the qualification time period selected in Section 3.1.2.2.

3.1.2.1.3 Permit before the control date and annual landings of 5,000 pounds in one or more years during the qualification time period

In order to qualify under this alternative a vessel would have to have had a permit before the control date (November 1, 2004) and landed at least 5,000 pounds of scallops (in meat weight)

during one fishing year. This poundage was selected as an amount that would further reduce capacity as compared to the other alternatives under consideration. A vessel would qualify for a limited access general category permit if it had a permit before the control date and could prove scallop landings above 5,000 pounds in any one year during the qualification time period selected in Section 3.1.2.2.

3.1.2.2 Qualification time period alternatives

In addition to the qualification criteria described above, a vessel has to meet the landings criteria during one of the three qualification time period alternatives described below. It is understood that landings criteria (100 pound trip, 1,000 annual pounds, or 5,000 annual pounds) must be from the same fishing year that a vessel had a federal general category scallop permit. This restriction was added to prevent a vessel from having a federal general category permit one year and state water only landings a different year during the qualification time period, potentially qualifying for a federal limited entry general category permit with state water landings.

Rationale: Three qualification time period alternatives were considered. The first March 1, 2003 through November 1, 2004 is the most restrictive, and would include recent participants in the fishery prior to the control date (November 1, 2004). The second alternative is March 1, 2000 through November 1, 2004. This alternative was included to consider more historic activity as well as recent activity. Lastly, March 1, 1994 through November 1, 2004 was included as the third alternative, which is the most inclusive. This alternative includes all fishing years since the general category permit was implemented under Amendment 4 through the control date.

3.1.2.2.1 Historical landings from March 1, 2003 through November 1, 2004

In order to qualify for a permit, a vessel would have to meet the landings criteria during scallop fishing year 2003 or scallop fishing year 2004 (but only through the control date, March 1, 2004 through November 1, 2004). The Council recommends this time period as an alternative that would consider recent participants in the fishery. This time period would include more recent investment and dependence on the fishery. The Council recommends that the last fishing year not extend past the control date, so a vessel would have to have had landings during the first eight months of the scallop fishing year. It was discussed that the qualification time period should be consistent with the control date.

3.1.2.2.2 Historical landings from March 1, 2000 through November 1, 2004 (*proposed action*)

In order to qualify for a permit, a vessel would have to meet the landings criteria during scallop fishing year 2000, 2001, 2002, 2003 or the first eight months of scallop fishing year 2004 (March 1, 2004 through November 1, 2004). The Council recommends this time period as an alternative that would consider more historic activity as well as recent activity in the fishery. This time period would include vessels that may have fished several years ago, but not in the last two years as the alternative above. The Council recommends that the last fishing year not extend past the control date, so a vessel would have to have had landings during the first eight months of the scallop fishing year. It was discussed that the qualification time period should be consistent with the control date.

3.1.2.2.3 Historical landings from March 1, 1994 through November 1, 2004

In order to qualify for a permit, a vessel would have to meet the landings criteria during scallop fishing year 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 or the first eight months of scallop fishing year 2004 (March 1, 2004 through November 1, 2004). The Council recommends this time period as an alternative that would consider the entire time period from implementation of Amendment 4 when the general category permit was created through the control date. This time period would include the longest time series as compared to the other alternatives. The Council recommends that the last fishing year not extend past the control date, so a vessel would have to have had landings during the first eight months of the scallop fishing year. It was discussed that the qualification time period should be consistent with the control date.

3.1.2.3 Determination of qualification amount (contribution factor)

Once the universe of vessels is identified based on the qualification criteria and time period described above, there are two alternatives for determining a final qualification amount for each vessel. These alternatives identify the historical fishing level, or contribution factor, that will be used to determine how much allocation a vessel will be allocated as a percentage of the total allocation to the general category fishery. One alternative uses a vessel's best year during the qualification time period, and one that uses a vessel's best year but applies an index of years active in the scallop general category fishery. Several other alternatives were considered during the process but were rejected for various reasons, See Section 3.5.1.1.4 for a description of the other contribution factor alternatives that were considered and rejected.

A vessel will not be allocated a certain amount of pounds equal to their historical activity. Rather they will be allocated a percent of the total general category allocation based on their contribution to historical landings. Once each vessel's contribution percentage is determined, their actual allocation will be scaled up or down depending on what overall allocation is selected for the general category fleet. For example, if the qualification amount determined for the entire fleet is below the amount the Council decides to allocate that fleet, all allocations will be scaled up to equal to final allocation for the general category fleet. Conversely, if the individual qualification amounts are added together and they exceed the total allocation the Council has awarded the general category fleet; individual allocation will be scaled down. Furthermore, since projected yield from the scallop fishery will vary, individual or tiered allocations will vary to match the percent allocated to the general category fleet. The percent of the total projected yield will remain constant, but actual poundage will vary.

Rationale: Two alternatives were considered for this section. One alternative is based on landings from a vessel's best year. A second alternative is also based on landings from a vessel's best year but is multiplied by an index factor related to years active in the fishery. The more years a vessel has been active, the higher the index value. This alternative was added as an option that gives more weight to vessels that have been in the fishery longer. Another alternative related to capping a vessel's contribution was added to prevent some potentially miscoded or suspect records over 50,000 pounds from affecting the allocations for other vessels (Alternative 3.1.2.3.3).

3.1.2.3.1 Allocation based on best year

A vessels qualification would be based on scallop landings from its “best year” during the qualification time period. If a vessels best year is the eight months of 2004, which will count as a full fishing year; landings will not be pro-rated for a full fishing year. Keep in mind that the qualification amount per vessel may not actually be the amount a vessel is allocated. A vessels historical landings will determine the percent of general category landings that individual vessel will be awarded. Their allocation may be further scaled up or down annually depending on the projected yield of the scallop resource and the overall allocation percent the Council selects for the general category fishery.

3.1.2.3.2 Allocation based on best year indexed by number of years active in the scallop fishery (*proposed action*)

A vessels qualification would be based on scallop landings from its “best year” during the qualification time period. Landings from that year would then be multiplied by an index that incorporates “years active” in the fishery. Active is defined as landing one or more pounds of scallops. Two options for this alternative are currently being considered in the document. **Option A** would use the following index values; if a vessel was active only one year landings from their best year would be multiplied by 0.9; two years = 0.95; three years = 1.0; four years = 1.05; and five years or more would be 1.10. Overall, this 10% index value was selected to provide an example that would slightly affect an individual’s allocation based on number of years active in the fishery. **Option B** would use the following index values; if a vessel was active only one year landings from their best year would be multiplied by 0.75; two years = 0.875; three years = 1.0; four years = 1.125; and five years or more would be 1.25 (**proposed action**). Overall this option uses a 25% index value for vessels that have been in the fishery five years or more, so their individual contribution amount would be multiplied by a higher weight compared to Option A. These options increase the contribution factor for vessels that have been active in the fishery for several years; the actual amount allocated is not multiplied by the index value, just their contribution amount. A vessels historical landings (multiplied by the index value) will determine the percent of general category landings that individual vessel will be awarded. Their allocation may be further scaled up or down annually depending on the projected yield of the scallop resource and the overall allocation percent the Council selects for the general category fishery.

3.1.2.3.3 Cap of 50,000 pounds for individual contribution factor

Once the contribution factor is determined for each vessel using any of the alternatives above (Alternatives 3.1.2.3.1 through 3.1.2.3.2) this alternative would cap the contribution factor at 50,000 pounds. Only several vessels have more than this value based on the “best year” analysis of preliminary data. Even though these records have been reviewed, in some cases it is not certain what could have caused the records to be much higher than the possession limit. In some cases these few entries impact the allocation of other vessels, so putting a cap on the contribution factor will prevent some of these potentially miscoded or suspect records from affecting the allocations for all other vessels. This amount was identified as an appropriate level to cap the contribution factor at, so a vessel’s contribution factor could not exceed 50,000 pounds if this alternative is selected. A vessel could be allocated more or less than this amount depending on the projected yield of the scallop resource and the overall allocation percent the Council selects for the general category fishery.

3.1.2.4 Allocation of access for general category limited access qualifiers

Once the universe of vessels is identified, and their individual qualification is determined the Council recommends that several alternatives be considered for allocation. The first system is an individual allocation; an individual amount in pounds (**proposed action**) or total number of trips would be awarded to individuals vessels that qualify. The second system would also be an individual allocation, but there would be two permit types (part-time and full-time). The part-time permit would have a reduced possession limit of 200 pounds, and the full-time permit category would have a possession limit of 400 pounds. All vessels that qualify would receive an equal allocation in pounds or total number of trips depending on which tier they qualify for. The third alternative is a tiered permit system; all vessels that qualify for each tier would receive an equal allocation in pounds or total number of trips, all with a 400 pound possession limit. A fourth stand alone alternative was developed, which is also an individual allocation but access is in quota and is transferable. In addition, all vessels that had a permit before the control date would be given a permit, not just vessels that had landings during the qualification time period. However, a permit that did not have landings history would not be allocated specific access to the fishery, but would be permitted to lease or buy quota from another vessel. This alternative allows individual allocations to be leased. Lastly, the Council recommends that an alternative that allocated a fleetwide hard TAC be analyzed, rather than an individual based system. In addition, a seasonal hard-TAC was considered by quarter or trimester (Alternative 3.1.2.4.7).

Rationale: The Council considered several different strategies of access to the general category fishery in combination with limited access. One alternative is an individual allocation for each qualifying vessel. An individual poundage (**proposed action**) or number of trips would be allocated to each qualifying vessel. This alternative was included as a strategy that would provide flexible access to the fishery for varying levels of participation; every vessel would be allocated access based on their individual level of effort during the qualification time period selected. Under this alternative there is an option to modify the possession limit to 2,000 pounds rather than 400 pounds per trip. This option was included to consider an option that increases flexibility for participants in terms of landings per trip. It may be more cost effective for a vessel to harvest their individual allocation in more than 400 pound trips, so this option was added for consideration. The Council did want to include some possession limit to keep this permit type separate from the existing limited access permit type, where there is no daily possession limit.

There are two additional individual allocation alternatives with different permit types and tiers. One alternative has both a full time and part time permit with different possession limits; this alternative was developed to have one permit type for vessels that have more investment and dependence on the general category fishery, and the second permit type was intended to be for qualifiers that land scallops more incidentally while fishing for other species. The third alternative is also an individual allocation alternative, but there would only be three different allocation amounts (in pounds or number of trips) based on tiers, rather than individual access levels per vessel. This alternative was developed to consider an option that allocated access on an individual basis, but reduced the variation in allocation among qualifiers; only three different allocations would be granted under this alternative, full-time, part-time and occasional, similar to how the limited access scallop fishery. The poundage or number of trips would be the same for all vessels in each tier or permit category.

There are two stand alone allocation of access alternatives. Alternative 3.1.2.4.4 is an individual based allocation, but the intent of this alternative is to award a limited access general category permit to all vessels that had a general category permit from fishing year 2000 through the control date, regardless of landings history. However, specific access to the fishery would be based on historical landings, but if a vessel did not fish and did not land scallops during the qualification time period it would be given a permit and the right to lease or purchase quota from another qualifying vessel. This alternative is more of an individual *transferable* quota system open to all vessels that had a permit from 2000 through the control date. Alternative 3.1.2.4.5 is also a stand alone alternative with specific qualification criteria, and it is intended to be an alternative that uses limited entry, but does not allocate access on an individual basis, rather a fleetwide TAC is set on a quarterly basis and all qualifiers have equal access to the resource until the TAC is reached.

Lastly, there are two hard TAC alternatives that use limited entry but similar to Alternative 3.1.2.4.5 described above, access is not allocated on an individual basis. One alternative is a fleetwide hard TAC for the entire fishing year, and one alternative is a fleetwide hard TAC broken down by quarter. These two alternatives were considered to utilize limited entry but not allocation on an individual or tiered permit system, all qualifying vessels would have the same access rights to the general category TAC.

3.1.2.4.1 Individual allocation for all qualifiers (*proposed action*)

Every vessel that qualifies for a permit based on the qualification criteria, time period, and determination approach would be allocated an individual allocation in pounds (**Option A**) (*proposed action*) or total number of trips (**Option B**). The allocation would be scaled depending on estimated projected yield and the percent that is allocated to the general category fleet in this action. It is possible that all qualifiers could receive a different amount. Furthermore, depending on the qualification criteria, qualification time period and which determination of qualification amount alternative is selected, the number of vessels and individual percent allocations will vary. This alternative maintains the 400 pound possession limit. Alternative 3.1.2.4.1.3 below would increase the possession limit to 2,000 pounds per trip under this alternative. The Council recommends that NMFS round allocations to the nearest ten pound unit if that is determined to improve monitoring and compliance.

For example, if individual allocation were based on the average pounds from the best three years for each vessel from the last 5 fishing years (2000-04, up to the control date), the sum of shares for the qualifiers would be around 2.0 million lbs. In this case, minimum allocation would vary between 35 lb. to 1,696 lb. depending on the qualification criteria (100 pound trip or 5,000 annual pounds) and the maximum allocation would be around 43,000 lb for all three qualification amount alternatives, based on a 2.0 million pound overall allocation.

3.1.2.4.1.1 Cost recovery program

Under both the SFA and reauthorized Magnuson Act of 2007 the agency is mandated to collect up to 3% of ex-vessel value of landed product to cover actual costs directly related to enforcement and management of an individual fishing quota program (Section 304 (d)(2) of the Magnuson-Stevens Act). Since the proposed action will include an allocation of individual quota (based on a percent of total general category catch), the Secretary is authorized and shall collect

a fee to recover the actual costs directly related to the management and enforcement of any individual fishing quota program. The fee shall not exceed 3% of the ex-vessel value of fish harvested under such program. During development of Amendment 11 the Council learned that the preliminary estimates of the cost recovery program for the surf clam quota program, which is also subject to this requirement, were about \$50,000 to monitor and manage that quota program. The Council discussed that a cost of this magnitude would outweigh the drawbacks of allocating in 400 pound trip units.

This action is not required to specify the details of the cost recovery program, but it is understood that a future framework or other appropriate vehicle will specify how the Secretary will collect a cost recovery fee for this individual fishing quota program. The Council will either develop the specific program through a framework action, or the Agency will develop and implement such details in consultation with the Council.

3.1.2.4.1.2 Requirement for a referendum vote under IFQ programs

In Section 303A (c)(6)(D) of the MS-Act reauthorized in 2007 there is a provision for a required referendum vote for new individual fishing quota programs in New England. This provision however, has a “transition clause” of six months after the date the Act was reauthorized (January 12, 2007). So since the Council selected final measures for this individual fishing quota program before the date this provision became effective (July 11, 2007) there is no requirement for a 2/3 referendum vote. The Council has been developing this action since early 2006 and allocation in individual pounds was the final recommendation of the general category advisors.

3.1.2.4.1.3 Modify the 400 pound possession limit to 2,000 pounds per trip

This alternative is only being considered if individual allocations are allocated for limited access general category qualifiers. Any vessel that qualifies would be permitted to land up to 2,000 pounds per trip, regardless of trip length. For clarification, if Alternative 3.1.2.4.1 is selected but allocation is granted in number of trips (Option B) rather than poundage (Option A) and this option is selected, a vessel would be permitted to land up to 2,000 pounds per trip and it would only be charged one trip. Each trip would count as one trip regardless of the total landings up to 2,000 pounds. But if Option A was selected (in pounds) a vessel could be charged up to 2,000 pounds per trip depending on what the vessel landed.

3.1.2.4.2 Individual allocation for two permit types (part-time and full-time)

Every vessel that qualifies for a permit based on the qualification criteria, time period, and determination approach would be allocated an individual allocation in pounds (**Option A**) or total number of trips (**Option B**). The major difference between this alternative and the previous one is that under this alternative there would be two permit types. A vessel would qualify for a full-time permit if they had landings of 5,000 pounds or more in one fishing year during the qualification time period. If Option A is selected, a vessel would be permitted to catch that amount in as many trips as they want with a maximum possession limit of 400 pounds per trip if allocated in pounds. If allocated in number of trips, those vessels would only be allowed to fish up to the total number of trips allocated per vessel in that tier (with a 400 pound maximum per trip).

Another permit type would exist for vessels that meet the criteria to get a limited access permit, but have not had more than 5,000 pounds of scallops in one year. These vessels would get a part-time general category permit and would be allocated individual poundage or number of trips based on their historical activity, but would be restricted to a 200 pound possession limit. Again, these vessels could land as much as they want on any one trip, but not in excess of 200 pounds.

The final allocation in pounds or trips to all vessels in either tier would be scaled depending on estimated projected yield and the percent that is allocated to the general category fleet in this action. Furthermore, depending on the qualification criteria, qualification time period and which determination of qualification amount alternative is selected, the number of vessels and individual percent allocations will vary. See Table 72 for a description of the potential qualifiers and average allocations per permit type under the different qualification alternatives.

