

**Table 8.** Summary of TACs and limits for scallop access in the Georges Bank closed areas during the 2000 fishing year.

		<b>Nantucket Lightship Area</b>	<b>Closed Area I</b>	<b>Closed Area II</b>
<b>Scallops</b>	Total TAC	5.5 million lbs. (2,495 mt)	7.0 million lbs. (3,175 mt)	6.6 million lbs. (2,994 mt)
	TAC for limited access vessels	5.12 million lbs. (2,322 mt)	6.51 million lbs. (2,953 mt)	6.47 million lbs. (2,935 mt)
	Two percent TAC for observers (one percent deduction from the Total TAC)	110,000 lbs. (50 mt)	140,000 lbs. (64 mt)	132,000 lbs. (60 mt)
	One percent TAC to fund scallop research	55,000 lbs. (25 mt)	70,000 lbs. (32 mt)	66,000 lbs. (30 mt)
	Five percent TAC for general category vessels	275,000 lbs. (125 mt)	350,000 lbs. (159 mt)	
<b>Initial trip allocation for limited access vessels</b>		1	2	3
<b>Scallop possession limit</b>	Limited access vessels	10,000 lbs. per trip	10,000 lbs. per trip	10,000 lbs. per trip
	General category vessels	400 lbs. per trip	400 lbs. per trip	400 lbs. per trip
<b>Regulated multispecies possession limit</b>	Limited access vessels	1,000 lbs. per trip	1,000 lbs. per trip	1,000 lbs. per trip
	General category vessels	Zero possession	Zero possession	Zero possession
<b>Yellowtail flounder TAC</b>	Southern New England stock	109,129 lbs. (49.5 mt)		
	Cape Cod stock		1.582 million lbs. (717.75 mt)	
	Georges Bank stock			
	Set-aside for research or compensation trips	1,102 lbs. (0.5 mt)	15,984 lbs. (7.25 mt)	

#### 5.1.3.2.2 One-percent set-aside and one-percent supplement for funding observers

One percent of the scallop TAC for each of the groundfish closed areas would be set-aside to pay for observers as described in Section 5.2.16. NMFS may authorize vessels that carry observers to land more than 10,000 lbs. of scallop meats (i.e. more than the scallop possession limit) with the additional revenue used to pay for the observer at a rate determined by the NMFS. NMFS will monitor the landings from limited access scallop vessels that fish in the closed area and close the fishery when the landings exceed or are projected to exceed the overall scallop TAC, reduced by this and other set-asides.

Accounting for all three set-asides, the TAC that will apply to landings from limited access scallop vessels would be 93 percent of the total (Table 8). The set aside to pay for observers would total 191,000 lbs. (87 mt). An additional 191,000 lbs. would be authorized for harvest in addition to the overall TAC to pay for observers, making the total funding equivalent to the landings of 382,000 lbs. (174 mt).

**Rationale:** In the Closed Area II fishery in 1999, the one-percent TAC was insufficient to account for the additional authorized landings to fund the observer program. Since there was no provision for this possibility and the fishery did not take the total TAC anyway, the additional landings exceeded the authorized amount, but did not increase scallop mortality above the targets adopted by the Council. To correct for last year's underestimate and more accurately account for the actual cost of the observer program, the Council increased the TAC for the observer program to two percent, taking one percent as a set-aside from the overall TAC. Since the closed area access program is constrained by the TACs for yellowtail flounder, it is unlikely that the scallop TAC will be taken for the three areas combined. This alternative is not therefore expected to cause the fishery to exceed the scallop mortality targets.

#### 5.1.3.2.3 Five-percent for access by general category vessels in Nantucket Lightship Area and Closed Area I

Five percent of the total scallop TAC for Nantucket Lightship Area and Closed Area I will be set-aside to account for landings by vessels with general category scallop permits. When the landings from these vessels exceeds or are projected to exceed the general category TAC, NMFS will discontinue access to one or both of the closed areas by general category vessels and notify general category vessels that are authorized to fish for scallops that they may no longer fish in the closed areas.

The TACs for general category vessels that fish in Nantucket Lightship Area and Closed Area I will be 275,000 lbs. (125 mt) and 350,000 lbs. (159 mt), respectively. Accounting for all three set-asides, the TAC that will apply to landings from limited access scallop vessels would be 93 percent of the total (Table 8). General category vessels may not possess more than 400 pounds of scallops on any trip.

**Rationale:** Although a 400 pound scallop possession limit will apply to general category vessels fishing in the closed areas, there will be no limit on the number of participants (i.e. any vessel may have a general category permit) or on the number of trips that a vessel may take into the closed areas. The Council does not expect many general category vessels to participate, however, because they must use dredges, rather than the more prevalent trawls, and because the cost of fishing will be relatively high. Historically, the landings by general category scallop vessels have rarely exceeded five percent of the total landings from all areas (NEFMC 1999b). With this TAC set-aside, 1,562 general category trips are possible in the two areas together.

#### 5.1.4 Total Allowable Catch for yellowtail flounder (Framework Adjustment 34)

The TAC for Georges Bank yellowtail flounder catches (i.e. landings and dead discards) from scallop vessels fishing in Closed Area I and Closed Area II is 725 mt, corresponding to 15 percent of the target groundfish TAC for Georges Bank yellowtail flounder plus 3.3 percent of the 1998 landings for the Cape Cod yellowtail flounder stock. The TAC for Southern New England yellowtail flounder catches (i.e. landings and dead discards) from scallop vessels fishing in the Nantucket Lightship Area is 50 mt, or about 15 percent of the target groundfish TAC for the Southern New England yellowtail flounder stock<sup>10</sup>.

The closed area access program includes a one-percent set-aside for the yellowtail flounder TAC as well as the scallop TAC to allow research (Section 5.1.13.4). The yellowtail flounder TAC for the closed area access program is 49.5 mt for the Nantucket Lightship Area and 717.75 mt for Closed Area I and Closed Area II, combined (Table 8). The remaining 0.5 and 7.25 mt will be set aside to enable scallop research in the closed areas in the event that they close due to high yellowtail flounder bycatch before the research is conducted.

If at any time, information or data indicate that the total yellowtail flounder bycatch will exceed or is projected to exceed the yellowtail flounder TAC, the Regional Administrator may suspend the closed area scallop fishery by publishing a notice in the Federal Register. The potential for the closed area access scallop fishery to exceed the combined yellowtail flounder TACs should also be considered when determining whether an allocation of additional trips for Closed Area I is justified. Similarly, the yellowtail flounder bycatch in the Nantucket Lightship Area should be considered to determine whether an additional trip allocation is likely to exceed the yellowtail flounder TAC for the Southern New England stock.

**Rationale:** Georges Bank and Southern New England yellowtail flounder stocks are two of the primary, overfished stocks of groundfish governed by the Multispecies FMP. Since these are critical stocks, this measure ensures that the scallop fishery bycatch of yellowtail flounder does not jeopardize or delay the existing yellowtail flounder rebuilding program. The Council determined that the Amendment 7 targets were still operative and consistent with the Sustainable Fisheries Act and National Standard 1.

The Council adopted the 15 percent proportion for a TAC for the Closed Area II fishery and most of the yellowtail flounder in Closed Area I are assumed to be part of the Georges Bank stock. The 3.3 percent proportion is the historic proportion of landings from the Cape Cod yellowtail flounder stock between 1982 and 1993.

