

## NEW ENGLAND FISHERY MANAGEMENT COUNCIL

### Scallops

#### I. STATUS

##### A. Management Actions

The final rule for Framework 20 was published on December 21, 2007 and was effective on December 24. Framework 20 extended interim measures that reduced effort in the Elephant Trunk Area to reduce potential for overfishing. This action also clarifies the current restriction on landing no more than one scallop trip per calendar day for vessels fishing under general category rules. Vessels are no longer prohibited from leaving on a scallop trip on the same calendar day that the vessels landed scallops.

A Notice of Availability (NOA) for Amendment 11 was published on November 30 and the proposed rule for this action was published on December 17. Comments on the NOA are due on January 29 and comments on the proposed rule are due on January 31. The proposed rule for Framework 19 is expected soon as well as the announcement of research set-aside funds available for 2008.

##### B. Meetings

- The Scallop PDT met on January 10
- The Scallop Committee met on January 25

#### II. COUNCIL ACTION

The Council will review and approve a scoping document for Amendment 15

#### III. INFORMATION

1. Working timeline for Amendment 15 and other upcoming scallop actions
2. PDT meeting summary (January 10)
3. Committee meeting summary (January 25)
4. Draft scoping document developed by the Scallop Committee
5. Copy of Amendment 11 proposed rule comment letter submitted by the Scallop Committee
6. Correspondence

UPDATED: December 2007 #1

PROJECT MANAGER: Deirdre V. Boelke

PROJECT TITLE: Scallop Amendment 15 and Framework 21

**GOAL: A15 – compliance with new requirements of the MSA (ACL's / AM's), rationalization of the limited access scallop fishery, consideration of sectors in the limited access scallop fishery, revisions to the scallop overfishing definition FW21 – specifications for FY2010**

TARGET COMPLETION DATE: June 2010 (A15), September 2009 (FW21)

TARGET IMPLEMENTATION DATE: March 1, 2011 (A15), March 1, 2010 (FW21)

MILESTONES	PLANNED	MEETINGS
1. Committee meets to develop and approve scoping document	JAN 2008	1 Committee mtg. 1 PDT mtg.
<b>2. Council approves Amendment 15 scoping document</b>	<b>12-14 FEB 2008</b>	
3. Staff initiates scoping for Amendment 15; publishes NOI	FEB 2008	
4. Scoping meetings	APR 2008	4 scoping mtgs.
5. Advisors and Committee meet to review scoping comments and develop a range of alternatives for analysis in Amendment 15 (work with PDT) Get guidance from Council in June if necessary on development of measures	APR - OCT 2008	2-3 Comm. mtgs. 2 AP mtgs. 3 PDT mtgs.
6. PDT review updated biomass estimates from 2008 survey	SEPT 2008	1 PDT mtg.
<b>7. Council reviews updated biomass estimates and determines if trips in ETA and/or Delmarva need to be reduced in 2009</b>	<b>7-9 OCT 2008</b>	
<b>8. Council approves Amendment 15 alternatives for analysis in DSEIS</b>	<b>18-20 NOV 2008</b>	
<b>9. Council initiates Framework 21 to set specifications for FY2010</b>	<b>JAN 2009</b>	
10. Scallop PDT prepares Draft Amendment 15 DSEIS and public hearing document	DEC 2008 – APR 2009	3 PDT mtgs.
11. Scallop Committee and Advisory Panel meet to review Draft Amendment 15/DSEIS and recommend preferred alternatives	MAY 2009	1-2 Committee mtgs. 1-2 AP mtg.
<b>12. Council approves Draft Amendment 15 DSEIS and public hearing document and selects preferred alternatives</b>	<b>JUNE 2009</b>	
13. Staff submits Amendment 15 DSEIS	JULY 2009	
14. PDT, Committee and AP develop and analyze Framework 21 (FY2010)	AUG – SEPT 2009	2 Cmte mtgs. 1 AP mtg. 2 PDT mtgs.
<b>15. Council approve Framework 21</b>	<b>SEPT 2009</b>	
16. Staff submits Framework 21	OCT 2009	
17. NMFS publishes NOA for A15, starts public hearings (45-day DSEIS comment period)	NOV 2009	
18. Scallop Public Hearings	DEC 2009	6 hearings
19. PDT, Advisors, and Committee meet to review public comments and recommend final measures	JAN/FEB 2010	1 Committee mtg. 1 AP mtg.
<b>20. Council reviews public and advisor comments and O/S recommendations; approves final Amendment 15 measures</b>	<b>MAR/APR 2010</b>	
21. Framework 21 implementation	MAR 1, 2010	
22. Staff submits Amendment 15	JUNE 2010	
23. Scallop Amendment 15 Implementation; including implementation of 2011 – 2012 specifications	MAR 1, 2011	

*SSC input is not included in this timeline.*

*If IFQs are included for consideration in A15, then timeline will need to adjust to include required referendum vote (no guidance yet on when that is supposed to occur in the process and who votes)*

#2



Scallop PDT Meeting  
January 10, 2008  
Newburyport, MA

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The meeting began with a summary of items to discuss for inclusion in Amendment 15 by Ms. Deirdre Boelke. Four major issues have been identified for this action, but the focus of this meeting was to review the overfishing definition proposed in Amendment 10. Ms. Boelke then reviewed a timeline of scallop actions for the next three years, which is tentative and does not yet include the incorporation of new SSC review requirements, potential adjustments pending new NEPA guidance, or changes in the timeline because specifications for 2011 will be included in Amendment 15 (additional time may be needed to include either specific or a range of measures for specifications within A15 several years in advance).

Mr. Peter Christopher then gave the PDT an update on pending scallop actions.

*Framework 20* – Implemented in late December – This action will extend the emergency action implemented last year to reduce effort in ETA until the end of FY2007 (February 29, 2008).

*Amendment 11/Framework 19* – The NOA and proposed rule for A11 is currently out for public comment (NOA comments thru Jan 29 and proposed rule comments due Jan. 31). An optimistic timeline for the final rule on A11 would be March 15, and effective by April 15. The plan is to publish a proposed and final rule for FW19 very soon after A11 so there is not a long lag time between effective dates for the two actions. Since A11 will not be published by the start of FY2008 the status quo measures will be in effect: HC will revert to an open area and vessels will be able to fish under 2007 allocations (51 open area DAS); if a vessel exceeds the 35 DAS included in FW19 for 2008, then DAS will be deducted from 2009 allocations. One PDT member commented that based on recent VMS data, the area west of HC has had substantial effort by LA and GC vessels and, when HC reopens, that area may experience increased effort as well.

*Proposed rule for change in turtle chain regulation* – This modification is still under review and there are several lawsuits still pending related to this action, as well as the original chain rule. Not sure when final rule will be published, but maybe later this spring.

*2008 RSA funding announcement* – Scallop RSA funds were supposed to be announced in the 2008 Omnibus Grants Notice, but they were not. They are expected to be announced very soon. The PDT again voiced concerns about how delayed notice can have negative impacts on research projects that may be conducted this year that are critical for management (i.e. calibration studies for the federal survey and other time sensitive projects like assessment of resource in the Delmarva area).

Dr. Dvora Hart then briefly summarized the status of the federal scallop survey that is transitioning to a new platform. She explained that the vessel that will be utilized for the 2008 survey is still undetermined. However, the tentative plan is to utilize the UNOLS vessel R/V Sharp, owned by the University of Delaware. There are three major issues: 1) the R/V Sharp is not set up for this type of survey work, 2) a test is needed to see if the R/V Sharp can tow a scallop dredge, and 3) using the R/V Sharp costs money (i.e. NOAA vessels are already paid for) and we are waiting for approval for money to charter it. In addition, there may not be time to

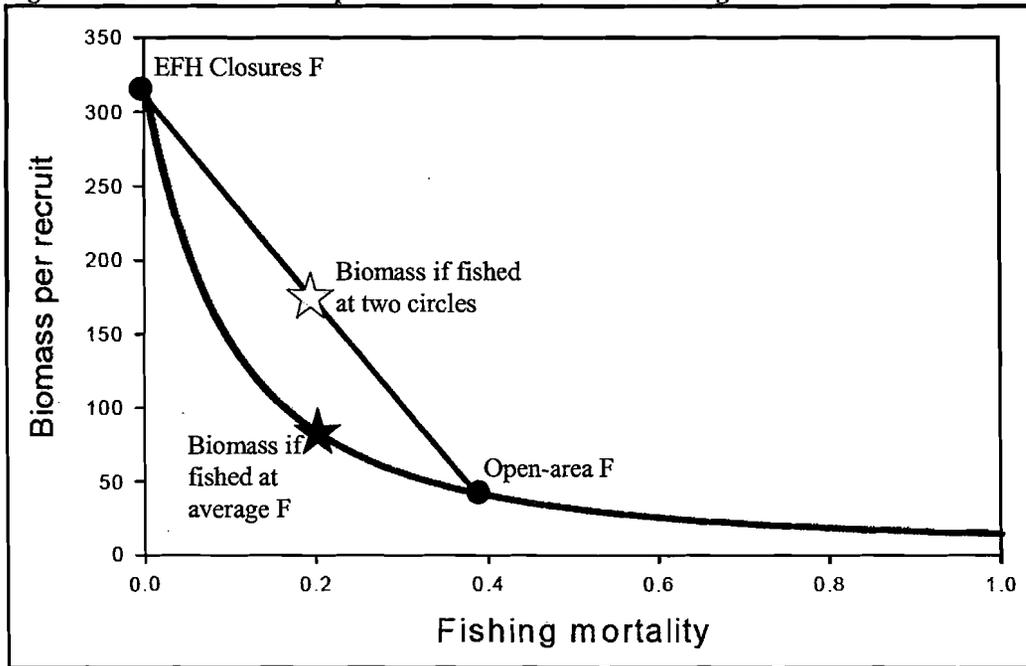
calibrate the R/V Sharp against the R/V Albatross (hopefully 2-3 days of R/V Albatross will be available). If not, the plan may include calibration against commercial vessels (already calibrated to R/V Albatross last summer), which will require RSA money. There are issues of calibration that the SSAP has been discussing and hopefully many of them will be addressed with research projects planned for this coming year.

#### **Review of current overfishing definition and potential modifications (Scoping Issue #4)**

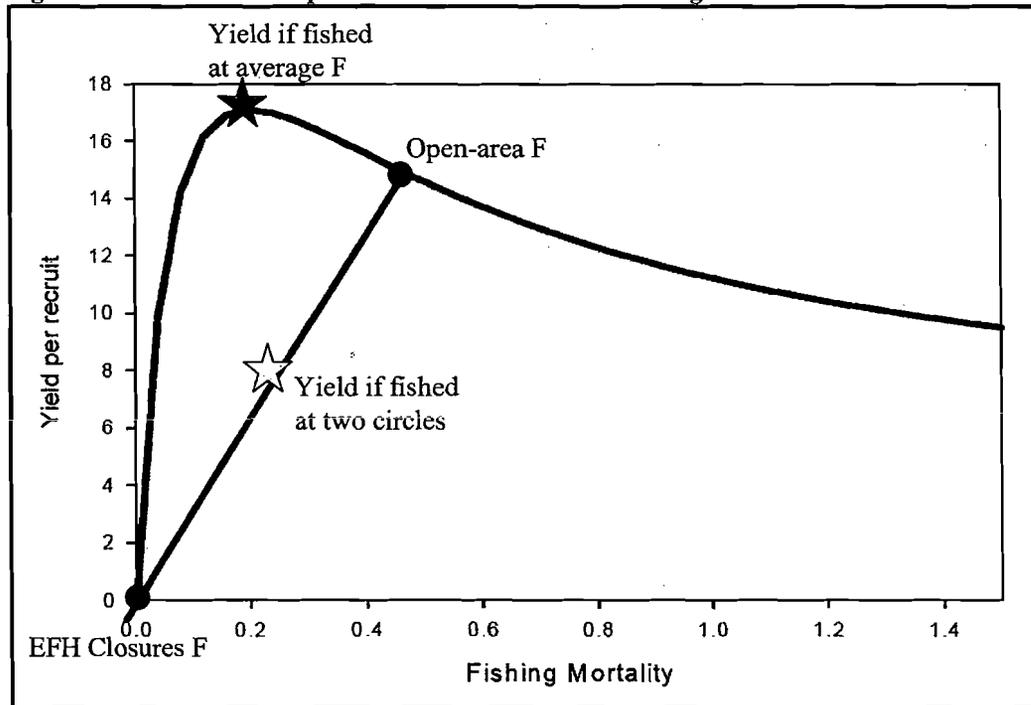
Dr. Dvora Hart gave a presentation (*Effects of spatial heterogeneity and area management on fishery reference points*) about the overfishing definition. She pointed out that fishing mortality is highly variable in the scallop fishery without area management; fishing mortality is higher in areas of higher density. Rotational and long-term area closures will further increase the spatial variability in fishing mortality and increase fishing effort in high density areas even more. Under the current overfishing definition, the estimate of fishing mortality is biased low when compared to standard pre recruit reference points because reference points for scallops is a number-weighted calculation and most scallops are small. Furthermore, overall yield is lower because yield per recruit (YPR) is overestimated at  $F_{max}$  and causes an underestimation of biomass per recruit (BPR) at any fishing mortality. Biomass per recruit at  $F=0.20$  is less than half of the average BPR of  $F=0$  and  $F=0.40$  (see Figure 1). That is why overfishing can occur even when overall stock biomass is above a management reference point; when zero  $F$  from closed areas is averaged with high  $F$  in open areas the result is higher overall biomass compared to biomass when a lower more uniform  $F$  is applied. Currently yield is not maximized because the existing overfishing definition is set so that the overall fishing mortality is  $F_{max}$  (higher  $F$  in open areas to compensate for zero in closed areas). Dr. Hart explained that yield is actually maximized if  $F$  is set at  $F_{max}$  in remaining areas even if some areas are closed to fishing (see Figure 2). In summary, when some areas are closed (fishing mortality zero) the stock should still be fished at  $F_{max}$  instead of fishing at the upper end of fishing mortality (i.e. if  $F_{max}=0.24$ , closed area  $F=0$ , fishing mortality in the open area should be 0.24, not 0.48). Overall three things happen when you average  $F$  over all areas as the current overfishing definition does: 1)  $F$  is biased low, 2) yield is decreased, and 3) biomass is increased. Dr. Hart explained that it is fine to average fishing mortality over time; however, it is inappropriate to average fishing mortality over space.

