

stocking is typically associated with boats that fish for scallops with nets rather than dredges." (White 1992: 13).

Port agents in the Virginia and North Carolina region, however, were not aware of anyone practicing shell stocking to any significant degree (pers. comm.). If that is true, then there may be few "traditional" shell-stockers in that region affected by this regulation, although that is difficult to adjudicate with current information.

There is, according to New England port agents (pers. comm.), a market for live-scallops in the shell, supplied by state waters fishermen in inshore areas like the Cape Cod Bay. If those fishers also hold federal licenses, they could be impacted unless they are fishing in the state waters exemption program, in which case the 50-bushel limit does not apply. Without knowing if and how many of those participants in the live-scallop market are in fact fishing under the exemption program, it is impossible to know whether and to what extent they may be impacted. Given, however, that the majority of vessels that show up in the logbooks possibly indicating shell stocking are general category boats, the 50-bushel limit is no more stringent than the rules under which they are currently regulated.

5.3 Regulatory Impact Review (RIR; Executive Order 12866)

5.3.1 Introduction

This section provides the information necessary for the Secretary of Commerce to address the requirements of Executive Order 12866.

The purpose and need for management (statement of the problem) is described in Section 3.0. The proposed action (option 3) and the alternatives (options 1 and 2) are described in Section 4.0. The economic impacts are described in Section 5.2.4.4 and summarized below under the discussion of how the proposed action is characterized under EO 12866.

5.3.2 Executive Order 12866

The proposed action does not constitute a significant regulatory action under Executive Order 12866 for the following reasons:

- a) Framework 14 proposes to adjust days-at-sea allocations and provide access to HC and VA/NC areas by taking into account the recent changes in scallop abundance levels. The 2000 SAFE scallop report indicated that Amendment 7 days-at-sea schedule no longer corresponds to the fishing mortality reduction schedule under the current stock abundance conditions, and a change in days-at-sea allocations is necessary to achieve optimum yield. The proposed action is identified by option 3 in the document, and allows an increase in days-at-sea allocations for the limited access vessels. Specifically, the days-at-sea allocations would be increased to 120 days-at-sea for the full-time, 48 days-at-sea for part-time vessels and 10 days-at-sea for the occasional vessels for the fishing years 2001 and 2002. Although these levels correspond to the current days-at-sea allocations, they represent an increase from the Amendment 7 schedule of 49 days-at-sea for full-time, 19 for part-time, and 4 for the occasional vessels for year 2001. The non-selected options, options 1 and 2, would also increase days-at-sea allocations to 120 days for the fishing years 2001 and 2002. Framework 14 would also allow restricted access for the limited access scallop vessels to the previously closed areas in Mid-Atlantic, i.e., HC and VA/NC, to take advantage of the high scallop biomass in these areas. Although, non-selected alternatives

(options 1 and 2) would also allow access to these areas, the TACs would be set at a higher level than the TAC proposed by this Framework (option 3). Options 1 and 2 would close, however, additional areas in Georges Bank and Mid-Atlantic, to scallop fishing in the next two fishing years.

As analyzed in Section 5.2.4.4, the increase in the days-at-sea allocations and the area access will have positive impacts on the scallop industry, consumer and producer benefits, and the local and the national economy. Framework Adjustment 14 measures will benefit consumers by lowering scallop prices and increasing the scallop landings. Although the operating costs will rise due to increase in the fishing effort, the rise in scallop revenues will more than offset the cost increase, resulting in positive producer benefits for the scallop vessels. The annual economic impacts on the economy will also be positive, since the total fleet revenues are estimated to increase for all the options that were considered by the Council. The proposed action, option 3, however, results in the maximum economic impact, by increasing the total revenues by \$53.6 million in 2001, and by \$70.6 million in 2002 compared to the status quo option (Amendment 7 days-at-sea schedule). For the non-selected options (options 1 and 2), the increase in revenues was estimated to be \$26.8 million and \$41.5 million in year 2001, and \$21.4 million and \$51.6 million in year 2002 for options 1 and 2 respectively. These economic impacts were estimated based on the assumption that the landings from the restricted access areas (HC and VA?NC areas) will equal to the corresponding TACs. If scallop fishermen prefer to fish in the open areas rather than in the restricted access areas at the proposed days-at-sea trade-offs and trip limits, the annual impacts on the economy, although still positive, will be less than the estimated levels (Section 5.2.4.4).

