

**DRAFT**  
**Amendment 11 to the Atlantic Sea Scallop FMP**

Including a  
Draft Supplemental Environmental Impact Statement

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

*Council approval of DSEIS: April 11, 2007*

*Draft submission to NMFS: April 16, 2007*

*Council approval of SEIS:*

*Final submission of FSEIS to NMFS:*

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## AMENDMENT 11 TO THE SEA SCALLOP FISHERY MANAGEMENT PLAN

- Proposed Action:** Implementation of measures to control capacity and mortality in the general category scallop fishery. Some measures under consideration are: a limited access program and/or hard-total allowable catch (hard TAC) for the general category fishery, approval of a mechanism for voluntary sectors in the general category fishery, establishment of a separate limited entry program for general category fishing in the Northern Gulf of Maine, potential adjustments to limited access scallop fishing under general category rules, allocation of total projected annual scallop catch and yellowtail flounder bycatch TAC between the limited access and general category fisheries, measures to allow better and more timely integration of recent data in the scallop management process, and other administrative provisions and adjustments.
- Type of Statement:** Draft Supplemental Environmental Impact Statement
- Responsible Agencies:** New England Fishery Management Council  
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- Abstract:** The New England Fishery Management Council and the NOAA Assistant Administrator for Fisheries propose to adjust measures to control capacity and mortality in the general category scallop fishery through Amendment 11 to the Scallop FMP, pursuant the Magnuson-Stevens Fishery Conservation and Management Act. This document includes a variety of measures to address the goals and objectives of the action. The Council has identified several measures as preferred alternatives for the public comment period. A few include: a limited entry program with specific qualification criteria (permit in at least one year from March 1, 1994-November 1, 2004 and at least 1,000 pounds of scallop landings in any one of those years); an overall allocation of 5% of the total projected annual scallop catch for the general category fishery; individual

allocation of access for qualifying vessels in number of trips with a maximum of 400 pounds per trip; several permit provision alternatives; a separate limited entry program for vessels to fish at a reduced level in the Northern Gulf of Maine, and permit current limited access vessels to fish under general category but only those vessels that qualify under the same qualifying criteria and under a total allocation of 0.5% of the total projected annual scallop catch. This document includes all information and analyses required under the National Environmental Policy Act (NEPA), the M-S Act, the Regulatory Flexibility Act (RFA), and other applicable laws.

## **EXECUTIVE SUMMARY**

This amendment document and draft supplemental environmental impact statement (DSEIS) presents and evaluates management measures and alternatives to achieve specific goals and objectives for the Atlantic sea scallop fishery. This document was prepared by the New England Fishery Management Council and its Scallop Plan Development Team (PDT), in consultation with the National Marine Fisheries Service (NMFS, NOAA Fisheries) and the Mid-Atlantic Fishery Management Council (MAFMC). This amendment was developed in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA, M-S Act) and the National Environmental Policy Act (NEPA), the former being the primary domestic legislation governing fisheries management in the U.S. Exclusive Economic Zone (EEZ). This document also addresses the requirements of other applicable laws (See Section 7.0).

In addition to the no action alternative, the Council is considering limited entry and hard-TAC alternatives to control capacity and mortality in the general category fishery. Within the limited entry alternatives there are numerous qualification alternatives for a limited access program, including different qualification time periods and past landings criteria. There are also various alternatives for how qualifying vessels would receive access to the scallop resource. Specifically, some alternatives are an individual allocation in pounds, or number of trips, and other alternatives consider a hard-TAC for qualified vessels. One stand alone alternative for access is an individual transferable quota alternative, and there is also a stand along hard-TAC option with limited entry. This action also includes specific limited entry permit provisions such as vessel upgrade, replacement, stacking and permits splitting restrictions. There are several alternatives designed to reduce incentive for qualifying limited access general category vessels to fish for scallop with trawl gear. This action is also considering a mechanism to allow voluntary sectors in the general category fishery and interim measures for the transition period to limited entry (if adopted)

This action is also considering measures that will affect existing limited access scallop vessels (full-time, part-time and occasional permits). There are alternatives in the document that permit or prohibit limited access vessels to fish under general category. There is also a section that considers allocating a portion of the total scallop catch to the general category fishery. There are several alternatives to allow better and more timely integration of recent data. Lastly, this action is considering several other measures related to a current trawl gear restriction and a higher possession limit of scallops seaward of the VMS demarcation line.

### **The Council's preferred alternatives at this time include:**

- **Allocation of 5% of the total annual projected scallop catch to the general category fishery (Section 3.1.7)**

A portion of the total projected annual scallop catch would be allocated to vessels with a general category permit. The document considers a range of 2.5 – 11% of the total projected annual scallop catch as well as no action for allocation. The Council

identified 5% as the preferred allocation value, as was recommended by the Scallop Oversight Committee. The main rationale for identifying this alternative as preferred was that 5% reflects a percentage similar to the long-term average, but is higher to recognize more recent growth and participation in the general category fishery. It is a level of catch that would ideally provide enough landings to be spread among various general category vessels that participate in this fishery at a variety of levels without substantial impacts on the existing limited access fishery. The Council did discuss that the ultimate percentage value selected for allocation should reflect later decisions about qualification criteria alternatives that would affect the number of potential participants if limited entry is adopted.

- **Implementation of a limited entry program for the general category fishery (Section 3.1)**

Only vessels that qualify for a limited entry general category permit would be permitted to land scallops under general category rules after this action is adopted. The current general category permits (1A- nonVMS and 1B- VMS permits) will be replaced with limited entry general category permits. The document also considers No Action as well as a fleet-wide annual TAC to control capacity and mortality in the general category fishery. The main rationale for the Council selecting limited entry as preferred was that limited entry is expected to have positive impacts overall on aspects of both the biological and economic environments, and was preferred by both the Scallop Oversight Committee and advisory panels.

- **A vessel would qualify if it had a permit before the control date (November 1, 2004), landings of 1,000 pounds in any year during the 11-year time period of FY1994 through the control date. (Section 3.1.2.1 and 3.1.2.2)**

Based on available data, approximately 469 vessels would qualify under these qualification alternatives. The document also considers two other qualification time periods, and two other poundage criteria. The main rationale for identifying these alternatives as preferred was that the longer time series provides more opportunity for vessels to qualify that may have fished historically as well as vessels that have fishing in more recent years. The 1,000 pound landing criteria reflects a poundage level that is not too restrictive but demonstrates dependence on the scallop resource. Overall, the Council intent of the preferred alternatives for qualification was to balance the number of vessels that qualify so that more than just directed general category vessels receive a limited access permit, but not too many vessels so that the TAC is divided among too many participants. In order to be consistent with the vision statement for this action, these preferred alternatives for qualification would ideally identify a number of diverse vessels that could participate in the general category fishery at different levels and provide flexibility for qualifying vessels.

- **Allocation of access for qualifying vessels would be an individual allocation in trips, maintaining the 400 pound possession limit. (Section 3.1.2.4)**

All vessels that qualify for a limited entry general category permit would be allocated a specific number of trips (Option B). The number of trips would be a percentage of the total general category allocation and based on an individual vessel's contribution

to landings during the qualification time period. The document considers numerous other allocation alternatives including the same individual allocation alternative but in pounds rather than trips, other individual allocation alternatives with two permit types or equal allocations in three tiers, a stand alone individual transferable quota system, a stand-alone hard-TAC option, and several other hard-TAC alternatives combined with limited entry. The main rationale for the preferred alternative was that individual allocation is the most fair strategy, and qualifying vessels would be allocated an amount that best reflects their contribution to general category landings. This alternative was the preferred alternative of the Scallop Oversight Committee, and allocation in trips was identified as preferred over pounds primarily for monitoring reasons and to reduce the potential for possible cost recovery requirements. NMFS 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.

