

The Regional Administrator may make an in-season re-allocation of closed area trips no earlier than mid-season, based on the number of vessels that participate and the number of trips taken, if each trip catches the scallop possession limit. Vessels must have fished at least one trip before that date to receive additional trips.

In the Nantucket Lightship Area, the adjustment date would be no earlier than November 15, 2000, and vessels that make at least one trip by November 14, 1999 would be eligible. In the Closed Area I and in Closed Area II, the adjustment date would be no earlier than October 1, 2000, and vessels that make at least one trip by September 1, 2000 would be eligible

**Rationale:** The allocation of trips shown in Table 15, with the associated day-at-sea tradeoffs, will be conservation neutral (Section 6.2.6.1.10). This allocation will also allow a scallop possession limit that is sufficiently high to encourage vessels to fish for scallops in the closed area while not exceeding the TACs for scallops in the groundfish closed areas.

Allocations of more trips would require the Council to reduce the scallop possession limit to levels that might not be attractive, compared to scallop fishing for similar days-at-sea in the existing open areas. Allocations of fewer trips with the same day-at-sea tradeoffs would not be conservation neutral, because of the potential for vessels to use unused days-at-sea to fish in the closed areas. The Council considered a broad range of trip allocations and scallop possession limits (Section 6.2.6.1.10).

#### **5.2.9.2 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 certain number of days-at-sea or the actual time at sea, whichever is more. The day-at-sea accumulations range from seven days with an 8,000 pound scallop possession limit to 21 days with an 18,000 pound scallop possession limit.

A scallop vessel that fishes within a groundfish closed area and catches the scallop possession limit (10,000 pounds) in six days, for example, would accumulate 12 scallop days-at-sea for the trip. Even if the trip lasted only eight days, the trip would 'cost' twelve days-at-sea. A vessel that took five days to steam to and from port (e.g. a vessel from VA) would accumulate 13 days-at-sea for the trip, since the trip lasted more than 12 days.

**Rationale:** Assessing a higher number of days-at-sea for a closed area trip is a conservation measure that makes up for the higher scallop catch rate in the closed area. Scallops are not only larger in the closed area, they are also more abundant. A scallop dredge will therefore catch more scallops (in number) per day-at-sea than if it fished in the areas now open for scallop fishing. To make up for this higher availability, a vessel will accumulate more days than the trip's actual duration, especially if it catches the scallop possession limit in a short time.

The purpose of a day-at-sea accumulation that is greater than the trip length is to ensure a conservation-neutral strategy. Without this mechanism, the higher abundance in the closed areas would enable a vessel to catch more scallops per day-at-sea, increasing fishing mortality. In addition to this effect, the day-at-sea tradeoff for fishing in the closed areas must make up for increased fishing effort caused by the additional opportunity and for the ability of some vessels to use otherwise unused days-at-sea while fishing in the closed areas. These effects are explained in more detail in Section 6.2.6.1.10.

Because of additional time that vessels would take to harvest a higher scallop possession limit, the day-at-sea accumulation must also increase to compensate for the added trip duration. The higher scallop possession limit equates to fewer trips to harvest the TACs and greater day-at-sea tradeoffs.

### **5.2.9.3 Maximum trip length**

Vessels on a scallop day-at-sea will be prohibited from remaining within a closed area or an adjacent buffer zone for more than the number of days-at-sea charged for the closed area trip, unless authorized to do so under an experiment or to catch scallops under the research TAC set aside (Section 5.1.13). Once it leaves, the vessel will not be able to re-enter the area during the same trip.

**Rationale:** This restriction is necessary to prevent vessels from taking longer trips than they would automatically accumulate by fishing in the closed areas. Although the estimates indicate that the scallop vessels will be able to catch the scallop trip limit well before 10 days, this measure could also dissuade vessels from transferring their scallops to another vessel and continue fishing for longer periods.

### **5.2.10 Eligibility (Framework 13)**

No alternatives except the proposed action was considered in this framework adjustment, because there is no justification for excluding limited access scallop vessels and the fleet is highly mobile. Vessels in the Mid-Atlantic are less likely to fish in the groundfish closed areas, due to their distance from home ports, but many vessels travel and land their scallops in a variety of ports when the situation demands it.

