

**FINAL**

**FRAMEWORK ADJUSTMENT #5**

**to the**

**SEA SCALLOP FISHERY MANAGEMENT PLAN**

**AS AMENDED**

**April 3, 1995**

**Prepared by**

**New England Fishery Management Council**

**in consultation with**

**Mid-Atlantic Fishery Management Council**

**South Atlantic Fishery Management Council**

**National Marine Fisheries Service**

<b>First framework hearing:</b>	<b>December 8, 1994</b>
<b>Second framework hearing:</b>	<b>January 12, 1995</b>
<b>Final framework hearing:</b>	<b>March 30, 1995</b>
<b>Final submitted by NEFMC:</b>	
<b>Final approved by NOAA:</b>	

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### APPENDIX I: Public Comments

## 1.0 BACKGROUND

Amendment 4 to the Fishery Management Plan for Atlantic Sea Scallops, Placopecten magellanicus (Gmelin) was approved on November 5, 1993, but its implementation was delayed until March 1, 1994 because the fishing gear required by the new regulations was not yet available from suppliers in all areas.

The objectives of the amendment are:

- 1) to restore adult stock abundance and age distribution;
- 2) to increase yield per recruit for each stock;
- 3) to evaluate plan research, development and enforcement costs; and
- 4) to minimize adverse environmental impacts on sea scallops.

Amendment 4 changed management from a meat count (size) based system to one which uses both effort and size controls for all resource areas. In place of the meat count, the amendment controls total fishing effort by limiting access to the fishery and through a schedule of reductions in allowable time at sea. Supplemental measures limit increased vessel fishing power to control the level of fishing pressure and to help control the size of scallops landed. They include gear restrictions, limits on the number of crew members and vessel restrictions such as maximum horsepower, length, gross registered tons, etc. There are catch limits for vessels not in the limited access fishery. The amendment includes a framework procedure for adjusting all the management measures in the plan, and. Since its implementation, the Council has recommended several framework adjustments.

Framework 1, effective on August 17, 1994, changed the crew size to a maximum of seven until December 31, 1994, revised the period during which days at sea are counted annually to March 1 through the last day in February, defined a legal dredge configuration, allowed one spare dredge on board vessels and triple linking of dredge rings on the bottom of the dredge for repair purposes.

Framework 2 was implemented on November 16, 1994 and allowed vessels to fish strictly within state waters without adhering to the federal gear restrictions required under Amendment 4. Framework 3 eliminates the requirement that permit applicants own title to a fishing vessel at the time they initially apply for limited access permits. Framework 4 extends the rule for maximum crew size of seven from January 1, 1995 through February 29, 1996. Both of these frameworks are now under review.

## 2.0 PURPOSE AND NEED

### 2.1 Protection of small scallops

Although Amendment 4 has been implemented recently, the Council and NMFS are nonetheless concerned about immediate protection for small sea scallops. This concern was reflected in the Regional Director's letter approving the amendment which advised the Council that NMFS would carefully monitor the initial impact of the regulations on fishing mortality of small sea scallops. More importantly, fishing mortality is not measured just for the protection of small scallops, that is framework adjustments may be made that affect overall fishing mortality. According to Amendment 4, if fishing mortality increases beyond anticipated levels, the Council is expected to protect sea scallop stocks by immediately implementing adjustments under the framework procedures.

Prior to 1977 the scallop resource in the Mid-Atlantic area was sporadic, and an opportunistic trawl industry periodically fished it out (see July 25, 1994 NEFSC letter, Table 1). During the extraordinary 1977-79 fishery, however, most of those vessels converted to dredges and stayed in the scallop fishery on a full-time basis, as some continued to fish seasonally for summer flounder. The Mid-Atlantic resource has remained at high levels since that time. The Mid-Atlantic is presently the primary scallop resource in terms of landings.

Historically, many of the current dredge operators began in the scallop fishery by using nets, as characterized by scallop advisors who are concerned with the effect of net gear on the resource. These experienced fishermen fear that wholesale conversion from dredge to nets will fish out the resource again.

Amendment 4 is based on an effort reduction schedule which measures days-at-sea (DAS) taken by the scallop fleet using 1990 as a baseline. Without consolidation of DAS and with vessel replacement restrictions (limited horsepower, length, GRT and net tons) the problem with transferring DAS from one gear type to another could be temporarily put off. The O/S Committee has focused on a fishing power formula as necessary to allow the transfer of DAS from one vessel to another but has yet to come up with a solution. Dr. William DuPaul of VIMS mentioned in his December 1, 1994 letter that the Council's Scallop Plan Development Team identified the use of trawl nets as a way to circumvent the inefficiencies that would be imposed by the 3-1/4 and 3-1/2 inch minimum ring size restrictions for dredges. A ban or limits on the use of all nets may not be necessary, however, because vessels which used them to qualify are accounted for in the DAS calculation. Additionally, some of these vessels reportedly are incapable of towing dredges because they lack the sufficient

engine power or proper construction. The Council, therefore, proposes to allow these vessels to continue the use of nets.

Secondly, this proposed rule requires that dredges have a "traditional" twine top, or one that does not extend the entire length to the club stick. This would prevent the conversion of the dredge into a "net", while the conversion to nets per se is being eliminated. The Council sought public comment on the definition of a "traditional" twine top, and specifically the appropriate distance down the back or towards the bottom of the dredge? Advisors indicated that traditionally 8 to 10 rows of 3 inch steel rings were used between the club stick and the twine top and recommended the number of rows be adjusted for the size of rings required at the time (i.e., 3-1/4 to 3-1/2 inches).

The Amendment 4 final rule (59 CFR 650.21) prohibits dredge and net obstructions such that no material, device, net, or dredge configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal size net and dredge that did not have in use any such material, device, or net or dredge configuration or design. Dredge configuration includes restrictions on links between rings, chafing gear, minimum ring size, minimum mesh size, and maximum dredge width. The Council is aware of a recent practice of running the twine top along the back of the dredge to the club stick. This dredge design replaces well-defined ring configurations with less restricted mesh and more importantly provides little flexibility for the dredge to open up as the mesh stretches shut. The proposed framework adjustment further refines the dredge vessel gear restrictions to require that all dredges must have at least 7 rows (regardless of ring size) of steel rings extending up the back, or top, of the dredge from the club stick (see Table A). Additionally, all single dredges of 8 feet or less width must have at least 4 rows (regardless of ring size) of steel rings extending up the back, or top, of the dredge from the club stick (see Table B).

Any dredge design which shows little inter-ring space, for instance replacing the rings with mesh, will negate the effectiveness of all of the gear configuration measures. It is expected that framework adjustments to refine gear configuration or design will occur on a continuing basis.

## **2.2 Publication of Proposed Action as a Final Rule**

The Council considered the following factors and recommends that NMFS publish the proposed management measures as a final rule.

### **2.2.1 Timing of the Rule**

Data availability or the need to have the measures in place for an entire harvesting season were not factors considered by the Council in its decision to recommend publishing the adjusted management measures as a final rule.

### **2.2.2 Opportunity for Public Comment**

There has been adequate notice and opportunity for the public and members of the scallop industry to participate in the development of the Council's recommended management measures. In fact, control over the use of nets and the length of the twine top was initiated in response to public (the Council's Scallop Advisors) comments about size selectivity in the commercial catch and its effect on concentrations of small scallops in the Mid-Atlantic. The framework process began on October 26, 1994 when the Council requested information from the Northeast Fisheries Science Center to compare the performance of dredges versus nets in terms of fishing power and its effect on the days-at-sea (DAS) reduction schedule. Subsequently, the Scallop Advisors and Scallop Oversight Committees held meetings on November 21 and 22, 1994 respectively.

The December 8, 1994 Council meeting was the first of the required public meetings under the framework adjustment process as published in 59 FR 231, pp. 61878-61879 on December 2, 1994. A draft document providing the rationale and analytical results (from the 1988 sea trials) of the proposed measure was published on December 28, 1994. This document was mailed to about 260 people, including the Scallop Industry Advisors and others on the Council's sea scallop mail list. Copies also were provided to the NMFS Regional Office and the NMFS Northeast Fisheries Science Center. The second public meeting was the January 12, 1995 Council meeting. Public notice of this meeting was issued on December 29, 1994. The final public meeting was the March 30, 1995 Council meeting as published in 60 FR, p. 15893 on March 28, 1995 at which no public comments were received.

### **2.4.3 Need for Immediate Resource Protection**

The need for immediate protection of the resource by restricting the use of nets and twine tops is described in Section 3.1.1. It is critical that harvesting

selectivity provided for by the traditional twine top and the fleet distribution of vessels using nets and dredges be continued as soon as possible, due to the normal timing of recruitment in early spring. This consideration would also give fishermen as much time as possible to plan their fishing strategy for 1995 and most importantly prevent the wholesale conversion of the dredge fleet to nets. Unnecessary delay in implementing this adjustment could significantly impact the new, incoming year-class during early spring (February in the Mid-Atlantic area) and cause more fishermen to convert back to dredges or normal dredge configurations (twine tops) once the regulations proposed here come into place.

The Council strongly recommends that restrictions on the use of nets and twine tops be published as a final rule because fishermen may spend time and money to convert to nets or lengthen twine tops (rebuild the dredge) for a month or so only to be required to convert back upon implementation of the framework. No implementation of the restrictions might result in confusion and undue controversy, and could allow an unacceptable harvest of small scallops.

#### **2.4.4 Continuing Evaluation**

The effectiveness of the net/twine top restrictions will continue to be evaluated along with all of the other management measures. In particular, the 3-1/2 inch ring size should be implemented on January 1, 1996 for the purpose of shifting the size selectivity towards larger scallops. Additionally, Amendment 4 specifically implements a delay in the mortality reduction schedule during the third year to evaluate the FMP's progress in eliminating overfishing and restoring the condition of the resource. The Council intends to recommend the necessary adjustments to achieve the FMP's objectives and eliminate overfishing by the seventh year.

### 3.0 PROPOSED ACTION AND ALTERNATIVE

#### 3.1 Proposed Action - Gear Restrictions

(1) Limited access vessels in the days-at-sea program will be restricted from using nets to catch sea scallops. Vessels which have not used a scallop dredge since 1987, however, may continue their use of nets to harvest sea scallops. The use of dredges since 1987 will be determined through documentation in the NMFS interview files, and by sworn affidavits submitted by the owners of limited access vessels.

(2) Vessels with limited access permits and participating in the days-at-sea program will be restricted from using dredges with twine tops which extend the full distance to the club stick. The twine top restriction will require that 7 rows of steel rings, or 4 rows for single dredges 8 feet wide or less, must be between the club stick and the twine top.

##### 3.1.1 Rationale

A framework adjustment is proposed prohibiting limited access scallop vessels from fishing with nets unless the vessel has not used a scallop dredge since 1987. The intended effect of this prohibition is to prevent scallop dredge vessels from switching to nets to catch sea scallops. Additionally, this rule prohibits the use of twine tops which extend to the club stick (i.e., requires twine tops which extend the "traditional" distance towards the bottom of the dredge). This would prevent fishermen from modifying dredge gear from functioning like nets.

Council Scallop Advisors have indicated that the "traditional" twine top extended from 8 to 10 rings above the club stick to the dredge frame during public meetings. These recommendations, however, related to a time when the industry standard was a 3 inch ring. The Council has required the use of 3-1/4 inch rings since May 15, 1994, and will automatically increase the ring size requirement to 3-1/2 inches on January 1, 1996. As ring size increases, the number of rows from the club stick to the twine top should decrease. Using the outside diameter of the rings, assuming 1/4 inch thickness, the equivalent number of rows that should be required for different size rings can be calculated. Table A below shows the number of rows needed at 3-1/4 and 3-1/2 inch ring sizes. For instance, if 10 rows is used as the traditional number, then 9.33 and 8.75 rows are necessary with 3-1/4 and 3-1/2 inch rings respectively. Ten rows of 3 (3-1/2 outside diameter) inch rings equals 35 inches total (parentheses in

column two). Rings are linked tightly together. Dividing 35 inches by 3-3/4 (the outside diameter for 3-1/4 inch rings) yields the 9.33 rows.

A minimum number of seven (7) rows from the club stick to the twine top of scallop dredges is proposed, for simplicity and to avoid another regulatory change within a year when the ring size increases to 3-1/2 inches. This is the number of rows of steel rings required by assuming that the traditional number was eight rows (last row in Table A).

**TABLE A: NUMBER OF ROWS OF DREDGE RINGS WITH TRADITIONAL CONFIGURATION (COL. 2), CONVERTED TO NUMBER OF EQUIVALENT ROWS WITH 3-1/4 AND 3-1/2 INCH REGULATED RING SIZE:**

<b>RING SIZE INSIDE (OUT)</b>	<b>3" (3-1/2")</b>	<b>3-1/4" (3-3/4")</b>	<b>3-1/2" (4")</b>
10 ROWS	(35")*	9.33	8.75
9 ROWS	(31.5")*	8.40	7.88
8 ROWS	(28")*	7.47	7.00

\* TRADITIONAL 3" COLUMN, PARENTHESES ARE TOTAL INCHES FOR NUMBER OF ROWS.

Another issue involving the number of rows of dredge rings required from the club stick to the twine top is the width of the dredge. Amendment 4 restricts total dredge width to a maximum of 30 feet. The typical dredge operation uses two dredges at once, thus the practical limit is a 15 foot dredge width. As with ring size, the number of rows from the club stick to the twine top should decrease proportionally with decreases in dredge width.

Table B shows a range of dredge widths used in the scallop fishery, from the large, offshore 15 and 13 foot type to the inshore Gulf of Maine dredges which are typically 3 to 8 feet. The state of Maine has dredge width requirements which change seasonally, with a maximum of 10.5 feet. If the seven rows or the ring requirement derived from Table A is applied to the typical 15 foot dredge, the number of rows that should be required for smaller dredges can be calculated. Table B also shows the number of rows or rings required by different

size dredges, proportional to both the 15 foot dredge and, for the purpose of illustration, the 13 foot dredge.

An 8 foot dredge should only be required to have 3.7 rows of rings from the club stick to the twine top (8 feet divided by 15 feet, times 7 rows). As fishery regulations become more complex, enforcement becomes more difficult. For simplicity and ease of enforcement, only two requirements for the number of rows of rings is proposed. Thus, smaller dredges or those with a width of 8 feet or less should have at least four (4) rows of rings from the club stick to the twine top. Dredges larger than 8 feet must continue to have at least 7 rows of rings.

**TABLE B: NUMBER OF ROWS OF DREDGE RINGS PROPORTIONAL TO THE DREDGE WIDTH, USING 15' (COL. 2) AND 13' (COL. 3) AS THE TRADITIONAL.**

DREDGE WIDTH	ROWS FOR 15' TRADITIONAL	ROWS FOR 13' TRADITIONAL
15 FEET	7	8.1
13 FEET	6.1	7
11 FEET	5.1	5.9
10.5 FEET	4.9	5.7
9 FEET	4.2	4.8
8 FEET	3.7	4.3
5.5 FEET	2.6	2.9
4.5 FEET	2.1	2.4
3 FEET	1.4	1.6

**3.2 No Action.**

No action would allow limited access vessels to continue to switch from scallop dredges to trawl nets to catch scallops. Further, the remaining dredges would be allowed to extend the twine tops to the club stick, thus negating the effects of all gear restrictions relating to rings (i.e., ring size, link restrictions, prohibition on obstructions).

## 4.0 Analysis of Impacts

### 4.1 Biologic Impacts

Technically, it has been well established that trawl gear selects fewer large scallops and produces on deck as much as two times the amount of small scallops as dredge gear. In a document entitled "A Comparative Analysis of the Effects on Technical Efficiency and Harvest of Sea Scallops by Otter Trawls of Various Sizes" research was conducted on the 4" to 5" mesh and 3" dredge rings which were popular at the time. The two authors, Drs. James Kirkley and William DuPaul, have continued their at-sea work and are currently examining the differences between 3", 3-1/4", and 3-1/2" dredge rings with the same results. The NEFSC has reported to the Council and noted the results of the above study (letter dated July 27, 1994). Dr. DuPaul also has reported to the Council (attached) that shell stocking (with the 3-1/2" minimum) as a practice would not be as problematic to resource conservation as an increase in the number of vessels using nets, since this shift in gear was not accounted for in Amendment 4. Minimum shell size standards notwithstanding, larger numbers of smaller scallops are killed through landing, deck and discard mortality in the trawl fishery than in the dredge fishery.

### 4.2 Economic Impacts

The estimated number of limited access vessels which have not used dredges during 1988-1994 is shown in Table 1. These estimates are based on NMFS weighout files as well as the 1994 permit files (vessels reporting number and width of dredges are eliminated as nets because these data were mandatory). Out of the total 464 limited access qualifiers, there are 101 vessels which could continue to use nets under the proposed rule by this estimation. The percentage of scallop trips which are interviewed, however, is higher than normal. Most of these are occasional participants (65), followed by part-time vessels (32) and only four full-time vessels. Geographically, the overwhelming majority of these net boats, 63, are in the south (North Carolina, Virginia, and other South Atlantic states). The 21 vessels categorized as Region Unknown have qualified by appealing their status and have no records in the weighouts to determine whether or not they have dredge landings. Thus, the 1994 permit files are used as described above to demonstrate that these 21 vessels do not have dredges.

Concerns may be raised that some vessels are being restricted to dredge use on the basis of only one or two weighout trips. Out of the 363 dredge vessels that

would be restricted, however, only 12 are classified on the basis of one trip and 4 are classified based on two trips. These are all vessels in the Occasional category which qualifies them as limited access vessels with less than 18 days-at-sea annually.

**Table 1: Number of Vessels Qualifying as Net Boats, 1987-1994**

REGION	FULL-TIME	PART-TIME	Occasional	TOTAL
Unknown	0	8	13	21
GA	0	1	1	2
MA	1	0	6	7
NC	1	10	24	35
NJ	0	1	4	5
Other Mid-Atl.	0	0	3	3
Other N.E.	0	0	2	2
Other So. Atl.	0	6	7	13
VA	2	6	5	13
TOTAL	4	32	65	101

The prohibition against changing from dredge to net gear is expected to maintain the distribution of nets and dredges in the scallop fleet on which the effort reduction schedule was based. The effort reduction program is expected to have positive net economic benefits and positive benefits for scallop harvesters (Amendment #4 pp. 133-139). Changes in the fishing power of individual vessels would jeopardize the achievement of the conservation objectives, and therefore the economic benefits of the program, by increasing the overall level of fishing effort.

Increases in the efficiency of catching small scallops, in particular, would jeopardize achieving these objectives because the plan does not contain direct controls, such as a meat count, on the size of scallop meats that may be landed. The increase in efficiency in harvesting small scallops, would therefore decrease overall economic efficiency of the fleet by decreasing the yield per recruit and the spawning stock biomass per recruit below optimum levels.

The prohibition against changing from dredge to net gear also imposed no additional costs on the scallop fleet, except that dredge vessels that have acquired nets may no longer use them in the scallop fishery while fishing under the days at sea program for scallops.

Similarly, the twine top restrictions are expected to have positive economic impacts because they protect small scallops by preserving the historical size selection pattern of dredge gear on which the effort reduction program was based. They also do not impose any additional costs except that vessels that already have modified their dredges by increasing the size of the twine top must now reconfigure the twine top to conform to the more traditional size.

### **4.3 Administration and Enforcement**

Enforcement of the net restriction may be accomplished by permit endorsement. Counting the number of rings from the club stick is a simple matter. Coverage of fleet operations with the current number of enforcement agents is problematic.

## 5.0 APPLICABLE LAW

### 5.1 Magnuson Act - Consistency with National Standards

Section 301 of the FCMA requires that any regulation promulgated to implement any FMP or amendment shall be consistent with the seven national standards listed below. The measures and provisions of the Atlantic Sea Scallop Fishery Management Plan were deemed consistent with these standards when Amendment 4 was approved on November 5, 1993. The proposed adjustments are temporary adjustments to preserve the FMPs size selectivity and fishing mortality schedule. As such, these adjustments fall within the scope of issues previously analyzed to determine consistency.

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

The proposed action is expected to lessen fishing mortality and improve size selectivity on the Georges Bank/Mid-Atlantic stocks.

*2. Conservation and management measures shall be based upon the best scientific information available.*

Information on the importance of size selectivity to the fishing effort reduction schedule may be found in Amendment 4. The number of vessels participating (Table 1) and the impacts expected are based on the most recent federal permit data (as of October 24, 1994) and the weighout files (NMFS) from 1988 through 1993. Unfortunately, dealer reports and fisherman logbooks, which would indicate the landings by gear type on each trip, are unavailable for 1994. The Council is relying on its Scallop Advisory Committee and its public meeting process to receive expert input regarding the operational costs and traditional gear configurations involving the proposed net/twine top restrictions.

*3. 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.*

The management unit remains the Atlantic sea scallop throughout its range.

*4. 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 net/twine top restrictions have no implications for the allocation of fishing privileges.

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

The proposed action is expected to maintain the traditional distribution of nets and dredges in the scallop fleet in order to better achieve the conservation goals of the fishing effort reduction schedule. This combined with the twine top restriction is designed to limit the efficiency of catching *small scallops* and result in a greater yield from larger scallops in the long run.

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

The Council is making this adjustment to the regulations using the framework abbreviated rulemaking procedure established by Amendment 4 to the Atlantic sea scallop FMP. As such, the Council is acting in a manner which is fully consistent with the guidelines for this national standard as contained in Section 602 of 50 CFR.

*7. Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.*

The proposed action is expected to have little impact on the cost of fishing, except for the several (anecdotal information) vessels which have converted to nets or rebuilt their dredges with the extended twine top. Further, the net/twine top restrictions are an extension of an existing management measure (gear regulations), and as such should not entail any additional administrative costs.

### **Fishery Impact Statement**

Section 303 (a) (9) of the Magnuson Act requires a fishery impact statement describing the likely effects of a plan or amendment on participants in the fishery and in other fisheries. Sections 4.2 and 5.3 of this document describe the

impacts of the proposed action on the industry and the resource. This action is being taken as an adjustment to the plan which was promulgated under Amendment 4. The proposed action is expected to have no impacts on other fisheries because it is intended to preserve the status quo in terms of the distribution of net and dredge use in the scallop fishery. For a discussion of the impacts of Amendment 4 on fisheries, see Section VII.H (pp. 144-148) and other sections of the amendment document.

## **5.2 National Environmental Policy Act (NEPA)**

The Council conducted an Environmental Assessment of Amendment 4 to the Atlantic sea scallop FMP which included gear restrictions and an assumed distribution of nets and dredges prosecuting the total days-at-sea (DAS). For Amendment 4 implementing the scallop effort reduction program and other measures, the Council produced an Environmental Impact Statement which is contained in Volume I of the amendment document.

Amendment 4 thoroughly describes the environment that would be affected by scallop fishing. It is not expected that this adjustment will significantly alter the natural or human environment. The environmental consequences of the proposed adjustment fall within the scope of those analyzed.

The measure to restrict the use of nets/twine tops will have positive impacts on the natural environment (Section 4.1) by reducing the ability of fishermen to land small scallops and therefore decreasing fishing mortality. The impacts on the human environment are evaluated in Sections 4.2 and 4.3 and are not significant beyond the extent indicated in Amendment 4. The measure does not require vessel owners and operators to make additional expenditures to comply with the regulations, except for those who have converted to nets or rebuilt their dredges with the extended twine top.

### **5.2.1 Environmental Assessment**

The purpose and need for the proposed action are discussed in Section 2.1. The proposed action and the no-action alternative, are discussed in Section 3.0. Further detail on the affected environment can be found in Section VI of Amendment 4. The environmental consequences are discussed in Section 4.0 of this document. Based on this analysis, the Council finds that the proposed action will have no significant impact on the environment.

### **5.2.2 Finding of no significant environmental impact (FONSI)**

NOAA Administrative Order 216-6 provides guidance for the determination of significance of the impacts of fishery management plans and amendments. The five criteria to be considered are addressed below:

- 1) *Can the proposed action be reasonably expected to jeopardize the long-term productive capability of any stocks that may be affected by the action?*

The proposed action is being taken to assure the fishing mortality reduction expected during the first few years of the plan and to assure that the size selectivity goals are met, thus increasing the long-term productivity of the stocks.

- 2) *Can the proposed action be reasonably expected to allow substantial damage to the ocean and coastal habitats?*

The proposed action is not expected to impact coastal or ocean habitat. In fact, the net/twine top restrictions help to minimize the practice of "deckloading" with its subsequent increase in discard mortality.

- 3) *Can the proposed action be reasonably expected to have an adverse impact on public health or safety?*

The measure is not expected to have any impact on public health or safety.

- 4) *Can the proposed action be reasonably expected to have an adverse effect on endangered, threatened species or a marine mammal population?*

The NMFS Biological Opinion for Amendment 4, issued under authority of Section 7 (a) (2) of the Endangered Species Act indicated that the "fishing operations conducted under the amended FMP are not likely to adversely impact threatened or endangered species under the jurisdiction of NMFS." The proposed measure does not change that finding.

- 5) *Can the proposed action be reasonably expected to result in the cumulative adverse effects that could have a substantial effect on the target resource species or any related stocks that may be affected?*

The proposed action is intended to be a part of the overall sea scallop management program implemented through Amendment 4. As such the cumulative effect is expected to be consistent with that of the Atlantic sea scallop FMP. The proposed action is not expected to add to the effect of the FMP on other stocks. The restrictions on the use of nets/twine tops will enhance the resource recovery of the Georges Bank/Mid-Atlantic stocks.

The guidelines on the determination of significance also identify two other factors to be considered: degree of controversy and socio-economic effects. Since the proposed action is an adjustment to existing gear regulations, the Council expects no significant socio-economic impacts. The Council also has determined that the proposal is not controversial since there has been no substantial dispute on the environmental effects of the proposed action. Based on this guidance and the evaluation of the preceding criteria, the Council proposes a finding of no significant impact.

**FONSI statement:** In view of the analysis presented in this document and in the DSEIS for Amendment 4 to the Atlantic sea scallop Fishery Management Plan, it is hereby determined that the proposed action would not significantly affect the quality of the human environment with specific reference to the criteria contained in NDM 02-10 implementing the National Environmental Policy Act. Accordingly, the preparation of a Supplemental Environmental Impact Statement for this proposed is not necessary.

\_\_\_\_\_  
Assistant Administrator  
for Fisheries, NOAA

\_\_\_\_\_  
Date

### **5.3 Regulatory Impact Review (Regulatory Flexibility Act and Executive Order 12866)**

This section provides the information necessary for the Secretary of Commerce to address the requirements of Executive Order 12866 and the Regulatory Flexibility Act. The purpose and need for management (statement of the problem) is described in Section 2.0 of this document. The alternative management measures of the proposed regulatory action are described in Section 3.0. The economic impact analysis is in Section 4.2 and is summarized below under the discussion of how the proposed action is characterized under Executive Order 12866 and the Regulatory Flexibility Act.

#### **5.3.1 Executive Order 12866**

The proposed action does not constitute a significant regulatory action under Executive Order 12866. (1) As stated in section 4.2, the management proposals will help to increase the yield from the fishery. However, the proposed action will not have an annual effect on the economy of more than \$100 million. (2) The proposed actions will not adversely affect in a material way the economy,

employment, competition and jobs. The proposed action should increase the long-term productivity of the stocks. (3) It will not affect competition, jobs, the environment, public health or safety, or state, local or tribal governments and communities. Public input has indicated that *not* restricting the use of nets/twine tops will afford those who convert first a competitive advantage, and result in fleet conversion to net usage with the subsequent effects on size selectivity and ultimately greater reductions in the fishing effort schedule than anticipated. (4) The proposed action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. (5) The proposed action will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of their recipients. (6) The proposed action does not raise novel legal or policy issues. Regulations regarding net/twine top restrictions are part of Amendment 4.

### 5.3.2 Regulatory Flexibility Act

The Atlantic sea scallop fishing industry directly affected by the proposed action is composed primarily of small business entities operating in the New England and Mid-Atlantic areas as far south as North Carolina. The number of operating units (vessels), by permit category, is given in Table 1. There are also *five* full-time and *five* part-time permits issued under the small dredge exemption program (§ 650.21(e)). Dealers that process and market sea scallops are not expected to be affected by the proposed action. The Council has consulted its industry advisors and listened to public comment to assure that no groups within the industry are unduly impacted.

The proposed action will not have a "significant economic impact on small entities" and does not require a Regulatory Flexibility Analysis for the following three reasons. First, the proposed action will not reduce long-term annual gross revenues by more than five percent (i.e., not at all). Second, the costs of ensuring compliance are not expected to change because the proposed action is merely an extension of existing management measures. The proposed action, therefore, will not increase total costs of production by more than five percent as a result of an increase in compliance costs nor will it increase compliance costs as a percent of sales for small entities at least ten percent higher than compliance costs as a percent of sales for large entities. Third, the proposed action is unlikely to force vessels to cease business operations. All vessels that are restricted to dredge use only have used scallop dredges, and the overwhelming majority use scallop dredges exclusively. The extension of the twine top to the club stick on scallop dredges is a new phenomenon, developed to circumvent the gear regulations already in place. This change in fishing practice was

described during 1994 by the Council's scallop Advisors during regularly scheduled meetings.

The proposed action, therefore, will not have a significant economic impact on a substantial number of small business entities and a Regulatory Flexibility Analysis is not required.

#### **5.4 Endangered Species Act**

See section XI, Volume I of Amendment 4 to the Atlantic Sea Scallop FMP. The Council finds no cause to change its earlier findings with respect to the Endangered Species Act requirements.

#### **5.5 Coastal Zone Management Act**

Upon the submission of Amendment 4, the Council conducted a review of the FMP for its consistency with the coastal zone management plans of the affected states and all the states concurred with the Council's consistency determination. See section X, Volume I of Amendment 4 to the Atlantic Sea Scallop FMP for the Council's consistency determination. Those states' response letters are on file at the Council office. The Council has determined that the proposed action is within the scope of measures already reviewed and that the consistency determination done for Amendment 4 is sufficient. The affected coastal states have been informed of this decision. The states' response letters to this determination concerning Framework #5 will be on file at the Council office.

#### **5.6 Paperwork Reduction Act**

Copies of the PRA for Amendment 4 to the Atlantic Sea Scallop FMP are available from the NMFS Regional Office. The burden-hour estimates are detailed in the Classification section of the Federal Register notice of the final rule implementing the amendment (Federal Register, vol. 59, no. 12, pp. 2762-2763, January 19, 1994).

The proposed action does not include any additional paperwork or reporting requirements by restricting the use of nets and twine tops.

#### **5.7 Marine Mammal Protection Act**

See section XII, Volume I of Amendment 4 to the Atlantic Sea Scallop FMP. The Council finds no cause to change its earlier findings with respect to the Marine Mammal Protection Act requirements.

## 6.0 Response to Public Comments

1. *Nets can easily switch to other fisheries when the vessel's days-at-sea are gone.*

The proposed rule does not eliminate nets. Vessels which historically have used only nets may continue to do so. Vessels which have traditionally used dredges have made the change already.

2. *Using NMFS port agents to determine which vessels haven't used dredges is not fair and equitable to all.*

This part of the proposed rule has been changed. Vessels must use dredges if they show up in NMFS interview files, rather than weighout files, as having done so in the past. Signed affidavits stating that the vessel never used a dredge are the other requirement. Port agents will not be used to make vessels' gear determinations.

3. *It is not reasonable to require vessels to use dredges to catch sea scallops simply because they used a dredge for only one or two trips.*

The Council's intent is clear. All limited access vessels which can use a dredge must do so while under the days-at-sea (DAS) program. The Committee's original proposal was to eliminate net use by all limited access vessels until it came to light that some vessels were not equipped to do so and were also unable to upgrade to do so because of the FMP's upgrading restrictions.

4. *Nets are more efficient, and safer with only seven crew, than dredges.*

Increased efficiency is the reason for the proposed action. Nets catch proportionally more small scallops than dredges and under current, low resource conditions that will slow the recovery expected with the DAS reduction program. Furthermore, if most of the scallop dredge fleet begins to switch to netting, then the DAS reduction program could be rendered ineffective because it was based on a fleet configured of mostly scallop dredges. The concerns about safety have been mitigated during the most recent years when scallop dredge operators have learned to fish with seven men or less.

5. *The Advisors felt that a ban on netting would be good for the whole industry.*

Although the Council has grandfathered net vessels which cannot use dredges, it believes that the Amendment 4 DAS reduction schedule will have to be revised soon without this framework.

## 7.0 REFERENCES CITED (Attached)

NMFS/NEFSC. July 25, 1994. Letter to the Council.

DuPaul, W. D. December 1, 1994. Letter to the Council.

*A Comparative Analysis of the Effects on Technical Efficiency and Harvest of Sea Scallops By Otter Trawls of Various Mesh Sizes*, East Coast Fisheries Association (VIMS Marine Resource Report 88-10).

**APPENDIX I: Public Comments**

Written Comments

December 8, 1994 Council Meeting

January 12, 1995 Council Meeting

January 11, 1995

National Marine Fisheries  
Management Council

JAN 12 1995

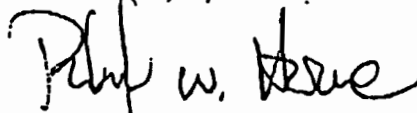
Ladies and Gentlemen,

The pending regulation for Scallopers with nets should be addressed in a similar fashion to those using drags. Lessening the efficiency in the catching power of net boats is imperative. We understand that the rule to allow Net Fishermen to continue to fish if they've had a history of fishing with nets is about to pass. It is not logical to allow them to continue unless major changes to reduce their harvesting ability is implemented, after all, each party in the scallop industry should be expected to conserve for future growth. The capability of nets is currently much more effective than drags. If the rule is passed that grandfathers them and allows them to fish with nets, then they should not be allowed to ever fish with drags again.

Instead of applying all of these intangible double standards, we should be looking at a proven system such as the Quota System that has a sustainable record of success.

With regard to the Transponder issue we would ask for a system similar to that used within the Hawaiian Fishery. The government is mandating this same program on the East Coast and we would expect to be treated likewise in terms of funding.

Sincerely yours,



Cape Oceanic Corp

FEB 14 1995

# WELLS *Scallop* COMPANY

POST OFFICE BOX 600 • SEAFORD, VIRGINIA 23696-0600

Bill Wells, Jr.  
Bill Wells III

(804) 898-8512

February 14, 1995

Dear Sir,

I am writing in favor of a framework adjustment to allow only the limited use of nets to harvest sea scallops.

I own 7 scallopers on the East Coast. My fish house, fuel dock, & processing facility are totally dependent on the scallop fleet producing scallops. Any practice which adversely affects the mortality of juvenile scallops puts the captains, crews, & all of the shoreside employment of these businesses at risk.

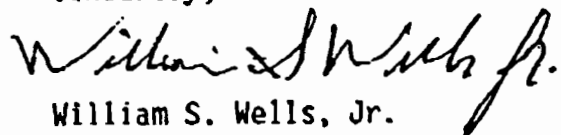
The facts are the following:

1. The scientific evidence clearly demonstrates netting targets smaller scallops than dredging.
2. The industry advisors unanimously supported this framework measure.
3. Anecdotal information from fish houses who unload net & dredge boats verify the higher meat count of scallops landed from net boats.
4. There is a major shift in gear type from dredges to nets at 3 of the 5 docks in Hampton Roads. The others will follow if this practice is not stopped.

As a general comment, I think we should have meat count restrictions & closed areas to protect juvenile scallops. Whatever may occur regarding transferability of days-at-sea, ITQ's, or vessel buybacks the common thread must be conservation of the scallop resource. The danger is not too much regulation, it is too little regulation.

Please support resource conservation & the framework to limit the use of nets.

Sincerely,



William S. Wells, Jr.

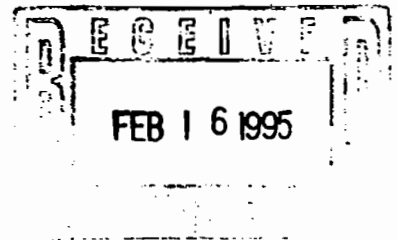
Dear Gentlemen:

First let me state that I am a second generation scalloper, and hope someday to have one of my sons to be a third generation scalloper. Now to the subject at hand, NET SCALLOPING. I have experience on both sides of the coin. As a concerned fisherman, I am very much against it. I have seen the devastation that a net can do on scallops, especially on good, clean hard bottom, there have been amendments passed on us DREDGE scallopers to help the conservation of scallops. I have a father and one brother who are boat owners. But yet you have imposed dredge limit size, days at sea, and various other laws on us to help the industry. But yet while NET SCALLOPERS are covering as much as 2 or 3 times more ground there have been no laws to limit the area they cover. Now, as a scalloper, I think more laws or the total abolishment of NET SCALLOPING should go into effect just like you did when you were given a 30 ft. limit of dredge. Now, gentlemen our aim is conservation. If our children are to have a future in our industry like we are, something has to be done about net scalloping, because that is not the way of the future.

Thanks,



Timmy Behavidez



N  
2/20/95

FEB 23 1995

Dear Council Members,

I am writing because I am concerned about my fishing boat which is specially rigged for scallops. I saw in a recent letter that you are allowing boats incapable of using dredges to continue to fish with nets even though everyone agrees that it is highly destructive to the scallop resource. I am asking that you consider those of us that have boats that can not use nets very efficiently when you devise these plans. The boats I am referring to are eastern rigged boats, which mine is, and western rigged boats rigged for scalloping, with shucking houses and winches on their sterns. It will become very difficult for us to compete with boats that can switch to net dragging when our days at sea are used up. I am sure you really do not want us switching into other fisheries anyway so please consider our economic viability when you develop future fisheries management plans.

Sincerely,  
Arthur Ochse  
Captain and Owner  
F.V.Christian and Alexa

PBH  
LGG ✓

MAR 15 1995

231 Hankins Drive  
Hampton, VA 23669  
March 13, 1995

Mr. Douglas G. Marshall  
Executive Director  
New England Fishery Management Council  
5 Broadway  
Saugus, MA 01906-1097

Dear Mr. Marshall:

I would like to respond to your letter dated 2/7/95 regarding the Framework Adjustment #5 to the Atlantic Sea Scallop FMP and its effect on the vessel Tony One.

I had bought the vessel in May of 1991 with the equipment necessary to catch scallops by net. At the time of my purchase the vessel had 4 doors and 3 scallop nets. Since the time of my purchase, I have never used dredges on the Tony One; I have no experience in using scallop dredges. Furthermore, the Tony One does not have enough horsepower to pull the dredges.

I would appreciate your immediate attention to this matter as I do not know how the Framework Adjustment #5 will affect the Tony One. Thank you for your time. If you have any questions, please let me know.

Sincerely,



Tay Ngoc Huynh  
F/V Tony One, Inc.  
President