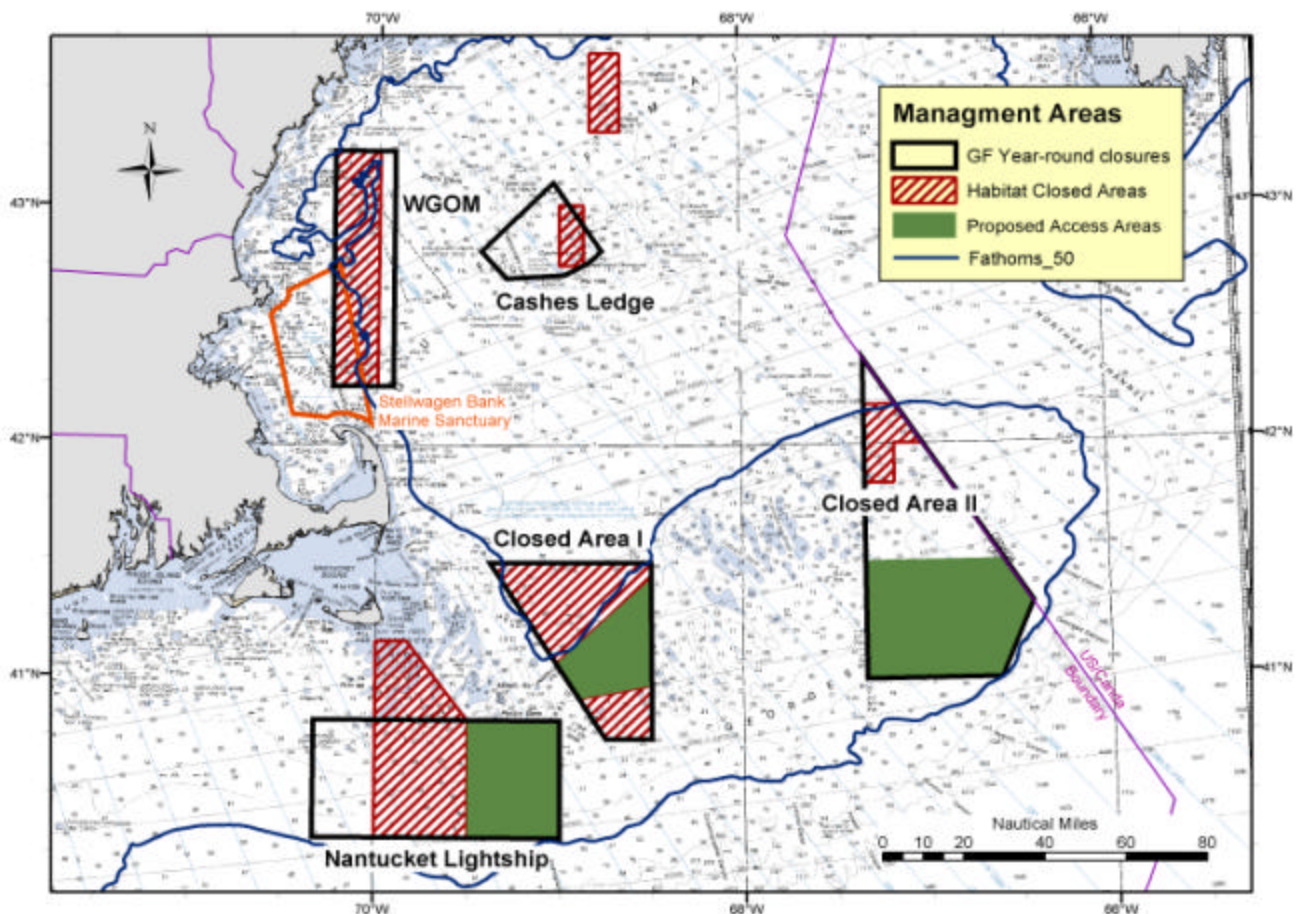


Framework Adjustment 16 to the Atlantic Sea Scallop FMP
and
Framework Adjustment 39 to the Northeast Multispecies FMP
with an
Environmental Assessment, Regulatory Impact Review, and
Regulatory Flexibility Analysis

Proposing Controlled Scallop Fishing in Portions of the Nantucket Lightship Area, Closed Area I, and Closed Area II during 2004 – 2007

Prepared by the New England Fishery Management Council, in consultation with the National Marine Fisheries Service and the Mid-Atlantic Fishery Management Council



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On the cover: Map of the Georges Bank region and the southern half of the Gulf of Maine, showing the boundaries of the proposed EFH closed areas and parts of the groundfish closed areas that would be open for controlled access scallop fishing in 2004 – 2007.

