

6.2 Required Provisions

6.2.1 Foreign Fishing Measures

“Contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

- (A) Necessary and appropriate for the conservation and management of the fishery to prevent overfishing and rebuild overfished stocks, and to protect, restore, and promote the long-term health and stability of the fishery;*
- (B) Described in this subsection or subsection (b), or both; and*
- (C) Consistent with the national standards, the other provisions of this Act, regulations implementing recommendations by international organizations in which the United States participates (including but not limited to closed areas, quotas, and size limits), and any other applicable law.”*

The Scallop FMP and Amendment 10 implements management measures that are needed to promote conservation (prevent overfishing, minimize bycatch, minimize habitat impacts) and achieve OY from the scallop resource. These management measures are in compliance with the National Standards (see Section 6.1). Since the domestic fishery is capable of catching and processing the allowable biological catch (ABC), there is no total allowable level of foreign fishing (TALFF) and foreign fishing on sea scallops is not permissible at this time.

6.2.2 Fishery Description

“Contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interest in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any.”

The fishery and fishery participation is described in Section 7.1.

6.2.3 Maximum Sustainable Yield and Optimum Yield

“Assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification; Assess and specify—

- (A) The capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3),*
- (B) The portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing, and*
- (C) The capacity and extent to which United States fish processors, on an annual basis, will process that portion of such optimum yield that will be harvested by fishing vessels of the United States.”*

The present and probable future condition of the resource and estimates of MSY and OY are given in Section 8.2.2.2. The US fishery is expected to harvest 100% of OY and domestic processors are

expected to be able to process 100% of OY. Current domestic landings and processing capabilities are around 50 million lbs., while OY is around 45 million lbs.

6.2.4 Pertinent Fishery Data

“Specify the pertinent data which shall be submitted to the Secretary with respect to commercial, recreational, and charter fishing in the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and the estimated processing capacity of, and the actual processing capacity utilized by, United States fish processors.”

The FMP and existing regulations specify the type of reports and information that scallop vessel owners and scallop dealers must submit to the NMFS. These data include, but are not limited to, the weight of target species and incidental catch which is landed, characteristics about the vessel and gear in use, the number of crew aboard the vessel, when and where the vessel fished, and other pertinent information about a scallop fishing trip. Dealers must report the weight of species landed by the vessel, the date of landing, and the ex-vessel price for each species and/or size grade. Important information about vessel characteristics, ownership, and location of operation is also required on scallop permit applications. Dealers are also surveyed for information about their processing capabilities.

The substantial majority of scallop limited access vessels also are required to operate vessel monitoring system (VMS) equipment to record the location of the vessel for monitoring compliance with DAS regulations. In addition these vessel location data are used to identify when and where aggregated scallop fishing occurs⁴⁰, which has been very important for stock assessment and for analysis of bycatch and habitat impacts.

Section 5.1.8.1 proposes collecting additional fishing data by placing at-sea observers on scallop vessels to record more detailed information about the catch, including size frequency data, the quantity of discards by species, detailed gear data, and interactions with protected species. In particular, vessels that fish in controlled access areas must notify NMFS of their intent to take a controlled access area trip so that an observer may be placed on the vessel if selected by the Regional Administrator. Some data about the characteristics of the vessel, related to its capability to carry an observer, is required.

6.2.5 Temporary Adjustments for Safety

“Consider and provide for temporary adjustments, after consultation with the Coast Guard and persons utilizing the fishery, regarding access to the fishery for vessels otherwise prevented from harvesting because of weather or other ocean conditions affecting the safe conduct of the fishery; except that the adjustment shall not adversely affect conservation efforts in other fisheries or discriminate among participants in the affected fishery.”

