

FINAL

FRAMEWORK ADJUSTMENT #9

to the

SEA SCALLOP FISHERY MANAGEMENT PLAN

Trip Limit Exemption for State Waters Fisheries

December 19, 1996

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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APPENDIX I, Public Comments: Portland, ME - November 6, 1996
 Peabody, MA - December 12, 1996

1.0 PROPOSED ACTION

1. Vessels fishing in the state waters exemption program, while fishing in the Gulf of Maine waters of Maine, Massachusetts, or New Hampshire, would be allowed to land any amount of scallop meats (or in-shell scallops).

Currently, vessels with federal scallop permits may possess only 400 pounds of scallop meats (or 50 bushels of in-shell scallops) at any time regardless of the length of their fishing trip, with not more than one scallop trip allowable per calendar day. The proposed action would eliminate the possession limit in the state waters exemption program. This action would accommodate the state waters operations as described in section 2.1 below.

2. Vessels must adhere to the call-in notification requirements by providing the appropriate information at least 7 days prior to fishing under this exemption and remaining in the exemption for a minimum of 7 days.
3. Vessels fishing under this exemption are still subject to all other provisions of the state waters exemption program.

2.0 PURPOSE AND NEED

2.1 Trip limit exemption

The regulations exempt vessels from restrictions on days-at-sea and gear (see section 3.1 below) while fishing in state waters, if the state in question has restrictive gear regulations that would not compromise the fishing mortality/effort reduction program in the EEZ. The Council believes that these vessels should also be exempt from the 400 pound per trip limit. There are several reasons for allowing a trip limit exemption, as follows:

- 1) 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, 1994) and thus is predominately a state responsibility. State waters exemptions for harvesting sea scallops are allowed only in the states of Maine, New Hampshire, and Massachusetts which have the only scallop fisheries within state waters. Not implementing an exemption would fail 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. Although the average catch of scallops is currently less than 400 pounds per day in state waters fisheries, the current 400 pound trip limit prevents normal operations because:

- * vessels fish far from their home port because of the staggered openings of scallop fishing areas in state waters
- * vessels are reluctant to land daily at unknown dealers
- * vessels with federal permits must land at federally licensed dealers
- * vessels lay-to at night because night fishing is prohibited in state waters
- * vessels without federal permits land several "daytrips" at once, in excess of 400 pounds.

3) The initiation of a call-in program for all federal general permits, vessel tracking system (VTS) usage by all limited access vessels in the near future and, to some degree, data reporting requirements will help assure that boats fishing under the exemption program remain within the state's waters.

Amendment #4 regulations fall into five categories: 1) DAS control, 2) gear restrictions (including crew size and vessel configuration), 3) data reporting (log books, dealer reports, permit requirements), 4) VTS and call-in requirements (vessel tracking), and (5) a 400 pound possession limit for general category permits. The state waters exemption may range from simply not accruing DAS and gear restrictions (the current exemption program) to being exempt from all five categories of regulations. Alternatives to this exemption program could exempt federal permit holders from one or more of the five 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. The Maine scallop season began November 1, 1996, however, and extends to April 15, 1997.

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 October 2, 1996 when the Council heard a request from the states of Maine, Massachusetts, and New Hampshire concerning a scallop gear exemption in the Gulf of Maine which included a provision to eliminate the 400 pound possession prohibition in state waters. The gear exemption became Framework 21 under the Multispecies FMP, whereas the possession limit exemption became Framework 9 under the Scallop FMP. This information was forwarded to the Council on November 6, 1996 in Portland, ME, the initial public meeting under the framework process. The subsequent Scallop Committee meeting on November 25-26, 1996, where the committee reviewed the state waters exemption program and changed the preferred

alternative from just a possession exemption to a program including mandatory call-in by general permit holders, provided additional opportunity for public comment.

A draft document providing the rationale and impact analysis of the proposed measures was published on December 3, 1996. This document was mailed to Scallop Industry Advisory Committee members and the Council. Copies were also provided to the NMFS Regional Office and the NMFS Northeast Fisheries Science Center. The final required public meeting was the December 12, 1996 Council meeting. In addition to the Council's normal meeting announcements, public notice of this meeting was given in 61 FR, p. 64309 on December 4, 1996.

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 current 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 during this season. Unnecessary delay of this adjustment would significantly increase the costs to industry by requiring time to steam from open fishing grounds and back again on a daily basis, 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 into their operations to meet the current regulations. Depending on how they fish for scallops, fishermen may be required to make unnecessary trip modifications.

2.2.4 Continuing Evaluation

The Council will continue to evaluate the proposed measures. VTS operation will be required soon to monitor and to assure that limited access vessels fishing under the proposed, expanded state waters exemption are in fact fishing only in state waters. All other fishermen in the program will be required to call-in. 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.

2.3 BACKGROUND

Amendment #4 to Fishery Management Plan for Atlantic Sea Scallops, Placopecten magellanicus (Gmelin) was implemented March 1, 1994.

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. 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.

Framework 2 was implemented on November 16, 1994. The action exempted vessels holding only state permits and fishing within state waters from gear restrictions required under Amendment 4.

3.0 ALTERNATIVES

3.1 Exemption Program Options

3.2.1 No action

Vessels may enter an exemption program to fish strictly in state waters, as described in section 648.54 of the regulations.

Any vessel holding a federal scallop permit, whether general or limited access, may request an exemption from the DAS program and gear restrictions 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 and gear requirements.

Limited access 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.