3.1.2.4.3 Individual allocation – equal allocation for three tiered permits

Every vessel that qualifies for a permit based on the qualification criteria, time period, and determination approach selected in previous sections would be allocated access to the fishery, but their allocation would be based on a tiered permit system. A tiered permit system would be developed based on landings (best year or best year indexed by years in the fishery) from the qualification time period for vessels that had a permit before the control date. In order to qualify for a certain tier a vessel would have to show landings within that tier for one year only during the qualification time period. The current possession limit of 400 pounds per trip would be maintained for all three tiers. Three tiers would be considered:

Tier 1: 20,000 pounds and above;

Tier 2: 5,000 – 19,999 pounds;

Tier 3: 100 – 4,999 pounds

(Note that the lower tier would adjust based on the qualification criteria selected. For example, if the 1,000 pound criteria were selected then Tier three would be 1,000 – 4,999 (not starting at 100 pounds). Similarly, if the 5,000 pound qualification criteria were selected, then there would only be two tiers (5,000 to 19,999 and 20,000 and above).

See Table 144 for a description of the potential qualifiers and average allocations per tier under the different qualification alternatives.

Option A – Allocation in equal pounds per tier

Each vessel that qualifies for a certain tier would get an equal allocation in pounds. That allocation would be based on the average pounds per vessel in the tier, but scaled, depending on estimated of projected yield and the percent that is allocated to the general category fleet in this action. The percent of the total general category allocation that each tier would receive would depend on their historical share of total general category landings.

Option B – Allocation in equal number of trips per tier

Each vessel that qualifies for a certain tier would get an equal allocation in number of trips. That allocation would be based on the average pounds per vessel in the tier, but access would be allocated based on the number of 400 pound trips that average is closest to. For example, if the

average for tier 3 is 2,500 pounds that would equal 6 trips (400 pounds X 6 trips = 2,400). A vessel would be permitted to land up to 400 pounds per trip, but each trip would count as 400 pounds; the vessel would not be permitted to land part of 400 pounds on more than one trip. The total number of trips allocated would be scaled, depending on estimated of projected yield and the percent that is allocated to the general category fleet in this action. The percent of the total general category allocation that each tier would receive would depend on their historical share of total general category landings.

3.1.2.4.4 Stand alone alternative - Individual transferable quota

The Scallop Committee developed a stand alone qualification and allocation alternative. The intent of this alternative is to award a limited access general category permit to all vessels that had a general category permit from fishing year 2000 through the control date, regardless of landings history. However, specific access to the fishery would be based on historical landings, but if a vessel did not fish and did not land scallops during the qualification time period it would be given a permit and the right to lease or purchase quota from another qualifying vessel. A vessel would also be permitted to lease/sell part of their allocation. The specifics of the alternative are described in the bullets below:

- Any vessel that held a general category permit in any year between 2000 and the control date (November 1, 2004) would qualify for a limited access general category permit.
- Quota would be allocated on an individual basis using any of the qualification amount strategies (best year or best year indexed by years active).
- Quota may be leased or sold to another qualified limited access general category permit.
- Consolidation will be capped at (1%-5%) of quota (in pounds) per vessel.
- Retaining a 400 pound possession limit for all vessels that qualify.
- All purchases and sales of quota need to be in writing and within a fully automated system. Also any leases or purchases of quota must be between vessels within the same vessel baseline (if that measure is approved).

This alternative only has two variations depending on how individual qualification amounts are determined (best year or best year indexed by years active). The qualification criteria and time period are defined in the alternative (permit in any one year between FY2000 and the control date, November 1, 2004).

3.1.2.4.5 Stand alone alternative - Quarterly hard TAC with limited entry

This alternative would include a limited entry program for vessels with a general category permit before the control date and some level of landings that would determine which permit they qualify for. A vessel would qualify for a 200 pound permit if they landed 100-5,000 pounds in any fishing year from March 1, 1994 – November 1, 2004. A vessel would qualify for a 400 pound permit if they landed over 5,000 pounds in any one fishing year from 1994-2004. Qualifying vessels in either category could possess up to 200 or 400 pounds per trip (depending on the category they qualify for) and fish under a quarterly hard TAC. All vessels would have equal opportunity to fish, no individual or tiered allocation would be awarded.

Once the TAC is reached in that quarter all vessels can only possess up to 40 pounds of scallop meats per trip. This alternative was developed at the September 13 Committee meeting as an alternative that would combine limited entry but would not allocate access in pounds or trips to

each qualifying vessel. Rather the fishery would be managed under a quarterly hard TAC, and vessels would be limited to the possession limit of their permit category. Once the quarterly hard TAC is reached, the fishery would close for both permit types. Vessels could then fish under incidental rules, unless they are changed under this action as well. Table 2 describes the seasonal distribution of scallop landings by general category vessels from 2000 through 2005. The average for the years combined is roughly 24% for Quarter 1, 39% for Quarter 2, 23% for Quarter 3 and 14% for Quarter 4. Similar percentages could be considered for the quarterly hard TACs under this alternative. Once a quarterly hard TAC is reached, all vessels (current limited access and limited access general category vessels) could possess scallops under incidental rules, unless that provision is changed in this action.

3.1.2.4.6 Fleetwide hard-TAC under limited entry

A hard TAC would be developed for the general category fleet of the fishery. Under this alternative, only vessels that qualify for a limited access general category permit would be permitted to fish for scallops up to 400 pounds per trip. Based on the criteria and time period selected, a specific universe of vessels would qualify for a limited access general category permit. Those vessels would then have equal access to the resource; no individual or tiered allocations would be awarded. When the Regional Administrator projects that TAC is going to be reached, the fishery would close. All vessels (current limited entry and limited entry general category vessels) would be permitted to land scallops under incidental rules after the hard TAC is reached, unless this action changes that provision.

3.1.2.4.7 Fleetwide hard-TAC by quarter/trimester under limited entry

A hard TAC would be developed for the general category fleet of the fishery. Under this alternative, only vessels that qualify for a limited access general category permit would be permitted to fish for scallops up to 400 pounds per trip. A quarterly/trimester TAC would be set using data from FY2001-2006 to identify the appropriate percentage that should be allocated for each quarter/trimester. That percent per quarter/trimester would be applied to the total TAC awarded to the general category fishery. It is understood that the percent per quarter/trimester could vary per year based on new landings data and future projections. For example, if there are a series of years with anomalous landings, the PDT and Council can adjust future quarterly TACs. Unused TAC from one quarter/trimester would roll-over to a later quarter/trimester in the same fishing year, similar to what is done in the squid fishery (i.e. if quota from the first quarter is not caught, the remaining quota would roll over into the third quarter; if there is unused TAC at the end of the fishing year it does NOT roll-over into the next fishing year). Similarly, if there are any overages, they will be reduced in subsequent quarters and the TAC for the following year will be reduced by that amount the following fishing year if the fishery exceeded the annual TAC. The first quarter/trimester would start on March 1 (unless this action changes the start of the fishing year). When the Regional Administrator projects that the quarterly/trimester TAC is going to be reached, the fishery would close until the start of the next quarter/trimester. Once a quarterly/trimester hard TAC is reached, all vessels (current limited access and limited access general category vessels) could possess scallops under incidental rules, but could not sell them under their general category permit. However, that provision is under consideration in this action and may be changed to prevent vessels from fishing under incidental rules.

Option A

Based on preliminary analysis of all general category landings from the dealer database, landings from Quarter 1 and 3 are similar, Quarter 2 is the highest and Quarter 4 is significantly lower. Table 2 describes the seasonal distribution of scallop landings by general category vessels from 2000 through 2005. The average for the years combined is roughly 24% for Quarter 1, 39% for Quarter 2, 23% for Quarter 3 and 14% for Quarter 4. The percent of landings from each quarter is relatively consistent since 2001, but there seems to have been a shift toward Quarter 2 (June to August) in recent years as compared to landings from 1994 through 1999, and the high landings during Quarter 4 for FY2000 are rare. The DSEIS will include a range of percentages to consider once landings from dealer data as well as landings from just qualifying vessels are examined.

Table 2 - Seasonal distribution by quarter of landings by general category vessels (Dealer data FY2001-06)

FISHYEAR	Q1.Mar-May	Q2.June-Aug.	Q3.Sept.Nov.	Q4.Dec. to Feb.
2001	20%	52%	14%	14%
2002	35%	38%	15%	11%
2003	28%	43%	22%	6%
2004	17%	45%	24%	14%
2005	17%	44%	26%	13%
2006	34%	43%	11%	13%*
All years	25%	44%	19%	12%

*Estimated using dealer data for March 2006- Dec.2006.

Option B

Based on preliminary analysis of all general category landings from the dealer database, landings from Trimester 1 and 2 are similar (just over 40%) and the last trimester is closer to 16%. Table 3 describes the seasonal distribution of scallop landings by trimester for general category vessels from 2001 through 2006. The percent of landings from each trimester is relatively consistent, but landings from trimester 3 have increased in recent years. The DSEIS will include a range of percentages to consider once landings from dealer data as well as landings from just qualifying vessels are examined.

Table 3 - Seasonal distribution by trimester of landings by general category vessels (Dealer data FY2001-06)

FISHYEAR	T1. Mar-Jun	T2.Jul-Oct.	T3.Nov to Feb
2001	46.8%	37.0%	16.2%
2002	50.0%	35.8%	14.1%
2003	40.4%	48.5%	11.1%
2004	31.5%	48.9%	19.6%
2005	29.9%	51.0%	19.1%
2006	48.0%	33.9%	18.1%*
All years	41.1%	42.5%	16.4%

*Estimated using dealer data for March 2006- Dec.2006.

3.1.2.5 Limited entry permit provisions

This amendment considered measures to govern activities such as vessel sales, limited access permit transfers, permit splitting, changes to vessel size, and establishment of vessel baselines to

evaluate changes to vessel size. These measures would apply to all general category permits that qualify for limited access if limited access is adopted under Amendment 11. Unless noted, the provisions under consideration in this section are consistent with those in other limited access fisheries in the Northeast region.

Rationale: During the 1990s, a number of limited access programs were developed in the Northeast region to address the unrestricted growth in the number of commercial vessels fishing for several species. These programs were developed over a period of years, and a variety of approaches were chosen to address important activities such as vessel sales, limited access permit transfers, permit splitting, vessel size and horsepower upgrades, ownership restrictions and the establishment of vessel baseline specifications. Therefore, in 1998, NMFS and the Councils developed a set of amendments to these management programs to establish a consistent approach to these activities in all of the limited access programs. This action, known as the Consistency Amendment, established a single set of regulations in 1999 to standardize the administration of the limited access permit programs. It is understood that this action (Amendment 11) will be consistent with the Consistency Amendment unless noted in this section.

3.1.2.5.1 Fishing History and Permit Transfers

Initial Eligibility: Consistent with other limited access programs established by the Council, initial eligibility for a general category scallop limited access permit must be established during the first year after the implementation of Amendment 11. In other words, the general category scallop limited access permits may not be applied for more than twelve months following the effective date of the final regulations for this action, unless NMFS determined that the application time period should be shorter to improve overall implementation of this program. The Council recommends that NMFS shorten the application period to 90 days. This was suggested as a reasonable length of time for a vessel to apply for a permit and it would help reduce the transition time to a limited entry program.

Use of NMFS Landings Data for Eligibility and Contribution Factor Determination: To prove that a vessel is eligible for the general category scallop limited access program under any landings criteria established through Amendment 11, applicants would have to submit third-party verification of landings history, such as dealer receipts. Since it is difficult to determine the reason some dealers report making purchases from general category vessels landing in excess of 400 pounds for a trip, the Council recommends that NMFS cap landings per trip at 400 pounds for qualification purposes and contribution factor. Landings in excess of 400 pounds could increase future allocations for some vessels, and reduce future allocation for other vessels. Also, a vessel may qualify with illegal landings if it landed more than 400 pounds on a trip and the landing appears in the dealer database. Limited access eligibility will be based on landings in the dealer database. The process would allow a vessel owner to provide information to demonstrate that NMFS relied on incomplete data to deny eligibility and/or limit contribution factor and would be able to verification to disprove the reason for truncating the landings. During the appeal process, if there is controversy over qualification, the Council recommends that NMFS apply/incorporate VTR data with dealer data for qualification purposes.

Landings data from the dealer database will also be used for qualification of limited access vessels for a limited access general category permit. To be clear, limited access vessels do not have a general category permit, so landings for these vessels will be from trips the vessel was not on a DAS (i.e. landings less than 400 pounds per trip). NMFS may later confirm that trips under 400 pounds were on a DAS or not, but for analysis purposes in this action, all trips less than 400 pounds were considered to be landings outside a limited access DAS.

Confirmation of permit history (CPH) for initial general category scallop limited access permit qualification: The owner of a qualifying vessel that has sunk, been destroyed, or been transferred to another person without the general category scallop fishing history but not yet replaced, would be required to apply for a Confirmation of Permit History (CPH) within the first year after the implementation of Amendment 11.

A vessel that sank or was destroyed can meet the “control date” eligibility requirement for a general category scallop limited access permit if it possessed a Federal general category scallop permit before November 1, 2004 (in at least one year during the qualification time period selected). Similarly, an individual who sold a vessel that possessed a Federal general category scallop permit before November 1, 2004, but who retained the general category scallop history through a written agreement signed by both parties in the vessel sale or transfer, can meet the “control date” eligibility requirement for a limited access permit. See Section 3.1.2.5.7 for more discussion of CPH provisions.

Appeals of denial of permit: An appeals procedure will be developed similar to that established for previous limited access programs. An applicant who has been denied a general category scallop limited access permit may appeal in writing to the Regional Administrator within 30 days of the denial. Any such appeal must be based on the grounds that the information used by the Regional Administrator was based on incorrect data, must be in writing, and must state the grounds for the appeal.

Appeal review: The Regional Administrator will appoint a designee who will make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision is the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator, which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator will issue a final decision on the appeal. The Regional Administrator’s decision is the final administrative action of the Department of Commerce.

Status of vessels pending appeal: A vessel denied a general category scallop limited access permit may fish for scallops, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under general category scallop limited access restrictions. The Regional Administrator will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on

the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

3.1.2.5.1.1 No Action

The No Action alternative would maintain the restriction in the permits section of all of the Northeast Region (NER) fishing regulations that prevents a vessel from using its history to qualify more than one vessel for a limited access permit, even when the histories involve different fisheries. Under current restrictions, which would be applied to general category scallop permits under this alternative, a vessel that has a general category history and a limited access eligibility in another fishery, cannot be used to qualify one vessel for a limited access general category scallop permit and another vessel for a different limited access fishery. If a seller retained the rights to another limited access fishery to apply to another vessel, and the buyer and seller agreed that the general category scallop history transferred to the buyer with the sale of the vessel, this alternative would prohibit the buyer from using that general category history to qualify the vessel, or a replacement. The buyer would have to develop its own general category history on the vessel in order to qualify for a limited access general category scallop permit.

This provision would be consistent with other fisheries with limited access permit programs and would mirror the Council's decision in Amendment 1 to the Herring FMP.

3.1.2.5.1.2 One vessel potentially qualifying two permits (*proposed action*)

This alternative would permit one vessel to qualify two limited access general category permits if the following applies: *If a vessel owner that sells his permits to another vessel, but retains the general category scallop history on the purchase and sales agreement, the "seller" should be able to qualify for a permit. The "buyer" cannot qualify under that history; however, if the buyer qualifies under its own landings after the sale but during the qualification period the buyer could be granted a permit as well. This applies to vessels that sold a vessel with only an open access general category permit and/or a vessel with other limited entry permits. Specifically, the current policy used under the Consistency Amendment would not apply; an individual that retained history would be permitted to qualify for a permit and fish under general category on a different vessel.*

Other than this scenario, or unless the Regional Administrator determines otherwise, no more than one vessel may qualify, at any one time, for a limited access permit or CPH based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit or CPH, based on one vessel's fishing and permit history, the Regional Administrator will determine who is entitled to qualify for the permit or CPH.

Rationale: During scoping it was raised that vessels have sold their vessel and permits but retained their open access general category history in the purchase and sales agreement. While in the past this open access history has not been considered for a limited access permit when separated from the vessel, in this case the Council is considering an alternative that would allow the "seller" to qualify for a permit if the history was retained. To prevent two permits being

formed from one vessel, a stipulation was added that the “buyer” cannot qualify unless they have landed their own qualification since the date of purchase.

3.1.2.5.2 Vessel Upgrades

3.1.2.5.2.1 Option 1 (no upgrade restriction) (*proposed action*)

There would be no vessel upgrade restrictions. A vessel that qualifies for a limited access general category permit can replace their vessel to any size, or refit their vessel without any horsepower, gross tonnage or length restrictions. It is understood that if this alternative is selected, but a vessel is under another FMP with a vessel upgrade restriction, those restrictions would still apply.