#### **5.2.10.1 Net boats may fish in the groundfish closed areas with dredges and continue using trawls in all other areas open to scallop fishing**

The Council considered other options, including preventing scallop vessels from using trawls in the future if they use dredges in the groundfish closed areas. Due to differences in size selectivity, the Council believes that vessels using trawls incur more fishing mortality on a day-at-sea than vessels that use dredges. Originally, the Council allowed these vessels to continue using trawls to fish for scallops because many were not equipped to use dredges. Forcing the vessels to use dredges could create safety problems if the modification made the vessels less seaworthy. If the vessel uses a dredge in the groundfish closed areas, however, the vessel presumably is capable of fishing with dredges in any area.

The Council decided at this time to make no changes in this special eligibility to use trawls outside of the groundfish closed areas. The issue of the differential size selection and mortality with the different gears may be addressed by a future plan amendment.

#### **5.2.10.2 Vessels with General Category Permits**

##### **5.2.10.2.1 Alternative 1 – Vessels with General Category permits would be prohibited from fishing in the groundfish closed areas**

If fishing in an exempted fishery<sup>20</sup> or during a multispecies day-at-sea, vessels with a general category scallop permit will not be eligible to fish in the re-opened closed areas. Vessels with general category scallop permits, however, will be able to retain up to 400 pounds of scallop meats in the

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<sup>20</sup> Including the Gulf of Maine exemptions specified in §648.80(a)(10).

demarcation area, even during the closed area fishery. Vessels without limited access or general category permits will be able to retain and land up to 40 pounds of scallop meats, consistent with current regulations.

**Rationale:** General category scallop permits were intended to accommodate a small amount of scallop bycatch associated with some fishing activities and small-boat inshore fisheries that target scallops. The Scallop FMP currently allows vessels with this open access scallop permit to retain and land no more than 400 pounds of scallop meats. Since the implementation of Amendment 4, some vessels have used this opportunity to use small dredges near shore to target scallops. Since the groundfish closed areas are offshore and are closed to discourage groundfish catches, there is no reason to allow access to the re-opened areas to either type of vessel.

If the vessel with a general category scallop permit is using it to land scallop bycatch, the vessel is fishing for other species, contrary to the need for this action. If the vessel is targeting scallops, it will be uneconomic to fish for scallops so far from shore. Additionally, there would be no mechanism to account for days used (Section 5.1.11.1) that would apply to vessels with limited access scallop permits, if they fished in the re-opened areas under the 400-pound trip limit. Since any type of vessel may obtain a general category scallop permit, allowing any vessel with a general category permit to fish within Closed Area II would unreasonably increase enforcement and administrative costs.

This alternative would avoid the need for mandatory reporting requirements to monitor compliance with the closed area regulations. Many of the vessels with General Category permits would be required to obtain expensive vessel monitoring systems (VMS), comply with the reporting requirements, and carry observers to fish for scallops in the closed areas. The VMS program would be needed to monitor compliance with the area access provisions and buffers. The added reporting requirements and observers would be needed to monitor compliance with the TAC and determine when it would be necessary to halt access to the closed areas. Due to the high number of potential participants, these problems are significant hurdles. In addition to increasing cost, the new reporting requirements for these vessels would require a time-consuming Paperwork Reduction Act analysis to allow access by General Category vessels.

This alternative would also limit the number of vessels that would be exempt from the groundfish closed area regulations, easing the law enforcement burden. The addition of general category vessels could double the number of vessels fishing for scallops in the closed areas and increase the opportunity for limited access vessels to evade the trip limit regulations.

In addition to the PRA and reporting issues discussed above, vessels operating with a general category permit are not currently exempt from the groundfish small mesh regulations. cursory examination of the SAFE report revealed that general category vessels that use dredges had groundfish landings that exceeded the five-percent tolerance, used to justify an exemption from the groundfish regulations. Landings of groundfish for trips landing less than 400 lbs. of scallop meats were about 10 percent of the landings of scallops (NEMFC 1999b). Either a special exemption would be needed in this framework adjustment, or these vessels would have to show that their catch met the five-percent criterion.

Within an external buffer zone (Section 5.2.12), vessels with general category permits could legally fish for other species and have a legitimate scallop bycatch. Continuing the current regulations for these vessels in the buffer zones would satisfy National Standard 9 concerns, without jeopardizing the enforceability of the scallop possession limit that will apply to limited access scallop vessels on a closed area trip.

#### 5.2.10.2.2 Alternative 2 – Allow vessels with General Category permits to fish for scallops in the groundfish closed areas with added reporting requirements

Vessels with a General Category Scallop permit would be authorized to fish in the Nantucket Lightship Area or in Closed Area I during times and in portions that are accessible to vessels with limited access scallop permits. These vessels would be prohibited from possessing more than 400 lbs. of scallop meats or 50 U.S. bushels of shell stock, consistent with current regulations. Vessels with general category permits<sup>21</sup> that fish for scallops in the closed areas would be required to comply with all reporting requirements, gear restrictions, bycatch limits, and all other requirements that apply to limited access vessels that fish in the closed areas, including VMS, observer coverage, and trip notification requirements.