Dr. Dvora Hart then explained the proposed (but not selected) overfishing definition from Amendment 10 that averaged fishing mortality over time and not space. This definition recognizes that there are three kinds of areas: closed areas, rotational access areas that were closed in the recent past, and open areas. When determining overfishing for this definition, closed areas are not included in the fishing mortality calculation. The threshold for access areas is set up using the time-averaging principle (higher than in open areas), and the threshold for open areas is set at  $F_{max}$ . Overfishing is occurring if  $F$  in the non-closed areas is higher than the number-weighted average of the thresholds for the access and open areas. The PDT briefly discussed reasons why the industry was opposed to this modification under A10, but agreed it should be re-examined in this action and discussed that the current specifications under FW19 should be run with this overfishing definition to see what impacts there would be on allocations.

**Figure 1 – Standard biomass per recruit curve at various fishing mortalities**



**Figure 2 – Standard Yield per recruit curve at various fishing mortalities**



The PDT then briefly discussed if any further modifications should be considered at this time. Some preliminary ideas about the proposed overfishing definition are: 1) splitting Georges Bank and Mid-Atlantic open areas and applying separate target and threshold  $F_s$ . Can there be more

that one status determination (one for GB and one for MA)? The PDT will explore this further. And 2) instead of setting the target to be 80% of the threshold, use a higher percentage when there are long-term closures (i.e., if 10% of all scallops were in EFH closures, the target in the open areas can be 90% of the threshold rather than 80%) because the closures can be thought of as precautionary and preventing recruitment overfishing.

***The PDT as a whole is supportive of considering a new overfishing definition in this amendment that is time-averaged (rather than spatially-averaged) to reduce biases that are exacerbated with rotational area management and highly variable fishing mortality rates.***

#### **Annual Catch Limits (ACL) and Accountability Measures (AM) (Scoping Issue #1)**

One of the primary issues identified for consideration in Amendment 15 is compliance with new ACL and AM requirements. The PDT briefly discussed basic definitions and potential issues that would need consideration in order to bring the Scallop FMP in compliance with these new requirements.

Mr. Tom Nies, the groundfish PDT chair, presented the complexities of establishing ACLs and AMs to the Scallop FMP because the Groundfish PDT is currently facing the same requirements under a faster timeline (2010). He explained that there is currently no official guidance from NMFS yet on how Councils must comply with ACL requirements, so much of our work is guesswork. He reported that guidance should be published by March/May 2008 according to NMFS staff. The presentation Mr. Nies gave included what the groundfish PDT will suggest to the Council regarding ACLs and AMs for the Groundfish FMP. There is some overlap in terms of issues that the Scallop Committee will want to keep in mind when developing ACLs in the Scallop FMP. A primary issue the groundfish PDT is discussing is the potential establishment of an ACL under the GF FMP for another fishery that catches GF incidentally; for example, the scallop fishery would receive an ACL for yellowtail flounder under the groundfish FMP.

The scallop PDT briefly considered ways the YT ACL for the scallop fishery could be defined, including: 1) as a percentage of the stock-specific YTF TACs; 2) as a percentage or proportion of the expected scallop catch; 3) based on expected scallop effort (which might give a different result than (2) if scallop density varies); 4) taking into account scallop fishery management measures, such as which rotational access areas are open, etc.

Mr. Nies also highlighted numerous unknowns and potential complications for this provision. Some discussed include: we are not sure if there will be required AMs for the scallop fishery under the groundfish plan if they exceed their ACL; we are also uncertain what happens if one component of an overall ACL exceeds their allocation – what would the impacts be on other components (i.e. if groundfish fishery exceeds their TAC, does it shut down the scallop fishery)? Also, how and when do we determine the ACL for the scallop fishery and what is the best process to implement that ACL (under the groundfish or scallop plan)?

Once the Groundfish Committee determines if separate ACLs are necessary for the scallop fishery, the scallop PDT will further examine potential ways to define ACLs and AMs, i.e. analyze YT and scallop bycatch rates in open areas vs. access areas. It's possible that additional

species may also need an ACL for the scallop fishery; some mentioned were monkfish and summer flounder because of historically higher bycatch rates.

*In summary, the Scallop PDT will continue to work closely with the Groundfish PDT as ACL and AM policies are further developed.*

**Other issues that may be identified for scoping in Amendment 15**

The PDT then reviewed a list of other issues that have previously been identified as potential alternatives in A15 but have not yet been formally approved. The PDT briefly discussed each topic and provided initial input for the Committee to consider when recommending whether these issues should be included in the A15 scoping document. The PDT also identified several additional items that were not originally on the list.

- **Item #5 – Specific Sector Application for General Category Vessels on Cape Cod:**  
The PDT is unsure of the progress and development of this sector to date. Only feedback would be that A15 will not be implemented until 2011 so the sector should keep that in mind. Also, specific details of the sector would need to be made available to the Council sometime in 2008 because they would have to be included in the DSEIS approved by the Council later this year.

- **Item #6 - Individual allocation of YT Bycatch for Access Areas:**  
Two issues involved - allocate YT bycatch for individual vessels or allocate a separate bycatch TAC for limited access and general category vessels. It was pointed out it may be feasible to allocate two separate TACs for the limited access and general category fisheries, but not individual boats unless there is 100% observer coverage. One PDT member voiced concern about two separate TACs as well because the TACs are expected to be quite small and therefore difficult to monitor. Also, it would be impractical if an area has to close right after it opens. Another PDT member voiced concern that behavior may change on a vessel that is observed if participating in a sector with an allocated TAC because that bycatch would directly impact that group of vessels rather than the entire group. The PDT does not believe an individual allocation of YT bycatch TAC is practical and still supports the reasons given for rejecting a separate TAC for LA and GC fisheries that was considered in A11.

- **Item #7 - IFQ Carry-over for General Category Vessels:**  
If the general category vessels do not harvest their full annual IFQ, the question is whether it should be allowed to carry over into the following fishing year. The argument is that if they don't use the whole IFQ for safety reasons or business planning, they should be allowed to use it the following year. It was mentioned that the limited access vessels have a carryover provision now (10 DAS). In general the PDT did not feel very strongly one way or the other if this should be considered in A15, but the complexities would need to be thought through because it has implications for enforcement (lag between knowledge of carryover and enforcement) and potential issues with future ACL determinations (not knowing how many pounds would be carried to the next fishing year).

- **Item #8 - IFQ allocations for General Category vessels by Area:**

In general, the PDT was supportive of considering this topic in A15. There may be issues of practicality and complications of trading IFQ that would be difficult to monitor, but a thorough analysis of this alternative would be worthwhile if it would help prevent negative impacts of derby fishing.

- **Item #9 – If Phase II of Habitat Omnibus Amendment is delayed:**

If the Habitat Omnibus Amendment is not on track for 2009 implementation, should A15 consider revising the EFH closures in CAI to be consistent with GF A13 EFH closures? It was discussed that the EFH timeline has slid back to 2010 and maybe even further. But it was pointed out that adding this issue to A15 would not resolve this issue until 2011. It seems the only solution to address this issue in time for the 2010 FY would be to initiate another amendment to make the EFH closures for the scallop fishery consistent with the EFH closures implemented in A13. This would push the current A15 timeline back which could impact compliance with ACL and AM requirements by 2011. At this time the PDT does not support stopping work on A15 in order to work on a separate amendment to address this one issue.

- **New Item - Research Set-Asides:**

Several PDT members voiced support for including an additional topic for the Committee to consider adding to the A15 scoping document – improvements to the research set-aside program. The PDT and Committee have identified this as an issue that needs attention for several years but there is never time to devote to it. Two specific ideas were discussed: 1) streamlining the process in general; and 2) potentially separating out the current 2% set aside into 1% for resource surveys and 1% for other topics. The PDT believes that several adjustments to the application and review process can be made so that the entire program overall can run more smoothly. One specific example suggested was to include standard protocols for research so applications can be reviewed more quickly and EAs submitted for research could be simplified. Also, there is now a Research Steering Committee review process that needs to be incorporated. Second, under Amendment 10 there was an alternative to spread out the RSA funds into two pools of money – one for direct resource surveys and one for other topics. When Amendment 10 was approved, the agency did not approve the research aspect of the RSA section because the specific TAC was not defined and the design of the program was not specified. Another suggestion was to delink this process from the grants process because it could be an approved resource survey of a federal resource under preapproved protocols, but that would need more investigation. The PDT recommends that the Committee revisit ways to improve this program in A15.

One question that was raised was why only some of the RSA funds were allocated last year. Also asked was if those leftover funds can roll over into the next year. The PDT will look into how RSA funds have been spent in recent years, but it was explained that depending on the year and what proposals came in, not all of the TAC was allocated because some projects were not applying for TAC from certain areas or from open area DAS.

- **New Item - Sectors Paying for Observer Coverage:**

The PDT discussed that the issue to allow sectors in the limited access fishery should be expanded to include allocation TAC to fund observers and not just allocation of scallop TAC. Specifically, if a sector of limited access or general category vessels are interested in forming a

sector they could also apply for and receive an allocation of the 1% set-aside to fund observers. For example, if a sector were approved and allocated 5% of the total scallop TAC, that sector would also receive 5% of the 1% set-aside for observer coverage. Then that sector can decide how to fund observers on vessels that are required to carry an observer within the sector. Therefore, the sector would then be responsible for paying for observer coverage rather than an individual vessel. This might give better data because the burden of the observer coverage is shared among vessels within a sector. This idea would need further development, but the PDT believes it may be worth adding as an expansion of the sector alternative.

- **New Item - Changing the fishing year to May 1:**

This issue has been raised by the PDT several times in the past and the PDT still feels strongly that the fishing year should move from March 1 to May 1. If the fishing year is changed, it would be easier to incorporate new survey data into the management process. It would also put the Scallop FMP in line with the GF FY when establishing ACLs, which may be an important issue to consider in the future if ACLs are defined across FMPs. One PDT member argued that the main reason the industry did not want to change the FY in A11 was because of the uncertainty of the scallop survey and, since that is more clear now, maybe people will be more supportive of a May 1 start date.

#### **A15 Economic Analyses Needs**

Since A15 is going to consider alternatives to rationalize the limited access scallop fishery, there are numerous economic analyses that should be completed. Lead by Dr. Demet Haksever, the PDT had a brief discussion of some of the important issues to consider first when preparing for this action. For example, what is the optimal number of DAS per vessel, how many vessels does that translate into, and what impacts will that number have on employment, price, and communities. In addition, how do we define capacity; there are technical, economic and social ways to approach this complex issue. Economic efficiency may not be good for all fishing communities. Some considerations in the analysis will be gear restrictions, restrictions on mechanical shucking, crew size, and how to estimate capacity. All of these issues will need to be addressed in this action and the PDT began discussions about how it will describe and analyze these important topics. The PDT also identified several basic tables that should be included in the scoping document if there is time such as historical trends in the number of active vessels, employment, DAS usage etc.