- **Individual allocation would be based on a vessels best year indexed by number of years active in the fishery. (Section 3.1.2.3)**

Each qualifying vessel would receive a percent of the available TAC for general category. A vessels best year of landings during the qualification time period would be taken and that amount would then be multiplied by an index of years active in the scallop fishery. The Council identified Option B as preferred, an index of 25% to be used to scale a vessels contribution factor by the number of years that vessel has been active in the fishery. The main rationale for the preferred alternative was to provide some weight in allocation for vessels that have been participating in the general category fishery for a longer period of time.

- **Specific permit provisions for limited entry general category permits (Section 3.1.2.5)**

This section includes several alternatives about specific permit provisions; most are consistent with the standardized permit provisions established by the Consistency Amendment (1999) and several alternatives consider provisions that would be different. The Council reviewed all the provisions and identified several as preferred alternatives. First, the alternative that would allow more than one permit to be issued from one hull number was identified as preferred (provided that all previous owners of that hull retained the general category history of the vessel when it was sold, and all owners had a general category permit and qualifying landings during the qualification time period). Second, to identify one of the stacking alternatives as preferred; a vessel would be permitted to stack allocated general category access on one vessel up to 60,000 pounds or 150 trips (depending on how access is allocated). Lastly, the Council selected a third permit provision alternative as preferred; a measure to prevent excess consolidation, 1-5% of the total general category allocation could not be owned by one individual or corporation. In general, these alternatives were identified as preferred to respond to comments during the scoping process for Amendment 11. If an individual can prove that he/she held their general category scallop history when a vessel was sold, it should be entitled to qualify for a limited entry permit. Furthermore, one way to minimize potential revenue loss for qualifying

vessels and increase flexibility would be to enable a vessel to stack access on one vessel. Lastly, the Council supports some level of consolidation, but identified one alternative that would prevent excess consolidation as preferred. There are several other permit provision alternatives but only three were identified as preferred.

- **A separate Northern Gulf of Maine (NGOM) limited entry general category program would be adopted. Vessels could qualify for this permit if they landed at least one 100 pound trip in any fishing year since 1994 through the control date. Access to fish in this area would be at a reduced level (200 pounds per trip) with specific gear restrictions and the entire fishery would be under a hard-TAC. The NGOM area would close to all scallop fishing after the TAC was reached. (Section 3.1.4)**

The Council considered several alternatives for management of the scallop resource in the Northern Gulf of Maine. It has been noted that this area may be managed separately because the fishery in this region is 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 this area separately from the overall program. The Council selected the alternative that would establish a separate limited entry program for this area with a reduced access level for vessels that had some level of historic fishing as preferred.

- **Limited access vessels would be prohibited from fishing under general category unless they qualify under the same qualification criteria selected for the limited entry general category permit. Catch from that component of the fishery would be limited to 0.5% of the total scallop TAC. Qualifying vessels would also receive an individual allocation of trips based on their best year indexed by years active in the fishery. (Section 3.1.6)**

This section includes several alternatives for limited access privileges under general category. The Council identified one alternative as preferred: if a limited access vessels qualifies for a general category permit under the same qualification criteria selected for the limited entry general category program then that vessel would be permitted to fish under general category outside a scallop DAS/access area trip. All vessels that qualify would be allocated access to the scallop resource in the same method as general category vessels (preferred strategy is individual allocation in trips). Each vessel would receive an individual share based on their historical contribution to general category landings up to a total of 0.5% of the total projected annual scallop catch for the entire component of the fishery. All limited access vessels that do not qualify to fish under general category would no longer be permitted to fish under general category rules. The main rationale for this preferred alternative is that limited access vessels that have general category landings that qualify under the same criteria should be permitted to fish under general category. Some limited access vessels depend on this privilege as a component of overall revenue. The Council identified 0.5% as the maximum projected annual scallop 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.

There are other measures being considered in this action that the Council has not identified as preferred. It is possible that the Council will select some of these measures as part of the final action for after the public comment period. The other measures under consideration that have no identified preferred alternative to date are: measures to reduce incentive for limited access general category qualifiers to fish for scallops with trawl gear, a mechanism to approve voluntary sectors for the general category fishery, interim measures for transition to limited entry, monitoring provisions, incidental catch, measures to allow better and more timely integrations of recent data, and other measures. Table 1 is a summary of all the alternatives in Amendment 11; the preferred alternatives are shaded. After the public comment period, the Council may select different alternatives from the preferred alternatives identified at this time.

**Table 1 – Summary of alternatives for Amendment 11 (preferred alternatives shaded)**

SECTION	ALTERNATIVE NAME	DESCRIPTION OF ALTERNATIVE
<b>3.1</b>	<b>MEASURES TO CONTROL CAPACITY AND MORTALITY IN THE GENERAL CATEGORY FISHERY</b>	
<b>3.1.1</b>	<b>No Action</b>	
<b>3.1.2</b>	<b>Limited Entry</b>	
3.1.2.1	Qualification criteria alternatives	
3.1.2.1.1	Permit before control date and 100 pound trip	In order to qualify must have permit before control date and at least one trip of 100 lbs or more during qualification time period
3.1.2.1.2	Permit before control date and 1,000 annual pounds	In order to qualify must have permit before control date and at least 1,000 pounds of scallops in one year during the qualification time period
3.1.2.1.3	Permit before control date and 5,000 annual pounds	In order to qualify must have permit before control date and at least 5,000 pounds of scallops in one year during the qualification time period
3.1.2.2	Qualification time period alternatives	
3.1.2.2.1	March 1, 2003-November 1, 2004	Qualification would have to be during these five fishing years, note last fishing year only eight months long (Mar.1,04 - Nov.1,04)
3.1.2.2.2	March 1, 2000-November 1, 2004	Qualification would have to be during these two fishing years, note last fishing year only eight months long (Mar.1,04 - Nov.1,04)
3.1.2.2.3	March 1, 1994-November 1, 2004	Qualification would have to be during these eleven fishing years, note last fishing year only eight months long (Mar.1 94 - Nov.1 04)
3.1.2.3	Determination of qualification amount	
3.1.2.3.1	Best year	A vessels best year would be taken from the qualification time period selected as their contribution to the general category fishery. That value would then be scaled based on projected TAC and percent given to the general category fishery.
3.1.2.3.2	Best year indexed by number of years active in the scallop fishery	A vessels best year would be taken from the qualification time period selected as their contribution to the general category fishery. That amount would then be multiplied by an index of years active in the scallop fishery. Option A is a range of index values from 0.9 to 1.1 for one to >5 years respectively. Option B is 0.75 to 1.25 for one to >5 years respectively ( <b>preferred</b> ). The final value would then be scaled based on projected TAC and percent given to the general category fishery.
3.1.2.3.3	Cap of 50,000 pounds for a vessels individual contribution factor	The contribution factor calculated by any of the methods above (3.1.2.3.1 – 3.1.2.3.5) could not exceed 50,000 pounds per vessel.
3.1.2.4	Allocation of access for qualifiers	
3.1.2.4.1	Individual allocation	Every vessel that qualifies would be allocated an individual amount of quota in pounds (Option A) or number of trips (Option B). <b>Option B is preferred</b> . Once their allocation is caught they can't land scallops under general category permit.
3.1.2.4.1.1	Modify the 400 pounds possession limit to 2,000 pounds per trip only with individual allocation alternative	A vessel that qualifies for a limited entry permit would be permitted to land up to 2,000 pounds of scallop meat per trip regardless of the length of a trip.
3.1.2.4.2	Individual allocation with two permit types	Every vessel that qualifies would be allocated an individual amount of quota in pounds (Option A) or number of trips (Option B) but there would be two permit types. Part time permit restricted to 200 pounds per trip and Full time permit restricted to 400 pounds per trip. Once their allocation is caught they can't land scallops under general category permit.

