

the proposed action is expected to have positive cumulative impacts on the communities by improving safety, by reducing losses from broken trips and by better monitoring of the possession limit, benefiting both limited access and general category vessels participating in the scallop fishery.

## **7 APPLICABLE LAW**

### **7.1 *Magnuson-Stevens Fishery Conservation and Management Act (Including National Standards)***

#### **7.1.1 Consistency with National Standards**

##### **7.1.1.1 National Standard 1: Overfishing and Optimum Yield**

“Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. “

The biological reference points and control rule for Atlantic sea scallops was revised and updated in Amendment 10 to the FMP. The recent 2003 survey data indicated that the scallop biomass is above the MSY biomass target and will remain above this level for the foreseeable future under either the proposed action or the no action alternative. Also the updated analysis indicated that fishing mortality will remain below the overfishing threshold mortality rate,  $F_{max}$ , either with the proposed action or the No Action alternative.

The proposed action is not expected to cause overfishing to occur or to cause the stock to become overfished (see Section 6.1.1). Requiring VMS on vessels with general category scallop permits is not expected to have any direct change of impacts on biological resources. Similarly, allowing vessels to power-down while they are in port is not expected to have adverse effects on the scallop resource or to cause overfishing. There are no changes proposed in the scallop possession limits, the number of authorized trips, or the amount of fishing authorized or expected to occur.

Furthermore, the proposed action is expected to improve the FMPs ability to produce optimum yield. due to the indirect benefits on the sea scallop resource. A vessel monitoring system (VMS) will enable law enforcement personnel to locate general category vessels participating in the scallop fishery, thus improving enforcement's ability to deploy personnel and other resources in monitoring vessel offloads. The improvement in enforcement's effectiveness in monitoring the possession limit and the resulting increase in compliance may help to prevent fishing mortality from increasing beyond the sustainable levels due to illegal landings in excess of the 400 lb. general category possession limit. VMS will also provide better data for fishery management for monitoring the area boundaries that are a part of rotational area management. Such benefits for scallop management will help to maintain the optimum yield from the fishery.

The removal of the broken trip program disincentive is not expected to have any biological consequences or to cause overfishing. The Scallop FMP already has a built-in 20% buffer between the fishing mortality target and the threshold that defines overfishing. Furthermore, Framework 16/39 controlled access trip allocations were based on the assumption that there will be no broken trips and the entire allocated catch will be taken by the scallop fleet. Therefore, broken trip replacements where the combined catch equals the total allowed for the original trip

would not change scallop fishing mortality, as long as there is sufficient enforcement of and compliance with the controlled access trip allocations and possession limits.

### **7.1.1.2 National Standard 2: Best Available Science**

“Conservation and management measures shall be based upon the best scientific information available.”

The information used in the framework adjustment analyses included the fishery data from the most recently completed fishing year (2003) and the most recent survey data (2003) collected by the NMFS on the R/V Albatross and by SMAST on industry-based surveys. The information also included 2004 fishing year data for scallop landings and revenues available only for months January through May. In addition, the number of broken trips were analyzed by using 2004 fishing year data provided by NMFS Northeast Regional Office. Furthermore, the analyses were prepared by and peer reviewed by the Council’s Scallop Plan Development Team and complies with the Data Quality Act (Section 7.7). Thus, the information used for this framework adjustment is the best available data, which is presently available for analysis and relevant to the alternatives under consideration.

### **7.1.1.3 National Standard 3: Management Unit**

“To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.”

According to Amendment 10, the target fishing mortality rate and stock biomass are applied to the scallop resource from NC to the US/CAN boundary. This encompasses the entire range of scallop stocks under Federal jurisdiction. Rotation area management furthermore allows the FMP to set area-specific mortality rates to achieve a resource wide mortality target and achieve optimum yield from the resource. The proposed action do not affect this policy and consistent with management of scallop stock as a unit throughout its range.

### **7.1.1.4 National Standard 4: Fairness and equity**

“Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.”

The proposed action will require VMS on a subset of vessels with general category permits regardless of the location of their homeports, the area they fish, or the port where they land their catch. The proposed action will also allow all general category vessels with VMS to power-down while in port after offloading their catch. The only criteria applied for VMS requirement is possession or landing of more than an incidental amount of scallops, i.e. 40 lb. of scallops per trip. The analyses in Section 5.1.2 and Section 6.1.4.5 showed that the general category vessels that would be required to install a VMS by the proposed action were located and landed their catch in several states from Maine in New England to North Carolina in Mid-Atlantic. Therefore, the proposed action will not discriminate between residents of different States. Similarly, the automatic charge on replacement trips will be eliminated for all limited access scallop vessels that fish in controlled access areas regardless of the location of these areas or the homeport of a

vessel. Therefore, there are no alternatives in the proposed action which by their nature disadvantage or unfairly discriminate against fishermen in various states.

#### **7.1.1.5 National Standard 5: Efficiency**

“Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.”

The proposed action will require general category vessels that land over an incidental amount of scallops, i.e., over 40 lb., to have a VMS on board. Its primary purpose is to improve enforcement's effectiveness in monitoring the general category possession limit. The improvement in enforcement's ability to monitor the possession limit and the resulting increase in compliance may help to prevent fishing mortality from increasing beyond the sustainable levels due to illegal landings in excess of the 400 lb. possession limit. As a result, the proposed action is expected to enhance the FMP's ability to efficiently utilize the fishery resources.

VMS could also have some other important benefits for scallop management. VMS will provide better data for fishery management, particularly for areas that are more frequently targeted by small vessels fishing inshore of the typical scallop fishing areas. The other benefit would be better monitoring of area boundaries that are a part of rotational area management. Such benefits for scallop management will help to maintain the optimum yield and economic benefits from the fishery, thus will improve efficiency in the utilization of fishery resources.

Although VMS requirement will increase the costs of fishing for general category fleet, the benefits for enforcement and scallop management are expected to outweigh these costs. In addition, this action requires only those vessels that land more than an incidental amount of scallops (Over 40 lb.) per trip to have VMS, thus does not impose any cost burden over 2,300 general category vessels that do not land in excess of the amount (See Section 6.2 for economic impacts). In addition, the power-down option proposed by the Framework will reduce the costs for general category vessels that have a VMS by allowing them to log out of the fishery and turn VMS off when they are in port.

The removal of broken trip disincentive could also enhance efficiency in the utilization of scallop resources, although this impact could be small. The two DAS/3000 lb. of scallops penalty associated with broken trips will reduce the landings below the optimum yield, whereas the elimination of this penalty will allow every vessel to land the possession limit by taking replacement trips.

Similarly, this framework action does not propose a limited access system or include measures with a sole purpose to effect economic allocation. Although, the costs associated with VMS requirement may discourage some general category vessels from participating in the scallop fishery, as long as a vessel lands up to 40 lb. of scallops per trip, it can still retain its general category permit without installing a VMS. Therefore, this action does not change the criteria for qualifying for a permit. It is also not expected to change the allocations for general category and limited access vessels that continue to participate in the scallop fishery.

This framework action proposes no changes in possession limit for general category vessels, or no changes in DAS allocations for the limited access fleet. On the other hand, if no action is taken and illegal landings of scallops increase due to the violation of the 400 lb. possession limit,

scallop mortality could increase beyond sustainable levels, reducing the stock biomass and the efficiency in utilization of scallop resource. Instead of taking no action, the Council could adopt stringent regulations to prevent overfishing due to the unreported landings in excess of the possession limit. For example, the DAS allocations for the limited access vessels could be reduced, negatively impacting the group of vessels that has already been subject to strict effort controls since 1994. Such an action would redistribute income from the limited access vessels to the vessels with general category permits landing scallops illegally in excess of the 400 lb. possession limit. The Council could also reduce the possession limit for all general category vessels, affecting negatively those vessels that comply with the rules. For example, the concerns about illegal landings by general category vessels and increased participation in general category scallop fishery caused the Council to publish a control date for the general category fishery as of November 1, 2004, which could be used in the future establish a limited entry general category fishery. The proposed action, if successful in improving the enforcement of the possession limit, may help prevent drastic changes in economic allocations.

#### **7.1.1.6 National Standard 6: Variations and Contingencies**

“Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.”

The proposed action does not detract from, and in fact enhances, the FMP’s ability to adapt to changing resource conditions. VMS implementation is expected to improve enforcement’s effectiveness in monitoring the general category possession limit, to provide better data for fishery management, and improve monitoring of area boundaries that are a part of rotational area management. These benefits will potentially provide the FMP greater flexibility in the future to achieve optimum yield by preventing fishing mortality from increasing beyond the sustainable levels due to illegal landings in excess of the 400 lb. possession limit, and also through better management of the scallop resource. The removal of broken trip charge will increase the flexibility for fishermen to determine when to continue fishing, thereby minimizing costs to industry and take into account variations and contingencies. Therefore, this action will enhance the FMP’s ability to take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches. Because the control area TACs and fishing mortality targets were set by assuming that vessel landings will equal to the possession limit set for these areas, the modification of the broken trip program does not detract from the FMP’s ability to adapt to changing resource conditions.

#### **7.1.1.7 National Standard 7: Cost and Duplication**

“Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.”

The proposed action in this framework adjustment does not introduce any new measures that are unnecessary or duplicate measures already in place. The general category vessels were not previously required to have a VMS onboard by the Scallop FMP except when they fish in Georges Bank access areas. The proposed action minimizes the compliance and enforcement costs by requiring only those general category vessels land over an incidental amount of scallops, i.e., over 40 lb., to have a VMS on board. Only 276 out of 2,554 vessels with general category permits landed scallops more than 40 lb. on at least one trip during the 2003 fishing year. There

were 53 vessels that already have a VMS due to the regulations in other fisheries, thus they will not be required to install a second VMS unit because of this framework action. Therefore, the proposed alternative would substantially lower the costs of compliance for the general category fleet by exempting over 2,200 general category vessels that had either no landings of scallops or only landed an incidental amount. The power down alternative proposed this Framework also minimizes the compliance costs for the general category vessels that are required to have a VMS.

The removal of broken trip disincentive and broken trip rebates will improve safety and minimize the compliance costs for vessels, in terms of foregone revenue due to broken trips, by eliminating the penalty associated with replacement trips.

### **7.1.1.8 National Standard 8: Communities**

“Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.”

The characteristics and participation of fishing communities involved in the scallop fishery were discussed in Section 7.1.1.3 of the Amendment 10 FSEIS, and Section 6.1 and 7.1.6 and the impacts of proposed action from the point of view of National Standard 8 is discussed also in Section 7.1.6.

The proposed VMS implementation and power-down alternative will have impacts on the general category vessels. Many of these vessels are relatively small ones that engage in a variety of different fisheries throughout the year. Stonington, Barnstable, Provincetown, Sandwich, Newburyport, Barnegat Light, and Chincoteague were among the main ports in 2003, each constituting over 5% of total general category landings in 2003 (either directly as a port of landing or indirectly as homeport).

