

FINAL

FRAMEWORK ADJUSTMENT #2

to the

SEA SCALLOP FISHERY MANAGEMENT PLAN

September 21, 1994

Prepared by

New England Fishery Management Council

in consultation with

Mid-Atlantic Fishery Management Council

South Atlantic Fishery Management Council

National Marine Fisheries Service

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1.0 BACKGROUND

Amendment #4 to Fishery Management Plan for Atlantic Sea Scallops, Placopecten magellanicus (Gmelin) was approved on November 5, 1993, but its implementation was delayed until March 1, 1994 because of the difficulty in obtaining the new gear, especially rings.

The objectives of the amendment are:

- 1) restore adult stock abundance and age distribution;
- 2) increase yield per recruit for each stock;
- 3) evaluate plan research, development and enforcement costs; and
- 4) minimize adverse environmental impacts on sea scallops.

Amendment #4 changed management from a meat count (size) control to one which uses both effort and size controls for all resource areas. In place of the meat count, the amendment controls total fishing effort through limited access and a schedule of reductions in allowable time at sea. Supplemental measures limit increases in vessel fishing power to control the amount of fishing pressure and to help control the size of scallops landed. These measures include gear restrictions, limits on the number of crew members and vessel restrictions. There are also catch limits for vessels not in the limited access fishery. The amendment includes a framework procedure for adjusting all the management measures in the plan.

Amendment #4 states that "Owners wishing to fish with their vessels in state waters under state regulations may relinquish their limited access permit to the Regional Director of the National Marine Fisheries Service (NMFS). That permit may be held by the Regional Director for the applicant's future use if he expresses his intention to re-enter the scallop fishery in the Exclusive Economic Zone (EEZ) at a later date."

However, the regulations approved by the Council on August 10, 1993 and implementing Amendment #4 (59FR12, pp. 2757-2777, dated January 19, 1994) describe a days-at-sea (DAS) exemption program: "Any vessel holding a limited access scallop permit under section 650.4(a) may request an exemption from the DAS program, as follows: while scallop fishing exclusively landward of the outer boundary of a state's waters. Any such exemption granted will exempt the vessel from the DAS requirements specified under section 650.24(c)."

At its May 11, 1994 meeting the Council voted to "... approve that this be meeting one of the expedited rule making process under which the Council would address a permit tendering procedure that would allow vessels fishing within state waters under the regulations or laws of a particular state that happened to have federal permits to fish in those waters without these days accruing as days-at-sea under the federal fishery management plan."

Nevertheless, June 30, 1994 was the initial public meeting for Framework #2, at which the Council sent to Committee the resolution of the Regional Director's objections to the permit tendering idea, largely based on administrative and enforcement concerns. On September 21, 1994, the Council held the final public meeting for Framework #2 and approved the gear exemption as final regulations, a change from the full permit tendering of the initial meeting.

2.0 PURPOSE AND NEED

2.1 Gear exemption

The regulations exempt vessels from restrictions on days-at-sea only (see section 3.1 below) while fishing in state waters, but the Council believes that these vessels should also be exempt from gear regulations (as an alternative to full permit tendering) if the state in question has restrictive gear regulations that would not compromise the fishing mortality/effort reduction program in the EEZ. There are several reasons for replacing full permit tendering with a gear exemption, as follows:

1) A reduction in fishing mortality on the major stocks is expected, because general category as well as limited access permit holders are included in the proposed exemption (see Section 4.1, Biologic impacts, for more detail). The Gulf of Maine and Cape Cod stocks of sea scallops are separate from the major stocks on Georges Bank and in the Mid-Atlantic area, and are not included in the estimates of fishing mortality or in the rebuilding program. The Gulf of Maine fishery is 80 % within state waters based on landings (Status of the Stocks, 1993) and thus predominately a state responsibility. State waters exemptions for harvesting sea scallops will be allowed only in the states of Maine, New Hampshire, and Massachusetts where sea scallops actually exist. Not implementing an exemption fails to provide an alternative for vessels in the general permit category other than to cancel their federal permits and be exempt from all federal requirements including reporting of landings. They would be able to re-apply for a federal permit at anytime.

2) The gear exemption preserves existing state fishing rights and programs, and allows for fairer competition among state-water fishermen (see Section 4.2, Economic impacts, for more detail). Without such a provision fishermen holding federal permits would be at a competitive disadvantage in state waters. For example, in Maine state waters, state waters fishermen may fish with one 5-1/2 foot dredge and 3" rings but fishermen holding federal permits must fish with a single 5-1/2 foot dredge and 3-1/4" rings (3-1/2" rings after 1995).