Dr. Haksever also presented a monthly price model she has developed for the scallop fishery. The model was developed to analyze the impacts of derby fishing and access area management in a more quantitative way. Monthly prices are affected by numerous factors including area rotation, composition of catch, price of imports/exports, economy in general, etc. The model shows that recently, prices for scallops are lower from March through August corresponding to a larger amount of scallop landings from access areas, and then are higher from August through the winter when scallop landings start declining in the fall. The results indicate that the rotational area management could have important impacts on prices, revenues, and profits of fishermen; this model can be used to estimate these impacts more quantitatively in the future.



Scallop Oversight Committee Meeting  
January 25, 2008  
Danvers, MA (Sheraton Ferncroft)

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**Scallop Committee Members:** David Simpson (*Chair*), Rodney Avila, Rip Cunningham, Sally McGee, Dana Rice, Dennis Spitsbergen (*Vice-Chair*), Richard Robins, and Pete Christopher (*designee for Pat Kurkul*).

**Staff:** Deirdre Boelke, Sarah Pautzke, Demet Haksever

**Approximately 25 members from the public attended the meeting.**

**PURPOSE OF MEETING**

The focus of the Scallop Committee Meeting was to approve the Amendment 15 scoping document and review the proposed rule for Amendment 11. There were brief introductions and then Ms. Deirdre Boelke reviewed the documents provided at the meeting, including comments from the public with regards to capacity reduction and IFQ programs, the proposed rule for Amendment 11 and a staff-summarization of the proposed rule with several highlighted issues, a PDT meeting summary, a draft Amendment 15 scoping document and summary of issues raised so far, and a timeline for scallop actions in 2008-2011.

**REVIEW AND APPROVAL OF A15 SCOPING DOCUMENT**

- **Original 4 Scoping Issues**

*The Committee approved the list of issues discussed at the November Council meeting for consideration in Amendment 15 (Issues #1- #4). Several modifications were made to the scoping document by consensus related to the description of these issues and clarifying bullets to help focus public comments.* Specifically, the Committee requested that the definition of a sector under Issue #3 be consistent with current sector policy guidelines approved by the Council, add other considerations to the IFQ bullet under Issue #2, add a bullet under Issue #3 (sectors) requesting specific sector applications to be considered in Amendment 15, add several more questions under the sector bullet such as allowance for sectors across FMPs and participation in multiple sectors, and add a bullet under Issue #1 (ACLs) to consider mechanisms to reduce YT bycatch. The summary below reflects some of the discussion related to these modifications to the scoping document.

**Motion 1 (Salisbury/McGee): Approve scoping document with issues 1-4 as modified.  
Motion passed, 7:0**

1. ***Compliance with new Magnuson Act requirements (ACLs and AMs)***

ACLs and AMs were briefly discussed. Several questions from the public centered on how the Council plans to implement ACLs across all FMPs in this region. Several speakers voiced concern about one FMP managing another FMP under ACL management. There is obvious overlap with the Groundfish FMP with regards to YT flounder and it should be clarified soon

who should develop AMs under various FMPs. The Scallop Committee will have to stay abreast of the Groundfish Committee for developments related to ACLs since that Committee has to address them by 2010, one year prior to the Scallop FMP. One member of the audience expressed serious concerns about bycatch information used in monitoring the YT bycatch TAC. One Committee member raised concerns of one fishery closing another fishery if the ACL for the former fishery was exceeded.

2. ***Rationalization measures for the LA scallop fishery***

The Committee did not spend a significant amount of time reviewing this issue. One recommendation was made to expand the IFQ bullet to seek more directed input from the public with regards to consolidation limits and other general considerations. The Committee agreed to add this language by consensus.

3. ***Approval of a mechanism for sectors in the LA scallop fishery***

The Committee made several changes to this section by consensus: updating the definition of a sector to be consistent with recent Council policy, adding bullets to seek comments on sectors for YT bycatch allocation and allocation of observer set-aside TAC, as well as adding additional bullets to seek comments regarding specific sector applications from either the general category or limited access fisheries.

The Committee discussed several timing issues with sectors and raised concerns about when applications should come in and what actions would best consider specific sector applications. One member voiced that we can learn some important lessons from the groundfish experience, but that the Scallop Committee should not necessarily follow the same template. This amendment would need to establish a timeframe for sector applications/submissions if individual sector applications are going to be accepted under this action.

4. ***Revision of the overfishing definition so it is more area-based***

The Committee did not get into the details of the overfishing definition that were proposed-and-not-selected under Amendment 10 at this meeting, but agreed that it should be an issue to include in the scoping document. One Committee member concerned about optimizing yield wanted to be clear that the status quo option would still be considered. Several commenters from the audience also voiced concern about the ability of achieving optimum yield under both the current and proposed overfishing definition and setting targets too low with all the constraints on area rotation (EFH closures, YT bycatch TAC, etc.).

- **Additional Scoping Issues considered by the Scallop Committee**

The Committee then discussed additional issues that have been raised over the last few years but delayed for a variety of reasons. The Committee went through each item one by one and reviewed input from the PDT.

***Potential Issue #5 – Specific sector application for GC vessels from Cape Cod***

The Committee decided to incorporate this issue under Issue #3 – sectors. A bullet was added to the scoping document to clarify that specific sector applications could be accepted in the

amendment for either limited access or general category sectors. During the development of the amendment, the Council would then determine a timeline for applications and either approve/disapprove formal consideration of individual sectors in this action.

***Potential Issue #6 – Individual allocation of YT bycatch for access areas***

The Committee discussed adding this topic to the scoping document, then withdrew the motion and instead added a bullet under Issue #1 – to solicit comments on separate YT ACLs for either the fleet as a whole, two separate YT ACLs for the limited access and general category fisheries, or individual YT allocations. NMFS has raised concerns with sub-dividing the existing YT TAC into two parts, and particularly on an individual basis. One argued that 100% observer coverage would potentially be required; that is not a very realistic option at this time. It was also argued that we should include something more general in the scoping document to solicit comments on other strategies to reduce YT bycatch (i.e. gear solutions).

**Motion 2 (Spitsbergen/Cunningham):**

**To include issue 6 in scoping doc (individual allocation of YT bycatch for access areas).  
By consensus, withdraw motion to include item 6 and instead add a new bullet under issue 1 (compliance with MSA) to include issues about YT bycatch.**

***Potential Issue #7 – Carry over provision for IFQ vessels***

***Potential Issue #8 – Allocate IFQ by area***

The Committee discussed these two issues separately and ultimately decided to include them both in the scoping document under the same heading – Modifications to the IFQ program. One commenter on the first issue did not want to slow A15 down to include this alternative and asked if this provision was frameworkable. Staff responded that there is a generic issue titled “specifications for IFQs for limited access general category vessels” in the list of frameworkable items, but was not positive if it would be covered.

One Committee member reminded the group that the agency did raise concerns with carry forward provisions in the past with regards to enforcement and accounting for catch and discards because carry-forward is treated differently in different fisheries. It was also pointed out that ACL requirements would have to be accounted for as well. The Committee briefly discussed the issue of allocation of IFQ by area. A member of the audience suggested that it is important to consider area IFQ allocations to reduce derby effects in the access areas by the general category fishery.

**Motion 3 (Avila/Salisbury): To include issue #7 to scoping document (Carry over portion of IFQ to following FY for GC vessels if not harvested).**

**Motion passed, 7:0.**

**Motion 4 (Rice/ Cunningham): To include #8 in the scoping document (IFQ allocations for GC vessels by area).**

**Passed 8:0.**

***Staff recommended and the Committee agreed to add these two issues under the same heading in the scoping document “Modifications to the IFQ program”***

***Potential Issue #9 – If Habitat Omnibus Amendment is not on track for 2009 implementation, consider revising EFH closures in CAI to be consistent with A13.***

The Committee discussed this issue for a substantial amount of time. Pros and cons to considering this issue in this action were discussed and ultimately, the Committee agreed to add it into the scoping document due to concerns of potential delays of Phase II of the EFH Amendment. Most members of the Committee wanted to have some flexibility to address this issue under the Scallop FMP if for some reason Phase II gets delayed due to the controversial nature of the action.

Several commenters from the audience were very concerned that the Scallop FMP is being controlled by the Groundfish and Habitat Committees and consequently, the effectiveness of area rotation is suffering. Optimizing yield when significant portions of the scallop resource are in these areas is critical to address. One added that reducing capacity would not be as necessary if the scallop fishery had access to more of the available resource. Another argued that if this issue is not added to the scallop action, then the analysis that needs to be done will never get done – specifically, what impacts do these EFH closed areas have on the scallop fishery.

On the other hand, one Committee member argued that the appropriate place to deal with changes to habitat closed areas is through the Habitat Committee. It was explained that under Phase I there are new and better EFH designations that the Council approved last June. All habitat measures and closed areas that will be developed this year, which aim to mitigate fishing impacts, will be based on these designations. If the Scallop Committee decides to consider changes to habitat closed areas within Closed Area I to be in line with A13 habitat closed areas, very soon afterwards those closed areas would most likely change anyway through the habitat amendment because those closures are based on old habitat definitions that have just been changed. The Committee member added that it wouldn't make sense to make those changes anyhow because we do not know how long these changes will be good for. Lastly, it is unlikely that the EFH Amendment would not be finished before A15. In addition, it was added that if issues like this slow Amendment 15 down, it would compromise compliance with ACL requirements, which is the primary reason this action was initiated; we do not want to lose focus of the primary goals of this action.

**Motion 5 (Avila/Robins): To include #9 in the scoping document (Measures to address EFH closed areas if Phase II of Habitat Omnibus Amendment is delayed).**

**Motion passed 6:1:1.**

The PDT recommended three additional issues for the Committee to consider: improvements to the research set-aside program, ability for a sector to be allocated scallop TAC for observer coverage, and changing the scallop fishing year to May 1. The Committee discussed all three of these issues and decided to add all three into the scoping document. Several questions were raised related to changing the scallop fishing year and how it could alleviate some of the problems we have. One member voiced concern about the impacts of this shift and all these issues will be included in the DSEIS if included for consideration. One member of the public suggested that annual management would better address use of recent data for management than changing the fishing year, but the Committee did not add that issue to the scoping document.

**Motion 6 (Robins/Rice): To include RSA as a general topic in scoping document.  
Motion passed, 8:0.**

**Motion 7 (Robins / Rice): To include under sectors paying for observer coverage.  
Motion passed, 8:0.**

**Motion 8 (Cunningham / Spitsbergen): To include change of FY to May 1.  
Motion passed, 8:0.**

### **PROPOSED RULE FOR AMENDMENT 11 DISCUSSION**

The Committee then reviewed the proposed rule for Amendment 11 and a staff document that summarized the rule. The staff document highlighted a dozen or so places where the proposed regulations were inaccurate or beyond what was proposed in Amendment 11. **After reviewing the staff document, the Committee decided to draft a letter to NMFS with comments to consider for the final rule.** The comment period ends on January 31 so there was no time for the full Council to review these comments; instead, the Executive Director will draft a letter on behalf of the Scallop Committee only. The Committee agreed to add some issues by motion and most were approved by consensus (recognizing that Peter Christopher from NMFS is unable to vote on comments about the intent of the proposed regulations since the agency is currently reviewing Amendment 11 for approval). **A comment letter was sent to NMFS dated January 31, 2008, for more details of the issues described below (included in February 2008 Council binder).**

#### ***NGOM permit***

Staff pointed out that in several places in the proposed rule the NGOM area is not correct. By consensus, the Committee agreed to clarify in a comment letter to NMFS that the NGOM area should be “the GOM small-dredge exemption area north of 42° 20’” (and not all waters north of 42° 20’, as drafted).

#### ***LAGC Permit Restrictions***

Staff explained that NMFS assumed that all permit provisions apply to all three limited access general category permit types in A11 and not just the IFQ permit. The Committee was in agreement that the Council would support consistent permit restrictions for all three types of LAGC scallop permits, except those specifically excluded. They also agreed that the proposed rule should be clarified so that landings from the 2004 FY are truncated to the control date (November 1, 2004). In addition, the Committee requests that the proposed rule be clarified so that a vessel that qualifies for an OFQ permit but decides not to receive it can automatically qualify for either the NGOM or Incidental Catch permit.

#### ***Cost-Recovery***

If a vessel fails to pay cost-recovery fees, their vessel permit should not be renewed the following year. The intent of the Council was non-renewal, rather than invalidation as worded in the proposed regulations. That implies cancellation and renewals of permits. The Committee agreed by consensus to add this suggested clarification to the proposed rule.

### ***Separation of NGOM TAC from overall catch allocations elsewhere***

In the A11 proposed rule, overall catch is divided between GC and LA after an estimate of mortality from incidental catch is removed. The Council intended for the NGOM TAC to remain separate, but in some places in the proposed rule the TAC for NGOM is referenced as being removed first before allocations are made to the GC and LA fisheries – this is inconsistent with Council intent. The Committee agreed by consensus to request that NMFS delete this reference to NGOM with regards to removing the TAC before allocations are made to the GC and LA fisheries.