The yellowtail flounder bycatch is expected to be 602 to 707 mt if all active vessels fish the potential number of trips associated with the area access options. These estimates are based on the observations from the Closed Area II fishery and the experimental fisheries in Nantucket Lightship Area and in Closed Area I. Vessels in the latter experimental fishery used 8-inch mesh twine tops.

This action, on the other hand, requires that dredges have twine tops with 10-inch, rather than 8-inch, mesh. Industry has also advised that it will be possible to significantly reduce their finfish bycatch through operational adjustments. These adjustments include fishing in areas within the groundfish closed areas where yellowtail flounder are less abundant, slowing the vessel and dredge speed while fishing, and letting the dredge set still on the bottom a few minutes before haul back. As previously anticipated for the Closed Area II access in 1999, the Council anticipates that a significant portion of the scallop TAC can be

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<sup>10</sup> Fifteen percent of the Southern New England yellowtail flounder TAC is 37 mt, which was rounded to 50 mt by Council vote.

harvested before the fishery catches this much yellowtail flounder provided that the necessary adjustments are made by industry.

### 5.1.5 Triggered Area Closure (Frameworks 13 and 34)

If at any time, information or data indicate that the total groundfish bycatch or the total scallop catch will exceed the TACs, the Regional Administrator may suspend the re-opening of the closed areas to scallop vessels by publication of a Federal Register notice.

**Rationale:** Although Georges Bank yellowtail flounder has been in a rebuilding program since Amendment 7 in 1995, Amendment 13 could allow additional yellowtail flounder catch in a 10-year rebuilding program, consistent with the control rule and the Sustainable Fisheries Act. On the other hand, Georges Bank yellowtail flounder is in the sixth year of a rebuilding program and remains a few years away from achieving  $B_{MSY}$  with status quo fishing mortality.

Significant changes in fishing strategies are expected to occur when scallop vessels fish in the closed areas to maximize their catch per day-at-sea. Although data is still being collected and has not yet been analyzed, a preliminary analysis (Appendix II) indicates that scallop fishermen were effective in keeping yellowtail flounder bycatch during the Closed Area II fishery below expected levels.

These changing strategies could increase the scallop catch and groundfish bycatch well above anticipated levels. If this occurs, the additional catches could increase fishing mortality above the fishing mortality thresholds ( $F_{max}$  for sea scallops,  $F_{0.1}$  for yellowtail flounder) and potentially jeopardize the rebuilding programs set by Amendments 7 for the Multispecies and Scallop FMPs. To prevent this potential outcome, the Regional Administrator would be authorized to discontinue the closed area scallop fishery.

### 5.1.6 Effort limits (Framework 13)

#### 5.1.6.1 Trip allocations

Each limited access scallop vessel will be authorized to fish for one trip in the Nantucket Lightship Area, two trips in Closed Area I, and three trips in Closed Area II (Table 4). Since part-time vessels will have a maximum allocation of 58 days-at-sea in the 2000 fishing year<sup>11</sup>, part-time vessels can take a maximum of five closed area trips in any combination up to one in the Nantucket Lightship Area, two in Closed Area I, and three in Closed Area II. A part-time vessel would be eligible for additional allocations (see below) if it had not used up its annual day-at-sea allocation by fishing in other areas. If for example, the Regional Administrator allocates an additional trip in Closed Area I, a part-time vessel could therefore take three trips in Closed Area I and two trips in Closed Area II, rather than the reverse. An occasional scallop vessel will have a maximum allocation of 19 days in the 2000 fishing year<sup>12</sup> and is therefore eligible to take a trip in any one closed area, regardless of additional allocations through a possible in-season adjustment via the provision described below.

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<sup>11</sup> A part-time scallop vessel will have a 48 day-at-sea allocation in the 2000 fishing year plus up to 10 unused days-at-sea carried forward from the 1999 fishing year.

<sup>12</sup> An occasional scallop vessel will have a 10 day-at-sea allocation in the 2000 fishing year plus up to nine unused days-at-sea carried forward from the 1999 fishing year (it must have used at least one day-at-sea to be eligible to carry forward unused days).

For the Nantucket Lightship Area and Closed Area I (but not for Closed Area II), the Regional Administrator may make an in-season re-allocation of closed area trips at any time, assuming that each trip catches the scallop possession limit. Unlike the Closed Area II fishery in 1999, limited access vessels would not be required to fish in each or any area to be eligible for additional trips if the Regional Administrator makes an in-season adjustment. If additional trips are authorized, the Regional Administrator may also extend the season for the Nantucket Lightship Area and Closed Area I to include January 1 to January 31, 2001.

**Rationale:** The analysis (Section 6.2.6.1.7) indicates that limited access scallop vessels may be allocated up to 1 trip in the Nantucket Lightship Area, 2 trips in Closed Area I, and 3 trips in Closed Area II, with a 10,000 pound scallop possession limit, without exceeding the scallop TAC. The actual scallop catch will depend on how frequently each eligible vessel chooses to fish in the closed areas, allowing for later allocations of additional trips through one or more in-season adjustments.

For Closed Area II, the Scallop PDT assumed that the same number of limited access vessels would fish in 2000 as fished in 1999. If the participation by scallop vessels increases in Closed Area II, because of the additional access in 2000 or for other reasons, the catches could increase so the Closed Area II access program would close from landing the scallop TAC.

Under these assumptions, the three trip allocation is expected to allow the scallop vessels to harvest 83 percent of the scallop TAC for Closed Area II. An additional trip would exceed the scallop TAC. It is therefore unlikely that additional trips will be needed to harvest the scallop TAC (provided the yellowtail flounder bycatch does not exceed its TAC), unless participation by scallop vessels falls below the observed participation in the 1999 fishery.

On the other hand, the analysis estimates that the initial trip allocation will result in the harvest of 61 percent of the scallop TAC in the Nantucket Lightship Area and 89 percent of the scallop TAC in Closed Area I. An additional trip in either area would exceed the scallop TACs, unless fewer vessels actually fished than the analysis assumes. Since the analysis assumes that all eligible limited access scallop vessels will fish their maximum allocation of trips, like the 1999 Closed Area II access program, it is very likely that fewer vessel will actually fish in the two closed areas, increasing the possibility that an additional trip could be allocated without exceeding the scallop TAC. Whether an in-season adjustment is possible will depend mainly on the actual bycatch of yellowtail flounder.

### 5.1.6.2 Day-at-sea restrictions and tradeoffs

Vessels that report VMS positions within a groundfish closed area while on a scallop day-at-sea will automatically accumulate a 10 days-at-sea or the actual time at sea, whichever is more.

**Rationale:** An accumulation of days-at-sea for trips in the closed areas must be greater than the actual trip length to compensate for the increased scallop mortality caused by fishing in the closed areas. For vessels that use most or all of their day-at-sea allocations outside of the groundfish closed areas, the effect of the added tradeoff is to reduce the available fishing time elsewhere. This in turn reduces fishing mortality in those areas to compensate for the added mortality in the groundfish closed areas. For the stock as a whole, the intent is to prevent mortality from increasing from the closed area access program, i.e. the program is conservation neutral relative to the goals of the FMP.

