

### **3 INTRODUCTION AND BACKGROUND**

#### **3.1 Purpose of the Action**

The purpose of this framework action is to enhance monitoring and enforcement of the 400 lb. scallop possession limit for the general category scallop fishery and to improve safety at sea. A vessel monitoring system (VMS) will enable law enforcement personnel to observe fishing activity on sea scallops and easily determine locations where the landings are occurring - no matter how small or large the amount of landings. Removal of the automatic charge on replacement trips will improve safety by eliminating any potential disincentive to use the broken trip program.

VMS will improve enforcement's ability to deploy personnel and other resources in monitoring vessel offloads, and thus will increase effectiveness in monitoring the possession limit. Moreover, the VMS is expected to deter illegal scallop landings because fishermen using VMS will know that the fishing activity is being monitored and potentially chosen to monitor compliance.

VMS requirements also carry several other important secondary benefits. First, data from VMS equipment has been extremely useful for evaluating the impact of the fishery on the scallop resource, the effects of the fishery on sensitive fish habitat, finfish resources that are vulnerable to capture in the scallop fishery, and sea turtle interactions. These data have become more relevant as the Council gathers more fine-scale information about the marine environment and regulates scallop fishing by area rotation. These effects may be even more important to analyze in scallop fishing areas that are closer to shore, where many vessels with general category permits are thought to target sea scallops. Examples of these fishing areas include coastal Maine and near Cape Cod, both areas known to be important to cod, and a little further from shore near NJ and MD where monkfish and summer flounder are known to occur. In addition, interactions with sea turtles may also be important since many vessels with general category permits target scallops with gear that is very similar (although somewhat smaller) than the gear used by limited access scallop vessels.

Another secondary benefit of requiring VMS on vessels that target sea scallops is to monitor and enforce rotation management closed area boundaries. Although the FMP currently requires vessels with general category permits to have VMS when they fish in a re-opened scallop management area, it is even more important to monitor the activity of vessels that would have scallops onboard but are not currently required to have VMS. The present situation opens up potential loopholes where vessels with scallop dredges may occasionally dip into a closed scallop area or take scallops onboard from another vessel that had fished in a scallop controlled access area. Requiring VMS aboard more vessels that fish for scallops with their general category permit would close this potential loophole.

Elimination of the broken trip program disincentive will improve safety by removing one potential factor in a vessel captain's decision whether or not to terminate a trip. The decision to terminate the trip will be based on the ability for the vessel to make an economical makeup trip without consideration of a penalty. Thus, the proposed action will reduce the potential safety misjudgments by fishermen in an attempt to avoid penalty from broken trips. Rebate of charges against replacement trips during the 2005 fishing year and prior to implementation of Framework Adjustment 17 will address any actual or implied safety concerns with the broken trip charge as quickly as possible.

Requiring VMS will also improve safety at sea. This equipment provides highly accurate location information up to two times per hour. Especially when vessels are unable to transmit a distress call, this location information can be vital to the effectiveness of search and rescue operations. In terms of safety, minutes count and more effective search and rescue operations can improve survivability in adverse

conditions. A safer fishery that uses VMS might keep insurance costs lower than they would be without VMS, helping to recoup some of the costs.

### **3.2 Need for the Action**

This action is needed to ensure that the open-access general category scallop fishery does not grow out of proportion with historic amounts due to illegal landings of scallops in excess of the possession limit. It is also needed to improve safety at sea and to reduce the actual or alleged safety risks associated with broken trip exemption program.

Fishing vessels with general category scallop permits must abide by a 400 lb. possession limit, and with certain gear restrictions when using scallop dredges. The landed form of scallops (meats packed in bags aboard the vessel) is highly marketable and it can be difficult to observe landings of moderately small quantities, like ten (or more) 40-lb. bags. Many vessels that have general category permits and target sea scallops land many ports, making it difficult to observe fishing activity and ensure compliance with the possession limit. In fact, recently there has been reports of illegal landings of scallop significantly in excess of the 400 lb. possession limit by some general category vessels. If the possession limit cannot be effectively enforced, the fishing for scallops with a general category permit could become more attractive to fishermen that customarily target other species. Moreover, fishermen could build larger and more capable vessels to target sea scallops. Such an increase in fishing effort could raise scallop mortality beyond sustainable levels or cause the Council to adopt stricter regulations for vessels with general category and/or limited access scallop permits.