3.1.2.5.2.2 Option 2 (10:10:20 upgrade restriction)

A vessel may be upgraded, whether through refitting or replacement, and be eligible to retain or renew a general category scallop limited access permit, only if the upgrade complies with the following:

- (1) The vessel’s horsepower may be increased only once, whether through refitting or replacement. Such an increase may not exceed **20 percent** of the horsepower of the vessel’s baseline specifications, as applicable.
- (2) The vessel’s length, GRT, and NT may be increased only once, whether through refitting or replacement. Any increase in any of these three specifications of vessel size may not exceed **10 percent** of the vessel’s baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

3.1.2.5.2.2.1 Establishing Vessel Baselines

If an upgrade restriction is adopted, then establishing a vessel baseline would be necessary. A vessel’s baseline refers to those specifications (Length Overall, Gross Registered Tons, Net Tons, and Horsepower) from which any future vessel size change is measured. Consistent with the other limited access programs that established baselines at the time they were initially implemented, the vessel baseline specifications for vessels that qualify for a limited access general category permit will be the specifications of the vessel that was initially issued a limited access permit as of the date that the initial vessel applied for such permit. The first vessel issued a limited access general category permit, even through replacing another vessel’s eligibility, would be the “baseline vessel”. If vessel upgrades are not implemented under this action, this measure is not relevant.

3.1.2.5.3 Vessel Replacements (*proposed action*)

The term *vessel replacement*, in general, refers to replacing an existing limited access vessel with another vessel. In addition to addressing increases in vessel size and horsepower, the consistency amendment also established a restriction that requires that the same entity must own both the limited access vessel (or fishing history) that is being replaced, and the replacement vessel. In order to maintain consistency with the other regional limited access programs, this provision will be adopted for the general category scallop limited access program.

3.1.2.5.4 Stacking of Permits or consolidation of access privileges

The Council considered several alternatives for “stacking” or allowing vessels to consolidate access privileges on one vessel (in pounds or trips). It was assumed that the 400 pound possession limit would still be in effect even if stacking is approved unless Alternative 3.1.2.4.1.3 (with the IFQ alternative) is approved (alternative to modify the possession limit restriction to 2,000 pounds per trip).

The Council clarified several aspects of the “stacking” alternatives at the final Council meeting in June 2007. First, the alternatives in this section, namely the proposed action to allow a vessel to stack up to 2% of the total general category allocation on one vessel is for limited access general category vessels only. These alternatives do not apply to current limited access vessels that may also qualify for a general category permit under this action. Current limited access vessels would not be permitted to stack or consolidate general category poundage on one vessel above what they are allocated. Second, it was clarified that stacking or consolidation of allocated poundage could be on a permanent or temporary basis (annually). Third, a vessel could only lease/sell their entire allocation, not a portion of their general category allocation. Last, when a vessel wants to permanently stack a limited entry general category permit it must also either transfer all other federal limited access permits or permanently cancel such permits.

3.1.2.5.4.1 No Action

An individual would not be permitted to stack limited access general category permits onto one vessel. Only one permit could be used per vessel. If an individual qualifies for more than one permit, (i.e. an individual currently owns more than one vessel that qualifies for limited entry) he/she must fish those permits on different vessels.

Rationale: This is currently in place for all other limited access programs in this region.

3.1.2.5.4.2 Allow stacking limited to two permits

A vessel that qualifies for more than one limited access general category permit, or leases/purchases additional quota (if permitted in this action) would be permitted to stack their allocation onto one vessel. For example, if an individual currently owns two vessels and both qualify for a general category permit, that individual would be permitted to stack their access privileges onto one vessel. This alternative is not specific to permit type or amount of quota. So conceivably, two permits with the largest allocation could be stacked, and two permits with the smallest allocation could be stacked.

Rationale: This alternative was developed to allow some level of stacking, but to limit the level of potential consolidation to two permits. It was discussed that if many vessels qualify for a limited access permit and allocations are low, the Council may want to consider some level of stacking to allow vessels to consolidate to increase flexibility and reduce operational costs.

3.1.2.5.4.3 Allow stacking up to 60,000 pounds or 150 trips per vessel

This alternative would allow a vessel to stack up to 60,000 pounds or 150 trips (depending on how access is allocated) onto one vessel. This amount was identified as a “full-time” amount of general category scallop landings or number of trips on an annual basis. Therefore, if an individual has three vessels that qualify; Vessel A with 20,000 pounds, Vessel B with 30,000 and

Vessel C with 40,000 pounds; that vessel could stack the quota from Vessel A and B, Vessel A and C, but not Vessel B and C because it would be in excess of 60,000 pounds. Table 153 compares the impacts of this stacking alternative.

Rationale: This alternative was developed to allow some level of stacking, but to limit the level of potential consolidation to 60,000 pounds or 150 trips (depending on how access is allocated) per vessel. During development of this action, this level of landings was identified as a level of effort for a “full-time” general category vessel.

3.1.2.5.4.4 Allow stacking up to 2% of total general category allocation per vessel (proposed action)

This alternative would allow a vessel to stack up to 2% of the total general category allocation per vessel. For example, if 3.0 million pounds is allocated to the general category fishery then one vessel is not permitted to have more than 60,000 pounds per vessel. The maximum poundage permitted per vessel will change from year to year depending on what the total general category allocation is, but the 2% maximum restriction will remain the same. So if the total allocation became 2.0 million the following year, the maximum stacking restriction per vessel would be 40,000 pounds.

Rationale: This alternative was developed to allow some level of stacking, but to limit the level of potential consolidation to 2% of the entire general category allocation per vessel. Current estimates of scallop catch are about 50 million, so 5% of that value (5% is the proposed action for general category allocation) is 2.5 million pounds or 50,000 pounds per vessel. Fifty-thousand pounds is less than the highest landings per vessel in the dealer database now, but if total landings were restricted to 2.5 million pounds 2% would provide some level of consolidation to increase flexibility for participating vessels.

3.1.2.5.5 Voluntary Relinquishment of Eligibility (proposed action)

The consistency amendment included a provision to provide a mechanism for a vessel owner to voluntarily exit a limited access fishery. In some circumstances, it could allow vessel owners to choose between different permits with different restrictions without being bound by the more restrictive requirement (e.g., lobster permit holders may choose to relinquish their other northeast region limited access permits to avoid being subject to the reporting requirements associated with those other permits). If a vessel’s limited access permit history for the general category scallop fishery is voluntarily relinquished to the Regional Administrator, no limited access permit for that fishery may be reissued or renewed based on that vessel’s history or to any other vessel relying on that vessel’s history. IN addition, if a vessel does not renew their permit annually that limited entry in effect is relinquished indefinitely under this program.

3.1.2.5.6 Permit Splitting (proposed action)

The consistency amendment established a measure that requires limited access permits issued to a vessel to stay together with the vessel as a “package.” They may not be split apart and distributed among other vessels by making a vessel replacement because that would increase overall fleet capacity. Therefore, all limited access permits must be treated as a “package” for the purposes of vessel replacement or for the purposes of limited access permit retention when a vessel is sold or transferred. The general category scallop limited access program will adopt this

restriction upon implementation of Amendment 11; therefore, a vessel could not sell a limited access general category permit separately from other limited access permits the vessel may have.

3.1.2.5.7 Permit Renewals and Confirmation of Permit History (CPH) (*proposed action*)

Continued Eligibility: This section refers to permit renewals and CPH once a vessel qualifies for a limited access general category permit. A vessel owner must maintain the limited access permit status for an eligible vessel by renewing the permits on an annual basis or applying for issuance of a CPH. A CPH is issued to a person who does not currently own a fishing vessel, but who has legally retained the fishing and permit history of the vessel for the purpose of transferring it to a replacement vessel at a future date. Annual renewal is considered important in establishing participants who have an active interest in maintaining their ability to participate in a limited access fishery, and conversely allowing permits to lapse and be cancelled for those who do not. The CPH is important in this regard because it provides a benefit to a vessel owner by securing a vessel history through a registration system.

Therefore, to be eligible to receive a general category scallop limited access permit, a vessel must have been issued a general category limited access permit in the preceding year, be replacing a vessel that was issued a general category scallop limited access permit for the preceding year, or be replacing a vessel that was issued a confirmation of permit history (CPH – see below). If a vessel's limited access permit history is cancelled through failure to renew or otherwise, no limited access permit for that fishery may be reissued or renewed based on that vessel's history or to any other vessel relying on that vessel's history.

All general category scallop limited access permits would be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a CPH has been issued (see below). Application for such permits must be received no later than 30 days before the last day of the fishing year.

Confirmation of permit history (CPH): A person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements for the general category scallop limited access permit in question. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel.

An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit. A CPH will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has applied for or been issued previously a limited access permit is a final agency action subject to judicial

review. Information requirements for the CPH application are the same as those for a limited access permit. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to the relevant upgrade restrictions.

3.1.2.5.8 Percentage Ownership Restriction

3.1.2.5.8.1 No Action

Qualifiers would not be constrained by a maximum percent ownership restriction. An individual or corporation would not be restricted by a maximum percent ownership restriction.

3.1.2.5.8.2 Maximum of 1-5% of total general category allocation (*proposed action*)

This alternative would establish some maximum that would be determined later based on the number of vessels that qualify for a general category permit. The DSEIS considered a range of (1-5%) because the number of permits that are likely to qualify was unknown until the final decision was made at the June Council meeting. **After the Council selected a final recommendation that would qualify approximately 369 vessels, the Council selected 5% as the final proposed action for the percentage ownership restriction provision.** This restriction would prevent an individual or corporation from having ownership interest in more than 5% of the total general category allocation. It was pointed out during development of this alternative that if an individual or corporation owns more than the limit when the plan is implemented, they would be grandfathered in. **Table 153** compares the impacts of this percentage ownership restriction range. This provision will not impact current limited access vessels because they are already restricted to a maximum ownership restriction of 5% of limited access permits.

3.1.2.5.9 Multispecies permit restriction would not apply (*proposed action*)

This section was included to clarify that vessels that qualify for a limited entry general category scallop permit would not be restricted by the regulations under the multispecies plan that prohibit a vessel from having both a limited access multispecies permit and a limited access scallop permit. Amendment 5 to the Multispecies FMP prohibited a vessel from having both unless that vessel qualified as a combination vessel. If limited entry is adopted under Amendment 11 for the general category fishery a vessel would be permitted to have both a limited access multispecies and limited access general category scallop permit. Since fishing under general category rules has been a component of fishing activity for many multispecies vessels, the current multispecies permit restriction should not apply for a limited access general category permit. Therefore, if a limited access multispecies vessel qualifies for a limited access general category permit, that vessel would not have to relinquish their multispecies permit.

3.1.2.6 Measures to reduce incentive for limited entry qualifiers to fish for scallops with trawl gear

Rationale: The measures in this section were developed to consider alternatives that would reduce incentive for qualifying vessels to target scallops with trawl gear. One option would reduce the potential expansion of vessels to target scallops using trawl gear because it would only allow vessels that qualify with trawl gear to fish with trawl gear under a limited entry general category scallop permit. Another alternative would reduce the possession limit for

qualifying vessels that use trawl gear to provide incentive to switch to dredge gear. A third alternative would allow qualifying vessels to use trawl gear but would indirectly limit it to vessels targeting other species. Specifically, scallops could only be 5% of the total regulated species onboard.

3.1.2.6.1 No Action (*proposed action*)

All limited access general category qualifiers would be permitted to use trawl gear and land up to 400 pounds of scallop meat per trip, unless restricted by other FMPs (such as the scallop exemption areas under the NE Multispecies FMP). All limited access general category qualifiers would be allowed to use trawl gear to fish for scallops and could land up to 400 lb. of scallop meats per trip, or other possession limit if adopted (e.g. 200 pounds for part-time permit or up to 2,000 pounds per trip for alternative under consideration for individual allocation only (Alternative 3.1.2.4.1.3)

3.1.2.6.2 Prohibit a vessel from switching to trawl gear if it qualified under dredge gear

If a vessel qualifies for a limited access general category permit while using dredge gear, it would be prohibited from switching to net gear. Specifically, if a vessel used dredge gear at all to fish for scallops during the qualification time period, that vessel would qualify for a dredge only permit. Likewise, this permit would not be able to be sold to a vessel that plans to catch scallops with trawl gear. Once a permit is given to a vessel that qualified using dredge gear that access to the fishery would be restricted to dredge gear only. If a vessel qualifies for a trawl permit they would be permitted to land up to 400 pounds of scallop meat per trip using trawl gear, or other possession limit if adopted (e.g. 200 pounds for part-time permit or up to 2,000 pounds per trip for alternative under consideration for individual allocation only (Alternative 3.1.2.4.1.3)

3.1.2.6.3 Lower possession limit for vessels that qualify for a limited access general category permit and fish with trawl gear

This alternative would reduce the incentive to fish for scallops using trawl gear, but provide some level of landings to reduce scallop bycatch for vessels that fish with a trawl for other species and catch scallops incidentally. The Scallop PDT reviewed available data and provided the alternatives below as possible “lower possession limit” alternatives.

The Scallop PDT analyzed VTR data from 2005 for trips landing scallops with trawl gear. Most trips where scallops were landed using trawl gear were targeting other species; however there are a number of vessels that target scallops using trawl gear. In summary, when general category vessels with trawl gear were targeting other species like groundfish, monkfish, skate, squid and scup, about 50% of the trips landed less than 300 pounds per trip. In fact, for many of the other species, average scallop landings were lower. Table 4 summarizes the average scallop landings per trip by target species for general category vessels using trawl gear. Based on these preliminary analyses the Scallop PDT recommended the following two alternatives (250 and 300 pounds) as a reduced possession limit to reduce the incentive to fish for scallops using trawl gear.

3.1.2.6.3.1 Reduced possession limit of 250 pounds of scallop meat (31.25 bu.)

3.1.2.6.3.2 Reduced possession limit of 300 pounds of scallop meat (37.5 bu.)

Table 4 - Percentiles of scallop landings per trip by target species for general category vessels using finfish trawls.

Target species or group	Trips	Vessels	Percentile						
			5%	10%	25%	50%	75%	90%	95%
Yellowtail flounder	152	68	50	60	114	231	369	400	400
Groundfish	163	69	45	50	65	100	150	380	400
Summer flounder	178	59	50	63	111	300	340	394	400
Skate	37	18	68	80	100	273	396	400	400
Monkfish	91	54	50	50	100	206	347	400	400
Scallops	2778	84	50	220	300	300	398	400	400
Scup	14	6	26	31	79	275	324	400	400
Loligo	9	7	59	73	150	300	300	314	342
Lobster	1	1	*	*	*	*	*	*	*
All	3423	203	50	97	286	300	395	400	400
All but scallops	645	160	50	50	90	180	340	400	400

3.1.2.6.4 A limited access general category qualifier can fish with trawl gear, but scallops can not be more than 5% of total regulated species onboard

A vessel can use trawl gear and land up to 400 pounds of scallop meat per trip if they qualify for a limited entry general category permit, but scallop meat cannot be more than 5% of total weight of regulated species onboard. [Note: if a different possession limit is adopted under this action (e.g. 200 pounds for part-time permit or up to 2,000 pounds per trip for alternative under consideration for individual allocation only (Alternative 3.1.2.4.1.3), then 5% of that amount would be permitted. Regulated species (excluding sea scallops) includes all species managed under an FMP in New England and the Mid Atlantic (including species managed under the Atlantic Bluefish FMP, Atlantic Herring FMP, Atlantic Salmon FMP, Red Crab FMP, Squid Mackerel and Butterfish FMP, Monkfish FMP, Multispecies FMP, Skate FMP, Dogfish FMP, Summer flounder, Scup and Black Sea Bass FMP, Surfclam and Ocean quahog FMP, and Tilefish FMP). Species such as croaker are not technically a regulated species, so that species would not apply to the 95% of regulated species required onboard.

3.1.2.7 Sectors and Harvesting Cooperatives

3.1.2.7.1 No Action

A process for future sector allocations in the general category scallop fishery would not be established in Amendment 11.

3.1.2.7.2 Establish a process for sectors in the general category scallop fishery (*proposed action*)

This alternative would establish a process for the creation of fishing “sectors” and the allocation of TAC shares to the sectors. Groups may be formed around common fishing practices, common homeport or landing port, common fishing area, common marketing arrangements, etc. This section provides details on eligibility criteria, operations plan elements, monitoring and enforcement of sectors, allocation rules, and other related issues. How the sector chooses to harvest its allocation could include a wide range of arrangements, including, but not limited to, a

plan that simply sub-divides the TAC or a measure of effort among the vessels. While Amendment 11 was being developed the Council formed a Sector Committee to develop overall sector policies for this region. The Sector Committee developed a series of principles that were later approved by the Council to guide sector management. Any individual interested in applying for a general category scallop sector in the future should review and consider the approved principles when developing a sector application. In addition, the Council recommends for the time being that the 400 pound possession limit remain in effect for all vessels that apply to participate in a sector.

Rationale: The purpose of establishing this process is to allow greater opportunities for fishery participants to proactively engage in resource governance, to provide greater flexibility for participants, to guide the appropriate development of capacity, and, last, to create outcomes that are more socially and economically relevant for fishing groups within the biological limitations of the fishery (TACs).