Vessels with limited access scallop permits would alternatively be allowed to fish and land greater amounts of scallops on authorized trips, but would not be allowed to fish for scallops in the closed areas during other trips utilizing its General Category scallop permit<sup>22</sup>.

**Rationale:** Some vessels with general category scallop permits have targeted scallops during favorable conditions close to shore. Unlike Closed Area II, the other two groundfish closed areas are within the range of smaller vessels that could make day trips and profitably land 400 pounds of scallops. This alternative would enable these vessels to realize the benefits of the four-year closure and the rebuilding biomass of scallops in these closed areas. No quantitative analysis of this measure was attempted, because of the PRA and exemption issues identified in Section 5.2.10.2.1 and because of sparse data for vessels targeting scallops with general category permits.

### 5.2.11 Gear Restrictions (Framework 13)

#### 5.2.11.1 Twine Tops and Dredges – status quo

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 8-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 methods described in §648.51(a)(2)(iii).

**Rationale:** The status quo would allow vessels to use commonly available twine tops while fishing in the closed areas. This minimum twine top mesh regulation became effective on December 9, 1999 and applies to all limited access scallop vessels using dredges. Bycatch would be higher than the proposed action, because a 10-inch mesh twine top would allow more finfish to escape capture by the dredge.

#### 5.2.11.2 Other gear modifications to reduce bycatch

The Council may include restrictions on the configuration of the dredge or its components to reduce bycatch based on industry advice. Other than the larger twine top identified in the previous

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<sup>21</sup> This does not include vessels with a limited access scallop permit that fish in the closed areas during an authorized trip.

<sup>22</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.

section, there are no known and proven bycatch reduction devices that would be effective at reducing finfish bycatch without significant losses of scallops. Some research, for example on funnels, ticklers, and other types of finfish excluders has been promising and proposals for an experimental fishery in areas with large scallops to test gear modifications for reducing bycatch or habitat impacts should be encouraged.

Industry on the other hand apparently has an opportunity to voluntarily reduce finfish bycatch under this program. Two changes in fishing and gear handling have the potential for reducing finfish bycatch without significantly reducing scallop catch. The impacts of both of these practices is discussed in more detail in Framework Adjustment 11 (NEFMC 1999a; Section 8.1.1.2.4.2).

One method is to simply tow the dredges slower than the current 4.5 knot standard. The reason for the higher towing speed is to cover more fishing area and catch more scallops per tow. In the closed areas, the scallop biomass is high enough that vessels will be able to catch enough scallops so that their landing are constrained by the scallop trip limit and the vessel's shucking capacity, not by the catch rate. If the vessels towed the gear slower, they would catch less per hour, but that would balance the shucking capacity and (for Alternative 1 only) there would be no cost to extend the trip to 10 days.

A second method to reduce finfish bycatch arose during evaluation of the experimental fishery. Some researchers and fishermen that had observed films of scallop dredging thought that letting the dredge sit stationary on the bottom for a few minutes prior to hauling the gear back would also significantly reduce bycatch. Even if the yellowtail flounder bycatch was reduced by half, it could keep the total yellowtail flounder catch under its TAC.

**Rationale:** No proposals were raised that could be enforced during the development of Framework Adjustment 11. Changes in fishing operations, however, could be very effective in reducing bycatch and the Council encourages the industry to voluntarily explore and adopt ways to reduce bycatch.

## 5.2.12 Buffer zones (Framework 13)

### 5.2.12.1 Alternative 1 - External buffer zones where closed area regulations apply

Any vessel on a scallop day-at-sea within a buffer zone, as described for Closed Area II below, will be considered to be on a closed area trip and the regulations for fishing for scallops in Closed Area II (scallop possession limit, automatic x day-at-sea accumulation, x-day maximum trip length, 10-inch twine top mesh, etc.) also apply. Any vessel<sup>23</sup> that is not on a scallop day-at-sea (including vessels with limited access scallop permits) can retain up to 400 pounds of scallop meats if it has a scallop general category scallop permit or 40 pounds of scallop meat if it does not have a general category scallop permit.

Buffer zones and the closed area regulations for scallop vessels would expire when scallop vessels are again prohibited from fishing within an adjacent groundfish closed area, either when the season closes according to this framework adjustment, or when the closed area scallop fishery is suspended for exceeding the yellowtail flounder TAC (Section 5.2.7).