Therefore, the current state waters exemption does not accommodate the state waters operations as described in section 2.1 above. Vessels cannot land several "day" trips at one time at their homeport dealer.

3.2.2 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 648.14(h)(3) and 648.9(c)&(d), data reporting as found in section 648.7(b), logbooks, adherence to gear and crew restrictions (see section 648.51), accrual of DAS while fishing under state regulations (see section 648.53(e)), possession restrictions found in section 648.52, 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.

If many vessels tendered their federal permits to fish strictly in state waters, they would not be bound by crew restrictions, reporting, VTS and call-in requirements.

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. Because general category permit holders are included in the proposed exemption, 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

1 Status of Fishery Resources off the Northeastern United States for 1994, NOAA Technical Memorandum NMFS-NE-108, January 1995.

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 1993.

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 possession 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 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 land any amount of scallops they catch on a fishing trip but federally permitted fishermen must land no more than 400 pounds, or 50 bushels, per trip. Federally permitted fishermen must also land at federally permitted dealers, whereas state permit fishermen may land anywhere.

Catch rates are currently described as between 200-300 pounds per day in the Gulf of Maine. The normal sea scallop operation, however, involves steaming to selected open areas within Maine state waters, fishing during the day, and laying-to during the night. Maine scallop regulations prohibit fishing at night. After several days of fishing, landings are made usually at the vessel's home port and at a dealer known to the vessel owner. Federally permitted scallop vessels must land once they have caught 400 pounds of scallops, averaging less than two days per "trip". Thus, additional steaming costs are incurred by adhering to the federal possession limit. Meanwhile, state permitted scallop vessels may fish several more days before landing.

Maine officials indicate that there are 787 state scallop dredge permits as of September 1996; 579 of these also have federal permits. Table 1 shows the total number of potential participants: 387

vessels with limited access scallop permits (of all types) and 2402 general permits. All 2789 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 vessel logbooks are currently unavailable for 1995 or 1996.

Nevertheless, the potential impacts on revenues may be illustrated. If the 400 pound possession limit is eliminated in Maine state waters, for instance, boats have approximately 180 days available to fish for scallops. Let's say that the typical boat fishes for half that time, or 90 days, and that they exceed 400 pounds by 100 pounds (for a total catch of 500 pounds) on only 10 % of those days. Thus, 9 days will result in 100 extra pounds of scallops without the possession limit, and at \$7.00 per pound the typical boat will net an extra \$6,300 per year. In a fishery that usually has several hundred participants, that results in a potential increase of over \$1 million in the state waters fishery.

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. As stated above, Maine prohibits night-time dragging for scallops, effectively halving the time available to harvest them. New Hampshire has 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, 1996

PRINCIPAL STATE	FULL-TIME	PART-TIME	OCCASIONAL	GENERAL	TOTAL
Unknown	.	.	.		
Maine	8	4	0	567	579
Mass.					
Other N.E.					
New Jersey					
Virginia					
Other Mid-Atlantic					
N. Carolina					
Other S. Atl.		.			
TOTAL	283	68	36	2402	2789

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 12 federal limited access permit holders that land primarily in Maine, as well as checking the possession limit for the 567 general permit holders. Call-in notification, already required for limited access vessels, should help with enforcement. Implementing the 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 state water 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.*

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.

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, 1994", 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 1996). Data from vessel trip reports (logbooks) for 1994-1996 are still unavailable. Call-in information, which might indicate how many of the limited access permit holders are actually fishing, is also unavailable.

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 possession 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 land scallops in the same

manner. The proposed possession 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 steaming to homeport daily in the Maine state water fishery. Costs of steaming are unquantified but clearly substantial.

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 possession 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 possession exemption is merely another provision within the existing 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. 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. Therefore, the environmental consequences of the proposed adjustment fall within the scope of those analyzed.

The proposed measure to exempt per trip possession restrictions from those vessels in the state waters also will have a positive impact on the human environment. Fishermen who otherwise may have given up fishing in state waters may now continue using the appropriate per day possession regulations. Subsequently, fishermen will have higher landings but not from the stocks where effort and fishing mortality must be reduced.

The proposed action to regulate scallop fishing in state waters where state regulations apply also has no significant environmental or human impacts beyond those identified in Amendment #4. FMP objectives will be achieved 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 action to eliminate the per trip possession limit does 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 expansion of call-in notification to general permit vessels, logbooks and VTS monitoring requirements for limited access vessels 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 Sections 1 and 3. 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 possession restrictions, the displacement of fishing effort out of these other regulated fisheries and into the EEZ may 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. It simply allows federal permit holders to fish for scallops under the same rules as state permit holders.

- 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 and will enhance safety by reducing steaming time.

- 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 federal permit holders in state waters without possession restrictions will not affect the recovery of the Georges Bank/Mid-Atlantic stocks, and the diversion of general permit holders into state water fisheries would 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 about 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 NAO 216-6 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

Date

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 may increase slightly the landings and revenues of the existing fishery, and lower the costs of steaming. 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 per day possession 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 scallop 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 possession limits 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. These include *three* full-time and *three* part-time permits issued under the small dredge exemption program (§ 648.51(e)) in Maine. 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, which began the state waters exemption program, are kept 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 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 (FRAMEWORK 9)

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 revised with the words in italics:

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), *possession*, 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, revise 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 *possession*, 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.

APPENDIX I

Public comments on Framework #9

Atlantic Sea Scallop FMP

December 12, 1996 Council meeting