3.1.2.4.3	Individual allocation with three tiers	Every vessel that qualifies would fall into one of three tiers based on annual landings. Each vessel within a tier would get an equal allocation. Allocation of quota would be in pounds (Option A) or number of trips (Option B). Once their allocation is caught they can't land scallops under general category permit.
3.1.2.4.4	Stand alone ITQ alternative	This alternative would qualify all vessels that had a permit in any year from 2000 through the control date. However, only vessels with landings would be allocated access to the fishery. Vessels would be able to lease/buy quota from other qualifiers up to 1-5% of total general category quota.
3.1.2.4.5	Stand alone quarterly hard TAC alternative with limited entry	This alternative would include a limited entry program for vessels with a permit before the control date and some level of landings. A vessel would qualify for a 200 pound permit if they landed 1-5,000 pounds in any FY from March 1, 1994 – Nov 1, 2004. A vessel would qualify for a 400 pound permit if they landed over 5,000 pounds in any one FY from 1994-2004. Qualifying vessels could possess up to 400 pounds per trip and fish under a quarterly hard TAC.
3.1.2.4.6	Fleetwide Hard TAC with limited entry	A vessel would have to qualify for a limited access general category permit. All vessels that qualify would be allocated a fleetwide hard TAC. When the TAC is projected to be caught vessels would not be permitted to land scallops outside of incidental catch rules.
3.1.2.4.7	Fleetwide Hard TAC by quarter or trimester with limited entry	A quarterly (Option A) or trimester (Option B) TAC would be set using data from FY2000-FY2005 to identify the appropriate percentage that should be allocated for each quarter. Only vessels that qualify for a limited access general category permit would be permitted to fish for scallops up to 400 pounds per trip.
3.1.2.5	Limited Entry Permit Provisions – these alternatives only relative if limited entry adopted in this action	
3.1.2.5.1	Fishing history and permit transfers	
3.1.2.5.1.1	No Action (One vessel can only qualify one permit)	Fishing history for an open access permit remains with the vessel. Even if the purchase and sales agreement specifies that the general category history remains with the seller, NMFS does not recognize history for an open access permit and the buyer would be the only person eligible for qualification.
3.1.2.5.1.2	One vessel potentially qualifying more than one permit	If a vessel owner 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.
3.1.2.5.2	Vessel upgrades	
3.1.2.5.2.1	No upgrade restriction	A vessel that qualifies can replace their vessel, or refit it without any restrictions.
3.1.2.5.2.2	10:10:20 upgrade restriction	A vessel may be upgraded, but HP can only increase 20% once, length, GRT and NT can only increase 10% once.
3.1.2.5.2.2.1	Vessel baselines	If an upgrade restriction is adopted, establishing a baseline is necessary. A vessels baseline would be the specifications when a vessel qualifies for a limited access permit.
3.1.2.5.3	Vessel replacements	A qualifying vessel would be permitted to replace that vessel in the future, but the same entity must own the vessel that is being replaced and the replacement vessel.
3.1.2.5.4	Permit stacking	
3.1.2.5.4.1	No Action	No permit stacking
3.1.2.5.4.2	Allow stacking up to two permits	A vessel that qualifies for more than one limited access permit, or leases/purchases additional quota (if permitted) would be allowed to stack their allocation onto one vessel-limited to two

		permits.
3.1.2.5.4.3	Allow stacking up to 60,000 pounds or 150 trips	A vessel that qualifies could stack up to 60,000 pounds or 150 trips onto one vessel.
3.1.2.5.5	Voluntary Relinquishment of Eligibility	A vessel that qualifies can voluntarily exit the fishery. If relinquished, no limited access permit can be reissued to another vessel.
3.1.2.5.6	Permit splitting	If limited entry is approved in this action, that permit would have to be sold as a package, like all other limited access permits.
3.1.2.5.7	Permit renewals and CPH	A vessel owner must maintain the limited access permit status by renewing permits on an annual basis or applying for issuance of a CPH.
3.1.2.5.8	Percentage ownership restriction	
3.1.2.5.8.1	Maximum of 1-5% of total number of limited access general category permits	A vessel would be restricted to owning 1-5% of the total permits. If a vessel owns more than the limit when the plan is implemented, they would be grandfathered in.
3.1.2.5.9	Multispecies permit restrictions would not apply for limited entry general category qualifiers	In terms of not being permitted to have a limited entry scallop permit on a limited entry multispecies vessel, if limited entry is adopted for the general category fishery this alternative clarifies that one vessel would be permitted to have both a limited entry multispecies permit and a limited entry general category permit
3.1.2.6	Measures to reduce incentive for limited entry qualifiers to fish for scallops with trawl gear	
3.1.2.6.1	No Action	If a vessel qualifies for a permit using a trawl they would be permitted to land scallops up to 400 pounds per trip
3.1.2.6.2	Prohibit a vessel from switching to trawl gear if it qualified under dredge gear	If a vessel qualifies using dredge gear at all during qualification they would get a dredge only permit, it would not be permitted to switch to trawl gear to fish for scallops under general category.
3.1.2.6.3	Lower possession limit for vessels that qualify for a limited entry general category permit and fish with trawl gear	Two alternatives under considerations (300 pounds and 250 pounds)
3.1.2.6.4	If a vessel is fishing with a net and has a general category scallop permit, scallops can only be up to 5% of total regulated species onboard (maintaining the 400 pound possession limit)	This alternative would allow vessels to land up to 400 pounds of scallops with a net, but scallops can only be up to 5% of total product onboard. This would reduce incentive to fish for scallops with a net since a vessel would have to have 95% of another species onboard.
3.1.2.7	Sectors and Harvesting Cooperatives	Establish a process for creation of voluntary sectors in the general category fishery.
3.1.2.7.1	20% maximum allocation per sector	One sector could not be allocated more than 20% of the total general category allocation. The maximum percent value could be changed in a future framework, perhaps after the Council considers an overall sector policy.
3.1.2.8	Interim measures for transition period to limited entry	
3.1.2.8.1	Transition to limited entry with hard-TAC	General category qualifiers (and vessels under appeal) will be limited to a 10% of total projected annual scallop catch
3.1.2.8.2	Transition to limited entry without hard-TAC	General category qualifiers (and vessels under appeal) will be permitted to fish under current restrictions – not hard TAC for the component of the fishery overall
<b>3.1.3</b>	<b>Hard TAC</b>	
3.1.3.1	Fleet-wide Hard TAC	A hard TAC would be defined for the entire general category fishery and when that amount