### ***IFQs for CHP permit holders***

The Council never directly addressed CPH permits in terms of whether they would receive IFQ. In the proposed rule, NMFS assumes that CPH permits would be treated just like any other IFQ permit: the vessel would get an allocation and be permitted to transfer that quota. The Committee agreed with this interpretation but added that an individual with CHP should not be required to assign it to a vessel in order to transfer it, as required under the Groundfish FMP. Also, one person asked if the status of people's allocations could change depending on the status of CPH in any one year. This would allow people without vessels to still obtain a CPH. A motion was made because more was added to this issue than was discussed at the full Council.

**Motion 9 (Robins/Avila): We agree with the way NMFS interpreted the restriction for CPH vessels. Specifically, a CPH owner would be eligible to receive an IFQ and the IFQ would be transferable. In addition, NMFS should add that a CPH permit owner does not have to attach their IFQ to a vessel in order to transfer IFQ.**

**Motion passed 7:0:1.**

### ***5% vs. 10% allocation for GC vessels during transition period if IFQ program not in place in 2009***

Section 648.53 of the proposed regulations describes the division of TAC between the various components of the fishery. It states that the general category will receive 10% in 2008 and 5% in 2009. The Council's final recommendations under Framework 19 for allocations for the two fleets were also based on these assumed percentages, presuming that the IFQ program would be in place for FY2009. However, this section of the proposed regulations also clearly states that if the IFQ program is not in place for March 1, 2009, then the quarterly hard TAC management program should stay in place for 2009 and beyond, if necessary under the transition period to IFQs. The Committee heard testimony from the public on both sides of this issue; the main message was that 10% in 2009 would be inconsistent with measures just approved under FW19 and it's unclear which action takes precedence. Several audience members supported a 5% allocation under a quarterly hard-TAC program in 2009 if the IFQ program is not in place, arguing that the 10% allocation for the transition period was to allow for the appeals process and by 2009, the agency will know who had and did not have a permit before the control date. On the other hand, one speaker argued that a 10% allocation was intended for the full transition; if it takes 2 years to implement IFQs, that is still a transition period. All vessels that qualify to fish under the transition period will have the same access to the fishery, so a 10% allocation is

warranted because someone that landed 1,000 pounds will have the same access as someone who landed 40,000 pounds.

The Scallop Committee discussed this issue and supports that Amendment 11 intended a 10% overall allocation to the general category fishery for the transition period to IFQs, not limited to FY2008 only. The Committee believes that the Council was making decisions under the impression that the transition period would not extend beyond FY2008, but based on language within the amendment the Committee supports that if the program is not in place in 2009, then 10% should be allocated to the general category fishery under the quarterly hard-TAC program. The Committee did not support a 10% allocation beyond FY2009 and suggested that if the IFQ program could not be implemented for FY2010, then a 5% allocation was more justified because it was never discussed during development of Amendment 11 that implementation of this program could exceed two years. One Committee member added that this motion clarifies the Council's position and does not change it; he added that there may be consequences related to FW19 allocations but the intent of Amendment 11 was a 10% allocation for the transition period. The Committee questioned if 2009 implementation was still a reality and NMFS responded that nothing had changed but it was difficult to predict.

The Committee recognizes that a 10% allocation in FY2009 would be inconsistent with final recommendations recently made under Framework 19. The Committee still supports the final allocation measures approved under Framework 19, but in the event that the IFQ program cannot be implemented for FY2009, then NMFS may want to consider adjustments to the proposed allocations so that the general category fishery is allocated 10% and the limited access fishery is allocated 90% of available catch. The Committee discussed that the impacts on the limited access fishery from allocating 5% compared to 10% to the general category fishery will have to be investigated.

**Motion 10 (Cunningham / Salisbury): The Committee will indicate that the 10% transition allocation was meant for entire transition period to IFQs (FY2008 and FY2009 only).  
Motion passed, 5:1:1.**

***Increase in Possession Limit seaward of the VMS Demarcation Line***

Staff explained that the proposed rule expanded the possession limit increase to all three LAGC permits, while A11 only specified an increase seaward of the demarcation line for IFQ vessels. NMFS included similar increases for the NGOM and Incidental Catch permit types. The Committee decided not to make any specific comment on this item to submit to NMFS, and therefore, was supportive of the addition.

***Incidental Catch in NGOM***

The proposed regulations imply that catch in the NGOM from Incidental Catch permits would count against the NGOM TAC. Amendment 11 does clearly state that all scallop permits are prohibited from fishing in the NGOM after the TAC is reached (including incidental catch permits), but it is not as clear about whether incidental catch would count toward the TAC. The Scallop Committee discussed this issue and supports the draft regulations and agrees that catch from incidental catch permits should count against the NGOM TAC.

**Motion 11 (Cunningham / Avila): To not comment and leave wording as it was (landings from incidental catch permits would count against the NGOM TAC if caught in that area) Motion passed, 6:0:1**

***Ownership Cap Restriction for LA vessels and CPH***

NMFS added a regulatory clarification to this proposed rule related to the ownership cap restriction for current limited access vessels implemented under Amendment 4 to the Scallop FMP. Currently, the regulation states that an individual may not own, or have an ownership interest in, more than 5% of limited access vessels. The current regulations are not clear whether this cap applies to CPHs. According to these proposed regulations, in terms of future ownership, a CPH is equivalent to a limited access permit. This rule would clarify that an individual could not own more than 5% of the limited access permit eligibilities in the form of a limited access permit or CPH. While this issue was not explicitly discussed during development of Amendment 11, the Committee supports this clarification and believes it is consistent with similar CPH provisions included in Amendment 11 for limited access general category vessels.

***State water exemption program***

Staff explained that the proposed rule says that states must submit information describing their scallop conservation program, but includes no specifics about when or how often. The Committee decided not to comment on this issue in terms of suggested timelines and how often states should submit information since it was not discussed at the Council level.

**OTHER BUSINESS**

The Committee did not take up any additional items under other business, but there was one comment from the public from an employee of one of the observer service providers. He explained that there are drastic differences between open and access areas with regards to compensation for carrying an observer and it is greatly impacting the program. As such, captains are willing to schedule trips to include observers for access area trips, but try to dodge them for open area trips. Crews also do not want to work on a vessel with an observer for an open area trip because generally the observer will be paid much more than the crew. This can lead to a hazardous environment for the observers and can bias data. It was asked if there are better ways of compensating observers. Staff responded that this issue was brought up earlier in other meetings and FW19 did include a recommendation to adjust compensation rates so more compensation is given on open area trips compared to access area trips. The other suggestions would be to raise this as an issue under Amendment 15, but that would not be effective until FY2011.

DRAFT



# 4

**NEW ENGLAND FISHERY MANAGEMENT COUNCIL  
SEEKS YOUR COMMENTS ON THE MANAGEMENT OF THE  
SCALLOP FISHERY**

***Your comments  
are invited***

The New England Fishery Management Council (Council) is initiating the development of an amendment to the Fishery Management Plan (FMP) for Sea Scallops (*Placopecten magellanicus* ((Gmelin)) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (M-S Act). In accordance with the National Environmental Policy Act (NEPA), the Council also intends to prepare a Supplemental Environmental Impact Statement (SEIS) that will analyze the impacts of this amendment on both the physical and human environment.

This document is to inform you of the Council's intent to gather information necessary for the preparation of the SEIS and ask for your specific suggestions and input on the range of issues that should be addressed in this amendment to the Scallop FMP.

***Why is the  
Council  
proposing to  
take action?***

**What actions have already been taken?**

The New England Council's Scallop FMP was implemented in 1982 and has been amended a number of times. In 1994, Amendment 4 began a limited access program for the directed scallop fleet with day-at-sea (DAS) limits and other measures to manage the scallop resource more effectively. Limited access vessels were assigned to different DAS permit categories (full-time, part-time, or occasional) according to their 1985-1990 fishing activity. Vessels that did not qualify for limited access could obtain a "general category" permit and could land up to 400 pounds of scallops a day. In 2004 Amendment 10 introduced rotational area management and changed the way that the FMP allocates fishing effort for the limited access fishery. Rather than an annual pool of DAS, vessels are now allocated a certain number of trips in controlled access areas as well as a specific number of open area DAS. Numerous other actions have been implemented over the years to control this fishery including modifications to gear and other input controls to further reduce effort and impacts on essential fish habitat (EFH) and bycatch.

More recently, the Council approved an action to control capacity in the general category fishery (Amendment 11). This action allocated a specific portion of the projected scallop catch to the general category fishery and includes a limited access program for this permit type with an individual fishing quota (IFQ) program. Amendment 11 was approved by the Council in June 2007 and is currently under review by NMFS for implementation expected in spring 2008.

**What additional measures are currently in approval by NMFS?**

Framework 19 was approved by the Council in October 2007 and is currently under review by the NMFS; implementation is expected in spring of 2008. It establishes allocations for the 2008-2009 fishing years for the limited access and general category scallop fisheries. FW19 also includes other measures such as a new rotational closed area, a modified overfishing definition based on results from the recent scallop stock assessment, specific measures for the general category fishery based on Amendment 11, and other more administrative issues.

***Why is the Council proposing to take action (cont.)?***

**Why are additional measures being considered?**

Additional measures are being considered because: 1) the Magnuson-Stevens Reauthorization Act of 2007 (MSRA) includes new requirements for annual catch limits (ACLs) and accountability measures (AMs) to be in place for all FMPs that are not subject to overfishing by 2011, 2) there is excess capacity in the limited access scallop fishery and rationalization of this fishery would reduce costs, increase profits and overall economic efficiency in the fishery, 3) there is interest in considering a mechanism for voluntary sectors in the limited access fishery to improve flexibility and self-governance among individual vessels interested in forming a sector, 4) the current overfishing definition does not protect the stock from growth overfishing and consideration of a more area-based approach is justified since this resource is primarily managed by area rotation, 5) there is interest in considering adjustments to the IFQ program that was recently approved for the limited access general category scallop fishery, 6) there is concern about Phase II of the EFH Amendment process getting delayed and impacting effectiveness of scallop area rotation on Georges Bank, 7) there is interest in considering alternatives to improve the current research set-aside program, and 8) there is interest in considering a change in the scallop fishing year to May 1 rather than March 1.

***What action is the Council considering?***

The issues described above require the development of an amendment to the Scallop FMP to fully consider and analyze an appropriate range of management alternatives. The Council is seeking comment on these eight specific issues only.

**What issues may be addressed in this amendment?**

This amendment was initiated to address four primary issues: 1) compliance with the MSRA with regards to ACLs and AMs, 2) addressing measures to rationalize the sea scallop fishery, 3) approval of a mechanism to establish sectors in the limited access fishery, and 4) revising the overfishing definition to be more area based. Other issues under consideration are adjustments to the general category IFQ program, consideration of measures if Phase II of the EFH Amendment is delayed, alternatives to improve the research set-aside program, and moving the fishing year to May 1. Below is a more detailed summary of the issues currently under consideration and several questions to help focus public input during the scoping process.

**1) Compliance with new Magnuson requirements for ACLs and AMs**

The M-S Act was reauthorized in 2007 and one new requirement is to establish annual catch limits (ACLs) and accountability measures (AMs) in order to end and prevent overfishing in all FMPs. Section 302 (h)(6) states: (Each Council shall) develop annual catch limits for each of its managed fisheries that may not exceed the fishing level recommendations of its scientific and statistical committee or the peer review process established. Section 303 (a)(15) states: (Any FMP shall) establish a mechanism for specifying annual catch limits in the plan (including a multiyear plan), implementing regulations, or annual specifications, at a level such that overfishing does not occur in the fishery, including measures to ensure accountability. NMFS has provided some informal input on what these new requirements may entail, but official guidance on how Councils must comply with these new requirements is not expected until May 2008. The Scallop FMP is required to be in compliance with these new regulations by 2011 because it is not subject to overfishing.

*Questions to consider when commenting on this issue:*

***What action is the Council considering (cont.)?***

- Most likely available catch will need to be allocated to different components of the scallop fishery under this new requirement. Which components do you believe merit consideration for inclusion in the Scallop FMP (i.e. limited access, general category, incidental catch fisheries, vessels with a Northern Gulf of Maine general category permit, etc.)?
- If the scallop fishery is allocated an ACL from another fishery under a different FMP, which species would be appropriate to consider (i.e. YT flounder, monkfish, etc.)? For example, if an ACL was allocated to the scallop fishery for YT, should that ACL be sub-allocated to various components of the scallop fishery (i.e. should there be one overall ACL similar to how the YT bycatch TAC in access areas is managed now, or should the ACL be divided between the limited access and general category fisheries, or should the ACL be allocated on an individual basis)? Are there other measures that should be considered to reduce YT bycatch in this action?
- As accountability measures are considered, what specific alternatives would be appropriate for each component of the scallop fishery and when should those measures be implemented if an ACL is exceeded?