Cover Sheet

Abstract

Framework Adjustment 16/39 was developed as an addition to Amendment 10 to address and implement scallop area management in parts of the groundfish closed areas. Scallop biomass in portions of these areas has increased to high levels as a result of the closure to scallop fishing since 1994 to achieve groundfish mortality and rebuilding objectives. Although the Council wanted to allow controlled scallop fishing access starting with the 2004 fishing year, the specific issues associated with scallop fishing in the groundfish mortality closed areas were too complex and controversial to incorporate into the larger Amendment 10. Instead, Framework Adjustment 16/39 focuses on these issues, considering and analyzing the potential effects of alternatives to achieve the Scallop FMP goals with area rotation, without causing unacceptable impacts for groundfish habitat and bycatch.

This document amends the Atlantic Sea Scallop FMP via Framework Adjustment 16 and amends the Northeast Multispecies FMP through Framework Adjustment 39. Alternatives associated with Framework Adjustment 16 focus on allocations of fishing effort and scallop TACs, provisions to fund observers and research, enforcement provisions, and monitoring requirements. Alternatives associated with Framework Adjustment 39 focus on measures to minimize or control bycatch, including when and where scallop fishing may occur, as well as a limit on how much bycatch would be allowed. Because the alternatives and effects are intertwined, the document and analysis of impacts (Environmental Assessment) have been combined into a single document that describes and analyzes the proposed access program and various related management alternatives.

Total net benefits are expected to be slightly negative in the short term, but positive in the long term. In addition, the proposed access program is expected to minimize impacts on habitat and bycatch, in part due to reductions in fishing effort that would otherwise have occurred in the open fishing areas in Georges Bank and the Mid-Atlantic regions. As a result, total fishing time will be reduced while maintaining high scallop yield and net benefits. The proposed access program is expected to reduce fishing effort in the open areas of the Georges Bank region, where 50% of the open area effort is expected to otherwise occur in the environmentally sensitive Great South Channel. It is also expected to reduce fishing effort in the Mid-Atlantic region, where fishing mortality has been above sustainable levels and where interactions with sea turtles have been problematic.

Another effect of this framework adjustment is to modify the area rotation plan in Amendment 10, so that it is compatible with the EFH closed areas that the Council adopted in Amendment 13 to the Multispecies FMP. Amendment 10 to the Scallop FMP contemplated access to areas that had previously been open to limited scallop fishing in 1999 and 2000, but some of these areas overlapped the new EFH closed areas.

1.0 EXECUTIVE SUMMARY

This framework adjustment was prepared by the New England Fishery Management Council (NEFMC), in consultation with the Mid-Atlantic Fishery Management Council (MAFMC) and the National Marine Fisheries Service (NMFS). Two MAFMC members sit on the NEFMC's Scallop Oversight Committee and vote on the alternatives that are recommended to the NEFMC for approval. In addition, the NEFMC utilizes a Plan Development Team (PDT) of scientists and an Advisory Committee of fishery experts. Four of seven PDT members are employed by the NMFS, either at the Regional Office in Gloucester, MA or the Northeast Fisheries Science Center in Woods Hole, MA. Five of the fifteen Advisory Committee members are from the Mid-Atlantic region. In addition, the Groundfish and Habitat Oversight Committee also met and developed alternatives and recommendations for consideration by the Council. The Groundfish Oversight Committee also has a voting member who drawn from the MAFMC membership.

1.1 *Summary of Purpose, Need for Action, and Major Issues*

The purpose of this framework action is to develop management measures to control scallop fishing effort in re-opened portions of the Georges Bank groundfish closed areas and correct the inconsistencies between the Scallop and Multispecies FMP with regard to habitat closures. The proposed action is needed to allow access to large, valuable scallops in the Georges Bank groundfish areas; while minimizing bycatch impacts for groundfish, skates, monkfish, and other finfish; and improving the practicability of the habitat closed areas adopted by the Council in Amendment 13 to the Multispecies FMP.

Secondarily, two areas of perceived inequities are addressed. The Council developed management measures to allow vessels with general category scallop permits to target scallops in the re-opened area. Under previous access programs, only vessels with a limited access scallop permit had been allowed to target scallops in the re-opened areas. The framework action also includes an alternative to modify the method to allocate controlled access trips and DAS to part-time and occasional scallop vessels, correcting a potential inequity caused by an allocation strategy in Amendment 10 using rounding.