### **3.3 Management Background**

Beginning in 1994, the Council has managed the Atlantic sea scallop fishery through limited access effort controls (NEFMC 1993). The limited access program assigned vessels with a history of scallop fishing to three broad classes and assigned each category a maximum number of days that a vessel may fish for sea scallops. In addition to limits on DAS, the limited access vessels were regulated by the maximum number of crew a vessel may carry (which effectively limited shucking capacity and fishing power), limits on the size of the vessel based on its historic baseline, and other limits on gear.

Vessels that had sufficient history qualified for either a full-time, part-time, or occasional limited access permit. Based on the initial analysis in Amendment 4 (NEFMC 1993), there would have been 403 vessels that could qualify for a limited access permit. Unlike other some plans that allowed qualification with one pound of landings of a regulated species, a scallop vessel needed to have landings of more than 400 lb. of scallop meats (or 50 U.S. bu.) in either 1988 or 1989 to qualify for one of the three access categories. In addition, vessels could qualify for one of three categories based on the average of its three highest years of scallop fishing effort (measured in days) during 1985-1990. Any vessel with an average of 1 to 37 days could qualify for an Occasional permit, while it took an average of more than 37 and 150 days to qualify for a part-time or a full-time scallop permit, respectively.

It quickly became apparent at public hearings in Ellsworth, ME; Hyannis, MA; and Washington, NC that many vessels would not qualify for the LA permit as proposed. These vessels appeared to fall into one of the following two categories:

- Vessels that caught and landed scallops while targeting other species with bottom-tending mobile gear
- Vessels that targeted scallops with dredges and trawls on day-long trips

The first group included vessels that used trawls to target flounders and sole (dabs) on Georges Bank and in the Mid-Atlantic region, vessels targeting Loligo squid in the Mid-Atlantic region, and surf clam boats using dredges in the Mid-Atlantic region. Commonly, the crew was allowed to shuck the scallops and land the meats as “shack”, or a bonus. Very often the total scallop catches on a trip were less than 400 lb. Trips were relatively long and were taken year around, although the scallop catches were sporadic. Qualifying for an occasional limited access permit would not have met this group’s need because it would have allowed scallop landings on a few number of days.

The second group included many small vessels that typically fished closer to shore in locations that were accessible for day trips and when scallop abundance was high. Landings often fluctuated with conditions and other fishing opportunities. Many boats also used smaller dredges because of their small size and low horsepower, relative to the bigger boats that targeted scallops offshore. Fishing activities like this were concentrated along the ME coastline, along the other part of Cape Cod, MA, on the eastern end of Long Island, NY, and in coastal NC (where vessels often used modified flounder nets to target scallops). Most captains and vessel owners said in public hearings that landings per day fluctuated between 100 and 400 lb., depending on the local resource conditions. Qualification for a limited access permit also would not have met this group’s need because vessels frequently took many more trips during favorable years than would have been allowed with this permit.

In both cases, the scallop landings were very often marketed by low-volume dealers and individuals, which made it difficult to document landings to qualify vessels for limited access. However, the Council believed that although the number of vessels in this situation was high, the total landings were a small fraction of the total. The Council believed that a 400 lb. possession limit would keep landings and fishing effort in check, even though a “general category” permit would be available to anyone (particularly to accommodate the landings of scallop incidental catches).