Three management measures in the FMP address this safety-related issue. First, the DAS allocations, under most circumstances, allow a vessel to choose when to fish. There are no restrictions on trip length and vessels that return to port early due to adverse conditions may continue fishing at another time without penalty. Furthermore, if a vessel must return from a trip early at the end of a fishing year, it

⁴⁰ Fishing location data is aggregated over many vessels and individual vessel information is not identifiable.

may carry up to 10 unused DAS into the next fishing year, essentially an automatic DAS adjustment to address this requirement.

Finally, Amendment 10 includes a revised broken trip exemption process that reduce the business risk of making a controlled access trip caused by a vessel being forced home by adverse conditions. Instead of a case-by-case determination of whether to adjust an automatic DAS charge for vessels retuning early from a controlled access area trip, the new procedure would allow an automatic adjustment, based on the amount of scallops landed. Thus if a vessel has less than the possession limit onboard and has to return early, it may continue the trip at a later time with a modest 3,000 lb. penalty to prevent mis-use. Many vessels under the existing system were ineligible for an adjustment because the vessel had small amounts (up to a few thousand pounds) of scallops that were landed. Thus vessels that began fishing in controlled access areas were often reluctant to return to port in the face of adverse conditions due to the potential to use the entire DAS tradeoff without landing a suitable amount of scallops.

6.2.6 Essential Fish Habitat

“Describe and identify essential fish habitat for the fishery based on the guidelines established by the Secretary under section 305(b)(1)(A), minimize to the extent practicable adverse effects on such habitat caused by fishing, and identify other actions to encourage the conservation and enhancement of such habitat.”

The EFH Provisions of the SFA (50 CFR Part 600.815) require the inclusion of the following components of FMPs. The Council has fully met these obligations as detailed below each mandatory component.

- (A) Identify and description of EFH
- (B) Fishing activities that adversely affect EFH
 - i. Evaluation of potential adverse effects
 - ii. Minimizing adverse effects
- (C) Identification of non-Magnuson-Stevens Act fishing activities that may adversely affect EFH
- (D) Identification of non-fishing related activities that may adversely effect EFH.
- (E) Cumulative impacts analysis
- (F) Identification of conservation and enhancement actions.
- (G) List the major prey species and discussion the location of the prey species’ habitat
- (H) Identification of habitat areas of particular concern
- (I) Recommendations for research and information needs
- (J) Review and revision of EFH components of FMPs.

Identify and description of EFH

EFH for the management unit of the Atlantic sea scallop FMP has been identified and described in Amendment 10. The Council plans to update these EFH designations through an omnibus amendment that will be initiated in early 2004 and will become Amendment 11 to the Atlantic sea scallop FMP.

Fishing activities that adversely affect EFH

Evaluation of potential adverse effects

The EFH Final Rule (50 CFR Part 600) provides guidance to the Regional Fishery Management Councils for identifying fishing activities that adversely impact essential fish habitat (EFH). In addition to the EFH Final Rule, guidance provided by the Habitat Conservation Division (HCD) headquarters office

in the form of a memo dated October 2002 was followed in the preparation of this section of Amendment 13. This evaluation should primarily include the impacts of activities associated with the fishery that is the subject of the management action, as well as other federally-managed and state-managed fishing activities. Based on the guidance provided by the EFH Final Rule and the HCD office, this determination focuses on the effects of fishing activities in the Atlantic sea scallop fishery on EFH. It also includes information on the effects of other federally-managed fishing activities on scallop EFH, and identifies gears used in state-managed fisheries that could affect scallop EFH. Most of the information needed to complete this determination is provided in more detail in previous sub-sections of the Gear Effects Evaluation Section 7.2.6.2 and Adverse Impacts Determination Section 7.2.6.3.