The Gulf of Maine sea scallop resource normally consists of beds of spatfall which are all of the same year class and thus all of the same shell size. A fleet of boats with 3" rings will leave virtually nothing for the remaining fleet with 3-1/4" rings or larger. The other states have similar, more restrictive regulations than the federal regulations.

3) The continuation of vessel tracking system (VTS) usage and, to some degree, data reporting requirements will help assure that all limited access boats fishing under the exemption program remain within the state's waters.

4) Publication as a final rule is needed to give fishermen the opportunity to fish in Maine and New Hampshire state waters beginning on November 1 without being required to make costly gear modifications.

Amendment #4 regulations fall into four categories: 1) DAS control, 2) gear restrictions (including crew size and vessel configuration), 3) data reporting (log books, dealer reports, permit requirements) and 4) VTS requirements (vessel tracking). The state waters exemption may range from simply not accruing DAS (the current exemption program) to being exempt from all four categories of regulations. Alternatives to this exemption program could exempt federal permit holders from one or more of the four categories of federal scallop regulations mentioned above. These alternatives are discussed in section 3.2.

2.2 Publication of Proposed Action as a Final Rule

The Council considered the following factors and recommends that NMFS publish the proposed management measures as a final rule.

2.2.1 Timing of the Rule

Data availability or the need to have the measures in place for an entire harvesting season were not factors considered by the Council in its decision to recommend publishing the adjusted management measures as a final rule.

2.2.2 Opportunity for Public Comment

There has been adequate notice and opportunity for the public and members of the scallop industry to participate in the development of the Council's recommended management measures. The framework process began on May 11, 1994 when the Council directed its staff to evaluate the differences between the permit tendering provisions included in the amendment and the DAS exemption implemented under the regulations. This information was forwarded to the Council on June 30, 1994, the initial public meeting under the framework process as published in 59 FR 118, pp. 31982 on June 21, 1994. The subsequent Scallop Committee meeting on August 30, 1994, where the committee reviewed the staff's options paper and changed the preferred alternative from full permit tendering to a gear exemption, provided additional opportunity for public comment.

A draft document providing the rationale and impact analysis of the proposed measures was published on September 15, 1994. This document was mailed to Scallop Industry Advisory Committee members and the Council's interested parties. Copies were also provided to the NMFS Regional Office and the NMFS Northeast Fisheries Science Center. The third and final required public meeting was the September 21, 1994 Council meeting. In addition to the Council's normal meeting announcements, public notice of this meeting was given in 59 FR 178, pp. 47307-47308 on September 15, 1994.

2.2.3 Need for Immediate Resource Protection

The need for immediate protection of the resource is not relevant to this framework. However, with the upcoming season in Maine and New Hampshire state waters from November 1 to April 15 (April 14 in N.H.), it is critical that fishermen have as much time as possible to plan their

fishing strategy and begin fishing in state waters on November 1. Unnecessary delay of this adjustment would significantly increase the costs to industry by requiring time to change to the appropriate ring size and back again, or simply forgo the opportunity to fish.

The Council strongly recommends that the gear exemption rules be published as a final rule because fishermen are now planning their operations to meet the current regulations. Depending on how they fish for scallops, fishermen may be required to make unnecessary gear modifications.

2.2.4 Continuing Evaluation

The Council will continue to evaluate the proposed measures. VTS operation will be required to monitor and to assure that limited access vessels fishing under the proposed gear exemption are in fact fishing only in state waters. Federal data reporting requirements will also continue to provide landings and effort data from all vessels fishing under the exemption, to monitor the Gulf of Maine scallop resource which remains as part of the management unit.

Additionally, Amendment #4 implements a pause in the mortality reduction schedule during the third year to evaluate the FMP's progress in eliminating overfishing. Subsequently, the Council intends to recommend any further adjustments necessary to achieve the FMP's objectives and eliminate overfishing by the seventh year.

3.0 PROPOSED ACTION AND ALTERNATIVES

3.1 Proposed action - Exemption from federal restrictions on scallop gear

Vessels with either general category or limited access permits may enter an exemption program to fish strictly in state waters, similar to that found in section 650.27 of the regulations. While fishing in the exemption program, vessels currently are not required to count their fishing time as part of their DAS allocations. The proposed action also would not require adherence to federal gear and crew restrictions (see section 650.21), if the state in whose waters the exemption takes place has its own gear and/or crew restrictions applicable to Atlantic sea scallops.

Gear and crew restrictions include, for trawls, 144 feet maximum sweep, 5-1/2 inch minimum mesh (5 inches south of Cape May for the first two years), only legal nets available for immediate use, no device or material [obstructing] the top of the trawl, and no twisted knots. For dredges, both limited access and general category, these restrictions include 31 feet maximum dredge width, 3-1/4 inch minimum ring size, 5-1/2 inch minimum mesh in the twine top, no chafing gear or cookies or other obstructions and only double links between rings on the top of the dredge. All vessels are restricted to nine [seven until December 31, 1994] or less crew size, no sorting or shucking machines for shucking operations.