The proposed action will impact a small subset of general category fishermen by requiring only those vessels that land over an incidental amount of scallops (over 40 lb.) per trip to have a VMS. The vessels with general category permits that choose not to operate a VMS will still be able to retain their permit, but will not be allowed to land more than 40 lb. of scallops per trip. Only 276 out of 2,554 vessels with general category permits landed scallops more than 40 lb. on at least one trip during the 2003 fishing year. Given that 53 of these vessels already have a VMS, only 223 vessels will be affected by this alternative. Although, the proposed VMS requirement will increase the fishing costs, for some vessels the revenues from scallops will substantially exceed the costs for VMS equipment and operation (See section 6.2.1.1.3 for economic impacts). For some other vessels, however, scallop landings could be so low as to not justify the cost of a VMS unit. These vessels will be still be able to retain their general category permit, however, if their scallop landings do not exceed 40 lb. per trip. Therefore, the proposed action will minimize adverse economic impacts on the communities by exempting over 2,200 vessels from VMS requirement, and by providing the vessels the flexibility to retain their general category permit without installing a VMS as long as they land an incidental amount of scallops (up to 40lb.) per trip.

The power down exemption specifically addresses the needs of smaller fishing communities that cannot offer facilities with shoreside power. Instead, vessels in these communities are more frequently tied to moorings (in part due to extreme tidal range in ME) or are located at docks lacking electricity or other amenities. Therefore, the power-down alternative takes into account the nature of many of the vessels in the general category fleet operating at ports where power availability or cost may be an issue of concern. By allowing to turn-off VMS after offloading and when a vessel is in port will enable more vessels to participate in the VMS system, and thus in the general category fishery.

Proposed action is also expected to minimize the adverse economic impacts on by removing the automatic charge on replacement trips associated with the broken trip exemption program instituted by Amendment 10. Rebate on charges for the 2005 fishing year will also minimize adverse economic impacts from the broken trips prior to the implementation for Framework 17.

The economic and social impacts, which have a large role in effects on fishing communities, are analyzed and discussed in Sections 7.1.4, and 7.1.6.

### **7.1.1.9 National Standard 9: Bycatch**

“Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.”

Bycatch in the scallop fishery has been greatly reduced and minimized by the success of the FMP to increase scallop biomass and reduce the amount of time fished on a DAS. The FMP has also implemented several gear restrictions that have successfully reduced bycatch. These effects are discussed in detail in Section 6.1.9 of the Amendment 10 FSEIS, and in related sections of that document.

There are no direct effects anticipated from the proposed action because the amount of authorized fishing and other regulations that effect fishing are not changing. Similarly, the distribution of fishing effort is not expected to change in response to the proposed action.

VMS requirement for the general category vessels may have some indirect effects on bycatch, however. If fishing effort that targets scallops increase due to vessels trying to recoup the compliance costs, then finfish bycatch would increase by a similar amount. Given that the proposed action will require a small subset of general category vessels that land a more than incidental amount of scallops per trip to install a VMS, such negative impacts on bycatch are expected to be negligible. Furthermore, the added VMS cost could discourage increasing participation in the general category scallop fishery, thus, it could have a beneficial effect of reducing finfish bycatch compared to the amount that would occur without the added costs.

More importantly, the VMS data provides information about the distribution of fishing by vessels with general category permits. This distributional data is likely to be helpful for assessing bycatch hotspots that overlap the distributions of other managed species. This information may, for example, be used to evaluate the effectiveness of the small mesh exemption program and for identifying seasons when finfish bycatch may be a problem.

The removal of broken trip alternative is not expected to change finfish bycatch as long as the scallop catches and total expected fishing effort remains at the levels that were allocated by

Amendment 10 and Framework Adjustment 16/39. Replacement trips would be taken in the area where the broken trip occurred and while the area is open for scallop fishing.

The direct and indirect impacts of these measures are described in Section 6.1.2.

#### **7.1.1.10 National Standard 10: Safety**

“Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.”

Requiring general category vessels to have a VMS onboard will improve safety at sea. Since VMS is a system that is constantly monitored, when a vessel signal stops, it provides another method to alert shoreside authorities that the vessel is in trouble. Therefore, transmission of location information through VMS will add another layer of safety in the event of an emergency. Especially when vessels are unable to transmit a distress call, this location information can be vital to the effectiveness of search and rescue operations.

Proposed action is also expected to promote the safety by removing the automatic charge on replacement trips associated with the broken trip exemption program instituted by Amendment 10. Amendment 10 implemented the new broken trip exemption system specifically as a measure to enhance safety (see page 6-20, Final Amendment 10 document). It recognized the improvement in safety from the new broken trip exemption program, but also recognized that there was a compromise to improve administration and safety that held a potential risk.

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 existing broken trip program allows vessels to take replacement trips for each controlled access area trip they terminated, but at a charge of 2 days-at-sea plus one day-at-sea for each 10 percent of the scallop possession limit onboard the vessel (i.e. landed). Such automatic charge will result in a revenue loss from the broken trips. The proposed action would prevent such economic loss because it will allow vessels to land the difference between the possession limit and the amount of scallops they landed during the broken trip. In other words, total pounds landed from the broken and the replacement trip will add up to the possession limit (18,000 lb. for 2004 fishing year) for that area. As a result, 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 loss in revenue. Thus, the proposed action will reduce the potential safety misjudgments by fishermen in an attempt to avoid revenue loss from broken trips, and will promote the safety of human life at sea. Similarly, rebates for the charges for the replacement trips taken during the 2005 fishing year may reduce some of the alleged risks associated with the broken trip charge. The vessels facing unsafe conditions can return to port without the threat of losing a portion of their authorized scallop landings. Therefore, taking this action will improve safety associated with the broken trip program as quickly as possible.

#### **7.1.2 Compliance with Provisions of the Act**

Section 6.2 of Amendment 10 to the Atlantic Sea Scallop FMP describes and analyzes the FMP's compliance with the required provisions of the Magnuson Act, §303(a). Nothing in this framework adjustment effects compliance with foreign fishing measures, a description of the fishery, a discussion of pertinent fishery data, the fishery impact statement, objectives to prevent overfishing, or effects on recreational catch and release.

## 7.1.3 EFH Assessment

### 7.1.3.1 Description of Action

This essential fish habitat (EFH) assessment is provided pursuant to 50 CFR 600.920(e) of the EFH Final Rule to initiate EFH consultation with the National Marine Fisheries Service.

Section 4.0 describes the proposed action which is intended to meeting the following objectives:

- Improving law enforcement capabilities in monitoring the possession limit.
- Improving safety by removing the disincentive for vessel to use the broken trip exemption program.
- Preventing the general category scallop fishing from increasing the scallop mortality beyond sustainable levels because illegal landings.
- Minimizing the costs of VMS implementation on vessels with General category permits with incidental catches of scallops.
- Reducing the compliance costs for vessels while are in port.

To accomplish these goals, the Council proposes to implement the following actions for which no impacts to EFH are expected.

1. VMS requirement: Any General category vessel that has in possession or land more than an incidental amount of scallops, i.e., over 40 lb. scallop meats for commercial sale, in any trip will be required to have a VMS onboard (Section 4.1.1.1).
2. Power-down while in port: General category vessels with VMS will be allowed to log into and out of the fishery via VMS after offloading and after the vessel is secured to a fixed dock or mooring, unless required to keep VMS in operation by their permit in another fishery. (Section 4.1.1.2).
3. Elimination of automatic charge on broken trips: Any limited access scallop vessel that is authorized to take a replacement trip for a Scallop Access are trip terminated early will be allowed to land the difference between the possession limit and the number of pounds landed on the broken trip for which the additional trip replaces (Section 4.2.1.1).
4. Rebate of charges against replacement trips during the 2005 fishing year and prior to implementation of Framework Adjustment 17: Access Area trips in the 2005 fishing year that are terminated early will continue to have the broken trip charge applied until Framework Adjustment 17 is implemented. Once Framework Adjustment 17 is implemented, vessels that terminated an access area trip before implementation will be able to take a second replacement trip to catch the amount of scallops lost as a result of the broken trip charge. (Section 4.2.1.2)

In general, the activity described by this proposed action, fishing for sea scallops, occurs throughout the U.S. EEZ, from about the NC/VA border to the coastal portions of the Gulf of Maine in the north. The concentrations of sea scallops, and thus the majority of scallop fishing activity, however, occur within a narrow depth band in the Mid-Atlantic from about the 40-meter isobath out to the 100-meter isobath, throughout the Hudson Canyon area, and around the perimeter of Georges Bank, including the Great South Channel. Thus, the range of this activity occurs across the designated EFH of all Council-managed species (see Amendment 9 to the Atlantic Sea Scallop FMP for a list of species for which EFH was designated, the maps of the distribution of EFH, and descriptions of the characteristics that comprise the EFH). This activity also occurs across EFH designated by the Mid-Atlantic Council for species such as black sea bass, ocean quahog, scup, spiny dogfish, summer flounder, and tilefish (see the Dogfish, Surf clam and Ocean Quahog, Summer Flounder, Scup and Black Sea Bass, and Tilefish FMPs for relevant information on the characteristics and distribution of EFH designated for these species). EFH designated for species managed under the Secretarial Highly Migratory Species FMPs are not affected by this action, nor is any EFH designated for species managed by the South Atlantic Council as all of the relevant species are pelagic and not directly affected by benthic habitat impacts.

### **7.1.3.2 Assessing the Potential Adverse Impacts**

Although scallop dredges have been shown to be associated with adverse impacts to some types of bottom habitat (NEFMC 2003), this action does not propose to increase current levels of fishing activity in the U.S. EEZ. As such, no negative habitat impacts are expected to result from this action.

**VMS requirement:** Any General category vessel that has in possession or land more than an incidental amount of scallops, i.e., over 40 lb. scallop meats for commercial sale, in any trip will be required to have a VMS onboard.

**Habitat Impacts:** There will be no adverse habitat impacts associated with the implementation of this measure. The VMS implementation proposed by this action is expected to improve effectiveness in monitoring the possession limit, to increase compliance due to the electronic monitoring presence of VMS, and discourage violations. This in turn will reduce the risks of overfishing of the scallop resource due to violations. VMS implementation will also carry several other important secondary benefits.

**Power-down while in port:** General category vessels with VMS will be allowed to log into and out of the fishery via VMS after offloading and after the vessel is secured to a fixed dock or mooring, unless required to keep VMS in operation by their permit in another fishery.

**Habitat Impacts:** There will be no adverse habitat impacts associated with the implementation of this measure. The requirement to obtain a VMS unit to participate under general category permit will enhance enforcement's ability to ensure area rotation compliance and ensure the integrity of the scallop closed areas. VMS on the most active scallop vessels will provide better data for fishery management, particularly for areas that are more frequently targeted by small vessels fishing inshore of the typical scallop fishing areas. Transmission of location information through VMS could also improve safety by automatic tracking of the vessel's last known position.

**Elimination of automatic charge on broken trips:** Any limited access scallop vessel that is authorized to take a replacement trip for a Scallop Access are trip terminated early will be allowed to land the difference between the possession limit and the number of pounds landed on the broken trip for which the additional trip replaces.