Although total net economic benefits of the action are nearly identical to the No Action alternative, there are important non-economic benefits that are analyzed in the Environmental Assessment, such as minimizing bycatch and adverse impacts on essential fish habitat. Achieving the Scallop FMP's annual $F=0.2$ fishing mortality target with access allows the plan to allocate considerably fewer DAS in the open parts of the Georges Bank and Mid-Atlantic regions. By allowing access, fishing effort and bottom contact time in the Georges Bank region is expected to decline in exchange for managed access and moderate increases of impacts in the closed groundfish areas, where there are less habitat sensitive areas than in the EFH closed areas. Much of the reduced fishing time, compared to the No Action alternative, will be in the Great South Channel, having benefits for groundfish bycatch and habitat. The action is also expected to reduce scallop fishing effort in the Mid-Atlantic region, having a benefit from reducing interactions with sea turtles and reducing mortality of young scallops that are presently abundant in the region.

The major issues addressed in the proposed action include:

- Minimizing groundfish bycatch so that the proposed access program does not impact the rebuilding strategy or results from Amendment 13 management measures,

- Seasonal vs. year around access to the proposed areas, balancing the effects on groundfish vs. the needs of the scallop fishery (e.g. effects on markets, seasonal changes in meat yield, and safety)
- Establishing access area boundaries that minimize bycatch, while preserving the ability to access areas remaining closed unless they are classified as a habitat closed area to conserve EFH.
- The practicability of habitat closed areas if both plans continue to apply,
- Allowing access to a part of Closed Area I that has not been accessed since 1994 by the use of mobile fishing gear

1.2 Summary of Background Information

The Council initiated an ad hoc¹ framework adjustment in November 2003, following on the heels of Amendment 10, which the Council was submitting for Secretarial review and approval. The framework was initiated to consider a controlled access program for the groundfish closed areas, an action that had been contemplated in the Amendment 10 rotation area management strategy. It was also initiated to correct inconsistencies between the EFH closed areas adopted in Amendment 10 to the Scallop FMP and Amendment 13 to the Multispecies FMP.

The Council held several meetings during December 2003 and January 2004 to develop and consider alternatives to address these issues. The Scallop and Groundfish PDTs met jointly in early December to examine the existing data and recommend ways to address the issues. A follow up Scallop PDT meeting was held in early January to update the Amendment 10 projections, using 2003 survey data which were unavailable for Amendment 10 analyses and taking into account the abundance estimates from a more-precise video survey conducted in the access areas by SMAST, as part of a broader survey that the university conducted. Groundfish bycatch projections were also finalized, working with the Groundfish PDT and using the Amendment 13 groundfish biomass projections.

Habitat, Groundfish, and Scallop Oversight Committee meetings were held in mid-January to review the analyses and recommendations from the PDTs. Staff also developed comparative analyses of the habitat alternatives, because the information already existed in Amendments 10 and 13, and the alternatives were relatively straightforward. Scallop Advisors also met during this time and provided recommendations to the Scallop Oversight Committee. The committees adopted many of the recommendations from the PDTs and advisors as alternatives, but some issues (particularly on management alternatives to manage scallop access with a TAC for yellowtail flounder bycatch) needed more work and there was no opportunity for more committee meetings.

The committee recommendations and this additional work by an ad hoc working group were presented at the late January 2004 Council meeting for consideration and approval as a framework alternative. One major issue at the meeting was whether the access program could be managed with a target TAC², using the recommendations of an ad hoc working group that was appointed by the Oversight Committee³. This ad hoc working group developed recommendations, which were then presented to the full Council on January 27, 2004, some of which were included in the final four options for transferring

¹ An ad hoc framework adjustment may be initiated at any time in response to a management need and is distinct from a regular, biennial framework adjustment that is associated with a SAFE Report.

² Also known as a 'soft' TAC.

³ The committee appointed Dr. Trevor Kenchington, Mr. Ron Smolowitz, and Mr. Andrew Applegate to the ad hoc working group to develop a proposed solution to the bycatch issue. The ad hoc working group met via a conference call on January 22, 2004.

unused DAS from controlled access areas to open fishing areas, when they were no longer accessible because yellowtail flounder bycatch reached the 10% TAC limit, or the limit if adjusted by the Regional Administrator on or after December 1 of a scallop fishing year. The Council consensus was that a hard TAC was needed to ensure that the access program would not threaten groundfish rebuilding or endanger special access programs for the groundfish fleet.