Amendment 4 thus established a new “general category” permit, regulated by a 400 lb. possession limit, gear regulations, a minimum 3½” size limit for shell-stock, and scallop area closures when implemented by the Scallop FMP. Vessels with a general category permit could use any legal fishing gear to target sea scallops, including a scallop dredge. The minimum 3” ring size for scallop dredges was initially raised to 3¼” and then 3½”. Amendment 10 raised the minimum ring size to 4” on December 23, 2004. Dredges were limited to 31 feet in total width, but due to concerns about groundfish bycatch the Multispecies FMP limited the maximum dredge size to a single 10½-foot dredge east of 72°30’W longitude. In addition, scallop fishing while not on a limited access DAS was restricted to a coastal exemption area bordering the coastline of eastern MA, NH, and ME.

The initial permit counts in 1994 totaled 358 limited access permits and 1,960 general category permits. Although there were a significantly greater number of general category permits, few vessels actually landed scallops using the general category permit. The number of permits remained relatively steady through 1998 and then increased slightly as resource conditions dramatically improved. By 2003 (the last complete fishing year), permit issuance stood at 333 limited access permits and 2,554 general category permits.

Actual fishing effort remained low and landings remained a small fraction of the catch (<4%) until recently, with no further need to regulate the general category fishery as had been foreseen in Amendment 4 as a possibility. The Council has considered additional regulations at several times in more recent actions. In particular, Amendment 10 to the Scallop FMP (NEFSC 2004) proposed to separate the general category permit into an incidental catch category and a new general category permit for targeting scallops. When the issue arose in previous amendments and actions, further regulation was determined to be unnecessary because conditions changed and landings by vessels with general category scallop permits had not substantially increased.

On the other hand, there was interest in allowing general category vessels to fish in re-opened scallop areas, controlled by the number of trips, a TAC, or other measures. This issue first arose with Framework Adjustment 11 (NEFMC 1999) that allowed controlled access scallop fishing in parts of the Nantucket Lightship Area, Closed Area I, and Closed Area II on Georges Bank. At the time, a solution could not be negotiated that would allow access by general category vessels, which in particular were excluded from fishing in the re-opened areas by the Multispecies FMP (i.e. the re-opened areas were not in the exemption area where scallop fishing was allowed while not on a DAS).

The issue of general category access to scallop controlled access areas arose again in Framework Adjustment 14 (NEFMC 2001) when the Hudson Canyon and VA/NC Areas re-opened to scallop fishing. Unlike the previous action, these areas were exempt from the Multispecies FMP restrictions and therefore the Scallop FMP could allow scallop fishing by vessels with general category permits. Nonetheless, the potential for unmonitored vessels fishing alongside of the limited access vessels that were subject to a scallop possession limit and monitored by VMS concerned many, particularly law enforcement. In Framework Adjustment 14, the Council considered allowing vessels with general category permits to fish with a 400 lb. scallop possession limit, with the condition that they carry a VMS and have a Letter of Authorization. The Council rejected this proposal because it could not be demonstrated that the benefits to the vessels would compensate for the VMS and administrative costs. In addition, there was little historical evidence that vessels with general category scallop permits to target scallops had used these areas.

Nonetheless, there was interest among some to work out a procedure that would allow vessels with general category scallop permits to fish in re-opened scallop areas where there was historic fishing activity, in particular within the Nantucket Lightship Area and Closed Area I. Thus, when Framework Adjustment 16/39 (NEFMC 2004) allowed access to and re-opened portions of the Georges Bank closed areas, the Council reconsidered the VMS requirement and proposed additional monitoring due to concerns over groundfish bycatch and controlling the total catches of scallops. Under the recently approved regulations for Framework Adjustment 16/39, vessels with general category scallop permits may fish in the Georges Bank controlled access areas (inside of the Nantucket Lightship Area, Closed Area I, and Closed Area II), but are required to operate VMS equipment, make vessel trip reports with bycatch information, and carry observers if selected to do so. In addition, the general category fleet has a separate TAC and total number of trips that may be taken in each area. The results of this new program have not been evaluated due to its recency.

