

4.0 PURPOSE AND NEED FOR ACTION (Amendment, EIS, RFA)

The primary intent of Amendment 10 is to introduce spatial management of adult scallops, taking advantage of resource heterogeneity to improve yield and minimize collateral adverse impacts on other fisheries and the marine environment. Although the Scallop FMP has employed limited spatial management on an ad hoc basis since 1994, the primary conservation measures currently rely on annual fleet day-at-sea allocations, gear restrictions, and crew limits to achieve the FMP objectives. These objectives included rebuilding the scallop resource, producing optimum yield, ensuring equitability and regulatory flexibility, minimizing bycatch and habitat impacts, maximizing safety, and other mandates of the Magnuson Stevens Act (MSY) and the National Environmental Policy Act (NEPA). With some minor exceptions, these primary management measures apply to the entire scallop resource and fishery, essentially from the Gulf of Maine and Georges Bank to Cape Hatteras, NC.

Although Amendment 7 and subsequent amendments were approved and implemented after passage of the Sustainable Fisheries Act¹⁴ (SFA), Amendment 10 takes additional steps to improve the FMP performance for achieving optimum yield, for defining overfishing consistently with area-based management by reducing the potential for localized overfishing, for reducing the risks from potential overfishing through temporary area closures, for reducing bycatch and bycatch mortality, for reducing essential fish habitat impacts, and for improving data collection and monitoring.

Another primary purpose of Amendment 10 is to amend the Fishery Management Plan for Scallops to comply with section 303(a)(7) of the Magnuson-Stevens Act. More specifically, the purpose is to identify and describe adverse effects of fishing on EFH and to minimize to the extent practicable these adverse effects. These actions are being undertaken to ensure the conservation and enhancement of EFH as required under the Magnuson-Stevens Act.

In part, these mandates are being achieved through effort limits and gear restrictions, but more can be done. A recent court decree (Court Order from US District Court for the District of Columbia in *American Oceans Campaign v. William M. Daley*, September 14, 2000) moreover requires the Council to analyze a broad range of alternatives to minimize the effects of the scallop fishery on essential fish habitat for other species, and the effects of other fisheries on essential fish habitat for scallops. Specifically, Amendment 10 re-evaluates the effectiveness of the present closed areas and management regulations and considers different and possibly expanded closures in sensitive habitat areas. Amendment 10 also considers and analyzes the impacts of new technology that promises to reduce bycatch and bycatch mortality.

The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) required the National Marine Fisheries Service (NMFS) and regional Fishery Management Councils (Councils) to describe and identify essential fish habitat (EFH) within fishery management plans, minimize to the extent practicable adverse effects on EFH caused by fishing, and identify other actions to encourage the conservation and enhancement of EFH. EFH is defined in the Magnuson-Stevens Act as *“those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.”*

¹⁴ The Sustainable Fisheries Act amended the Magnuson Stevens Act in 1998, adding new emphasis on achieving MSY, reducing bycatch and essential fish habitat (EFH) impacts, and reducing impacts on communities and safety of human life at sea.

Pursuant to the Magnuson-Stevens Act and the EFH regulations, the Councils submitted fishery management plan amendments and associated Environmental Assessments (EAs), as required under the National Environmental Policy Act (NEPA), to NMFS for Secretarial review. NMFS approved or partially approved all the EFH fishery management plan amendments in accordance with section 304(a) of the Magnuson-Stevens Act. Subsequently, a coalition of seven environmental groups and two fishermen's associations brought suit challenging NMFS' approval of certain EFH amendments prepared by the Gulf of Mexico, Caribbean, New England, North Pacific, and Pacific Fishery Management Councils (American Oceans Campaign et. al. v. Daley et al., Civil Action No. 99-982(GK)). The suit specifically contested the adequacy of the evaluations of fishing gear impacts on EFH in the fishery management plan amendments, and the analyses of environmental impacts in the EAs.

