

**Framework Adjustment 10  
to the  
Atlantic Sea Scallop Fishery Management Plan**

prepared by the

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## **1.0 Introduction**

In June, 1996, the New England Fishery Management Council (Council, NEFMC), approved Amendment #5 to the Sea Scallop Fishery Management Plan (FMP). The action, implemented in February, 1997, established a nine-square mile experimental use area located approximately twelve miles southwest of the island of Martha's Vineyard. With the exception of activities specifically identified, the Council closed the area to all fishing for 18 months. The intended effect of the closure was to support research activities and prevent conflicts between fishing gear and project equipment.

During the closure period, which is scheduled to expire in August, 1998, scientists, technical experts and fishermen have conducted an experiment and demonstration project involving sea scallop research, enhancement and aquaculture. Basic activities have involved transporting scallops from areas with dense concentrations to the project site for the purposes of testing various transport and grow-out strategies. The objectives are to develop techniques for the optimal management of a scallop grow-out area and for the transportation and seeding of small scallops, to identify potential scallop grow-out sites in New England and to determine the economics of scallop enhancement and culture in New England.

With an effective date of February 13, 1997, and an 18-month operational period, the closure will expire in mid-July, 1998. Project participants requested a three-year extension of the closure period to continue the work currently in progress. The Council approved initial action on this request at the April 15-16, 1998 Council meeting in Plymouth, MA, but for an 18-month period. The Council finalized the action as Framework 10 to the Sea Scallop Fishery Management Plan (FMP) at its May 20-21, 1998 meeting.

## **2.0 Purpose and Need**

### **2.1 Background**

In October, 1997, the Secretary of Commerce notified the Council that the sea scallop (*Placopecten magellanicus*) resource is overfished. In keeping with the requirements of the new Sustainable Fisheries Act (SFA), the Council must submit a plan within one year that ends overfishing and rebuilds the resource over a period not to exceed ten years. Fishing must be reduced to a level that will not jeopardize the capacity of the resource to produce the maximum sustainable yield on a continuing basis. Accordingly, the Council will take action in Amendment 7 to the FMP to reduce fishing mortality by approximately 80 percent from current levels.

Because the sea scallop resource is very clearly overexploited, vessels in the fishery will face more restrictions beyond those currently in place. Full-time vessels are now allocated 142 days-at-sea, are subject to crew size limits and gear restrictions and are eliminated from fishing in the groundfish closed areas, potentially valuable fishing grounds, because of concerns about the bycatch of juvenile regulated species.

Existing management options can only address these problems by decreasing fishing effort and harvesting efficiencies, both of which reduce employment opportunities and fleet productivity. Better information on sea scallop enhancement, harvest gear/scallop/habitat interactions, open ocean cage engineering and growth rates of transferred juvenile brood stock in both cage culture and open bottom culture would provide the Council and area fishermen with the potential tools to expand the resource base.

Sea scallop aquaculture is one of the most promising commercial opportunities for the Northwest Atlantic, with many of the prerequisites for success already in place. Small scallops are plentiful; the harvesting and processing infrastructure is in place; the unit value for market-sized sea scallops is high; and the sea scallop market is well established. Most importantly, the scallops can be reared on naturally occurring feed without the costs or environmental considerations associated with finfish aquaculture.

## **2.2 The New Bedford Scallop Industry**

Some participants in the New Bedford sea scallop industry believe that increasing natural productivity is a better solution than scaling back fishing effort. From that idea, the participants in the project (previously referred to as the Westport Scallop project and renamed the Seastead Site) have endeavored to apply scallop culture techniques, proven in other parts of the world, to the New England region. In support of their view and from an economic standpoint, *Placopectin* is by far the most important commercial pectinid species worldwide, comprising more than half of total global scallop landings from wild capture fisheries. Cultured scallops have now surpassed the wild catch in terms of total landings. In 1993 for example, culture production of *Placopectin yessoensis* in China totaled 200,000 mt and 300,000 mt in Japan.

While the commercial potential for sea scallop pen culture and natural enhancement is vast, significant applied research and development activity, coupled with fleet education and training, is essential to make sea scallop aquaculture a commercial success in New England. This project serves to facilitate essential research aimed at developing techniques and practices that could allow the scallop fishery to evolve from one based exclusively on wild-capture to an industry that also incorporates modern husbandry, enhancement and open-ocean cage culture.

## **2.3 Need for an Adjustment**

Amendment 5 to the Scallop Plan established the experimental site pursuant to 50 CFR §648 and restricted certain fishing activities during the term of the Seastead Project. The success of the experiment is dependent on retaining the restrictions currently in place. Project participants have requested an 18-month extension of the closure period. The objective is to obtain a comprehensive understanding of the issues associated with scallop seeding and grow-out. These activities and the required environmental monitoring necessitate limits on activities within the experimental area. Therefore, without restrictions or controls on fishing, expensive grow-out or monitoring equipment could be inadvertently destroyed by towed gear.

Continued operation of the project also is intended to help to answer a number of important questions related to scallop management, given that the substrate and environmental conditions at this location are very typical of many areas on Georges Bank and Southern New England. If work is allowed beyond the limited duration of the current project, information obtained may provide a better understanding of issues such as:

- the identification of characteristics of optimal of grow-out sites;
- an assessment of areas with good scallop sets, but poor survivability;
- the economic feasibility of transferring scallops for areas with poor survival to potentially favorable sites;
- an evaluation of the impact of fishing gear on scallop; and
- a better understanding of the ecological relationships between scallops, crabs, starfish, sand dollars and other organisms.

Furthermore, work at the Seastead Site appears to complement the Strategic Plan for Fisheries Research published by the National Marine Fisheries Service (NMFS) in February, 1998. In the section on marine aquaculture NMFS maintains that it will concentrate its research activities in several broad areas which include:

- evaluate and develop commercially viable technology for new candidate species for aquaculture;
- determine the siting requirements for aquaculture operations in the EEZ;
- develop effective enhancement strategies for aquatic species to help recover wildstock fisheries and endangered species;
- conduct research on the effects of aquaculture on habitat and develop environmentally safe alternatives; and
- assess the effectiveness of aquaculture as an alternative employment source for fishers in over-exploited fisheries.

In order to avoid compromising the project, an extension of the closure, which is due to expire in July, should be implemented as soon as possible. Individuals and associations representing the user groups who initially objected to the original location of the Seastead Site were contacted by the Council staff to inform them of the Council's pending action and to inquire about possible problems or issues associated with an extension of the closure period. To date, none have been raised.

Seastead Project participants have been active in the Council process and have provided updates on the ongoing activities being conducted. If an extension of the closure is approved, the Council will continue to monitor and evaluate project operations over the second 18 month period of operation.

### **3.0 Proposed Action and Rationale**

#### **3.1 Preferred Alternative/Sea Scallop Experimental Area**

For the purposes of conducting controlled research in sea scallop culture and enhancement, a nine (9) square mile site approximately twelve (12) miles southwest of Martha's Vineyard was established. A description of the experimental area and the associated activities are presented below. All of these activities and parameters would remain intact during the 18-month extension of the closure period which is being proposed for this project .

#### **3.2 Description of Area and Project Buoyage**

The experimental area is square, three miles on each side, and is located approximately twelve (12) statutory miles southwest of Martha's Vineyard. The northwest corner of the site is at 41°11.8' N, 70°50' W; the northern boundary runs east to 41°11.8' N, 70°46' W; the eastern boundary runs south to 41°08.8' N, 70°46' W; the southern boundary runs west to 41°10' N, 70°40' W; the western boundary then runs north to 41°08.8' N, 70°50' W, the starting point. The approximate location is indicated on in Figure 1.

An enlarged picture of the site is presented in Figure 2, along with the specified buoyage. Each corner of the site is marked by a picket buoy which is lighted and painted yellow to meet Coast Guard requirements.

Factors that were weighed in the site selection analysis that ultimately led to the proposed experimental area included:

- 1) proximity to hatchery and laboratory facilities;
- 2) ability to monitor and maintain experimental control of the site;
- 3) proximity to shore-side services for participating vessels;
- 4) representative of exposed ocean conditions and commercial bottom;
- 5) availability of NMFS fish landing data;
- 6) locally based fishermen's identification of areas of low mobile gear activity;
- 7) surface traffic;
- 8) water temperature; and
- 9) natural sets of *Placopecten magellanicus* in non-commercial quantities.

Most of the experimental site is being used for bottom seeding and scallop grow-out. The grow-out area is arranged in eight lanes which run east/west and are 2.5 miles long by 0.25 miles wide. The lanes are marked by inflatable buoys at each corner and on each edge of their mid-length. The northern portion of the experimental area has been set aside for experiments on other methods of scallop culture and grow-out. Two specific methods are being conducted in cooperation with other scallop researchers. The first method is aimed at determining the growth rates of sea scallops suspended off-bottom. Large grow-out units, patterned after traditional lantern nets, are being utilized. The severe ocean environment at the site requires measures that will ensure the survival of the suspended grow-out system and minimize the effects of wave motions on the culture process.

The second method of culture being evaluated during the experiment involves small bottom cages that are similar to lobster traps in shape and method of handling. Figure 3 illustrates one of the three-layer grow-out cages. Each is buoyed individually with a pot marker. Most of these cages are located in the vicinity of the suspended array, however some are located throughout the experimental area. This aspect of the experiment is designed to gather data on a technology that could be adapted to the gear handling capabilities of the region's small lobster or day boat fleet.

### **3.3 Activity Restrictions in Project Area**

Amendment 5 established restrictions on the types of activities that can be allowed within the project boundaries. They were determined not interfere with the conduct of the research or the results of the experiment would be allowed.

#### **• Allowed Activities:**

- 1) sea scallop culture, growth, research, and monitoring activities as described in this section by project participants;
- 2) scallop seeding, sampling, and harvesting by project participants; and
- 3) vessel transit.

#### **• Controlled Activities:**

- 1) lobster trapping;
- 2) pot fishing;
- 3) pole fishing and jigging and
- 4) longlining.

#### **• Prohibited Activities:**

- 1) otter trawling, mid-water trawling and other related mobile gear fishing;
- 2) shellfish dredging;
- 3) gillnetting;
- 4) anchoring, except in emergencies; and discharging not in accordance with MARPOL regulations.

It should be noted that about 25 fishermen applied for and received an Allowable Gear Permit (AGP) issued by the NMFS Regional Administrator (RA) in accordance with the Amendment 5 regulations. Allowable Gears are those listed above under Controlled Activities. The permits enabled the RA to inform vessel operators of the location of the research equipment and avoid potential conflicts between those fisheries and project activities. The permit was also issued to enable the RA to notify anyone fishing in the area under an AGP to remove their gear periodically or to set their gear a certain minimum distance from research project activities. To date, the project participants have not made this request, nor have observed any fishing activities impeded project operations.

### 3.4 Notification of Controlled Activities

The notification procedures would remain unchanged from the regulations which implemented Amendment 5 to the Scallop FMP. Lobster pot fishing, fishing with handgear and longlining is allowed within the boundaries of the project area to minimize potential economic impacts on those fisheries.

### 3.5 Vessel Participation

The following vessels participated in the research conducted at the experimental site and are authorized as specified above:

<u>Vessel Name</u>	<u>LOA</u>	<u>Activity</u>
F/V Westport	98 ft	Gear installation, scallop handling, monitoring, and harvesting
F/V Concordia	116 ft	Gear installation, scallop handling, monitoring, and harvesting
4-6 Scallop Vessels		Scallop seeding and harvesting
2-3 Lobster Boats		Scallop cage handling and harvesting
2 Research Vessels		Monitoring and sampling

### 3.6 Days-at-Sea Accounting Plan

The above vessels hold general category scallop permits and participate in the days-at-sea program established by Amendment #4 to the Sea Scallop FMP. They are currently limited to 142 days of sea scalloping. In order to allow participation in this research project without adversely impacting their ability participate fully in the regular sea scallop fishery, procedures were established in the Amendment 5 final rule which is appended to this document.

### 3.7 Collection of Scallops

Juvenile and small sea scallops introduced into the experimental site were obtained from the bycatch associated with normal commercial harvesting by the participating vessels listed above. Regulation New Bedford-style scallop dredges have been used for this purpose. However, because of the difficulty in locating seed scallops in sufficient quantity, project participants also applied for and received permits to conduct experimental fisheries for this purpose.

### 3.8 At-Sea Transfer of Scallops

The F/V Westport, the F/V Concordia, and the research vessels are the only participating vessels that will engage in setting up, loading, monitoring, sampling, and harvesting sea scallops in the



suspended array. To facilitate this process, transfer of small scallops from other participating scallop vessels to these vessels may occur within the experimental site. In addition, transfer of small scallops from the participating scallop vessels to the participating lobster boats also may occur for the purpose of loading the small bottom cages.

### **3.9 Transportation of Scallops**

Transportation of undersized scallops from the fishing grounds to the experimental site has occurred aboard the harvesting vessel. Storage systems that allow for water circulation and oxygenation have been used to maximize the survivability of the scallops during transit.

### **3.10 Experimental Area Monitoring and Sampling**

The seeded lanes at the project site are monitored for growth rate, general health and mortality. Specimens from the bottom sites are taken periodically by divers. These specimens are transported in circulating tanks to the Laboratory for Marine Animal Health (LMAH) in Woods Hole, Massachusetts. At the LMAH, scallops collected from each treatment group are necropsied and evaluated histopathologically. Additionally, moribund scallops from each treatment group are examined for disease.

Additional samples have been taken for biochemical analysis of the adductor muscle in order to determine how the culture environment may affect the scallop meat. This work is being done by the Department of Aquaculture and Fisheries at the Woods Hole Oceanographic Institution. The samples are analyzed for total lipids, protein, glycogen and ash content. Scallop samples are analyzed for biochemical composition at time zero (before deployment onto bottom lanes) and quarterly during the first year of the grow-out process. Fifteen scallops are selected for analysis from each location at various time intervals.

Bottom conditions under and surrounding the suspended arrays are monitored for any changes caused by project activities. In addition to water column sampling, sediment samples are tested quarterly for organic matter content. Underwater video recordings will be made of specific survey sites over the course of the project.

## **4.0 Alternatives to the Proposed Action**

### **4.1 No Action Alternative**

The No Action Alternative allows the area closure established at the Seastead site to expire in August, 1998. Without an extension of the closure, the existing plan does not regulate activities within the specified area. Certain fishing activities could significantly impair the experiment and potentially result in damage to expensive gear.

### **4.2 Three-Year Extension Alternative**

The proponents requested that the Council extend the Seastead Site closure for 3 years beyond the initial 18-month period implemented in Amendment 5 to the Sea Scallop Plan. Given that the amendment did not include a discussion of an extension of the closure area beyond 18 months, the Council was reluctant approve the action for such a lengthy period. In keeping with the provision of the Scallop Plan that allows all existing plan measures to be approved under the framework adjustment process, however, the Council agreed that a second 18 month period was not an unreasonable period of time to allow for the continued collection of valuable information. This position was further supported after Council staff queried the users groups (lobstermen from Martha's Vineyard and the New Bedford and several groundfish otter trawl vessels) who

had traditionally fished in the area and were potentially affected by the closure. Fishermen commented that the closure had few, if any negative impacts on their operations.

## **5.0 Environmental Assessment**

### **5.1 Purpose and Need for Proposed Action**

See Section 2.0 of this document.

### **5.2 Description of the Proposed and Alternative Actions**

See Section 4.0 of this document.

### **5.3 Description of the Physical Environment**

The sea scallop experimental site has water depths ranging from 14 to 19 fathoms. The site is relatively exposed to ocean waves and swell from all directions except due north. Tidal currents in the area are not expected to exceed one knot. Ocean bottom temperatures at the site have been sampled 14 times since 1981 by NMFS survey cruises and fall within the range of 1.9 (January 1982) to 18.4 (September 1991) degrees Celsius. The substrate is mostly sand bottom with cobbles and boulders present. The western portion of the site may have considerably more rocks present than the southeastern corner.