The boundaries of the buffer zone surrounding Closed Area II are described in Table 14 and shown in Figure 25. No boundaries have been specified for Nantucket Lightship Area or Closed Area I,

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<sup>23</sup> Assuming the vessel is legally fishing in an exempted fishery or during a multispecies day-at-sea.

because of the anticipated negative impacts of an overlapping buffer zone, close to shore and in a prime scallop resource area. A buffer of about 15 nm, could be constructed on the inshore boundary of Closed Area I and the Nantucket Lightship Area to reduce the opportunity to evade the closed area regulations and to mitigate the habitat and bycatch impacts. These areas would, however, overlap and effectively close important scallop areas.

Table 14. Boundary of the scallop buffer zone adjacent to Closed Area II.

Point label <sup>24</sup>	North latitude	West longitude
DA1	40°24'	67°40'
DA2	40°24'	EEZ
DA3	40°26.5' (US/Can)	EEZ
G5	41°18.6'	66°24.8' (US/Can)
CII2	41°00'	66°35.8'
CII1	41°00'	67°20'
DA2	42°12'	67°20'
DA3	42°12'	67°40'
DA1	40°24'	67°40'

<sup>24</sup> Only points DA1, DA2, and DA3 are new. Other points are labeled to correspond to points of reference in existing regulations.