		was projected to be caught the fishery would close.
<b>3.1.4</b>	<b>Establish a NGOM Scallop Management Area</b>	
3.1.4.1	No Action	No additional measures would be considered for the NGOM
3.1.4.2	Amendment 11 would not apply to waters in the NGOM	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) or Option B (EEZ north of 43N). The open access 1B permit to fish for scallops under general category would remain for this area, and a vessel could possess up to 400 pounds until a hard TAC is reached. Once the hard TAC is reached all vessels only permitted to possess up to 40 pounds
3.1.4.3	Establish a limited entry program for the NGOM	This alternative would develop a separate limited entry general category program in either Option A (the GOM exemption area north of 42°20N) or Option B (EEZ north of 43N). The area would have a separate hard TAC. Separate qualification criteria are being considered as well as different trip and gear restrictions from the general category limited entry program. If a vessel qualifies for a limited entry general category permit and wants to fish in the NGOM area it will have to declare it is on a NGOM trip.
<b>3.1.5</b>	<b>Monitoring provisions</b>	
3.1.5.1	Require landings and declaration of scallop trip through VMS	Require vessels to declare they are going on a general category trip and report scallop landings through VMS.
3.1.5.2	Require vessels to report landings through IVR	Vessels would be required to report landings weekly through IVR in addition to VTR
<b>3.1.6</b>	<b>Limited access fishing under general category rules</b>	
3.1.6.1	Permit or prohibit limited access fishing under general category rules	
3.1.6.1.1	Permit limited access vessels that qualify	Any full-time, part-time, or occasional vessel that qualifies to fish under the same criteria selected for the general category fishery would receive a permit to land scallops under general category while not on a scallop DAS.
3.1.6.1.2	Permit occasional or part-time limited access vessels that qualify	Same as above but full-time permits would not be considered.
3.1.6.1.3	Prohibit all limited access vessels from fishing under general category rules	All limited access permits would be prohibited from landings scallops under general category rules.
3.1.6.2	Allocation of quota to limited access vessels under general category rules	
3.1.6.2.1	Landings deducted from general category TAC	The landings from limited access qualifiers under general category would be deducted as part of the general category TAC
3.1.6.2.2	Landings deducted from separate allocation – 0.5% of total projected annual scallop catch	The landings from limited access qualifiers under general category would be deducted from a separate TAC just for limited access fishing under general category rules- 0.5%.
<b>3.1.7</b>	<b>Allocation between limited access and general category fisheries</b>	
3.1.7.1	No Action	A specific allocation would not be implemented.
3.1.7.2	Allocation for general category fishery of 2.5-11% of projected TAC	The general category fishery would be implemented a specific percent of the total scallop catch. It is understood that the amount will change based on estimated yield, but the percent would remain the same. The range being considered in 2.5 to 11% of the total. <b>Preferred allocation value is 5.0%.</b>
3.1.7.3	Allocation of yellowtail flounder bycatch TAC in access areas	
3.1.7.3.1	No Action	The yellowtail flounder bycatch TAC is for both components of the scallop fishery. When the

		TAC is projected to be caught, the area closes to both fisheries.
3.1.7.3.2	Allocate a proportional allocation of the 10% to the general category fishery	Currently the 10% YT bycatch TAC is for both fisheries combined. This alternative would allocate the same percent of the YT bycatch TAC as the Council selects for the scallop catch (2.5-11%).
<b>3.1.8</b>	<b>Incidental Catch</b>	
3.1.8.1	No Action	No change to incidental rules, 40 lb. possession limit not for resale. No permit needed – any vessel in the region is permitted to possess/land (but not sell) up to 40 lb.
3.1.8.2	New Incidental Catch Permit	A vessel that qualifies under the general category qualification time period alternative selected but not the landings criteria would qualify for this permit and could possess and sell up to 40 lb. of scallop meat per trip. A vessel that qualifies for a limited entry general category permit could opt for this permit instead. If this alternative is selected the current privilege for any vessel to possess (for personal use – cannot be sold) up to 40 lb. scallop meat would be eliminated.
<b>3.2</b>	<b>MEASURES TO ALLOW BETTER AND MORE TIMELY INTEGRATION OF RECENT DATA</b>	
3.2.1	No Action	No additional measures to allow better and more timely integration of recent data
3.2.1.1	Change issuance date of permit	Change the issuance date of general category permit from May 1 to March 1
3.2.2	Change start of FY to May 1	Change scallop fishing year for general category and limited access from March 1 to May 1
3.2.3	Change start of FY to August 1	Change scallop fishing year for general category and limited access from March 1 to August 1
<b>3.3</b>	<b>OTHER MEASURES</b>	
3.3.1.1	No action	Current trawl sweep restriction would apply
3.3.1.2	Clarification of trawl gear restriction	This alternative would clarify that the 144 ft. net sweep restriction is intended for vessels in the scallop fishery only, and does not apply to vessels participating on other trawl fisheries that catch scallops as bycatch. Specifically, if a vessel is fishing under a multispecies or monkfish DAS, and have a general category 1B permit, or a limited entry general category permit if one is adopted in this action, would be permitted to possess up to 400 pounds of scallops and would not be restricted by the 144 net sweep restriction.
3.3.2.1	No Action	Current possession limit would apply in all areas
3.3.2.2	Possession limit of 50 bu. Shoreward of the VMS demarcation line and up to 100 bushels east of the line	This modification would allow a general category vessel to be in possession of up to 100 bushels east of the demarcation line only. Once shoreward of the line a vessel can only be in possession of 50 bushels.

### **Summary of Impact Analysis**

Analyses of the preferred alternatives as well as all management alternatives considered during the development of this amendment are provided in this document across a series of valued ecosystem components, or VECs. VECs represent the resources, areas, and human communities that may be affected by a proposed management action or alternatives, and by other actions that have occurred or will occur outside the Proposed Action. VECs are the focus of an EIS since they are the “place” where the impacts of management actions are exhibited. An analysis of impacts is performed on each VEC to assess whether the direct/indirect effects of an alternative adds to or subtracts from the effects that are already affecting the VEC from past, present and future actions outside the Proposed Action (i.e., cumulative effects). The VECs identified for Amendment 11 include: Atlantic sea scallop resource, physical environment and EFH, protected species, fishery-related businesses and communities, and other impacts.

The descriptive and analytic components of this document are constructed in a consistent manner. The Affected Environment section of this document traces the history of each VEC and consequently addresses the impacts of past actions. The Affected Environment section (Section 4.0) is designed to enhance the readers’ understanding of the historical, current, and near-future conditions (baselines and trends) in order to fully understand the anticipated environmental impacts of the management alternatives under consideration in this amendment.

#### ***Impacts on Atlantic Sea Scallop Resource (Section 5.1)***

Overall the impact of No Action is negative for the scallop resource. Open access may increase the risk that estimates could be inaccurate and fishing mortality exceeded. The No Action would not help reduce fishing pressure in near shore waters which are below average in terms of abundance. Since the No Action does not address potential growth of the general category fishery there is a greater chance that overfishing could result if projections do not accurately predict mortality from the general category sector. Limited entry is expected to have positive impacts on the scallop resource. While the specific qualification alternatives have neutral impacts in terms of cumulative effects, overall limiting the number of vessels that can harvest scallop under general category helps prevent overfishing. In general, how access is allocated has neutral impacts, but the hard TAC options may have negative impacts on the scallop resource depending on how it is implemented and how vessels respond to a hard TAC. In general, the other alternatives under limited entry such as permit provisions, fishing with trawl gear and sectors have neutral or potentially positive effects.

In terms of limited access fishing under general category the impacts on the scallop resource are neutral. Allocating a portion of the total scallop TAC to the general category fishery would help prevent the fishery from exceeding fishing mortality rates, but there are some concerns with near shore areas and vessel behavior in terms of scallop mortality. The cumulative impacts of the NGOM alternatives are neutral provided the TAC is set at an appropriate level to prevent overfishing. Lastly, positive cumulative impacts are expected from the measures to improve integration of scallop data so that management measures can be developed using the most recent data available.