### **5.4 Description of the Biological Environment**

Eight NMFS survey tows (3 trawl, 3 clam and 2 scallop) indicate the biological environment is typical of sand and rock substrate. Invertebrate species include sea scallops (*Placopecten magellanicus*), clams (*Arctica islandica*, *Spisula solidima*, *Ensis directus*, *Venus borealis*), snails (*Lunatia heros*), sea stars (*Asterias* sp.), crabs (*Cancer borealis*, *Pagurus* Sp.) and lobster (*Homarus americanus*).

Commercial catch data, obtained by NMFS port agent interviews, indicates the presence of the following bottom dwelling finfish species: monkfish (*Lophius americanus*), cod (*Gadus morhua*), winter flounder (*Pseudopleuronectes americanus*), summer flounder (*Paralichthys dentatus*), yellowtail flounder (*Limanda ferruginea*), sand-dab (*Scophthalmus aquosus*), red hake (*Urophycis chuss*), silver hake (*Merluccius bilinearis*), sea raven (*Hemitripterus americanus*), scup (*Stenotomus chrysops*), black sea bass (*Centropristis striata*), dogfish (*Squalus acanthias*), and skates (*Raja* sp.). Pelagic species present include bluefish (*Pomatomus saltatrix*), butterfish (*Peprilus triacanthus*), shad (*Alosa sapidissima*), and squid (*Loligo pealei*).

A number of species of endangered and threatened marine mammals under the jurisdiction of the National Marine Fisheries Service may be present at the project site during certain times of the year. These include the northern right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), fin whale (*Balaenoptera physalus*), leatherback sea turtle (*Dermochelys coriacea*), green sea turtle (*Chelonia mydas*), loggerhead sea turtle (*Caretta caretta*), and Kemp's ridley sea turtle (*Lepidochelys kempii*). In addition, the harbor porpoise (*Phocoena phocoena*) is proposed for listing as threatened and may also be present at the project site. All of these species may transit the area at certain times during the year on their migrations to or from more northerly feeding and nursery areas. Based on survey data (CeTAP, 1982), however, this area is not known to be a concentration area for any whale or turtle species. NMFS comments to the Army Corps of Engineers on this project are appended.

## **5.5 Description of the Human Environment**

Fishermen using this area are primarily from ports in southeastern Massachusetts and Rhode Island. Scallopers from as far south as Virginia and gillnetters from New Hampshire have been known to fish in the general area. The site is primarily fished by lobstermen from Martha's Vineyard. Small draggers from New Bedford fish for winter flounder during the fall/early winter on the southern edge of the site. A seasonal hook fishery for cod has been conducted in the past in this area by vessels from Cape Cod and the Islands. There have been gear conflicts in this area primarily between Martha's Vineyard lobstermen and large offshore scallopers.

For a thorough description of the human environment associated with groundfish fishing activities that may have occurred in the proposed experimental site, see Amendment 5 and Amendment 7 to the Northeast Multispecies FMP - section E.6.4 in both documents. For an equivalent description of the human environment associated with scalloping activities that may have occurred in the proposed experimental site, see Amendment 4 - section 7.G of the Atlantic Sea Scallop FMP.

## **5.6 Biological Impacts of the Proposed Action**

Because of the lack of additional data available on a scale finer than ten minute squares, impacts of the existing project, including an extension of the closure period, are expected to remain unchanged from the information below which was also included in Amendment 5 to the Sea Scallop FMP.

### **5.6.1 Impacts on Sea Scallops**

From the available data we conclude that the proposed project at this site will have no negative impacts on the sea scallop fishery. NMFS survey and port interview data indicates that small amounts of scallops have been present at the enhancement site. As reported, between 1983 and 1993 six pounds of scallop meats were landed from the ten minute square in which the site is located, in 1983. Information collected during interviews with fishermen show that the two ten minute squares just south of the site have accounted for scallop catches of 46,647 and 18,825 pounds of meats during the same time period. Annual landings of interviewed trips from these two neighboring squares has fluctuated from zero to 12,059 pounds of meats.

Sea scallops will be harvested from off-site locations and released within the project area, either directly onto the bottom or into cages/nets. These scallops will range in size from 35-65 mm, a size range normally discarded in the fishery. We do not expect the mortality in these scallops to be any higher than if they remained at their original location of capture where they would be exposed to intense harvesting pressure. The potential for disease or pathogen transfer is non-existent as the scallops will be from the same stock native to the area. In addition, the scallops will be routinely monitored and samples taken for testing to determine causes of mortality and general condition.

Stocking density could pose a problem but this is considered unlikely since scallops will be broadcast into water depths of approximately 100 feet and should disperse naturally as they settle to the bottom. Also, scallops are fairly motile and should spread out as necessary. If stocking density did become a problem, it would be identified during periodic dive or video monitoring.

### **5.6.2 Impacts on Groundfish**

The proposed action will have no negative impacts on groundfish stocks. The site will be closed

to towed fishing gear and thus may have positive biological benefits. The effects of this project to the benthic environment should be minimal. Any disturbance to the benthos should be significantly less than if the site were open to towed gear.

### **5.6.3 Impacts on Lobsters**

The proposed action will have no negative impacts on lobsters. The site will be closed to towed fishing gear, except for some limited experimental tows, and thus should provide a refuge for lobsters for the duration of the experimental closure. The effects of lobster predation on small scallops is unclear but should be determined during the experimental period.

### **5.6.4 Impacts on Endangered and Threatened Species**

The proposed site is not known for concentrations of marine mammals or turtles. Whales migrating through the area may be adults with calves heading for the protection and seasonally abundant food resources of Cape Cod Bay. Protecting females with calves during their vulnerable springtime breeding period is particularly important in furthering the recovery of several populations of endangered whales. Juvenile and sub-adult loggerhead, green, and Kemp's Ridley turtles prefer warmer water and are most likely to be in the area from mid-summer through fall.

Whales and turtles are known to become entangled in lobster pot lines, seines and fish weirs. Right whales are particularly vulnerable to entanglement in lines because of their propensity for surface feeding. Leatherback sea turtles are also commonly caught in lobster trap lines because they lack sufficient maneuverability to free themselves.

The threat of entanglement in the buoyed lines used to delineate each lane as well as the lines supporting the suspended cage array is the foremost concern for all species involved. The concentration of scallops within the lanes may attract loggerhead turtles which are known to feed on mollusks and crustaceans. Green, Kemp's Ridley, and leatherback sea turtles are less likely to be attracted to the site since their primary food sources are sea grass and algae, crabs and jellyfish, respectively. The grow-out lanes and the suspended cage array system should pose little risk to the endangered species mentioned above as long as the number of lines to the surface does not exceed what has been proposed.

The off-bottom grow-out array is a substantial arrangement of floating and suspended gear, however, the taut mooring system planned and the weight of the grow-out modules will place all lines in the system under tension. Unlike slack lines which can become entangled on flukes and flippers, this array presents significantly less risk.

The proposed action is not likely to adversely affect endangered species under the jurisdiction of the NMFS because: 1) the site is not a known concentration area for the species of concern, and 2) the expected impact from the structures associated with the grow-out lanes and the cage array should be minimal in a pilot project of this size and duration. This conclusion is supported by the NMFS comments to the Army Corps of Engineers concerning the Seastead Site Project, dated October 26, 1994 and included in the Appendices.

### **5.7 Economic Impacts of the Proposed Action**

Framework 10 to the Scallop FMP would continue the existing closure of the Seastead Site to certain types of fishing gear under the Atlantic Sea Scallop FMP. Because of the small size of the closure area and the relatively unchanged circumstances of the fisheries operating in the vicinity, no new data is available with which to revise the economic analyses previously included in

Amendment 5 to the Sea Scallop FMP. The designation currently allows lobster pot fisheries as well as recreational and commercial hook-and-line fisheries to continue operations within the site boundaries and within prescribed distances from both the grow-out array and bottom cages. Towed mobile gear, gillnetting, and any scallop harvesting by non-participating vessels or researchers are prohibited for the duration of the experiment.

The closure and a proposed 18-month extension, appear have a negligible impact on overall landings. The proposed nine square-mile site constitutes 0.012 percent of the approximately 72,000 square miles of potential commercial fishing area in the Northeast. The amount of fish landed commercially from the site is small compared to total commercial landings in the region. As detailed in other sections, the site is reported to have produced an average of one hundredth of a percent of the cod and three hundredths of a percent of the winter flounder caught between 1985 and 1991.

The low level of fishing activity within the experimental area was one of several selection criteria used by the project team. Analyses were performed on the basis of existing NMFS data and in cooperation with area fishermen. To date, this constitutes the project participants best efforts to minimize the impact of the proposed restrictions.

**Benefits** - The project does not provide a blanket exclusion for activities that might be incompatible with the requirements of the experiment. Instead, the project identifies specific activities that are compatible with project operations, allowing for a maximum level of commercial and recreational fishing activity while insuring consistency with the goals and objectives of the experiment. The closure, with some exceptions, strikes a workable balance between the requirements of the experiment and the desire to maintain the maximum permissible fishing effort in the designated area.

Because of the non-proprietary nature of the experiment and its results, the data generated and conclusions drawn from attainment of the project's objectives have the potential to deliver valuable short and long-term returns to fishermen from the region. These returns range from advances in applied technologies and biology to increased economic opportunities for both the small and offshore fleets.

**Costs** - The conditions necessary to ensure the integrity of the project and confidence in its conclusions are not incompatible with all present users. The ability to specify activities that would compromise the project's scientific integrity minimizes the costs to present users while at the same time allowing research to proceed. Some current uses of the site by mobile gear operators, gillnet fishermen and scallopers will be affected during the eighteen-month period of the experiment or a proposed extension of that period. Estimates of impacts are difficult to project given the large size of the statistical blocks utilized by the National Marine Fisheries Service to calculate landings. Based on discussions with area fishermen, these activities are believed to consist of some scalloping activity on the western side of the experimental area and some groundfish dragging and gillnet activity on the eastern side of the experimental area. In economic terms, estimates in lost revenue due to the loss of groundfish catch from the nine square-mile site is approximately \$6,000 based on 1985 to 1991 NMFS landing statistics for cod and winter flounder. This figure is offset by the benefits accrued by participating vessels that will be compensated for their participation in the program through the harvesting and sale of scallops in their respective grow-out lanes at the conclusion of the experiment. Groundfish will remain vulnerable to towed gear if they leave the experimental site, although hook fishing at the site will

continue to yield groundfish revenues. It is important to note that to date, little or no fishing activity has been observed within the designated site.

### 5.7.1 Economic Impacts of Other Alternatives

#### No Action Alternative

**Benefits** – If the closure expires all managed and unmanaged fisheries would continue operations in the experimental area subject only to current reporting requirements, days-at-sea allowances, gear restrictions or other regulatory requirements. Economic benefits derived from fishing at the proposed site would continue. These benefits are modest as shown in Table 1 which presents estimated annual landings from the experimental area as a percentage of overall landings. In this analysis we have assumed the catch from the 9 square-mile experimental area is 9% of the yield from the 100 square mile reporting area that encompasses the experimental site.

year	10 minute block		3 minute block		N.E. total catch		Percent	
	cod (lbs)	winter flounder (lbs)	cod (lbs)	winter flounder (lbs)	cod (1000 lbs)	winter flounder (1000 lbs)	cod	winter flounder
1985	18,181	36,733	1636.3	3306.0	30,203	7,937	0.005	0.042
1986	11,416	11,712	1027.4	1054.1	26,676	3,527	0.004	0.030
1987	35,410	35,898	3186.9	3230.8	22,266	6,834	0.014	0.047
1988	34,362	21,429	3092.6	1928.6	24,251	5,071	0.013	0.038
1989	20,643	4,126	1857.9	371.3	32,187	4,630	0.006	0.008
1990	56,263	5,584	5063.7	502.6	41,226	3,307	0.012	0.015
1991	60,207	6,641	5418.6	597.7	44,753	2,425	0.012	0.025
<b>Avg.</b>	<b>33,783</b>	<b>17,446</b>	<b>3,040</b>	<b>1,570</b>	<b>31,652</b>	<b>4,819</b>	<b>0.009</b>	<b>0.029</b>

Table 1. Cod and winter flounder caught in the experimental area as a percentage of overall catch in the Northeast

Mobile and fixed gear users would have continued opportunities to harvest inside and transit the proposed experimental area. There would be no new benefits to fishermen associated with the No Action Alternative since the Sea Scallop Enhancement Project would not be conducted in the absence of restrictions to protect the scientific integrity of the project. There would be some savings of enforcement and administrative costs under this alternative.

**Costs** - The proponents are not aware of any methodology or procedure that would allow research and experimentation with commercial-scale sea scallop aquaculture and enhancement without restraining open-access conditions. In order to conduct experiments which could lead to an expanded sea scallop resource base in the region, it is necessary that the proponents have the ability to observe, monitor and record fundamental ecological processes, mortalities, dispersions and growth with as few external variables as possible. The Sea Scallop FMP currently allows activities in the experimental area that would be inconsistent with the purposes of the project.

In order for the Sea Scallop Enhancement Project to occur at any site that might be identified, certain minimum conditions must exist. Foremost among these conditions is protection of the site's suspended grow-out array, the grow-out lanes, spat collectors and bottom cages from interference. Growth trials and monitoring of scallop culture and change would be virtually impossible under the No Action Alternative. One of the critical hypotheses to be tested is that

growth rates will increase when the seeded scallops are free from the effects of repeated dredging. Specifically, the No Action Alternative would prevent accurate and reliable data collection to test the carrying capacity of the grow-out lanes as well as sediment sampling, measuring scallop mobility, identifying predators, and maintenance of the apparatus. The presence of unrelated mobile gear and gillnets within the area would compromise nearly all aspects of the experiment.

Due to the fact that bottom cages for sea scallop grow-out, spat collectors, and the suspended mid-column sea scallop grow-out array cannot accommodate fishing with towed gear or gillnetting, there is a need to minimize the number of potentially detrimental interactions at the site. The high probability of negative interactions would argue against the No Action Alternative.

The No Action Alternative would result in losses to the research team and to the individual vessel operators who choose to explore the opportunities associated with sea scallop enhancement and aquaculture as supplements to their existing wild harvests.

No Action over the long term would discourage or delay the development of both the scientific and engineering aspects of sea scallop husbandry and enhancement. Based on the economic benefits enjoyed by other nations that have adopted scallop culture and enhancement techniques, the potential benefits to the Northeast could be in the hundreds of millions of dollars in landed sea scallops within a decade.

### **Three-Year Extension Alternative**

Because of the relatively negligible impacts of the original 18 month alternative due to the low level of fishing activity at the site, impacts projected of a closure over a three-year period are expected to very similar to that described in section 5.7.

#### **5.7.2 Economic Impacts on Scallopers**

No significant impacts are expected to affect the commercial scallop fleet landings due to the 18-month closure of this site or an 18-month extension of the closure to commercially towed gear. As stated earlier, insignificant amounts of scallops are currently harvested from the experimental area.

The scallops to be collected from commercial grounds for seeding would very small and likely uneconomical to shuck. As such, they represent no short-term loss to the scallop fleet. Increases in size and value of the seeded scallops will represent increased revenues to the scallopers who originally caught them and placed them in their designated lane.

Long-term gains, based on project results, are incalculable at this time but may be substantial. Each 1/4 mile by 2-1/2 mile lane has 22.5 million square feet. Even a modest stocking density of one scallop every 10 square feet would allow the placement 2.25 million seed scallops per lane. In Japan, a seeding density of two scallops per square foot is not uncommon. If moderate increases in growth rates of the seeded scallops can be coupled with substantial reductions in dredge-related mortalities, significant economic benefits may be realized.

#### **5.7.3 Economic Impacts on Other Fisheries**

The proposed action should have few negative economic impact on most fixed gear fisheries since these activities would continue to be allowed in the experimental area. There is some concern on the part of lobstermen fishing near the area that the site may attract large scallop vessels and result in increased gear conflicts. The proponents plan to use peer pressure and public awareness

of the project's purpose to minimize, address and possibly even reduce this type of occurrence.