Removing any or all of these restrictions does not affect the effort reduction management program if the state has similar or more restrictive gear and/or crew regulations and these vessels fish strictly in state waters on the Gulf of Maine and Cape Cod stocks. Further, general category permit holders would continue to be subject to the 400 pound limit, and all federal permit holders subject to reporting and VTS requirements.

3.2 Exemption Program Options

3.2.1 DAS exemption (No action)

Vessels may enter an exemption program to fish strictly in state waters, as described in section 650.27 of the regulations.

Any vessel holding a limited access scallop permit may request an exemption from the DAS program, while scallop fishing exclusively landward of the outer boundary of a state's waters. Any such exemption granted will exempt the vessel from the DAS requirements. Vessel owners may request the start/end of an exemption via VTS prior to the first trip in/out of the program. Vessel owners may request the start of an exemption via fax or phone 7 days prior to the first trip in the program, and must remain in the program a minimum of 7 days. These vessels may not leave port to fish for scallops in the EEZ until 48 hours after notification of *early* withdrawal is received by the Regional Director. A vessel participating in the DAS exemption program may not fish in the EEZ during the participation period. Participation in the DAS exemption program

expires when the owner's or vessel's name changes. Vessels participating in the DAS exemption program continue to be subject to all the other requirements of the regulations.

3.2.2 DAS, gear and reporting exemptions

In addition to the exemptions described above in 3.2.2, vessels may enter an exemption program to fish strictly in state waters which would not require data reporting as found in section 650.7(b), logbooks. Dealers would continue to be required to submit weekly reports (weighouts) of all fishing trips landed regardless of where the fish were caught, i.e., from state waters or the EEZ. A framework category would be included in the list under framework specifications, to reinstate the data reporting requirement (logbooks) if it were determined that large quantities of scallops landed from "state waters" were supplanting logbook reports from the EEZ.

3.2.3 Permit tendering

Vessels may tender their permit, by sending their copy to the Regional Director via registered mail, to fish strictly in state waters which would not require continuous VTS monitoring as found in sections 650.9(b)(2) and 650.25(a)(4), data reporting as found in section 650.7(b), logbooks, adherence to gear and crew restrictions (see section 650.21), accrual of DAS while fishing under state regulations (see section 650.24(c)), and any other federal regulations. A framework category would be included in the list under framework specifications, to reinstate the VTS monitoring requirement if it were determined that large numbers of limited access vessels were operating in "state waters", thus reversing the overwhelming proportion of days at sea historically spent in the EEZ.

Vessels could tender their federal permits only to fish in state waters which contain a sea scallop fishery and have a state sea scallop or shellfish permit requirement. Vessels would have to abide by all state regulations regarding sea scallops. Vessel owners seeking to tender their federal permits must present evidence of the appropriate state permits. The state must, in writing to the Regional Director, elect to participate in the permit tendering program described by this section. NMFS permit office must notify the appropriate state of the vessel which has tendered its permit to fish strictly in that state's waters, and the duration of the tender period {of which there may only be one per year}. The vessel must not enter or transit the EEZ, nor the waters of another state unless such other state is participating in the permit tendering program described by this section and the vessel is enrolled in that state's program.

4.0 ANALYSIS OF IMPACTS

4.1 Biologic impacts

The Gulf of Maine and Cape Cod stocks of sea scallops are separate from the major stocks, and are not included in the estimates of fishing mortality. State water exemptions for fishing for sea scallops are expected only in the states of Maine, New Hampshire, and Massachusetts where sea scallops actually exist. If general category permit holders are included in the proposed exemption, then a further reduction in fishing mortality on the major stocks may also occur.

Gulf of Maine, including Cape Cod, stocks are separate from the Georges Bank and Mid-Atlantic stocks. The National Marine Fisheries Service indicates that north of Cape Cod concentrations of sea scallops are generally scattered in shallow water less than 20 m (11 fathoms) deep which are predominantly in state waters.¹ The long-term potential catch for the Gulf of Maine, including Cape Cod bay, is classified as being from territorial waters within that resource area. The document also shows that more than 80 percent of the catch in the Gulf of Maine was from state territorial waters (less than 3 nmi from shore) indicated continued dependence of the fishery on inshore scallop beds during 1992.

The overfishing definition and threshold found in Amendment #4 are calculated for the Georges Bank/Mid-Atlantic stocks of Atlantic sea scallops (page 34 and Appendix I). That is because annual surveys, from which fishing mortality rates are calculated, are not done within the Gulf of Maine/Cape Cod resource areas. Only sporadic surveys have been done in the latter areas for sea scallops. Thus, fishing mortalities on the Gulf of Maine/Cape Cod stocks have not and will not be measured for the purpose of reducing fishing effort in the Atlantic sea scallop fishery.