3.1.2.7.2.1 Participation

Only vessels with limited access general category permits are eligible to form sectors. Sectors are self-selecting, meaning that participation in a sector is voluntary, and that a set of mutually agreed upon vessels are eligible to participate. Any interested group that meets the eligibility criteria can submit a proposal for a sector. To initiate the process of sector creation, a group (two or more) of permit holders must agree to cooperate and submit a binding plan for management of that sector's allocation of TAC. Vessels electing to enter a sector are expected to cooperate and decide how to manage the allocation. Vessels that do not choose to participate in a sector will remain in the competitive "common pool" fishery and will fish under the un-allocated TAC(s).

Participation by non-limited access general category vessels in the sector is subject to approval by the Council as part of the action that implements the sector allocation, provided the details of such participation are specified in the sector's operations plan; however at this time the Council does not endorse participation by non-limited access qualifiers, but will consider it if part of an actual proposal. The harvest of a sector allocation may not be limited only to sector members. A sector operations plan may specify that the sector will contract with non-sector vessels to harvest the sector allocation. In this case, if the Council endorses this approach, the landings history of the contracted vessels would not be used in the calculation of future sector shares, the contracted vessels may not build scallop catch history for themselves, and the operations plan will specify the contract details that will bind the contractor vessel to the rules of the sector.

3.1.2.7.2.2 Formation of a Sector – Operations Plan

A group that wants to form a sector and receive an allocation is required to submit a legally binding operations plan to the Council, which will ultimately require approval from the NMFS Regional Administrator. The operations plan must be agreed upon and signed by all members of the sector and, if approved, will constitute a contract.

The operations plan submitted by a self-selecting sector will be required to have, at a minimum, the following components:

- A list of all participants;

- A contract signed by all participants indicating their agreement to abide by the operations plan;
- An entity name, address, phone number, and the name and contact information for a sector representative (a manager or director) that NMFS can contact regarding sector management issues;
- A plan explaining how the sector will harvest its allocation, including contracts and methods to inform NMFS of changes in those arrangements over the year;
- The original distribution of catch history of vessels in the sector (maintaining vessel data confidentiality);
- A plan detailing how the sector will avoid exceeding its allocated TACs – this plan should include provisions for monitoring and enforcement of the sector regulations, including documentation of both landings and discards;
- Rules for entry to and exit from the sector, including sanctions and procedures for removing members for contract violations;
- Procedure for notifying NMFS if a member is no longer part of the sector for specified reasons;
- A process through which the operations plan can be amended by sector members (i.e., how the sector will make decisions to amend their operations plans);
- If the sector plans to contract for harvesting services with vessels other than those in that sector (see Monitoring, Enforcement, Transparency), details of such arrangements should be described in the operations plan;
- An appropriate NEPA document assessing the impacts of forming the sector is also required and must be submitted to NMFS through the Council – the development of the NEPA document is the responsibility of the applicants.

3.1.2.7.2.3 Sector Review, Approval, and Revocation

A sector will submit its operations plan and NEPA document to the NMFS Northeast Regional Office and the Council no less than one year prior to the date that it plans to begin operations. The Council will consider this plan in the course of the periodic framework adjustment or specification process and may, if approved, implement it through either of those processes. After Council approval of a sector, the details of its operation will be primarily addressed between the sector and NMFS, although the Council will review and provide comment on these details.

The Regional Administrator may withdraw approval of a sector, after consultation with the Council, at anytime if it is determined that sector participants are not complying with the requirements of an approved operations plan or that the continuation of the operations plan will undermine achievement of fishing mortality objectives of the Sea Scallop FMP. Withdrawal of approval of a sector may only be done after notice and comment rulemaking as prescribed by the Administrative Procedure Act.

A sector is required to resubmit its operations plan to the NMFS Regional Office by a specific date (to be determined later based on final decision in this action on date of fishing year) every year, whether or not the plan has changed. NMFS may consult with the Council and will solicit public comment on the operations plan for at least 15 days, through proposed rulemaking in the *Federal Register*. Upon review of the public comments, the Regional Administrator may

approve or disapprove sector operations, through a final determination consistent with the Administrative Procedure Act.

3.1.2.7.2.4 Allocation of TAC to Sectors

The sector allocations represent a percentage share of TAC(s), not absolute amounts. TACs are established through the fishery specification process, which is currently a biennial process. If declining stock conditions or other factors result in the need to reduce fishing mortality, the TACs will likely be reduced accordingly. In this case, the sector's percentage share of the TAC will not change, but the amount of TAC (pounds of scallop meat) that this share represents may decrease due to reduced TACs. The same is true if the TACs increase for any reason. The calculations used in determining a sector's share are based on a vessel's qualification amount (depending on which alternative is selected that could be their best year or best year indexed by years active in the fishery).

Sector Share Determination

Sector shares cannot be calculated until NMFS makes its final determination of vessels eligible for limited access under the provisions of this amendment. When a sector proposal is submitted, NMFS will verify the qualification landings levels per vessel wanting to join a sector. The averages for vessels wanting to join a particular sector will be added together and divided by the sum of the qualification average. When this fraction is multiplied by 100, the result is the sector's percentage share of the TAC (see example below).

Membership Changes

If a pre-existing sector accepts a new member, the percentage share brought to the sector is based on that vessel's average qualification landings at the time it joins the sector (i.e., the vessel is treated as a 'sector of one' and a share based on the appropriate adjusted TACs is calculated. This new single-vessel-sector share is added to the pre-existing sector). If a vessel leaves a sector, that sector's share is reduced by the individual vessel share the exiting vessel had when it joined the sector.

Interaction Between Sectors

A vessel may not be a member of more than one sector.

Illustrative Example

Assumptions:

- 720 vessels qualify for a limited access general category permit;
- 10 vessels wish to form a sector in 2010;
- Total TAC for the general category fishery is projected to be 5.0 million pounds in 2010;
- The sum of the sector vessels' qualification average is 100,000 pounds (2%) of general category allocation.

This sector would be allocated 100,000 pounds in 2010. The remaining 4,900,000 pounds would be allocated to the rest of the limited access general category permit qualifiers in the "common pool".

3.1.2.7.2.5 Monitoring, Enforcement, and Transparency

It will be the responsibility of each sector to track its activity and enforce any provisions adopted through procedures established in the operations plan and agreed to through the sector contract. Therefore, sector contracts should describe graduated sanctions including grounds for expulsion.

Once a vessel enters into a sector, it cannot fish during that fishing year under the regulations that apply to the common pool. Additionally, vessels cannot shift from one sector to another during a single fishing year. Therefore, if a vessel leaves a sector for whatever reason, it cannot participate in the general category scallop fishery during the remainder of that fishing year.

For the purposes of enforcement, a sector is a legal entity that can be subject to NMFS enforcement action for violations of the regulations pertaining to sectors. Vessels operating within a sector would be responsible for judgments against the sector. Sector operations plans will specify how a sector will monitor its landings to assure that sector landings do not exceed the sector allocation. At the end of the fishing year, NMFS will evaluate landings using VMS, and any other available information to determine whether a sector has exceeded any of its allocations based on the list of participating vessels submitted in the operations plan. If a sector exceeds its TAC, the sector's quota will be reduced by the overage in the following year, and the sector may be subject to additional enforcement action. If the sector exceeds its TAC more than once, the sector's share may, after consultation with the Council, be reduced or the sector's authorization to operate will be withdrawn by NMFS.

3.1.2.7.2.6 Trading

Permanent or temporary transfers of quota between sectors or between sector and non-sector participants are not permitted. For purposes of harvesting a sector allocation only, vessels under contract to a sector are assumed to be part of that sector for the duration of that contract.

3.1.2.7.2.7 Movement Between Sectors

A vessel can only participate in one sector during a fishing year. Once a vessel elects to be in a sector or fish in the common pool for a given area, that vessel must remain with the sector or common pool for that area for the rest of the fishing year. Each sector will set its own rules on movement into and out of the sector.

3.1.2.7.2.8 Other Provisions

If a sector is approved, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or owner belonging to the sector. The LOA shall authorize participation in the sector operations and may exempt participating vessels from one or more Federal fishing regulations as appropriate. The LOA also may include requirements and conditions deemed necessary to ensure effective administration of and compliance with the operations plan and the sector's allocation.

3.1.2.7.2.8.1 Possession limit restriction

The Council supports maintaining the 400 pound possession limit for vessels in a sector. For the time being, the Council will not approve an application for a sector program if it includes removal or increase in the 400 pound possession limit. Currently the Council supports the 400 pound possession limit to maintain the nature of the general category fishery.

3.1.2.7.2.9 Measures to address “Excessive shares”

National Standard 4 of the Magnuson-Stevens Act states that:

“If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be... carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.”

NOAA’s guidelines on the *avoidance of excessive share* portion of this standard (see 50 CFR Ch. VI: 600.325) state that “an allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.”

Neither the language in National Standard 4 nor the NOAA guidelines specifically define “excessive share.” A GAO report on Individual Fishing Quotas (GAO report # GAO-03-159) recommends that the NOAA develop guidance on factors to consider when regional councils define what would constitute an excessive share in future IFQ programs. In response to the GAO recommendation, NOAA agrees but notes that caps are not necessarily appropriate in all new IFQ fisheries. NOAA also stated that it will conduct research to provide guidance on the three categories of factors: (1) market effects, (2) distributional issues, and (3) equity considerations.

3.1.2.7.2.9.1 20% maximum allocation per sector (*proposed action*)

One sector could not be allocated more than 20% of the total general category allocation. Council decided to include this alternative to be consistent with the sector program in the multispecies plan. The maximum percent value could be changed in a future framework, perhaps after the Council considers an overall sector strategy; which it may do in the near future.

Rationale: This option was included to consider a maximum allocation per sector that would be consistent with the other sector management program in the region (Multispecies FMP). This amount may be revisited if and when the Council convenes a Committee in 2007 that is expected to develop standards and principles for sector management.

3.1.2.8 Interim measures for transition period to limited entry

Previous limited entry programs allowed one year for vessels to apply for a permit after the action is implemented. In addition, vessels can appeal for a permit if denied one and/or wish to appeal their awarded allocation for another period of time. It is possible to shorten the application and appeals process, but even so, the ultimate pool of participants in a limited entry general category program will not be known until about 18-24 months after the action is implemented (i.e. FY2010). In addition, since this action considers allocating access to qualifying vessels as a percentage of the total scallop catch allocated to the general category sector, until the final universe of vessels is known, the percent of access (in pounds or trips) per vessel can not be determined with certainty since additional vessels may qualify under the appeals process. The Council is considering two alternatives for interim measures until a limited entry and allocation program could fully be implemented.

3.1.2.8.1 Transition to limited entry alternative with a hard-TAC (*proposed action*)

This alternative would implement the limited entry program first, and then phase in the individual allocation part of Amendment 11 (if adopted) until the final universe of vessels is known. Vessels would be identified as qualifying vessels and they would be permitted to fish under existing general category rules until a temporary hard-TAC of 10% of the total projected annual scallop catch was reached. Vessels that had a permit before the control date and appeal for a permit would be permitted to fish under the hard-TAC as well. No other vessels would be permitted to fish for scallops under general category during this transition period to limited entry. Once the final universe of vessels is known, then the other components of this program could be implemented like allocation of TAC to the general category fishery and allocation of access to qualifying vessels.

If limited access vessels (current full time, part-time and occasional vessels) are permitted to qualify for a limited entry general category permit under Amendment 11, a similar approach would be taken for these vessels. Since scallop landings from this component of the fishery have been considered under general category scallop catch in the past, it would make sense that these qualifying vessels (and any under appeal) could also fish under the interim 10% TAC for general category.

Option A – quarterly hard-TAC (*proposed action*)

The Council decided to recommend the 10% hard-TAC be divided into quarterly TACs to reduce derby fishing. The quarterly hard-TACs will be based on historical general category landings from FY2000-2004. It is assumed that the details of this interim quarterly hard-TAC will be similar to the quarterly hard-TAC developed in Amendment 11 (Alternative 3.1.2.4.7).

Rationale: Since implementing a limited entry program usually takes time this alternative would provide a way to control mortality and capacity in the general category fishery until the program could be fully adopted. Amendment 11 includes analyses of several hard-TAC options combined with limited entry (on an annual basis, by quarter, or trimester). While there may be some short-term negative consequences of a hard TAC on qualified vessels, this alternative would control overall mortality and impacts would be temporary. The Council selected 10% because that is a value that has been used in recent projections for scallop mortality in the projection model. In the last few years the Scallop PDT has assumed that about 10% of available catch would be landed by general category vessels based on recent trends in landings and stock condition. The Council decided to recommend this level for the interim transition period to limited entry to reduce impacts on current general category vessels; this number is not an indication of what the Council will ultimately select for the allocation decision in Section 3.1.7 (Allocation between limited access and general category fisheries). Furthermore, the Council recommended that the TAC be divided by quarter to reduce derby fishing.

3.1.2.8.2 Transition to limited entry alternative without a hard-TAC

This alternative would implement the limited entry program first, and then phase in the individual allocation part of Amendment 11 (if adopted) until the final universe of vessels is known. Vessels would be identified as qualifying vessels and they would be permitted to fish under existing general category rules (i.e. possession limit of 400 pounds, VMS, etc.) Vessels that had a permit before the control date and appeal for a permit would be permitted to fish under

existing general category rules as well. No other vessels would be permitted to fish for scallops under general category during this transition period to limited entry. Once the final universe of vessels is known, then the other components of this program could be implemented like allocation of TAC to the general category fishery and allocation of access to qualifying vessels.

If limited access vessels (current full time, part-time and occasional vessels) are permitted to qualify for a limited entry general category permit under Amendment 11, a similar approach would be taken for these vessels. Since scallop landings from this component of the fishery have been considered under general category scallop catch in the past, it would make sense that these qualifying vessels (and any under appeal) could also fish under general category rules during the interim transition to limited entry.

Rationale: Since implementing a limited entry program usually takes time this alternative would provide a way to control mortality and capacity in the general category fishery until the program could be fully adopted. While vessels would be permitted to fish an unlimited number of general category trips during this transition time period, the number of vessels that could potentially fish is reduced, thus capacity and mortality is somewhat controlled. Amendment 11 includes analyses of the No Action alternative, which would have negative impacts as compared to limited entry, but these impacts are temporary for the transition period only.

3.1.3 Hard Total Allowable Catch (Hard TAC)

One option to control mortality in the general category fishery aside from limited entry is implementing a hard total allowable catch limit. If this action does not implement a limited entry program for the general category fishery, a hard total allowable catch limit could be adopted, which would close fishing to that component of the fishery once a certain limit was reached. The TAC in future years for this component of the fishery would depend on the alternative the Council selects for Section 3.1.7, allocation between limited access and general category fisheries. The range that is being considered is 2.5 to 11% of the total annual scallop catch, or the No Action alternative.

Under this alternative, a hard TAC would be developed for the general category fishery, and when the Regional Administrator projects that TAC is going to be reached, the fishery would close. If this alternative were selected the general category fishery would be managed by current input controls (possession limit) and a hard TAC. Once the Regional Administrator estimates that the fleet-wide hard TAC is projected to be caught, the general category fishery would close. The hard TAC would be based on the alternative selected for Section 3.1.7, allocation between limited access and general category fisheries. The range that is being considered is 2.5 to 11% of the total annual scallop catch, or the No Action alternative.

Rationale: This alternative is consistent with the primary goal of this amendment to control mortality in the general category scallop fishery; capacity would still be an issue.

3.1.4 Establish a Northern Gulf of Maine Scallop Management Area (NGOM)

During development of this action there has been considerable discussion of establishing a separate management system for general category scallop fishery in the Gulf of Maine. There are several reasons why the Council decided that this area should be managed separately. First, most of the landings from the NGOM area designated by the Council were from Maine state waters so management in the EEZ component of the fishery needs to be as compatible with state management regulations as possible. Second, this fishery was traditionally fished, to a very large extent, by small boats that were engaged in other fisheries such as the lobster or groundfish fisheries during different seasons and that fish only seasonally for scallops. As a result, the Council considered local access to the scallop resource by small vessels important to the continuation of fishing communities in Maine New Hampshire and Massachusetts.

Furthermore, it is not clear how the scallop resource in the Gulf of Maine interacts with the scallop resource to the south. It is much smaller in size and has not been included in the scallop surveys or stock assessments to date and therefore has never been a factor in setting target effort or removal rates under the Scallop FMP. Finally, boats from outside the GOM historically fished in this area only when scallops were depleted in other areas and abundant in the GOM. More recently, the improved management and abundance of scallops in the major resource areas on Georges Bank and in the Mid-Atlantic region has made access to GOM scallops less important for the limited access boats and general category boats from other regions. As a result, a separate management program from Scallop in the NGOM is unlikely to have any impact on these vessels.