***Impacts on Physical Environment and Essential Fish Habitat (EFH) (Section 5.2)***

In general, most alternatives under consideration have neutral to slightly positive cumulative impacts on EFH when compared to the No Action. Similar to the scallop resource, negative cumulative impacts are expected under No Action and positive impacts under limited entry. Limited entry will have long-term positive impacts on EFH by reducing the number of potential participants and controlling effort as compared to the No Action open access fishery. The specific qualification alternatives and permit provisions do not have expected impacts on EFH. Permitting the formation of sectors may have potential positive impacts on EFH if vessels can fish more efficiently and reduce bottom contact time. And if additional monitoring requirements are selected potential positive impacts on EFH may result with better information about the general category fishery. Overall if the general category fishery is allocated a portion of the scallop TAC there could be potential positive impacts on EFH because the potential expansion of general category effort would be limited, thus potential impacts to EFH reduced. If general category effort is concentrated in near shore areas with critical effort then the cumulative impacts on EFH in those areas would be potentially negative in the long term.

***Impacts on Protected Resources (Section 5.3)***

In general, most alternatives under consideration have neutral cumulative impacts on protected resources when compared to the No Action. Similar to the scallop resource, negative cumulative impacts are expected under No Action and positive impacts under limited entry. The specific qualification alternatives and permit provisions do not have expected impacts on protected resources. Permitting the formation of sectors may have potential positive impacts on protected resources if vessels can fish more efficiently and reduce bottom contact time. Potentially negative impacts could occur if a change in the fishing year results in an increase in effort or derby effects that overlap with periods when turtles are most abundant. And if additional monitoring requirements are selected potential positive impacts on protected resources may result with better information about the general category fishery. Overall if the general category fishery is allocated a portion of the scallop TAC there could be potential positive impacts on protected resources because the potential expansion of general category effort would be limited, thus potential impacts to protected resources reduced.

***Impacts on Fishery-Related Businesses and Communities (Section 5.4 and 5.5)***

The direct and indirect impacts of the alternatives included in Amendment 11 on fishery related businesses and communities were analyzed in Section 5.4 (Economic Impacts) and Section 5.5 (Social Impacts) of this document. The cumulative impacts of the limited access, TAC, and other alternatives included in Amendment 11 are summarized in Table 203. Overall, these impacts are expected to be positive on fishery related businesses and communities.

Past and present actions had positive cumulative impacts on the communities by increasing the scallop landings and revenues, and by giving relatively smaller general category vessels an option to fish on a rebuild resource. The proposed action will

continue providing this opportunity to a subset of vessels that had a general category permit and participated in the general category fishery before the control date for a period ranging from 2 to 11 years. Although the limited entry alternatives will have negative distributional impacts on the groups of general category vessels excluded from limited access, the overall cumulative impacts of the proposed action are expected to be positive compared to taking no action. Since with no action there are no limits on the number of trips a general category vessel could take and no limits on the number of vessels able to participate in the general category fishery, total fishing effort in this fishery could increase in response to higher scallop prices, to an increase in resource productivity, or to changes in fishing opportunities in other fisheries. As a result, scallop mortality could exceed sustainable levels, reducing the stock biomass, the future yield, scallop revenues and income for the participants of the sea scallop fishery. Limited access, by itself, will not entirely eliminate these possible effects, but it will reduce the risks of overfishing of the scallop resource by preventing new entry to the general category fishery and by restricting the number of participants in this fishery to vessels that meet the poundage qualification criteria within a qualification time period.

Amendment 11 also includes alternatives that would control scallop fishing mortality in the general category fishery by allocating a separate TAC for this sector. In general, the cumulative impacts of the TAC alternatives are expected to be positive on fishery related businesses and communities compared to taking no action for the following reasons:

- Even with limited access and in the absence of measures that control overall scallop landings by general category vessels, it is possible for the fishing mortality to increase beyond the target levels if the qualified vessels increase the number of trips targeting scallops. This could have negative impacts on both the limited access and the general category vessels as scallop catch per day-at-sea declines and fishing costs per pound of scallops increase.
- Since any increase in overfishing of the scallop resource will need to be corrected through framework action according to the Sea Scallop FMP, the Council could reduce the DAS allocations for limited access vessels, negatively impacting these vessels and their communities. The Council could also reduce the possession limit for all general category vessels, affecting negatively most of the general category vessels that participate in the fishery and depend on scallops as a significant source of income.

If the general category fishery is managed by hard TAC, however, without limited access and/or without allocation of quota to individual vessels (either an individual quota or allocations to tiers), it could lead to a race to fish and market gluts, which could have negative economic impacts especially on smaller vessels that fish seasonally and cannot access all areas due to the constraints on their capacity. Fleet-wide hard TAC by trimester or by quarter will spread out the fishing season and reduce negative impacts from derby fishing and market gluts to some extent. TAC management combined with limited entry and allocation for vessels (in terms of IQ in pounds or trips, in terms of individual allocation or equal allocation for tiers) will prevent derby-style fishing and the negative impacts associated with it.

The impacts of the other alternatives regarding permit and monitoring provisions, NGOM area management alternatives, limited access fishing under general category rules, allocation between general category and limited access vessels, incidental catch, more timely integration of data and other measures were analyzed in Section 5.4 (Economic Impacts) and Section 5.5 (Social Impacts) and summarized in Table 5. Since the overall impacts of these alternatives are, in general, expected to be positive for the participants in the sea scallop fishery (for the reasons provided in Section 5.4 and 5.5), the cumulative impacts of the Amendment 11 alternatives including the past actions are also expected to be positive compared to taking no action.

***Other Fisheries (Section 5.6.1)***

In general, most alternatives under consideration have neutral cumulative impacts on other fisheries when compared to the No Action. Some of the hard- TAC alternatives have potential negative impacts on other fisheries because if a hard TAC leads to vessels changing behavior impacts could increase. Specifically, if vessels end up fishing for scallops on a more direct basis until the TAC is caught and then fish for other species, then effort could shift into other fisheries after the general category TAC is caught.

***Cumulative Effects (Section 5.7)***

A summary of the cumulative effects of past, present and reasonably foreseeable actions on all the VECs in this document are assessed in Section 5.6. In addition the potential cumulative effects of each VEC on the preferred alternative and all alternatives under consideration are summarized in Table 203. Overall, the cumulative effects of the No Action alternative are negative. Limited entry is expected to have positive cumulative effects, and a hard-TAC to control capacity and mortality in the general category fishery would have negative unintended consequences. In general many of the qualification alternatives and different allocation alternatives for a limited entry program have neutral cumulative effects on the VECs under consideration overall.

This DSEIS for Amendment 11 will be available for 45 days for public comment. The Council has scheduled public hearings on this action for May 2007. Contact the Council office for the meeting locations and details.

## LIST OF ACRONYMS

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

SARC – Stock Assessment Review Committee  
SAW – Stock assessment workshop  
SBNMS – Stellwagen Bank Marine Sanctuary  
SEIS – Supplemental Environmental Impact Statement  
SMAST – School of Marine Science and Technology, University of Massachusetts  
Dartmouth  
SNE – Southern New England  
TAC – Total Allowable Catch. This includes discards for finfish species, but not for  
scallops which have a much lower discard mortality rate.  
PDT – Scallop Plan Development Team  
U10 – A classification for large scallops, less than 10 meats per pound.  
USGS – United States Geological Survey  
VIMS – Virginia Institute of Marine Science  
VMS – Vessel Monitoring System  
VTR – Vessel Trip Reports  
YT – Yellowtail flounder

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## **1.0 BACKGROUND AND PURPOSE**

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

The Atlantic Sea Scallop FMP management unit consists of the sea scallop *Placopecten magellanicus* (Gmelin) resource throughout its range in waters under the jurisdiction of the United States. This includes all populations of sea scallops from the shoreline to the outer boundary of the Exclusive Economic Zone (EEZ). The principal resource areas are the Northeast Peak of Georges Bank, westward to the Great South Channel, and southward along the continental shelf of the Mid-Atlantic.