Accounting for the differences in scallop yield inside and outside of the groundfish closed areas, a 10 day-at-sea accumulation would decrease mortality (i.e. the number of scallops removed from the stock) by about one percent. Higher day-at-sea accumulation amounts for each closed area trip would

decrease mortality and vice versa. If additional trips are authorized, fishing mortality would decline relative to the analysis from the added day-at-sea tradeoffs. This occurs because at that point, there would be fewer unused days for vessels to use in the closed areas and the added trips would be catching larger scallops in the closed areas than would an equivalent trip in the open areas.

### 5.1.6.3 Maximum trip length

There is no maximum trip length for vessels that fish in the groundfish closed areas. Vessels on trips in the groundfish closed areas would accrue 10 days-at-sea or the actual time at sea, whichever is greater.

**Rationale:** A maximum trip length would prevent vessels from fishing longer than 10 days if catch rates substantially decline. A limit on the trip length appears unnecessary, however because either the catch would have to exceed the TAC for this to occur or the catch rates would probably be below the point where it is more favorable to fish in the open areas rather than in the groundfish closed areas.

## 5.1.7 Eligibility and exemptions (Framework Adjustments 13 and 34)

### 5.1.7.1 Limited access scallop vessels

All vessels with scallop limited access permit and days-at-sea allocations will be eligible to fish under the program to access the closed areas. This would include vessels that did not fish during 1998 or 1999 and vessels re-activating history permits. Inactive vessels or history permits are eligible to fish in the re-opened areas to ensure equitable access for all legal scallop vessels.

Permit-holders with “Confirmation of Permit Histories” (CPH) may not fish with two permits on one vessel in any given year. In other words, if a person owns Vessel A and also possesses a CPH for Vessel B (a vessel no longer owned), the owner of Vessel A may not fish both Vessel A’s scallop days-at-sea and Vessel B’s scallop day-at-sea history on Vessel A during the same year. This policy is consistent with the rules that prevent owners of multiple vessels from stacking permits onto one vessel and preventing the use of more than one vessel’s days-at-sea on a single vessel.

Inactive vessels with limited access scallop permits could be fishing for other species in New England or other regions and would not therefore be using scallop days. History permits, on the other hand, could be transferred to a replacement vessel to fish for scallops.

There are 328 vessels that have limited access scallop permits and these vessels will be allocated 31,267 days-at-sea for the 2000 fishing year beginning March 1 (NEFMC 1999c). In addition, there are 37 confirmation of permit histories that could be reactivated during the year by applying for a replacement vessel permit. Depending on the option chosen, there could be 367 to 685 potential trips to the three areas combined. Assuming a 10-day trip, the total number of potential trips by the fleet is 3,420.

Table 9. Number of eligible vessels with full-time, part-time, and occasional scallop limited access permits as of February 11, 1999.

Category	Vessel Permits	Confirmation of Permit Histories	Total Eligible Vessels	1999 Day-at-sea allocation	Maximum 10-day trips
Full time	236	21	257	120	12
Part time	43	14	57	48	5
Occasional	49	2	51	10	1

Category	Vessel Permits	Confirmation of Permit Histories	Total Eligible Vessels	1999 Day-at-sea allocation	Maximum 10-day trips
Total	328	37	365	29,472	3,420

**Rationale:** Limited access scallop vessels have permits to target scallops and use days-at-sea. There is no justification or objective that would exclude any class of limited access permit from fishing in the closed areas. Exclusion of a class of limited access scallop vessels would not be fair and equitable.

### 5.1.7.2 Net boats may fish in the groundfish closed areas with dredges and continue using trawls in all other areas open to scallop fishing – status quo

The status quo would allow scallop trawl vessels to use dredges within the re-opened closed areas (Section 5.2.11) without jeopardizing their authority to use trawls to fish for scallops in other areas. Vessels that are currently authorized to use trawls to fish for scallops have a permit to use trawls, based on its past fishing history. Section 648.51(f) prohibits the use of trawl nets to fish for scallops, unless a vessel has a letter of authorization. A vessel is eligible for a letter of authorization if:

- it had already been issued a letter of authorization,
- it had not fished with a dredge more than 10 trips between January 1, 1988 and December 31, 1994, inclusive, or
- it replaces a vessel that had a letter of authorization

Although these vessels may not be capable of fishing for scallops with standard dredges, there is no requirement to use only two 15-foot dredges within the closed area, a common practice for scallop dredge vessels. The regulations only limit the combined width of dredges. To fish for scallops in the closed area, net vessel fishermen may decide to fish with a single dredge or with smaller dredges.

**Rationale:** This provision clarifies the intent of the Council to allow participation by the scallop trawl vessels in the closed area, but only when these vessels use a scallop dredge. Using scallop trawls in the re-opened areas could increase groundfish bycatch concerns (due to larger swept area), since scallop trawl vessels could, according to the Sea Scallop FMP, legally use less than the 6-inch mesh required by the Multispecies FMP.

This option most clearly avoids any objections that might arise out of National Standard 4 concerns. Consistent with the above section, scallop vessels that use trawls to fish for scallops will be eligible to fish in the re-opened areas, but they could only use a scallop dredge in the re-opened area. If using trawls to fish for scallops in any way jeopardized the vessel’s letter of authorization, the vessel might not be able to revert to using trawls once they began using dredges.

### 5.1.7.3 Access by vessels with General Category permits to fish for scallops in the groundfish closed areas with a separate scallop TAC – Alternative 3 (Framework Adjustments 13 and 34)

General category vessels will be able to fish for scallops in the Nantucket Lightship Area and in Closed Area I when they are open for scallop fishing by limited access scallop vessels and land up to five percent of the total scallop TAC, or 125 and 159 mt, respectively (Table 4). Vessels with a general category scallop permit must contact the Northeast Regional Office to obtain authorization to fish in the closed areas. This authorization will be issued to a vessel that has a general category scallop permit, but does not have a limited access scallop permit, for a 30-day or more period (at the applicant’s discretion),

during which the vessel may only fish in Nantucket Lightship Area and Closed Area I. Authorized general category vessels may retain no more than 400 lbs. of scallop meats, consistent with the Sea Scallop FMP, and may retain no regulated multispecies.

### **Exempted fishery**

The proposed action will also create an exemption from the Multispecies FMP small mesh regulations to allow vessel with general category permits to fish for scallops with a dredge, when the groundfish closed areas are open for scallop fishing by limited access vessels. This exemption will require vessels with general category scallop permits to comply with the following provisions.

Vessels with general category scallop permits would be required to report landings and submit vessel trip reports, would be required to carry observers when requested, and operate a VMS of a type that is approved for use by limited access scallop vessels. General category vessels that fish in the closed areas would be required to use one legal scallop dredge, not greater than 10'6" in width, with the same twine top requirements that apply to limited access vessels fishing in the groundfish closed areas (Section 5.1.8.2). No other gear may be onboard the vessel while fishing with the closed areas or while fishing on a trip that had fished within the closed areas. Vessels with general category permits that fish in this exempted fishery will have a zero possession limit for regulated multispecies (Section 5.1.9.3), but the yellowtail flounder bycatch will be monitored and counted against the yellowtail flounder TAC for the applicable groundfish closed area.

Vessels with limited access scallop permits<sup>13</sup> may not fish in the closed areas under this exempted fishery.

**Rationale:** This alternative would allow access to vessel with general category scallop permits, consistent with the history of some vessels that target scallops during favorable seasons and conditions. Many vessels with general category permits are already required to report all landings and submit vessel trip reports under other FMPs<sup>14</sup>. Like Alternative 2, the proposed action would require the creation of a new exempted fishery to allow these vessels to fish in the closed areas while not complying with the groundfish day-at-sea restrictions and small mesh requirements, however.