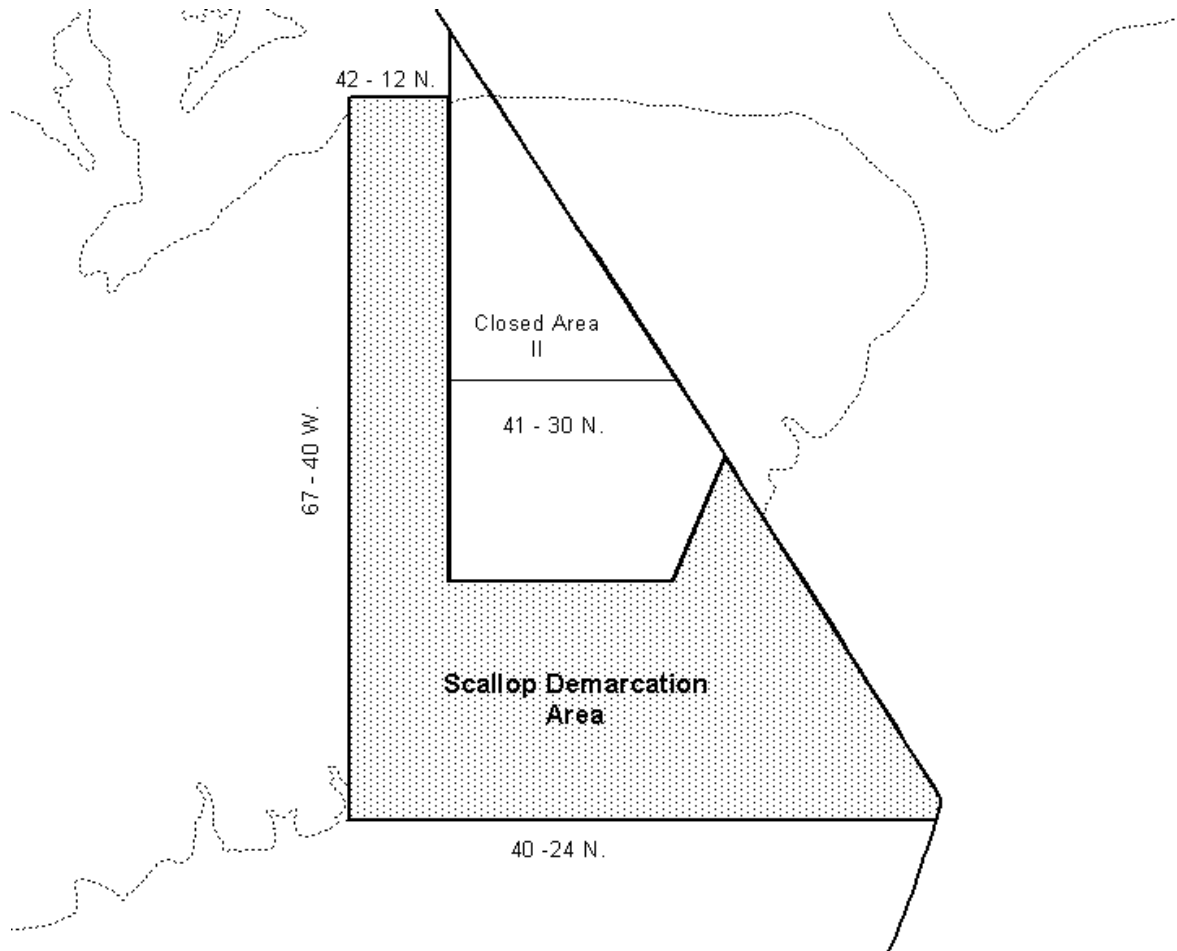


Figure 25. Boundaries of the Georges Bank scallop demarcation area where the closed area fishery regulations apply to any vessel fishing during a scallop day-at-sea. Closed area trips may be taken in the scallop buffer zone and in the portion of Closed Area II that lies south of 41°30' North latitude.

**Rationale:** The main purpose of a buffer zone is to reduce the potential for transferring scallop catches at sea or fishing within the closed area during short periods between times when the vessel's location is determined by the VMS system.

Without the buffer zone, two vessels could fish right to each other, one with a scallop possession limit and the other with no limit on the amount of scallops that could be on board. While a buffer zone simply moves this problem further west, vessels fishing within the buffer zone have less incentive to transfer its scallops to another vessel fishing nearby. At its closest point, the boundary of the buffer zone for Closed Area II is about 20 nautical miles from the boundary of the area re-opened for scallop fishing. It would therefore take about one to two hours for two vessels to meet in the demarcation area, enough time for the VMS to document that the vessel on a closed area trip had left the area, terminating the trip and accumulating ten days-at-sea. Re-entering the Closed Area would be prohibited, or at the very least, trigger an accumulation of another 10 or more days-at-sea.

Another effect of a buffer is to reduce scallop fishing effort in adjacent areas with smaller scallops and high bycatch of Georges Bank yellowtail flounder. Daily catch reports from scallop vessels on Closed Area II trips indicate little activity within the buffer zone, except for some trips that report their

catches on the way to port after leaving Closed Area II. Anecdotally, the buffer zone has been so effective at reducing fishing effort adjacent to Closed Area II, that fishermen have indicated an interest in saving a portion of their annual day-at-sea allocations to re-enter this area when the Closed Area II fishery closes. They anticipate finding higher catches and larger scallops in this zone, which has been essentially unfished for five to six months. Coupled with the abundant year-class first observed in the 1998 research survey, the catches when the buffer zone becomes less regulated could be substantial. Many vessels however are running short of days at the end of 1999, because of having only 120 days to fish or because of using up to 60 days-at-sea to fish in Closed Area II. The catch rates in the buffer zone surrounding Closed Area II could be higher than when the Closed Area II fishery opened, but the total catch may be restrained by the availability of days-at-sea. This delayed fishing mortality, if as effective as it appears, could translate into improved yield during the beginning of the 2000 fishing year.

No formal analysis of the buffer zone effect could be completed, due to the availability of data and insufficient time. The full conservation effect of the buffer zone surrounding Closed Area II cannot be calculated until the catches of scallops and finfish for 1999 are available. The biological benefits of the buffer zone will also become apparent when scallop vessels begin fishing there again. The benefit for enforcement, however, appears to have been compromised by the opportunity for boats without VMS systems to enter the closed area. The U.S. Coast Guard reports that “illegal transfers at sea of scallops . . . are occurring with regularity.” Furthermore, “recipient boats have become something of a cottage industry.” (Appendix V).

The PDT evaluated the establishment of buffer zones surrounding the accessible areas of Nantucket Lightship Area and Closed Area I. The consensus on buffer zones was that the broad buffer zone around Closed Area II, while originally intended to improve enforcement, would have a measurable biological and economic benefit from the reduced fishing effort in this zone. The benefit could not be quantified, however, since the buffer zone had not yet been surveyed since it went into effect and because the Closed Area II fishery is still underway. For Closed Area II, therefore, the PDT recommended continuing the current buffer zone policy should apply in 2000 if access is again granted to scallop vessels.

For Nantucket Lightship Area and for Closed Area I, on the other hand, external buffer zones would severely impact the scallop fishery in the important South Channel area. The PDT felt that this option would not be acceptable to the fishing industry and that failure to approve access would prevent the opportunity to shift fishing effort from the smaller scallops in open areas to the larger scallops in the closed areas.

### **5.2.12.2 Alternative 2 - Internal no-fishing areas**

A two mile strip inside the periphery of the groundfish closed areas would exist inside the boundary of the groundfish closed areas. This measure would be tied to increasing the polling frequency for the VMS system (Section 5.1.10.4) to enhance the monitoring capability for closed area access.