3.1.4.1 No Action

No specific measures would be considered for the Northern Gulf of Maine. Whatever is adopted under Amendment 11 would apply to the Northern Gulf of Maine; no separate limited entry program would be considered for that area.

3.1.4.2 Amendment 11 would not apply to the Northern Gulf of Maine

If this alternative is selected by the Council then any measures adopted in Amendment 11 pertaining to controlling capacity and mortality in the general category fishery would not apply to waters in either: **Option A** - the GOM exemption area north of 42°20N (See Figure 3 – hatched area north of 42°20) or **Option B** – waters in the EEZ north of 43N. An open access permit to fish for scallops under general category would remain for this area, and a vessel could land up to 400 pounds of scallops per trip if they have VMS (IB permit). Any vessel from any area would be permitted to apply for and fish under an open access NGOM general category permit. A hard TAC would be established for this area and if reached vessels would be limited to possession of up to 40 pounds of scallop meats after the TAC was reached. The Scallop Committee recommends that the hard TAC for this area include scallop landings in both federal and state waters. The actual TAC for this area would be defined in future framework actions based on information about the status of the resource in that area. The PDT will recommend a hard TAC and the Council will consider it in each biennial framework. To give the Council a sense of what the PDT would most likely base the TAC on below is some information that could be used to set the hard TAC. For example, the historical average of GOM landings from the data used in the scallop assessment for 2000-2005 is 0.62 million pounds. The Scallop PDT recommends that amount be reduced by a certain percentage (i.e. 20%) to prevent overfishing,

enable rebuilding of the scallop resource within the Gulf of Maine, and to account for the fact that most areas offshore in the NGOM that have supported scallop fishing in the past are now closed within habitat or groundfish mortality closed areas. If 0.62 million pounds were reduced by 20% then the average from the last six fishing years would be closer to 500,000 pounds.

If a region wide hard TAC or limited entry program is adopted under Amendment 11 it would not apply to this area. Therefore if a vessel fishes for scallops in this area, landings from this area would not count against an overall TAC, or an individual quota, they would only be reduced from the NGOM hard TAC.

Rationale: This alternative was recommended by the Scallop Committee as an alternative to help expedite the Amendment 11 process. It has been noted that one of the major factors that led to development of Amendment 11 was new entrants and increased effort in the general category fishery. However, the growth in general category fishing effort has not been in the Gulf of Maine. This alternative could be selected as a placeholder until assessment information is available to set more appropriate management measures in this area. The Scallop PDT did recommend that if this area was going to be managed separately a hard TAC should be considered so conservation objectives are not undermined.

3.1.4.3 Establish a Northern Gulf of Maine Management Area Limited Entry Program

This alternative would develop a separate limited entry general category program in the GOM exemption area north of 42°20N (**Option A**) (See Figure 3 – hatched area north of 42°20) or **Option B** – waters in the EEZ north of 43N. The bullets below describe the qualification criteria and restrictions for this permit as recommended by the Scallop Committee.

1. Create a NGOM scallop management area with a separate hard TAC. The TAC will be determined by historical landings until funding is secured to undertake a NGOM stock assessment. The actual TAC for this area would be defined in future framework actions based on information about the status of the resource in that area. The PDT will recommend a hard TAC and the Council will consider it in each biennial framework. The TAC will be determined by historical landings until funding is secured to undertake a NGOM stock assessment. To give the Council a sense of what the PDT would most likely base the TAC on below is some information that could be used to set the hard TAC. For example, the historical average of GOM landings from the data used in the scallop assessment for 2000-2005 is 0.62 million pounds. The Scallop PDT recommends that amount be reduced by a certain percentage (i.e. 20%). Landings from the NGOM area will not be counted against the General Category TAC.
2. To qualify for a NGOM scallop permit, one must have had a General Category scallop permit in any fishing year between 1994 and Nov. 1, 2004 and must have landed at least one 100 pound trip in the same fishing year in any area.
3. If a vessel qualifies for a NGOM permit they are restricted to fish for scallops in the NGOM area, and only until the TAC is reached for that area. Once that fishery closes a vessel could possess/land (but not sell) up to 40 pounds only when fishing for other species (unless Amendment 11 changes the incidental catch rules). Incidental catch less than 40 pounds per trip do not count against the TAC.
4. If a vessel qualifies for a limited entry general category permit their catch will be deducted from their individual allocation (in trips or pounds) regardless of where the scallops were caught. Those vessels can land up to 400 pounds per trip even in the NGOM (not restricted to 200 pound possession limit). If this vessel wants to fish in the NGOM it must declare into that area and those landings will be removed from the NGOM TAC.

5. Trip and Gear Restrictions for fishing in the NGOM Management Area:
 - a. The Hard TAC back stop will be based on PDT analysis of historic landings and the PDT recommendation until an assessment of the NGOM is done to provide a better estimate of the resource.
 - i. When the hard TAC is reached, the fishery in the NGOM Area will close for all Limited Access and General Category scallop vessels.
 - ii. When the fishery is closed, then no vessel may possess more than 40 pounds of scallop meats in the NGOM.
 - iii. Vessels fishing outside the NGOM Management Area that intend to land scallops in ME, MA or NH (depending on the boundary alternative selected) after the NGOM fishery is closed will have to have gear stowed and declare via VMS that they are transiting the NGOM with scallops on board.
 - b. Vessels permitted to only fish in the NGOM Management Area will be limited to possession of 200 pounds of scallop meat per trip, maximum of one trip per day.
 - c. All vessels fishing in the NGOM Management Area will be required to use VMS
 - d. Vessels fishing in the NGOM Management Area must declare via VMS that they are fishing on a NGOM Management Area Scallop trip and must report scallop landing through VMS.
 - e. Vessels fishing in the NGOM Management Area will be required to use a dredge no larger than 10.5 ft wide.

Rationale: The intent of this alternative is to provide opportunistic access for vessels that have some level of historical fishing in the NGOM. This alternative is designed to provide a reduced level of access to as many vessels as possible for sporadic times when the resource can support it. This fishery has been identified as a distinct component of the general category fishery and due to unique characteristics such as smaller vessels, sporadic fishable populations, and state regulations it is reasonable to consider management of this area separately from the overall program. General category management measures could be tailored to accommodate the distinct nature of this regional fishery without jeopardizing the success of the general category or limited access management program. Since this area is not surveyed as part of the federal scallop survey, and landings from this area are not included in the assessment, then a separate TAC is justified that will not be removed from the limited access or general category TAC.

3.1.4.4 Establish a Northern Gulf of Maine Management Area Limited Entry Program without landings criteria (*proposed action*)

This alternative would develop a separate limited entry general category program in the GOM exemption area north of 42°20N (**Option A**) (See Figure 3 – hatched area north of 42°20). Following the public comment process the Council developed this alternative to combine some of the alternatives in this section to better reflect the intent of this alternative. Specifically, a limited entry program is recommended but with no landings criteria in order to provide a reduced level of access to a wider range of vessels in this region. Vessels that had a permit at the time of the control date (November 1, 2004) would be permitted to fish in the NGOM area with a 200 pound possession limit. Vessels would be restricted to fish for scallops with a 10.5 ft. dredge, unless the vessel was also fishing under a limited access multispecies or monkfish permit. These vessels would be exempt from the dredge restriction. Vessels in this permit category would be exempt from upgrade restrictions as described in Section 3.1.2.5.2 and vessels would be required to report through VMS. The details of the alternative are described in the bullets below.

The area would be under a hard-TAC set by the Scallop PDT based on the federal portion of scallop resource in the NGOM. All federal permit holder landings from the NGOM count toward the NGOM TAC, and if a vessel qualifies for a limited entry general category permit

under Amendment 11 then any landings from the NGOM will count against their individual allocation as well as the NGOM TAC. Once the TAC is reached for the area no federal scallop vessel would be permitted to fish for scallops in the NGOM.

1. Create a NGOM scallop management area with a separate hard TAC for just the scallop resource in federal waters. The TAC will be determined by historical landings until funding is secured to undertake a NGOM stock assessment. The actual TAC for this area would be defined in future framework actions based on information about the status of the resource in that area. The PDT will recommend a hard TAC and the Council will consider it in each biennial framework. The TAC will be determined by historical landings until funding is secured to undertake a NGOM stock assessment. Landings from the NGOM area will not be counted against the General Category TAC.
2. To qualify for a NGOM scallop permit, one must have had a General Category scallop permit at the time the control date was implemented (November 1, 2004).
3. If a vessel qualifies for a NGOM permit they are restricted to fish for scallops in the NGOM area, and only until the TAC is reached for that area. Once that fishery closes no scallop fishing can take place in the NGOM, regardless of permit type.
4. If a vessel qualifies for a “regular” limited entry general category permit their catch will be deducted from their individual allocation (in trips or pounds) regardless of where the scallops were caught. Those vessels will also be restricted to the 200 pounds possession limit when fishing in the NGOM. If this vessel wants to fish in the NGOM it must declare into that area and those landings will also be removed from the NGOM TAC.
5. Trip and Gear Restrictions for fishing in the NGOM Management Area:
 - a. The Hard TAC back stop will be based on PDT analysis of historic landings and the PDT recommendation until an assessment of the NGOM is done to provide a better estimate of the resource.
 - i. When the hard TAC is reached, the fishery in the NGOM Area will close for all Limited Access and General Category scallop vessels.
 - ii. When the fishery is closed, then no vessel may possess scallops in the NGOM.
 - iii. Vessels fishing outside the NGOM Management Area that intend to land scallops in ME, MA or NH (depending on the boundary alternative selected) after the NGOM fishery is closed will have to have gear stowed and declare via VMS that they are transiting the NGOM with scallops on board.
 - b. Vessels permitted to only fish in the NGOM Management Area will be limited to possession of 200 pounds of scallop meat per trip, maximum of one trip per day.
 - c. All vessels fishing in the NGOM Management Area will be required to use VMS
 - d. Vessels fishing in the NGOM Management Area must declare via VMS that they are fishing on a NGOM Management Area Scallop trip and must report scallop landing through VMS.
 - e. Vessels fishing in the NGOM Management Area will be required to use a dredge no larger than 10.5 ft wide.

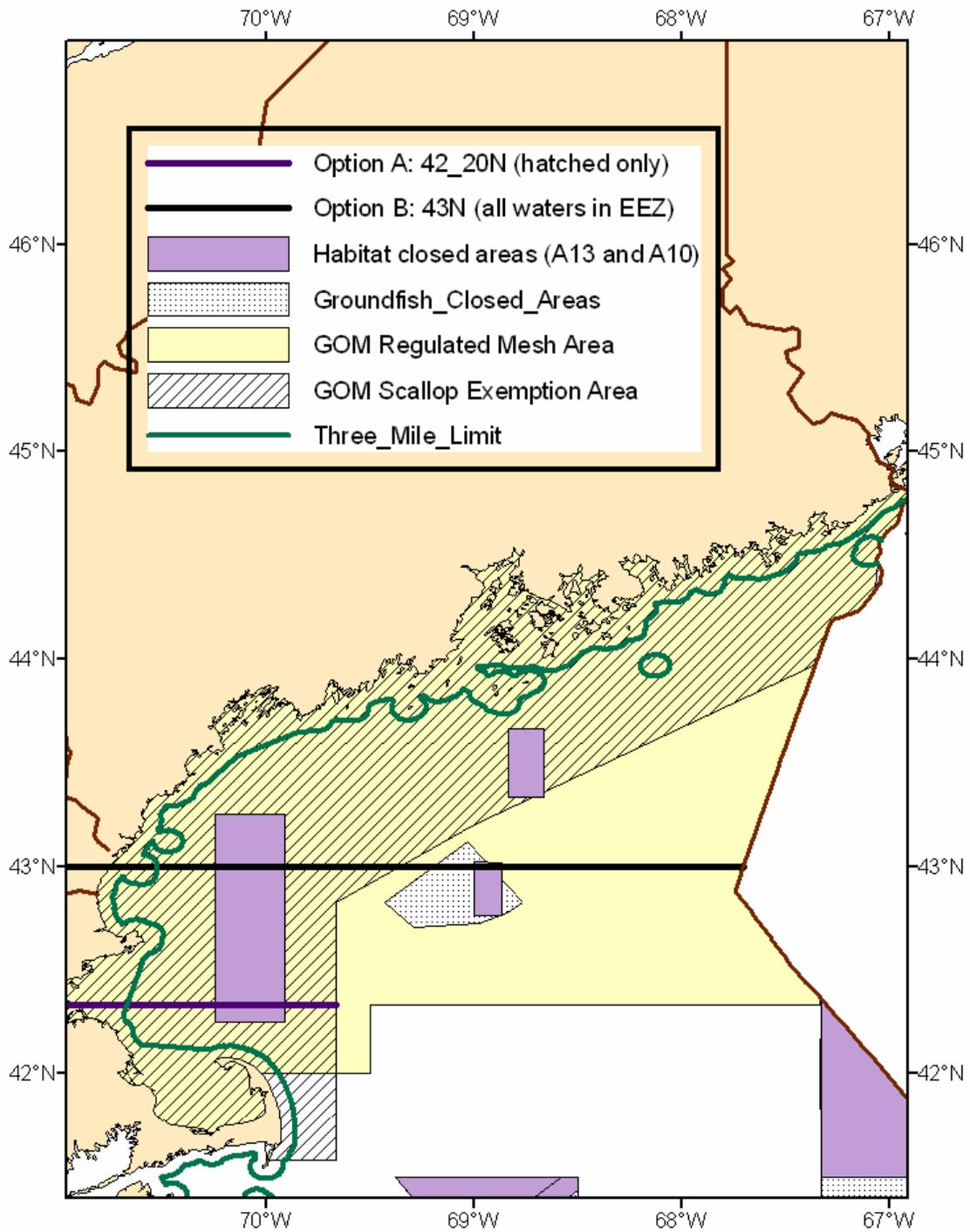
Rationale: Following the public comment period on the DSEIS the Council developed this alternative to combine some of the alternatives in this section to better reflect the intent of this alternative. Although, the Council decided that limited access was necessary to manage scallops in this area, it has developed rules that are more compatible with the needs of local fishermen. Also, the scallop resource increases sporadically with the result that scallops were not available in abundant quantities during the qualification time period. As a result, the Council decided that the limited access criteria to the NGOM should be based on whether or not a vessel had a permit on the control date (November 1, 2004) rather than on the amount of scallops a vessel had landed. Additionally, because vessels catch fewer scallops in the NGOM, the Council decided

that a 200-pound trip limit would be more appropriate and reduce incentive to increase effort in that area. In order to control the amount of scallops landed from the area overall, a hard-TAC will be implemented for the federal portion of the NGOM. One of the primary reasons the Council developed this additional alternative was in response to several concerns the Regional Administrator raised related to the approvability of the original limited entry alternative (Alternative 3.1.4.3). This alternative is intended to address those concerns. Specifically, she raised issues of conservation, administrative burden and enforceability. The Council designed this alternative in an attempt to address these concerns and allow for a placeholder for future management of scallops in the NGOM if and when they return. It was discussed that these vessels did not contribute to the problem, and this alternative would allow a supplemental fishery for vessels that have depended on this resource as part of total revenue over time.

First, since NMFS can't track state landings there is no way to monitor a TAC that encompasses both landings from state and federal waters, so this alternative applies only to the resource in the federal portion of the NGOM. Since the federal portion of this resource is a small portion, this TAC will be small, thus conservative for the area overall. Second, in order to ensure the TAC is not exceeded, all scallop landings in that area would count against the TAC as well as an individual allocation if landed by a "regular" general category vessel. This alternative also clarifies that no vessel would be permitted to possess an incidental level of scallop catch once the TAC is caught, another conservative provision. In addition, all limited access permit holders will most likely not be permitted to fish for or land (in federal or state waters) any species of fish authorized by the permit, unless and until the permit has been issued or renewed, pending a proposed rule to reconcile state and federal commercial fishing vessel permit programs. On April 6, 2007 NMFS published a proposed rule that is considering a revision to the limited access permit program that would prevent a vessel from fishing under a state permit before it has applied for or renewed its federal permit (72 FR 17085). This proposed rule was not final when Amendment 11 was submitted, but is expected to be final rule sometime later this summer. This potential revision is seen as a conservative provision that will prevent a federal permit from fishing under the federal TAC and then moving into state waters.

The Regional Administrator also voiced concern about the administrative burden of implementing a limited entry program with the 100 pound landings criteria. She argued that qualifying vessels with that low criteria over an 11-year time period would be a very resource intensive program, for little utility since it would qualify almost everyone that landed a scallop in that area since 1994. If an upgrade restriction was also applied it would be administratively unacceptable to have NMFS track vessel replacements, etc. for hundreds of vessels. Lastly, in terms of enforceability since all vessels would be prohibited from having more than 200 pounds in the area, and no scallop fishing will be permitted in the area after the TAC is caught it would be enforceable. In addition, vessels will be required to have VMS, report through VMS and can transit in the area with more than 200 pounds if gear is stowed and fishing took place outside the NGOM area.