Although these vessels would be prohibited from possessing regulated multispecies, their bycatch would be counted against the TAC, increasing regulatory discards, and requiring adequate observer sampling on these vessels to accurately determine the yellowtail flounder bycatch.

## **5.1.8 Gear restrictions**

### **5.1.8.1 Dredges (Framework Adjustment 13)**

Limited access scallop vessels that fish in the Nantucket Lightship Area, Closed Area I, or Closed Area II must use a scallop dredge that conforms to §648.51 (Gear and Crew Restrictions) and §648.2

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<sup>13</sup> Many limited access scallop vessels also possess a General Category scallop permit to accommodate scallop bycatch while they are fishing for other species. Some vessels also target scallops while not under a day-at-sea under this permit.

<sup>14</sup> Landings reports and vessel trip reports are now required by regulations implementing the Northeast Multispecies, the Monkfish, the Summer Flounder, and other FMPs that govern fisheries in the northeast region. See the SAFE report (NEFMC 1999) for a cross reference of vessels with general category scallop and other permits.

(definition of “dredge or dredge gear”), including ring size, configuration and linkage, and maximum width. According to this regulation, the combined dredge width shall not exceed 31 feet (9.4 m).

Vessels with general category scallop permits that fish in the closed areas under Section 5.1.7.3 must also comply with these regulations, but the total width of the dredge may not exceed 10.5 feet (3.2 m). General category vessels must have no more than one dredge onboard during a closed area trip.

**Rationale:** Limited access vessels would be required to comply with the existing regulations that apply to any other scallop area when the vessel is in the day-at-sea program. Although vessels with a general category permit are limited to 400 pounds per day or trip (whichever is greater), current regulations allow the use of dredges with a total width of 31 feet.

### **5.1.8.2 Twine tops (Framework Adjustment 34)**

Any vessel with a general category or limited access scallop permit that fishes in Nantucket Lightship Area, Closed Area I, or Closed Area II must use a scallop dredge with a twine top having diamond mesh no smaller than 10-inches (25.40 cm). This mesh may be hung on the square or the diamond within the area of the dredge occupied by the twine top. The mesh will be measured using the same methods for the current 8-inch twine top, as described in §648.51(a)(2)(iii).

**Rationale:** The purpose of this measure is to reduce groundfish and other finfish bycatch and take advantage of recent research that shows a significant reduction of bycatch, especially for flatfish, with insignificant reductions of scallop catch when scallops are large. Framework Adjustment 11 also included a measure to increase the twine top mesh to 8-inches diamond in all other areas, to mitigate the groundfish bycatch while fishing in the closed areas. This permanent increase to an 8-inch twine top became effective on December 9, 1999, six months after the implementation of the Framework Adjustment 11 measures. The larger twine top inside and outside of the groundfish closed areas will ensure that the access program will be conservation-neutral for many species.

The larger twine top mesh is expected to produce significant reductions for many species, especially flatfish like yellowtail flounder, winter flounder, and windowpane flounder. On the other hand, a larger twine top is not expected to significantly reduce monkfish and adult roundfish catches. Catches of summer flounder and possibly skates could be reduced as well, benefiting those species and reducing the opportunity of plugging the dredge bag. Dredge bags that are clean and not plugged with fish have been reported to release more small scallops through and between the rings, improving size selection of the dredge.

Although the standard is now 8-inch mesh twine tops, the Closed Area II scallop fishery access program (NEFMC 1999a) required scallop vessels to use 10-inch mesh twine tops. About 180 vessels participated in the fishery and now have these twine tops on hand. Interest in Framework Adjustment 13 has been high and many fishermen and suppliers are aware of this pending requirement, allowing them time to order new stock before the closed area access begins.

## **5.1.9 Possession limits**

### **5.1.9.1 Scallop possession limit for limited access vessels (Framework Adjustment 13)**

Vessels on a scallop day-at-sea may possess no more than 10,000 pounds of scallop meats on trips that had fished in the Nantucket Lightship Area, in Closed Area I, or in Closed Area II. The Regional Administrator may make one or more in-season adjustments to the scallop possession limit, assuming that each future trip will catch the scallop possession limit.

**Rationale:** The scallop possession limit will ensure that the scallop fishery does not exceed the scallop TAC for each of the groundfish closed areas. According to the analysis (Section 6.2.6.1.10), the scallop possession limit, coupled with the trip allocation for each area, is expected to allow the fleet to harvest 61, 89, and 83 percent of the TAC in the Nantucket Lightship Area, Closed Area I, and Closed Area II, respectively. A non-uniform scallop possession limit would allow Framework 13 to define a program that would more closely achieve the TACs, but a different possession limit for each area would be much more complicated and difficult to enforce. In place of such a complicated system, the Council and the Enforcement Committee preferred a uniform scallop possession limit for all three areas, with an in-season adjustment procedure for trip allocations and/or the scallop possession limit to enable the fishery to catch the TACs.

The analysis assumes that all eligible vessels will take one trip in the Nantucket Lightship Area and two trips in Closed Area I. Since the 1999 fishery in Closed Area II provides information about the potential participation in 2000, the analysis assumed that the same vessels that fished in Closed Area II during 1999 would fish during 2000. The Council does not expect all eligible vessels to fish and the actual catch by participating vessels will be considerably lower than the TAC. The estimated total fishing effort, scallop catch, and bycatch are reported in Table 31.

A wide range of trip allocations (zero to four trips) and trip limits (8,000 to 18,000 pounds) were analyzed and evaluated. The choices are shown in Table 15 and the estimated impacts are given in Sections 6.2.6.1.10 and 0.

Estimated net benefits are \$33.4 million higher than the status quo for the proposed action, \$14.4 from consumer surplus and \$19.0 million from producer surplus. Total estimated net benefits for the proposed action are \$185 million (Table 32). This is better than most of the rejected alternatives with scallop possession limits ranging from 8,000 to 18,000 pounds (Table 40). Only the 15,000 pound scallop possession limit alternative has a slightly higher net benefit estimate, \$186 million.

Although lower trip limits (with more allocated trips) were estimated to be more profitable than fishing in the existing open areas, the Council opted for the highest scallop trip limit that would be conservation neutral. This approach gave the greatest assurance that eligible vessels would fish in Closed Area II and reduce their fishing effort in the open areas, where smaller scallops predominate.

There are significant impediments for Confirmation of Permit Histories (CPH) to be reactivated. The profits from six closed area trips (roughly \$82 thousand) may not be enough to justify the cost of reactivating the permit on a new or replacement vessel. Other factors, including the expected increase in open area catches during the 2000 fishing year are more likely to induce owners to reactivate vessels with Confirmation of Permit Histories. Excluding CPHs, the vessels with permits assigned to a vessel could only land 4,000 mt, seven percent less than the scallop TAC. It is also very unlikely that inactive vessels from the Mid-Atlantic will fish in the closed area. Any reactivation of a CPH is likely to be more than offset by non-participation of the 48 vessels that did not fish for scallops during the 1998 fishing year.

Since the price differential is small between large and small scallops and discard mortality is generally low, highgrading (i.e. discarding less valuable scallops) is not likely to occur or be a significant problem.