**Habitat Impacts:** There will be no adverse habitat impacts associated with the implementation of this measure. The removal of broken trip charge is expected to improve safety at sea by reducing some of the alleged risks associated with the broken trip charge. This is because vessels facing unsafe conditions can return to port without the threat of losing a portion of their authorized scallop landings.

**Rebate of charges against replacement trips during the 2005 fishing year and prior to implementation of Framework Adjustment 17:** Access Area trips in the 2005 fishing year that are terminated early will continue to have the broken trip charge applied until Framework Adjustment 17 is implemented. Once Framework Adjustment 17 is implemented, vessels that terminated an access area trip before implementation will be able to take a second replacement trip to catch the amount of scallops lost as a result of the broken trip charge.

**Habitat Impacts:** There will be no adverse habitat impacts associated with the implementation of this measure. 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.

### **7.1.3.3 Minimizing or Mitigating Adverse Impacts**

In Amendment 13 to the Multispecies FMP and Framework 16 to the Scallop FMP, the New England Council implemented a range of measures to minimize the impacts of bottom trawling in the Gulf of Maine, George's Bank and Southern New England. In addition to the significant reductions in days-at-sea and some gear modifications, the Council closed 2,811 square nautical miles to bottom-tending mobile fishing gear (known as Habitat Closed Areas). See Table 46 for a description of the actions implemented in recent Council actions that act to minimize, mitigate or avoid impacts on EFH that are more than minimal and less than temporary in nature.

Measure	Source FMP (implemented by)	Description	Description of Habitat Impacts	Overall Habitat Impact
<b>CLOSED AREA MEASURES</b>				
<b>Mortality Closure</b>	Multispecies	Retention of existing groundfish closed areas in the Gulf of Maine, George's Bank and Southern New England. Addition of Cashes as a year round closure	Year-round closures provide habitat benefits to the areas within the closures. The addition of Cashes Ledge as a year-round closure will benefit EFH. Rare kelp beds are found in that area.	+
<b>Habitat Closed Areas</b>	Multispecies and Scallop	2811 square nautical miles closed to bottom-tending mobile gear indefinitely in five separate closed areas in GOM, GB and SNE.	Significant benefits to EFH by minimizing adverse effects of bottom trawling, scallop dredging and hydraulic clam dredging by prohibiting use.	+
Rotational Area Management (RAM)	Scallop	Amendment 10 implemented a rotational area management strategy which introduced a systematic structure that determines where vessels can fish and for how long. Framework adjustments will consider closure and re-opening criteria.	Expected to have positive effects on habitat because effort on gravelly sand sediment types is expected to decline. In general, swept area is expected to decline in most of the projected scenarios (especially in the Mid-Atlantic region), which could have positive impacts on EFH.	+
<b>EFFORT REDUCTION MEASURES</b>				
<b>Monkfish DAS usage by limited access permit holders in scallops and multispecies fisheries</b>	Monkfish	Retain current requirement for vessels to use both monkfish DAS and scallop or multispecies DAS simultaneously	This alternative relies on the scallop and multispecies management plans to set DAS levels (with the exception of when DAS fall below 40 DAS). As DAS have been reduced by management actions over the past two years, consequent impacts on habitat by the directed monkfish fishery have been reduced proportionally. Further reductions are possible depending on management actions in these two plans.	+
<b>Capacity Control</b>	Multispecies	DAS can be transferred with restrictions and new measures for "reserve days"	Any measure that is intended to reduce the amount of time fishing by mobile gear will likely have benefits to EFH. These measures reduce amount of latent effort as well.	+
<b>DAS</b>	Multispecies	Mix of adaptive and phased effort	Reducing DAS will likely benefit EFH by reducing the amount of	+

Measure	Source FMP (implemented by)	Description	Description of Habitat Impacts	Overall Habitat Impact
<b>Reductions</b>		reduction strategies. A days (60% of effective effort) B days (40% of effective effort) C days (FY01 allocation). Provides opportunity to fish on stocks that do not need rebuilding.	time vessels can fish.	
<b>DAS Limits</b>	Scallops	Amendment 10 implemented a new program that allocates specific number of DAS for open areas and controlled access areas.	The total DAS allocation in open areas is significantly less than the Status quo DAS allocation. Less DAS translates into less fishing effort, so positive for EFH. Furthermore, CPUE in controlled access areas is expected to be greater, thus the gear is expected to spend less time on the bottom.	+
<b>Possession Limits</b>	Scallops	Reduced possession limit for limited access vessels fishing outside of scallop DAS	Vessels with limited access permits are currently allowed to possess and land up to 400 lbs per trip of shucked scallop meats when not required to use allocated DAS; this measure will reduce possession limit to 40 lbs/trip) and reduce fishing effort by vessels that have been targeting scallops under the higher general category possession limit. Scallops harvested under this provision cannot be sold.	+
<b>GEAR MODIFICATION MEASURES</b>				
<b>Minimum mesh size on directed MF DAS</b>	Monkfish	Mobile gear vessels are required to use either 10-inch square or 12-inch diamond mesh in the codend. Gillnets must be at least 10 inches	The mesh size regulations do not have a direct effect on habitat, but may indirectly minimize adverse effects of the fishery on complex bottom types by reducing the ability to catch groundfish, and therefore the incentive to target those fish in hard bottom areas.	+
<b>Four inch rings</b>	Scallop	Increase ring size on scallop dredge rig to 4" everywhere.	Four inch rings will slightly increase dredge efficiency for larger scallops, thus reducing bottom contact time in recently-opened areas where large scallops are abundant, but will reduce catch rates and increase bottom time in areas where medium-small sized scallops are prevalent.	+
<b>OTHER MEASURES</b>				

Measure	Source FMP (implemented by)	Description	Description of Habitat Impacts	Overall Habitat Impact
<b>Observer Coverage</b>	Multispecies	10% requested by 2006 for each gear type	If observers are able to collect data of interest to EFH management, increased coverage could indirectly benefit habitat.	+
<b>TAC Set-Aside for research</b>	Scallop	2% set-aside from TAC and/or DAS allocations to fund scallop and habitat research and surveys	Could indirectly benefit habitat when habitat research is funded and provides better information for future management decisions.	+

**Table 46. Description of measures implemented by Council in last major FMP amendments to minimize, mitigate or avoid adverse impacts on EFH.**

Section 6.5.7 (Cumulative Effects Analysis) demonstrates that the overall habitat impacts of all the measures combined in this action have neutral impacts on habitat, compared to the habitat benefits that will result from implementation of Amendment 10 and Framework 16 of the Scallop FMP. Because the impacts are less than minimal and are temporary in nature and a framework action is considered a minor action, measures to minimize adverse effects on EFH are not necessary.

#### **7.1.3.4 Conclusions**

The action proposed under this framework adjustment should have no more than a minimal adverse effect on EFH of federally managed species. Because there are no substantial adverse impacts associated with this action, an abbreviated consultation may be the only required action.

#### **7.1.4 Skate Baseline Review**

The proposed action does not affect any of the fisheries management measures listed below,

- (i) NE Multispecies year-round closed areas
- (ii) NE Multispecies DAS restrictions
- (iii) Gillnet gear restrictions
- (iv) Lobster restricted gear areas
- (v) Gear restrictions for small mesh fisheries
- (vi) Monkfish DAS restrictions for Monkfish-Only permit holders
- (vii) Scallop DAS restrictions

Therefore the Council is not required to conduct a baseline review of the Fishery Management Plan for the Northeast Skate Complex.

### **7.2 NEPA**

In accordance with the National Environmental Policy Act as amended (NEPA), the Council has prepared an Environmental Assessment (EA) to determine whether further analysis and an Environmental Impact Statement (EIS) are needed. The EA has estimated the degree of impacts (short-term and cumulative) on the human environment, and the results justify a "Finding of No Significant Impact" (FONSI). Impact estimates are compared to the "No-Action." In the context of the current situation, these are the regulations that would be in place during 2004 if no action were taken to change them. Thus, No-Action is essentially the regulations that Amendment 10 specified and anticipated for 2004.

The SEIS for Amendment 10 analyzed the cumulative impact of scallop management since Framework 14 and projections of the impacts beyond 2004. The No-Action alternative in this document is the continuation of the current measures that are presently in place.

The Council has determined through an Environmental Assessment that preparing an EIS at this time is unnecessary to justify actions in this document, as noted in the FONSI. Several factors for the final action in Framework Adjustment 17 (this document) support this conclusion, including:

The scope of management adjustments is very limited, focusing only on the VMS implementation for the general category fishery and removal of broken trip charge.

Further rationale for the Finding of No Significant Impact is given below.

## 7.2.1 Consideration of NAO 216-6 Significance Criteria

In addition, National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6 (revised May 20, 1999) provides nine criteria for determining the significance of the impacts of a final fishery management action. These criteria are discussed below:

### **1. Can the final action be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action?**

The final action is not expected to endanger the long-term sustainability of the target species, i.e. sea scallops. The proposed action is expected to have indirect benefits on the sea scallop resource, and to improve the sustainability of scallop resource. A vessel monitoring system (VMS) will enable law enforcement personnel to locate general category vessels participating in the scallop fishery, thus improving enforcement's ability to deploy personnel and other resources in monitoring vessel offloads. The improvement in enforcement's effectiveness in monitoring the possession limit and the resulting increase in compliance may help to prevent fishing mortality from increasing beyond the sustainable levels due to illegal landings in excess of the 400 lb. general category possession limit. VMS will also provide better data for fishery management for monitoring the area boundaries that are a part of rotational area management. Such benefits for scallop management will help to keep the sea scallop resource at sustainable levels.

The removal of the broken trip program disincentive and rebates for charges on replacement trips is not expected to have any biological consequences or to jeopardize the sustainability of sea scallops. The Scallop FMP already has a built-in 20% buffer between the fishing mortality target and the threshold that defines overfishing. Furthermore, Framework 16/39 controlled access trip allocations were based on the assumption that there will be no broken trips and the entire allocated catch will be taken by the scallop fleet. Therefore, broken trip replacements where the combined catch equals the total allowed for the original trip would not change scallop fishing mortality and the sustainability.

### **2. Can the final action be reasonably expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and identified in FMPs?**

No direct changes in impacts on ocean and coastal habitats and/or EFH is expected from VMS requirement for general category vessels and from liberalizing the broken trip exemption program. Similarly, the distribution of fishing effort is not expected to change in response to the proposed action. General category vessels have historically participated in the sea scallop fishery, and there has been discussion that effort attributed to this sector has increased in recent years. Framework 17 proposes that some or all vessels with general category permits install and operate VMS to enhance monitoring of the general category catch. Although VMS implementation is not expected to have direct impacts, indirectly, more detailed reporting on effort distribution and fishing activity by general category vessels may be helpful for assessing the impacts of this fishery on EFH. This information will be even more useful to evaluate the effects on habitat, particularly in the Gulf of Maine and around Cape Cod, MA, where there are more habitat concerns than in the sandy-bottom areas in Southern New England and Mid-Atlantic waters.