Final analyses of the impacts of the alternatives on the environment were conducted, focusing on impacts to the scallop, groundfish, and skate resources as well as impacts on habitat and sea turtles, and included in a draft document for a final Council meeting in late February, where the Council approved the final alternative and voted to submit the framework adjustment to the Secretary of Commerce.

The Skate FMP identified and characterized a baseline of management measures in other fisheries that provide additional conservation benefits to skate species. Since this framework action proposes to lessen restrictions as assessed in the skate baseline review, the Skate PDT must evaluate whether this action will have negative impacts on overall mortality of skate species in a formal rebuilding program. Section 7.1.4 evaluates the impact of this action on skate mortality, and concludes that the slight increase in total allocated DAS and access into portions of the groundfish mortality closed areas proposed in this action will not have negative impacts on skate mortality.

1.3 Summary of Proposed Action

This framework adjustment is proposed to change the regulations associated with both the Atlantic Sea Scallop and Northeast Multispecies FMP. This document contains a description of the proposed action in Section 4.1 and analyzes the direct and indirect impacts of the proposed action in Section 6.1. This framework adjustment is a combined action that would authorize vessels to target sea scallops in the Georges Bank closed areas, which are otherwise closed to scallop fishing by the Multispecies FMP. As such, the proposed action is presented as one section, but where appropriate notes which regulations would be modified to allow access. The cumulative effects of the measures in the proposed action, including the effects of past, present, and reasonably foreseeable future actions, are analyzed in Section 6.3. The final alternative is composed of eleven management measures as follows:

1. Access area boundaries, which are consistent with EFH closed areas to allow fishing on concentrated scallop biomass in the groundfish closed areas (Section 4.1.1)
2. Adoption of habitat closed areas that are consistent with Amendment 13 to the Northeast Multispecies FMP (Section 4.1.2)
3. A dredge-only restriction for fishing in the access areas to minimize bycatch and bycatch mortality (Section 4.1.3)
4. Yellowtail flounder TACs and provisions to minimize bycatch (Section 4.1.4)
5. Changes in finfish possession limits to minimize bycatch and bycatch mortality (Section 4.1.5)
6. Seasons when scallop fishing would be allowed to minimize bycatch and bycatch mortality (Section 4.1.6)
7. Enhanced sea sampling to improve precision of bycatch estimates (Section 4.1.7)
8. Provisions to enhance enforcement monitoring and compliance (Section 4.1.8)
9. Expanded reporting requirements to improve monitoring of the fishery and data collection (Section 4.1.9)
10. A mechanical area rotation strategy, with appropriate scallop fishing mortality targets and trip/DAS allocations for limited access scallop vessels. The allocations include unequal scallop possession limits with an adjustment for part-time and occasional trip/DAS allocations to make them consistent with open area allocation procedures. (Section 4.1.10)

11. An access program for vessels with general category scallop permits, including enhanced reporting requirements and a two-percent TAC set-aside. (Section 4.1.11)

1.4 Summary of Alternatives to Proposed Action

Alternatives to the proposed action are described in Section 4.2 and a comparative analysis of the direct and indirect impacts of the alternatives is presented in Section 6.2. Section 4.2 also includes alternatives that were eventually adopted in the proposed action, because they also contain various management options that were not ultimately selected. Rationale for each of the alternatives, and the allocations if applicable, is also provided with the description of the alternative. In addition, six alternatives that the Council considered and rejected without further analysis are outlined in Section 4.3. The alternatives to the proposed action in Section 4.2 include:

1. A No Action alternative that allocates a higher DAS allocation for vessels to fish in open fishing areas, but does not allow scallop fishing access in the groundfish closed areas (Section 4.2.1)
2. The proposed action and three alternatives for area access boundaries (Section 4.2.2)
3. The proposed action and two status quo alternatives (depending on approval of plan amendments currently under review) (Section 4.2.3)
4. The proposed action alternative and two alternatives to require vessels to use certain gear on area access trips (Section 4.2.4)
5. Three proposed action alternatives and two alternatives setting limits on the annual catch of yellowtail flounder. One alternative includes three unapproved options for transferring unused area access DAS allocations to open fishing areas when area access is closed due to yellowtail flounder catches. (Section 4.2.5)
6. Two proposed action alternatives and three alternatives for groundfish possession limits (Section 4.2.6)
7. The proposed action and two alternatives for access seasons to minimize bycatch and bycatch mortality (Section 4.2.7)
8. The proposed action and two alternatives for enhancing sea sampling and providing funding to partially compensating vessels for the cost of carrying an observer (Section 4.2.8)
9. Three enforcement provisions, all adopted for the proposed action (Section 4.2.9)
10. Two reporting requirement provisions, both adopted for the proposed action (Section 4.2.10)
11. The proposed action and a status quo alternative for a mechanical rotation strategy, including potential DAS and trip allocations (Section 4.2.11)
12. The proposed action and a status quo alternative for allocating part-time and occasional DAS and trips for fishing in the access areas (Section 4.2.12)
13. The proposed action and a status quo alternative (i.e. no access) for vessels with general category permits to target sea scallops in the proposed access areas (Section 4.2.13)

1.5 Summary of Environmental Consequences

Direct and indirect impacts of the proposed action are analyzed and discussed in Sections 6.1 to 6.2, and the cumulative effects are analyzed in Section 6.3. The analysis indicates that the impacts of the proposed action are not significant and a Finding of No Significant Impact is justified based on these analyses in the Environmental Assessment.

The proposed action is expected to allow the scallop and groundfish fisheries to harvest the maximum sustainable yield, while reducing environmental impacts on essential fish habitat, on bycatch of regulated groundfish and other finfish, and on protected species (i.e. sea turtles). It would do this by allowing the scallop fleet to target large scallops that have built up within the groundfish closed areas,

while avoiding fishing in more environmentally sensitive areas and by reducing open area effort allocations and scallop mortality. Because fishing on concentrated large scallops is more efficient, the proposed action is expected to reduce bottom contact time, which all other things being equal will reduce bycatch and the amount of bottom impacted by scallop fishing. The proposed access area program is expected to reduce scallop fishing effort in open areas of the Georges Bank region, where 50% of the effort is expected to occur in the environmentally sensitive Great South Channel. It is also expected to reduce fishing effort in the Mid-Atlantic region, where scallop fishing mortality has been above sustainable levels and where interactions with sea turtles have been problematic.

Total net benefits are expected to be -\$1.4 million in the short-term (2004-2007) and +\$45 million over the 10 year projection period, while producer surplus which incorporates cost savings and is realized by the fishing industry (vessel owners and crew) is expected to be +\$31.2 million in the short-term and +\$70 million over the 10 year projection period. Although total net benefits are marginally negative in the short term, the Council believes that the unquantifiable, but tangible benefits that accrue from reducing mortality on smaller scallops in the Mid-Atlantic, from allowing Georges Bank open area scallop biomass to increase, and from reducing fishing time (thereby reducing bycatch and habitat impacts) are considerably greater than the quantifiable total net benefit reduction from access. Benefits from potential reductions in bycatch mortality that may affect the future groundfish yield cannot be quantified.

The proposed action includes several measures to minimize groundfish bycatch, so that the proposed access program keeps catches below 10% of the overall groundfish TACs. Based on observed catch rates in 2000, projected forward based on stock assessment forecasts, yellowtail flounder has the highest catches as a percent of the overall TACs. The proposed action includes a hard TAC for yellowtail flounder catches, which will be carefully monitored and estimated via enhanced sea sampling and reporting. Although difficult to estimate, the added catches in the access areas are expected to be partially or completely mitigated by reductions in fishing effort elsewhere.

In addition, the proposed action limits access from June 15 to January 31, a period that avoids scallop fishing in the access areas during peak groundfish spawning activity. Besides potential disruption of spawning, the season would also avoid uncertain periods when bycatch could be considerably higher than estimated by quantitative forecasts in this document. The Council considered these benefits against potential effects on scallop prices by concentrating landings during half of the fishing year, changes in meat yield due to a seasonal spawning cycle, and potential threats to safety due to autumn and early winter weather. Scallop fishing is a year round occupation conducted by large vessels that are designed to spend considerable time at sea. If market prices decline temporarily or if meat yields decline, the proposed season is sufficiently long for fishing vessels to adapt to these events. The ability to transfer unused trips to open fishing areas if the areas close due to yellowtail flounder catches helps alleviate these concerns as well.