### **5.1.9.2 Shellstock – 50 US Bushels**

Any vessel with a limited access or general category scallop permit in a groundfish closed area will be prohibited from possessing more than 50 US bushels of shell stock when it is no longer in the closed area (Section 5.1.1). For purposes of enforcing the scallop trip limit, 50 US bushels of shell stock shall be counted as 400 pounds of scallop meat.

**Rationale:** The purpose of this measure is to prevent vessels from catching more than the scallop trip limit allows and discarding the excess scallops in port. It will also ease the enforcement burden caused by the potential for partial offloadings as scallops are shucked in port. On the other hand, it is necessary to allow some landings of shell stock to satisfy a market for large, live scallops.

### **5.1.9.3 Scallop possession limit for general category scallop vessels (Framework Adjustment 13)**

The scallop possession limit in the groundfish closed areas for vessels with a general category scallop permit will be 400 pounds per trip or per 24-hour period, whichever is more. This possession limit is the same as the one applying to all vessels with a general category scallop permit or vessels with a limited access scallop permit while called out of the day-at-sea program [§648.52(a)]. Limited access vessels will be prohibited (see Section 5.1.7.1) from fishing in the groundfish closed areas, however, while not on an allocated closed area trip.

**Rationale:** The intent for closed area access by vessels with general category scallop permits is no different from the original intent of the permit, for vessels that target scallops. During the development of Amendment 4, the general category scallop permit was retained as an open access category for vessels that typically landed higher amounts of scallops as bycatch. At the same time, Amendment 4 also retained the general category permit to accommodate vessels that occasionally targeted small amounts of scallops, but did not qualify for limited access.

In the Amendment 4 analysis, it was evident that some vessels that did not qualify for an occasional limited access permit had targeted sea scallops, before the 1988-1990 qualification period. At that time, the few vessels in this situation did not significantly contribute to fishing mortality and there was no reason to believe that fishing effort in this category would increase. According to the 1999 SAFE report (NEFMC1999b), the 400-pound scallop possession limit is still satisfactory for this purpose and at this time is not expected to significantly increase scallop fishing mortality.

Access to the closed areas could cause the landing by general category vessels to increase, but this is limited to five-percent of the TAC in the Nantucket Lightship Area and Closed Area I. With a 400-pound possession limit, the possession limit would allow for 1,562 potential trips. If just 20 vessels declare into the program, vessels would be able to take 78 trips on average during the closed area scallop fishery. A higher scallop possession limit would allow for fewer trips, but each vessel could land more scallops on a trip.

Since the pool of vessels that might participate is so large and these vessels also have a variety of other permits, the economics that would determine participation are very complex. There were trips in 1999 however that targeted scallops by vessels with general category permits. Given this fact, the

Council believes that the scallop possession limit for general category vessels is sufficient for vessels that had infrequently targeted sea scallops, but not too high to attract new fishing effort by vessels with general category scallop permits that never targeted scallops.

#### **5.1.9.4 Regulated Multispecies - Limited access scallop vessels**

While portions of the groundfish closed areas are open to scallop fishing, scallop vessels on a closed area trip (i.e. vessels with a VMS position report within the groundfish closed areas) may retain and land up to 1,000 pounds of regulated species. The Regional Administrator is authorized and requested to make a mid-season adjustment to this possession limit and reduce regulatory discards to the maximum extent possible.

**Rationale:** This measure would increase the groundfish trip limit to accommodate the expected bycatch of large mesh regulated species. Raising the trip limit would avoid economic waste and partially address National Standard 9 concerns. Since some discarded fish survive, unreasonable increases in the trip limit could however increase mortality on overfished groundfish stocks and promote continued fishing when the scallop catch rates decline.

The expected bycatch of regulated species far exceeds the existing 300 pound possession limit. On the other hand, the Council wants to avoid creating an incentive for scallop vessels to fish in areas where the groundfish bycatch is high or to continue fishing for groundfish when the vessel reached its scallop possession limit. Increasing the regulated species possession limit from 300 to 500 pounds will decrease regulatory discards, but will not encourage fishing for groundfish or discourage efforts to avoid bycatch. If all 265 active vessels fish for scallops on their three allocated closed area trips, this adjustment would reduce regulatory discarding by 159,000 pounds.

It is also unlikely that scallop vessels will continue to fish after catching the scallop possession limit. Other than monkfish, no other species are caught by scallop dredges and are valuable enough to land. Flatfish (e.g. yellowtail, winter, and windowpane flounders) are regulated by the Multispecies FMP and landings will be limited to no more than 1,000 pounds. The expected catches of these species are greater than this low possession limit. The expected catch of monkfish (the other valuable species that are caught by scallop dredges) while fishing for scallops in the closed area is expected to approximate the monkfish possession limit, 300 pounds tail-weight per day-at-sea.

#### **5.1.9.5 Regulated Multispecies – Vessels with general category scallop permits**

Vessels with general category scallop permits will be prohibited from retaining regulated multispecies.

**Rationale:** This prohibition is consistent with other small mesh exemption programs. Under these exemptions, vessels are only allowed to fish where and when the gear has a regulated multispecies bycatch that is less than five-percent of the total weight of fish onboard. They are not allowed to retain regulated multispecies to prevent the exemptions from promoting fishing on regulated multispecies.

Allowing retention of 300 to 1,000 pounds of regulated multispecies would enable a vessel with a general category permit to keep as much or more regulated multispecies as scallops. This would be equivalent to a targeted multispecies fishery outside the day-at-sea program with small mesh gear.

### 5.1.9.6 Monkfish

The possession limit for monkfish will be the amount specified in the Monkfish FMP. For limited access scallop vessels on a day-at-sea, this will be 300 pounds tail-weight per day-at-sea (996 pounds whole-weight). According to the Monkfish FMP [§648.94(c)(4)], general category vessels that fish in the groundfish closed areas while they are open for scallop fishing would be considered as a small-mesh vessel and could retain only 50 pounds of monkfish tails (166 pounds whole-weight). Some of the general category vessels may also have qualified for monkfish limited access, but they could not fish for scallops in the groundfish closed areas on a monkfish day-at-sea, because the former requires that vessels use a dredge while the latter prohibits it.

**Rationale:** The expected bycatch of monkfish is expected to be less than the allowance (300 pounds tail-weight per day-at-sea) for scallop dredges, therefore adjustment is unnecessary. The monkfish trip limit for general category scallop vessels is appropriate, since the purpose of the access program is to allow some small vessels to target scallops, like they had done infrequently in past years. No specific data exists, but the small dredge used by general category vessels is less likely to retain monkfish. Similar to other species, monkfish would be more able to avoid a small dredge than a large one, like the dredge used by limited access scallop vessels. Targeting monkfish by vessels with general category permits in the closed areas would be inconsistent with this intent and could increase fishing mortality for monkfish, contrary to objective of the Monkfish FMP.

### 5.1.10 Enforcement Provisions (Framework Adjustment 13)

#### 5.1.10.1 Trip Declaration and Notification

An activity code will be incorporated into the VMS programming to indicate when a scallop vessel is on a closed area trip. A vessel may set an activation code for a closed area trip no more than the number of trips authorized for fishing within the closed area (Section 5.2.9.1). NMFS may trigger a closed area trip either when the vessel's VMS reports its first position within one of the closed areas or when notified by the existing VMS email capabilities that the vessel will be taking a closed area trip. To simplify administration and enhance monitoring, NMFS may require email notification of a closed area trip prior to leaving the dock. No additional notification is required at the end of a trip, before landing.