In addition, the added VMS cost may reduce participation in the general category scallop fishery, and the decrease in fishing effort could potentially have a beneficial effect of ocean and coastal habitats and/or EFH. Because the proposed action requires a relatively small subset of vessels to operate a VCMS, these impacts are not expected to be substantial. This information could be used to improve habitat

management and therefore the proposed alternatives could have an indirect benefit for minimizing effects on essential fish habitat.

The removal of broken trip alternative is not expected to change impacts on ocean and coastal habitats and/or EFH as long as the scallop catches and total expected fishing effort remains at the levels that were allocated by Amendment 10 and Framework Adjustment 16/39. Replacement trips would be taken in the area where the broken trip occurred and while the area is open for scallop fishing.

### **3. Can the final action be reasonably expected to have a substantial adverse impact on public health or safety?**

The proposed action is expected to improve public health and safety. Requiring general category vessels to have a VMS onboard will improve safety at sea. Since VMS is a system that is constantly monitored, when a vessel signal stops, it provides another method to alert shoreside authorities that the vessel is in trouble. Therefore, transmission of location information through VMS will add another layer of safety in the event of an emergency. Especially when vessels are unable to transmit a distress call, this location information can be vital to the effectiveness of search and rescue operations.

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. This is because vessels facing unsafe conditions can return to port without the threat of losing a portion of their authorized scallop landings. 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.

### **4. Can the final action be reasonably expected to have an adverse impact on endangered or threatened species, marine mammals, or critical habitat of these species?**

The final action is not expected to have an adverse impact on sea turtles, which have been caught by scallop fishing gear. The Biological Opinion prepared for Amendment 10 to the Scallop FMP found that the scallop management program is not likely to jeopardize the continued existence of endangered and threatened species.

The proposed action is not expected to directly affect protected species or critical habitat of these species. It is not expected to appreciably change the amount or distribution of fishing effort by general category scallop fishery. Indirectly, however, more detailed reporting on catch, and in particular effort distribution and possibly other information, may enable managers to better evaluate the impacts of this on endangered or threatened species, marine mammals, or critical habitat of these species.

No changes in impacts on endangered species and protected resources is expected from liberalizing the broken trip exemption program, as long as the scallop catches and total expected fishing effort remains at the levels that were allocated by Amendment 10 and Framework Adjustment 16/39. Replacement trips would be taken in the area where the broken trip occurred and while the area is open for scallop fishing.

### **5. Can the final action be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?**

The cumulative effects of the final action on target and non-target species are described in Sections 6.5.4. and 6.5.5. The final action is not expected to result in cumulative adverse effects on target and non-target species. VMS requirement for general category vessels is expected to prevent an increase in scallop mortality from illegal landings in excess of 400 lb. general category possession limit. In addition, the added VMS cost may reduce participation in the general category scallop fishery, and the decrease in fishing effort could potentially have a beneficial effect both on scallop (target species) and also bycatch species. these effects are not expected to be substantial, however, since general category landings comprise a small percentage (less than 5%) of scallop landings. Similarly, the removal of the broken trip charge is not expected to result in any substantial effects on the target and non-target species because the controlled access trip allocations were made as if there were no broken trips and the entire allocated catch had been taken by the fleet.

**6. Can the final action be reasonably expected to jeopardize the sustainability of any non-target species?**

Due to catch limits and other measures to minimize bycatch and bycatch mortality, the final action is not expected to jeopardize the sustainability of non-target species. No changes in finfish bycatch is expected from VMS implementation and the removal of broken trip discharge as long as the scallop catches and total expected fishing effort remains at the levels that were allocated by Amendment 10 and Framework Adjustment 16/39. Furthermore, the added VMS cost could discourage additional participation in the general category scallop fishery, thus, could have a beneficial effect of reducing finfish bycatch compared to the amount that would occur without the added costs. Replacement trips would be taken in the area where the broken trip occurred and while the area is open for scallop fishing. These impacts are analyzed and discussed in Section 6.1.2.

**7. Can the final action be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?**

The final action is not expected to have a substantial impact on biodiversity and ecosystem function, because the intent of the action is to improve enforcement of the general category possession limit, prevent an increase in scallop mortality due to illegal landings and to improve safety.

**8. Are significant social or economic impacts interrelated with significant natural or physical environmental effects?**

There are no significant natural or physical environmental effects, so interrelations with significant social or economic impacts are moot.

**9. To what degree are the effects on the quality of the human environment expected to be highly controversial?**

The proposed action is not expected to be highly controversial. The VMS requirement will apply to the vessels with general category permits that has in possession or land more than an incidental amount of scallops, i.e., over 40 lb. scallop meats for commercial sale, in any trip. Only 276 out of 2,554 vessels with general category permits landed scallops more than 40 lb. on at least one trip during the 2003 fishing year. Therefore, this action will not impact the majority of the vessels with general category permits and will reduce the controversy regarding cost burden on vessels with incidental catches of scallops. Another potential source of controversy was related to the inconvenience and hardships on vessels if the VMS was operated 24 hour/7 day. The final action, however, reduces this controversy by allowing vessels to

power-down while in port. As a result, with the proposed action, the vessels will not have to rely on shore power or continuous battery power while in port, which may under some circumstances be unavailable.

More importantly, the proposed action is expected to reduce the controversy regarding the illegal landings of scallops due to the violations of the 400 lb. general category possession limit. Any increase in scallop fishing mortality beyond the sustainable levels could have adverse impacts on vessels that comply with the regulations. VMS is expected to improve enforcement's ability to monitor the possession limit more effectively. This in turn will reduce the risks of overfishing of the scallop resource due to violations.

Removal of the broken trip charge will help to reverse the highly controversial effects of this program on safety. Eliminating the automatic charge on replacement trips may reduce some of the alleged risks associated with the broken trip charge because vessels facing unsafe conditions can return to port without the threat of losing a portion of their authorized scallop landings. This measure will provide vessel operators more flexibility for all trips in the 2005 fishing year, even if they occur prior to the implementation of Framework Adjustment 17. Rebate of charges against replacement trips during the 2005 fishing year and prior to implementation of Framework Adjustment 17 should also reduce the controversy because it addresses any actual or implied safety concerns with the broken trip charge as quickly as possible.

In short, Council recommends several measures in the final action to reduce adverse impacts of regulations on the human environment, thereby reducing the potential controversiality of the final action.

## **7.2.2 Finding of No Significant Impact**

To determine the significance of the action analyzed in this EA, NMFS is required by NEPA, 40 CFR 1508.27 and NOAA Administrative Order 216-6 Section 6.01b to consider the context and intensity of the proposed action. This determination is based on the factors from CEQ's implementing regulations at 40 CFR 1508.27 and based on the nine criteria discussed above for determining the significance of the impacts of a final fishery management action..

Based on the EA, review of the National Environmental Policy Act (NEPA) criteria for significant effects, and my knowledge of the predicted impacts, I have determined that the action to be implemented (Section 4.0) would not have a significant effect, individually or cumulatively, upon the quality of the human environment. Therefore, preparation of an EIS on the final action is not required under Section 102(2)(c) of NEPA, its implementing regulations (40 CFR Part 1500-1508), or NOAA/NMFS environmental review procedures (NAO 216-6).

Signature

Date

## **7.2.3 Point of Contact and Prepares**

Questions concerning this document may be addressed to:

Mr. Paul Howard, Executive Director  
New England Fishery Management Council  
Framework Adjustment 17  
March 11, 2005

50 Water Street, Mill 2  
Newburyport, MA 10950  
(978) 465-0492

The list of preparers and agencies consulted are shown in Section 11.

#### **7.2.4 Opportunity for Public Comment**

The proposed action was developed during the period October 2004 through February 2005 and was discussed at the following meetings. Opportunities for public comment were provided at each of these meetings.

<b>Meeting</b>	<b>Place</b>	<b>Date</b>
Scallop Oversight	Comfort Inn - Warwick, RI	November 4, 2004
Council meeting	Courtyard by Marriot - Portsmouth, NH	November 16, 2004
Scallop Oversight	Sheraton - Revere, MA	January 26, 2005
Council meeting	Courtyard by Marriot - Portsmouth, NH	February 1, 2005

### **7.3 Endangered Species Act**

Section 7 of the Endangered Species Act requires federal agencies conducting, authorizing or funding activities that affect threatened or endangered species to ensure that those effects do not jeopardize the continued existence of listed species. The NEFMC has concluded, at this writing, that the proposed framework adjustment and the prosecution of the scallop fishery is not likely to jeopardize any ESA-listed species or alter or modify any critical habitat, based on the discussion of impacts in this document. For further information on the potential impacts of the fishery and the proposed management action on listed and other protected species, see Section 6.1.4 of this document.

The Council acknowledges that endangered and threatened species may be affected by the measures proposed, but impacts should be minimal. The NEFMC is now seeking the concurrence of the NOAA Fisheries Service with respect to Framework Adjustment 17.

### **7.4 Marine Mammal Protection Act**

The NEFMC has reviewed the impacts of the scallop fishery and this proposed action on marine mammals and has concluded that the proposed alternatives are consistent with the provisions of the MMPA, and will not alter existing measures to protect the species likely to inhabit the scallop management unit, such as take reduction plans. For further information on the potential impacts of the fishery and the proposed management action on marine mammals, see Section 7.0 of this document.

### **7.5 Executive Order 13158 (Marine Protected Areas)**

### **7.6 Coastal Zone Management Act**

The Council has determined that the final proposed alternatives comply with the rules and regulations of the Coastal Zone Management Act. This document has been sent to coastal states from Maine to North Carolina for review of compliance with individual state's CZMA management regulations.

## **7.7 Administrative Procedure Act**

The Federal Administrative Procedure Act (APA) establishes procedural requirements applicable to rulemaking by Federal agencies. The purpose of the APA is to ensure public access to the Federal rulemaking process, and to give the public notice and an opportunity to comment on the proposed regulations before the agency promulgates new regulations. Specifically, the APA requires NMFS to solicit, review, and respond to public comments on rulemaking taken in the development of fishery management plans and subsequent amendments and modifications. Opportunities for public input and access to the rulemaking process for this regulatory action were provided through the Fishery Management Council process. For example, during the February 2, 2005 New England Fishery Management Council meeting, NMFS requested suggestions and information from the public on the preferred alternatives in the draft environmental assessment. The agency is not requesting relief from the requirements of the APA for notice and comment on rulemaking activities in regards to the proposed rule. Thus, this rulemaking is in compliance with the requirements of the APA.

## **7.8 Section 515 (Data Quality Act)**

Following the procedures described in the Amendment 10 FSEIS, the data and analysis of impacts was prepared as described in the DQA compliance discussion in Amendment 10, utilizing the Council's Scallop, Groundfish, and Habitat technical teams (Plan Development Teams) for development and review of analyses. Pursuant to NOAA Fisheries guidelines implementing Section 515 of Public Law 106-554 (the Data Quality Act), all information products released to the public must first undergo a Pre-Dissemination Review to ensure and maximize the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies. The following section addresses these requirements.