The waters of Maine, New Hampshire and Massachusetts, north of Cape Cod, are the only places where state water exemptions are expected to occur. The Status of the Stocks document referenced above indicates that sea scallops normally are found at depths between 40 and 200 m (22 to 110 fathoms) south of Cape Cod. Therefore, no state water fisheries exist from Massachusetts south of Cape Cod to the southern extent of the Atlantic sea scallop's range off of North Carolina.

General category permit holders are included under the gear exemption, thus fishing mortality on the Georges Bank/Mid-Atlantic stocks is expected to be lower. If general permit holders were put at a competitive disadvantage in state water fisheries by not being able to enter the state waters exemption, then they may be expected to prolong their EEZ scallop fisheries and land more trips under the 400 pound possession limit. General permits are included in the state

¹ Status of Fishery Resources off the Northeastern United States for 1993, NOAA Technical Memorandum NMFS-F/NEC-101, October 1993.

waters exemption program because these vessels may no longer be able to cancel their federal permits at will.

4.2 Economic impacts

The gear exemption allows fairer competition among state-water fishermen. Without such a provision fishermen not holding Federal permits would have an undue competitive advantage in state waters. For instance, in Maine state waters endemic state waters fishermen may fish with one, 5-1/2 foot dredge and 3" rings but federally permitted fishermen must fish with one, 5-1/2 foot dredge and 3-1/4" rings (3-1/2" rings after 1995). Federally permitted fishermen must follow the more restrictive regulation, and therefore cannot use their 31' dredges in Maine state waters. The Gulf of Maine sea scallop resource normally consists of beds of spatfall which are largely of the same year class and thus of the same size. A fleet of boats with 3" rings will leave few scallops for the remaining fleet with 3-1/4" rings or larger.

There is also an additional cost of rebuilding the 5-1/2 foot dredges with 3-1/4" rings this year and 3-1/2" rings next year, without the exemption program. The costs of building dredges with the new ringsize is estimated at \$2000 for each 10-1/2' dredge for 3-1/4" rings in 1994-1995 and again for 3-1/2" rings in 1996 (personal communication, New Bedford gear dealer). Costs for smaller dredges should be roughly the same. Table 1 shows the total number of potential participants: 473 vessels with federal scallop permits (of all types) with principal state listed as Maine. Additionally, all 2230 federally permitted scallop boats may participate, and may incur these costs, in the Maine state waters fishery because it is not limited to just Maine boats. Unfortunately, dollar impacts on gross revenues cannot be estimated because dealer reports and logbooks are currently unavailable for 1994.

The other states have regulations similar to or more restrictive than federal regulations (Table 2). In New Hampshire, as well as Maine, state waters scallops may be caught only during a five and one-half month season from November 1 to April 15. Further, Maine prohibits night-time dragging for scallops, effectively halving the time available to harvest them. New Hampshire is proposing an even smaller dredge width (4 feet) and larger mesh size (6 inches) than any other state or federal regulation. Massachusetts has a limited access system which excludes any vessel which did not land sea scallops from its state waters during the period 1988-1992 (limiting the potential participants to approximately 400), and allows the vessel only one, 10 foot dredge to catch scallops.

Table 1: Federal sea scallop permits by principal state, through August 25, 1994

PRINCIPAL STATE	FULL-TIME	PART-TIME	OCCASIONAL	GENERAL	TOTAL
Unknown	.	.	.	1	1
Maine	6	6	17	444	473
Mass.	111	4	12	764	891
Other N.E.	6	2	2	239	249
New Jersey	32	11	9	146	198
Virginia	62	10	10	30	112
Other Mid-Atlantic	3	2	3	197	205
N. Carolina	16	22	15	42	95
Other S. Atl.	1	.	1	4	6
TOTAL	237	57	69	1867	2230