**Rationale:** Enforcement must know when a vessel is or is not authorized to fish in the groundfish closed areas. The activity code would enable law enforcement to quickly check if the vessel is authorized to be in the Nantucket Lightship Area, Closed Area I, or Closed Area II. Without the activation code or some other means of authorization, it would be impossible to distinguish between a vessel that had already taken its allocated closed area trips and one that had not and is therefore authorized to fish in a groundfish closed area.

#### 5.1.10.2 Vessel operation and landing

Vessels on a closed area trip may not fish for any species except within the open portions of Nantucket Lightship Area, Closed Area I, or Closed Area II. Vessels fishing for scallops in one of the groundfish closed areas may not enter or re-enter another groundfish closed area, except to transit an area with gear stowed in accordance with §648.81(e) of the multispecies regulations governing closed area access. Partial unloadings of the catch at more than one dealer is also prohibited.

**Rationale:** Circumvention of the scallop possession limit will significantly undermine the conservation goals of the proposed action. Allowing scallop fishing on closed area trips outside of closed areas would provide greater opportunity to transfer scallops at sea, thereby avoiding the scallop possession limit. The allocation of trips and the scallop possession limit are the primary management measures for controlling scallop catch and are intended to prevent the fishery from exceeding the scallop TAC.

Partial unloadings could also reduce the effectiveness of the scallop possession limit to keep landings below the TAC. Allowing landings of scallops at more than one dock or port would make it harder to track and monitor the landings from closed area trips.

### **5.1.10.3 Penalties for Closed Area Fishery Violations**

Since many of the measures in the proposed action ensure that the FMPs meet their conservation goals for scallops, yellowtail flounder, and other groundfish, the Council considers violations of the closed area fishery management measures to be a very serious offense, particularly for intentional and willful violations. These type of violations include significant overages of the possession limits, transfers at sea, exceeding the crew limits, fishing with non-conforming gear, and fishing on more than the number of authorized trips. Penalties should therefore be commensurate with the seriousness of the violation, possibly including barring future access to areas that had been closed to rebuild scallops or other species

**Rationale:** There will be great economic incentives to break the rules for fishing in the groundfish closed areas, largely due to the differences in the resource condition in the closed area compared to the existing open areas. This provision establishes the Council's intent about intentional and willful violations of the proposed action. NMFS should take this intent into account when determining appropriate penalties for serious violations.

### **5.1.10.4 More frequent polling of VMS equipment**

NMFS will increase the polling frequency for all limited access scallop vessels with VMS systems (regardless of whether the vessel fishes in the groundfish closed areas) to an average of twice per hour, from the current rate of one polling per hour. This enhanced polling frequency would begin on June 15, when Closed Area II opens for scallop fishing, and terminate when the all three closed areas are no longer open for scallop fishing.

The increased polling frequency will also apply to all general category scallop vessels that apply for access to the closed areas. The increased polling frequency for these general category vessels would continue until the vessel no longer participates in the program, i.e. the end of the minimum of the 30-day declaration (see Section 5.1.7.3). The added costs associated with the increased messaging and associated administrative costs are to be borne by the scallop vessels with VMS systems.

**Rationale:** The increased polling frequency will enhance the monitoring capability to catch violators when fishing in the groundfish closed areas. Since the average would be a polling every 30 minutes, there would be a 50% chance of detection for entries into the closed areas of more than 15 minutes and a 100 percent chance of detection for entries into the closed areas for longer than 30 minutes. The Council believes this will be sufficient to catch violators that could be transferring scallops at sea to circumvent the scallop possession limit.

The original intent of the scallop VMS program was to determine when a vessel was at sea or at the dock, to be able to deduct the correct number of days-at-sea from a vessel's annual allocation. For this new purpose, more frequent polling is needed. It is also necessary to increase the polling frequency

for scallop vessels that are not on a closed area trip, since the purpose of the provision is to prevent transfers at sea to other scallop vessels. It is not necessary to monitor non-scallop vessels, because it would be highly unusual for a vessel to be unloading 10,000 pounds of scallops without a dredge onboard.

#### 5.1.11 Reporting requirements (Framework Adjustment 13)

The reporting requirements would extend and expand to other groundfish closed areas the existing requirements for vessels fishing for scallops in Closed Area II during 1999.

##### 5.1.11.1 Vessel monitoring systems (VMS)

All scallop vessels that fish in the re-opened closed areas will be required to have a functional VMS onboard. In addition to the current VMS-based reporting requirements, the Regional Administrator may require vessels that fish for scallops in the closed areas to make daily reports on the haul weight of scallops, yellowtail flounder, windowpane flounder, winter flounder, barndoor skates, and monkfish; the total number of tows since the last daily report; and the area fished. This daily report must be made via the e-mail messaging capability built into the VMS units.

**Rationale:** The additional reporting requirements are necessary for NMFS to monitor the fishery and make in-season adjustments to the trip allocations or discontinue the closed area scallop fishery. Currently all full and part-time vessels are required to have a VMS onboard. It is anticipated that very few occasional and general category vessels will want to fish in the re-opened closed areas due to the day-at-sea cost and due to the smaller size of most vessels with occasional limited access scallop permits. During 2000, occasional scallop vessel will receive 4 to 22 days-at-sea for the year. One trip to the re-opened closed areas would therefore cost them their entire annual allocation of days-at-sea.

##### 5.1.11.2 Vessel Trip Reports (VTR)

In addition to the information that NMFS currently requires scallop vessels to submit on Vessel Trip Reports (VTR), the Regional Administrator is encouraged to require vessels on closed area trips to report the following detailed information:

- Start and end time of each tow
- Duration of tow
- Latitude and longitude coordinates of each tow
- Depth of tow
- A description of the gear used
- The number of crew members aboard the vessel
- Subjective description of the habitat they are dredging
- An estimated amount and size of scallops caught on each tow
- Characterization (amount, size, and condition) of all bycatch for each species.

**Rationale:** More detailed information is needed to evaluate future area rotation strategies and the effects they will have on scallops, bycatch species, and habitat. There is very little information to assess how a full-scale commercial fishery will operate under a condition that is representative of a rebuilt scallop resource. Since conditions in the groundfish closed areas are more in line with a rebuilt resource, this information is crucial for developing a rotational area management strategy, contemplated for Amendment 10. The model developed for this framework adjustment makes some very basic assumptions about fishing operations and the distribution of fishing effort relative to the resource (Section

8.1.4.1 in Framework Adjustment 11; NEFMC 1999a). On average, the model assumptions are acceptable for estimating overall impacts, but changes in fishing strategies and non-uniform fishing effort could cause different results. The above list of variables, collected for each closed area trip, would allow the Council to refine and modify this model to improve its predictive capabilities.

#### 5.1.12 Observer requirements (Framework Adjustment 13)

##### 5.1.12.1 Alternative 1 – Mandatory observers on 25 percent of closed area trips

Two-percent of the scallop TAC will be allocated (Section 5.1.3.2.2) to authorize additional landings on trips carrying a NMFS-approved observer. This TAC set aside will enable the Regional Administrator to authorize additional landings on observed trips to defray the observer costs. Any scallop landings on observed trips that exceeds the scallop possession limit will be counted against the TAC set aside for observers, rather than the scallop TAC (Section 5.1.3).

At a goal, the minimum observer coverage should be 25 percent of the scallop trips in each groundfish closed area. The Regional Administrator should take whatever steps are necessary to achieve the 25 percent observer coverage goal, including training of new observers, contracting with third parties, seeking other funding sources, authorizing fewer closed area trips, or even delaying the closed area scallop fishery.