### **Utility**

Utility means that disseminated information is useful to its intended users. "Useful" means that the content of the information is helpful, beneficial, or serviceable to its intended users, or that the information supports the usefulness of other disseminated information by making it more accessible or easier to read, see, understand, obtain or use. The intended users of the information contained in this document are vessels participating in the general category scallop fishery and limited access scallop fishery. However, federally permitted scallop dealers and members of the general public may also benefit from this information. The information contained in this document will be helpful and beneficial to owners of vessels holding a limited access or general category permit since it will notify these individuals of changes in management measures for the fishery. This information will enable these individuals to adjust their fishing practices, and make appropriate business decisions based on the new management measures and corresponding regulations.

The information being provided in this framework document concerning the general category and limited access scallop fishery is updated information based on landings and effort information for the 2003 fishing year which includes a 12-month period from March 2003 to February 2004. This data corresponded to the most recent information available for a complete fishing year, since the 2004 fishing year data is available only for months January to April. In addition, this framework includes new data on broken trips by the limited access scallop vessels from May 2004 to February 2005 provided by NMFS Northeast Regional Office. The data included on the status of scallop resource are 2003 scallop survey data from the R/V Albatross annual scallop dredge survey, the 2003 video survey scallop density analysis provided by Dr. Stokesbury of SMAST and Dr. Rago of the NEFSC, and maps of bottom substrate observations from the 2003 video survey data conducted by SMAST.

Information concerning changes to scallop management measures is new information that has been developed through a multi-stage process that involved members of the public. Therefore, the information pertaining to management measures contained in this document has been improved based on comments from the public, fishing industry, members of the Council, and NOAA Fisheries. The media being used in the dissemination of the information contained in this document will be contained in a Federal Register notice announcing the proposed and final rules for this action. This information will be made available through printed publication and on the Internet website for the Northeast Regional Office (NERO) of NOAA Fisheries.

### **Integrity**

Integrity refers to security--the protection of information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification. Prior to dissemination, NOAA information, independent of the specific intended distribution mechanism, is safeguarded from improper access, modification, or destruction, to a degree commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information.

### **Objectivity**

Objective information is presented in an accurate, clear, complete, and unbiased manner, and in proper context. The substance of the information is accurate, reliable, and unbiased; in the scientific, financial, or statistical context, original and supporting data are generated and the analytical results are developed using sound, commonly accepted scientific and research methods used in analyses in Amendment 10 to the Sea Scallop FMP. "Accurate" means that information is within an acceptable degree of imprecision or error appropriate to the particular kind of information at issue and otherwise meets commonly accepted scientific, financial, and statistical standards.

Several sources of data were used in the development of this document, including the analysis of impacts. These data sources include, but are not limited to, landings data from vessel trip reports, landings data from individual voice reports, information concerning DAS usage from the DAS call-in system, data from the dealer weighouts purchase reports, and ex-vessel price information. Although there are some limitations to the data used in the analysis of impacts of management measures, and in the description of the affected environment, these data are considered to be the best available.

The policy choices (i.e., management measures) to be contained in this specifications package are supported by the best available scientific information. Qualitative discussion is provided in cases where quantitative information was unavailable, utilizing appropriate proxies and reference points as necessary.

The review process for any action under an FMP involves the Northeast Regional Office (NERO) of NOAA Fisheries, the Northeast Fisheries Science Center (Center), and NOAA Fisheries Headquarters (Headquarters). The Council review process involves public meetings at which affected stakeholders have the opportunity to provide comments on the proposed changes to the FMP. Reviews by staff at NERO are conducted by those with expertise in fisheries management and policy, habitat conservation, protected species, and compliance with the applicable law. The Center's technical review is conducted by senior level scientists with specialties in population dynamics, stock assessment methods, demersal resources, population biology, and the social sciences. Final approval of this Framework action and clearance of the proposed and final rules is conducted by staff at NOAA Fisheries Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget. This review process is standard for any action under an FMP, and provides input from individuals having various expertises that were not directly involved in the development of the action. Thus, the review process for any FMP amendment, including the proposed regulations in Framework 17, is performed by technically qualified individuals to ensure the action is valid, complete, unbiased, objective and relevant.

## **7.9 Paperwork Reduction Act**

The analysis for Amendment 10 included an estimate and description of the burden (time and cost) of preparing, submitting, and administration of new data collection requirements for the Amendment 10 proposed action. Any new requirements or requirements that would alter the burden hour estimates will be described and evaluated in a new PRA analysis under a separate cover.

## **7.10 Executive Order 12898 – Environmental Justice**

Executive Order (E.O.) 12898 requires that, “to the greatest extent practicable and permitted by law... each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions...” The outcomes that have been predicted in this framework adjustment may differentially affect some populations. Nonetheless, many of the participants in the scallop limited access and general category scallop fishery may come from lower income and or ethnic minority populations. These populations may be more vulnerable to more restrictive management measures. For example, in many ports crew may be comprised of ethnic minorities, and many regions in which fishing is an important livelihood can also be economically impoverished.

## **7.11 Initial Regulatory Flexibility Act**

### **7.11.1 Introduction**

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 main elements of the RFA are fully discussed in several sections of the Framework 17 document, and the relevant sections are identified by reference to this document.

### **7.11.2 Problem Statement and Objectives**

The purpose of the action is described in Section 3.1 and the need for management (statement of the problem) is described in Section 3.2 of the Framework 17 document.

### **7.11.3 Management Alternatives and Rationale**

The proposed action is described in Section 1.3 of the Framework document and in Section 4.0. Alternatives to the proposed action are summarized in section 5.0. Economic impacts are examined in subsections of Section 6.2.

### **7.11.4 Determination of Significant Economic Impact on a Substantial Number of Small Entities**

#### **7.11.4.1 Description of the Small Business Entities**

The RFA recognizes three kinds of small entities: small businesses, small organizations, and small governmental jurisdictions. It defines a small business in any fish-harvesting or hatchery business as a

firm that is independently owned and operated and not dominant in its field of operation, with receipts of up to \$3.5 million annually. The vessels in the Atlantic sea scallop fishery could be considered small business entities because all of them grossed less than \$3.5 million according to the dealer's data for the 2001, 2002 and 2003 fishing years. Table 4 in Section 5.1 shows that annual revenue from all species including scallops averaged about \$ 814,000 per full-time vessel, \$405,800 per part-time vessel, and \$121,800 per occasional vessel during the 2003 fishing year. The average annual revenue per vessel that participated in the general category scallop fishery was \$235,300 in 2003 (Table 40). For those vessels that will be impacted by the proposed action, the average annual revenue was estimated to be \$165,845 for the 2003 fishing year ( Table 48 below).

The proposed regulations of Framework 17 would affect vessels with limited access scallop and general category permits. Section 5.1 (Description of the Fishery) and Section 6.4 (Social Impacts) of the Framework 17 document provides extensive information on the number, the port, the state, and the size of vessels and small businesses that will be affected by the proposed regulations. The information on the number and characteristics of the limited access vessels are shown in Table 4 and extensive information on the general category vessels are shown in Section 5.1.2. The current information on the number of scallop permits for the years 1994 to 2003 are provided in Table 3, in Affected Environment. According to the recent permit data, there were 289 vessels that obtained full-time limited access permits in 2003, including 37 small-dredge and 16 scallop trawl permits. In the same year, there were also 34 part-time and 10 occasional limited access permits in the sea scallop fishery. In addition, 2,554 permits were issued to vessels in the open access General Category.

#### **7.11.4.2 Determination of Significant Effects**

The Office of Advocacy at the SBA suggests two criteria to consider in determining the significance of regulatory impacts, namely, disproportionality and profitability.

The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of "small entity"), not the difference between segments of small entities. Framework 17 is not expected to have significant regulatory impacts on the basis of the disproportionality criterion for the following reasons:

1. The majority of the permit holders in the sea scallop fishery are considered small business entities.
2. The alternatives included in this Framework, including the proposed action and the nonpreferred alternatives, require all or a subset of vessels with general category permits to operate a VMS. The proposed action also includes the removal of broken trip disincentive to improve safety. The resulting changes from these actions in terms of profits, costs, and net revenues are not expected to be disproportional for small versus large entities.
3. The proposed action and the nonpreferred options are not expected to place a substantial number of small entities at a significant competitive disadvantage relative to large entities.

The profitability criterion will apply if the regulation significantly reduces profit for a substantial number of small entities. The impacts of the proposed alternatives on revenues, costs, and profits of an average vessel are discussed in relevant subsections of 6.2. Section 4.0 of Framework 17 describes the alternatives proposed by the Council and discusses the rationale for the Council's choice of each component of the proposed option. The economic impacts of the individual measures considered by this Framework, including VMS implementation and removal of broken trip disincentive are analyzed in the following sections of Framework 17. The following section provides a summary of the economic impacts from the proposed measures, compares these impacts with the impacts from significant alternatives, and discusses

the mitigating factors. The relevant section of Framework 17, which discusses the rationale of each measure, is also identified.

#### **7.11.4.2.1 Economic Impacts of VMS Implementation on Small Business Entities**

Rationale for the proposed action is provided in Section 4.1.1 and the economic impacts of the proposed VMS implementation for the general category vessels are examined relative to “no action” in Section 6.2.1. “No action” is defined as the continuation of the present regulations, which do not require vessels with general category permits to carry a VMS. Therefore, the economic impacts of alternatives for VMS implementation are compared to the “no action” (status quo) scenario with no VMS requirement. The number of affected vessels, their scallop landings, and total costs for VMS implementation are summarized in Table 47 for each alternative. Proposed action is equivalent to Alternative 2 in all tables.

**Table 47. General Category Vessels and VMS Alternatives**

Data	Alternatives and maximum scallop landings per trip				
	Alt. 1 All general category permits	Alt.2 Proposed Action >40 lb.	Alt.3a >100 lb.	Alt.3b >200 lb.	Alt.3c >300 lb
Number of vessels required to have a VMS	2,554	276	232	175	144
Number of affected vessels (i.e., vessels that do not already have a VMS)	2,344	223	192	156	132
Scallop landings as a percent of total general category landings	100%	99.9%	99.4%	96.8%	94.2%
Total costs for VMS and monthly service for the general category fleet during 2005 (Skymate:\$3,565)	8,356,360	794,995	684,480	556,140	470,580
Total costs for VMS and monthly service for the general category fleet during 2005 (Boatracs:\$4,735)	12,093,190	1,306,860	1,098,520	828,625	681,840
Annual service costs for Skymate (2006 on)	1,517,506	144,370	124,301	100,994	85,457
Annual service costs for Boatracs (2006 on)	2,953,440	280,980	241,920	196,560	166,320

#### **Summary of the impacts of the proposed option and mitigating factors:**

The proposed action will provide VMS monitoring for the vessels that usually land scallops in excess of incidental amount (40 lb. per trip) allowed for personal use, while exempting a large number of vessels that are less likely to land scallops or to exceed the possession limit. It will also allow vessels to power-down while in port as explained in Section 4.1.1.2. There were 2,554 vessels with general category permits in the 2003 fishing year; 2,278 of these vessels either did not have any landings or landed up to 40 lb. of scallops per trip, and 2,121 of them did not have a VMS. These vessels will not be required to operate a VMS and will still retain their permit as long as their landings per trip do not exceed 40 lb. of scallops. However, the proposed action will affect about 223 vessels that do not already have a VMS out of a total 276 vessels that landed over 40 lb. of scallops per trip during the 2003 fishing year. These 276 vessels landed over 99.9% of the general category scallop landings in 2003 (Table 47).