**Background on Broken trip exemption:** The Scallop FMP allowed controlled access to portions of the Georges Bank closed groundfish areas in 1998 and 1999, and to the Hudson Canyon and VA/NC closed scallop areas in 2000-2003. During this time, vessels that took a trip to these areas were charged a minimum of 10 DAS, regardless of how long the vessel took to catch the applicable possession limit. This automatic DAS charge counted against the vessel's annual DAS allocation, regardless of how much scallop landings occurred as long as the vessel entered the controlled access area for scallop fishing.

Initially, whether a vessel received a rebate on DAS due to an early trip termination (i.e. a "broken trip") for weather or other circumstances was determined by the Regional Administrator. Rebates were often given to vessels that landed no scallops or for exceptional weather conditions, like hurricanes. Due to the risk of losing days, however, the Council liberalized this procedure in Amendment 10 to the FMP, which was implemented in July 2004.

The current broken trip provision allows a vessel to return early from a controlled access trip and have a large part of its automatic DAS charge and potential scallop landings applied to a future replacement trip. This rebate depended on the portion the 18,000 lb. scallop possession limit that was actually landed on the broken trip. For the broken trip, the vessel's annual allocation for a controlled access area was charged one DAS for each 10% of the scallop possession limit actually landed, plus two DAS. Thus a vessel with

a broken trip landing 6,000 lbs. on a broken trip would be accorded an allocation of 9,000 lbs. and 6 DAS on a future replacement trip (see table in Section 1.3.2).

In late December 2004, the F/V Northern Edge, a full-time scallop vessel taking a replacement trip sank while fishing in the Nantucket Lightship Area. At the present time it is unclear what factors contributed to the accident, although the decision to continue fishing despite poor weather may or may not have been influenced by the broken trip provision. While the facts are gathered, the alternative considered in this framework adjustment would remove the standard two DAS charge on re-initiated trips.

The following regulatory text in §648.60(c) pertains to the broken trip provision, as it presently exists. Suspending or modifying §648.60(c)(5) would allow the vessel to receive a return of DAS with a reduced or no charge compared to the vessel having had taken the entire 18,000 lbs. of scallops on the original controlled access trip and returned to port under normal conditions.

While the two DAS/3,000 lb. disincentive existed to avoid creation of loopholes and improve enforceability of the 18,000 lb. scallop possession limit, removing the disincentive would take a risk averse approach while a better allocation program can be developed.

### **3.4 Summary of Management History (Including Amendments and Frameworks)**

Tables A and B summarize the management actions taken under the Sea Scallop FMP. Few actions had a direct effect on vessels with general category scallop permits. Amendment 4, which created the general category permit and established a 400 lb. daily possession limit, and Framework Adjustment 2, which exempted vessels fishing in certain state waters from Federal regulations directly effected general category fishing activity. Amendment 10 increased the twine top mesh and minimum dredge ring size that apply to general category vessels using a scallop dredge. Framework Adjustment 16/39 allowed general category vessels to fish in the re-opened Georges Bank closed areas for a limited number of total trips . Better management through other changes in limited access regulations and an improving scallop resource had an important indirect effect, however. Through these actions, scallop fishing became more attractive and larger offshore vessels fished less frequently in some areas where general category vessels targeted scallops, opening up some opportunities.

The broken trip exemption program was first established in Framework Adjustment 11, which authorized the Regional Administrator to use discretionary provisions to grant replacement trips for vessels that returned from a controlled access trip due to weather or emergencies. A pre-defined schedule that gave a partial rebate of days and pounds for trips returning early with landings below the possession limit was first considered in Framework Adjustment 15. The Council first rejected this alternative due to administrative and enforcement concerns. This program was reconsidered in Amendment 10, to apply to controlled access trips as part of area rotation management. The new exemption was deemed more acceptable, because it relieved the problems associated with the program that was first adopted in Framework Adjustment 11.