NMFS may require any vessel fishing on a scallop day-at-sea within a groundfish closed area to carry a NMFS-approved observer. The cost of carrying the observer will be borne by the vessel, unless otherwise authorized by the Regional Administrator. The Regional Administrator shall authorize such vessel, carrying an observer, to land an amount of scallops above the scallop possession limit to help defray the cost of carrying an observer. The observer will be paid through and by a means established by the Regional Administrator for paying observers for the closed area scallop fishery. The vessel is obligated to pay the observer costs regardless of whether the vessel lands or sells any scallops on the observed trip.

In addition to the customary data that sea samplers collect, NMFS should also take steps to also collect the following information:

- detailed written and photographic records of all bycatch associated with scallop fishing in the closed areas
- the characterization of bycatch should include a classification of sediment information and associated macroinvertebrates
- finfish discard mortality data.

**Rationale:** A high level of observer coverage is needed because of the concerns over important impacts from scallop fishing in the groundfish closed areas and the uncertainty about how a full-scale commercial fishery will operate under conditions characteristic of a rebuilt resource. These concerns include bycatch and bycatch avoidance, discarding, damage and recovery of habitat, and detailed scallop fishery data collection.

More specifically, standard data reporting alone will be insufficient to monitor the fishery and enable in-season adjustments or a suspension of the fishery. A large portion of the yellowtail flounder bycatch could be discarded, depending on the actual catches in the re-opened closed areas, and the only reporting mechanism besides sea sampling observations would be the Vessel Trip Reports (VTR),

submitted by the vessel operator. Since the Regional Administrator could suspend the fishery when the yellowtail flounder catch exceeds the TAC (725 mt for Closed Area I and Closed Area II; 50 mt for Nantucket Lightship Area), the VTRs (a self-reporting system) could be highly suspect without a second method of augmentation or verification of the VTR data. The TAC for yellowtail flounder is estimated in terms of stock removals, i.e. landings and dead discards. To the extent that surviving fish can be identified, live discards should not be counted against the yellowtail flounder TACs, if the Regional Administrator can determine, based on scientific studies, the survival rates of yellowtail flounder discards.

A second compelling reason to closely monitor the closed area scallop fishery with a high level of observer coverage is to quantify how a full-scale commercial fishery would operate under conditions that are characteristic of a rebuilt resource. Observers collect more detailed information, often on a tow-by-tow basis, than is possible via VTRs. This detailed information is crucial for identifying where and how the fishery operates within the re-opened closed area, so that the information can be applied to future openings of closed areas as part of a rotational area management strategy, contemplated by Amendment 10. Unlike the model used to estimate fishing time and catch from the proposed closed area fishery, scallop fishing will not have uniform effort across the closed area since it will be affected by scallop density, bycatch, vessel crowding, and other factors. The sea sampling data, coupled with VTRs, will be used to fine tune the model developed to estimate impacts of the closed area scallop fishery.

It is necessary to fund this intense data collection activity through a TAC set aside, because no other funding is available. Most funding for observers comes from a Sea Sampling Observer Program to identify and enumerate marine mammal encounters. Since scallop dredges have few encounters with marine mammals, sea sampling scallop trips has a relatively low priority. Additional observer coverage is sometimes funded to take biological samples and record discards, but these scarce funds are used for other equally important fisheries like groundfish.

To enable some of the scallop landings to fund observers, the Regional Administrator may establish a mechanism for these proceeds to pay for observers and help defray the costs of carrying an observer. At six dollars per pound, the additional landings associated with a one-percent TAC set aside could provide nearly \$1.15 million to fund this activity. Since the Council anticipates that 367 to 685 trips could be taken by active scallop vessels, this fund could allow for up to \$8,700 (or 1,450 lbs.) per observed trip at a 25 percent sampling frequency, more than enough to provide funds for the proposed sampling intensity.

It is inadvisable for the vessel to pay the observer directly, due to a potential conflict of interest. A fund for such purpose could be established, on the other hand, into which the proceeds from additional scallop landings could be deposited to allow the agency to defray the observer costs or pay for observers through a third-party contract.

### 5.1.13 TAC set-aside and administration to fund scallop research (Framework Adjustment 13)

#### **Background**

Framework Adjustment 11 to the Atlantic Sea Scallop FMP (NEFMC 1999b) included a provision that allowed one-percent (1%) of the TAC, authorized through the Georges Bank Sea Scallop Exemption Program conducted in Closed Area II, to be reserved for the purpose of funding scallop research. The NMFS Regional Administrator (RA) authorized landings in excess of the trip limit on closed area trips. The additional scallops were sold to generate funds that defrayed the cost of research.

The landings that exceeded the possession limit were deducted from the one percent research set-aside, and not the remaining TAC assigned to the entire fishing area.

The Council continues to support a research set-aside mechanism for Framework Adjustment 13. After reviewing research proposals submitted under the research set-aside in Framework 11, however, the Council's Research Steering and Experimental Fisheries Committee concluded that, to accommodate a broader range of research projects, more flexibility is required in the program than was provided for under Framework Adjustment 11. The principle issue is that it should be possible to conduct research on trips other than those that collect the scallops to fund the approved research activities. In Framework 11, the research set-aside mechanism allowed research activities approved by the RA to be conducted only on the same closed area trip on which scallops were harvested in some specified amount greater than the possession limit.

Although this scenario could be desirable in some cases, the Framework 11 regulations precluded the conduct of research outside of a Scallop Exemption Program trip, limiting the research activities by time and area. Further the cost of the research and expenses incurred during fishing each likely increased because vessels were attempting to make a 10,000 pound trip, fish under research protocols and collect research set-aside scallops simultaneously. As reported by vessel owners and researchers in public testimony, the resulting increased operational costs generally resulted in decreased revenues to the vessel owner, captain and crew, therefore lowering the incentive to collect the set-aside scallops and/or participate in research activities. To address these issues, Framework Adjustment 13 included the following alternatives.

#### **5.1.13.1 General provisions of the TAC research set-aside**

##### ***Areas***

Unless an area is specifically excluded from consideration, one percent of the scallop TAC assigned to each groundfish closed area (or portion of the area) would be reserved for the purpose of funding sea scallop research.

##### ***Eligibility***

Vessels with limited access permits and days-at-sea allocations would be eligible to collect scallops set aside under the research TAC.

##### ***Research Activities***

Research may be conducted in or outside of a closed area, within and outside of the closed area access timeframe and onboard a fishing or other type of vessel. Research conducted with these TAC set-aside funds also may or may not involve the harvest of scallops. Projects funded under the research set-aside would not be limited by, but should be consistent with the goals and objectives of the Sea Scallop FMP, enhance understanding of the scallop resource or contribute to the body of information on which management decisions are made. Examples of research that the Council would support include investigating the use of modified scallop gear to reduce bycatch and minimize impacts to fish habitat. Priorities include research on bycatch reduction, habitat impacts, rotational fishing and enhancement strategies, size selectivity and incidental mortality of scallops and other species.

##### ***Council Administration***

The Council would have responsibility for soliciting research proposals in the form of a Request for Proposals (RFP). The RFP would be distributed to as broad a group of potential respondents as practicable. The Council also would be responsible for the establishment of criteria to be included in the RFP, timely solicitation, receipt, evaluation and development of recommendations for specific research projects. The Council would delegate these activities to its Research Steering and Experimental Fisheries Committee. The Council would provide final approval of the committee's recommendations, and then forward the research proposals using the TAC set aside to the RA for final approval.