If all of these 223 vessels choose to install and operate a VMS, total costs to the industry will range between \$795,000 to \$1,307,000 during the initial year of implementation. The proposed action is expected to have indirect economic benefits, however, due to improved enforcement of the general category possession limit. These benefits and costs were discussed in detail in Section 6.2.1.1.2 and Section 6.2.1.1.3. The economic impacts on vessels were analyzed in Section 6.2.1.1.7 and summarized below:

- The initial investment costs for VMS including the installation charge, activation fee, and monthly service are estimated to be \$3,565 for Skymate to \$4,735 for Boatracs as discussed in Section

6.2.1.1.6. After this initial investment in the first year of implementation, the costs of VMS implementation for vessels will decline substantially, and will consist of monthly service charges estimated to be \$1,260 for Boatracs and \$647 for Skymate for 12 months. The discussion below summarizes the results in terms of the less expensive Skymate units, while showing the results for Boatracs in parenthesis.

**Table 48. Impacts of Proposed VMS requirement on general category vessels**

Data	VMS costs exceed scallop revenue		VMS costs are less than scallop revenue		Grand Total
	Boatracs (\$4,735)	Skymate (\$3,565)	Boatracs (\$4,735)	Skymate (\$3,565)	
Number of vessels	87	79	136	144	223
Average annual scallop revenue per vessel	1,569	1,323	52,651	49,948	32,722
Average annual scallop landings per vessel (lb.)	324	274	11,325	10,742	7,033
Average number of trips per vessel	4	3	38	37	25
Average scallop pounds per trip	87	82	296	294	284
Average annual total revenue from scallop trips	10,769	9,183	59,244	57,421	40,332
Average annual total revenue from all trips	172,888	176,930	154,781	153,570	161,845
Scallop Revenue as a percent of total annual revenue	6.2%	5.2%	38.3%	37.4%	24.9%
Initial VMS costs as a percent of scallop revenue	>100%	>100%	9.0%	7.1%	10.9%
Annual service costs as a percent of scallop revenue	80.3%	48.9%	2.4%	1.3%	2.0%
Initial VMS cost as a percent of Total Annual Revenue	2.7%	2.0%	3.1%	2.3%	2.2%
Annual service costs as a percent of Total Annual Revenue	0.7%	0.4%	0.8%	0.4%	0.4%
Loss in revenue if scallop landings were reduced to 40 lb. per trip					
Total annual loss	(850)	(759)	(8,350)	(7,980)	(5,415)
Percent of total revenue	-0.5%	-0.4%	-5.4%	-5.2%	-3.3%

- Table 48 shows the general category vessels that will be impacted by the proposed action in two groups according to their scallop revenue relative to VMS costs for Boatracs or Skymate units. The costs for VMS equipment and service will exceed the scallop revenue for 79 (87) vessels if they chose to install Skymate (Boatracs) units. These groups of vessels include those that mostly land scallops as a bycatch from a few trips, usually in amounts much below the 400 lb. possession limit.
- Table 48 shows that the scallop landings per trip was less than 90 lb., and annual revenue per vessel from scallops averaged about \$1,323 to \$1,569 this for group of vessels, lower than the costs for VMS for either Skymate or Boatracs units. Therefore, the proposed action will have negative economic impacts on these vessels if they choose to install a VMS and continue catching over 40 lb. of scallops per trip. Because investing in VMS will entirely eliminate their profits from scallop catch, however, some vessels in this group may choose to lower their scallop landings to the incidental amount (40 lb.) per trip in order to retain their general category permit without having a VMS onboard. The revenue loss from such a strategy is not expected to be large since these vessels do not derive significant amounts of revenue from scallops to begin with. As Table 48 shows, the average reduction in scallop revenue would be \$760 annually, or less than 1% of total revenue per vessel, if scallop landings by these vessels per trip were lowered to 40 lb. per trip.
- Over one-half of the vessels that will be impacted by the proposed action, or 144 (136) vessels out of a total 223 vessels, had revenue from scallops either equal to or in excess of estimated VMS costs for Skymate (Boatracs). The majority of these vessels targeted scallops during those trips when they

landed scallops, and earned, on the average, close to or over \$50,000 in scallop revenue during the 2003 fishing year. Average VMS costs for this group of vessels during the first year are estimated to be 7% (9%) of their annual revenue from scallops for Skymate (Boatracs) units, and will decline to 1.3% (2.4%) of scallop revenue after the first year of implementation. Therefore, for this group of vessels, the financial burden from the VMS requirement will be less as a proportion of scallop revenue. Nevertheless, the proposed action will still reduce the profitability of the scallop trips for these vessels in the short-term, although these negative impacts will decline in the subsequent years since the costs will only comprise the service charge for VMS operation. Because they earn significant amounts of revenue from scallop trips, these vessels are not likely to reduce their scallop landings to the incidental amount (40 lb.) per trip in order to avoid the costs of operating a VMS.

- There are several mitigating factors, however, that could minimize the negative economic impacts of VMS implementation for the general category vessels that are required to operate a VMS. As discussed above, the proposed action provides the flexibility to any vessel with a general category permit to retain it without having a VMS on board as long as scallop catch per trip is limited to the incidental amount (40 lb.) per trip. Therefore, many vessels that do not land any or land only a small amount of scallops per trip could avoid VMS costs without experiencing a significant amount of revenue loss and without giving up their general category permit.
- For other general category vessels that already earn significant amounts of revenue from scallop trips in excess of the VMS costs, there could be an opportunity to cover these costs fully or in part by taking more trips and/or by increasing the scallop catch per trip. Also, the recent publication of the control date for general category scallop fishery and a potential limited entry program into the general category scallop fishery could provide an economic incentive for some vessels to increase landing of scallops and thus to operate a VMS even if they do not presently participate in the fishery.
- The amount of additional scallop catch necessary to compensate a vessel for the VMS equipment and service charge depends on how many extra trips a vessel must take and on how the additional scallop revenues are shared between the vessel owner and the crew. Table 38 estimated the scallop pounds that is necessary to pay for the VMS equipment and service charge. At a minimum, about an additional 783 (1,041) pounds of scallops would be required to cover the VMS costs for Skymate (Boatracs) units assuming that these pounds could be landed at no extra cost to the vessel, and all of the revenues from scallops are applied towards VMS costs (See Section 6.2.1.1.7 and from Table 39 to Table 44 for further analysis). More realistically, however, the vessel owner has to compensate the crew for the extra pounds landed and also pay a part of the trip expenses incurred while fishing for additional scallops. As estimated in Section 6.2.1.1.6 and Table 38 about 2000 lb. (2,600 lb.) of scallops would be necessary to cover the costs for a Skymate (Boatracs) unit, assuming a lay system of 40/60 and assuming that scallops constitute the only source of revenue from those trips. These pounds would translate into an additional 5 (6.5) day trips at landings of 400 lb. of scallops per trip for Skymate (Boatracs) units.
- The actual scallop pounds that would cover the VMS costs would probably be less than these amounts given that some of the trip expenses could be covered from additional revenue from other species landed. In addition, some vessels may choose to finance the costs for VMS equipment by a bank loan over a longer period of time instead of paying for it in full during the first year in order to minimize the impacts on their cash flow. For example, spreading the VMS costs over 4 years would reduce the cost burden to \$1,583 (\$2,376) for Skymate (Boatracs) from \$3,564 (\$4,735) during the first year. These annualized costs for Skymate (Boatracs) units could be covered by taking an additional 2.2 (3.3) trips and by landing 400 lb. of scallops on each trip (Table 38).
- The discussion provided above comparing the VMS costs with the scallop revenue showed that the proposed action could have differential impacts on vessels depending on the level of their

participation in the general category scallop fishery. In order to assess the significance of the proposed action according to the profitability criterion of RFA, however, the VMS costs should be compared with total profits per vessel. This analysis compares VMS costs with total vessel revenue from all species in order to analyze if the proposed regulation will significantly reduce the profit for a substantial number of small entities. Table 48 shows that for most vessels VMS equipment and service costs constitute a relatively small proportion of total revenue for most vessels regardless of whether their scallop revenue exceeds or falls below the VMS costs, ranging from an average 2.0% to 2.3% of total revenue for Skymate units and from 2.7% to 3.1% for Boatracs units. If some vessels choose to recover part of the VMS costs by taking additional trips and/or by increasing scallop catch per trip, the reduction in total revenue will be less than these percentages. For these reasons, the proposed action is not expected to reduce substantially total revenue and profits of the general category vessels that are required to operate a VMS.

- In addition, there will be economic benefits from VMS implementation, although these benefits cannot be estimated quantitatively. General category vessels that comply with the 400 lb. possession limit and that have earnings from scallops significantly exceeding VMS costs will benefit from better monitoring of the possession limit. The proposed action will also have indirect economic benefits on the limited access scallop vessels through improved enforcement of the 400 lb. general category possession limit. If there is no action, scallop mortality could increase beyond sustainable levels due to illegal landings of scallops reducing the stock biomass for the scallop resource. As a result, the future yield and revenues from the scallop resource could decline. Therefore, better enforcement of the possession limit will help to prevent future revenue loss from the scallop fishery if overfishing of the resource occurs due to violations of the general category possession limit or if stringent measures on the limited access and general category fleet need to be taken to prevent such overfishing.
- Both the limited access and the general category vessels will benefit from better management of the scallop resource made possible by better data on the location of the fishing activity. Finally, all general category vessels are expected to benefit from the additional safety benefits from having a VMS on board. Section 6.2.1.1.7 provides a comparative analysis of economic impacts on vessels from a RFA perspective of the proposed action and the alternatives.
- The power-down exemption proposed by this framework action will allow vessels to turn the VMS off while in port and will help to reduce compliance costs from VMS implementation.

In summary, over both the short- and long-term, the proposed action is not expected to reduce significantly the total revenue and profit for the general category vessels that are required to operate a VMS. Also because the vessels that are required to operate a VMS constitute only a small subset, or about 10%, of all vessels with a general category permit, the proposed action will not impact a substantial number of small entities.