Figure 3 – Potential boundaries for the NGOM Management Area



3.1.5 Monitoring Provisions

3.1.5.1 No Action

Whether limited entry is adopted or not, vessels would still be required to report scallop landings through vessel trip reports (VTR). Vessels are currently required to report all landings within one month after a trip has been taken.

3.1.5.2 Require landings and declaration of scallop trip through VMS (*proposed action*)

Same requirement no matter what strategy is adopted for controlling capacity and mortality (limited entry or hard TAC). Currently all general category vessels that want to land more than 40 pounds of scallop meats are required to have VMS, but they are not required to report landings through VMS. This alternative would add the requirement to report landings through VMS and a vessel would also be required to call in to NMFS when they are leaving port to declare that they are going on a general category scallop trip. Vessels would be required to call in the hailweight and VTR number for each trip through the VMS system.

Rationale: In order to improve monitoring of an individual quota, or fleetwide TAC, general category vessels would be required to report scallop landings through VMS. Requiring a vessel to report hailweight and VTR number would improve the ability for NMFS to link this data with other databases and enable NMFS to monitor the TAC on a more real-time basis.

3.1.5.3 Require landings and declaration of scallop trip through IVR system

Interactive Voice Reporting (IVR) is a system where vessels report landings on a trip basis through a phone recording system. Several TAC managed fisheries in the region use IVR. This alternative would require IVR in addition to current VTR reporting requirements.

Rationale: In order to improve monitoring of an individual quota, or fleetwide TAC, general category vessels would be required to report scallop landings through IVR. This measure would reduce the time it takes NMFS to monitor an individual allocation or fleetwide TAC.

3.1.6 Limited access fishing under general category rules

3.1.6.1 Permit or prohibit limited access vessels from fishing under general category

A limited access scallop permit owner is currently permitted to fish under general category rules when not on a DAS. This has been permitted as part of the limited access permit since implementation of limited entry under Amendment 4. A limited access vessel is permitted to possess/land up to 400 pounds of scallops per trip when not fishing under a scallop DAS, or after their individual DAS have been used.

Rationale: In order to reduce capacity and effort in the general category fishery the alternatives in this section are considering alternatives that would prohibit limited access vessels from fishing under general category rules. One alternative prohibits all limited access vessels from fishing under general category rules (Alternative 3.1.6.1.4). Two alternatives only allow limited access vessels to fish under general category rules if they qualify under the same criteria as general category vessels (Alternative 3.1.6.1.2 and Alternative 3.1.6.1.3 would be limited to part-time

and occasional vessels). The No Action alternative would allow all limited access vessels to fish under general category rules as currently permitted.

3.1.6.1.1 No Action

Permit all limited access vessels (full-time, part-time and occasional) to possess/land up to 400 pounds of scallops per trip when not fishing under a scallop DAS, or after their individual DAS have been used.

3.1.6.1.2 Permit limited access vessels that qualify under general category rules (proposed action)

This alternative would only allow limited access vessels that qualify under the same criteria selected for the limited access general category permit to fish under general category rules. Limited access vessels that do not qualify would be permitted to land/possess scallops under incidental rules while fishing for other species, unless Amendment 11 changes that provision. The landings from this component of the fishery could be deducted from the general category or limited access portion of the total harvest. If VMS is required for limited access general category permitted vessels, it is understood that vessels with occasional limited access permits that qualify would be required to use VMS. To be clear, a limited access vessel would be permitted to also have a limited access general category permit if it qualified.

3.1.6.1.3 Permit occasional or part-time limited access vessels that qualify under general category rules

This alternative would only allow occasional and part-time limited access vessels that qualify under the same criteria selected for the limited access general category permit to fish under general category rules. This alternative would exclude full-time vessels from qualifying for a limited entry general category permit. Limited access vessels that do not qualify would be permitted to land/possess scallops under incidental rules while fishing for other species unless Amendment 11 changes that provision. The landings from this component of the fishery could be deducted from the general category or limited access portion of the total harvest. If VMS is required for limited access general category permitted vessels, it is understood that vessels with occasional limited access permits that qualify would be required to use VMS. To be clear, a limited access vessel would be permitted to also have a limited access general category permit if it qualified.

3.1.6.1.4 Prohibit all limited access vessels from fishing under general category rules

Vessels with a limited access permit (full-time, part-time and occasional) would no longer be permitted to fish under general category rules while not on a scallop DAS. All limited access vessels would be allowed to land/possess scallops under incidental rules while fishing for other species, unless Amendment 11 changes that provision.

3.1.6.2 Allocation of quota to limited access vessels under general category

If the Council determines that limited access vessels that qualify for a general category permit under the same qualification criteria should receive a general category permit, then that effort would have to be attributed to (or removed from) either the general category allocation or the limited access allocation. If the Council decides not to permit limited access vessels to fish under general category rules then this section is irrelevant.

Rationale: If limited access vessels are permitted to land under general category rules and a hard TAC is implemented for the general category fishery under this action then scallops landed by limited access vessels under general category rules will have to be deducted from either the TAC awarded to the general category fleet, or a separate TAC awarded to the limited access fishery for scallops caught under general category rules.

3.1.6.2.1 Landings from this component of the fishery would be deducted from the general category allocation

Similar to how these landings have been recorded in the past, landings from limited access vessels that qualify to fish under general category rules would be counted against the allocation for the general category fleet.

3.1.6.2.2 Landings from this component of the fishery would be deducted from a separate allocation added onto the general category allocation (*proposed action*)

An additional allocation would be given to limited access vessels that qualify to fish under general category rules (Section 3.1.6.1.2 or 3.1.6.1.3). The Council selected 0.5% as the maximum catch that should be allocated to this component of the overall scallop fishery because that value is close to what historical landings have been in recent years and does not represent a large amount of the total catch, and is not projected to have substantial impacts on other limited access and general category vessels.

3.1.7 Allocation between limited access and general category fisheries (Objective #1)

Both general category and limited access landings have fluctuated over time. Table 5 summarizes the catch and percent of total catch from each component of the fishery since 1994.

Table 5 – Scallop landings from general category vessels, limited access vessels under DAS, and limited access vessels under general category from 1994 to present

Fish Year	Total scallop landings (LA and GC)	Total scallop landings by General Category vessels only		Total scallop landing by Limited Access vessels under DAS		Total scallop landings by limited access vessels outside DAS (on 400 lb trips)	
		LBS	%	LBS	%	LBS	%
1994	14,907,265	95,268	0.64%	14,713,046	98.70%	98,951	0.66%
1995	15,807,941	123,967	0.78%	15,603,104	98.70%	80,870	0.51%
1996	16,447,682	204,635	1.24%	16,175,248	98.34%	67,799	0.41%
1997	12,619,221	310,049	2.46%	12,122,375	96.06%	186,797	1.48%
1998	11,186,468	164,435	1.47%	10,528,707	94.12%	493,326	4.41%
1999	21,286,244	150,482	0.71%	20,713,733	97.31%	422,029	1.98%
2000	32,929,475	357,691	1.09%	32,259,404	97.97%	312,380	0.95%
2001	45,164,706	1,216,947	2.69%	43,659,686	96.67%	288,073	0.64%
2002	49,808,416	983,775	1.98%	48,641,573	97.66%	183,068	0.37%
2003	54,778,793	1,809,071	3.30%	52,781,614	96.35%	188,108	0.34%
2004	61,714,971	3,245,661	5.26%	58,106,020	94.15%	363,290	0.59%
2005	53,214,097	7,495,884	14.09%	44,917,224	84.41%	800,989	1.51%
2006*	56,149,105	6,838,083	12.18%	48,886,653	87.07%	424,369	0.76%

* Preliminary data – 2006 fishing year not complete

3.1.7.1 No Action

The Council would not allocate a certain percentage of the total available scallop harvest to the general category fleet. Currently the landings from the general category fleet are estimated, and then limited access specifications are set to harvest the remaining portion of available harvest. The landings from the general category fleet are not an actual allocation, and vessels may under or over-harvest the estimated amount. This alternative could be selected whether limited access is recommended or not. Similarly, if a hard TAC is recommended this alternative could also be selected.

Rationale: Different components of the fishery would not be allocated a specific TAC. Rather a target TAC would be determined and measures would be put in place for both fisheries to stay within that target TAC. If a portion of the fishery exceeds the target TAC no measures would be taken.

3.1.7.2 Allocation for general category vessels (*proposed action*)

The Council approved at the April 2006 Council meeting that the range of 2.5 to 11% allocation of the total available scallop harvest be considered for the general category fishery in Amendment 11. **The proposed action includes an allocation of 5% to the general category fishery.** The rationale for the lower bound of the range was to consider the approximate historical average since Amendment 4 was implemented (1994-2005). The rationale for the upper bound is to consider an amount that reflects the percent of current landings (based on available data from fishing year 2005) from vessels with general category permits before the control date. Based on available landings data for 2005, approximately 80% of all general category landings were from vessels that had a permit before the control date, and 80% of the approximate 14% of total scallop landings is roughly 11% of the total scallop landings for 2005. Since this action is considering the control date as a component of the qualification criteria, the Council voiced that it is appropriate to include in the range of allocation alternatives an amount that reflects the current participation of vessels that would qualify if having a permit before the control date were the only qualifying criteria.

The Council added that a higher percentage than historic norms is justified for economic and social reasons, recognizing this fishery is an important component of fishing communities along the coast. It was further suggested that a relatively high value compared to historic norms is appropriate to consider for analysis since the general category fleet landed 14% in 2005, and if the resource remains healthy then a higher percentage may be more appropriate in the long term. In addition, this range is responsive to the advisory panel requests. Lastly, the Scallop Committee suggested that is important to analyze a relatively high percent to illustrate the potential consequences of a high allocation value. The Council did not identify specific allocation percentages within the range under consideration, so the Scallop PDT will examine a feasible number of alternatives between 2.5 and 11%. The Council can select any value within the range so long as the specific alternative is analyzed and available to the Council before final decisions are made. Table 6 describes an example of possible allocations within the approved range for TAC values from 40-70 million pounds. The scallop assessment is currently being updated and is part of SARC 45. Scallop biological reference points are being reviewed and the assessment is expected to be available in mid-June, hopefully before the Council is scheduled to make final decisions on Amendment 11. In the meantime, the analyses in this document include

the most updated assessment information including biological projections using survey results from 2006. These methods and estimates were approved by the Council Statistical Committee in June 2006.

Table 6 - Estimate of the lower and upper bounds of the range approved for consideration in Amendment 11 for the general category allocation with various TAC values (40-70 million pounds).

	2.5%	11.0%
40.0	1.0	4.4
50.0	1.3	5.5
60.0	1.5	6.6
70.0	1.8	7.7

It is understood that whatever alternative is selected to control capacity and mortality in the general category fishery, the total amount allocated to the general category permit owners would be roughly equal to the overall percent selected in this alternative. Furthermore, the percent will remain the same in future years, but the total and individual poundage will vary based on changes in projected yield. Therefore, total and individual allocations in the general category fishery will be specified in each biennial framework, or whatever action implements specifications for future fishing years.

Rationale: This alternative is being considered so that the total harvest from the general category fishery can be controlled. A total amount of scallops would be allocated to the general category fishery and measures would be implemented to stay below the allocated amount. If this plan adopts individual allocation then a vessel is in violation if it lands more than the share it was allocated.

3.1.7.3 Allocation of yellowtail flounder bycatch TAC in access areas

The Council is considering allocating a specific portion of the yellowtail flounder bycatch TAC to each fishery (limited access and general category).

Rationale: In an effort to reduce the potential for one component of the fishery closing an access area to all scallop fishing this section considers allocating a portion of the total bycatch cap to the general category fishery equivalent to the percentage of total scallop TAC being considered in this action (2.5% - 11%). Each fishery would be permitted to fish in an access area until their portion of the total yellowtail flounder bycatch TAC was caught.

3.1.7.3.1 No Action (proposed action)

Currently 10% of the yellowtail flounder TAC (Georges Bank and SNE) is set aside as bycatch for the scallop fishery in access areas. Limited access scallop vessels are permitted to land the yellowtail flounder they catch as bycatch, but the general category fleet is not. The 10% bycatch cap is monitored through observer coverage and total bycatch estimates are extrapolated from that data. The regulations consider YT bycatch from both the limited access and general category fleets under the same TAC and once the bycatch TAC is reached, the access area would close to all vessels.

3.1.7.3.2 Allocate a proportional allocation of the 10% bycatch cap to the general category fishery

Rather than both fisheries being under the 10% cap equally, this alternative would actually divide the bycatch TAC between the limited access and general category fisheries. Whatever overall allocation of the scallop yield is given to the general category fishery (2.5%-11%), that same percentage of the yellowtail flounder bycatch cap would be given to the general category fleet for access areas. It is understood that this catch could not be retained by general category vessels; they still would not be permitted to land the yellowtail flounder that they catch. This alternative would prevent one fleet of the fishery closing the access area for the other fleet. For example, if the 10% bycatch TAC was reached for Closed Area II during the winter months by limited access vessels before the majority of the general category fleet could access area, this alternative would prevent one fleet from closing the access area for another fleet.

3.1.8 Incidental Catch (Objective #4)

3.1.8.1 No Action

All vessels with a federal fishing permit are permitted to possess and land (but not sell) up to 40 pounds of scallop meat per trip. A vessel is not required to have a scallop permit in order to possess/land up to 40 pounds of meat.² Under this alternative any federally permitted vessel in the region would continue to be permitted to possess/land up to 40 pounds of scallop meat for personal use. All vessels that qualify for a limited access general category permit (if one is adopted in this action), and all current limited access scallop permit owners would continue to be permitted to possess/land up to 40 pounds of scallop meat per trip when targeting other species.

Rationale: The Scallop PDT has not expressed concern about scallop mortality from incidental catch less than 40 pounds. If scallops are returned to the water relatively quickly, mortality of incidental scallop catch is expected to be relatively low. Some input during scoping recommended changing the incidental limit, but the Council decided that 40 pounds is an appropriate amount to prevent incentive to target scallops and reduce bycatch.

3.1.8.2 Establish a new permit category for incidental catch (*proposed action*)

If a general category vessel meets the time period qualification criteria for limited entry but not the landings criteria selected (100 lb. trip, 1,000 pounds in one year during the qualification time period, or 5,000 pounds in one year during the qualification time period) then that vessel would qualify for a new incidental catch permit. A vessel would be permitted to possess, land, and sell up to 40 lb. of scallop meat per trip. If a vessel does qualify for a limited entry general category permit but would prefer to fish for scallops under this permit category it can relinquish the limited entry general category permit and opt for a limited entry incidental catch permit instead. Once a qualifying vessel decides which permit it selects, it would not be permitted to switch. This permit type would not be open access and if adopted, would replace the current privilege for all federal permits to possess/land (but not sell) up to 40 lb. of scallop meat. If this alternative is selected, after implementation of Amendment 11 all vessels that possess/land scallops would be required to have a permit (limited access, limited access general category, or limited access

² Currently there is a general scallop permit (Category 1A) that permits a vessel to possess/land AND sell scallops. That permit is currently open access and a vessel is not required to have VMS to possess/land (and sell) scallop meat up to 40 lb.

incidental). No vessel would be permitted to have more than one scallop permit (unless a limited access vessel qualifies for a limited access general category permit in this amendment).

This alternative also includes a provision to remove a certain percentage of the total projected annual scallop catch in future years to account for mortality from landings from this permit category. Specifically, the PDT is instructed to remove from the total projection a level of landings expected from this permit category each year, similar to how a percent of total catch is currently removed for research set aside and observer coverage. This value would be defined in future actions and could be modified over time to incorporate recent landings from this permit category.

Rationale: This alternative was developed to consider an alternative that would enable an incidental level of scallop catch for vessels that qualify for the time period criteria, but not the landings criteria. This alternative would better reflect the actual incidental scallop catch for some vessels that traditionally land closer to 40 pounds of scallop meat per trip as a component of their overall catch while fishing for other species. Furthermore, some vessels that may qualify for a limited entry general category permit may opt for this permit instead because it permits a vessel to land an incidental level of scallops on an unlimited number of trips. For example, if access to the general category fishery is allocated in individual number of trips, a vessel would only receive a certain number of trips with a trip limit of 400 pounds. This alternative would reduce the possession limit from 400 to 40 for these vessels, but it was pointed out during development of this amendment that there are some fisheries where it may be more advantageous to land a smaller incidental level of scallops on more trips, than a higher level of scallops on fewer trips.

3.2 MEASURES TO ALLOW BETTER AND MORE TIMELY INTEGRATION OF RECENT DATA (GOAL #2, OBJECTIVE #5)

This was identified as the second goal of Amendment 11 because the scallop fishing year is out of sync with the framework adjustment process and the timing of when 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. Furthermore, there are numerous analytic requirements and extra steps in the framework approval process that make it difficult to implement measures in a timely way. See Section 5.1.2 for detailed background information on this issue and examples of when the timing of the fishing year has been problematic for effective management of the scallop resource.