The most significant economic impact may be to trawl vessels fishing for winter flounder or cod. Information gathered through interviews with fishermen (Table 2) confirm at least a moderate catch of these species from the ten-minute square which encompasses the proposed site. Landings are significantly lower at the project site than those attributed to the ten-minute squares directly south of the project.

year	41-15'N x 70-35'W		41-05'N x 70-35'W		41-05'N x 70-45'W	
	cod (lbs)	wf (lbs)	cod (lbs)	wf (lbs)	cod (lbs)	wf (lbs)
1985	18,181	36,733	7,344	51,968	25,824	128,137
1986	11,416	11,712	14,228	26,937	9,904	56,264
1987	35,410	35,898	21,065	13,219	54,665	62,236
1988	34,362	21,429	80,775	44,637	56,705	39,759
1989	20,643	4,126	114,619	28,164	115,337	22,148
1990	56,263	5,584	34,063	15,003	56,850	22,155
1991	60,207	6,641	21,676	27,212	34,183	47,103
1992	28,672	9,251	47,535	55,979	68,875	61,697
1993	5,241	13,226	1,160	13,493	5,857	16,080
Avg.	30,044	16,067	38,052	30,735	47,578	50,620

Table 2. Cod and winter flounder caught in the ten-minute square containing the experimental area and two squares to the south

Since the experimental area is only nine-percent of the ten-minute square reported above, the actual effect of the proposed closure would presumably be proportionally smaller.

**5.7.4 Distribution of Economic Impacts**

Lobstermen may benefit from an extension of the closure period. Lobsters normally taken by mobile gear at the site would only be available to trap fishermen during the term of the experiment. Small vessels using hooks for cod may also benefit because of their access to the project area.

The enhanced growth and reduced mortality of the scallops placed at the site may increase the revenues of the participating vessels when seeded scallops are harvested at the end of the project. Revenues for these boats may be higher than for non-participating vessels that would have had the opportunity to recapture those animals. This effect is difficult to quantify because of questions about dredge-induced mortality on commercial scallop grounds. Alternatively, revenues to the participants may not adequately compensate them for their time, fuel and other expenses associated with their involvement in the project. More likely, the action will have a short-term negative economic impact because they are not engaged in commercial fishing while participating in the experiment. In the long-term, all benefits should be equally available to all fishermen due to the non-proprietary nature of the proposed action.

**5.7.5 Cost/Benefit Conclusion**

In the aftermath of recent reductions in effort in New England's wild fisheries, there is an increasing need to advance understanding and collect data on the viability of commercial-scale sea scallop culture techniques. The ability to conduct sea trials in a relatively low-use area away from



the crowded, and possibly-polluted coastal zone will advance our knowledge of the possibilities that exist in an exposed marine environment.

The project is non-proprietary and cooperative in nature and is 18 months in duration. It will have a negligible impact on the site and will advance our understanding of culturing systems and scallop morphology. The benefits of conducting trials under the Sea Scallop Experimental Area Alternative may produce results that could potentially increase sea scallop production and revenues for regional coastal communities.

Other potential long-term benefits from the experiment include increasing the ability to sustain commercial yields during negative fluctuations in wild stocks. The experiment also will test the potential and cost effectiveness of "re-seeding" depleted areas such as George's Bank through seed transfer. Potential long-term benefits would appear to far outweigh any short-term economic impacts resulting from the area closure. There are no anticipated long-term economic costs associated with this alternative.

Under an 18-month extension of project, existing data reporting requirements would remain in place. The adoption of this alternative would not impose any additional reporting requirements on fishermen at the proposed site. Under this alternative, the project team will work cooperatively with fishermen allowed in the area to develop data important to the understanding of potential interspecies interactions and effects.

It should be noted that the project is not a private venture which seeks long-term exclusive use of the site or the introduction of non-native scallop species that may require additional feed or antibiotics. To the contrary, this public domain research project is directed exclusively at the enhancement of a native, planktonic-feeding species. There would be no significant impact on the proposed site after the experiment is terminated.

#### **5.8 Social Impacts of the Proposed Action**

Because of the lack of new information concerning this project, social impacts remain the same as those analyzed in Amendment 5 to the Sea Scallop FMP. In that document, the Council did not anticipate any significant negative social impacts in the short-term as a result of the experiment. Although the preferred alternative imposed additional restrictions on some gear types for an eighteen-month and possibly a 30-month period, fishing history at the experimental site indicates limited use. The long-term positive social impacts of the project, on the other hand, could be significant. The Sea Scallop Enhancement Project could break new ground in the understanding of sea scallop culture on a commercial scale and on the ability to re-seed depleted areas with transferred stock. The project has the potential for stabilizing and expanding commercial production, increasing jobs, strengthening the economic base of those communities that depend on the sea scallop and other regional fisheries. This could improve the long-term social welfare of all components of the industry connected to sea scallop production.

The project also provides some social benefits by developing a relationship between the harvesting sector and the scientific community for their mutual benefit. A successful experience could help to promote similar positive working relationships within the fishing community.

#### **5.9 Finding of No Significant Impact (FONSI)**

NOAA Administrative Order 216-6 provides guidance for the determination of the significance of the impacts of fishery management plans and amendments. The five criteria to be considered

are as follows.

1. *Can the proposed action be reasonably expected to jeopardize the long-term productive capability of any stocks that may be affected by the action?*

The principal objective of this amendment is to enhance sea scallop stocks in both the short-term and in the long-term. The project seeks to do this by developing sustainable methods of sea scallop production and demonstrate those methods to current participants in the sea scallop fishery. The project will not introduce non-native species, supplemental feed, or medications. The site for the experiment has been selected specifically and the project has been designed to reduce the impacts on any currently important fisheries. The amendment will have a neutral to slightly beneficial impact in the short term and no impact in the long term on other stocks that might be affected by the temporary closure.

2. *Can the proposed activity be reasonably expected to allow substantial damage to the ocean and coastal environments?*

The sustainable techniques that will be developed during the project include reducing the practice of repeatedly harvesting sea scallops during their growth. This will reduce the potentially-damaging impact of scallop dredges on the site and the sea scallops and other biota that dwell there. In the long term, the goal of the project is to impart a conservation and sustainability ethic within the sea scallop industry resulting in a stewardship of the ocean resources.

The project will be deploying equipment and growout cages that, in the event of a failure or unanticipated conditions, might become lost. There is a chance that such gear losses could reach the beaches of Martha's Vineyard, southern Massachusetts or Rhode Island. Such an event would not cause long term impact or damage. The project team has the technical and monitoring capability to respond adequately to these contingencies.

3. *Can the proposed activity be reasonably expected to have an adverse impact on public health or safety?*

A goal of the project is the development of sustainable methods for the production of high-quality sea scallops. Features of this approach include the ability to plan harvests of monitored "crops" of sea scallops with more efficiency and less dependence on long trips. A higher-quality, safer product will result.

4. *Can the proposed action be reasonably expected to have an adverse impact on endangered or threatened species or a marine mammal population?*

The proponents of the project factored in the fact that endangered or threatened species and marine mammals are only seldom sighted in the proposed area, and then only transiting. The proposed area is not a known feeding, breeding, or calving area for these species. In addition, the gear that is proposed for the project is small and discrete, offering little chance for entanglements. These potential for interactions are not different in kind or degree from the existing situation. The National Marine Fisheries Service has reviewed the project and their conclusions are quoted in section 5.4.1.

5. *Can the proposed action be reasonably expected to result in the cumulative adverse effects*

*that could have a substantial effect on the target resource species or any related stocks that may be affected?*

The proposed action is intended to facilitate a project with the goal of increasing the biological productivity of sea scallops through the introduction and demonstration of sustainable practices. As explained in the background section, other countries have seen greatly increased stock strengths through the adoption of some of the practices that will be used in the experimental project. If the project is successful there will be a cumulative benefit to the target resource. Because of the short-term nature of the project, even if it fails it is not expected to have any permanent or cumulative adverse effects.

The guidelines on the determination of significance also identify two other factors to be considered: degree of controversy and socio-economic effects. The socio-economic impacts of the proposed action are discussed above and are not considered significant in the short-term. Over the long-term, the project is expected to have a positive contribution on the economic and social situation in the region's fisheries.

The location of the proposed special management area has been debated during the presentations to the various Council species committees, to the Council itself, and during public hearing. Some of the specific comments brought up during these debates have resulted in modifications to the project plans to both accommodate other user groups and add to the overall value of the project. On balance, the degree of controversy has been minimal considering the unprecedented nature of the plan. Most fishermen agree that the potential information to be gained from the planned research outweighs any anticipated temporary hardships.

The issue of privatizing the bottom through long-term commercial leasing is controversial and deserving of full Council debate. However, this project is not such an initiative. The public nature of the planned research, the broad and open level of industry participation, and the short-term nature of this action separates it from the larger issue of privatization.

According to NAO 216-6, no action should be deemed significant solely on the basis of its controversial nature, but the degree of controversy should be considered if determining the level of analysis needed to comply with NEPA regulations. Based on this guidance and the evaluation of the preceding criteria, the Council proposes a finding of no significant impact.

#### **FONSI Statement**

In view of the analysis presented in this document, it is hereby determined that the proposed action would not significantly affect the quality of the human environment with specific reference to the criteria contained in NDM 02-10 implementing the National Environmental Policy Act. Accordingly, the preparation of a Supplemental Environmental Impact Statement for this proposed action is not necessary.

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Assistant Administrator for Fisheries

---

Date

## 6.0 Applicable Law

### 6.1 Magnuson Fishery Conservation and Management Act

#### Consistency with National Standards –

*Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.*

This amendment seeks to implement an experimental area for the purpose of developing sustainable sea scallop fishing methods. As explained in the background section, in Japan, the harvest of sea scallops has become stable from year to year, and is an order of magnitude larger than it was before sustainable practices and culturing techniques were introduced. Currently, the Atlantic sea scallop fishery is in a downward trend which the planned project hopes to reverse through conservation and husbandry.

*Conservation and management measures shall be based upon the best scientific information available.*

The proponents of the project have based their experimental plans and selected the enhancement area based on the best scientific information available. These include extensive investigations of the scientific literature on sea scallop enhancement and culturing techniques. It also is based on abundance surveys of the site and its neighboring area and on landing data supplied by commercial fishermen.

*To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.*

The experimental plans to be carried out during the project will determine the suitability of a variety of techniques that could be used to improve the sustainability of sea scalloping. These methods could have applicability throughout the range of Atlantic sea scallops. Some of the techniques have already been demonstrated as successful in the Canadian Maritimes on the same stock of sea scallops.

*Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.*

Results of the research will be applicable to all states where sea scallops are found. For the short-term, fishermen from Massachusetts who have traditionally had free access to the site will be affected. They will, however, be in the best position to benefit from the knowledge that is gained from the project. The project results will be disseminated widely and the participants in the project are providing substantial in-kind support to the project in order to be involved. The project is as broad-based as possible within the limits of the scientific requirements and is of relatively short duration.

*Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.*

The action is in support of a project aimed at promoting sustainability and efficiency in the sea scallop fishery. By identifying and demonstrating culturing and enhancement techniques, the productivity of the sea scallop industry will be improved along with its efficiency.

*Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.*

The proponents of the project have included a range of experimental measures to best identify productivity and sustainability increasing methods. Even if some of the planned approach fail to meet their goals, other aspects of the project will be unaffected. The project plan allows for responding to contingencies to maximize the overall benefit that can be expected from the project given its short-term duration.

The choice of the experimental area was based on scientific data revealing local variations in catch levels and presumably variations in local abundance of resources.

*Conservation and management measures shall where practicable, minimize costs and avoid unnecessary duplication.*

This proposed action is without precedent and does not duplicate any other regulations or plans. The proposed experimental area was developed and specified in order to maximize the value from the planned program of research. No other research of this nature has been proposed in this region or in the U.S.

*Conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Fishery Conservation and Management Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse impacts on such communities.*

The action would protect an experimental area and its associated activities for the purpose of collecting information that could potentially be used to enhance the sea scallop resource in the Northeast. Local fishing communities such as New Bedford have been and will continue to suffer severe economic consequences as a result of an overfished resource. If successful, projects such the Seastead Site also could also provide potentially indirect benefits to hard-hit communities in the form of alternative employment.

*Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.*

The activities conducted at the site are largely associated with the culture of native sea scallops. None should result in the bycatch of other species.

*Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.*

No safety issues beyond those normally associated with vessel activities should arise as a result of this project.

## **6.2 National Environmental Policy Act (NEPA)**

There are no economic and social impacts from this action beyond those identified and discussed in the Environment Assessment contained above. The FONSI recommended by this amendment satisfies the obligations set forth by NEPA.

## **6.3 National Aquaculture Policy, Planning, and Development Act (NAA)**

Establishment of a closure under this amendment will further the purposes of the National Aquaculture Act which specifically seeks to extend and encourage these types of activities.

## **6.4 Regulatory Impact Review**

This section provides the information necessary for the Secretary of Commerce to address the requirements of Executive Order 12866, the Regulatory Flexibility Act and the National Environmental Policy Act. The purpose and need for management (statement of the problem) is described earlier in this document. Alternative management measures to the proposed regulatory action are described on page x. The economic and social impact analysis begins on page x and is summarized below. The analysis of the economic and social impacts, however, is the same as submitted with Amendment 5 to the Sea Scallop FMP, which was implemented in 1997. This proposed action, would extend the provisions of Amendment 5 for an additional 18-month period. Other elements of the Regulatory Impact Review are included below.

For the purpose of the Regulatory Impact Review the proposed action is compared to the No Action Alternative. The goal of the Council is to allow this project to take place under conditions that would otherwise not exist without the proposed action. The long-term economic and social impacts of the proposed action are positive and the program has been designed and the site selected in a manner that minimizes the potential for short-term negative economic or social impacts.

## **6.5 Executive Order 12866**

The proposed action does not constitute a significant regulatory action under Executive Order 12866. (1) It will not have an annual effect on the economy of more than \$100 million. (2) Because of the limited scope of the action and the finite duration it will not adversely affect in a material way the economy, productivity, competition and jobs. (3) It will not affect competition, jobs, the environment, public health or safety, or state, local or tribal governments and communities. (4) The proposed action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will affect this fishery. (5) The proposed action will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of their recipients. (6) The proposed action does not raise novel legal or policy issues. Area closures have long been used to manage fisheries in the Northeast

## **6.6 Regulatory Flexibility Act**

The sea scallop fishery in the Northeast is composed of small business entities operating primarily out of southern New England ports. There were 255 scallop vessels were issued full-time permits in 1997. Additionally, 48 vessels were issued part-time permits and 34 were issued

permits in the "occasional" category. Approximately 8 vessels would participate in the project and the remainder would not be allowed to fish in the enhancement area during the duration of this proposed action. As discussed earlier, all other participants in the scallop fishery will have access to the results of the research.

The proposed action will not affect a significant number of small business entities since the proposed enhancement site is not a productive location for scalloping. It will not increase costs for small entities, compared to large entities because all scalloping operations are small entities. The proposed action therefore will not have a significant economic impact on a substantial number of small business entities and a Regulatory Flexibility Analysis is not required.

#### **6.7 Marine Mammal Protection Act and Endangered Species Acts**

The proposed site is not a known concentration area for marine mammals or turtles. Whales migrating through the area may be adults with calves heading for the protection and seasonally abundant food resources of Cape Cod Bay. Juvenile and sub-adult loggerhead, green, and Kemp's Ridley sea turtles prefer warmer water and are most likely to be in the area from mid-summer through fall.

The grow-out lanes and the suspended cage array system should pose little risk to the endangered species mentioned above as long as the number of lines to the surface does not exceed what has been proposed.

The proposed action is not likely to adversely affect endangered species under the jurisdiction of the NMFS because: 1) the site is not a known concentration area for the species of concern; and 2) the expected impact from the structures associated with the grow-out lanes and the cage array should be minimal in a pilot project of this size and duration.

#### **6.8 Coastal Zone Management Act (CZMA)**

See Volume I of Amendment #4 and Supplemental Environmental Impact Statement to the Sea Scallop FMP, dated July 1993, Section X, page 155 and its Appendix XI, for consistency statements regarding scallop regulations and coastal zone management plans. This amendment does not change the conclusions of that analysis.