The management unit also includes populations found within the Gulf of Maine and Cape Cod Bay. These areas include the territorial seas throughout the range, primarily in Maine (ME) and Massachusetts (MA). Fishing for sea scallops within state territorial waters is not subject to regulation under the FMP except for vessels that hold a Federal scallop permit when scalloping in state waters. Nevertheless, sea scallops within state waters are included within the management unit in recognition of market interactions and the need for complementary state management action.

The Council established the Scallop FMP in 1982. A number of Amendments and Framework Adjustments have been implemented since that time to adjust the original plan. Amendment 4 was implemented in 1994 and introduced major changes in scallop management, including a limited access program to stop the influx of new vessels, a day-at-sea (DAS) reduction plan to reduce mortality and prevent recruitment overfishing, new gear regulations to improve size selection and reduce bycatch, a vessel monitoring system to track a vessel's fishing effort, and an annual framework adjustment process to allow certain measures to be modified in response to changes in the fishery including scallop abundance. Limited access vessels were assigned different DAS limits according to which permit category they qualified for: full-time, part-time or occasional. Amendment 4 also established a planned reduction in the annual day-at-sea allocations for vessels with limited access scallop permits. Amendment 4 also created the general category scallop permit for vessels that did not qualify for a limited access permit. Although originally created for an incidental catch of scallops in other fisheries, and for small-scale directed fisheries, the general category fishery and fleet has evolved since its creation in 1994. The changes in the general category fishery are demonstrated in Section 4.4.

Also in 1994 Amendment 5 to the Northeast Multispecies FMP closed Closed Area I, Closed Area II, and the Nantucket Lightship Area to scallop fishing, because of concerns over finfish bycatch and disruption of spawning aggregations (See Figure 1).

In 1998, the Council developed Amendment 7 to the Scallop FMP, which was needed to change the overfishing definition, the day-at-sea schedule, and measures to meet new lower mortality targets to comply with new requirement under the Magnuson-Stevens Act. In addition, Amendment 7 also established two new scallop closed areas (Hudson Canyon and VA/NC Areas) in the Mid-Atlantic to protect concentrations of small scallops until they reached a larger size. Amendment 7 further reduced the DAS allocations under a 10-year 'rebuilding' period.

Framework Adjustments 12, 14 and 15 to the Scallop FMP later adjusted the DAS allocations upward to meet the Amendment 7 fishing mortality targets.

In 1999 Framework Adjustment 11 to the Scallop FMP allowed the first scallop fishing within portions of the Georges Bank groundfish closed areas since 1994. Scallop resource surveys and experimental fishing activities had identified areas where scallop biomass was very high due to no fishing in the intervening years. These surveys and experimental fisheries provided more precise estimates of total biomass as well as the distribution and amount of finfish bycatch and allowed the Council to open the southern part of Closed Area II.

In 2000 Framework Adjustment 13 to the Scallop FMP authorized full-time and part-time limited access vessels to take three trips in the southern part of Closed Area II during June 15 to August 14, 2000; one trip in the northeast corner of the Nantucket Lightship Area during August 15 to September 30, 2000; and two trips in the central part of Closed Area I from October 1, 2000 to January 31, 2001.

In 2001 Framework Adjustment 14 to the Scallop FMP implemented a new area access program to the Hudson Canyon and VA/NC Areas since scallop biomass had rapidly increased due to the enhanced survival of the strong 1997 and 1998 year classes, especially in the Hudson Canyon Area. Following the structure of the highly successful area access program for the Georges Bank closed areas in 2000; the framework adjustment allocated trips to limited access vessels and applied a scallop possession limit and a day-at-sea tradeoff. Unlike the Georges Bank closed area access program, however, Framework Adjustment 14 allowed vessels with general category scallop permits to land 100 lbs. of scallop meats from the Hudson Canyon and VA/NC Areas.

Framework Adjustment 15 (2003) to the Scallop FMP continued the measures implemented in Framework Adjustment 14, but increased the Hudson Canyon and VA/NC Area scallop possession limit from 18,000 to 21,000 lbs. per trip. This action was needed to achieve the objectives and fishing mortality target specified in Amendment 7, while the Council developed Amendment 10.

In 2004 Amendment 10 to the Scallop FMP introduced rotation area management and changed the way that the FMP allocates fishing effort for limited access scallop vessels. Instead of allocating an annual pool of DAS for limited vessels to fish in any area, vessels had to use a portion of their total DAS allocation in the controlled access areas defined by the plan, or exchange them with another vessel to fish in a different controlled access area. Vessels could fish their open area DAS in any area that was not designated a controlled access area. The amendment also adopted several alternatives to minimize impacts on EFH, including designating EFH closed areas, which included portions of the groundfish mortality closed areas.

Framework 16 to the Scallop FMP, implemented in November 2004, adjusted DAS allocations and defined the area rotation schedule for part of the 2004 fishing year and the 2005 fishing year. It also included: a) an access program for vessels with general category scallop permits with enhanced reporting requirements and a two-percent TAC set-aside; b) yellowtail flounder TACs and provisions to minimize bycatch; c) changes in finfish possession limits to minimize bycatch and bycatch mortality; d) seasons when scallop fishing would be allowed to minimize bycatch

and bycatch mortality; e) enhanced sea sampling to improve precision of bycatch estimates; f) provisions to enhance enforcement monitoring and compliance; and g) a dredge-only restriction for fishing in the access areas to minimize bycatch and bycatch mortality.

Framework 16 also attempted to make the habitat closed area boundaries implemented under Amendment 10 consistent with the areas later implemented under Amendment 13 to the Northeast Multispecies FMP. However, in August 2005, the Court, in *Oceana v. Evans*, ruled that any revisions to the boundaries under the Scallop FMP must be implemented under a full rule making process via an FMP amendment rather than through the abbreviated rule-making process used in a framework adjustment, and reinstated the EFH closed areas implemented under Amendment 10 to the Scallop FMP. Thus, the habitat closed area boundaries implemented under Amendment 10 are currently in effect. As a result, the remaining areas accessible to scallop vessels under the rotational area management program are substantially smaller in Closed Area I and the Nantucket Lightship Closed Area than anticipated until the court ruling.

Framework 17 to the Scallop FMP was implemented in the fall of 2005. The purpose of the action was to provide more complete monitoring of the general category scallop fleet by requiring that vessels landing more than 40 pounds of scallop meats use monitoring systems (VMS). It revised the broken trip adjustment provision for limited access scallop vessels fishing in the Sea Scallop Area Access Program, by eliminating the broken trip “penalty”, which may have had a negative influence on vessel operator decisions and safety at sea.

Framework 18 was implemented on June 15, 2006, which set management measures for fishing years 2006 and 2007. Limited access vessels were allocated a specific number of open area DAS for each fishing year, as well as a maximum number of trips for different access areas depending on their permit category. Specifically, Closed Area II and Nantucket Lightship were open in 2006 under restricted access, and Nantucket Lightship and Closed Area I are open in 2007. General category vessels are also permitted to fish in these access areas with a 400 pound possession limit up to a total number of trips for that component of the fleet. Both areas are subject to a bycatch TAC of yellowtail flounder, and when that bycatch TAC is projected to be caught the area closes to all scallop fishing. The Elephant Trunk area also opens as a result of this action with specific allocation of trips, opening dates, and seasonal closures to reduce potential interactions with sea turtles. An area called Delmarva was closed under this action to protect small scallops found in that area; the area is projected to open in 2010. Other measures were included in the action such as measures related to unused 2005 Hudson Canyon trips, transfer of access area trips to open areas if access areas close early if the YT bycatch TAC is attained, elimination of crew size restrictions in access areas, access area trips exchange program changes, broken trip program changes, and allocations for set-aside programs (1% for observer program and 2% for research).