## **2) Measures to rationalize the limited access scallop fishery**

There is excess capacity in the limited access scallop fishery; that is, the capacity of individual vessels and the fleet as a whole is greater than what is needed to harvest allowable catch levels. There are various ways the limited access fishery could be rationalized to reduce excess capacity and improve overall economic performance of the fishery. Some examples include DAS leasing, permit or DAS transfers, IFQ programs, sectors, etc.

*Questions to consider when commenting on this issue:*

- Do you agree that something should be considered in this action to address excess capacity in the limited access scallop fishery? If so, what specific measures should be considered?
- What impacts would a reduction in capacity have? Please discuss expected positive and/or negative impacts on vessel owners, crew, processors, employment and associated industries, fishing communities, other fisheries, etc.
- What details should be considered for a DAS leasing or DAS transfer program (i.e., should there be restrictions on leasing or transferring of DAS between vessels of different permit categories or vessel size/horsepower)?
- If you support consideration of IFQ management as a strategy to reduce capacity and rationalize the fishery, what specific considerations should be considered (i.e., what should the qualifying criteria be, who should be considered for IFQs, should quota shares be transferable, should consolidation limits be considered, etc.)?

## **3) Mechanism for sectors in the limited access fishery**

The Council is considering a mechanism to allow fishermen to develop limited access privilege programs (LAPPs), which may include sectors, community quotas, and harvesting cooperatives for participation by defined groups of limited access scallop vessels. The NEFMC has defined a sector to be “a group of persons holding limited access vessel permits

***What action is the Council considering (cont.)?***

in the FMP through which the sector is being formed, who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a TAC(s) in order to achieve objectives consistent with applicable FMP goals and objectives.” The Council is still in the process of adopting both general and specific sector policies, but a mechanism to allow sectors in the general category scallop fishery was recently approved under Amendment 11 to the Scallop FMP. This action is considering a similar mechanism that would allow a group of limited access scallop permit holders to form a sector and submit a binding plan for management of that sector’s allocation of catch or effort. Participation in a self-selecting sector would be voluntary.

*Shaded Text is being discussed at the February 2008 Council meeting and will be modified to reflect the final Council decision after that meeting.*

*Questions to consider when commenting on this issue:*

- Should the Council consider approving a mechanism in this action that would allow limited access scallop vessels to form a sector or cooperative to harvest their collective shares? Why or why not?
- The current sector policy approved by the NEFMC includes guidance that species Committees should consider when developing sectors. Some considerations noted include: defining a baseline period upon which to base sector allocations; minimum and maximum size limitations; whether a sector should be based on a geographical area; how the sector will address bycatch of scallops and other species; how a sector will be held accountable if it exceeds its allocation; whether allocation should be permitted to move between sectors; if there should be any limits on who can be in a sector (within one FMP or across FMPs), which management measures sectors should be exempt from and which ones they should be required to follow (i.e., gear restrictions, crew restrictions, area closures, etc.); and if additional reporting, monitoring and enforcement measures are necessary within a sector. Please comment on any or all of these considerations.
- Should this action be limited to allocation of access to the scallop resource, or should it include consideration of other issues? Specifically, should a sector be permitted to apply for and receive a portion of the TAC set-aside reserved to help defray the cost of observer coverage? In addition, should a sector be permitted to apply for and receive a portion of the YT flounder bycatch TAC in access areas?
- Should this action consider specific sector applications from either limited access or general category participants, or should this action be limited to developing a mechanism for sectors only and wait to accept specific applications until a subsequent framework action?
- Would the approval and use of sector allocation change the limited access scallop fishery? How would it impact fishing communities? What issues should the Council consider when analyzing the impacts of sector management?

**4) Revision of overfishing definition to make more area-based**

When area rotation was implemented under Amendment 10, the Council considered an overfishing definition that would better complement the rotational area management program proposed under Amendment 10. For a variety of reasons, the Council did not recommend changing the overfishing definition in Amendment 10; however, several issues have come up in recent years to warrant re-examination of the current definition.

Specifically, the Scallop PDT originally developed an overfishing definition that would set a fishing mortality threshold that maximizes yield from scallops available to the fishery by setting area-specific thresholds based on past fishing mortality rates and area rotation policies. This new definition would be based on a “time-averaged” fishing mortality rate rather than a “spatially-averaged” fishing mortality rate. Thus, the new overfishing definition would average fishing mortality over time and not space, so rather than an average of  $F=0.29$  for the entire resource, each area open to fishing would have an average  $F=0.29$  over a period of time (more constant for open areas; variable for access areas).

*Questions to consider when commenting on this issue:*

- Do you agree there are issues with the current overfishing definition?
- If so, should a time-averaged approach be considered?
- Should another approach be considered?

### **5) Modifications of the General Category IFQ program**

Amendment 11 to the Scallop FMP recently approved an IFQ program for general category vessels. Two specific ideas were raised during that process but were delayed for consideration because they would require more time for development and analysis (a rollover allowance for IFQ permit holders and allocation of IFQ by area). If for some reason a vessel is unable to harvest their full IFQ in a given fishing year, a rollover allowance authorizes a vessel to carry forward unused quota for use in the following fishing year. Related to the second issue, under the IFQ program approved in Amendment 11, a limited access general category vessel is allocated an annual IFQ based on their contribution to historical landings. The allocation is not area-specific and a vessel is authorized to harvest their quota from any area (open areas or access areas until the fleetwide TAC is reached for that area). This modification would allocate IFQ specific to each area so a vessel would be restricted to catch (or trade) their IFQ by area. For example, in 2009, rather than an overall 6,000 pound IFQ, a vessel would receive 3,000 pounds from open areas, 500 pounds from Closed Area II, 500 pounds from Delmarva, and 2,000 pounds from Elephant Trunk. This action is currently considering alternatives to address these two modifications only; other modifications of the recently approved IFQ program are not under consideration.

*Questions to consider when commenting on this issue:*

- Do you agree that this action should consider a rollover allowance for limited access general category IFQ permit holders? If so, what is an appropriate level of quota that should be permitted to rollover and for how long?
- Do you agree that this action should consider allocating area-specific IFQ to limited access general category permit holders?

### **6) Measures to address EFH closed areas under the Scallop FMP if Phase II of the EFH Amendment is delayed**

One component of Phase II of the EFH Amendment is to develop alternatives for minimizing adverse impacts of fishing on EFH to the extent practicable. This will include a review and possible modification of existing EFH closed areas as well as other measures that are in place to minimize impacts of fishing on EFH. The Council is expected to approve a final range of alternatives in early 2009, and the final EIS is scheduled to be submitted later that summer. If this timeline remains in place, then the Scallop Committee

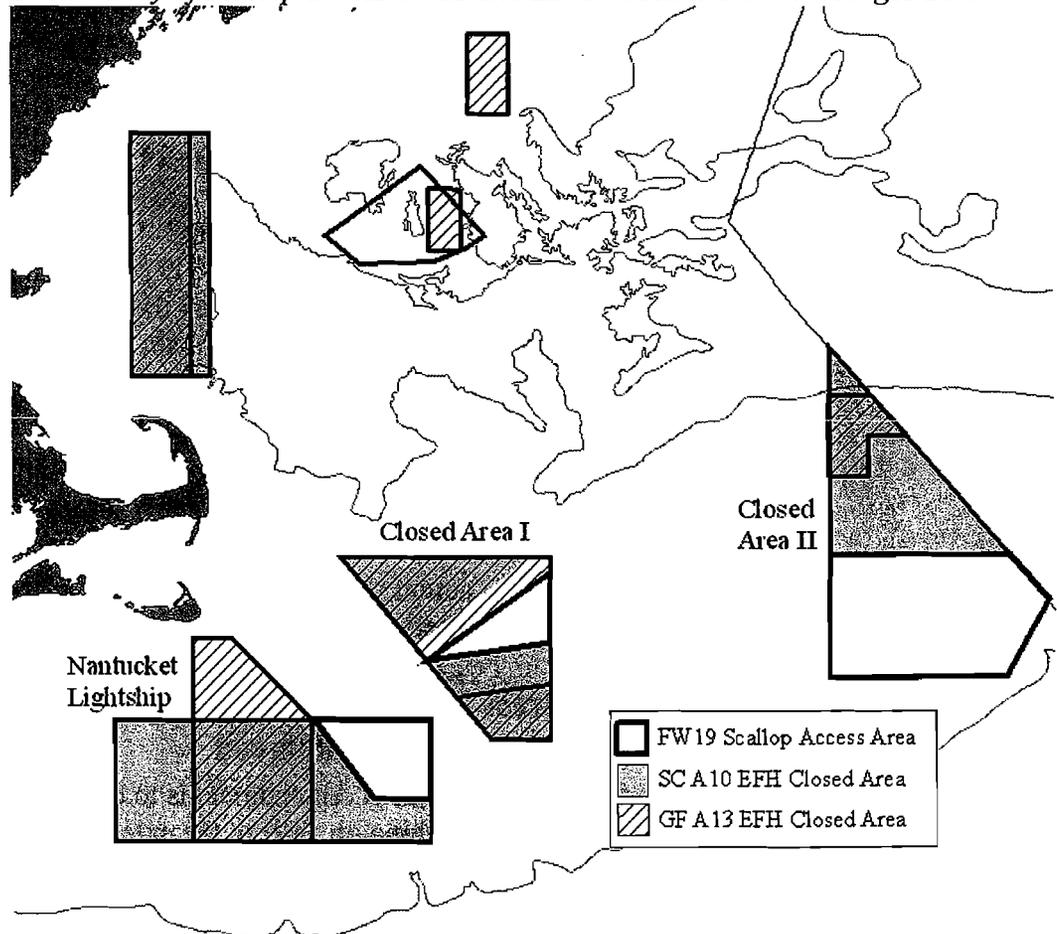
and Council will know what areas will most likely be available for potential rotational area management before the fall of 2009 when measures would have to be developed for the 2010 fishing year. However, if this timeline is delayed, then access into Georges Bank closed areas would still be limited to areas not closed to the scallop fishery for EFH under both the Scallop FMP and the Groundfish FMP. Framework 16/39 proposed to make the two plans consistent in terms of closed areas to minimize adverse impacts on EFH, but that action was challenged and, as a result, areas closed for EFH under both Amendment 10 and Amendment 13 apply to the scallop fishery. In most cases the two plans are consistent, with two important differences: the northern part of Closed Area II north of the cod HAPC, and the central portion of Closed Area I south of the original scallop access area. See Figure 1.

This action is considering alternatives to address the EFH areas currently closed to the scallop fishery. Specifically, this action would consider making the EFH closed areas consistent under both FMPs if the EFH timeline is delayed. Rather than both the shaded and hatched areas in Figure 1 being closed to the scallop fishery for EFH – just the hatched areas would be closed to minimize impacts on EFH (consistent with A13 to the Groundfish FMP).

*Questions to consider when commenting on this issue:*

- Do you agree that this action should consider making the EFH closed areas in the Scallop FMP consistent with the Groundfish FMP if the timeline for Phase II of the EFH Amendment is delayed?

*Figure 1. Overlay of scallop access areas and EFH closed areas on Georges Bank*



## **7) Alternatives to improve the research set-aside program**

Issues with the current research set-aside program have been identified such as timing concerns and efficient use of the resource for this purpose. This action is considering alternatives to improve the overall effectiveness of the research set-aside program. Specifically, alternatives to streamline the process will be considered as well as specific alternatives to maximize use of the resource for direct benefits to scallop management. For example, should the current 2% set-aside for research be further divided so that some portion of the set-aside is reserved for proposals that focus on industry-based surveys of the access areas to estimate TACs under the rotational area management program.

*Questions to consider when commenting on this issue:*

- Do you agree that this action should consider alternatives to improve the current research set-aside program? If so, specifically what types of measures should be considered?
- Do you support consideration of sub-dividing the current 2% set-aside to reserve some portion for research proposals that are focused on surveys of access areas to estimate TACs under the rotational area management program?

## **8) Change the scallop fishing year to May 1**

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

*Questions to consider when commenting on this issue:*

- Do you agree that this action should consider changing the scallop fishing year to May 1?
- Should the Council consider other measures to address this issue? If so, which ones?

IS THERE ANYTHING ELSE RELATED TO THESE ISSUES THAT IS NOT ADDRESSED IN THIS SCOPING DOCUMENT?