Appendix VI describes commercial fishing gears used in the Northeast region of the U.S. and the geographic distribution and use of the principal bottom-tending gears in three broadly-defined habitat types. It also evaluates the effects of bottom trawls and dredges on benthic marine habitats in the region. Most of this information is derived from the NMFS, NEFMC and MAFMC-sponsored Gear Effects Workshop that evaluated the effects of fishing gears used in the Northeast region on mud, sand, and gravel habitats (NREFHSC 2002) and from an extensive review of relevant gear effects studies (Stevenson et al. 2003). Additional sources of information include work done by the NEFMC Habitat Technical Team and NEFMC and NMFS staff, and a National Research Council report on the Effects of Trawling and Dredging on Seafloor Habitat (NRC 2002). The information in this section serves as the basis for evaluating which gear types, if any, are most likely to have an adverse impact on essential fish habitat for federally-managed species in the NE region.

Section 7.2.6.2 evaluates the vulnerability of all 37 federally-managed species' to gear types found to have potential adverse impacts on EFH. Vulnerability was evaluated according to four broad categories: none (0); low (L); moderate (M); and high (H), based upon a matrix analysis of habitat function, habitat sensitivity and gear use. Results are summarized by species and life stage.

Specifically, species and life stages were ranked according to the vulnerability of their EFH to the effects of mobile, bottom-tending gear. EFH for those ranked as moderately or highly vulnerable were included in this adverse impacts evaluation. For this determination, fishing activities are interpreted to mean fishing gears, since there is not enough information available to support a more detailed determination based on different fishing practices used with each gear type. Adverse impacts associated with each gear type are assessed for specific habitat types that make up EFH. Only benthic habitats are considered, since the gears used to catch scallops are bottom-tending gears. Habitat type is based on type of substrate, and, to some extent, depth and degree of exposure to natural disturbance. These simplifications were made in order to allow maximum use of the information available and to provide an evaluation that encompasses as broad a range of the relevant fisheries and affected habitats as possible.

EFH for those ranked as moderately or highly vulnerable were included in this adverse impacts evaluation. For the purposes of this action, EFH vulnerability that is ranked as low is considered to have a potential adverse effect to EFH that is minimal and temporary in nature. Therefore, the Council will eliminate from further consideration any EFH that has a low vulnerability to scallop dredges, otter trawls and clam dredges. Refer to Section 7.2.6.2.5 for a detailed look at the vulnerability rankings based on shelter, food, reproduction, habitat sensitivity, habitat rank, gear distribution and gear rank. Background on how vulnerability was determined in this exercise is useful for understanding how EFH could be adversely affected as a result of fishing with different gear types. Vulnerability was divided into four broad categories, including: none (0); low (L); moderate (M); and high (H), based upon a matrix analysis of habitat function, habitat sensitivity and gear use. Several criteria were qualitatively evaluated for each life stage based upon existing information. Each evaluation consisted of a score based upon a predefined threshold. The criteria used and the key describing what each ranking stands for is described in Section 7.2.6.2.5. Depth range and substrates that are included in the EFH designations for those species that have

been determined to be adversely impacted indicate that, as a group, they occupy a wide range of depths and bottom types.

Section 7.2.6.3 summarizes the results and findings of this section, identifying the potential adverse impacts of the three principal mobile, bottom-tending gears on three principal bottom types in the region. These results serve as the basis for analyzing proposed alternatives to minimize the adverse impacts of these gears on EFH.

Fishing activities that adversely affect EFH

Minimizing adverse effects

The EFH Final Rule also stipulates that “each FMP must minimize to the extent practicable the adverse effects of fishing on EFH that is designated under other federal FMPs”. Federally-managed species that could be affected by the Atlantic sea scallop fishery are listed in Section 7.2.6.3.4. In order to minimize and mitigate the adverse effects of the fishery on EFH the Council will implement the following measures to minimize the potential adverse effects of fishing on EFH in Amendment 10:

- Habitat Alternative 2 (Benefits of other Amendment 10 alternatives) which will further mitigate the adverse effects of the fishery on EFH.
- Alternative 6 (Habitat Closures Consistent with the Framework 13 Closed Area Access Program) which will prohibit scallop dredge from fishing in vulnerable areas containing the above benthic habitat types.
- Habitat Alternative 11 which will increase the dredge ring size to 4 inches throughout the range of the fishery.
- Habitat Alternative 12 which will direct a portion of the TAC set-aside to conduct habitat-related research.