**Rationale:** The no-fishing area would help to monitor compliance with the closed area regulations compared to having no buffer between the portions of the closed areas open to scalloping and other fishing areas, but it would have little conservation benefits. Increasing the VMS polling frequency was thought to be too costly to help enforcement with the small, internal no fishing zone around and inside the edges of the closed areas where scallop access might be permitted.

### 5.2.13 Possession limits

#### 5.2.13.1 Scallop meats – single limit for access to all groundfish closed areas (Framework 13)

A single possession limit, between 8,000 and 18,000 lbs. of scallop meats, would apply to vessels on a closed area trip, regardless of which area the vessel fished. The number of trips that can be allocated and the day-at-sea tradeoffs vary over this range of possession limits. A summary of these relationships is given in the table below.

**Table 15.** Trip allocations, conservation-neutral day-at-sea tradeoffs, and predicted net benefits for various possession limit options for trips by limited access scallop vessels that fish in the groundfish closed areas.

Possession limit option	Number of trips / day-at-sea tradeoff			Net benefits (million)
	Nantucket Lightship Area	Closed Area I	Closed Area II	
8,000	2 / 8	2 / 7	4 / 10	\$35.7
10,000	1 / 10	2 / 9	3 / 12	\$37.7
12,000	1 / 12	1 / 11	3 / 14	\$35.5
15,000	1 / 15	1 / 14	2 / 17	\$39.3
18,000	0 / -	1 / 18	2 / 21	\$29.3

**Rationale:** The purpose of a single possession limit is to ease the law enforcement burden of monitoring a unique trip limit for each closed area. A wide range of options is considered to explore ranges that are profitable to industry and low enough to provide reasonable access to limited access vessels, while being conservation neutral with respect to scallop fishing mortality, habitat, and other species that are normally captured as bycatch. Five options within this range were analyzed: 8,000; 10,000; 12,000; 15,000; and 18,000 pounds of scallop meats. The analysis of trip allocations associated with each option is presented in Section 6.2.6.1.7 and the analysis of conservation-neutral day-at-sea tradeoffs associated with each option is given in Section 6.2.6.1.10.

#### 5.2.13.2 Shellstock – 50 US Bushels (Framework 13)

Any vessel will be prohibited from possessing more than 50 US bushels of shell stock when it leaves a groundfish closed area or an adjacent buffer zone. 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.

#### 5.2.13.3 Possession Limits for Regulated Multispecies

##### 5.2.13.3.1 Alternative 1 – 500 pounds per trip

While portions of Closed Area II are open to scallop fishing, scallop vessels on a closed area trip (i.e. vessels with a VMS position report within one of the groundfish closed areas or a buffer zone) may retain and land up to 500 pounds of regulated species. On trips with a certified observer aboard (Section 5.2.16), the vessel may retain and land any amount of regulated species, but the revenue from the sale of more than 500 pounds of regulated species shall be donated to a bona-fide charity. 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 328 active vessels fish for scallops on six closed area trips, for example, this adjustment would reduce regulatory discarding by 393,600 pounds.

#### 5.2.13.3.2 Alternative 2 – 1,000 pounds per trip

While portions of Closed Area II are open to scallop fishing, scallop vessels on a closed area trip (i.e. vessels with a VMS position report within one of the groundfish closed areas or a buffer zone) may retain and land up to 1,000 pounds of regulated species. On trips with a certified observer aboard (Section 5.2.16), the vessel may retain and land any amount of regulated species, but the revenue from the sale of more than 1,000 pounds of regulated species shall be donated to a bona-fide charity. 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.

During the Closed Area II fishery in 1999, the average yellowtail flounder bycatch was over 1,300 pounds per trip. There was insufficient information available during deliberations to evaluate the distribution, but the mode<sup>25</sup> is likely to be somewhat less, since the average is often affected by a few trips with very high catches. Since these fish could not be landed and scallop landings were generous, there was no incentive to target yellowtail flounder or any other groundfish species. In fact, there was a strong incentive to try to avoid catching yellowtail flounder until the end of the year when vessels were trying to get in their remaining trips before the Closed Area II would be closed on the basis of the yellowtail flounder TAC.

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<sup>25</sup> The mode is a statistical measure where 50 percent of the observations occur above that value.