3.2.1 No Action

No additional measures would be implemented to improve the integration of recent data in the management process. Specifically, the scallop fishing year would remain at March 1.

Rationale: It may be possible to make minor changes to when the survey is conducted and how quickly the data can be processed for management use. However, this alternative may run the risk of late implementation and increased uncertainty in TAC estimates if these changes cannot be made.

3.2.2 Change the issuance date of general category permits from May 1 to March 1 (proposed action)

Whether limited access is implemented by this action or not, this alternative would change the issuance date of general category permits from May 1 to March 1. This change would improve integration of fishery data into the management decision process. Currently, the limited access portion of the fishery is issued a permit on March 1, the start of the scallop fishing year. Because the general category permit is not issued until two months later there is a lag time in summarizing scallop landings data.

Rationale: This alternative would slightly improve integration of fishery dependent data because permits would be issued sooner and in conjunction with the scallop fishing year. This alternative will not address the timing issue of when survey data become available for analysis.

3.2.3 Change the start of the fishing year to May 1

The scallop fishing year would be changed to start May 1.

Rationale: This alternative would be most effective if the survey can be moved earlier in the year and data available in June. If data can be available in June, then an action can be initiated, developed, and analyzed in time for May 1 implementation. This alternative would allow for the most recent survey data to be used if the survey schedule could be shifted earlier several months.

3.2.4 Change the start of the fishing year to August 1

The scallop fishing year would be changed to start August 1.

Rationale: This alternative allows sufficient time to audit and analyze survey data collected through August, and the survey schedule would not have to be changed. This alternative does not require NMFS and cooperative industry survey projects to conduct research earlier in the year and would allow for the most recent data available to be used for management purposes.

3.3 OTHER MEASURES

3.3.1 Trawl gear restriction

3.3.1.1 No Action

The regulations described in the section below would continue. All trawl vessels would be restricted to a 144 ft. trawl sweep.

3.3.1.2 Clarification of trawl gear restriction for vessels fishing under a multispecies or monkfish DAS (proposed action)

During development of Amendment 11 the Council became aware of a regulation that was not consistent with Council intent related to interpretation of a net size restriction (§648.51).

(a) *Trawl vessel gear restrictions.* Trawl vessels issued a limited access scallop permit under §648.4(a)(2) while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to §648.51(f), any trawl vessels in possession of more than 40 lb (18.14 kg)

of shucked, or 5 bu. (176.2 L) of in-shell scallops in or from the EEZ, and any trawl vessels fishing for scallops in the EEZ, must comply with the following:

- (1) *Maximum sweep.* The trawl sweep of nets shall not exceed 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing, unless the net is stowed and not available for immediate use, as specified in §648.23.

The Council intended the 144 ft. net sweep restriction to be exclusive to the scallop plan for all vessels targeting scallops using a net, and not to apply this restriction in other fisheries where scallops are caught more incidentally. This alternative would clarify that the 144 ft. net sweep restriction is intended for all vessels authorized to be in possession in excess of 40 pounds of scallop meats, except for vessels with a general category 1B permit and fishing under a multispecies or monkfish DAS. These vessels would not be restricted by the 144 net sweep restriction.

Table 7 summarizes the number of vessels that have both a general category scallop permit and a multispecies or monkfish permit. As of the last application date during 1994-2004 (control date), there were about 4,777 vessels that applied and received a general category permit, and 2,484 of these permits were renewed during 2004 application year. There were 2,505 vessels that received multispecies permit in 2004 (application year) that had a general category permit any one or more years during 1994-2004 (application year and before the control date). Similarly, there were 1,925 vessels that both had monkfish and general category permit during the period 1994-2004.

Table 7. Monkfish and Multispecies permits held by vessels by general category permits by last application date (unique numbers up to the control date)

Application Year and up to the control date	Monkfish permit	Multispecies Permit	General category permit
1994		107	149
1995		228	281
1996		202	262
1997		206	241
1998		137	142
1999	39	155	140
2000	111	226	210
2001	126	227	208
2002	166	266	268
2003	256	376	392
2004	1925	2505	2484
Grand Total	2623	4635	4777

Rationale: It was not the intent of the Council that this net restriction would apply to trawl vessels not directing on scallops. Since this change cannot be accomplished through a technical correction, this alternative would clarify that a trawl vessel fishing under a multispecies or monkfish DAS would not be restricted by the 144 ft. net sweep regulation.

3.3.2 Possession limit of 50 bushels

3.3.2.1 No Action

Current regulations would apply related to the possession limit of 50 bushels of in-shell scallops for all 1B general category scallop vessels.

3.3.2.2 Possession limit of 50 bushels shoreward of the VMS demarcation line and up to 100 bushels seaward of that line (*proposed action*)

The regulations currently permit a vessel to be in possession of either 400 pounds of scallop meat or 50 bushels of in-shell scallops if they have a 1B general category permit. However, 50 bushels of in-shell scallops does not equate to 400 pounds of scallop meat. Therefore, if a vessel wants to land scallop meat, it is technically in violation if it possesses for example 70 bushels to cut out 400 pounds of meat. The Council is considering an alternative that would modify the regulations so that “a vessel could not possess, or land per trip more than 50 bu. (17.62 hl) of in-shell scallops shoreward of the VMS Demarcation Line, but could possess up to 100 bushels seaward of the demarcation line”. This modification would allow a vessel to be in possession of more than 50 bushels east of the demarcation line so they are not in violation of current regulations if it takes more than 50 bushels to cut out 400 pounds of scallop meat. The 100 bushel maximum east of the demarcation line was added to reduce incentives for cheating and highgrading. The Committee recommends that the regulations described in Section 648.52 (d) below, should apply for all vessels with a general category 1B permit, not just vessels fishing in or transiting the area south of 42°20N.

§ 648.52 Possession and landing limits

a) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in §648.10 or that have used up their DAS allocations, and vessels issued a VMS general scallop permit, unless exempted under the state waters exemption program described under §648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu. (17.62 hL) of in-shell scallops, with no more than one scallop trip of 400 lb (181.44 kg) of shucked, or 50 bu. (17.62 hL) of in-shell scallops, allowable in any calendar day.

d) Owners or operators of vessels issued limited access or general category scallop permits fishing in or transiting the area south of 42°20'N. Latitude at any time during a trip are prohibited from fishing for, possessing, or landing per trip more than 50 bu. (17.62 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under §648.54.

Rationale: This alternative would allow a vessel to harvest the amount of in-shell scallop (which varies by area and season) it takes to reach the 400 pound of meat possession limit. Currently a vessel is in violation if they have more than 50 bushels north of 42°20N, although it is common knowledge that 50 bushels do not equal 400 pounds of scallop meat. Since general category vessels are now required to have VMS to land more than 40 pounds of scallop meats, possession limits can be enforced inside the demarcation line because the fishing vessels location is known. The Committee recommends that a maximum of 100 bushels be added east of the demarcation line to reduce incentives for cheating and highgrading.

3.4 ADDITIONAL MEASURES THAT CAN BE IMPLEMENTED BY A FRAMEWORK ACTION TO THE SCALLOP FMP

Depending on which measures are selected as final measures for Amendment 11 will determine the specific measures that should be added to the list of frameworkable items. Any new measures that need to be adjusted on an annual or biennial basis as a result of this action would be added to the list of frameworkable items. For example, if limited entry for general category vessels is adopted under Amendment 11, with an individual, tiered, or fleetwide allocation, the specific allocations for vessels would require adjustment through the biennial framework process. A NEPA analysis would be included in those framework actions.

3.5 CONSIDERED AND REJECTED ALTERNATIVES

3.5.1 Measures to control capacity and mortality in the general category scallop fishery (Goal #1)

3.5.1.1 Limited Entry (Objective #2)

3.5.1.1.1 Qualification criteria alternatives

3.5.1.1.1.1 Use of the control date only

In order to qualify for a limited access general category permit, a vessel would have to have had a permit before the control date, November 1, 2004.

Rationale for Rejection: The Committee considered this alternative and recommended not including it for analysis. The Committee felt that this criterion was not sufficient enough for controlling capacity and mortality in the general category fishery and additional criterion was necessary like historical landings. Furthermore, there is one alternative in the document that would give a permit to all vessels that had a permit before the control date even if they did not have landings, and those vessels would be able to purchase/lease quota from another vessel that qualified for access to the fishery with landings.

3.5.1.1.1.2 Use of the control date AND date VMS was required

In order to qualify for a limited access general category permit, a vessel would have to have had a permit before the control date, November 1, 2004 AND obtained VMS (permit 1B) before the December 1, 2006 deadline.

3.5.1.1.1.3 Use of control date, date VMS was required, and additional criteria in pounds or trips

In order to qualify for a general category permit, a vessel would have to have had a permit before the control date, November 1, 2004 AND obtained VMS (permit 1B) before the December 1, 2006 deadline AND qualify for additional criteria based on historical effort in pounds or trips. .

Rationale for Rejection: These alternatives were rejected because the Scallop Committee agreed with comments made at the general category scallop advisory panel meeting that using the VMS date would be unfair. It is unfair to exclude people based on the VMS date because there was no warning; it was never mentioned in the notice that getting VMS could be used as a qualifier,

so that is wrong. There is a big difference between knowing you have to get VMS to participate in the fishery for the following year, and having to get VMS to participate in the fishery forever.

3.5.1.1.2 Qualification time period alternatives

3.5.1.1.2.1 Historical landings through fishing year 2004

Originally the qualification time period alternatives went through all of fishing year 2004, not just until the control date, November 1, 2004. For example, one alternative was FY2000-FY2004, which is five full fishing years.

Rationale for Rejection: The Committee decided to revise the qualification time period alternatives to end at the control date to be consistent with the other qualification criteria alternatives. The Committee did not think it was desirable to have landings after the control date count toward qualification for a permit that had to be issued before the control date.

3.5.1.1.3 Qualification exception for vessels from Southern New England

The general category advisors recommended an alternative for a qualification exception for vessels homeported near the Southern New England (SNE) exemption area. They discussed that vessels from this area have not been able to fish near their homeport since 1996 due to the closure to protect SNE yellowtail flounder. Vessels have only been permitted to fish in the SNE exemption area for six months of 2004. It was recommended that their landings history for qualification should be prorated. Specifically, if a limited access program is developed with multiple years for qualification criteria in trips and/or pounds, the SNE exemption area should be considered an exception area for qualification purposes. Landings for qualification should be pro-rated or weighted for vessels homeported between 72° 30 to 70° 00.

The PDT reviewed this recommendation and while they voiced concern about exceptions they suggested a modification to this alternative. The way the alternative is written now is problematic related to limiting that exception to vessels that are from a certain area. Instead it was suggested that a qualification exception could be considered for vessels that have landings reported in VTR from that area from 1994-2004, rather than being from a certain geographical area. They cautioned that there may be other areas where regulations have prohibited vessels from fishing all year in areas near their homeport, and SNE yellowtail is in poor shape and reducing impacts on this species would be beneficial.

Rationale for Rejection: The Committee discussed this alternative and a motion was made to include it in the document, but the motion was not seconded so failed. The Committee discussed that exceptions are dangerous, and this would set a precedent for vessels from other areas to claim the same. Furthermore, it was noted that these vessels could have relocated and fished in other areas.

3.5.1.1.4 Determination of qualification amount

3.5.1.1.4.1 Allocation based on weighting of historical annual landings

The Committee did recommend one weighting alternative, but several others were considered. For example, four strategies were presented to the Committee and three of them were not

selected. One approach took a vessels best year and multiplied the total by a weighting factor that would represent years active in the fishery. A second approach took all annual landings for a vessel and multiplied each year by a by a weight relative to participation in the fishery. One example of this approach gave higher weights to more recent years (approach recommended by the Committee) and a second example gave higher weights to earlier years the second example was considered and rejected. The last method presented was a combination of the first two. [The detailed analyses of these weighting examples were presented in a document to the Committee on May 17, 2006 and are available upon request].

Rationale for Rejection: The Committee decided to recommend one weighting alternative only, not four individual alternatives. The Committee recommends that the strategy that uses all years of history and gives a higher weight to more recent years was the more desirable. This strategy would benefit vessels that have been active in the fishery for more than one year, but provide a higher weight to more recent years (arguably vessels with more current dependence on the fishery).

3.5.1.1.4.2 Allocation based on average of best three years

A vessels qualification would be based on an average of their best three fishing years. If a vessel did not fish for three years during the qualification time period, zeros will be factored in, thus reducing the overall percentage that vessel would be allocated. Landings from 2004 will only be from March 1, 2004 through November 1, 2004 (eight month period); landings from that year will not be pro-rated for a full fishing year. Keep in mind that the qualification amount per vessel may not actually be the amount a vessel is allocated. A vessels historical landings will determine the percent of general category landings that individual vessel will be awarded. Their allocation may be further scaled up or down annually depending on the projected yield of the scallop resource and the overall allocation percent the Council selects for the general category fishery. *This alternative will only be coupled with the longer time series alternatives, it will not be considered for the alternative that is based on FY2003-November 1, 2004.*

Rationale for Rejection: The Council considered a handful of alternatives to determine a vessels contribution factor. After preliminary analyses were done this alternative was inferior to other alternatives still being considered in the document. When some of the qualification alternatives are combined some unintended consequences may result in terms of individual allocations greatly exceeding a vessel's best year, which increases distribution impacts on individual vessels. Furthermore, it is difficult for a vessel to predict their contribution with this alternative and NMFS has to confirm more than one year of landings data for this alternative (as well as the following alternatives below). All three of the alternatives in this section (best three years averaged, average of all years and weighting alternatives will disadvantage vessels that did not fish or had a low level of landings in some years due to reasons beyond their control, such as vessel repairs, illness etc.

3.5.1.1.4.3 Allocation based on an average of all years during the qualification time period selected

A vessels qualification would be based on an average of their landings during all years during the qualification time period selected. Landings from 2004 will only be from March 1, 2004 through November 1, 2004 (eight month period); landings from that year will not be pro-rated for a full

fishing year. Keep in mind that the qualification amount per vessel may not actually be the amount a vessel is allocated. A vessels historical landings will determine the percent of general category landings that individual vessel will be awarded. Their allocation may be further scaled up or down annually depending on the projected yield of the scallop resource and the overall allocation percent the Council selects for the general category fishery.

Rationale for Rejection: Same as above.

3.5.1.1.4.4 Allocation based on weighting of historical annual landings

A vessels qualification would be weighted; lower weights for earlier years and higher weights for more recent years. Annual landings would be determined for each vessel, and each annual total would be multiplied by a weighting factor; for example, 1.0 for 2004 landings, 0.9 for 2003, 0.8 for 2002 etc. The average of the weighted totals for each year would determine a vessels final qualification percent. The DSEIS is going to consider several different weighting amounts for the Council to consider. Landings from 2004 will only be from March 1, 2004 through November 1, 2004 (eight month period); landings from that year will not be pro-rated for a full fishing year. Keep in mind that the qualification amount per vessel may not actually be the amount a vessel is allocated. A vessels historical landings will determine the percent of general category landings that individual vessel will be awarded. Their allocation may be further scaled up or down annually depending on the projected yield of the scallop resource and the overall allocation percent the Council selects for the general category fishery.

Rationale for Rejection: Same as above.

3.5.1.1.5 Allocation of access for general category limited access qualifiers

3.5.1.1.5.1 Individual fishing quota for two permit types (part-time and full-time)

The advisors originally recommended this alternative as one that would allocate an individual fishing quota for the full time permits and a hard TAC for the part time permits. The Committee decided to refine that recommendation to be an individual fishing quota for both permit types based on historical landings.

Rationale for Rejection: The Committee decided not to consider an alternative that uses a hard TAC because it would promote derby style fishing. This causes many problems such as vessel safety, price, product quality etc. Furthermore, it was discussed that monitoring a relatively small TAC (only a fraction of the general category TAC) could be problematic.

3.5.1.1.5.2 Full-time permit allocated in 2,000 pound increments

The general category advisors suggested an alternative for vessels that qualify for the full-time permit under this alternative. It was suggested that a vessels best year should be used, but rather than allocating a different value for each vessel, their best year would be rounded into tiers of 2,000 pound increments. For example, a vessel whose best year was 6,450 would be allocated 6,000 pounds since it falls within the 5-7,000 pound increment. This strategy was recommended as a compromise of allocating each vessel an individual allocation and allocating only several tiers.

Rationale for Rejection: The Committee considered this alternative and did not recommend including it for analysis. The Committee felt that the individual allocation alternative and the tiered permit system were sufficient enough and it may be difficult to monitor and administer all these different tiers.

3.5.1.1.6 Limited entry permit provisions

3.5.1.1.6.1 Special consideration for vessels under construction or written contract for purchase

To qualify for a limited access general category scallop permit, a vessel must meet the qualification criteria using the control date, or the vessel owner must show proof that the vessel was under new construction or written contract for purchase as of November 1, 2004 (the control date), and was issued a general category permit after the control date AND that vessel landed a specific amount of scallops that demonstrates serious participation and dependence on the fishery during a certain time period after the control date (e.g. November 2, 2004 through February 28, 2005, November 2, 2004 through November 1, 2005, or November 2, 2004 through Feb 28, 2006).