### **Comparison of the impacts of the alternative options:**

The proposed action minimizes the costs for the small business entities operating in the general category scallop fishery as compared to the non-selected alternative 1, according to which all vessels with general category permits would be required to operate a VMS. If all 2,554 vessels with general category permits installed a VMS, total costs would range between from \$8.3 million to \$12.1 million depending on the choice of VMS units to be installed. Because most of these vessels did not land any scallops or landed only an incidental amount, Alternative 1 would impose a financial burden on these vessels far exceeding their revenue from scallops. Alternatives 3a to 3c, however, would include a smaller subset of small business entities in VMS implementation, 232 vessels for alternative 3a, and 144 vessels for alternative 3c, and result in lower costs for the general category fleet compared to the proposed action (Table 47). On the other hand, exempting a large number general category vessels would create the same enforcement problems in monitoring the possession limit for the subset of vessels not required to install VMS. The

larger the number of vessels that are exempted from VMS requirement, the more difficult it would be to improve the enforcement efficiency in monitoring possession limits. In addition, alternatives 3a to 3c would create another possession limit to monitor and would reduce the enforcement benefits associated with the VMS implementation. For these reasons the Council did not select alternatives 3a, 3b, and 3c.

#### ***7.11.4.2.2 Economic Impacts of Removal of Broken Trip Disincentive and Rebate of Charges***

Rationale for the proposed action is provided in Section 4.2.1, and economic impacts are analyzed in Section 6.2.2. “No action” is defined as the continuation of the present regulations, which includes an automatic DAS-charge for the replacement trips and prorates the possession limit at a 1,500 per day-at-sea equivalent.

#### **Summary of the impacts of the proposed option and mitigating factors:**

Suspending the replacement trip charge will have positive economic impacts by reducing the losses from broken trips for the limited access scallop vessels that fish in controlled access areas. The proposed action would prevent such revenue loss because it would allow vessels to land the difference between the possession limit and the amount of scallops they landed during the broken trip. In other words, total pounds landed from the broken and the replacement trip will add up to the possession limit (18,000 lb. for 2004 fishing year) for that area. As estimated in Table 45, Section 6.2.2.1.1, assuming that the number of broken trip applications will be the same as they were during 2004 fishing year, an additional \$1.6 million in revenue for the scallop fishery could be recovered by eliminating the automatic charge on the replacement trips. The impacts of the proposed rebate for the 2005 fishing year is also expected to be positive because vessel owners will be able to land the full amount of the possession limit through replacement trips and the rebates even if they occur prior to the implementation of Framework Adjustment 17. In summary, the proposed modification of the broken trip program is not expected to reduce the total revenue and profit for the limited vessels and it is not expected to have significant impacts on small business entities.

#### **Comparison of the impacts of the alternative options:**

There are no significant alternatives to the proposed action that minimize economic impacts on small business entities.

## ***7.12 Regulatory Impact Review / E.O. 12866***

### **7.12.1 Introduction**

The Regulatory Impact Review (RIR) provides an assessment of the costs and benefits of proposed actions and other alternatives in accordance with the guidelines established by Executive Order 12866. The regulatory philosophy of Executive Order 12866 stresses that in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives and choose those approaches that maximize the net benefits to the society.

The RIR also serves as a basis for determining whether any proposed regulations are a “significant regulatory action” under the criteria provided in Executive Order 12866 and whether the proposed regulations will have a significant economic impact on a substantial number of small entities in compliance with the Regulatory Flexibility Act of 1980 (RFA).

This RIR summarizes the effects of the proposed management plan and other alternatives considered in this framework that has been developed to rebuild the scallop resource. The Framework 17 document

contains all the elements of the RIR/RFA, and the relevant sections are identified by reference to the document.

The purpose of and the need for action are described in Section 3.1 and Section 3.2. The description of the proposed alternative and the non-selected alternatives including the “no action” alternative is provided in Section 4.0. The description of fishery is provided in Section 5.1, which coincides with Section 7.1 of Amendment 10.

### **7.12.2 Economic Impacts**

Section 6.2 evaluated the economic impacts of Framework 17 alternatives considered by the Council. Sources of uncertainty are identified in Section 6.2.3. The economic impacts of the individual measures considered by Framework 17 are discussed in the following sections and the numerical results are presented in the tables included in those sections:

- Economic Impacts VMS implementation and power-down exemption, proposed action and alternatives: Section 6.2.1.
- Economic Impacts of no action corresponding to VMS implementation: Section 6.2.1.2
- Economic Impacts of removal of broken trip disincentive and rebate for replacement trips for 2005 fishing year: Section 6.2.2.
- Economic Impacts of no action (status quo) broken trip program 6.2.2.2.

The Initial Regulatory Flexibility Analysis, which evaluates the impacts of management alternatives on small businesses, is provided in Section 7.11

### **7.12.3 Summary of Regulatory Impacts**

The economic impacts of the proposed regulations on the scallop fishery, consumers, and on the total economic benefits to the nation are summarized below. The economic costs and benefits of the final alternatives are compared with the “no action” alternative. For proposed measures regarding VMS implementation, “no action” is defined as the continuation of the present regulations, which do not require vessels with general category permits to carry a VMS, except those vessels that choose to fish in the Georges Bank controlled access areas. For measures regarding the removal of the broken trip charge, “no action” is defined as the continuation of the regulations implemented by Amendment 10 that pertain to broken trip reporting requirements found in Paragraph §648.60(c)(5)(i). In other words, “no action” would retain the automatic the two DAS/3,000 lb. disincentive for the replacement trips.

#### **Summary of economic impacts for the VMS implementation:**

- The proposed action will increase both the costs and the benefits for the scallop fishery. Although economic costs from VMS implementation, including the expenditures on VMS equipment and monthly service charge are known, the economic benefits from VMS implementation could only be analyzed from a qualitative perspective. This is because the benefits will materialize through improved monitoring and enforcement of the possession limit, vessel safety benefits, and better data for scallop fishery management. These benefits cannot be estimated in dollars.
- VMS implementation will require a monetary investment by many general category vessels that do not presently own a VMS. The economic impacts of the proposed action on vessels with general category permits were analyzed in detail in Section 7.11 (IRFA) above, and will be summarized here for the general category fleet as a whole. The proposed action will require only those vessels with scallop landings of more than 40 lb. per trip to install and operate a VMS. It will affect about 223 vessels that do not already have a VMS, out of a total 276 vessels in this

category (Table 47). If all of these vessels choose to install and operate a VMS, total costs to the industry will range between \$795,000 to \$1,307,000 during the initial year of implementation (for Skymate and Boatracs, respectively).

- Many general category vessels (about 79 to 87 out of 223 vessels) included in the VMS requirement are estimated to have an annual scallop revenue lower than the VMS costs (Table 36, Section 6.2.1). If these vessels do not renew their general category permit or reduce their landings of scallops to 40 pounds or less per trip in order to avoid installing a VMS, the VMS costs would be lower than estimated above. In such a case, however, scallop revenues will also decline although by an insignificant amount (by a total of \$105,000) relative to the total revenues by the general category fleet (Table 36). However, the costs of VMS implementation should be compared to the benefits of improved enforcement on the scallop resource, yield and revenues.
- Although the proposed action will increase the fishing costs, it is not expected to reduce significantly the revenues and profits of most these vessels required to install and operate a VMS. There are several mitigating factors that could minimize the negative economic impacts of VMS implementation. The proposed action provides the flexibility to any vessel with a general category permit to retain it without having a VMS on board as long as scallop catch per trip is limited to the incidental amount (40 lb.) per trip. Therefore, many vessels that do not land any or land only a small amount of scallops per trip could avoid VMS costs without experiencing a significant amount of revenue loss and without giving up their general category permit. For other general category vessels that already earn significant amounts of revenue from scallop trips in excess of the VMS costs, there could be an opportunity to cover these costs fully or in part by taking more trips and/or by increasing the scallop catch per trip (see Section 7.11, IRFA).
- VMS implementation is expected to have indirect economic benefits on the scallop industry through improved monitoring and enforcement of the 400 lb. general category possession limit. If the possession limit cannot be effectively enforced, fishing for scallops with a general category permit could become more attractive to fishermen who usually target other species. If there is no action, that is, there are no new regulations to prevent such an increase in fishing effort, scallop mortality could increase beyond sustainable levels, reducing the stock biomass for the scallop resource. As a result, the future yield and revenues from the scallop resource could decline. Under the “no action” scenario, impacts on the consumer benefits may be negative due to reduced scallop landings in the future, possibly coupled with higher scallop prices. Similarly, producer benefits would decline due to lower landings and revenues, and higher fishing costs per pound of scallops if overfishing leads to a reduction in the productivity of the scallop resource.
- Therefore, the proposed action is expected to have positive economic impacts compared to “no action,” by improving compliance with the 400 lb. general category possession limit, thereby preventing an unexpected increase in overfishing due to illegal landings and thus a reduction in future scallop landings and revenues. For the same reasons, the total economic benefits of the proposed action, as measured by the sum of the producer and consumer surpluses, is expected to be positive compared to “no action.”
- VMS will also provide better data for fishery management, particularly for areas that are more frequently targeted by small vessels fishing inshore of the typical scallop fishing areas. The other benefit would be better monitoring of area boundaries that are a part of rotational area management. Such benefits for scallop management will help to maintain the optimum yield and economic benefits from the fishery, although these benefits cannot be quantified.
- VMS could also have potential vessel safety benefits. Since VMS is a system that is constantly monitored, when a vessel signal stops, it provides another method to alert shoreside authorities that the vessel is in trouble. Although these benefits cannot be quantified in terms of dollars, they

nevertheless may provide economic benefits to the extent that they reduce the chances for loss of property (vessel) and life in emergency situations.

- Because it is not possible to estimate benefits from VMS implementation in dollars, net benefits, that is total economic benefits minus costs (VMS equipment and service costs) cannot be quantified. However, after the initial investment in VMS the annual costs will decline substantially (to \$144,000 for Skymate and \$280,000 for Boatracs), comprising only the service charge. Given that these costs constitute only 2% to 4% of the total scallop revenue by general category vessels, there is reason to expect that over the long-run the benefits will exceed these costs. Better enforcement of the possession limit will undoubtedly help to prevent future revenue loss from the scallop fishery if overfishing of the resource occurs due to the illegal landings or if stringent measures need to be taken to prevent such overfishing.
- Although the VMS implementation is expected to benefit most vessels in the scallop fishery, these benefits may not necessarily be equally distributed. The general category vessels that comply with the 400 lb. possession limit and that have earnings from scallops significantly exceeding VMS costs will benefit from VMS implementation. These vessels will also benefit from better management of the scallop resource made possible by better data on the location of the fishing activity. Finally, all general category vessels are expected to benefit from the additional safety benefits from having a VMS on board. Although the benefits from VMS cannot be estimated quantitatively, they will be higher for vessels that target on and derive a significant proportion of revenue from scallops. The vessels with incidental landings of scallops may have little to benefit from improved enforcement of the possession limit and the positive impacts on the scallop resource.
- Proposed action (Alternative 2) minimizes the total compliance costs for the general category fleet as compared to the non-selected alternative 1, according to which all vessels with general category permits would be required to operate a VMS. If all 2,554 vessels with general category permit installed a VMS, total costs would range between from \$8.3 million to \$12.1 million depending on the choice of VMS units to be installed (Table 36, Section 6.2.1). Alternatives 3a to 3b, however, result in lower costs for the general category fleet compared to the proposed action because they require a smaller subset of vessels to install a VMS. On the other hand, the enforcement benefits discussed above will be less for these alternatives because they will include a smaller number of vessels.
- The power-down exemption proposed by this framework action will allow vessels to turn the VMS off while in port and will help to reduce compliance costs from VMS implementation.
- The removal of broken trip charge and the proposed rebate for the 2005 fishing year is expected to have positive impacts on the limited access vessels. It will allow every vessel to harvest the full amount of the possession limit through replacement trips and the rebates (Section 6.2.2, Economic Impacts). Because compliance with the scallop possession limit is sufficiently monitored and ensures that the total catch does not exceed the TAC, no adverse biological and economical impacts are expected due the implementation of these measures.
- By preventing a potential decline in scallop biomass and catch rates in the long run, the proposed measures are expected to increase the productivity of the scallop industry.
- The cumulative impacts of the proposed action, and the past actions including the Amendment 10 and Framework 16 to the scallop FMP, are estimated to be positive for the scallop fishery. Although VMS requirement will increase costs for about 10% of the vessels with general category permits (223 out of a total 2,554 vessels), the proposed action is expected to have positive cumulative economic impacts by improving safety, by reducing losses from broken trips

and by better monitoring of the possession limit, benefiting both limited access and general category vessels participating in the scallop fishery.