#### **6.9 Paperwork Reduction Act (PRA)**

Copies of the PRA analysis for this amendment to the Sea Scallop FMP are available from the NMFS Regional Office, Gloucester, Massachusetts. This amendment does not contain a collection of information requirement for purposes of the PRA.

## **Appendices**



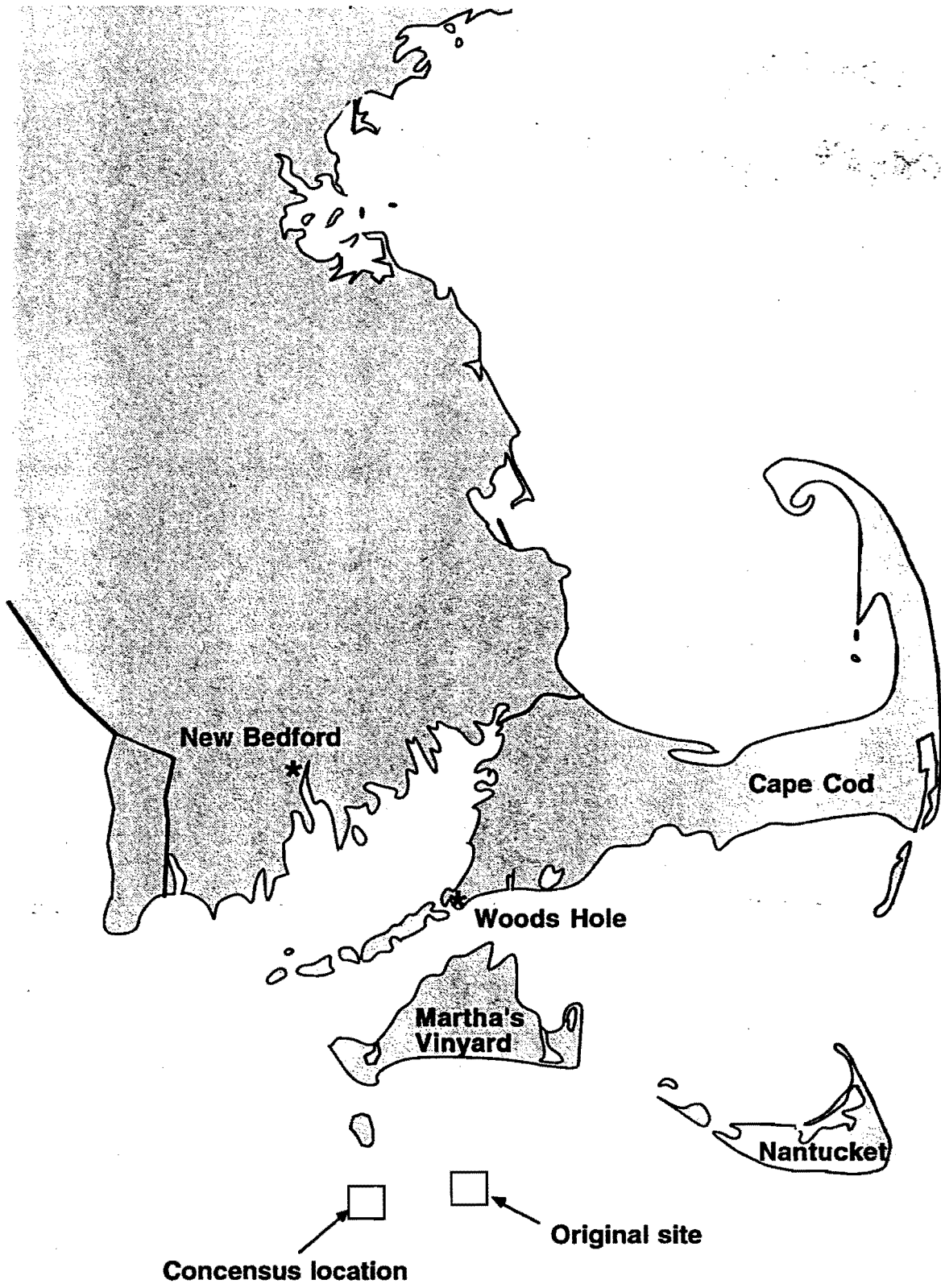
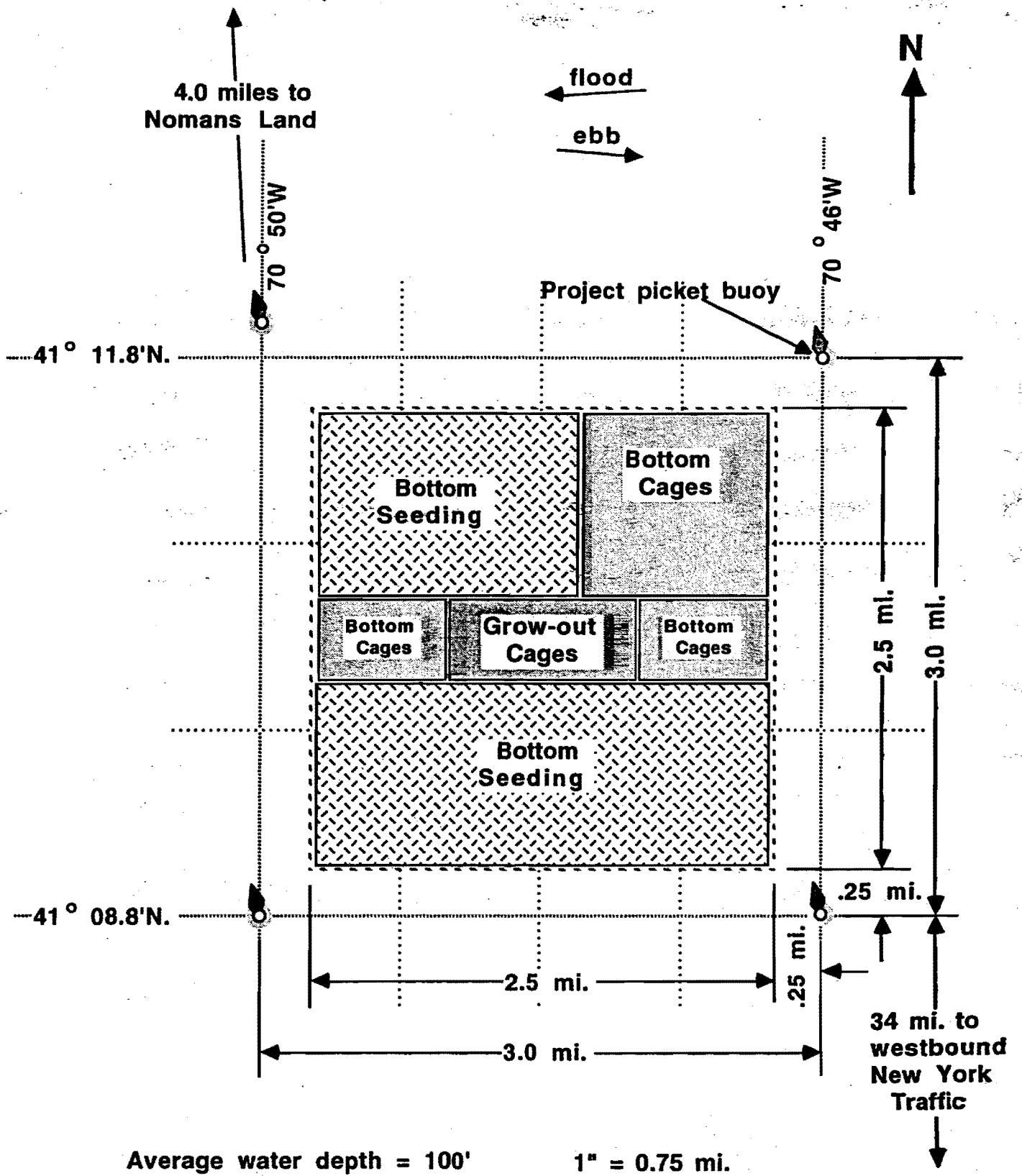
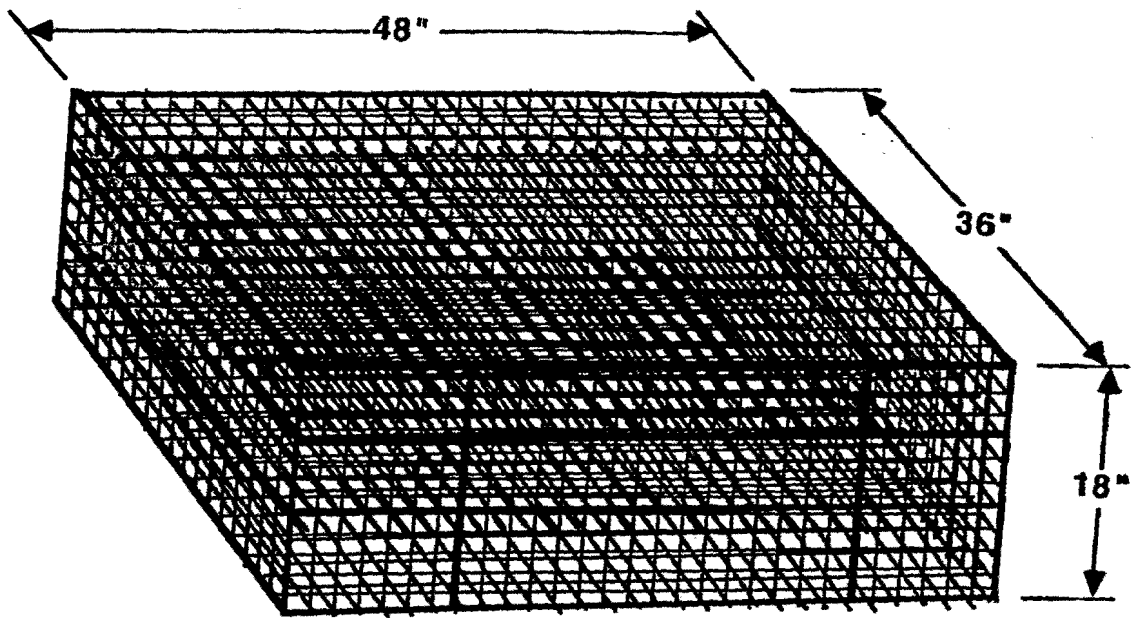


Figure 1. Original and consensus site locations.

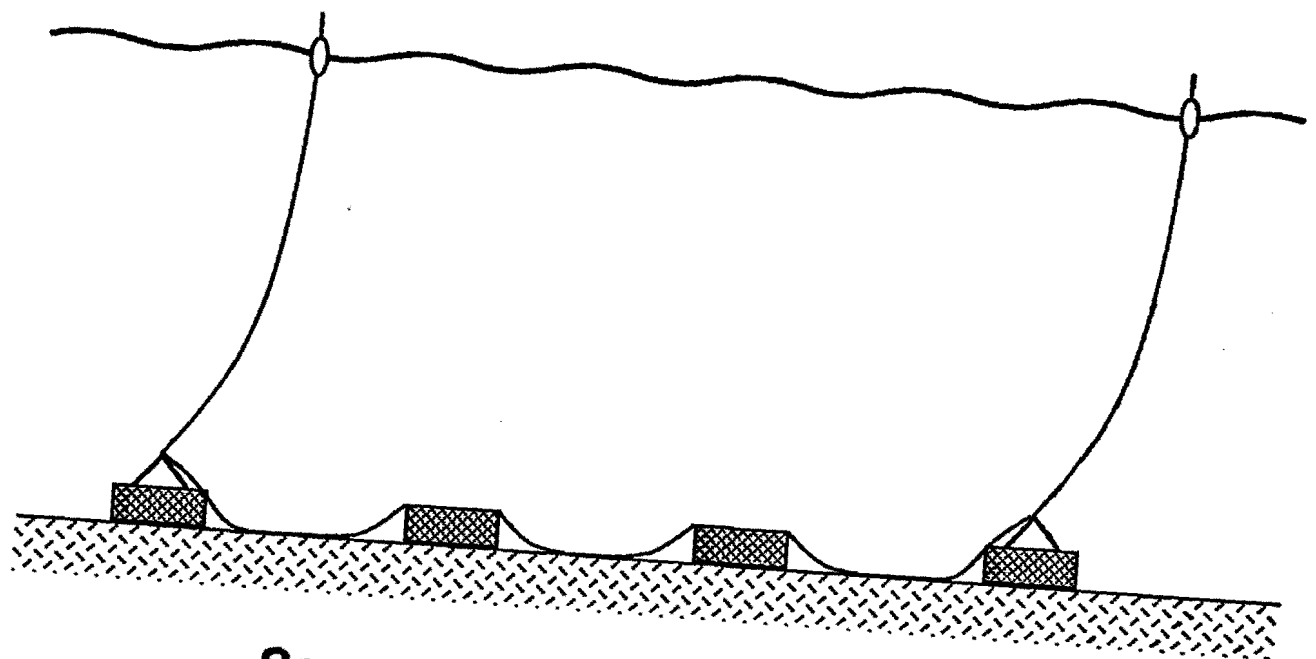
# Sea Scallop Experimental Area

Figure 2





**Sea scallop bottom grow-out cage.**



**Sea scallop grow-out cage trawl.**

**Figure 3**

# **Project Participants**

## **Industry participants:**

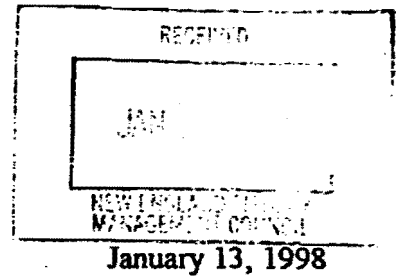
**Soren Henriksen, New Bedford**  
**Malvin Kvilhaug, New Bedford**  
**Roy Enoksen, New Bedford**  
**Hans Davidson, New Bedford**  
**George Bragdon, Dennisport**  
**Jim Spalt, Hyannis**  
**Dan Cohen, Hyannis**

## **Science, technical and legal support:**

**Cliff Goudey, MIT Center for Fisheries Engineering Research**  
**Ron Smolowitz, Coonamesset Farm**  
**Richard Karney, Martha's Vineyard Shellfish Group**  
**Dale Leavitt, Woods Hole Oceanographic Institution**  
**Gary Loverich, Ocean Spar Technologies, LLC**  
**Ken Riaf, attorney, Gloucester**  
**Peter Shelley, Conservation Law Foundation**  
**Roxanna Smolowitz, UPenn Lab. for Marine Animal Health**  
**Hauke Kite-Powell, Woods Hole Oceanographic Institution**

**COONAMESSETT FARM**

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Mr. Joseph Brancaleone, Chairman  
New England Fisheries Management Council  
5 Broadway Suntaug Office Park  
Saugus, MA 01906-1097

Re: Sea Scallop Experimental Area

Dear Joe,

We would like to formally request that the Council extend the closure time period of the Sea Scallop Experimental Area (Seastead Site) south of Marthas Vineyard for at least three more years. We have verbally requested, through Paul Howard, that time be made available at a full Council meeting to present the results of our efforts in the Seastead Site to date as a means of starting the discussion process. We would also propose that the Seastead Site use be extended to allow research into habitat impact of fishing and aquaculture in general.

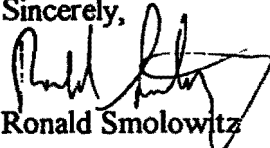
This request will hopefully serve to also kick-start the long-range planning process for sea scallop management, aquaculture, and essential fish habitat. Sea scallop harvesting is in our opinion one of these most important factors influencing New England fisheries. It impacts not only scallop production but the production and management of all species in these waters. The impacts are direct, through habitat alteration, and indirect, through redirection of scallop fishermen into alternative fisheries.

Attached are two letters that are germane to this discussion. The first is a letter that I sent Jim O'Malley regarding a sea scallop research program. Any program of this nature would benefit significantly from a dedicated long-term research area such as we are proposing for the Seastead Site. The second letter is from Westport Scalloping Corporation to NMFS requesting permission to harvest scallops for stocking the Seastead Site. It would be beneficial to monitor what happens to these scallops over the long-term, beyond the limited duration of our current NMFS-sponsored project. Such studies would include the ecological relationships between scallops, crabs, starfish, sand dollars, and other organisms.