Table 2: Listing of the relevant state and federal regulations

	MAINE	N.H. ²	MASS.	FEDERAL
DREDGE WIDTH	one dredge 4.5 ' to 10.5 ' by area	one - 4 ' dredge	10 ' total length	two - 31 ' total length; one - 10.5 feet
RING SIZE	3 "	3-1/4 " 94-95 then 3-1/2"	3-1/4 " 94-95 then 3-1/2"	3-1/4 " 94-95 then 3-1/2"
DREDGE TWINE	na	6 " minimum mesh	na	5-1/2 " min. mesh
OBSTRUC- TIONS	na	no chafing gear, liners, etc.	na	no chafing gear, liners; two links
TRAWL GEAR	not allowed	not allowed; dredge and by hand only	na	144 ' sweep, 5-1/2 " mesh, for limited access boats
SHELL HEIGHT	3-1/4 " no transfer	3-1/2 "	3-1/2 "	3-1/2 "
CREW SIZE	na	na	na	7 for 1994, then 9
POSSESSION	na	na	na	400 lbs. per trip, general category
BY-CATCH	na	none allowed	na	follows other FMP's
LIMITED ACCESS	na	na	1988-92 participants	full-time, part-time, occasional
DAYS AT SEA	Nov. 1 - Apr. 15 Season	Nov. 1 - Apr. 14 Season	na	limited access boats only
OTHER	no night-time dragging			no transfer at sea

²Proposed, public hearings October-November 1994.

4.3 Social, Fishery and safety impacts

The social impacts of the proposed action, insofar as it allows more fishing opportunity, is described above under the economic impacts (section 4.2). Fishery impacts are likewise described in that section, showing that the proposed action is expected to result in more of the general permit holders prosecuting the state water fishery in Maine.

Given the nature of the fishery as described above, the proposed action is not expected to have any safety implications.

4.4 Enforcement Concerns

Most scallop fishing in the Gulf of Maine takes place within state waters due to the location of the depth strata in which scallops live. Eighty percent of the landings have been attributed to the state waters fishery and this distribution of landings is believed to accurately reflect the geographical distribution of the resource between state and federal waters. The primary federal enforcement concern regarding this resource is that vessels with state permits might fish in the federal zone without a federal permit or with gear that does not meet federal requirements. This problem exists, however, whether or not an exemption program is implemented. Without an exemption program, federal enforcement personnel must still monitor scallop gear used in state waters by the approximately 29 federal limited access permit holders that land primarily in Maine. Implementing an exemption program would not create any burden, that does not already exist, in terms of monitoring these vessels in federal waters.

The proposed exemption program also would not increase the burden of enforcing scallop regulations for general category federal permit holders. These permit holders already have the option of cancelling their federal permits when the state scallop season opens in November and then re-acquiring them when the season ends in April of the following year. If they choose to fish under state regulations they may already do so without violating federal regulations. The purpose of allowing them to fish under an exemption program is to provide them with incentives to continue to report their landings and effort data through the federal logbook system. The incentive to fish under the gear exemption is to avoid the inconvenience surrendering and re-applying for a federal scallop permit rather than simply renewing the permit.

5.0 APPLICABLE LAW

5.1 Magnuson Act - Consistency with National Standards

Section 301 of the FCMA requires that any regulation promulgated to implement any FMP or amendment shall be consistent with the seven national standards listed below.

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

The proposed action is expected to lessen fishing mortality on the Georges Bank/Mid-Atlantic stocks. Fishermen who hold general permits will be included in the state water exemption program and may be expected to reduce scallop fishing in the EEZ and land fewer 400 pound trips.

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

Information on the extent of the state waters fisheries was obtained from the "Status of the Stocks, 1993", which is part of the Stock Assessment and Fisheries Evaluation provided to the Council by the NMFS. The number of vessels participating and the impacts expected are based on the most recent federal permit data (as of August 25, 1994). Unfortunately, dealer reports and fisherman logbooks are unavailable for 1994. Call-in information, which might indicate how many of the limited access permit holders are actually fishing, is also unavailable. Most importantly, the VTS program, which will give exact location and is critical to the proper enforcement of the state waters program, is yet to be implemented. It must be noted that the proposed action was changed from full permit tendering to a gear exemption because the latter would require VTS monitoring and assure the integrity of state water exemptions.

3. *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 gear exemption will allow the continuance of state regulation of the separate, Gulf of Maine/Cape Cod sea scallop stocks, in close coordination with the federal program to reduce fishing mortality on the Georges Bank/Mid-Atlantic stocks. The management unit remains the Atlantic sea scallop throughout its range.

4. *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.

The exemption program applies equally to all states that have a state waters scallop fishery. The Maine state water scallop fishery is open to residents of all states. The purpose of the gear exemption is to make participation in the Gulf of Maine state waters fishery fair and equitable to all fishermen, by allowing them to use the same gear. The proposed gear exemption has no implications for the allocation of fishing privileges.

5. *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 proposed action is expected to remove the necessity of rebuilding the 5-1/2' dredges used in the Maine state water fishery. Costs of rebuilding and of replacing the 3" rings with 3-1/4" rings in 1994-95 and again with 3-1/2" rings in 1996 will be avoided.