#### **7.12.4 Enforcement Costs**

In general, the enforcement costs and benefits of the proposed options for Framework 17 are within the range of impacts addressed in Section 8.9 of the Amendment 10 document, which included a discussion of VMS requirements for limited access and general category vessels. Section 6.3 of this document provides a qualitative analysis of the benefits and costs of the VMS implementation alternatives for general category vessels including the power-down exemption, proposed action for removal of broken trip disincentive and rebates for broken trips for 2005 fishing year. The impacts of the proposed action on enforcement costs could be summarized as follows:

- The proposed alternatives for VMS implementation including power-down alternative are not expected to have substantial impacts on administrative and enforcement costs. In fact, the VMS implementation may lower some of the enforcement costs by improving enforcement's ability to deploy personnel and other resources more efficiently and by improve its effectiveness in monitoring area rotation compliance.
- The proposed broken trip exemption, however, especially the provision to allow vessels to operate without turning on VMS when they are inside of the VMS demarcation line, will increase the enforcement complexity, and thus could reduce some of the enforcement benefits associated with VMS implementation.
- The enforcement benefits are expected to be proportional to the number of vessels included in the VMS implementation. While exempting a subset of general category vessels would reduce the overall costs of VMS requirement for the general category fleet, it also would create the same enforcement problems in monitoring the possession limit for the subset of vessels not required to install VMS. From this perspective, non-preferred alternative 1, could result in largest enforcement benefits by requiring all vessels with general category permits to have a VMS. On the other hand, the same alternative could present a challenge in terms of the current enforcement resources, and could increase the personnel costs of enforcement associated with monitoring VMS activity of a large number of vessels with general category permits. If there is no extra funding to meet the increased costs, overall efficiency of enforcement for fishery regulations in general could decline if a reallocation of resources was required to monitor VMS activity.
- The proposed action will provide, however, VMS monitoring for the majority of general category fishing activity, while exempting a large number of vessels that are less likely to land scallop or to exceed the possession limit (see the discussion above in economic impacts). In other words, the proposed action represents an improvement over the present system of dockside monitoring of the possession limit and it also balances considerations for enforcement efficiency with the concerns for increased compliance costs for general category vessels.
- The proposed action regarding the removal of broken trip disincentive is not expected to have significant impacts on enforcement costs or benefits. Broken trip rebates will increase administrative costs slightly since NMFS will have to let the fishermen know that they are entitled to another replacement trip and keep track of these trips. However, this increase in costs is not expected to be significant because NMFS already tracks the broken trips and have procedures in place for doing so.

#### **7.12.5 Determination of Significant Regulatory Action**

Executive order 12866 defines a "significant regulatory action" as one that is likely to result in: a) an annual effect on the economy of \$100 million or more, or one which adversely affects in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or

state, local, or tribal governments or communities; b) a serious inconsistency or interference with an action taken or planned by another agency; c) a budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; d) novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this executive order.

The preceding analysis shows that Framework 17 would not constitute a "significant regulatory action" since it will not raise novel legal and policy issues, other than those that were already addressed and analyzed in Amendment 10. VMS requirements were already applied for the scallop limited access fishery and this action includes a subset of general category vessels in the same implementation. Similarly, this action revises the existing broken trip exemption program implemented by Amendment 10. The proposed action is expected to have positive impacts, but these impacts are estimated to be less than \$100 million given that the entire scallop revenue generated by the general category scallop fishery was only \$7.3 million in 2003. VMS implementation will also have marginal impacts on compliance costs. The removal of broken trip discharge and rebate of charges against replacement trips for the 2005 fishing year will have safety benefits with no significant impacts on economic benefits. Therefore, the proposed regulations may not have an annual impact on the economy of \$100 million or more. The proposed alternatives will not, however, adversely affect in a material way the economy, productivity, competition, public health or safety, jobs or state, local, or tribal governments or communities in the long run. The proposed action also does not interfere with an action planned by another agency, since no other agency regulates the level of scallop harvest. It does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients.

### **7.13 Executive Order 13132 (Federalism)**

The E.O. on federalism establishes nine fundamental federalism principles for Federal agencies to follow when developing and implementing actions with federalism implications. Section 12.4 of the Red Crab FMP describes how the management plan is in compliance with this order. Furthermore, this action does not contain policies with Federalism implications, thus preparation of an assessment under E.O. 13132 is not warranted.

The proposed action does not affect any of the fisheries management measures listed below,

- (i) NE Multispecies year-round closed areas
- (ii) NE Multispecies DAS restrictions
- (iii) Gillnet gear restrictions
- (iv) Lobster restricted gear areas
- (v) Gear restrictions for small mesh fisheries
- (vi) Monkfish DAS restrictions for Monkfish-Only permit holders
- (vii) Scallop DAS restrictions

Therefore the Council is not required to conduct a baseline review of the Fishery Management Plan for the Northeast Skate Complex.

## **8 COMMENTS AND RESPONSES**

During the development of the proposed action, the Council received the following comments from various members of the fishing industry on the framework adjustment and the alternatives under consideration.

1. The FMP must take into consideration the inability for many general category vessels to supply shore side power for continuous VMS operation, like what is allowed in the Herring FMP.

Initially, the alternatives would have required vessels with general category permits to operate VMS 24/7, except for a specific exemption for vessels that would be out of operation for a continuous period of several weeks or months. This would have been consistent with the requirements to operate VMS that apply to limited access scallop vessels. Proposed power-down alternative (Section 4.1.1,2) allows vessels with general category permits to power down the VMS equipment when in port after the landings have been offloaded at a shore side dealer and when the vessel is tied to a fixed dock or mooring. The VMS must be re-powered when the vessel is embarking on a fishing trip, or whenever the vessel is seaward of the VMS demarcation line.

2. The power-down provisions must maintain the integrity of the VMS system for enforcement to monitor compliance with the 400 lbs. scallop meat landing limit.

The Council recognized the need for vessels to power down VMS equipment when in port, but yet require that the VMS be in operation on all fishing trips in a clear and unambiguous way. The Herring FMP provisions were too liberal for monitoring fishing and offloading activity while in port (it is not as crucial in the Herring FMP because the VMS is used to determine fishing effort distribution, not enforce a landing limit. Thus general category vessels will be required to offload their catch before powering down the VMS and be required to power up the VMS when embarking on a fishing trip (for any species) and whenever the vessel is seaward of the VMS demarcation line. The Council did not feel it was necessary to require VMS operation when the vessel moved locally to load supplies, get fuel and ice, or to have repairs and maintenance done to the vessel.

3. The FMP must make the existing broken trip program more flexible, to reduce the risk of losing authorized scallop landings when vessels have to return to port because of bad weather or other emergencies. This risk potentially causes vessels to remain at sea longer than they should, compromising safety.

Proposed action (Section 4.2.1) will remove the broken trip disincentive and vessels will be able to land the authorized scallop landings from a controlled access area, even if the vessel has to return to port because of bad weather or other emergencies.

4. The criteria for determining when a general category vessel must install and operate VMS equipment should be consistent with the provisions of the permit and not create another threshold to be enforced.

The Council chose a 40 lb. limit on any trip to define when a vessel needs to operate VMS equipment (see Section 4.1.1 ). This limit is consistent with the provisions of the permit, since a vessel needs no permit to land less than 40 lbs. of scallop meats.

5. The FMP should not impose monitoring costs on vessels that do not target or land scallops.

The Council selected a threshold that is consistent with a landing of 40 or more pounds of scallop meats for commercial sale. Thus, these vessels are in a commercial fishing operation and are therefore capable of supporting the costs of a VMS. The VMS costs were analyzed in Section 6.2.1. Vessels landing scallops as an incidental catch also derive fish revenue from other landings and are thus also capable of supporting the cost of the VMS equipment. On the other hand, nearly 2200 of the 2500 general category permits landed no scallops or landed less than 40 lbs. of scallops on every trip. The alternative in Section 4.1.1 exempts these vessels from the proposed VMS requirement and greatly reduces the program costs, compared to the alternative 1 in Section 4.1.3.1 which would require all vessels with general category permits to install and operate VMS equipment. Doing so may have forced a considerable number of

vessels to unnecessarily give up their general category permit, because they could not justify the cost to land a small amount (or no) scallops.

6. Vessels that fish for scallops in the Gulf of Maine should be exempt from the VMS requirements, because most of the problem with the 400 lb. possession limit compliance is in Southern New England and the Mid-Atlantic regions.

The Council rejected an area based exemption, due to the mobility of the scallop fleet to fish in areas where compliance with the 400 lb. possession limit has been a problem. An area based exemption creates loopholes that were unacceptable to managers.

7. Relief from the broken trip program disincentive is needed as quickly as possible. Will the review process for the VMS requirements slow down the approval of the broken trip program changes?

Framework Adjustment 17 approval is expected during the summer of 2005. VMS approval may take a bit longer due to Paperwork Reduction Act approval requirements, but other measures in the framework could be implemented sooner if the VMS requirements are delayed. Nonetheless, the framework action would rebate the scallop landing deductions from replacement trips, retroactive to March 1, 2005. This action should reduce the risk to vessels making trips in the 2005 fishing year, either to the Hudson Canyon Area or to the Georges Bank access areas.

8. Why is VMS equipment necessary to monitor compliance with a scallop possession limit?

Landings of 400 lbs. or less are easily and quickly offloaded to trucks or other non-traditional points of landing. This aspect, coupled with the sheer number of boats that can possibly land scallops, makes it hard to monitor fishing and offloading activity. Furthermore the smaller size of vessels with general category permits opens up a considerable number of additional ports where offloading might occur. The VMS data will enable law enforcement to monitor hotspots of activity and thus more effectively deploy personnel to check on compliance. This will also induce better compliance, since it is more likely that a vessel will be checked.