SHOULD THE COUNCIL CONSIDER ANYTHING ELSE IN THIS AMENDMENT RELATED TO THESE SPECIFIC ISSUES?

SHOULD THE COUNCIL CONSIDER ANY ADDITIONAL ISSUES IN THIS ACTION THAT ARE NOT RELATED TO THESE EIGHT ISSUES?

***What is the amendment process?***

The Council, its Scallop Oversight Committee, and the Scallop Plan Development Team, have held preliminary public discussions on the issues to be addressed in this amendment. The publication of this scoping document and an announcement in the *Federal Register* (dated March ??, 2008) of the Council's intent to prepare this amendment is the first part of the formal process. Four scoping hearings will be held in April 2008 to provide additional opportunity for input from the public (see meeting dates and locations on the last page).

After gathering information during this scoping period, the Council will select a range of alternatives to be considered and analyzed in a Draft Supplemental Environmental Impact Statement (DSEIS) and public hearing document. The Council will hold numerous meetings of its Scallop Oversight Committee, PDT and advisory panel to develop a range of alternatives for development in the DSEIS. Approval of these alternatives for consideration is expected in summer 2009. Once the DSEIS and analysis of alternatives is prepared, the Council will hold public hearings, tentatively scheduled for late 2009 / early 2010. After receiving public comment, the Council will choose final alternatives to submit to the Secretary of Commerce for implementation. If no delays are encountered during the development or review process, Amendment 15 is expected to become effective before the start of the 2011 fishing year.

***Why should I comment?***

This is the first and best opportunity for members of the public to raise issues and concerns for the Council to consider during the development of this amendment. The Council needs your input both to identify management issues and develop alternatives that meet the Scallop FMP objectives. Your comments early in the amendment development process will help us address your concerns more thoroughly.

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***How do I comment?***

The Council is scheduling four public scoping meetings for this amendment. Public meetings will be held in April 2008 (see location and dates of meetings below). You may attend any of the scoping meetings to provide oral comments, or you may submit comments by email to [scallopscoping@noaa.gov](mailto:scallopscoping@noaa.gov), or written comments by the end of the day on May ??, 2008 to:

Patricia Kurkul, Regional Administrator  
National Marine Fisheries Service  
One Blackburn Drive  
Gloucester, MA 01930  
Fax: (978) 281-9135

Please note on your correspondence; "Atlantic Sea Scallop Amendment 15 Scoping Comments." Comments may also be accepted via fax at the above fax number.

If you wish to be on the mailing list for future meetings of the Scallop Committee, please contact the Council office at the above address and phone number.

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**Scoping  
Meeting  
Dates**

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<i>April</i>	<i>Portland, ME</i>	<i>7-9 pm</i>
<i>April</i>	<i>New Bedford, MA</i>	<i>7-9 pm</i>
<i>April</i>	<i>Cape May, NJ</i>	<i>7-9 pm</i>
<i>April</i>	<i>Newport News, VA</i>	<i>7-9 pm</i>

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#5

## New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
 John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

January 31, 2008

Ms. Patricia Kurkul, Regional Administrator  
 National Marine Fisheries Service  
 One Blackburn Drive  
 Gloucester, MA 01930

### RE: Comments on Scallop Amendment 11 Proposed Rule

Dear Pat:

The Council staff and members of the Scallop Committee have reviewed the proposed regulations implementing Amendment 11 to the Atlantic Scallop FMP and offer several comments and suggestions for clarification. The full Council has not had the opportunity to review the proposed rule before the comment deadline of January 31, 2008. Therefore, these comments reflect input from the Scallop Committee only based on discussions from a meeting held on January 25 when the Committee reviewed the proposed rule.

#### Suggested modifications for Amendment 11 Final Rule

1. Several places in the proposed rule, the Northern Gulf of Maine (NGOM) area is referenced as all waters north of 42° 20' N. That is not consistent with the final recommendation from the Council. Option A in Figure 3 of Amendment 11 displays the final recommendation, which is limited to the Gulf of Maine small dredge exemption area north of 42° 20' N, not intended to include all waters in the Exclusive Economic Zone (EEZ) north of 42° 20' N. ***The Scallop Committee recommends that all references to the NGOM area be modified to be consistent with the boundaries recommended by the Council under Option A.***
2. In Section (F) *Eligibility for NGOM or Incidental scallop permit* on page 71330 of the proposed rule, it is not clear that a vessel that qualifies for an IFQ permit can choose not to apply for an IFQ scallop permit and instead qualify for a NGOM or Incidental Catch permit. Technically the amendment document states that a vessel would have to have a permit on the control date of November 1, 2004, in order to qualify for NGOM or Incidental catch permit, but the intent of these permits was to be less restrictive than the IFQ permit since there are no landings requirements. Therefore, a vessel that qualifies for an IFQ permit, but instead decides to apply for a NGOM or incidental catch permit, should be authorized to do so and qualify for the less restrictive permit. ***The Scallop Committee recommends that the language in this section be modified to clarify that point.***

3. NMFS noted in the proposed rule that there are several instances where it has interpreted the language in Amendment 11 to account for any missing details in the Council's description of the proposed measures. One instance is permit provisions for NGOM and Incidental Catch permits. Amendment 11 included a section on permit provisions for limited access general category permits, but it was not specifically clear whether these provisions should apply to all three limited access permit types implemented under Amendment 11 (IFQ, NGOM, and Incidental Catch). The proposed rule presumed that all the permit provisions including measures like permit transfers, permit splitting, appeals etc. should be consistent for all limited access general category permits issued under Amendment 11. ***The Scallop Committee agrees with this interpretation and supports that all these provisions apply to all limited access general category permits unless specifically noted.***
4. ***The Scallop Committee suggests that Section 2. Landings History on page 71316 of the proposed rule be modified so that it is clear that determinations from FY2004 can only be from March 1 – November 1, 2004 (not the full fishing year).*** If a vessel's best year is FY2004, landings history from March 1 – November 1, 2004, would be used, not March 1, 2004 through February 28, 2005, as is the case with other fishing years during the qualification time period. The Council made this recommendation so that landings past the control date would not count toward landings history.
5. Section 13. *Permit Renewals and CPH Issuance* on page 71318 of the proposed rule specifies that if an IFQ vessel fails to pay cost recovery fees, their permit could be invalidated. ***The Scallop Committee suggests that this section be modified to reflect the discussion at the Council level, which was that permits would not be renewed if a vessel failed to pay cost recovery fees from the previous fishing year.***
6. On page 71318 of the proposed rule, there is a description of how the TAC will be allocated between the various components of the scallop fishery. It states that once the IFQ program is implemented, 5% of the total projected annual scallop catch would be allocated to vessels with IFQ permits. And this would be calculated by taking the total projected annual scallop catch, then deducting estimated catch by incidental catch general category vessels and the TAC from in the NGOM. ***The Scallop Committee requests that this section be modified to delete reference to the NGOM TAC.*** The TAC from the NGOM is treated separately and is not deducted from the top the same way estimated catch from incidental catch would be. Other sections of the proposed rule explain this accurately, but this section should be modified to be consistent with the final recommendation of the Council.
7. On page 71318 of the proposed rule, there is a section on how IFQ would be issued to owners of CPH vessels. Amendment 11 was not explicit on how CHP vessels would be treated in this respect and the proposed rule is drafted so that IFQ would be issued to owners of CPHs since that vessel's contribution would be included in the determination of IFQs. Furthermore, the proposed rule states that IFQ associated with CHPs would be transferrable. ***This treatment of CHP permits would be consistent with how CHP owners are treated in other limited access programs and the Scallop Committee is supportive of this interpretation. In addition, the Scallop Committee suggests that the agency should add that a CPH permit owner does not have to attach their IFQ to a vessel in order to transfer IFQ.*** It was discussed that this is an ineffective restriction used in the Groundfish FMP.

8. Section 648.53 of the proposed regulations describes the division of TAC between the various components of the fishery. It states that the general category will receive 10% in 2008 and 5% in 2009. The Council's final recommendations under Framework 19 for allocations for the two fleets were also based on these assumed percentages, presuming that the IFQ program would be in place for FY2009. However, this section of the proposed regulations also clearly states that if the IFQ program is not in place for March 1, 2009, then the quarterly hard TAC management program should stay in place for 2009 and beyond if necessary under the transition period to IFQs. ***The Scallop Committee discussed this issue and supports that Amendment 11 intended a 10% overall allocation to the general category fishery for the transition period to IFQs, not limited to FY2008 only. The Committee believes that the Council was making decisions under the impression that the transition period would not extend beyond FY2008, but based on language within the amendment the Committee supports that if the program is not in place in 2009, then 10% should be allocated to the general category fishery under the quarterly hard-TAC program. The Committee did not support a 10% allocation beyond FY2009 and suggested that if the IFQ program could not be implemented for FY2010, then a 5% allocation was more justified because it was never discussed during development of Amendment 11 that implementation of this program could exceed two years.***

The Committee recognizes that a 10% allocation in FY2009 would be inconsistent with final recommendations recently made under Framework 19. The Committee still supports the final allocation measures approved under Framework 19, but in the event that the IFQ program cannot be implemented for FY2009, then NMFS may want to consider adjustments to the proposed allocations so that the general category fishery is allocated 10% and the limited access fishery is allocated 90% of available catch. This issue in particular highlights the importance of implementing Amendment 11 and the IFQ program as expeditiously as possible.

9. The proposed regulations imply that catch in the NGOM from Incidental Catch permits would count against the NGOM TAC. Amendment 11 does clearly state that all scallop permits are prohibited from fishing in the NGOM after the TAC is reached (including incidental catch permits), but it is not as clear about whether incidental catch would count toward the TAC. ***The Scallop Committee supports the draft regulations and agrees that catch from incidental catch permits should count against the NGOM TAC.***
10. NMFS noted in the proposed rule that there are several instances where it has interpreted the language in Amendment 11 to account for any missing details in the Council's description of the proposed measures. Another instance is related to the increase in possession limit seaward of the VMS demarcation line for limited access general category vessels. The Council recommended an increase from 50 to 100 bushels seaward of the demarcation line because it often takes more than 50 bushels of in-shell scallops to yield 400 pounds of scallop meats. Amendment 11 did not consider a similar provision for the other two limited access permits. However, the proposed regulations include similar increases for the other two limited access general category permit types: up to 50 bu. rather than 25 bu. for the NGOM permit and up to 10 bu. rather than 5 bu. for incidental catch permits. ***The Scallop Committee supports this interpretation and expansion of the increased possession limit provision included for IFQ vessels seaward of the VMS demarcation line.***

11. Lastly, NMFS added a regulatory clarification to this proposed rule related to the ownership cap restriction for current limited access vessels implemented under Amendment 4 to the Scallop FMP. Currently, the regulation states that an individual may not own, or have an ownership interest in, more than 5% of limited access vessels. The current regulations are not clear whether this cap applies to CPHs. According to these proposed regulations, in terms of future ownership, a CPH is equivalent to a limited access permit and this rule would clarify that an individual could not own more than 5% of the limited access permit eligibilities in the form of a limited access permit or CPH. ***While this issue was not explicitly discussed during development of Amendment 11, the Committee supports this clarification and believes it is consistent with similar CPH provisions included in Amendment 11 for limited access general category vessels.***

Thank you for the opportunity to provide comments on the Proposed Rule for Amendment 11 to the Atlantic Sea Scallop FMP. The Council urges NMFS to approve and implement all of the measures proposed by the Council in Amendment 11 as expeditiously as possible. Implementation of fishery specifications for fishing years 2008 and 2009 under Framework 19 cannot be implemented until Amendment 11 is approved and getting measures in place as soon as possible is critical for preventing overfishing of this valuable resource. Please contact me if you have any questions.

Sincerely,



Paul J. Howard  
Executive Director

#6

**ASSOCIATED FISHERIES OF MAINE**

PO Box 287, South Berwick, ME 03908

207-384-4854

August 30, 2007

Mr. John Pappalardo, Chair  
New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950

Dear John:

I write with respect to the General Category Scallop IFQ program, and a request by our members for Council action to create what is known in other IFQ programs as a "rollover allowance". Rollover allowances permit IFQ holders to carry forward unused quota for use in the following year or to payback from the next year's allocation an overharvest of the current quota. In IFQ programs, rollover allowances of 10-20% are common while multi-year accumulations are generally not permitted. (Research has shown that carry forward allowances are used with greater frequency in existing IFQ programs than are payback allowances.)

The ability to carry forward unused quota is of particular importance to our members for the following reasons (in order of priority):

- 1) Safety – The General Category Scallop fishing year will now begin in March and end in February. Our members are concerned with the possibility that unused quota at the end of the fishing year could entice IFQ holders to race to fish during the bad weather month of February. This type of allowance is, we believe, comparable to the DAS carry-over policy for the Scallop and Multispecies fisheries developed by the Council for safety considerations.
- 2) Availability of resource – Our members are concerned that premature closure of the scallop access areas due to early harvest of the yellowtail quota might prevent full utilization of the scallop IFQ.