The substrate and environmental parameters at this site are very typical of many areas on Georges and off southern New England. This is a good location for researchers to start understanding ecosystem relationships on a fine scale. We propose that the technical team currently supporting the Westport Project would act as a body to coordinate the extended use by the Project and cooperative use by other researchers.

If there is anything else we need to do to get this process moving please let me know.

Sincerely,

  
Ronald Smolowitz  
PI, Westport Project

cc: Scallop cis (1/22)  
JLB  
CBK, PMF, LJE



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*Bodega Bay Marine Station*

*University of California Davis*

Richard Delaney

*U Mass Boston*

Bill Delahunt

*United States Congressman*

James Ebert

*Marine Biological Laboratory*

Gary Glenn

*Mass. Foundation for*

*Excellence in Marine &*

*Polymer Science*

Klm Harrison

*N.E. Regional Aquaculture*

*Ctr. UMass Dartmouth*

J. Woodland Hastings

*Harvard University*

Rollin B. Johnson

*Harvard University*

Lee Kimball

*Washington, D.C.*

Slr Hans Kornberg

*Boston Univ*

Roy Martin

*Natl. Fisheries Inst.*

Bradie Metheny

*Washington Fax*

Henry S. Parker

*USDA / ARS*

Jack Pearce

*NE Fisheries Science Center,*

*NOAA*

Fernando Quezada

*Biotechnology Centers of*

*Excellence Corp.*

Larry Susskind

*Mass. Institute of Technology*

March 10, 1998

Mr. Joseph M. Brancalone  
New England Fishery Management Council  
5 Broadway  
Saugus, MA 01906-1036

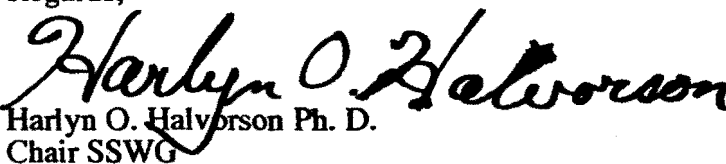
Dear Mr. Brancalone:

The Sea Scallop Working Group (SSWG) want to express their strong support for the request to extend the timing of the closure associated with the Westport Sea Scallop Project (now renamed the Seastead Site) and to allow expanded research on aquaculture and habitat impacts.

SSWG was formed in 1994 to bring together sea scallop farmers, professional scientists, government managers, regulators, lawyers, environmentalists, and economic development specialists - involving all relevant constituencies - to develop a clear process for the establishment of a productive aquaculture industry. From the beginning we recognized the critical importance of a demonstration project. For nearly four years, we have closely followed, commented upon, and supported the Westport Project. Our most recent review of this project was March 3rd of this year.

SSWG applauds the positive support of the initial amendment by NEFMC starting the project in Feb. 13, 1997. During the past year it has been demonstrated that none of the original concerns were valid. The extension of the lease for the site for 3 additional years would permit research on aquaculture and its impact to habitat. Further, approval of this request would open up a simplified permitting process for investigators to use the site. One advantage of Seastead is that for scientists to get research grants, they first need a permit. Creation of a Sea Scallop Aquaculture Industry in New England remains a timely and promising opportunity. This Westport project has brought us one step closer to achieving its goals. SSWG strongly support its approval and offers its assistance in advancing this project.

Regards,

  
Harlyn O. Halvorson Ph. D.  
Chair SSWG

**NEW ENGLAND FISHERY MANAGEMENT COUNCIL  
AQUACULTURE POLICY**

**WHEREAS**, aquaculture is encompassed within the Magnuson-Stevens Fishery Conservation and Management Act's broad definition of fishing which includes the catching or taking of fish, the harvesting of fish and any other activity or at-sea operations in support of such activity, and

**WHEREAS**, the NEFMC has an obligation under the Magnuson-Setevens Act to make comment concerning aquaculture projects which may affect fishery habitat; and

**WHEREAS**, many activities associated with EEZ-based aquaculture cannot be undertaken without modification to certain elements of existing FMP's under the NEFMC's jurisdiction; and

**WHEREAS**, several federal agencies are involved in reviewing and permitting EEZ-based aquaculture projects although no agency has been delegated lead responsibility for management, and

**WHEREAS**, the NEFMC has the necessary expertise, experience and statutory authority to effectively address the issues attendant to aquaculture development in the EEZ:

**NOW THEREFORE BE IT RESOLVED** that the NEFMC recognizes that it has a responsibility to develop management measures that will facilitate EEZ-based aquaculture development, and

**BE IT FURTHER RESOLVED** that it is the NEFMC's policy to encourage biologically and environmentally sound aquaculture projects and to develop management strategies that maximize opportunities for the aquaculture industry's productive coexistence with the traditional commercial fisheries of the New England region.

**ACCORDINGLY**, the NEFMC will facilitate the aquaculture permitting process through the following policy objectives:

- (1) The NEFMC will address those issues that are clearly germane to the Council's fishery management role and will work with other federal agencies involved in aquaculture to identify and minimize or eliminate areas of potential overlap.
- (2) The NEFMC will position itself as a point of contact for aquaculture developers, to provide information and federal permit application materials, and to provide recommendations to developers which may help avoid projects or elements of those projects that would otherwise pose conflicts with the Council's management activity.
- (3) The NEFMC will seek advice and guidance from representatives of both the aquaculture and fishing industries, the conservation community and other resource management agencies in formulation of aquaculture management strategies so as to minimize or eliminate the potential for user conflicts.

appropriate aeronautical charts thereby enabling pilots to either circumnavigate the area, continue to operate under VFR to and from the airport, or otherwise comply with IFR procedures. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9D, dated September 4, 1996, and effective September 16, 1996, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

#### The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the Federal Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

#### Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 96-ACE-22." The postcard will be date stamped and returned to the commenter.

#### Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends part 71 of the

Federal Aviation Regulations (14 CFR part 71) as follows:

#### PART 71—AMENDED

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

ACE NE E5 Alliance, NE [Revised]

Alliance Municipal Airport, NE

(lat. 42°03'12" N., long. 102°48'13" W.)

Alliance VOR/DME

(lat. 42°03'20" N., long. 102°48'16" W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Alliance Municipal Airport and within 3 miles each side of the 145° radial of the Alliance VOR/DME extending from the 6.8-mile radius to 10.5 miles southeast of the VOR/DME and within 3 miles each side of the 302° radial of the Alliance VOR/DME extending from the 6.8-mile radius to 8.7 miles northwest of the VOR/DME.

\* \* \* \* \*

Issued in Kansas City, MO, on December 17, 1996.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 97-847 Filed 1-13-97; 8:45 am]

BILLING CODE 4910-13-W

#### DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 960910252-6329-02; LD, 082296B]

RIN 0648-A177

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.



**SUMMARY:** NMFS issues this final rule to implement Amendment 5 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). The final rule closes a 9 mi<sup>2</sup> (23.31 km<sup>2</sup>) site to transiting and fishing with other than hand gear for an 18-month period to allow for the conduct of a NMFS-sponsored sea scallop aquaculture research project, provides for exemptions from the closure for vessels using certain gear types and for vessels participating in the project, and provides for temporary exemptions for vessels participating in the project from certain fishing regulations that might inhibit or prevent their performing any activity necessary for project operations. The intended effect of this action is to support the aquaculture research project and prevent conflicts between fishing gear and project equipment for the limited duration of the project.

**EFFECTIVE DATE:** February 13, 1997 through July 15, 1998.

**ADDRESSES:** Copies of Amendment 5, its regulatory impact review (RIR), the initial regulatory flexibility analysis contained within the RIR, and the environmental assessment are available from Christopher Kellogg, Acting Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01906-1097.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Dr. Andrew A. Rosenberg, Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20502 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, 508-281-9273.

**SUPPLEMENTARY INFORMATION:** Amendment 5 to the FMP was prepared by the New England Fishery Management Council (Council). A notice of availability for the amendment when it was proposed, was published on August 29, 1996 (61 FR 45395), and a proposed rule to implement it was published on September 20, 1996 (61 FR 49428). Details of this action were described in the preamble to the proposed rule and are not repeated here.

#### Approved Management Measures

This final rule establishes a 9 mi<sup>2</sup> (23.31 km<sup>2</sup>) area closure approximately 12 mi (22.22 km) southwest of the island of Martha's Vineyard, MA (hereinafter called the Sea Scallop

Experimental Area), to transiting and fishing with other than handgear for an 18-month period to allow for the conduct of a NMFS-sponsored (Saltonstall-Kennedy (NOAA Award NA 66FD0027)) sea scallop aquaculture research project and provides for exemptions from the closure for vessels using certain gear types and for vessels participating in the project.

Additionally, this final rule provides the Regional Administrator (RA) with authority to temporarily exempt a vessel participating in the project from any specific Federal fishing regulation which inhibits or prevents the vessel from performing any activity necessary for project operations, such as regulations prohibiting the use of nonconforming fishing gear or the possession of scallops when not fishing under a DAS allocation.

This action prohibits fishing other than with handgear within the Sea Scallop Experimental Area for 18 months. However, fishing with gear other than gillnet and mobile, i.e., trawls and dredges such as lobster pots, longline, and any other gear determined by the RA as not likely to interfere with the research project, will be allowed in the area pursuant to an Allowable Gear Permit (AGP) issued by the RA. This permit requirement will enable the RA to inform vessel operators of the location of the research equipment and avoid potential conflicts between fishery and project activities. Fishers authorized to fish in the Sea Scallop Experimental Area under an AGP may also be required periodically to remove their gear or may be required to set their gear a certain minimum distance from research project activities. At least 2 weeks notice will be provided to vessel operators of any requirement to relocate fishing gear.

All vessels will be allowed to transit the area at any time, provided their fishing gear is properly stowed.

Vessels participating in the project will be allowed to fish within and transit the Sea Scallop Experimental Area pursuant to an EFP issued by the RA. Such EFP may exempt such vessel from specific Federal fishing regulations which may inhibit or prevent that vessel from performing any activity necessary for project operations such as regulations prohibiting the use of nonconforming fishing gear or the possession of scallops when not fishing under a DAS allocation. Vessels issued an EFP are exempt from DAS requirements for any trip transiting to and from, and conducted exclusively within, the Sea Scallop Experimental Area, and for the portion of any trip used to transport sea scallops from the

fishing grounds to the area. The EFP also may allocate and authorize the use of up to 2 additional DAS for the collection of sea scallops from the fishing grounds for transportation to the Sea Scallop Experimental Area. Vessels issued an EFP must comply with all conditions and restrictions specified in the permit.

#### Comments and Responses

Written comments were received from one individual.

**Comment:** The commenter expressed concern about lobster gear that is typically fished in a portion of the Sea Scallop Experimental Area for about 6 months per year, and whether the project managers will be able to work around lobster gear during the research project period.

**Response:** The Regional Administrator will issue AGPs to lobster pot vessels interested in fishing within the Sea Scallop Experimental Area. Lobster fishers may be required to remove their gear periodically or may be required to set fishing gear a certain minimum distance from research project activities. The AGP program provides a means by which to communicate the dates and specific locations of project equipment and activities to those who are fishing in the area. At least 2 weeks notice will be provided prior to activities that would require removal of fishing gear. A minimum of 4 weeks notice will be provided in the event that more than 25 percent of the closed area is involved. NMFS will continue to stress to the principal NOAA grant investigators for the project that communication between fishers and project managers be maintained for the duration of the project to prevent conflicts.

#### Changes From the Proposed Rule

Changes were made to § 648.56(a) to clarify which permits are required for vessels participating in the sea scallop aquaculture research project or fishing within the Sea Scallop Experimental Area, but not participating in the project. Editorial simplifications and clarifications were made throughout the rule.

#### Classification

The Regional Administrator determined that this final rule is necessary for the conservation and management of the Atlantic sea scallop fishery and that it is consistent with the Magnuson-Stevens Act Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law.

This final rule has been determined to be significant for the purposes of E.O. 12866. The action raises a novel legal or policy issue arising out of a legal mandate under the Magnuson-Stevens Act, in that it may be viewed as setting a precedent for establishing other aquaculture efforts in the exclusive economic zone.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that it would not have a significant economic impact on a substantial number of small entities. The comment received and the changes made to the rule do not change the basis for that certification. Accordingly, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule contains one new collection-of-information requirement subject to the PRA. This collection-of-information requirement has been approved by OMB, and the OMB control number and public reporting burden are listed as follows: Sea Scallop Experimental Area authorization request, (0.5 hours/response) under OMB Control Number 0648-0321.

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding this burden estimate, or any other aspect of the collection-of-information to NMFS and OMB (see ADDRESSES).

NMFS reinitiated consultation on the Atlantic Sea Scallop FMP on October 7, 1996. This consultation will consider new information concerning the status of the northern right whale. The Regional Administrator has determined that the implementation of Amendment 5, pending completion of that consultation, will not result in any irreversible or irretrievable commitment of resources that would have the effect of reducing the formulation or implementation of any reasonable and prudent alternative measures.

List of Subjects  
15 CFR Part 909

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 8, 1997.  
Charles Karnella,  
Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR CHAPTER IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:  
Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, in paragraph (b), the table is amended by adding, in numerical order, the following entry to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.  
\* \* \* \* \*  
(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648-)
50 CFR	
648.56 .....	-0321

50 CFR CHAPTER VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

3. The authority citation for part 648 continues to read as follows:  
Authority: 16 U.S.C. 1801 *et seq.*

4. In § 648.14, paragraph (a)(96) is added to read as follows:

§ 648.14 Prohibitions.  
(a) \* \* \*  
(96) Fish within or transit, with other than handgear, the Scallop Experimental Area defined in

§ 648.56(a)(1), except as provided for in § 648.56 (a)(2) and (a)(3).

\* \* \* \* \*  
5. Section 648.56 is added to subpart D to read as follows:

§ 648.56 Scallop research project.

(a)(1) *Scallop experimental area.* From February 13, 1997 through July 15, 1998, no fishing vessel or person on a fishing vessel may fish within or transit, with other than handgear, the area known as the Sea Scallop Experimental Area, as defined by straight lines connecting the following points in the order stated, except as provided for in paragraphs (a)(2) and (a)(3) of this section:

Point	Latitude	Longitude
1 .....	41°11.8' N.	70°50' W.
2 .....	41°11.8' N.	70°46' W.
3 .....	41°08.8' N.	70°46' W.
4 .....	41°08.8' N.	70°50' W.

(2) *Exemptions.* A fishing vessel and persons on a fishing vessel may fish within or transit the Sea Scallop Experimental Area:

(i) With pot gear and traps, longline gear, or any other gear, provided such pot gear and traps, longline gear, or other gear is determined by the Regional Director as not likely to interfere with the sea scallop aquaculture research project in the Sea Scallop Experimental Area, and provided such vessel has been issued an allowed gear permit (AGP) under paragraph (a)(4)(i) of this section; or

(ii) If such vessel has been issued an experimental fishing permit (EFP) under paragraph (a)(4)(i) of this section to participate in the sea scallop aquaculture research project in the Sea Scallop Experimental Area.

(3) *Transiting.* Vessels that are not exempted from the prohibition against fishing within or transiting the Sea Scallop Experimental Area under paragraph (a)(2) of this section may transit such area provided their gear is stowed in accordance with the provisions of § 648.81(e).

(4) *Allowed gear and experimental fishing permits—(i) Allowed gear permits.* The Regional Director may issue an AGP to any vessel to fish within and transit the Sea Scallop Experimental Area with the gear specified in paragraphs (a)(2)(i) of this section. Vessels issued an AGP may be required to move their gear within, or remove their gear from, the area upon notification by the Regional Director and must comply with any additional conditions and restrictions specified in the permit.