During development of this action the Council also began developing Scallop Amendment 13 which considered re-activating the industry funded observer program. Since 1999, vessels required to carry an observer are authorized to land more than the possession limit from trips in access areas, and in open areas vessels are charged a reduced amount to help compensate for the cost of an observer. Observers were deployed through a contractual arrangement between National Marine Fisheries Service (NMFS) and an observer provider until June 2004. This

arrangement was not renewed because of unresolved legal issues concerning the use of a contract to administer the industry funded observer program. For sometime NMFS funded observers while a solution to this issue was investigated. As funding became insufficient, an interim rule went into effect that approved a new mechanism to use the observer set-aside funds through a non-contracted vendor. Amendment 13 was necessary to make this temporary mechanism part of the regulations. The Council selected final measures for that action at the February 2007 Council meeting and it is expected to be implemented sometime in 2007.

The Council also initiated Framework 19 to the Scallop FMP in late 2006 to develop measures for the biennial action for fishing years 2008 and 2009. This action will include specifications for open area DAS for the limited access fishery and the scallop access area program. Depending on what is approved in Amendment 11 for the general category fishery, Framework 19 may also include specific allocation and management measures for the general category fishery if they are selected and approved in Amendment 11.

The Council initiated Phase I of the Essential Fish Habitat Omnibus Amendment in 2004. The primary purpose of Phase I was to review EFH designations, consider HAPC alternatives, describe prey species, and evaluate non-fishing impacts. This action was an amendment to all FMPs in this region, and is Amendment 14 to the Scallop FMP. The Council approved Phase I at the February 2007 Council meeting and the document was submitted to NMFS in March 2007. It is expected to be implemented later in 2007.

The Council was also developing Amendment 12 to the scallop FMP during development of Amendment 11. Similar to the EFH action, this action is an omnibus amendment to all FMPs in the region and focuses on defining a standardized bycatch reporting methodology (SBRM Amendment). Section 303(a) (11) of the Magnuson-Stevens Fishery Conservation and Management Act requires that all FMPs include “a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.” The SBRM Omnibus Amendment will ensure that all FMPs fully comply with the act. Amendment 10 and Framework 16 to the Scallop FMP were submitted to NMFS several years ago, and in 2004 Oceana, an environmental organization filed suit in the U.S. District Court challenging the SBRM elements of the FMP. The Court found the actions did not fully evaluate reporting methodologies, did not sufficiently address potentially important scientific evidence, and did not mandate a methodology for bycatch monitoring. Therefore, the Court remanded that the Secretary of Commerce take further action on the SBRM aspects of the Scallop FMP. SBRM is the combination of sampling design, data collection procedures, and analyses used to estimate bycatch and to determine the most appropriate allocation of observers across the relevant fishery modes. The Council has worked with NMFS in development of the SBRM Omnibus Amendment since 2005 and final action is expected in 2007.

Lastly, the Council plans to initiate Framework 20 at the April 2007 Council meeting. Framework 20 will be a limited action in scope that will extend measures implemented by interim action to prevent overfishing in the 2007 fishing year. At the November 2007 Council meeting the Scallop PDT informed the Council that overfishing is likely to occur in 2007 under status quo measures implemented under Framework 18. The PDT presented several alternatives to reduce fishing mortality and ultimately the Council recommended that NMFS reduce the

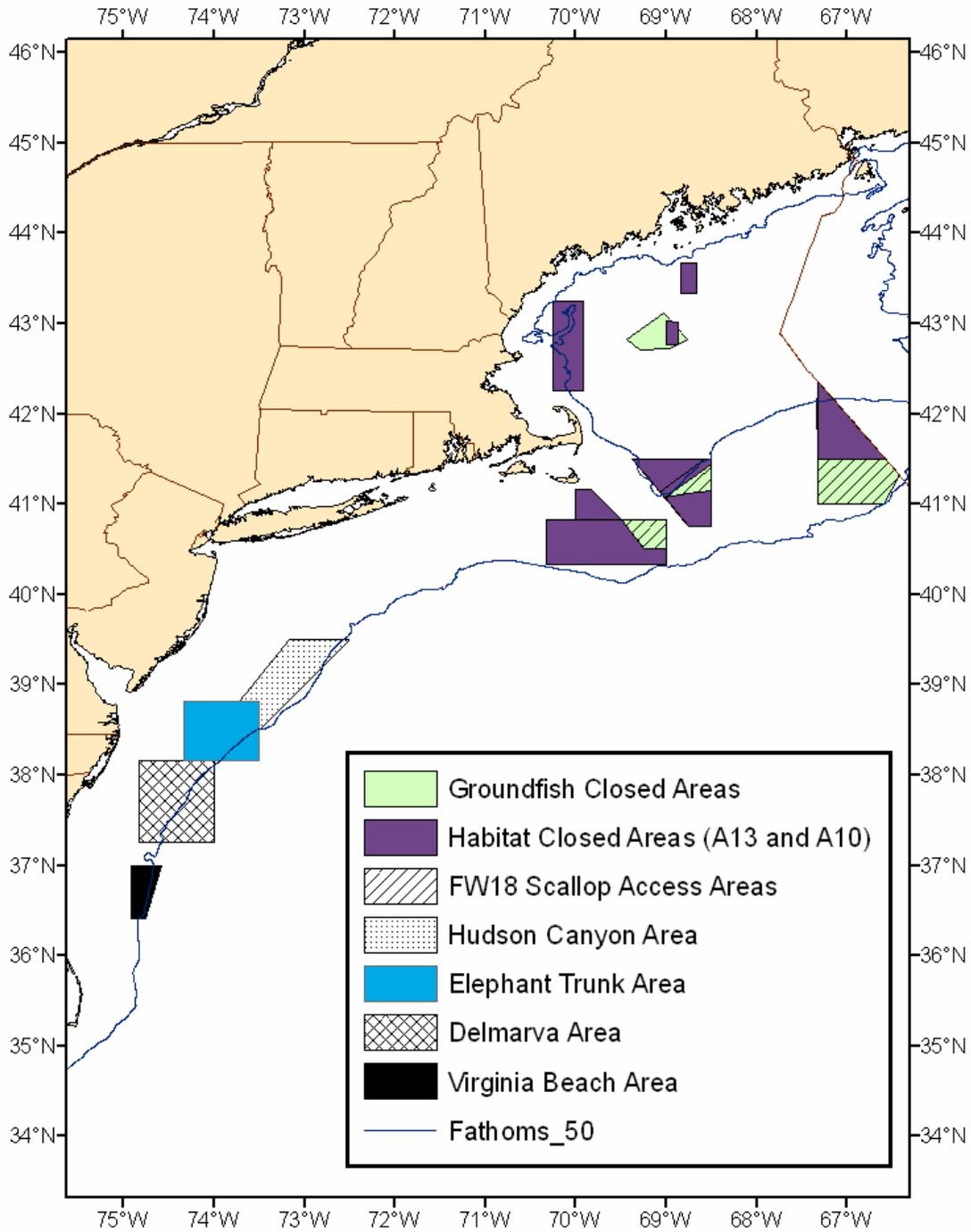
allocated number of trips for all scallop permit categories in the Elephant Trunk Access Area (ETA), delay the opening of the ETA, and prohibit vessels from possessing more than 50 bushels of in-shell scallops when leaving any controlled access area. NMFS agreed with the Council that the ETA has an unprecedented high abundance of scallops, which needs to be husbanded with precaution to effectively preserve the long term health of the scallop resource and fishery and implemented these measure by interim action.<sup>1</sup> This interim action became effective on December 22, 2006 and will remain effective until June 20, 2007 (180 days). This action can be extended once more for an additional 180 days, but would then expire by the end of December 2007, and could not be extended by interim action again. Under this scenario, the last two months of the fishing year are left (January-February 2008) and management would revert back to status quo measures under FW18. Specifically higher trips allocations would be granted in the Elephant Trunk Area for both limited access and general category fisheries. Therefore, the Council is considering an action that would extend the reduced fishing effort measures under interim action through the end of the 2007 fishing year. If approved, the action would expire on March 1, 2008, when Framework 19 would be in place. In order for Framework 20 to be in place by the end of December 2007, the Council would have to make final decisions at the June 2007 Council meeting.