We hope the Council will consider developing, at the earliest opportunity, a rollover allowance for the General Category Scallop IFQ program.

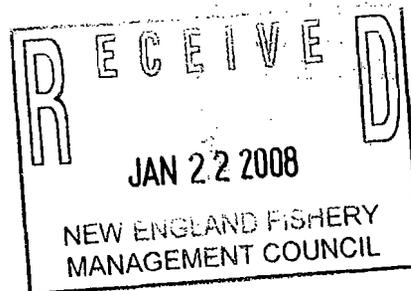
Sincerely,

*M. Raymond*

Maggie Raymond

*Associated Fisheries of Maine is a trade association of fishing and fishing dependent businesses. Membership includes harvesters, processors, fuel/gear/ice dealers, marine insurers and lenders, and other public and private individuals and businesses with an interest in commercial fishing.*

January 16, 2008



Mr. David Simpson, Chair  
NEFMC Scallop Oversight Committee  
50 Water Street, Mill #2  
Newburyport, MA 01950

RE: SCOPING DOCUMENT A #15

Dear Chairman Simpson:

My office is working with a coalition of full-time limited access sea scallop permit holders who seek to create opportunities to rationalize the fishery through Amendment #15. Unfortunately, I will be unable to attend your upcoming Committee meeting and therefore wanted to provide you with these brief comments.

The Scallop Capacity Reduction Coalition is focused on the issue of reducing fishing capacity in the sea scallop fishery while creating more efficient businesses. Under the current management program, the only way for vessel owners to increase fishing opportunities is to purchase additional vessels and permits. As a result, virtually every permit is active creating overcapacity in the fishery. With the reduction of DAS and number of closed area trips, individual vessels are realizing fewer fishing opportunities and thus becoming less economically viable. Today the majority of scallop vessels are tied up in port for months each year and the expenses related to maintaining inactive vessels are enormous and wasteful.

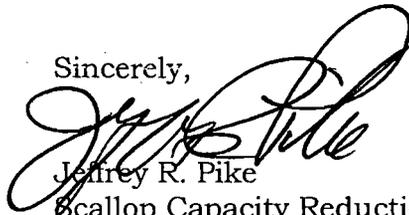
Future projections for the fishery estimate sustainable annual harvest levels of between 40-50 million pounds. Our members do not believe that this level of harvest can economically sustain today's limited access fleet of more than 340 vessels. Simply put, the limited access fleet is too large to economically harvest the resource and fleet capacity needs to be reduced to more closely match harvesting capacity with resource productivity. Amendment #15 presents the NEFMC with the opportunity to develop mechanisms that will allow for capacity reduction within the fleet while maintaining viable businesses.

At this time we believe the two most practical measures that would allow for a reduction in fishing capacity would be sector allocations and some form of DAS transfer and we would ask that the scoping document include both of these measures. With respect to sector allocations, you may recall that my firm worked with the Council staff to include sector allocations in Amendment #11 but ultimately the Council decided to postpone this for later action (A #15). We would be pleased to provide the Committee with our previous work and analysis as it proceeds with A #15. On the issue of DAS transfers, we encourage the inclusion of a DAS transfer mechanism that will allow vessel owners to move DAS in order to eliminate some vessels. We would expect that both these measures (DAS transfers and sector allocations) would be considered in the context of maintaining the current mortality controls included in Amendment #10.

In the Council's brief description of A #15, it mentioned IFQs as a possible measure to be considered. While a number of vessel owners strongly support IFQs, the many unresolved issues associated with establishing an IFQ or ITQ program for the full-time scallop fishery is enormous. The amount of time it would take to analyze and resolve these issues would almost certainly delay implementation of A #15, which we would not support. In light of these concerns, we request that the scoping document not include IFQs as a possible management measure and that consideration of IFQs be postponed for a future action.

Thank you in advance for your consideration of these comments and we look forward to working with the Committee on this important amendment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey R. Pike', written in a cursive style.

Jeffrey R. Pike  
Scallop Capacity Reduction Coalition

#6B

Mr. David Simpson  
Chairman, Scallop Committee  
50 Water Street, Mill#2  
Newburyport, Ma. 01950

January 22, 2008

Dear Chairman Simpson,

The purpose of this letter is to comment on capacity reduction measures in the sea scallop fishery under consideration in Amendment #15. I am in agreement that there is excess capacity in the scallop fishery. All measures to reduce capacity have their unique methods to achieve a reduction. Without commenting on any measure specifically, a reasonable goal of the selected measure would be to allow any like limited access permits to be combined on a single vessel without regard to baseline restrictions. An example would be a combination of two full-time limited access permits, on the choice of either boat, that would then effectively double the allocation of the selected vessel. The rationale for the lack of baseline consideration is to afford flexibility and practicality in the combination of effort among permit classes and the ever increasing insignificance of the level of landings among permit class. Simply put, rotational management has created defacto equality among the permit classes without regard to the platform each captain uses. With regard to open access days-at-sea, the platform used is having a diminishing affect on the pounds landed by distinct vessels as a result of a marked decrease in the biomass available outside access areas to the extent that that vast majority of scallop beds in the open bottom produce very similar landings per unit effort fleet wide.

Thank you for your consideration of my comments.

Sincerely,

Raymond W. Starvish Jr.



**OCEANA**

Protecting The  
World's Oceans

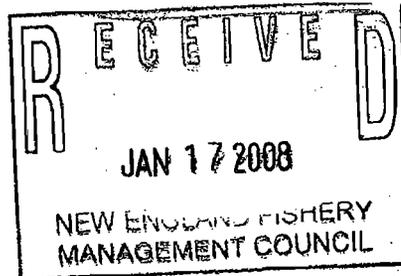
2501 M Street NW, Suite 300  
Washington, DC 20037 USA

+1.202.833.3900  
www.oceana.org

#6C

January 16, 2008

Patricia A Kurkul  
Regional Administrator  
National Marine Fisheries Service  
Northeast Regional Office  
One Blackburn Drive  
Gloucester, MA 01930



David Cottingham  
Division Chief  
Marine Mammal and Sea Turtle Conservation Division  
Office of Protected Resources,  
National Marine Fisheries Service,  
1315 East-West Highway, Room 13635,  
Silver Spring, MD 20910

**Re: Atlantic Sea Scallop Fishery Impacts on Sea Turtles**

Dear Ms. Kurkul and Mr. Cottingham:

As you know Oceana has been involved in a series of cases concerning the sea scallop fishery and the fishery's take of threatened and endangered sea turtles. Recently, Oceana negotiated with attorneys from the U.S. Department of Justice (on behalf of the Department of Commerce and the National Marine Fisheries Service) a deadline for the completion of a new Biological Opinion for the Atlantic Sea Scallop Fishery: March 15, 2008. Oceana is encouraged by this firm commitment by the agency to comply with its obligation to complete this revised assessment and looks forward to the information and findings of the updated BiOp.

Despite this progress toward effective management of sea turtle takes in the fishery, Oceana has serious concerns about two pending management actions under the Scallop Fishery Management Plan which might adversely affect sea turtles and which might affect the environmental baseline or the cumulative effects considered in the forthcoming BiOp: the Atlantic Sea Turtle Conservation Measures (the "Chain Mat Rule") published in the Federal Register November 9, 2007, and Framework 19 to the Scallop FMP which was approved by the New England Fishery Management Council at its October 25, 2007 meeting. Oceana is also concerned about new information concerning the failure of the turtle chains used in scallop dredges to significantly reduce scallop dredge captures of sea turtles – a concern Oceana raised in its comments on the Chain Mat Rule.

The environmental effects of these actions, together with the new information concerning captures in scallop dredges, could require significant reevaluation of the

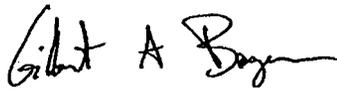
cc: Council, DB, CASK, PLIF (1/18)

anticipated level of incidental take in the fishery as well as potentially requiring a reevaluation of the RPMs or RPAs called for by the BiOp. Therefore, Oceana requests that the Agency delay approval and implementation of these actions until they can be considered in the BiOp. To do otherwise would be inconsistent with the agency's duty to consult under the Endangered Species Act.

If these actions are approved and implemented before the publication of the BiOp, it remains the case that the actions must be fully considered in the BiOp and that appropriate RPMs and RPAs might have to be implemented through separate rulemakings. Of course, for the BiOp to fail to consider these actions would be inconsistent with the agency's legal duties under the Endangered Species Act.

Oceana requests that this letter be added to the administrative record for each of these actions as well as for the Biological Opinion.

Thank you for your attention to this important matter,

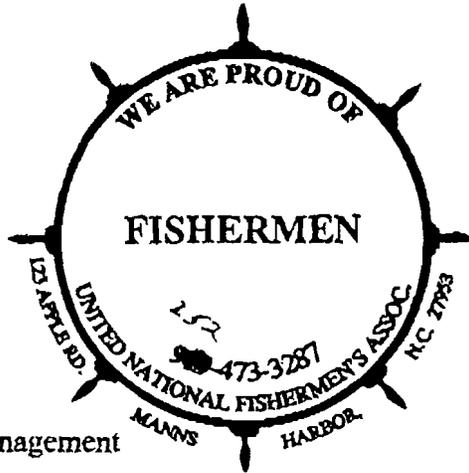


Gib Brogan

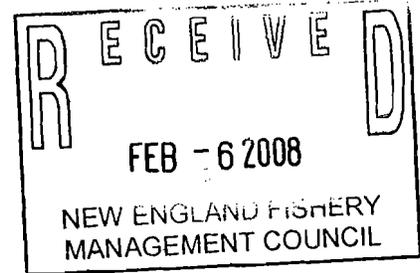
Campaign Projects Manager  
Oceana  
Wayland, MA

Cc: Mary A. Colligan, Assistant Regional Administrator for Protected Resources  
Patricia Fiorelli, Protected Species Coordinator, New England Fishery Management Council  
Eric Bilsky, Senior Attorney, Oceana

#6D



New England Fishery Management  
 50 Water St.  
 The Tannery Mill 2  
 Newburyport MA 01950  
 Fax 978-465-3116



Dear Sir,

What action will the Council take if an anoxic event as occurred in 1976 causes the death of the scallop bio-mass in the Elephant Trunk scallop management Area.  
 The PDT and Scallop Committee will not / has not addressed the issue.  
 Reviewing cycles saros, 240 moons, solar, tide and others.  
 A 50% chance possibility of an anoxic event occurring exist somewhere in the area.  
 What preparation has NMFS, Council, Scallop Committee, or PDT in case an event such as an anoxic event occurs in a scallop management Area?  
 This Letter places the Council on notice.

Thank You,

A handwritten signature in cursive script that reads 'James Fletcher'.

James Fletcher director 02-06-08

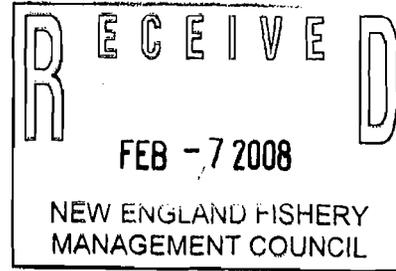


CAPE COD COMMERCIAL HOOK FISHERMEN'S ASSOCIATION, Inc.  
210-E Orleans Road  
North Chatham, MA 02650  
508-945-2432 • 508-945-0981 (fax)  
www.cchfa.org • contact@cchfa.org

#6E

Paul J. Howard, Executive Director  
New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950

February 6, 2008



Dear Captain Howard,

The following comments are directed towards the development of Amendment 15 to the New England Sea Scallop Management Plan on behalf of the Cape Cod Commercial Hook Fishermen's Association (CCCHFA) and newly forming Chatham Day Boat Scallop Coalition (CDBSC).

With the implementation of scallop Amendment 11, the General Category scallop fishery will be drastically changed. In the process of converting from an open access fishery to a limited access fishery, the Gen Cat fleet will be greatly reduced in number from over 600 vessels landing in a single year to about 369 qualified Gen Cat permit holders. IFQ consolidation and leasing will drop the number of Gen Cat participants further still and we will not be surprised to see less than 200 vessels in the Gen Cat upon implementation of Amendment 15. Due to the major impacts and changes resulting from Amendment 11, there are many loose that need the council's attention.