This increase in days-at-sea allocations from the Amendment 7 levels will result in higher employment in the scallop fishing industry. The employment is estimated to almost double for the proposed action (option 3), and to increase significantly for the alternative options (options 1 and 2). For these reasons, the proposed action will not adversely affect in a material way the economy, productivity, competition and jobs. The proposed action (option 3) will have an annual effect on the economy of more than \$100 million.

- b) For the same reasons as above, the proposed action will not significantly affect competition, jobs, the environment, or state, local or tribal governments and communities. The area access and trip limits will not affect safety or public health.
- c) The proposed action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency has indicated that it plans an action that will affect the same areas and the fisheries.
- d) The proposed action will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of their recipients.
- e) The proposed action does not raise novel legal or policy issues. Regulations regarding days-at-sea allocations, area closures, and trip limits have already been used to manage fisheries in the Northeast.

5.3.3 Regulatory Flexibility Analysis (RFA)

The purpose of the Regulatory Flexibility Analysis (RFA) is to reduce the impacts of burdensome regulations and record keeping requirements on small businesses. To achieve this goal, the RFA requires government agencies to describe and analyze the effects of regulations and possible alternatives on small

business entities. Based on this information, the Regulatory Flexibility Analysis determines whether the proposed action would have a “significant economic impact on a substantial number of small entities.”

The RFA applies to any rule or regulation that must undergo “notice and comment” under the Administrative Procedures Act (APA), specifically those rules published as proposed rules. When RFA applies, the Council must assess the impacts of the regulations to determine if they will have a “significant economic impact on a substantial number of small entities”. Since this action is submitted as a final rule, not subject to further notice and comment under the APA, the RFA does not apply. Section 5.2.4.4.11 provides, however, an analysis of the economic impacts of the proposed measures on the small business entities and vessels.

5.4 Endangered Species Act (ESA)

Section 7 of the ESA requires federal agencies conducting, authorizing or funding activities that may affect threatened and endangered species to ensure that the impacts of those activities do not jeopardize the continued existence of listed species. Section 5.2.4.3 discusses the impacts of Framework Adjustment 14 and the scallop fishery on listed species. This adjustment removes a requirement for reduction of days-at-sea that could have been of benefit to protected species, but does not increase days-at-sea beyond the 1999 fishing year allocation. In addition, it does not change the way in which scallop gear operates and may provide additional protection if new areas are closed to scallop fishing.

The Council concludes that this action may affect, but would not likely jeopardize the continued existence of any threatened and endangered species based on the discussion in this document, the historic low level of takes of listed species in the sea scallop fishery, and previous NMFS determinations that operation of this fishery and actions similar to those proposed in Framework Adjustment 14 were not expected to result in increased adverse impacts to listed species. The Council also concludes that this action would neither alter nor modify any designated critical habitat. Should activities under this action change or new information become available that changes the basis for this determination; the Council recognizes that NMFS may reinitiate consultation.

5.5 Marine Mammal Protection Act (MMPA)

The New England Fishery Management Council has reviewed the impacts of Framework Adjustment 14 to the Atlantic Sea Scallop Fishery Management Plan on marine mammals and concludes that this management action is consistent with the provisions of the MMPA and will not alter existing measures to protect the species likely to inhabit the management unit. See Section 5.2.4.3 for a discussion of these impacts.

5.6 Coastal Zone Management Act (CZMA)

Request for determinations of consistency with the Coastal Zone Management Act will be sent to coastal states that boarder the Atlantic Sea Scallop resource after the Council chooses the proposed action and submits the Final Framework Adjustment 14 document for official review and approval.

5.7 Paperwork Reduction Act (PRA)

This section will be prepared and submitted under a different cover.