Even though the 1999 experimental fishery indicated much lower bycatch rates for yellowtail flounder in the Nantucket Lightship Area and in Closed Area II, there still would be little incentive for limited access scallop vessels to target groundfish in the closed areas. The strongest incentive will probably operate like the early part of the 1999 Closed Area II fishery. Because of this strong incentive to avoid groundfish during scallop fishing, especially yellowtail flounder, there is no reason to limit the landings below the average catch level. A lower possession limit, like Alternative 1 or the status quo (300 lbs.) would increase discarding and waste, without having much benefit by keeping groundfish mortality at a minimum. In this case, other factors take the place of the effectiveness of a groundfish possession limit.

#### **5.2.13.4 Possession Limit for Monkfish**

Like the proposed action for the regulated multispecies possession limit, a higher possession limit for monkfish bycatch would be allowed to accommodate increased bycatch in the groundfish closed areas and reduce regulatory discarding.

**Rationale:** The Council rejected higher monkfish possession limits because the expected bycatch of monkfish is less than the allowance (300 pounds tail-weight per day-at-sea) for scallop dredges. An adjustment is therefore unnecessary.

#### **5.2.14 Enforcement Provisions (Framework 13)**

The alternatives that the Council considered for enforcement provisions were implemented in 1999 during the successful Closed Area II fishery. The Council therefore adopted the status quo for everything with the exception of the VMS polling frequency. The only provision that did not improve enforceability was the buffer zone around Closed Area II. While there were biological benefits for the temporary protection afforded by the buffer zone, the Enforcement Committee found that there was no improvement in enforceability. From one point of view, the buffer zone complicated enforcement by requiring a scallop possession limit for some trips that never entered the closed area.

Based on this finding, the Council did not adopt a buffer zone surrounding the closed areas while they were open to scallop fishing. In place of this provision, originally intended to discourage transfers at sea, the Council improved enforceability of the closed area access program by increasing the polling frequency (Section 5.1.10.4).

#### **5.2.14.1 VMS polling frequency – Status quo**

Limited access scallop vessels and other general category vessels that installed or used existing VMS equipment to participate in the groundfish closed area scallop fishery would be polled an average of one time per hour. The actual time of polling to determine the position of a vessel's VMS is randomized to prevent a vessel from knowing exactly when it is being polled.

**Rationale:** The status quo would require no programmatic changes and would not increase cost for either administration or for the scallop vessels. This polling frequency was originally intended to determine when a vessel was at sea or at the dock, instead of monitoring closed areas. This polling frequency may not be sufficiently short to prevent vessels from illegally entering the closed areas to transfer scallops from eligible vessels. Such an activity would circumvent the scallop possession limit.

## 5.2.15 Reporting Requirements (Framework 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. The Council, therefore, chose a status quo alternative that continued the successful program in the 1999 Closed Area II fishery. During the development of Framework Adjustment 13, no new alternatives were identified at the framework meetings.

## 5.2.16 Observers (Framework 13)

### 5.2.16.1 Alternative 2 – Mandatory observer coverage on less than 25 percent of closed area trips

The observer program to monitor the scallop and yellowtail flounder TACs would be reduced below 25 percent to shift resources and collect more detailed data, useful to managers and the industry during access to closed areas. The sampling frequency could be as low as 10 percent, similar to the Sea Sampling Observer Program for monitoring interactions with marine mammals by vessels using gears to which the mammals are particularly vulnerable.

**Rationale:** Sampling frequencies lower than 25 percent of all closed area trips could allow the collection of more detailed data needed by managers and the industry. If fewer resources were devoted to manning the observer program at a high sampling level, perhaps the focus could shift to collecting more useful data, without significantly compromising the accuracy of the yellowtail flounder and scallop TAC monitoring.

The observer program for the 1999 Closed Area II scallop fishery required the use of many new observers with modest training and skills, with directions to primarily observe and record scallop and finfish catches. More detailed data about gear characteristics and fishing practices could be helpful in determining any in-season changes that are needed or methods that the industry could use to reduce their impacts while fishing in closed areas.

Dr. William DuPaul is operating a more detailed observer sampling program on some trips in Closed Area II, funded by the research TAC set aside. This program is part of a nested design strategy to estimate the fleet fishing characteristics using vessel trip report (census) and regular observer data (subsampling at a higher frequency). Collecting this detailed data, however, slows the fishing operations and increases cost. Often more than one observer is aboard and fishing operations must be slowed to allow the observers to collect the needed data. For this reason, this program compensates the vessels for the delay and cost of the observers by allowing the vessel to land more scallops counted against the research TAC set aside.

Due to the detailed nature of this data and limited resources,<sup>26</sup> in-season analysis to change management regulations or promote changes in fishing practices is not possible. This data will, however, be very important to evaluate and estimate the impacts of future closed area access programs.