#### **Cape Cod Gen Cat Vision for the Future**

Changes were necessary in the Gen Cat and while we may or may not agree with all that has transpired, we find ourselves working with staff at CCCHFA to look forward and setting a course of adaptive policies that will maintain a healthy scallop resource, profitable fishing businesses, and robust traditional day boat scallop fleets located throughout New England. Our vision of the day boat scallop fleet on Cape Cod includes the following characteristics:

- Owner Operator.
- Profitable & safe fishing businesses.
- Preservation of the character of the near shore fleet.
- Smaller and mid-sized vessels returning to port daily.
- Traditional crew sharing with the majority of the ex-vessel value of the product remaining with the captain and crew.
- No absentee ownership of permits or quota.
- High quality day-boat product.
- Increasing portion of the catch harvested from Access Areas (similar to the Limited Access fleet).
  - More efficient and profitable.
  - Environmentally sound – less bottom time needed

The CCCHFA is working with Chatham scallop vessels to determine and seek changes to the Scallop Management Plan through Amendment 15 that will guide the stabilization of our Gen Cat fleet in years to come. A principal outcome that we seek in Amendment 15 is the formation of Gen Cat sectors that allow for local groups of scallop vessels to work together to manage bycatch caps, IFQ shares and access allocation. Sector allocation will be a fair and equitable means to ensure that ports are left intact

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through the Amendment 11 and Amendment 15 process. Sector allocation has the potential to avoid the constant process of different ports trying to indirectly compete with each other.

### **New General Category Access Areas**

We are also deeply concerned with the preservation of the near shore character of the Gen Cat fleet, especially the vessels that have traditionally fished around Cape Cod. Due to the range restrictions inherent with the Gen Cat fleet, most of the current access areas are almost out of the Gen Cat's reach. The council should start the process of designing one or more near shore access areas which will be reserved for the Gen Cat portion of the fleet. Everyone agrees that the Gen Cat Fleet deserves access area rights. We also understand the range restrictions inherent with the small boats of the Gen Cat fleet.

The closest access area to New England is about 60 miles from the nearest port. We think the scoping document for A15 should address the issue of making an access area exclusively reserved for the new Gen Cat fleet. The area would not have to be as big as CAII, but it must be close to shore. Perhaps more than one of these small access areas should be designed to allow the GC fisherman from the northern and southern portions of the east coast to fish while preserving some of the historical, near shore character of this fishery.

### **General Category Access to Closed Area II**

Access to one of the most productive access areas was taken away from the General Category in Framework 19. Access and means of utilizing the access should be restored OR the Council should find a way to mitigate the loss of this access by allowing greater access to areas closer to shore. Creation of small Gen Cat access areas inshore would also serve to mitigate removal of the CAII access opportunities.

### **Other Management Options**

The CCCHFA and CDBSC will also support the use of the following management tools in developing effective sector allocation regimes and an effective Amendment 15:

In Amendment 15, we support the consideration of Sectors including:

- Pooling of Access Area trips.
- Trading Access Trips to other Sectors or individuals.
- Ability to hold bycatch quota such as yellowtail.
- If a Sector is able to demonstrate through its operations plan that it is maintaining traditional characteristics of the Gen Cat fleet then it should have the ability to alter the daily trip limit from 400 pounds. Furthermore, if Sectors are granted access area trips that are far from their home port then they should be able to pool them and harvest them efficiently.
- Ability for Sectors to implement and organize Permit Banks or Fisheries Trusts to ensure affordable access to IFQ as long as the total Sector holdings stay under the 20% sector cap.

Other Measures:

- Maintenance of the observer program.
- The Gen Cat and Limited Access vessels should receive the same proportion of their annual landings from the rotational access areas.
- Hard TACs and accountability measures. The Gen Cat is now held to an annual Hard TAC. The Limited Access must also be held to a Hard TAC and shut down when they hit 95% of the annual TAC. Otherwise, the Limited Access fleet must "pay back" through Accountability Measures these overages. Overages in the limited access fleet must not impact the General Category allocation.
- IFQ carry over for Gen Cat vessels: If a Gen Cat does not use its entire IFQ for safety or business reasons, they should be allowed to use it the following year (much like the carryover provision of the Limited Access fleet).

- IFQ allocations for Gen Cat vessels by area: this would solve the danger involved with a derby fishery in the access areas.
- Allocate two separate bycatch TACs for the limited access and the Gen Cat in the access areas. This would allow the Gen Cat and the LA fleet to operate independent of each other. Otherwise, there is the possibility of a derby fishery in the access areas again.

We appreciate your consideration of your concerns and hope to be of assistance in the development of Amendment 15.

Sincerely,

Paul Parker,  
Executive Director



# Scallop Amendment 15



Review and Approval of Scoping Document  
February 2008 Council Meeting

# A15 – Scoping Issues

- Purposes:
  - 1) Set ACLs and AMs (required by MSRA 2007)
  - 2) Reduce capacity in the LA scallop fishery
  - 3) Develop mechanism for sectors in LA scallop fishery
  - 4) Consider revision of overfishing definition
  - 5) Consider specific modifications to the IFQ program for LAGC fishery
  - 6) Address EFH closed areas under the Scallop FMP if Phase II of the EFH Amendment is delayed
  - 7) Consider alternatives to improve the current RSA program
  - 8) Consider modifying the scallop fishing year to May 1

Issues in Black “pre-approved” by Council in November –  
Issues in Green added by Cmte on 1/25

# A15 – Working Timeline

February 2008	Council approves scoping document
March – April 2008	A15 Scoping Period
May – October 2008	Develop alternatives
November 2008	Council approves alternatives to be analyzed in DSEIS
December '08 - May '09	Complete analysis for DSEIS
June 2009	Council approves DSEIS for public hearings
<b>July – September 2009</b>	<b>Break in A15 work to develop Framework 21 – specs for FY2010</b>
December 2009	A15 Public Hearings
April 2010	Council selects final alternatives for A15
<b>March 2011</b>	<b>NMFS implements A15</b>



# Issue #1 - ACLs and AMs

- Annual Catch Limits and Accountability Measures to prevent overfishing
- By 2011 for stocks not subject to overfishing
- Formal guidance from NMFS expected in May 2008
- Potentially catch will be allocated to different components of the scallop fishery
- The SC fishery might also be allocated an ACL from a different fishery (YTF, monkfish, etc)



# Issue #2 - Rationalization of LA Fishery

- Currently excess capacity in LA fishery
- Potential ways to rationalize fishery include DAS leasing, DAS and permit transfers, IFQ programs, sectors, etc.
- Various considerations and impacts will need to be addressed



# Issue #3 - Mechanism for sectors for LA Fishery

- Sector = group of persons with LA permits who have voluntarily agreed to certain fishing restrictions in return for an allocation of TAC under an FMP
- Mechanism for sectors in the GC fishery already approved in Amendment 11
- Numerous issues to consider with sectors
- Should A15 solicit individual sector applications?

# Issue #4 - OFD Revision

- Current overfishing definition underestimates fishing mortality, reduces yield and allows growth overfishing
- Proposed OFD in A10 set area-specific targets with different  $F$  rates over time
- A10 = time-averaged;  
Current = space-averaged
- Other modifications and impacts will need to be considered



# Issue #5 - Modifications for LAGC IFQ program

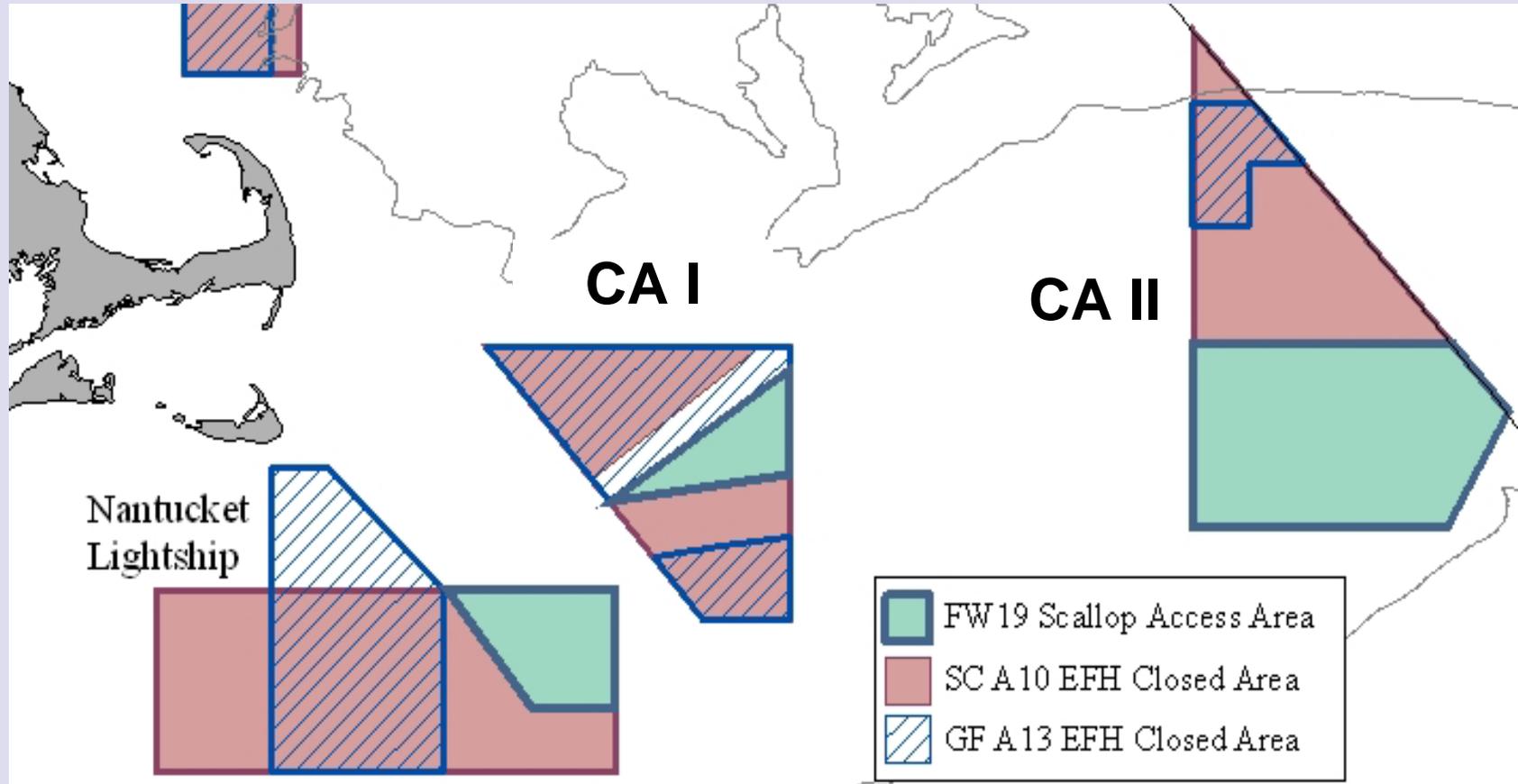
- Considering 2 modifications only
- Rollover allowance for IFQ holders
- Area-specific allocation of IFQ to LAGC vessels (Annual IFQ broken down by area)



# Issue #6 - Measures for EFH closed areas under Scallop FMP

- FW16/39 proposed to make the EFH closed areas in A10 consistent with A13 but that action was challenged and NMFS lost because it was considered in a framework (not an Amendment); so both areas are currently closed to the scallop fishery
- One component of Phase II is to develop alternatives for minimizing adverse impacts of fishing on EFH
- Includes review and possible modification of existing EFH closed areas

- In most places, the GF and SC FMPs are consistent except CA II north of cod HAPC and central portion of CA I.
- Should this action consider making EFH closed areas consistent between FMPs – hatch area only





# Issue #6 - continued

- If EFH Am. timeline is delayed, access to GB closed areas would still be limited to areas not closed to scallop fishery by SC and GF FMPs.
- Phase II likely to change EFH areas and unlikely that it will not be approved before A15, so timing issues would need to be addressed
- Analysis from FW16/39 could be used – but may need to update certain aspects



# Issue #7 - Improvements to RSA program

- Issues include timing and efficient use of the resource for this purpose
- Considering alternative to streamline the process and maximize use of resource for direct benefits to scallop management
- One idea is to divide the 2% research set-aside into two pools – reserving 1% for industry-based surveys to estimate TACs under area rotation



# Issue #8 - Change FY to May 1

- Scallop FY is out of sync with framework adjustment process and timing of survey data availability
- Result: actions not implemented at start of FY, TACs misestimated, and extra actions are required to compensate
- One new consideration for May 1 is in light of new ACL requirements – overlap with GF FMP



# Council Action for Today

- Should Council scope for these 8 issues? Should any be added/removed?
- Any suggested changes to the scoping document?
- If scoping document approved today the scoping process will begin early March
- Four scoping meetings scheduled  
(Cape May, NJ; Portland, ME; Newport News, VA; and New Bedford, MA)
- Scoping period through April/May 2008