The U.S. District Court for the District of Columbia found that the agency's decisions on the subject EFH amendments were in accordance with the Magnuson-Stevens Act, but found that the EAs for the Councils' amendments were inadequate and in violation of NEPA. The court determined that the EAs prepared for the EFH provisions of the fishery management plans did not fully consider all relevant alternatives. The court specifically criticized several of the EAs for evaluating only two options for the EFH amendments: either approval of the amendment or status quo. Additionally, the decision noted that the descriptions and analyses of the environmental impacts of the proposed actions and alternatives were vague or not fully explained. The court ordered NMFS to complete a new and thorough NEPA analysis for each EFH amendment named in the suit. This Environmental Impact Statement (EIS) responds, in part (see above), to the court's directive to NMFS to complete new NEPA analyses for the Scallop Fishery Management Plan. Although the plaintiffs' complaint focused on whether NMFS had adequately evaluated the effects of fishing on EFH, NMFS decided to complete new EISs to evaluate all of the EFH components of the applicable fishery management plans. Accordingly, this EIS reevaluates the impacts of amending the Scallop fishery management plans to include the EFH provisions required by the Magnuson-Stevens Act. The EIS analyzes alternatives for the EFH FMP amendments, including the alternative that was adopted by the Council and approved by NMFS in 1999 and other alternatives.

Minor changes in the optimum scallop area rotation system could achieve these plan objectives through area specific seasons, habitat protection areas coordinated with other plans that govern other mobile bottom gear fishing, improving the efficiency of fishing, potential bycatch TACs that could induce the scallop vessels to avoid bycatch, and other measures. Amendment 10 proposes gear changes that would make fishing gear more size and species selective. It proposes changing the management of scallop fishing by vessels with a general category scallop permit or fishing for scallops while not on a day-at-sea to reduce the risk of overfishing from a growing, open-access fleet. Finally, Amendment 10 proposes to change the fishing year and the framework adjustment cycle to make management more efficient – timed to use the research and industry scallop surveys when the data become available and implement adjustments in the shortest possible time.

The spatial resource management alternatives in Amendment 10 are intended to augment and compliment, rather than supplant the existing conservation regulations of the FMP. Instead of annual day-at-sea allocations for vessels to fish anywhere in the EEZ, Amendment 10 proposes to spatially allocate this fishing effort via area-specific day-at-sea or trip allocations. This change would create a more optimal distribution of fishing effort, postponing mortality on small scallops and improving yield, and reducing total fishing time to achieve the fishing mortality targets. Therefore, spatial management would focus fishing effort on larger, more valuable scallops in area where the effort is more efficient.

Other measures, such as increasing the ring size to 4-inches, may also improve efficiency thereby reducing fishing time and possibly bycatch and habitat impacts¹⁵.

The spatial effort (area specific) allocations require some compromises, however. Previously, the FMP's conservation measures were designed to achieve conservation objectives, but also maintain flexibility in the historically mobile fishery. The ability for fishermen to decide where and when to fish has been one of the hallmarks of independence that fishermen value. Amendment 10 would limit, yet preserve this flexibility by allocating fishing rights by area and possibly allow fishermen to trade area-specific allocations among themselves on a one-for-one basis.

Amendment 10 is needed because new science indicates that higher scallop yield can be achieved with less impact on the marine environment. Administrative and enforcement costs may increase, but this increase could be more than offset by the tangible and intangible benefits accruing from a healthier marine environment and scallop resource. The Magnuson Act requires the Council to amend its FMPs from time to time, when the best available science indicates that the FMP is not achieving its objectives.

In the 1996 reauthorization of the Magnuson-Stevens Act, Congress recognized that one of the greatest long-term threats to the viability of commercial and recreational fisheries is the continuing loss of marine, estuarine, and other aquatic habitats. To ensure habitat considerations receive increased attention for the conservation and management of fishery resources, the amended Magnuson-Stevens Act included new EFH requirements, and each fishery management plan must now include specific EFH provisions. Section 303(a)(7) of the Magnuson-Stevens Act requires that each FMP describe and identify EFH for the fishery based on the guidelines established by the Secretary (50 CFR part 600, Subpart J), minimize to the extent practicable adverse effects on EFH caused by fishing, and identify other actions to encourage the conservation and enhancement of EFH. The description and identification of EFH is applied as included in Amendment 9 to the Scallop FMP of 1998.

4.1 Goals of Amendment 10

The Council adopted the following three goals to be the focus of efforts to revise the FMP and improve scallop management.

A. To revise the FMP and improve the management of the resource

The Magnuson Act requires the Council to review its plans from time to time and to amend them if new regulations might improve the plan's ability to meet its objectives.

B. To update the analysis of cumulative impacts of the FMP on the human environment

NEPA requires the NMFS to review its fishery management plans and prepare a Supplemental Environmental Impact Statement on the cumulative impacts of the FMP, considering a broad range of reasonable alternatives that could reduce adverse impacts.

¹⁵ The impacts will also depend on the redistribution of fishing effort which may have positive or negative bycatch and habitat implications. These effects are analyzed more thoroughly in Sections 8.3 and 8.5.