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

The purpose of this framework adjustment is to allow for variations in the way scallop fishing is managed and conducted in the waters of different states. The Council is making this adjustment to the regulations using the framework abbreviated rulemaking procedure established by Amendment #4 to the Atlantic sea scallop FMP. As such, the Council is acting in a manner which is fully consistent with the guidelines for this national standard as contained in Section 602 of 50 CFR.

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

The proposed action is expected to reduce the cost of fishing in state waters fisheries. The gear exemption will allow one set of regulations to govern the state waters fisheries on the separate, Gulf of Maine/Cape Cod stocks, and another set of regulations, on the Georges Bank/Mid-Atlantic EEZ stocks, thus avoiding regulatory overkill. Further, the gear exemption is merely another provision within the existing DAS exemption program, now referenced as the state waters exemption program, and as such should not entail any additional administrative costs.

Fishery Impact Statement

Section 303 (a) (9) of the Magnuson Act requires a fishery impact statement describing the likely effects of a plan or amendment on participants in the fishery and in other fisheries. Sections 4.1 and 5.3 of this document describe the impacts of the proposed action on the industry and the resource. This action is being taken as an adjustment to the plan which was promulgated under Amendment #4. The proposed action is expected to lessen impacts on other fisheries by allowing federal permit holders the flexibility to fish in the state waters scallop

fishery as they had in the past. For a discussion of the impacts of that amendment on fisheries, see Section VII.H (pp. 144-148) and other sections of the amendment document.

5.2 National Environmental Policy Act (NEPA)

The Council conducted an Environmental Assessment of Amendment #4 to the Atlantic sea scallop FMP which included a permit tendering provision to fish in state waters. For Amendment #4 implementing the scallop effort reduction program and other measures, the Council produced an Environmental Impact Statement which is contained in Volume I of the amendment document.

Amendment #4 thoroughly describes the environment that would be affected by scallop fishing. It is not expected that this adjustment will significantly alter the natural or human environment, either in the EEZ or state waters. The environmental consequences of the proposed adjustment fall within the scope of those analyzed.

The proposed measure to exempt gear regulations from those vessels in the state waters also will have a positive impact on the human environment. Fishermen who otherwise would have to give up fishing in state waters may now do so using the appropriate state gear regulations. Subsequently, fishermen will have higher landings but not from the stocks where effort and fishing mortality must be reduced.

The proposed action not to regulate gear in state waters where state gear regulations apply also has no significant environmental or human impacts beyond those identified in Amendment #4. Gear restrictions in state waters are not necessary to achieve FMP objectives, because the two stocks in question, the Gulf of Maine and Cape Cod, were not included in the biological assessment used to measure fishing mortality. The proposed actions not to regulate gear do not have adverse human impacts because they allow traditional fishing practices in state waters rather than imposing additional restrictions relevant to the EEZ. They also do not require vessel owners and operators to make additional expenditures to comply with the regulations.

The continuation of logbooks and VTS monitoring requirements will help to assure that the exempted vessels fish strictly in state waters. These measures will preclude non-compliance with or problems in monitoring the state-waters-only restrictions.

5.2.1 Environmental Assessment

The purpose and need for the proposed action are discussed in Section 2.1. The proposed action and alternatives, including the no-action alternative, are discussed in Section 3.0. Further detail on the affected environment can be found in Section VI of Amendment #4. The environmental consequences are discussed in Section 4.0 of this document. Based on this analysis, the Council finds that the proposed action will have no significant impact on the environment.

5.2.2 Finding of no significant environmental impact (FONSI)

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

- 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 proposed action is being taken, in part, to prevent an increase in fishing effort directed at EEZ sea scallops by general category permit holders who may land up to 400 pounds per trip. Given that these participants may avoid state water scallop fisheries if they are at a disadvantage due to gear configuration, the displacement of fishing effort out of these other regulated fisheries and into the EEZ will increase.

- 2) *Can the proposed action be reasonably expected to allow substantial damage to the ocean and coastal habitats?*

The proposed action is not expected to impact coastal or ocean habitat. In fact, using state gear restrictions in state waters fisheries will result in lower impacts on the ocean floor overall, because maximum dredge widths in the appropriate states range from 1/3 to 1/8 of the maximum dredge width allowed under federal gear restrictions.

- 3) *Can the proposed action be reasonably expected to have an adverse impact on public health or safety?*

The measure is not expected to have any impact on public health or safety.

- 4) *Can the proposed action be reasonably expected to have an adverse effect on endangered, threatened species or a marine mammal population?*

The NMFS Biological Opinion for Amendment #4, issued under authority of Section 7 (a) (2) of the Endangered Species Act indicated that the "fishing operations conducted under the amended FMP are not likely to adversely impact threatened or endangered species under the jurisdiction of NMFS." The proposed measure does not change that finding.