The PDT was unable to recommend a specific sampling intensity for this program, as requested to do by the Scallop Oversight Committee. The Council has not identified what accuracy is acceptable for monitoring the TACs and the costs of a more intensive sampling strategy are unknown. A 25 percent

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<sup>26</sup> Analyzing data during the data collection program would divert resources away from data collection during crucial periods of time.

frequency is usually a high sampling intensity for most random subsamples, however. The Sea Sampling Observer Program for monitoring and estimating marine mammal encounters targets about 10 percent of trips by vessels that use gear to which marine mammals are vulnerable. For gears that are given high priority by the Sea Sampling Observer Program this sampling frequency is often satisfactory for estimating bycatch in assessments. Attempts to estimate bycatch with sampling frequencies less than five percent are often unsatisfactory. For the purpose of monitoring a TAC, however, sampling frequencies greater than 10 percent are appropriate to improve accuracy.

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

### 5.2.17.1 Research funded through an authorization to exceed the trip limit by 1,000 pounds - Alternative 3

Vessels eligible to fish for scallops in the groundfish closed areas would be allowed to land up to 1,000 pounds above the trip limit. A portion (50 percent) of the funds generated from the sale of the overage would be deposited in a research set-aside escrow account. The other half of the proceeds would accrue to the vessel as compensation for collecting scallops for the research fund.

Vessel participation would be voluntary and vessels would be required to notify the RA and obtain authorization before the vessel leaves port. For example, the Regional Administrator would authorize a scallop vessel electing to participate in the program to harvest up to 1,000 pounds in excess of the trip limit from a closed area on a specified trip. The vessel would retain 500 pounds, but would be required to sell the remaining 500 pounds, with a dealer transferring the proceeds to the research fund. The Council would oversee such a fund to be administered by an eligible non-profit group. The Council would select this non-profit organization through a bid process, if necessary.

The RA would determine the amount that the vessel could exceed the possession limit, and the portion that would count against the research TAC. The remaining research set-aside would be available to researchers who require the harvest of scallops as a component of their research projects.

All the rules of the closed area fishery would apply, with the exception of the scallop possession limit. All overages (in excess of 10,000 pounds) would be counted against the research set-aside TAC. Once the set-aside was caught, authorizations to collect extra scallops would cease. Days-at-sea for all trips would be assessed in the manner specified by Framework Adjustment 13 (Section 5.1.6.2).

**Rationale:** The incentive for participation in a program of this nature would be the receipt of extra scallops in return for bringing in additional scallops to generate research funds. Fishermen currently land catches below the 10,000 pound trip limit to avoid violations for overages. This proposal would allow vessels to land exactly 10,000 pounds plus the extra "reimbursement scallops" as compensation for bringing in those scallops used to generate research funds.

The voluntary nature of the program avoids the possibility that it could be construed as some form of a user fee<sup>27</sup>. Researchers and the Council could not anticipate the level and availability of funds, however, since it is not possible to determine how many or when boats would participate. It also makes

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<sup>27</sup> The Magnuson-Stevens Act states that that the imposition of fees may not exceed the administrative costs incurred during the issuance of permits, except where specifically allowed in the Act.

when research could commence uncertain, since commencement would depend on funding availability. These problems could be less than anticipated, since vessels would have an incentive to collect the extra scallops early in the season when high scallop catches and favorable weather conditions are more likely.

The burden associated with establishing and administering a research escrow fund might be significant. The Council was advised that additional consultation with NOAA General Counsel would be required prior to development of this alternative. Enforcement concerns about monitoring a trip limit overage were also associated with this alternative.

#### **5.2.17.2 Days-at sea accounting - Alternatives 1a and 2a**

DAS would be assessed in accordance with the provisions of Framework 13 for all scallops landed from a closed area trip, regardless of whether they are harvested under the overall area or research TAC and whether research is being conducted or not. Ten days-at-sea would be assessed for each closed area trip. For time spent fishing over 10 days, time at sea would be counted as actual days fished (i.e. one-for-one).

**Rationale:** An authorized vessel would receive a profit from a 10,000 pound closed area trip and would be compensated through research set-aside funds for time spent to catch the research TAC scallops and/or participation in research activities. However, just as the harvest of scallops for profit involves time at sea and costs associated with overhead, supplies and crew, these same conditions exist while fishing for the research TAC and during the conduct of research projects. A deduction of DAS for these types of trips serves as a disincentive to participate because it is time that could be spent on a strictly commercial venture.