(ii) *Experimental fishing permits.* The Regional Director may issue an EFP under the provisions of § 648.12, if consistent with the provisions of paragraph (a)(4)(iv) of this section, to any vessel participating in the sea scallop aquaculture research project to fish within and transit the Sea Scallop Experimental Area. Such an EFP may exempt such vessel from specific Federal fishing regulations which may inhibit or prevent that vessel from performing any activity necessary for project operations such as regulations prohibiting the use of non-conforming fishing gear or the possession of scallops when not fishing under a DAS allocation. Vessels issued an EFP shall be exempted from DAS requirements as specified in the FMP for any trip in which the vessel engages exclusively in project activities such as bottom surveying, biological sampling, or use of non-regulated hand gear outside the Sea Scallop Experimental Area. The EFP also may allocate and authorize the use of up to 2 additional DAS for project activities relating to scallop seeding. Vessels issued an EFP must comply with all conditions and restrictions specified in the permit.

(iii) A vessel with an AGP or EFP must carry the permit on board the vessel while fishing in the Sea Scallop Experimental Area or participating in the scallop aquaculture project.

(iv) The Regional Director may not issue an AGP or EFP unless he determines that issuance is consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law and will not:

(A) Have a detrimental effect on the sea scallop resource and fishery;

(B) Create significant enforcement problems; or

(C) Have a detrimental effect on the scallop project.

(5) *Application.* An application for an AGP or EFP must be in writing to the Regional Director and be submitted at least 30 days before the desired effective date of the permit. The application must include, but is not limited to, the following information:

(i) The date of application.

(ii) The applicant's name, current address, telephone number and fax number if applicable.

(iii) The current vessel name, owner address, and telephone number.

(iv) The vessel's Federal permit number.

(v) The USCG documentation number.

(vi) The species (target and incidental) expected to be harvested.

(vii) The gear type, size, buoy colors, trap identification markings and amount

of gear that will be used; and exact time(s) fishing will take place in the Sea Scallop Experimental Area.

(viii) The signature of the applicant.

(b) [Reserved]

[FR Doc. 97-872 Filed 1-13-97; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

#### 31 CFR Part 560

#### Iranian Transactions Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice; extension of time to report.

**SUMMARY:** The Office of Foreign Assets Control of the U.S. Department of the Treasury is extending to May 30, 1997, the deadline for submission of quarterly reports pursuant to § 560.603 of the Iranian Transactions Regulations for the quarters ending December 31, 1996, and March 31, 1997.

**EFFECTIVE DATE:** January 10, 1997.

**FOR FURTHER INFORMATION CONTACT:** Loren L. Dohm, Chief, Blocked Assets Division (tel.: 202/622-2440), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

#### SUPPLEMENTARY INFORMATION:

##### Electronic and Facsimile Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the Federal Register. By modem, dial 202/515-1387 and type "/GO FAC," or call 202/512-1530 for disk or paper copies. This file is available for downloading without charge in WordPerfect 5.1, ASCII, and Adobe Acrobat™ readable (\*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Business, Trade and Labor Mall" of the FedWorld bulletin board. By modem, dial 703/321-3339, and select the appropriate self-expanding file in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = <http://www.fedworld.gov>; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets

Control is available for downloading from the Office's Internet Home Page: <http://www.ustreas.gov/treasury/services/fac/fac.html>, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622-0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

#### Notice

On November 15, 1996, the Office of Foreign Assets Control ("OFAC") published an amendment to § 560.603 of the Iranian Transactions Regulations, 31 CFR Part 560 (the "Regulations"), which imposes reporting requirements on United States persons with foreign affiliates (See 61 FR 58480). Any report required to be submitted to OFAC pursuant to § 560.603 of the Iranian Transactions Regulations for the quarter ending December 31, 1996, or for the quarter ending March 31, 1997, may be filed up to but no later than May 30, 1997.

Issued: January 7, 1997.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: January 7, 1997.

James E. Johnson,

Assistant Secretary (Enforcement)

[FR Doc. 97-974 Filed 1-10-97; 12:08 pm]

BILLING CODE 4810-25-F

## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 1, 2, 21, 22, 60, 61, 62, 147, 262, 272, 707, 763

[FRL-5674-2]

### Technical Amendments to Revise Addresses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The EPA is revising the address for its Region 5 office, and those of the environmental agencies of the States of Illinois, Michigan and Ohio in 40 CFR Parts, 1, 2, 21, 60, 61, 62, 147, 272, 707, and the appendices to 40 CFR Parts 22, 262, and 763 because of changes in office locations. This document does not change the substantive requirements of the standards.

**EFFECTIVE DATE:** This action becomes effective January 14, 1997.

**FOR FURTHER INFORMATION CONTACT:** John Gaitskill, United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604-3590, (312) 886-6795.

UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
One Blackburn Drive  
Gloucester, MA 01930

OCT 26 1994

William F. Lawless, P.E.  
Chief, Regulatory Division  
Operations Directorate  
U.S. Army Corps of Engineers  
New England Division  
424 Trapelo Road  
Waltham, Massachusetts 02254-9149

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Dear Mr. Lawless:

This letter is in response to a proposal by Westport Scalloping Corporation to deploy and maintain a sea scallop aquaculture facility approximately eight miles south of Martha's Vineyard, Massachusetts (File# 94-02176). We offer the following comments.

Project Description

The purpose of this project is described in a U.S. Army Corps of Engineers' Public Notice, dated September 13, 1994, as the research and development of techniques for the capture, holding, transportation, seeding, husbandry, and harvesting of sea scallops. Two methods of raising scallops will be conducted. One method utilizes a single array of 10 lantern-style cages suspended 40 feet apart at various depths in the water column. This array will be secured by a two point mooring system at each end. The other method involves depositing scallops along grow-out lanes marked with buoys at each end and at midpoints. This technique requires no structural confinement.

The source of undersized scallops (40-60 mm) may include hatchery-reared stocks, however, for the purposes of this study, the primary source would be bycatch collected on commercial sea scallop draggers. The National Marine Fisheries Service (NMFS) understands the need to utilize this source given the availability of hatchery-reared juvenile sea scallops and the relatively short-term nature of this project (18 months). However, we do not consider this an acceptable source for projects of longer duration or other sea scallop aquaculture ventures. In order for this to become a sustainable industry that reduces rather than intensifies pressure on the species, the source of sea scallop spat would need to be hatchery-raised. Protecting wild stocks from a commercial effort to harvest undersized scallops would likely become a major issue if this form of aquaculture proved to be economically lucrative. This



matter needs to be addressed during the study since the current Atlantic Sea Scallop Fishery Management Plan does not prevent the harvest and transfer of scallops from one location to another.

#### Effects to the Benthic Environment

The effects of this project to the benthic environment should be minimal if good husbandry practices are employed. Stocking density could be a problem if scallops were densely concentrated, however, this is unlikely since scallops broadcasted into water depths of approximately 100 feet should disperse naturally as they settle to the bottom. Also, scallops are fairly motile and should spread out as necessary. If stocking density did become a problem, it should be identified during periodic dive monitoring.

The presence of natural predators such as sea stars and crabs are to be noted, but there is no expressed intention to remove any indigenous fauna from the area. The NMFS recommends that the disturbance to the benthic environment be kept to the minimum necessary and that marine predators be monitored, not removed, unless predation is found to be a significant problem. Prophylactic methods to remove predators should not be used.

A potential for disease or pathogen transfer exists if scallops are collected from areas outside the Gulf of Maine and Georges Bank, however, the probability of this is unclear. Unless it can be proven that the introduction of scallops from areas outside New England waters poses no threat to indigenous stocks, the collection of scallops for this study should be restricted to New England waters. In addition, the location and quantity of juvenile sea scallops retained by draggers for this project should be recorded and submitted to Westport Scalloping Corporation for inclusion in their final report.

#### Endangered Species

A number of species of endangered and threatened marine animals under the jurisdiction of the National Marine Fisheries Service may be present at the project site during certain times of the year. These include the northern right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), finback whale (*Balaenoptera physalus*), leatherback sea turtle (*Dermochelys coriacea*), green sea turtle (*Chelonia mydas*), loggerhead sea turtle (*Caretta caretta*), and Kemp's ridley sea turtle (*Lepidochelys kempii*). In addition, the harbor porpoise (*Phocoena phocoena*) is proposed for listing as threatened and may also be present at the project site. All of the whale species mentioned transit the area at certain times during the year on

their migrations to or from more northerly feeding and nursery areas. However, based on survey data (CeTAP, 1982) this area is not known to be a concentration area for whales or turtles. Many of the whales migrating through the area are adults with calves headed for the protection and seasonally abundant food resources of Cape Cod Bay. Protecting females with calves during their vulnerable springtime breeding period is particularly important in furthering the recovery of many of the endangered populations of whales. Juvenile and subadult loggerhead, green, and Kemp's ridley sea turtles prefer warmer water and are most likely to be in the area from mid-summer through fall.

Whales and turtles are known to have been entangled in lobster pot lines, seines, and fish weirs. Right whales are particularly vulnerable to entanglement in lines because of their propensity for surface feeding. Leatherback sea turtles are also commonly caught in lobster trap lines due to their lack of maneuverability upon encountering such obstacles.

The threat of entanglement in the buoyed lines used to delineate each lane as well as the lines supporting the suspended cage array is the foremost concern for all species involved. The concentration of scallops within the lanes may attract loggerhead turtles which are known to feed on mollusks and crustaceans. Green, Kemp's ridley, and leatherback sea turtles are less likely to be attracted to the site since their primary food sources are seagrass and algae, crabs, and jellyfish, respectively. The grow-out lanes and the suspended cage array system should pose little risk to the endangered species mentioned above as long as the number of lines to the surface do not exceed what has been proposed. If possible, the number of lines should be reduced.

We conclude that this project as proposed is not likely to adversely affect endangered species under the jurisdiction of the NMFS because: 1) the site is not a known concentration area for the species of concern, and 2) the expected impact from the structures associated with grow-out lanes and the cage array should be minimal in a pilot project of this size and duration. However, should project plans or specifications change or new information become available that alters the basis of this decision, then consultation must be reinitiated. If you have any further questions regarding endangered species please contact Laurie Silva at (508) 281-9291.

#### Sea Scallop Aquaculture in the EEZ

This project would cover a nine square mile area within the Exclusive Economic Zone (EEZ). In order for this project to be implemented successfully, it may be necessary to substantially limit fishing activity in the proposed area. To do this would likely require an amendment to at least the Atlantic Sea Scallop Fishery Management Plan promulgated as federal regulations under


the Magnuson Fishery Conservation and Management Act. Such an amendment would have to be developed and approved by the New England Fishery Management Council and ultimately by the NMFS; a process that could take several months.

Restricting an area within the EEZ for the exclusive use of aquaculture is an action that has, to date, never occurred in New England waters. Conflicting use concerns, and other issues such as the need to establish some form of leasing or licensing policy for the private use of public waters, should be addressed within the context of this study.

Please contact Eric Nelson at (508) 281-9118 with any questions regarding this letter.

Sincerely,

Signed: Christopher L. Mautzaris

 Jon Rittgers  
Deputy Regional Director

Reference:

CeTAP. 1982. A characterization of marine mammals and turtles in the mid- and north Atlantic areas of the U.S. Outer Continental Shelf. University of Rhode Island under contract #AA551-CT8-48 to U.S. Department of the Interior. insert at end of letter:

- cc: PR - Beach
- PR - Silva
- USFWS, Concord - Philip Morrison
- EPA, Boston
- MA DMF, Sandwich
- NE FMC, Saugus - Pat Fiorelli

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1 CHAIRMAN JOSEPH BRANCALEONE: O.K.  
 2 Ready for the motion? All those in favor signify  
 3 by saying "aye."  
 4 MULTIPLE VOICES: "Aye."  
 5 CHAIRMAN JOSEPH BRANCALEONE:  
 6 Opposed? Abstentions?  
 7 MULTIPLE VOICES: "Abstain."  
 8 CHAIRMAN JOSEPH BRANCALEONE: Two  
 9 abstentions, John Nelson abstaining.  
 10 Anything else, Jim?  
 11 JAMES O'MALLEY: I don't know  
 12 whether John Nelson wants to bring it up now or  
 13 under the Aquaculture Committee Report.  
 14 Aquaculture? Fair enough. This has to do with the  
 15 scallop aquaculture.  
 16 CHAIRMAN JOSEPH BRANCALEONE: O.K.  
 17 Anything else from you?  
 18 JAMES O'MALLEY: We're done, Mr.  
 19 Chairman.  
 20 CHAIRMAN JOSEPH BRANCALEONE:  
 21 Hallelujah, almost on time. O.K.  
 22 All right. Ray Starvish.  
 23 RAY STARVISH: I need a  
 24 clarification from Andy. When Andy made his

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1 statement, he said that he didn't believe that any  
 2 of these six proposals would pass? That's the way  
 3 we understood it. Could you clarify that, Andy?  
 4 CHAIRMAN JOSEPH BRANCALEONE: No.  
 5 He said two of them.  
 6 DR. ANDY ROSENBERG: I said that  
 7 there were six proposals, one of which I did not  
 8 believe was approvable along with its variation;  
 9 that is, Number 2 and 2A I do not believe are  
 10 approvable because they're 15-year rebuilding  
 11 programs.  
 12 RAY STARVISH: O.K. I misunderstood  
 13 you. Thank you.  
 14 CHAIRMAN JOSEPH BRANCALEONE: O.K.  
 15 Ellen?  
 16 ELLEN SKAAR: Yes. I'm looking for  
 17 clarification for what an active day is. Jim  
 18 O'Malley stated earlier when he made his report  
 19 that he assumed everybody knew what an active day  
 20 was. When it comes to leasing, I hate to say the  
 21 word, so I'm going to bring it back. Could you  
 22 please clarify what an "active day" is?  
 23 JAMES O'MALLEY: You'll notice that  
 24 in the Committee motions there was a motion to

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1 table the definition of the "active day at sea."  
 2 However, the original definition was that a day  
 3 that had been used between March 1st of '93 and  
 4 March 1st of '97 - I think I've got the two years  
 5 right - but then to that was added the further  
 6 restriction that if one of those active days was  
 7 now applied - or attached to a history permit, it  
 8 would not be eligible for leasing.  
 9 But finally, as the discussion  
 10 evolved today, those specific provisions that are  
 11 going out to public hearing are examples.  
 12 What is going to be decided on is  
 13 whether or not leasing, in general, will be part of  
 14 a frameworkable process in the future and that if  
 15 any such framework were to ever take place, then  
 16 each specific measure and definition would be done  
 17 anew.  
 18 ELLEN SKAAR: I do feel if this  
 19 public hearing document is gonna go out to the  
 20 public, it needs to be clarified what an "active  
 21 day" is, what a "history day" is, what a "latent  
 22 day" is, so the public understand what is coming  
 23 down their way.  
 24 Personally, leasing is gonna kill

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1 the rest of us. It has no help for the single boat  
 2 owner, but with the cutbacks what you're looking at  
 3 right now, I still say, again, that we need a buy-  
 4 back, and I'm not asking the Council to find the  
 5 money, I'm just asking the Council to say, after  
 6 hearing all the testimonies, because you hear the  
 7 testimonies from different people at different  
 8 meetings, I'm asking the Council to ask the proper  
 9 authority for a buy-back, never mind where the  
 10 money comes from. That is up to Congress. Thank  
 11 you.  
 12 CHAIRMAN JOSEPH BRANCALEONE: Thank  
 13 you.  
 14 O.K. Let's move on to aquaculture.  
 15 John Nelson.  
 16 AQUACULTURE COMMITTEE REPORT  
 17 JOHN NELSON: I'll move along  
 18 rapidly, Mr. Chairman.  
 19 As long as we maintain the current  
 20 quorum, we'll be all set. Oops, we lost one.  
 21 Geez, Jim, I stayed for you.  
 22 O.K. Under Tab 2, Mr. Chairman, are  
 23 the -  
 24 CHAIRMAN JOSEPH BRANCALEONE: Maybe

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we should take a five-minute break till we get my -  
- I'll get our Council back.

JOHN NELSON: Whatever you please.

CHAIRMAN JOSEPH BRANCALEONE: Yeah.

This is -- Let's take a five-, ten-minute break.