Table 8 summarizes the number of additional vessels that could possibly qualify for a limited entry general category permit if the qualifying time period is extended beyond the control date. This would include all vessels that can show landings beyond the control date, no additional criteria have been added such as level of dependence, substantial investment in a new vessel etc.

Table 8 – Summary of potential qualifiers if qualification time period is extended, based on dealer data

Qualification criteria	Number of Qualifiers 2000 through control date	Increase in qualifiers Through end of 2004 fishing year*	Increase in qualifiers Through end of 2005 fishing year
100 lb. Criteria	550	26	250 (65 have permit after CD)
1000 lb. Criteria	370	28	254 (63 have permit after CD)
5000 lb. Criteria	186	10	202 (47 have permit after CD)

*All of the new qualifiers if CD is extended the end of 2004 fishing year have permits on or before the CD.

Rationale for Rejection: This alternative was developed to consider an alternative that would waive the requirement to have a permit and landings before the control date for vessels that could prove substantial investment before the control date and high dependence on the fishery after the control date (higher landings requirements). The Committee considered this alternative and decided to reject it because this alternative would extend the qualification criteria for “latecomers” without consideration for vessels that may have had a permit and some landings before the control date, but not higher dependence on the fishery until after the control date. It was viewed as unfair to only have this alternative that would extend the qualification for one group of vessels and not another group that may not get a permit for other circumstances. When the Committee tried to develop language that would accommodate several different groups of vessels that may have special circumstances, the number of vessels that could potentially qualify was estimated to be higher than a desirable number of 1A qualifiers.

3.5.1.1.7 Measures to reduce incentive for limited entry qualifiers to fish for scallops with trawl gear

3.5.1.1.7.1 Prohibit the use of trawls in the general category fishery, with an exception for vessels on a multispecies DAS

This alternative would prevent all limited access general category qualifiers from landings scallops with trawls. However, there would be an exception for vessels fishing under a multispecies DAS. It was raised during scoping that there is a component of the general category fishery that lands scallops while on a multispecies DAS and those vessels should be able to continue that activity, and have scallop landings as a component of overall catch with trawl gear. Since multispecies DAS are limited, the amount of fishing for scallops with trawls in the multispecies fishery is limited.

Rationale for Rejection: This alternative was removed from consideration at the June 2006 Council meeting. The majority of the Council was uncomfortable with this alternative because it makes an exception for the multispecies fishery only. Preliminary data of scallop catch from vessels using trawl gear suggests that the multispecies fishery does not currently land more scallops on average per trip than other trawl fisheries. The only component of the multispecies fishery that does land close to the 400 pound possession limit is vessels participating in SAPs.

3.5.1.1.7.2 Lower possession limit for net fisheries other than under a multispecies DAS

For any net fishery (i.e. fishing on a limited access regulated species) not operating under a DAS, a vessel that qualifies for a limited access general category permit may use a net and land up to 200 pounds per trip, even if their permit allows them to land up to 400 pounds. This provision would not allow a vessel to land more scallops than it would be permitted to under its limited access general category permit. This alternative is similar to Section 3.1.2.6.3, with an exception for vessels fishing under a multispecies DAS. These vessels would not be restricted to the lower possession limit.

Rationale for Rejection: Same as above.

3.5.1.1.8 Sectors and Harvesting Cooperatives

3.5.1.1.8.1 Add “mechanism to adopt sectors and harvesting cooperatives” as a frameworkable item

This alternative would add “mechanism to adopt sectors and harvesting cooperatives” to the list of frameworkable items. The Council could then decide to consider and approve sectors in a future framework, rather than an amendment.

Rationale for Rejection: NOAA Counsel advised that this mechanism would have to be adopted by an amendment; therefore, the Committee recommended adding this as a frameworkable item be considered and rejected.

3.5.1.2 Alternative to modify the possession limit restriction

The Scallop Committee recommended inclusion of an alternative that would change the current 400 pound possession limit to a 400 pounds per 24-hour day restriction, with a cap of no more

than five days to be landed at once. If a vessel is on a multiple day trip it would be permitted to bring in more than 400 pounds on one trip. For example, if a vessel went on a three- day trip (which could be confirmed through VMS), it could possess and land up to 1,200 pounds of scallop meat, or if it was a two-day trip, the vessel could land/possess up to 800 pounds. This alternative would apply to both access area trips and open area trips, but a vessel would be restricted to a five day limit, or 2,000 pounds per five-day trip.

Rationale for Rejection: Aspects of this alternative were incorporated into Alternative 3.1.2.4.1.3 at the June 2006 Council meeting, but it is now limited to the IFQ alternative only. The majority of the Council was uncomfortable with the potential unintended consequences of this alternative. For example, this alternative may have the potential to change fishing behavior if vessels can land 2,000 pounds on one trip, potentially having safety impacts. The current “dayboat” fleet provides a valuable product to the market, and increasing the possession limit may impact that product for some vessels. In addition, the price/demand of a general category permit would likely increase if the possession limit were increased to 2,000 pounds, and it would be more attractive for limited access vessels to fish under general category rules if the possession limit increased.

3.5.1.3 Hard Total Allowable Catch (Hard TAC)

3.5.1.3.1 Hard TACs by area, quarter, or combination of area and quarter

A hard TAC would be developed for certain areas, or both area and quarter. The Scallop Committee recommends that the document consider an alternative that would develop a quarterly TAC for qualifying vessels (Alternative 3.1.2.4.7). Once the Regional Administrator projects the TAC for that area is going to be reached, the fishery would close. This option could be implemented for only vessels that qualify for a limited access general category permit, or if the Council decides not to implement limited entry. It is not clear yet whether vessels would be restricted to certain areas, or if they would be permitted to move freely to different areas.

Rationale for Rejection: The Committee did not spend a significant amount of time developing hard-TAC alternatives based on input from scoping and derby concerns. The Council wanted to leave one hard-TAC option in for consideration (Section 3.1.3).

3.5.1.3.2 Hard TAC on an individual basis

The general category fishery could be managed by current input controls (possession limits) and a hard TAC on an individual basis. If coupled with limited access all qualifiers would get an equal allocation. If under open access vessels would apply for a permit annually, and after the Regional Administrator determines the general category TAC for the year and the number of vessels, each vessel would be allocated an equal share of the general category TAC. Each vessel would be permitted to land up to 400 pounds per trip until their individual hard-TAC was caught. A vessel would be responsible to monitor their own TAC, and would be in violation if they land/possess more than their individual TAC. After an individual TAC is caught, a vessel could land/possess scallops and under an incidental permit while fishing for other species, unless Amendment 11 changes that provision.

Rationale for Rejection: There are administrative and monitoring issues with this alternative. It is very complex, and may be impossible to implement under open access.

3.5.1.4 Monitoring Provisions

3.5.1.4.1 Daily dealer reporting

This alternative would require federal dealers to report scallop landings on a daily basis only if Amendment 11 implements limited entry for the general category scallop fishery and allocation is in pounds (if in number of trips or TAC no daily reporting required).

Rationale for Rejection: The Committee considered this alternative and determined that the cost and burden to dealers would not outweigh the benefits of daily reporting. Daily reporting may improve monitoring of an individual quota or TAC for the general category fishery, but daily reporting for one species does not seem feasible at this time.

3.5.1.5 Limited access fishing under general category rules

[None]

3.5.1.6 Allocation between limited access and general category fisheries (Objective #1)

3.5.1.6.1 Allocation for vessels that qualify for a general category limited access permit

3.5.1.6.1.1 Examine a range of 2-5% of the total allocable catch

3.5.1.6.1.2 Examine a range of 5-15% of the total allowable catch

3.5.1.6.1.3 Examine a range of 2-15% of the total allowable catch

3.5.1.6.1.4 Examine a range of 2-35% of the total allowable catch

Rationale for Rejection: The Scallop Committee considered all these ranges, and originally recommended 2.5 – 12.5%. They identified 12.5% at their first meeting as an upper bound that would reflect the negative consequences of a high allocation, so any amount higher than that would be unreasonable based on the Committee rationale for the alternative they selected for consideration. The Council ultimately selected 2.5 to 11% as the final range for consideration.

3.5.1.6.1.5 Adjust allocation between general category and limited access sectors if total projected catch is above 60 million pounds

If total annual projected catch is above 60 million pounds, the difference in allocation should be split equally between the general category and limited access sectors. For example, if projected catch is 70 million, then 10 million should be allocated 50% to general category and 50% to limited access; so 5 million pounds would be added to the allocated portion of 60 million for each sector.

Rationale for Rejection: The Scallop Committee did not recommend including this for analysis.

3.5.1.6.2 Allocation for limited access general category qualifiers between open and access areas

During development of alternatives the advisors, PDT and Committee have discussed the complication of allocation for limited access general category qualifiers in terms of open areas versus access areas. The alternatives in this section describe how the general category allocation would be allocated in terms of open areas or access areas.

3.5.1.6.2.1 No Action

Currently the general category has been allocated 2% of the TAC for each access area, allocated in a fleetwide total number of trips. For example, in 2006 577 trips were allocated to the general category fleet in Nantucket Lightship, which was about 2% of the TAC for that access area (577 trips x 400 pounds = 230,800 pounds). This allocation decision is currently made during the biennial specification process. So if this alternative is selected, it is understood that a specific percentage of the TAC per access area would be allocated to the general category fleet, converted into a total number of fleetwide trips. It is understood that this allocation (2% or otherwise) could be variable for each area in future years. The framework would analyze the impacts of variable allocations.

3.5.1.6.2.2 Allocate the same percent that is allocated overall for each access area

This alternative would allocate an equal percent of access area TAC to what the Council selects for overall allocation for the general category fishery (Section 3.1.7). For example, this document is considering allocating a portion of the total TAC (2.5% to 11%) to the general category fishery. If the Council selects 2.5%, then the general category would be allocated 2.5% of the TAC in all access areas as well (starting in FY2008). On the other hand if the Council decides to allocate 11% of the TAC to the general category fishery, then 11% of each access area would be allocated to that sector of the fleet (starting in FY2008). It is assumed that the allocation for access areas would still be a fleetwide total allocation of trips, not on an individual basis. Once the total number of trips is taken, the access area would close for all general category vessels.

Rationale for Rejection: All of Section 3.5.1.6.2 was moved to the considered but rejected section at the June 2006 Council meeting. It was discussed that it may not be effective to allocate the same percent per access area to the general category fishery. About 2% of the total TAC has been allocated to the general category fishery in previous access programs, but it was noted during this process that it may be most effective to consider variable percents for different access areas. For example, the 2% allocated in Closed Area II has never been caught by the general category fishery. It was discussed that these decisions are best considered in future framework actions that set specifications and allocations for the access area program and there is nothing in current regulations to prevent different percentages from being considered.

3.5.1.7 Incidental Catch (Objective #4)

3.5.1.7.1 Consider an incidental catch for different fisheries appropriate for each fishery

Examine available bycatch data and define what an appropriate incidental catch limit would be for different fisheries. For example, if data reflects that 30 pounds is appropriate for the fluke

fishery then the incidental catch for that fishery should be adjusted downward. And if data reflects that 300 pounds is appropriate for the Closed Area II SAP groundfish fishery, then the incidental catch for that fishery should be adjusted upward from 40 pounds.

Rationale for Rejection: The PDT reviewed this alternative and recommended it be considered and rejected for the following reasons: 1) it is not well defined, 2) would be very difficult to analyze because there is very little observer data for the general category fishery, 3) it is very difficult to define when a vessel is “in” a certain fishery, 4) incidental catch is not a large concern for mortality and it is possible that vessels that land more than 40 pounds under general category now (like some components of the groundfish fishery) are likely to qualify for a limited access general category permit anyway]. The Committee agreed with these recommendations and rejected this alternative for consideration.

3.5.1.7.2 Prohibit landing of incidental catch (zero possession limit)

This option would prevent all vessels from landing scallops unless under a limited access or limited access general category scallop permit. Limited access vessels not on a scallop DAS would be prohibited from possessing scallops. Vessels that qualify for a general category limited entry permit would be prohibited from possessing scallops when fishing for other species and not on a general category trip. And all other vessels that currently are permitted to land an incidental catch of 40 pounds under a general category 1A permit would be prohibited from possessing or landings scallops.

Rationale for Rejection: The Committee does not recommend that the incidental scallop permit be eliminated under this action. The PDT notes that incidental catch does not have a large impact on mortality and the current incidental catch permit reduces scallop bycatch when vessels are targeting other species.

3.5.1.7.3 Any vessel participating in a special access program(SAP) program can land up to 400 pounds of scallops per trip whether they qualify for a limited entry general category permit or not

A vessel participating in a SAP would be exempt from general category rules. Specifically, if limited entry was approved these vessels would not have to qualify and could land up to 400 pounds of scallops when on a SAP trip. These vessels would not be permitted to land scallops over 40 pounds when not on a SAP trip. If a vessel does qualify for a limited entry general category permit and it is approved, scallop landings from SAP trips would not count against an individual quota or hard TAC. Landings from these trips are considered incidental and increasing the limit from 40 to 400 pounds is a bycatch reduction measure.

Rationale for Rejection: While preliminary data show that SAP trips are on average close to the 400 pound possession limit, discard mortality of scallops is considered low.

3.5.2 Measures to allow better and more timely integration of recent data (Goal #2, Objective #5)

3.5.2.1 Annual management of scallops

This alternative would change scallop specification setting to an annual basis rather than biennially as it currently is. Biennial management was approved under Amendment 10 and this alternative would change that process to an annual cycle. Any measures like DAS, TACs, and access area allocations would be made on an annual basis, rather than every two years.

Rationale for Rejection: This alternative would reduce uncertainty in setting TACs two years out using older data. It would improve integration of more recent survey and fishery data; however it does not address the timing issue of the survey. Data from the most recent survey conducted in the summer would not be available for the specifications set that following March; therefore, specifications would be based on year old data. In addition, there are currently not enough resources available or time for the Council to consider specifications every year for this fishery. It would leave no time for development of actions to adjust the FMP in general, all available time and resources would be spent on the annual specifications.

3.5.3 Other measures

3.5.3.1 Formation of sectors for the existing limited access scallop fishery

This alternative would establish a process for the creation of fishing “sectors” and the allocation of TAC shares to the sectors, specific to the limited access scallop fishery. Groups may be formed around common fishing practices, common homeport or landing port, common fishing area, common marketing arrangements, etc. Details on eligibility criteria, operations plan elements, monitoring and enforcement of sectors, allocation rules, and other related issues would have to be defined. How the sector chooses to harvest its allocation could include a wide range of arrangements, including, but not limited to, a plan that simply sub-divides the TAC or a measure of effort among the vessels.

The purpose of establishing this process is to allow greater opportunities for fishery participants to proactively engage in resource governance, to provide greater flexibility for participants, to guide the appropriate development of capacity, and, last, to create outcomes that are more socially and economically relevant for fishing groups within the biological limitations of the fishery (TACs).

Rationale for Rejection: The Council rejected this option for inclusion in Amendment 11 at the September 2006 Council meeting because this action is primarily focused on the general category fishery. Rather the Council has created a stand alone committee for 2007 that will focus on development of sector management in the Northeast region. An omnibus plan may be developed including overall guidelines and principles for sector management and potential creation of sectors in all fisheries in this region. The Council determined that this would be a more comprehensive way to address potential issues with sectors in the limited access scallop fishery. The Council revisited consideration of this alternative again at the April 2007 Council meeting and again decided not to include it in Amendment 11. Depending on how the new Sector Committee progresses, this issue could be readdressed in the next Scallop Amendment.

3.5.3.2 Consider an alternative that would make the habitat areas in Closed Area I consistent

Scallop Amendment 10 and Multispecies Amendment 13 implemented slightly different closed areas for habitat protection. Joint Framework 39/16 included analyses supporting that these areas be consistent and that action implemented one set of habitat closed areas. However, NMFS was sued on this action and the judge found that considering changes to habitat areas should not be done in a framework action. During development of Amendment 11 both the Scallop PDT and Committee have discussed that the current rotational program is adversely impacted by both habitat closed areas being closed to the scallop fishery, and the system needs to be more flexible. Specifically, Closed Area I (as reduced by the FW16 settlement) can only support one more access trip in the near future (opening in June 2007). The biomass in the reduced area will not support another access area trip under FW19 (FY2008 and FY2009) unless the area reverts back to what it was under FW16; therefore, access may be in areas that are less optimal (i.e. Closed Area II or Nantucket Lightship).

Rationale for rejection: The Council considered this alternative at the April 2007 Council meeting but it was decided to table it indefinitely. It was discussed that Phase II of the EFH Omnibus Amendment may be the most appropriate vehicle to reconsider the habitat areas overall.