### ***Proposal Requirements***

A research proposal submitted to the Council's Research Steering Committee would identify the research to be conducted and the total amount of scallops requested for the project, including their approximate cash value. Additionally the proposal would identify the vessel that would make a closed area trip to collect the research set-aside scallops and participate in the authorized research activities. These do not necessarily have to be the same vessel.

The researcher's proposal would state the amount funds required to support the research project, as well as the amount required to compensate the vessel owner either for the collection of set-aside scallops or for participation in the research project, or both. Any contractual agreements concerning compensation would occur between the researcher and the vessel owner. The research would be conducted in accordance with provisions approved by the Regional Administrator. A standard application that includes these provisions may also be included as part of the research proposal submission.

Funds generated from research set-aside landings would be used to defray the cost of research, including vessel costs, and to compensate boats for expenses incurred during the collection of set-aside scallops. For example, researchers could use the funds to pay for gear modifications, monitoring equipment, additional provisions (fuel or ice, food for scientists) or the salaries of research personnel. Disbursement of funds generated by the collection of set-aside scallops would occur as described in the research proposal.

### ***Project Approval***

The RA would consider the Council's recommendations on projects to be funded through the research set-aside, provide final approval, and authorize a vessel to exceed the possession limit and other regulations specified in this framework adjustment through written notification to the project proponent. Before final approval or disapproval of a project, NMFS would require a minimum of 60 days to review proposals. Additional time could be necessary to make a determination about the need for an Environmental Assessment. If required, preparation of this document may be the responsibility of the researcher. The Council would consider these timeframes in the issuance of an RFP.

Evaluations of the impacts of research activities that involve exemptions to the current fishing regulations other than those stated in this document would be made through the NMFS Experimental Fisheries Program (EFP). Vessels conducting certain types of research requiring relief from fishery regulations may be required to obtain an EFP permit.

### ***Reporting Research Results***

The Council or its Research Steering Committee would reserve the right to ask project proponents to submit interim and/or final reports describing their research results, or other acceptable deliverable, in a

timeframe that is specific to the type research conducted. A final report would be required to include an accounting of the funds provided through the TAC research set-aside program. The specifics of these reports (including information required, submission dates, format etc.) would be established by an agreement between the researcher and the Council (or the Research Steering Committee) before the collection of set-aside scallops and the commencement of the research activities.

### ***Notification***

Vessels making either a closed area research trip on which research set-aside scallops are collected or a closed area trip on which either some portion of or the entire trip is harvested from the research set-aside TAC, must provide notification to the Regional Administrator prior to leaving the dock. In addition, the vessel must also have been issued and carry onboard the vessel, Letter of Authorization that will exempt the vessel from possession limits, crew restrictions, or other exemptions to the regulations that otherwise would apply to scallop fishing.

### **5.1.13.2 Research TAC collected on the research trip - Alternative 1b**

All of the General Provisions stated above would apply to this combined scallop research set-aside collection and research trip. As provided for in Framework Adjustment 11, the Regional Administrator may authorize a vessel to participate in an approved research project, collect scallops in excess of the possession limit to fund the research and carry scientific personnel (exceed the crew size limit). Research activities funded through the set-aside would conform to the regulations for the closed area scallop fishery, except the scallop possession limit and the crew size limit. Other exemptions from the regulations would require an experimental fishery permit, as provided in §648.12.

In this alternative, the vessel may retain the first 10,000 pounds as a commercial closed trip with 10 DAS deducted from its vessel allocation. The first 10,000 pounds also would be deducted from the area's commercial TAC (Section 5.1.3.1). The additional landings would be deducted from the research TAC (Section 5.1.3.2.1). No additional DAS would be assessed for the authorized research set-aside landings if the trip duration were longer than 10 DAS.

**Rationale:** The intent of the research TAC and its administration is to foster better relationships between fishermen, and scientists and encourage the collection of information to better manage the sea scallop resource. The proposed action provides a mechanism to fund research and compensate vessels for collecting the TAC set-aside, and an incentive to participate in research activities. Funds generated through the sale of research set-aside scallops would defray some of the costs of decreased vessel efficiency, possible increased labor, additional fuel and supplies and other expenses incurred during fishing vessel participation in a research project. This exemption from DAS for scallops over the 10,000 pound possession limit is not only an additional incentive to participate in research activities, but actually allows vessels an opportunity participate without incurring additional costs that would ultimately result in an overall economic loss on a research trip.

The researcher, potentially reducing the workload of the Council and/or NMFS, would assume the administrative burden for vessel selection. Costs associated with both conducting research and fishing under this alternative, however, could be higher than other alternatives because of the need for a vessel to make its profit, collect set-aside scallops and fish under research conditions. Such a scenario could also complicate research protocols and logistics.

### **5.1.13.3 Research TAC collected separately from a research trip - Alternative 2b**

All conditions discussed above under General Provisions also would apply to this alternative in which research set-aside scallops are collected on one trip, but the research is conducted on a separate trip. The intent is to allow independent research trips to occur, unhampered by the constraints of a strictly commercial closed area trip.

Vessels could catch scallops under the research set-aside as part of a closed area trip on which the vessel could catch an amount up to 10,000 pounds, plus a specified amount over the trip limit to fund research. The vessel may retain the first 10,000 pounds as a commercial closed trip with 10 DAS deducted from its vessel allocation. The first 10,000 pounds also would be deducted from the area TAC. The additional landings would be deducted from the research TAC. No additional DAS would be assessed for the authorized research set-aside landings if the trip duration were longer than 10 DAS.

Trips that are entirely “compensation trips”, i.e. those on which the entire harvest is sold to generate research funds would also be allowed. In this case, all the scallops would be deducted from the research TAC and no DAS would be deducted from the vessel's DAS allocation. To preclude complicated accounting of DAS or allocating the TAC in a manner not contemplated during the development of this framework adjustment, the Council proposes that the first 10,000 pounds of any closed area trip be deducted from either the overall TAC or the research TAC set-aside, depending on whether the trip occurs as entirely a “compensation trip” or as a “mixed trip” as described in the above paragraph.

Both types of trips, those authorized to bring in an excess amount over the trip limit and “compensation trips” would conform to the regulations for the closed area scallop fishery, with exception of the scallop possession limit (Section 5.1.9.1). Again, other exemptions from the regulations would require an experimental fishery permit, as provided in §648.12.

#### **Research Trips and DAS Accounting**

To optimize and facilitate research opportunities and in keeping with a recommendation from the Council's Research Steering Committee, trips on which sea scallop research is being conducted would be subject to the following guidelines:

- Days-at-sea would not be assessed on research trips conducted in or outside of a closed area aboard a fishing vessel on which scallops are harvested and not retained.
- On research trips conducted in a closed area aboard fishing vessels on which scallops are harvested and retained, the scallops would be deducted from the research set-aside and no days-at-sea would be assessed.
- On research trips conducted outside a closed area aboard a fishing vessel on which scallops are retained, the assessment of days-at-sea would be determined by the Regional Administrator based on the type of research, the expected amount scallops to be harvested and possibly other relevant factors. The Regional Administrator may seek guidance from the Council or the Council's Research Steering Committee on individual applications.