(A brief recess was taken)

CHAIRMAN JOSEPH BRANCALEONE:  
Aquaculture report? Mr. Nelson.

JOHN NELSON: Thank you, Mr.  
Chairman.

Under Tab 2 is the information on  
aquaculture meetings. There's a number of papers  
there. Some of it's background information, such  
as the aquaculture policy that was approved by the  
Council quite awhile ago, and some motions, and  
I'll get to all of these and wrap them together.

On the -- We met on the 12th, a  
combined meeting with the Committee Members and  
also the advisors. We went over various background  
information to bring the advisors up to speed,  
since this was their first meeting, also looked  
over guidelines developed by the various federal  
entities and the Council staff that would assist  
the various potential aquaculture site developers

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1 in the future, that is, by providing a scope of  
2 information necessary to formally proceed with  
3 projects.

4 We also had started a discussion  
5 about Council evaluation criteria for aquaculture  
6 projects, and that's an ongoing project.

7 We had a Chair and a Vice Chair  
8 elected, and we then got into the discussion on how  
9 to proceed ahead on the Council -- by the Council  
10 on how to facilitate the aquaculture projects, the  
11 future aquaculture projects.

12 At our August 20th Meeting, 1997, we  
13 had approved the aquaculture policy at that time,  
14 and then we had also -- the Council had indicated -  
15 - or on a motion they said that to develop --  
16 initiate the development of a comprehensive  
17 aquaculture amendment to all existing and future  
18 fishery management plans including the framework  
19 adjustment process. So, we then discussed that to  
20 some degree to see how we were going to do that and  
21 what type of language would be involved in that.

22 The language that we have had  
23 decided upon is also in that -- behind that Tab.  
24 It's labeled "Draft Language For Inclusion in the

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Groundfish, Sea Scallop, Herring, Atlantic Salmon  
Public Hearing Documents." Hopefully, everyone has  
that. If not, I'll run through it quickly,  
anyways.

Basically, Mr. Chairman, what it  
involves is that we would add a new objective to  
all of those management plans. That would allow  
the development or encourage the development of  
biologically- and environmentally-sound aquaculture  
projects and develop management strategies that  
would maximize opportunities for  
aquaculture/industry's productive coexistence with  
traditional commercial fisheries of New England.

Then we have a -- what would be in  
the public hearing document would be the discussion  
of the -- how the framework adjustment works, and I  
won't -- I think we have a pretty good idea of  
that.

The adjustments or additions to  
management measures that would be going out to  
public comment would be from one or more of the  
following categories; that would be minimum fish  
sizes, gear restriction, minimum mesh sizes,  
possession limits, tagging requirements, monitoring

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1 requirements, reporting requirements, permit  
2 restrictions, area closures, establishment of  
3 special management areas or zones, and any other  
4 management measures currently included in the FMP.

5 I don't think we missed much, but if  
6 someone else has something else that they think  
7 should be included in that verbiage, I'll be happy  
8 to include it.

9 So, those would be included for the  
10 public hearing document, Mr. Chairman, under the  
11 Essential Fish Habitat Amendment that's going out.  
12 So, I would -- before I make any motion on this,  
13 I'd just like to see if there's any questions on  
14 that language?

15 CHAIRMAN JOSEPH BRANCALEONE:  
16 Questions? Questions or comments?

17 You're doing fine, John.

18 JOHN NELSON: O.K. Well, then I  
19 would like to move on behalf of the Committee the  
20 approval of the inclusion of sections in the  
21 Groundfish, Scallop, Atlantic Herring, and Herring  
22 FMPs to address the framework process that I've  
23 described.

24 CHAIRMAN JOSEPH BRANCALEONE:

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1 Atlantic Salmon.  
 2 JOHN NELSON: Pardon?  
 3 CHAIRMAN JOSEPH BRANCALEONE:  
 4 Atlantic Salmon and Herring.  
 5 JOHN NELSON: Didn't I say that?  
 6 O.K. Groundfish, sea scallop, herring, and  
 7 Atlantic salmon.  
 8 CHAIRMAN JOSEPH BRANCALEONE: O.K.  
 9 Is there a second? Bill Amaru.  
 10 Discussion?  
 11 O.K. Seeing none, all those in  
 12 favor signify by saying "aye."  
 13 MULTIPLE VOICES: "Aye."  
 14 CHAIRMAN JOSEPH BRANCALEONE:  
 15 Opposed? Abstentions? Motion carries.  
 16 JOHN NELSON: O.K. Thank you, Mr.  
 17 Chairman.  
 18 Let's see. One of the other things  
 19 that we received was a letter -- or you received,  
 20 Mr. Chairman, was a letter in regard to the ongoing  
 21 Westport Sea Scallop Experimental Area, and I think  
 22 that everyone received a copy of that, and it  
 23 should be also in that binder.  
 24 Basically, the request is to extend

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1 in fact, be operating as a model of a cooperative  
 2 relationship between something that appears to be  
 3 aquaculture and the fishermen that we're -- that  
 4 surround us, I think we're deserving -- I think  
 5 there's hardly a reason to consider not passing  
 6 this, frankly.  
 7 I think the word "extending the  
 8 closure" is possibly a misnomer because, basically,  
 9 we haven't excluded anything but mobile gear out in  
 10 that area, and the fixed gear that have been  
 11 operating in the area have been operating in their  
 12 normal way.  
 13 So, I'm not aware -- And maybe  
 14 somebody can point out any issues that have come up  
 15 over the last 12 months, but I don't -- I'm not  
 16 aware of a problem that we've had in coexisting.  
 17 So, I think, that is useful progress.  
 18 The work that we plan on doing still  
 19 remains embodied in the original amendment that we  
 20 began this process with and, I think, given the  
 21 fact that the Aquaculture Committee is making good  
 22 progress on identifying ways of handling these  
 23 requests in the future, I'm not troubled by scaling  
 24 back our request from 36 months to 18. I think, by

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1 the closure time period in the sea scallop  
 2 experimental area that the Council had voted in  
 3 about almost probably over a year ago, probably 16  
 4 months ago, or maybe it was just a year. The  
 5 principals are trying to continue the program that  
 6 they had started out there. There were some delays  
 7 in their initial getting out there and doing work,  
 8 and it's -- they feel that they could have a much  
 9 more productive program if they were able to  
 10 continue a closure of that area.  
 11 I believe Cliff is here to discuss  
 12 it a little bit more in detail, so if you will  
 13 allow, Cliff can come up.  
 14 CLIFF GOODEY: Thank you, John.  
 15 Thank you, Mr. Chairman.  
 16 I don't want to spend a lot of time.  
 17 I mainly want to be here to answer any questions,  
 18 but by way of a slight addition in background, the  
 19 project that funded this work initially is rapidly  
 20 coming to end, but by no means is our mission  
 21 complete out there, and our intention is to  
 22 continue, get some of the answers that have been  
 23 elusive.  
 24 I think, given the fact that we may,

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1 the time our -- this request is over, if there is  
 2 additional need or additional reason to have such  
 3 an area remain open, that the mechanism for doing  
 4 that will be in place.  
 5 So, if there are any questions, I  
 6 would certainly be happy to address them.  
 7 CHAIRMAN JOSEPH BRANCALEONE: Jim  
 8 Kendall?  
 9 JIM KENDALL: Yeah. It's not really  
 10 a question, Cliff, but just a statement. When you  
 11 first approached the Council for the original  
 12 application, there was some questions with a lot of  
 13 the mobile gear, particularly from the islands and  
 14 so forth, and we hosted a meeting at the New  
 15 Bedford Seafood Coalition, and Rodney and I have  
 16 since talked to a lot of the people who had the  
 17 original questions, and it seems like no -- they no  
 18 longer remain. So, the problems that were thought  
 19 to exist haven't surfaced, and so I'd like to make  
 20 this motion or second it, and now that I see  
 21 there's a motion made, I'd like to second it.  
 22 CHAIRMAN JOSEPH BRANCALEONE: Any  
 23 other questions for Cliff. Bill Amaru?  
 24 WILLIAM AMARU: Just briefly, Cliff.

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Could you help us to understand what aspects of the project specifically need a little more time to evaluate?

CLIFF GOODEY: Mm-hmm. Yeah. One of the things that we have discovered, and most people do in trying to deal with these kind of projects is, is answers come with difficulty.

We have had gear losses as a result of weather, we have gear losses as a result of our originally underestimating tidal currents. We haven't had any problems, gear losses, as a result of conflict or problems from any other fishermen.

Our initial efforts at seeding have, we think, been successful, but we've had difficulty in really monitoring and getting statistically-significant data, so we hope to expand that effort.

Our effort at using a commercially-supplied piece of gear to do suspended array was bad weather, rapidly swept away by a storm, so that piece of information remains elusive, and we want to continue that but in a better thought-out manner.

Our original efforts at transporting scallops and putting them in cages originally

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ERIK ANDERSON: Since this is being proposed as the first action of a framework, will this be sufficient time -- will there be a lapse of time between what you presently have for a time -- or what you presently have for a closed area versus the amount of time it might take for the framework adjustment?

CLIFF GOODEY: I believe we're in good shape on that, even though in the original amendment there was a discrepancy, in that, the time between the opening and the closing actually turned out to be 17 months, even though it was in other text stated to be 18. I think that if this goes through in the normal process that this could be in place in time so that we don't have a lapse.

CHAIRMAN JOSEPH BRANCALEONE: Any other questions. Phil Coates.

PHILIP COATES: Yes. Cliff, you originally requested three years, and I must have missed it somewhere. I notice a motion calls for 18 months. Has this been worked out through agreement?

CLIFF GOODEY: Yeah. I don't quite understand the logic as to why 18 months is

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1 suffered from poor mortalities in the  
2 transportation phase of the work. We want to  
3 improve on that technique and continue the  
4 monitoring of those cages that are in place. So,  
5 far, we see good progress in that area, but we want  
6 to be able to continue.

7 Basically, our need for a longer  
8 period to do this is a function of the species,  
9 basically. We are trying to look at these scallops  
10 that we've put in place over the full duration that  
11 one would want to do this work in a commercial  
12 venture, and it just simply takes time to do that.

13 CHAIRMAN JOSEPH BRANCALEONE: Jim?

14 JAMES O'MALLEY: Thank you, Mr.  
15 Chairman.

16 The Scallop Committee did receive  
17 the letter requesting the extension with the press  
18 of closed-area management days at sea, SFA, and  
19 everything else. We did not discuss it, but there  
20 were no objections voiced to me and, secondly, the  
21 Scallop PDT voted -- I believe it was unanimously -  
22 - to support the request for the extension.

23 CHAIRMAN JOSEPH BRANCALEONE: Erik  
24 Anderson.

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1 acceptable to the Council or to National Marine  
2 Fisheries Service and 36 months isn't but, again,  
3 because of the progress being made in the  
4 Aquaculture Committee to have this kind of stuff  
5 handled in a streamlined way, I'm not concerned  
6 about it, so I'm comfortable with that.

7 PHILIP COATES: All right. I just  
8 note that we're more towards land, where  
9 aquaculture operations are undertaken, I believe,  
10 in most of the states as statutory or regulatory  
11 provisions for accommodating the durational aspects  
12 of these things usually culminates in a much longer  
13 time period, recognizing that aquaculture projects  
14 do take some time to bear fruit in one form or  
15 another, whether it's through its experimental work  
16 or, you know, for business-related propagation and  
17 production.

18 And I think the Commonwealth  
19 recently amended their laws not too long ago for a  
20 minimum of 10 years or something like that, just to  
21 make sure that the projects don't fail because of  
22 the lack of time to do them, you know, or succeed,  
23 but they fail to succeed based on the efforts of  
24 the -- in the undertaking, so --

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1 JOHN NELSON: I think, Mr. Chairman,  
2 they were -- as is noted in the letter, it was  
3 requesting three years. However, there was some  
4 concern on extending beyond what the normal project  
5 was allocated, which was supposed to be 18 months,  
6 and so with the principals feelings that 18 months  
7 would assist them in continuing with their program  
8 and getting additional valuable information to  
9 report back to the Council, plus the fact that we  
10 had the aquaculture frameworking adjustments being  
11 put into all of the FMPs, that any work that was  
12 going to be done beyond the scope of what the  
13 experiment called for could be accommodated through  
14 the actual aquaculture frameworking process and  
15 could be a little bit more encompassing than what  
16 is presently allowed.

17 And just as a note to my Brother's  
18 state, we renew ours on an annual basis.

19 PHILIP COATES: Well, I can  
20 understand that.

21 CHAIRMAN JOSEPH BRANCALEONE: Any  
22 other questions for Cliff. Oh, Jim, sorry.

23 JAMES O'MALLEY: Just an  
24 observation. I am very pleased to note that there

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1 is a member of the public left who thinks we can do  
2 something in a year and a half.

3 JOHN NELSON: I would just ask Cliff  
4 while he's here: Cliff, when -- maybe it would be  
5 appropriate sometime to be able to provide a  
6 progress report either to the Aquaculture Committee  
7 or to the Council 'cause I'm sure everyone's  
8 interested in what results you have had with  
9 scallops in that area, and do you have some time  
10 table that you could get some preliminary  
11 presentation?

12 CLIFF GOODEY: Yeah. We can do that  
13 pretty much at any time. The more information we  
14 have, I think, the more interesting and valuable  
15 such a presentation would be, but you name the time  
16 and the place, and we'll be there.

17 CHAIRMAN JOSEPH BRANCALEONE: O.K.  
18 All right. Further discussion on the motion?

19 Thanks, Cliff.

20 All those in favor signify by saying  
21 "aye."

22 MULTIPLE VOICES: "Aye."

23 CHAIRMAN JOSEPH BRANCALEONE:  
24 Opposed? Abstentions? Motion carries.

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1 JOHN NELSON: Finally, Mr. Chairman,  
2 we looked at a -- reviewed the existing and  
3 proposed projects that might involve sites in the  
4 EEZ, and they are listed in the summary document  
5 for aquaculture, so I'm not going to run through  
6 them for you.

7 Some of them are -- there's  
8 certainly diversity associated with them, and it  
9 would be interesting, as some of these come to --  
10 as some of these proposals get flushed out more, to  
11 actually run them through the aquaculture process  
12 which, I'm sure, will be much more streamlined than  
13 it was for Cliff and Ron and some of the others.

14 That essentially completes my  
15 report, Mr. Chairman, and whatever questions there  
16 are, I'd be happy to try to answer them.

17 CHAIRMAN JOSEPH BRANCALEONE: Any  
18 questions? Paul?

19 PAUL HOWARD: John, is this  
20 considered the first framework for that --

21 JOHN NELSON: Yeah. Yeah. That's  
22 what we had up there, that this would be the  
23 initial action on the framework.

24 CHAIRMAN JOSEPH BRANCALEONE: Any

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1 other questions or comments on aquaculture. Doug?

2 DOUG HOPKINS: The list of existing  
3 projects -- I take it, this doesn't mean existing  
4 physically, yet. This "existing" means what, that  
5 they are more than just a gleam in somebody's eye  
6 but less than something you can go out and kick at  
7 this point?

8 JOHN NELSON: Well, a lot of them  
9 are in state waters and, therefore, they're not in  
10 the EEZ like the existing projects. So, I think  
11 you can go out and kick them if you wanted to, but  
12 kick them gently, obviously.

13 But the ones that are proposed would  
14 be more into federal water areas, and that's on the  
15 back page under "Proposed Projects." Several of  
16 them have been discussed previously but certainly  
17 need to be flushed out a lot more to really have  
18 some viable consideration given to them, and I  
19 think that this process, including the evaluation  
20 process criteria that we would be using, will help  
21 people develop proposals that will meet regulatory  
22 requirements. That's certainly the intent,  
23 anyways.

24 CHAIRMAN JOSEPH BRANCALEONE: Go

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ahead, Doug.

DOUG HOPKINS: Quick follow-up. By including projects that are now in state waters, is the intent to simply keep the Council informed about aquaculture activities that are in the area, or is there some implication here that even if they remain in state waters that since they involve federally-managed species that the Council would be exercising some kind of management authority?

CHAIRMAN JOSEPH BRANCALEONE: That will never happen, not in state waters.

JOHN NELSON: Well --

CHAIRMAN JOSEPH BRANCALEONE: Only in New Hampshire.

JOHN NELSON: -- I have to wear two hats here, you know, one, state -- And it'll never happen -- and then, number two, Aquaculture Chairman and always looking to expand kingdoms. I mean, we might find some happy medium somewhere.

Actually, let me just say, and more seriously, one of the proposed projects, the UNH demonstration project deals with summer flounder, and they're planning to have cages off the Isles of Shoals that are still within the convergence of

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1 those nefarious lines that Phil is always talking  
2 about. But it's a large enough project and deals  
3 with enough issues that I've talked to the  
4 participants of that, and they are -- they  
5 certainly understand that there's a lot that would  
6 be looked at for this particular type of project,  
7 and they are planning on going through the Council  
8 system for that, because they do have to go through  
9 the Army Corps to get a permit, also. So, I think  
10 it may be beneficial to them, as well as to the  
11 Council, to have an opportunity to take a  
12 relatively large-scale project and work it through  
13 the system.

14 CHAIRMAN JOSEPH BRANCALEONE: Any  
15 other questions or comments for John?

16 O.K. Well, I think we ought to  
17 commend ourselves. We made it right on schedule to  
18 adjourn at 5:00 o'clock, and just a reminder that  
19 there's a public hearing scheduled at 6:00 o'clock  
20 in this room -- I believe? Yes -- for monkfish,  
21 and the Chairman of that Committee, who's been  
22 working overtime on this, as well as Andy  
23 Applegate, urges Council members to participate in  
24 that so that you will be up on what's going on in

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monkfish for the discussion that will take place tomorrow.

Anything you want to add to that?

ERIC SMITH: Yeah. Just very briefly, it serves two purposes; it's predominantly a public information meeting to explain the plan that the Committee finally voted out yesterday, and we will also entertain public comment on it.

Just recognize, as I'll explain to people tonight, the Committee obviously isn't going to meet again on this issue before it goes to the Council tomorrow and the Mid-Atlantic Council next week for a vote. So, it's largely public information, and it would take a huge need, I think, to influence it to go back to Committee, so I don't want to raise false hopes by saying it's a public hearing where the Committee then goes back and revisits that. That is only for a huge need.

CHAIRMAN JOSEPH BRANCALEONE: O.K. There's publications which have just been distributed. There are some on the back table, I believe, or the side table over there, and each one of you have just received a copy at your table.

David Borden?

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1 DAVID BORDEN: Thank you, Mr.  
2 Chairman.

3 Just briefly, I would like to meet  
4 with the Herring Committee as soon as we break. It  
5 should take five or ten minutes, and the issue is  
6 Canadian herring carrier applications. I want to  
7 have some discussion of that before we entertain  
8 the discussion forum.

9 CHAIRMAN JOSEPH BRANCALEONE: O.K.  
10 All right. If there's nothing else, thank you.  
11 And again, note -- No, there's not. Thank you.  
12 (WHEREUPON, the hearing  
13 adjourned at 5:00 p.m.)

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1 Let's move along. Aquaculture. John Nelson.  
 2 **AQUACULTURE COMMITTEE REPORT**  
 3 **JOHN NELSON: O.K., Mr. Chairman.**  
 4 Under Tab 2 is Aquaculture.  
 5 Last month, the Council approved a  
 6 draft language for inclusion in the various public  
 7 hearing documents for groundfish, scallops,  
 8 herring, Atlantic salmon. The language to allow  
 9 for aquaculture projects process to actually take  
 10 place with the Council.  
 11 After review of the draft language  
 12 that the Council approved for the public hearing  
 13 comment, NOAA general counsel reviewed it and  
 14 determined that we needed to have an objective, a  
 15 new objective, included in that language.  
 16 So, you had as a handout today the  
 17 draft language that you already approved, and it's  
 18 draft language for inclusion of the groundfish, sea  
 19 scallop, herring, and Atlantic salmon in the public  
 20 hearing document, and there's an objective placed  
 21 in that that we would like to have go to -- be  
 22 included in the public hearing document, and if you  
 23 can't find it, let me just read what the objective  
 24 says.

1 Opposed? Abstentions? Carries unanimous.  
 2 O.K. I think you're wearing them  
 3 down, John.  
 4 **JOHN NELSON: Apparently.**  
 5 The next item is on the Seastead  
 6 Site. Last month, we initiated action to include  
 7 the -- I'm starting to stutter, myself.  
 8 We initiated action to extend for 18  
 9 -- to extend the 18-month closure of that area so  
 10 that the continued research could be undertaken in  
 11 that area. Originally, it was requested that we  
 12 have a three-month extension, but we've narrowed  
 13 that down to 18 months, which was the original  
 14 extension -- or the original closure of that area.  
 15 The motion to the Council would be,  
 16 is that the Council approve a second month -- an  
 17 18-month extension of the area restrictions  
 18 associated with the Seastead Site and that it -- by  
 19 this, we also mean that there would be no hiatus  
 20 between the current closure and the proposed  
 21 closure. And the reason I added that last comment  
 22 in there is because, apparently, when the  
 23 applicants had asked for an 18-month closure  
 24 originally -- And I think that's what was approved

1 The objective states that the --  
 2 essentially, that the (inaudible) is "to facilitate  
 3 the siting of biologically and environmentally  
 4 sound aquaculture operations in the EEZ, given that  
 5 some projects cannot occur in federal waters  
 6 without modification to one or more of the New  
 7 England Fishery Management Council fishery  
 8 management plans."  
 9 That's the only new language to be  
 10 included in our language to go out to public  
 11 hearing, and I would move that we include the  
 12 objective -- aquaculture objective language for  
 13 inclusion in the groundfish, scallop, Atlantic  
 14 salmon, and herring FMP public hearing document.  
 15 **CHAIRMAN JOSEPH BRANCALEONE: Is**  
 16 **there a second?**  
 17 **PHIL COATES: Second.**  
 18 **CHAIRMAN JOSEPH BRANCALEONE: Phil**  
 19 **Coates.**  
 20 **Discussion?**  
 21 **All right. All those in favor**  
 22 **signify by saying "aye."**  
 23 **MULTIPLE VOICES: "Aye."**  
 24 **CHAIRMAN JOSEPH BRANCALEONE:**

1 by the Council -- and I think when the final rule  
 2 came out, the actual dates wound up having it as a  
 3 17-month closure, and it expires probably in July,  
 4 and we would prefer, if we can do whatever  
 5 technical correction is necessary, to not have a  
 6 gap in between the two closures or for the  
 7 extension of the closures.  
 8 So, I move that, Mr. Chairman.  
 9 **THOMAS HILL: Second.**  
 10 **CHAIRMAN JOSEPH BRANCALEONE:**  
 11 **Seconded by Tom Hill.**  
 12 **Discussion? Andy Rosenberg.**  
 13 **DR. ANDY ROSENBERG: Can you just**  
 14 **give me a minute to --**  
 15 **CHAIRMAN JOSEPH BRANCALEONE: Anyone**  
 16 **else have any discussion while we're waiting for**  
 17 **him?**  
 18 **JOHN NELSON: Let me just say, also,**  
 19 **Mr. Chairman, that Pat has checked -- Pat can get**  
 20 **up and say a few things if she needs to, but I**  
 21 **understand she's checked with various users of the**  
 22 **area, that people had expressed some concern in the**  
 23 **past about not being able to fish in those areas,**  
 24 **and from what I understand, nobody came to have any**



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1 concern with additional closures.  
 2 Pat, if you want to confirm that?  
 3 Pat confirms that.  
 4 CHAIRMAN JOSEPH BRANCALEONE: All  
 5 right. Andy?  
 6 DR. ANDY ROSENBERG: Thank you, Mr.  
 7 Chairman. I'm sure at this hour you really wanted  
 8 to hear my opinion about this entire project, but -  
 9 - and I'll try to be brief.  
 10 I looked at the framework adjustment  
 11 and I've also looked at the news article prior to  
 12 this, and I would note that the request for the  
 13 extension was only made a short time ago.  
 14 I'd also note that when we went  
 15 through the entire process of putting this thing  
 16 into place in the first instance, that it was a  
 17 request for an 18-month project and that there were  
 18 an incredible number of changes all along the way  
 19 during the regulatory process including, I believe,  
 20 at one of the final meetings a faxed change of the  
 21 actual area that was to be closed.  
 22 I then note in the news article that  
 23 one of the principals in the project is noting that  
 24 the whole problem is the regulatory requirement,

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1 and it took 30 months to get something into place.  
 2 He doesn't mention the fact -- Maybe he did to the  
 3 reporter -- that they were having a great deal of  
 4 difficulty providing the information for a well-  
 5 known and laid-out regulatory process.  
 6 Now, that's true for a framework  
 7 action, as well, and to run in a month before -- a  
 8 month or two before the project expires and said,  
 9 "Gee, how come you can't double the extension --  
 10 double the period of the project?" I find  
 11 irritating, to say the least.  
 12 I don't mind if the Council moves  
 13 forward to extend the project. I'm not going to  
 14 make any promises about trying to do anything  
 15 additional. This will go into the que as  
 16 everything else does.  
 17 This is a last-minute action for a  
 18 very poorly-managed project. If the Council wishes  
 19 to recommend the extension, I have no problem with  
 20 that. I do have a problem with asking my staff  
 21 and, frankly, your staff to go to extraordinary  
 22 lengths because they seem to feel that the  
 23 regulatory process should always adapt to them, as  
 24 opposed to following an existing process.

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1 I don't happen to see anybody from  
 2 Westport Scallop or whatever it's now called,  
 3 Seastead, in the room, or I probably would have  
 4 made my comments rather more extensive.  
 5 So, I'm going to abstain from the  
 6 motion.  
 7 With regard to no hiatus, I have no  
 8 idea whether there'll be a hiatus or not. It'll  
 9 get into place when it gets into place.  
 10 CHAIRMAN JOSEPH BRANCALEONE:  
 11 Barbara Stevenson.  
 12 BARBARA STEVENSON: I oppose the  
 13 original efforts on this project because I didn't  
 14 feel it was just going to be a project that was  
 15 going to be a permanent, existing feature to  
 16 benefit a small group of people, and for that  
 17 reason, I will oppose this motion.  
 18 JIM KENDALL: Barbara, I can't hear  
 19 you. I'm sorry.  
 20 CHAIRMAN JOSEPH BRANCALEONE: It  
 21 wasn't very loud. Brand new system, too.  
 22 BARBARA STEVENSON: O.K. I'll try  
 23 again. How's that?  
 24 I oppose the original application

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1 for this project because I thought that it was  
 2 going to end up being a permanent entity that would  
 3 be to the benefit of a relatively small group of  
 4 people, and for that reason, because this is the  
 5 beginning of that permanent entity, I will oppose  
 6 this motion.  
 7 CHAIRMAN JOSEPH BRANCALEONE: Phil  
 8 Coates.  
 9 PHIL COATES: I'm always getting  
 10 (inaudible). I'm going to support this motion  
 11 (inaudible). The way it worked, to sample the  
 12 abutters and tenants who were in the area and  
 13 (inaudible) to let them have another shot. And I  
 14 understand the frustration, but I (inaudible),  
 15 because we tend to see some of the same things  
 16 happening (inaudible). Some of the processes need  
 17 to be in place (inaudible).  
 18 CHAIRMAN JOSEPH BRANCALEONE: Jimmy  
 19 Kendall?  
 20 JAMES KENDALL: Yeah. I'm going to  
 21 support this motion, and I hope the rest of the  
 22 Council will to the extent that we can get it  
 23 passed.  
 24 I can appreciate some of Andy's

1 concerns about how dragged out in the beginning and  
 2 the change of the location of the actual original  
 3 proposal, but a lot of that was done to accommodate  
 4 the local fishermen who felt that they would be  
 5 infringed upon with this. I think they came to a  
 6 good understanding amongst themselves. I think  
 7 it's been pretty much trouble-free for the most  
 8 part, and I think it's just beginning to get where  
 9 it needs to be to carry on and, you know, get to  
 10 the point where they get the information out of  
 11 there to show what they need to find out about this  
 12 type of project, particularly in light of the rote  
 13 that went on earlier today for possible permanent  
 14 closures and the benefits to be gained by that.

15 This one, here, I see as being done  
 16 with the consensus of industry and, therefore, I  
 17 would hope that we could all support it.

18 CHAIRMAN JOSEPH BRANCALEONE: Andy,  
 19 comment?

20 DR. ANDY ROSENBERG: I agree with  
 21 what Jim just said about that a lot of the work was  
 22 done to accommodate concerns of local industry --  
 23 local fishermen working in that area. I think that  
 24 was important to do. I think it justified the

1 Service needs to do, the work the Service needs to  
 2 do, and so on. That's my frustration. It is not  
 3 with the industry that has tried to work with the  
 4 proposers or with the Council Staff.

5 CHAIRMAN JOSEPH BRANCALEONE: Phil  
 6 Coates.

7 PHIL COATES: And I would support  
 8 any language and any transmittal to the applicants  
 9 relative to that, such as Andy just stated.

10 CHAIRMAN JOSEPH BRANCALEONE: It's  
 11 not part of the motion. Discussion on the motion.

12 Ready? All those in favor signify  
 13 by saying "aye."

14 MULTIPLE VOICES: "Aye."

15 CHAIRMAN JOSEPH BRANCALEONE:  
 16 Opposed?

17 UNIDENTIFIED PERSON: "No."

18 CHAIRMAN JOSEPH BRANCALEONE:  
 19 Abstentions?

20 UNIDENTIFIED PERSON: "Abstain."

21 CHAIRMAN JOSEPH BRANCALEONE: One  
 22 "no" and one abstention.

23 Anything else under Aquaculture?

24 JOHN NELSON: No. That concludes my

1 time. I think that Pat has done an awful lot of  
 2 very good work to try to keep this thing doing.

3 My frustration is that I have  
 4 difficulty seeing that the people who are proposing  
 5 this have, in any way, acknowledged the importance  
 6 of doing things, such as accommodating time for  
 7 discussion with local fishermen and so on. They  
 8 only did that and dragged out this process because  
 9 they were unwilling to do it for a really long  
 10 time.

11 So, I entirely agree, this is not at  
 12 all -- my irritation is not at all directed at the  
 13 Council Staff, it's at the people who are managing  
 14 the project. I think the Council needs to send a  
 15 message back to them, if this is approved, that,  
 16 you know, "You need to work with us, as opposed to  
 17 standing up and saying, oh, the damn regulations,  
 18 it took them all this time to do something that was  
 19 very simple. Everybody knows we had a good idea."  
 20 That's the problem I have with this. They're  
 21 asking us to do things the last minute and in the  
 22 midst of a very difficult regulatory year without  
 23 any consideration of what the Council needs to do,  
 24 the discussions the Council needs to have, what the

1 report, Mr. Chairman.

2 CHAIRMAN JOSEPH BRANCALEONE: Let's  
 3 -- Before we break, I'm going to have -- Eric Smith  
 4 has the motion that dealt with the issue that Eric  
 5 Smith had -- I mean, Eric Smith has the motion that  
 6 dealt with Erik Anderson's concern. We can put the  
 7 motion on the table, and we will deal with it  
 8 tomorrow. So, do it.

9 ERIC SMITH: Yeah. This is the one  
 10 on groundfish subject that preceded the afternoon  
 11 break. The motion -- I'm going to read it. It's  
 12 not terribly long. "Move that the Council use the  
 13 most expeditious process, either Amendment 9,  
 14 Public Hearing Document, or a Framework Amendment,  
 15 to address the issue of a vessel being able to  
 16 engage in other fisheries, as long as those  
 17 fisheries are exempted under the multispecies  
 18 fishery management plan."

19 CHAIRMAN JOSEPH BRANCALEONE: O.K.  
 20 Is there a second?

21 ERIK ANDERSON: Second.

22 CHAIRMAN JOSEPH BRANCALEONE:  
 23 Seconded by Erik Anderson.

24 We will deal with that tomorrow.