**Table A. Summary of amendments and Secretarial actions for the Atlantic Sea Scallop Fishery Management Plan.**

Implementation date	Label	Primary regulatory changes
10/9/85	A1	40-meat count (scallop meats per pound) minimum average size (“meat count standard”)
7/22/88	A2	10% increase in the meat count standard during October through January; framework adjustment to the meat count standard during spawning
2/5/90	A3	Regional 12-hour time periods (windows) for off-loading sea scallops
1/19/94	A4	Limited access; days-at-sea reduction schedule and allocations; overfishing definition; elimination of overfishing on a seven-year schedule
1/14/97	A5	To implement measures to permit the Sea-stead scallop grow-out project
1/10/97	A6	Gear Conflict - allowed the Council to resolve gear conflicts in the sea scallop fishery through the framework adjustment process
4/3/98	IA	Interim action to close Hudson Canyon and Virginia Beach areas to protect small scallops
3/29/98	A7	Addressed SFA stock rebuilding requirements by establishing new management reference points and fishing mortality targets to achieve $B_{MSY}$ on a continuing basis and the elimination of overfishing through DAS reductions. (120 DAS for full time vessels with further reductions planned to meet fishing mortality targets). Extension of Hudson Canyon and Virginia Beach areas to protect small scallops through March 1, 2001.
2/19/99	A8	Made upgrading and vessel replacement provision consistent with those in other New England and Mid-Atlantic FMPs.
4/21/99	A9	EFH – Addressed SFA requirements for designating Essential Fish Habitat
3/2/01	IA	Interim Action – requested by the Council to delay the opening of the Mid-Atlantic closed areas until controlled access to these areas could be implemented by Framework Adjustment 14.
7/23/04	A10	Major change in management to implement rotation area management and allocate DAS by specific area; closed the Elephant Trunk Area to scallop fishing and established closed areas to protect essential fish habitat; increased twine top mesh 10” in all areas; and increased minimum dredge ring size from 3.5” to 4” over a six month time period; set open area DAS allocations and Hudson Canyon Area trip allocations for 2004 – 2006 fishing years; established a two-year regular framework adjustment process.

**Table B. Summary of annual and in-season framework adjustments for the Atlantic Sea Scallop Fishery Management Plan**

Implementation date	Label	Primary regulatory changes
7/19/94	FW1	Implementation of first-year effort controls on a full-year basis
11/21/94	FW2	State waters exemptions from gear restrictions
12/5/95	FW3	Elimination of vessel ownership requirement to retain limited access permit
4/5/95	FW4	Temporary adjustment (reduction to seven) in crew-size limit
6/29/95	FW5	Restrictions on the use of nets by dredge vessels and twine-top mesh size restrictions
7/10/95	FW6	Change to DAS demarcation line (DAS are counted when a vessel crossed this line)
3/5/96	FW7	Indefinite extension of (reduction to seven) crew-size limit
7/24/96	FW8	Further restrictions on the use of nets to catch sea scallops
8/14/97	FW9	Exemption from the 400-pound possession limit for state waters fisheries
8/28/98	FW10	Extension of measures needed for continuation of the Sea-stead scallop grow-out project
6/15/99	FW11	Scallop vessel access to Georges Bank Closed Area 2 (this action also included GF Framework 29)
3/1/00	FW12	Annual adjustment –DAS allocations adjusted to 120 for full-time; 48 for part-time & 10 for occasional vessels.
6/15/00	FW13	Scallop vessel access to Georges Bank Closed Areas with 10,000 pound trip limit and 10 DAS trade-off. Access for general category scallop vessels to the Nantucket Lightship Closed Area and Closed Area I was disapproved because of enforcement and administrative issues.
5/1/01	FW14	Annual adjustment – DAS allocations adjusted to 120 for full-time; 48 for part-time & 10 for occasional vessels; controlled access to Virginia Beach and Hudson Canyon areas; additional area closures
3/1/03	FW15	Annual adjustment - DAS allocations adjusted to 120 for full-time; 48 for part-time & 10 for occasional vessels; controlled access to Virginia Beach and Hudson Canyon areas
11/2/04	FW16/39	Re-opened portions of the Georges Bank closed groundfish areas to limited scallop fishing by vessels with limited access and general category permits. Set DAS and trip allocations for these areas for the 2004 – 2007 fishing years.