- 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 be a part of the overall sea scallop management program implemented through Amendment #4. As such the cumulative effect is expected to be consistent with that of the Atlantic sea scallop FMP. The proposed action is not expected to add to the effect of the FMP on other stocks. The inclusion of limited access permit holders in state waters with state gear restrictions will not affect the resource recovery of the Georges Bank/Mid-Atlantic stocks, and the diversion of general permit holders into state water fisheries will hasten the recovery.

The guidelines on the determination of significance also identify two other factors to be considered: degree of controversy and socio-economic effects. Since the proposed action is an adjustment to an existing exemption program, the Council expects no significant socio-economic impacts. The Council also has determined that the proposal is not controversial since there has been no substantial dispute on the environmental effects of the proposed action. 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 and in the DSEIS for Amendment #4 to the Atlantic sea scallop Fishery Management Plan, 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 is not necessary.

Assistant Administrator
for Fisheries, NOAA

5.3 Regulatory Impact Review (Regulatory Flexibility Act and Executive Order 12866)

This section provides the information necessary for the Secretary of Commerce to address the requirements of Executive Order 12866 and the Regulatory Flexibility Act. The purpose and need for management (statement of the problem) is described in Section 2.0 of this document. The alternative management measures of the proposed regulatory action are described in Section 3.0. The economic impact analysis is in Section 4.2 and is summarized below under the discussion of how the proposed action is characterized under Executive Order 12866 and the Regulatory Flexibility Act.

5.3.1 Executive Order 12866

The proposed action does not constitute a significant regulatory action under Executive Order 12866. (1) As stated in section 4.2, the management proposals will not significantly impact the landings and revenues of the existing fishery, and will slightly lower the costs. Therefore, the proposed action will not have an annual effect on the economy of more than \$100 million. (2) The proposed actions will not adversely affect in a material way the economy, productivity, competition and jobs. In fact, the gear exemption in state waters will enhance productivity and promote competition by eliminating the competitive advantage which exists in state waters fisheries. (3) It will not affect competition, jobs, the environment, public health or safety, or state, local or tribal governments and communities. Rather, it will maintain consistency with existing state gear restrictions in state waters. (4) For the same reasons, the proposed action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. All three states in question, Maine, New Hampshire, and Massachusetts, have or have proposed gear regulations that 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. Regulations regarding gear configuration have long been used to manage other fisheries in the EEZ and state waters.

5.3.2 Regulatory Flexibility Act

The Atlantic sea scallop fishing industry directly affected by the proposed action is composed primarily of small business entities operating in the New England and Mid-Atlantic areas as far south as North Carolina. The number of operating units (vessels), by permit category, is given in Table 1. There are also *five* full-time and *six* part-time permits issued under the small dredge exemption program (§ 650.21(e)). Dealers that process and market sea scallops are not expected to be affected by the proposed action. The Council has consulted its industry advisors and listened to public comment to assure that no groups within the industry are unduly impacted.

The proposed action will not have a "significant economic impact on small entities" and does not require a Regulatory Flexibility Analysis for the following three reasons. First, the proposed action will not reduce long-term annual gross revenues by more than five percent. Second, the costs of ensuring compliance are not expected to change because the proposed action is merely an additional criterion to an existing exemption program. The proposed action, therefore, will not increase total costs of production by more than five percent as a result of an increase in compliance costs nor will it increase compliance costs as a percent of sales for small entities at least ten percent higher than compliance costs as a percent of sales for large entities. Third, the proposed action is unlikely to force vessels to cease business operations. Many vessels which traditionally fish both in state waters and the EEZ will, in fact, have a better opportunity to survive.

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.

5.4 Endangered Species Act

See section XI, Volume I of Amendment #4 to the Atlantic Sea Scallop FMP. The Council finds no cause to change its earlier findings with respect to the Endangered Species Act requirements.

5.5 Coastal Zone Management Act

Upon the submission of Amendment #4, the Council conducted a review of the FMP for its consistency with the coastal zone management plans of the affected states and all the states concurred with the Council's consistency determination. See section X, Volume I of Amendment #4 to the Atlantic Sea Scallop FMP for the Council's consistency determination. Those states' response letters are on file at the Council office. The Council has determined that the proposed action is within the scope of measures already reviewed and that the consistency

determination done for Amendment #4 is sufficient. The affected coastal states have been informed of this decision. The states' response letters to this determination concerning Framework #2 will be on file at the Council office.

5.6 Paperwork Reduction Act

Copies of the PRA for Amendment #4 to the Atlantic Sea Scallop FMP are available from the NMFS Regional Office. The burden-hour estimates are detailed in the Classification section of the Federal Register notice of the final rule implementing the amendment (Federal Register, vol. 59, no. 12, pp. 2762-2763, January 19, 1994).