This is a supplemental document because Amendment 11 would establish management measures that build off of the original Scallop FMP, for which a final environmental impact statement was completed in 1982. Several management actions, including 10 FMP amendments, and 18 "framework actions" have modified the FMP since 1982 and have been supported with either environmental assessments or supplemental EISs.

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<sup>1</sup> The interim rule published by NMFS on December 22, 2006 (**71 FR 76945**) included all measures recommended by the Council, except the prohibition on a vessel leaving an access area with more than 50 bu. of in-shell scallop was limited to the ETA only, not all access areas as recommended by the Council.

**Figure 1 – Boundaries for scallop management areas**



## **1.2 PURPOSE AND NEED**

The primary need for this action is to implement more effective management measures to control fishing mortality by the general category component of the scallop fishery. The first purpose of this amendment is to consider measures that will address capacity and fishing mortality in the general category fishery and allow the Council to develop alternatives that will more directly control the level of mortality from the general category fleet. This amendment is designed to meet all the requirements of the Magnuson-Stevens Fishery Conservation and Management Act, as well as other applicable laws.

To help focus this amendment during its development, the Council approved policy guidance at the January 2006 Council meeting. This guidance was used during scoping to help define the scope of issues that would be considered during the amendment. Some of this policy guidance has been changed related to statements about overfishing because based on an updated assessment completed in 2006, overfishing is no longer occurring.

The policy guidance reads:

*Amendment 11 will focus on addressing capacity in the general category fishery by considering measures that will better control fishing mortality by this component of the fishery. Specifically, the amendment will consider limited entry and implementation of a hard total allowable catch (hard TAC) to prevent overfishing. This amendment will not consider measures that maintain the general category fishery as an open access fishery with input controls as the only mechanism to manage general category effort (i.e. possession limits and crew restrictions).*

A secondary need identified for this action is related to allowing for better and more timely integration of sea scallop assessment results in the management process. 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. Therefore, the second purpose of this action is to consider measures that will address this mismatch to improve timing issues and allow for the use of the most recent data for management of the scallop resource.

## **1.3 VISION OF GENERAL CATEGORY FISHERY**

The Council recognizes that the general category scallop fishery has changed since development and implementation of Amendment 4 in 1994. While some of the participants are the same, many have changed and fishing behavior has evolved with time. The general category scallop fishery has been and still is very diverse. This component of the fishery is prosecuted by vessels of different size and gear types. For example, some general category vessels fish for scallops full-time but only seasonally, another component of the fleet lands scallops above incidental levels while fishing for other species, and some are full-time day boat vessels that target scallops year round.

This action will implement measures that will control capacity and mortality in the general category scallop fishery. In order to accommodate this diverse fleet, this amendment will consider a range of measures that take these differences into account. Specifically, this action is

considering a limited entry program, a hard TAC and other management measures to control capacity and mortality.

The overall intent of this action is to stabilize capacity and prevent overfishing from the general category fishery, and in doing so, the Council's vision of this general category fleet from this point forward is to maintain the diverse nature and flexibility within this component of the scallop fleet. Specifically, the Council intends to consider measures that will control mortality from this component of the fleet, but preserve the ability for vessels to participate in the general category fishery at different levels. This Council recognizes the importance of this component of the fishery for small fishing communities, as a component of overall catch for some individual vessel owners, and the value this "dayboat" scallop product has in the scallop market. Overall, the Councils' vision of the general category fishery after Amendment 11 is implemented is a fleet made up of relatively small vessels, with possession limits to maintain the historical character of this fleet and provide opportunities to various participants including vessels from smaller coastal communities.

#### **1.4 NOTICE OF INTENT AND SCOPING**

The New England Fishery Management Council published a Notice of Intent (NOI) to announce its intent to develop Amendment 11 and prepare a supplemental EIS to analyze the impacts of the proposed management alternatives on February 6, 2006. The purpose of the NOI was to alert the interested public of the re-commencement of the scoping process and to provide for public participation in compliance with environmental documentation requirements.

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

The Council approved a scoping document at the January 2006 Council meeting. The scoping document was available for the public to use during the scoping period from February 6 – March 6, 2006. Three scoping hearings were held in February 2006 and over 50 written comments were submitted during the scoping period. Comments received during scoping were considered carefully by the Council when developing the management alternatives under consideration in this amendment. A detailed summary of the scoping hearings and written scoping comments received is provided in Section 7.1.2. Appendix I includes copies of all the written scoping comments received.

#### **2.0 GOALS AND OBJECTIVES**

The Council has identified two goals and several objectives for Amendment 11 to the Scallop Fishery Management Plan. **The primary goal is to control capacity and mortality in the general category scallop fishery. The secondary goal is to allow for better and more timely integration of sea scallop assessment results in the management process.**

The general category scallop fishery is currently an open access fishery that was created and limited in Amendment 4 when limited access was implemented. Open access means any vessel that wants to apply for a permit can; there are no specific qualifications to receive a general category permit. The main control on mortality for this component of the scallop fishery is a daily possession limit. Since implementation of Framework 17 (December 1, 2005), if a vessel intends to land more than 40 pounds of scallop meats per trip, that vessel is required to have a vessel monitoring system (VMS). If a vessel has VMS it is able to apply for a general category “B” permit, and that vessel can land up to 400 pounds of scallops per trip, rather than up to 40 pounds, the daily limit for general category “A” permits.

Since 1999, there has been considerable growth in fishing effort and landings by vessels with general category permits, primarily as a result of resource recovery and higher scallop prices. This additional effort is likely a contributing factor to why the FMP has been exceeding the fishing mortality targets. Without additional controls on the general category fishery, there is a great deal of uncertainty with respect to potential fishing mortality from this component of the scallop fishery, thus the potential for overfishing is increased. Therefore, this amendment is considering a range of measures to control fishing mortality by this component of the fishery, improving the ability of this plan to prevent overfishing of the scallop resource.

The second goal is to allow for better and more timely integration of sea scallop assessment results in the management process. As stated earlier, 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. A change in the fishing year is needed to correct for new analytic requirements for framework actions, extra steps in the framework approval process, and the higher uncertainty in area management results caused by using year-old data when the Council develops and analyzes management alternatives.

## **2.1 OBJECTIVES OF AMENDMENT 11**

In order to achieve the two goals described in Section 2.0, the Council has identified the following list of objectives:

1. Allocate a portion of the total available scallop harvest to the general category scallop fishery (Section 3.1.7).
2. Establish criteria to qualify a number of vessels for a limited entry general category permit (Section 3.1.2).
3. Develop measures to prevent the limited entry general category fishery from exceeding their allocation (Section 3.1.2).
4. Develop measures to address incidental catch of scallops while fishing for other species (Section 3.1.8).
5. Determine means to incorporate the most recent sea scallop science and assessment results in management decisions (Section 3.2).

It is understood that when establishing criteria to qualify a number of vessels for a limited entry general category permit (Objective #2), Section 303 (b) (6) of the Magnuson-Stevens Act will guide the decisions made related to qualification criteria. Section 303 (b) (6) reads: