

FINAL  
FRAMEWORK ADJUSTMENT #8  
to the  
SEA SCALLOP FISHERY MANAGEMENT PLAN  
AS AMENDED  
*Limited net use*

June 7, 1996

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

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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 implemented on March 1, 1994.

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 the Council's primary management strategy from one based on size controls (meat count) to an effort control program applied to all resource areas. The amendment currently regulates total fishing effort by limiting participation in the fishery and has established a schedule of reductions in allowable fishing time (days-at-sea). Other measures cap the level of fishing pressure associated with day-at-sea by limiting increases in vessel fishing power and the number of crew allowed on board the vessel. Gear restrictions control the size of scallops landed and there are catch limits for vessels not in the limited access fishery. The amendment includes a framework adjustment procedure to modify these and all other management measures contained in the plan.

Framework 1 was implemented on August 17, 1994. The action limited crew size to a maximum of seven until December 31, 1994, established the period during which days-at-sea are counted annually as March 1 through the last day in February, defined a legal dredge configuration and allowed one spare dredge onboard and also triple linking of dredge rings on the bottom of the dredge for repair.

Other frameworks implemented by the Council:

Framework 2	November 16, 1994	exempted vessels holding only state permits and fishing within state waters from gear restrictions required under Amendment 4;
Framework 3	December 4, 1995	allowed individuals to apply for a limited access scallop permit without currently owning a vessel;
Framework 4	May 1, 1995	extended seven person maximum crew size limit through February 29, 1996;
Framework 5	July 31, 1995	restricted use of nets by limited access scallop vessels; for dredge gear, required seven rows of rings from the club stick;
Framework 6	August 9, 1995	modified a demarcation line established for use by Vessel Tracking Systems.
Framework 7	March 11, 1996	extended seven person crew size maximum indefinitely.

## **2.0 PURPOSE AND NEED FOR ACTION**

### **2.1 Protection of small scallops**

Since Amendment 4 was implemented in the spring of 1994, the Council and NMFS have been concerned about the protection of 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. 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. More importantly, framework adjustments may be made that affect overall fishing mortality and not just for the protection of small scallops.

Prior to 1977 the scallop resource in the Mid-Atlantic area was sporadic, and an opportunistic trawl industry periodically fished it out (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. Trawl landings also became more important. Preliminary dealer reporting data for 1994 show trawls accounted for 9.2%, dredges 90.5% and other gear 0.3% of the 7545 metric tons of meats landed. This represents more than double the recent years' proportion for trawl landings (July 25, 1994 NEFSC letter, Table 1). Most of the Georges Bank scallop grounds were closed to scallop fishing to protect groundfish, since December 1994.

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 is measured in 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 and has several options included in Amendment #6. 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.

To prevent a potential shift in effort, the Council implemented Framework Adjustment 5 to prohibit vessels capable of fishing with dredges from switching to nets. The Council thought the simplest way to determine whether a vessel could fish with dredge gear was whether the vessel had ever fished with a dredge. Under Framework Adjustment 5, if a vessel had fished with a dredge, the Council

determined it was capable of continuing to do so and therefore should be prohibited from switching to a net. NMFS, however, informed the Council (at its meeting on February 15-16, 1995) that this simple criterion might be insufficient to accommodate operators who had recently acquired vessels fishing with nets, but which at an earlier time might have used dredges. The Council, nevertheless, felt that if vessels had once towed a dredge, they were capable of continuing to do so.

Subsequently, operators of several vessels prohibited from fishing with nets, asked the Council to modify the net-use limitations on the following grounds:

- a) Although some vessels might have towed or attempted to tow a dredge in the past, they were no longer physically capable of doing so because either the engine power or the hull strength or design was no longer sufficient.
- b) Some vessels had been acquired by new owners and the purchase price was based on their performance as net vessels. Subsequent to the purchase, the Council implemented Framework Adjustment 5 and made it uneconomical for the vessels to continue fishing by prohibiting them from using nets. Additionally, the new operators had experience fishing the vessel with nets and could not successfully catch scallops with dredges.
- c) One firm stated that it wished to produce frozen-at-sea scallops and that the vibrations caused by towing and retrieving dredges damaged the freezer systems.
- d) Net vessels are more economically efficient because they use less fuel and under certain conditions catch more scallops.

The Council's Scallop Committee recommended that the Council consider a framework adjustment to modify limitations on using nets. The Council decided to initiate a framework adjustment which would consider exceptions to the prohibition based on, but not limited to, the number of dredge trips fished by the vessel from 1988 to the present and on the horsepower of the main engine. By its selection of these criteria the Council implicitly based any modifications to net restrictions on the grounds that a vessel may be either physically or economically incapable of continuing to fish with a dredge (items a and b above, but not c or d).

## **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. The request for appeals on the use of nets was initially made to the Council at its December 13, 1995 meeting. The framework process began on March 21, 1996 when the Committee received several appeals. The Council held the required public meetings on April 18 and June 6, 1996.

The April 18, 1996 Council meeting was the first of the required public meetings under the framework adjustment process as published in 61FR 72, p. 16237 on April 12, 1996. A draft document providing the rationale and analytical results of the proposed measure was published on May 15, 1996. This document was mailed to about 260 people, including the Scallop Industry Advisors and others on the Council's sea scallop mail list, as well as about 360 scallop limited access permit holders. Copies also were provided to the NMFS Regional Office and the NMFS Northeast Fisheries Science Center. The final public meeting was the June 6, 1996 Council meeting. Public notice of this meeting was issued on June 3, 1996 and published in 61 FR 107, pp. 27862-27863.

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

The Council strongly recommends that restrictions on the use of nets be published as a final rule because fishermen affected by this rule have been unable to scallop since August 1, 1995. Implementation of this action as soon as possible would allow some fishermen to continue their traditional fishing strategy and most importantly prevent the costly conversion to dredges.

The need for immediate protection of the resource by restricting the use of nets and twine tops is described in Framework 5. 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.

### **2.4.4 Continuing Evaluation**

The effectiveness of the net restrictions will continue to be evaluated along with all of the other management measures. In particular, the 5-1/2" mesh size and 3-1/2 inch ring size were implemented on January 1, 1996 to shift the size selectivity towards larger scallops. Additionally, there is a delay in the mortality reduction schedule from March 1, 1996 to April 30, 1997 to evaluate progress in eliminating overfishing and restoring the resource. During this period, 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, or have used a dredge on ten or less scallop trips from January 1, 1988 through 1994 and with no more than 450 horsepower, 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, mandatory dealer reports (for 1994), limited access scallop permits, and by sworn affidavits submitted by the owners of limited access vessels.**

### **3.1.1 Rationale**

The Council proposes a framework adjustment to prohibit limited access scallop vessels from fishing with nets unless the vessel has not used a scallop dredge since 1987, or has used a dredge on ten or less scallop trips since 1987 (through 1994) and the vessel's engine horsepower is no more than 450 horsepower. The intended effect of this prohibition is to prevent scallop dredge vessels from switching to nets to catch sea scallops. This rule extends somewhat the restriction on net use implemented with Framework 5.

The Committee heard several appeals to the restricted net use implemented under Framework 5. Some vessels indicated that they had taken a few trips to attempt to use the scallop dredge, but felt that they had not succeeded (catch rates were low) and went back to using trawls to catch scallops. Some of these vessels may have attempted again to use the scallop dredge because of the implementation of Framework #5 on July 31, 1995, and that is why the cut-off for eligibility for net use under Framework #8 is through 1994. During the appeals to the Council, they also indicated that they did not have sufficient horsepower to effectively pull the dredge. Some owners said that they had purchased a trawl vessel which they had continued to use to trawl for scallops, which may have used the scallop dredge prior to their ownership. Still others said that they had invested in costly refitting of the vessel, converting it from dredge to other operations including trawling for scallops.

### **3.1.2 Analysis**

Several sources of data are used to investigate successful dredge operation and ownership. Interview data from 1988 through 1993 are used for vessels with less than twenty scallop dredge trips. Mandatory dealer reports, which include gear used, for 1994 are added to these data and provide the number of trips and dredge and trawl scallop landings, as well as horsepower and the vessel's limited access scallop category. Scallop permit data for the years 1988, 1990 and 1994 were used to compare owner's name and address. Most of these data are included in the 1994 (mandatory) permit file, but are very sparse in the previous files. Thus, changes in name and address of owners cannot be determined. The 1995 data that were available did not contain owner name and address, but did have data on other permits (scallop, mutlispecies, fluke and other) and scallop gear reported.

Table 1 shows the number of vessels which have used a dredge on less than five, and less than ten, scallop trips since 1987 and have engines with no more than 450 horsepower. The proposal would allow ten vessels which reported no more than ten dredge trips from 1988 to 1994, the last year available for landings data, and have no more than 450 horsepower to continue to catch scallops with nets. On average, they landed 4,718 pounds of scallop meats on each of 4.1 dredge trips compared to 2,438 pounds on each of 11.7 trawl trips.

**TABLE 1: PERFORMANCE OF SCALLOP VESSELS WITH LESS THAN FIVE AND NO MORE THAN TEN DREDGE TRIPS ON RECORD, AND NO MORE THAN 450 HORSEPOWER.**

<u>PER BOAT (EXCEPT NO. OF VESSELS)</u>	<u>LESS THAN FIVE DREDGE TRIPS</u>	<u>NO MORE THAN TEN DREDGE TRIPS</u>
NUMBER OF VESSELS	6	10
HORSEPOWER	376	394
DREDGE TRIPS	2.1	4.1
DREDGE LANDINGS	12,448	18,363
LANDING PER TRIP	5,444	4,718
NUMBER W/ TRAWLS	4	6
TRAWL TRIPS	15	11.7
TRAWL LANDINGS	69,110	47,859
LANDING PER TRIP	3,172	2,438

Table 2 shows the number of vessels which have used a dredge on less than five, and on five to ten, scallop trips since 1987, have engines less than 450 horsepower, and also did not use the scallop dredge since 1991. Notice that only one vessel is eliminated from the group of less than five dredge trips, but all but one are eliminated from the group between 5 and 10 dredge trips during the 1988-1994 period.

**TABLE 2: PERFORMANCE OF SCALLOP VESSELS WITH LESS THAN FIVE AND LESS THAN TEN DREDGE TRIPS ON RECORD, LESS THAN 450 HORSEPOWER, AND NO DREDGE LANDINGS SINCE 1991.**

<u>PER BOAT (EXCEPT NO. OF VESSELS)</u>	<u>LESS THAN FIVE DREDGE TRIPS</u>	<u>FIVE TO TEN DREDGE TRIPS</u>
NUMBER OF VESSELS	5	1
HORSEPOWER	383	-
DREDGE TRIPS	2.2	-
DREDGE LANDINGS	13,488	-
LANDING PER TRIP	5,808	-
NUMBER W/ TRAWLS	3	1
TRAWL TRIPS	19.7	-
TRAWL LANDINGS	92,098	-
LANDING PER TRIP	4,181	-

In summary, ten vessels under 450 horsepower would continue to use nets if a threshold of no more than ten trips is chosen.

### **3.2 No Action.**

No action would force some limited access vessels to switch to scallop dredges from trawl nets to catch scallops, and some to leave the fishery.

## **4.0 Analysis of Impacts**

### **4.1 Biologic Impacts**

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 small 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 used dredges on between 1 and 10 trips during 1988-1994 is shown in Table 3. These estimates are based on NMFS weighout files as well as the 1994 mandatory dealer reports. Out of the total 464 limited access qualifiers, only 10 could continue to use nets under the proposed rule (no more than 10 dredge trips and 450 horsepower), although there are up to 25 vessels with one to ten dredge trips. Most of these are full-time participants (7), followed by part-time vessels (3) and no occasional vessels. Geographically, five net boats are in the south (North Carolina, Virginia, and Florida), three in New England, and two in New Jersey.

Some fishermen have raised concerns that their vessels are being restricted to using dredges on the basis of only a few trips. Of the 363 dredge vessels restricted under Framework Adjustment 5, however, five are classified on the basis of one trip, three each at two and three trips, respectively. One has four trips, and thirteen have five to ten trips.

**Table 3: Additional Number of Vessels Qualifying as Net Boats, 1988-1994, with no more than ten dredge trips (additional 450 horsepower restriction)**

REGION	FULL-TIME	PART-TIME	Occasional	TOTAL
Unknown	2	0	0	2
FL	1*(1*)	0	0	1(1)
MA	3 (1)	1	0	4 (1)
NC	2 (1)	2	1	5 (1)
NJ	1	4* (2)	1	6 (2)
Other Mid-Atl.	-	-	-	-
Other N.E.	3 (2)	-	-	3 (2)
Other So. Atl.	-	-	-	-
VA	3 (2)	1(1)	0	4 (3)
TOTAL	15(7)	8 (3)	2	25 (10)
	* single dredge	*single dredge		

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 proposed action would exempt very few additional vessels from the restriction on net gear, and therefore would not significantly affect the benefits of the effort reduction schedule. Additionally, it would prevent these vessels, including their owners, operators and crew, from experiencing undue economic hardship which they could not have reasonably anticipated when they began their operations.

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 as discussed in Framework #5.

### **4.3 Administration and Enforcement**

Enforcement of the net restriction may be accomplished by permit endorsement, that is issuing permits to allow vessels meeting the recommended criteria to fish with nets.

## **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 maintain fishing mortality and size selectivity on the Georges Bank/Mid-Atlantic stocks at levels scheduled under Amendment 4.

*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 3) and the impacts expected are based on the most recent dealer reports (1994) and the weighout files (NMFS) from 1988 through

1993. 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 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 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 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, and 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 (combined effect of Frameworks 5 and 8) 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 have more than ten dredge trips before that, and have over 450 horsepower.

### **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.

- 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 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.

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Assistant Administrator  
for Fisheries, NOAA

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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 restricting the use of some nets, now allowed under this action, may result in those vessels leaving the fishery. (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) affected, by permit category, is given in Table 3. 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, whereas No Action may do so. All vessels that are restricted to dredge use only have used scallop dredges, and the overwhelming majority use scallop dredges exclusively (see also Framework 5).

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 8 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.

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

The Council believes that it will maintain its effort reduction schedule despite allowing this handful of boats to continue netting.

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 the mandatory dealer reports (1994) or NMFS interview files (1988-1993), rather than weighout files, as having done so in the past. Signed affidavits stating that these records are true 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 a few trips.*

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. Further testimony shows that some vessels tried and failed to use the dredge successfully, and others did not realize that the previous owners had used scallop dredges.

4. *Nets are more efficient, and safer with freezers on board, 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. There are also several dredge boats which have used freezers.

## **7.0 REFERENCES CITED**

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

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

*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

March 21, 1996 Committee Meeting

April 17, 1996 Council Meeting

May 23, 1996 Committee Meeting

June 6, 1996 Council Meeting