The proposed action also establishes area access boundaries that will avoid areas with more sensitive EFH and also avoid fishing in areas with low scallop biomass and potentially higher groundfish bycatch. Bycatch estimates for the proposed access areas are relatively low, from a combination of less bottom contact time, high scallop abundance, and seasons when groundfish bycatch in the areas has been low.

The practicability of the existing EFH closed areas (pending Secretarial approval of both Multispecies and Scallop FMP amendments) is improved by making the closed areas consistent with each other. Without taking action, the analysis in this document suggests that the available scallop yield from Closed Area I would be cut by 2/3rds, if and when access is allowed in areas not considered as EFH closed areas.

Finally, there was careful consideration of the proposed access to an area in the south-central part of Closed Area I, which offsets the loss of access to scallops in the north-central part of Closed Area I due to EFH closed areas in Amendment 13 to the Multispecies FMP. New data and a more intense look at existing data within this new area (which had not been open to fishing since 1994) was performed. Concerns were raised about areas of hard bottom substrates in the proposed access area, based on multi-beam sonar images collected by the USGS. Other video survey data collected by SMAST were also evaluated and found that while there was some hard bottom identified, there were large parts of the proposed access area that were predominately sand and sandy gravel, substrates that are less vulnerable to alteration by scallop dredges. Considering these concerns, the Council found that keeping the area closed would be impractical without changing the boundaries of the EFH closed areas that the Council adopted in Amendment 13.

1.6 Summary of Cumulative Effects

A cumulative effects analysis for past, present, and reasonably foreseeable future actions is provided in Section 6.3. These analyses were performed with respect to their effect with respect to the following Valued Ecosystem Components (VECs):

- Sea scallop resource under US jurisdiction
- Scallop fishing fleet and infrastructure (suppliers, maintenance, facilities, processors)
- Vulnerable finfish resources caught as bycatch in the scallop fishery
- Essential Fish Habitat (EFH) for finfish, scallops, and shellfish under Federal management
- Protected species
- Human safety at sea
- Fishing-dependent communities

Results of the analysis (see Section 6.3.7.1.4) indicate that no significant cumulative impacts were identified as a result of the proposed action.

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2.4 List Of Acronyms

- A10** – Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan
A13 – Amendment 13 to the Northeast Multispecies Fishery Management Plan
B_{MSY} – Biomass Maximum Sustainable Yield
BO – Biological opinion
CEQ – Council on Environmental Quality
CA1 – Closed Area I
CA2 – Closed Area II
CV – Coefficient of variation, a standard statistical measure of variation, expressed as a percentage of the mean. Lower CVs indicate more accuracy in the estimates and less variation in data.
DAS – Day-at-sea
EA – Environmental Assessment
ESA – Endangered Species Act
EFH – Essential Fish Habitat
EFH designation life stages
 A – Adult life stage
 J – Juvenile life stage
 E – Egg life stage
FMP – Fishery Management Plan
FR – Federal Register
FSEIS – Final supplemental environmental impact statement
FW13 – Framework Adjustment 13 to the Atlantic Sea Scallop Fishery Management Plan, which allowed access for scallop fishing in parts of Closed Area I, Closed Area II, and the Nantucket Lightship Area
GB – Georges Bank
HAPC – Habitat Area of Particular Concern
LPUE – Landings per unit effort, usually a DAS in this document
IRFA – Initial Regulatory Flexibility Analysis
MAFMC – Mid-Atlantic Fishery Management Council
NAAA – Northwest Atlantic Analysis Area
NEFMC – New England Fishery Management Council
NEFMC – New England Fishery Management Council
NEFSC – Northeast Fisheries Science Center
NEPA – National Environmental Policy Act
NLSA – Nantucket Lightship Area
NMFS – National Marine Fisheries Service
PSP – Paralytic Shellfish Poisoning
RIR – Regulatory Impact Review
SAP – Special access program – a provision in the Multispecies FMP that may allow special fisheries in closed groundfish areas under special rules to limit the impact on overfished species.
SARC – Stock Assessment Review Committee
SAW – Stock assessment workshop
SBNMS – Stellwagen Bank Marine Sanctuary
SEIS – Supplemental Environmental Impact Statement
SMAST – University of Massachusetts Dartmouth School of Marine Science and Technology
VMS – Vessel Monitoring System
TAC – Total Allowable Catch. This includes discards for finfish species, but not for scallops which have a much lower discard mortality rate.
U10 – A classification of large scallops, less than 10 meats per pound.
USGS – United States Geological Survey