The proposed action does not include any additional paperwork or reporting requirements by redefining the DAS exemption program as a state waters exemption program.

5.7 Marine Mammal Protection Act

See section XII, Volume I of Amendment #4 to the Atlantic Sea Scallop FMP. The Council finds no cause to change its earlier findings with respect to the Marine Mammal Protection Act requirements.

6.0 Amendatory Language

The following amendments provide specific language to revise or replace existing sections in Amendment #4 to the Atlantic sea scallop FMP.

The fourth paragraph in section V.B., Permits, is replaced with:

Vessels that opt to fish in state waters for scallops according to state regulations may enter a state waters exemptions program. Vessels fishing under the program are exempt from counting days at sea (DAS), crew size and gear restrictions, as long as the state in question has its own gear restrictions applicable to scallops caught in its waters [i.e., Maine, Massachusetts, New Hampshire]. These vessels must also continue to report landings and other data, and VTS must be left on continuously.

Under section 821, Fishing Effort Control, replace the paragraph on page 167, Tendering a permit, as follows:

State Waters Exemption: Owners wishing to fish in state waters for scallops according to state regulations may enter the state waters exemption program. Vessels fishing under the program are exempt from counting their fishing time against their federal days at sea (DAS) allocations and from crew size and gear restrictions, as long as the state in question has its own gear restrictions applicable to scallops caught in its waters [i.e., Maine, Massachusetts, New Hampshire]. These vessels must also continue to report landings and other data, and their VTS must be left on continuously.

7.0 Response to Public Comments

1. Under the current plan, fishing in Maine state waters with 3 inch rings and a 4-1/2 foot dredge is a violation.

Current regulations would require federal permit holders to change the rings on their dredges (4-1/2 to 30 feet) to 3-1/4 inches during the 1994-5 season, and again to 3-1/2 inches in 1996, even if they were fishing strictly in the state of Maine's waters. The exemption will allow fishermen to continue to use the traditional 4-1/2 foot to 10-1/2 foot dredge with 3 inch rings as required by state law.

2. There is no way to assure that boats will stay in state waters. We must require the vessel tracking system (VTS).

The VTS is required while in the state waters exemption program for all limited access vessels which are required to have them under federal permit. All general permit holders and limited access vessels in the occasional category will not have to continue to call-in while in the state waters exemption, but they will be required to report landings and other data.

3. The Coast Guard was concerned that it will be difficult to determine whose in and out of state waters.

Fishermen state that they are certainly aware of when they're in state waters, for those who intend to live by the regulations. Vessels will be listed as current participants while under the state waters exemption, and as such will be immediately suspect if sighted within the EEZ by the Coast Guard or any other vessels.

4. The Maine Scallopers Association was concerned about the cost of the VTS and supported the exemption to 3-1/4 and 3-1/2 inch rings.

The gear exemption was initiated directly in response to the state waters fishery which traditionally existed in the Gulf of Maine. It was recognized that it was pointless to require inshore fishermen to rebuild their gear twice in two years when they have no measureable effect on the fishing mortality on the major stocks under management in Georges Bank and the Mid-Atlantic. Further, no vessels will be required to purchase VTS because of the gear exemption; only vessels which are already required to use VTS while in the limited access scallop fishery must use VTS while participating in the state waters fishery.

5. VTS shouldn't be mandatory in this exemption or at all.

As described above under number 4, no vessels will be required to purchase VTS because of the gear exemption; only vessels which are already required to use VTS while in the limited access scallop fishery must leave them running while participating in the state waters fishery. The Council has determined that the VTS offers the most effective means for assuring that vessels do in fact remain within state waters while under the exemption, for those vessels which are already required to have VTS under the limited access fishery. Likewise, the Council has determined that the VTS is the most effective method to measure the days at sea required under the limited access fishery, at this time.

6. In support of the gear exemption, the Council should be regulating the fishery and not the fishermen. The Council wishes to allow the states to regulate the inshore Gulf of Maine fishery as a whole, and in a consistent manner. Meanwhile, the Council is regulating the offshore scallop fishery throughout its range and in a consistent manner. It does not make any sense to have individual fishermen governed by different regulations while participating in the same fishery, whether inshore or offshore.

7. Permit tendering is more expeditious for those with general category permits. Nevertheless, the gear exemption is a compromise, and does not present a resource problem.

If either or both the permit tendering and state waters exemption alternatives encourage more general category permit vessels to fish for scallops in state waters, then fishing pressure on the major stocks in the EEZ will be lessened. The gear exemption allows limited access vessels another fishing opportunity; general permit vessels may choose the most expeditious way to pursue state waters fisheries, through the exemption program or federal permit cancellation.

APPENDIX I

Public comments on Framework #2

Atlantic Sea Scallop FMP