The proposed action is further described in Section 5.1.6 and the environmental consequences and practicability analysis of these alternatives can be found in Section 8.5.4. The Council has determined that the combination of these gear restrictions, effort reductions and area closures minimizes, to the extent practicable, the adverse effects of fishing on EFH. This includes the adverse effects of the scallop fishery on all federally-designated EFH.

Identification of non-Magnuson-Stevens Act fishing activities that may adversely affect EFH

Section 7.2.6.4 addresses the requirement of this component. This section will be thoroughly updated in the upcoming omnibus habitat amendment (to be Amendment 11 to the Atlantic sea scallop FMP).

Identification of non-fishing related activities that may adversely effect EFH.

Section 7.2.6.5 addresses the requirements of this component. This section will be thoroughly updated in the upcoming omnibus habitat amendment (to be Amendment 11 to the Atlantic sea scallop FMP).

Cumulative impacts analysis

Section 8.1.9 addresses the requirement of this component.

Identification of conservation and enhancement actions.

Section 7.2.6.6 addresses the requirement of this component. This section will be thoroughly updated in the upcoming omnibus habitat amendment (to be Amendment 11 to the Atlantic sea scallop FMP).

List the major prey species and discussion the location of the prey species' habitat

Section 7.2.6.7 addresses the requirement of this component. This section will be thoroughly updated in the upcoming omnibus habitat amendment (to be Amendment 11 to the Atlantic sea scallop FMP).

Identification of habitat areas of particular concern

Section 7.2.6.9 addresses the requirement of this component. This section will be thoroughly updated in the upcoming omnibus habitat amendment (to be Amendment 11 to the Atlantic sea scallop FMP).

Recommendations for research and information needs

Section 7.2.6.8 addresses the requirement of this component. This section will be thoroughly updated in the upcoming omnibus habitat amendment (to be Amendment 11 to the Atlantic sea scallop FMP).

Review and revision of EFH components of FMPs.

Section 7.2.6.10 addresses the requirement of this component. This section will be thoroughly updated in the upcoming omnibus habitat amendment (to be Amendment 11 to the Atlantic sea scallop FMP).

6.2.7 Nature and Extend of Scientific Data

“In the case of a fishery management plan that, after January 1, 1991, is submitted to the Secretary for review under section 304(a) (including any plan for which an amendment is submitted to the Secretary for such review) or is prepared by the Secretary, assess and specify the nature and extent of scientific data which is needed for effective implementation of the plan.”

Section 5.1.8 describes the nature and type of data that will be needed to administer and manage rotation area management. Other data, already collected include fishery dependent data described in Section 6.2.4 and fishery-independent resource surveys that provide an index of scallop abundance and biomass.

6.2.8 Fishery Impact Statement

“Include a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and describe the likely effects, if any, of the conservation and management measures on--

- (A) Participants in the fisheries and fishing communities affected by the plan or amendment; and*
- (B) Participants in the fisheries conducted in adjacent areas under the authority of another Council, after consultation with such Council and representatives of those participants.”*

The effects on fisheries and fishing communities are estimated and described in Section 8.8. The Council consults with other Councils in areas that overlap the management boundaries of this FMP by having members of those Councils participate on the Scallop Oversight Committee and by having a member of the Mid-Atlantic Fishery Management Council attend the this Council’s meetings as a liaison.

6.2.9 Objectives to Prevent Overfishing

“Specify objective and measurable criteria for identifying when the fishery to which the plan applies is overfished (with an analysis of how the criteria were determined and the relationship of the criteria to the reproductive potential of stocks of fish in that fishery) and, in the case of a fishery which the Council or the Secretary has determined is approaching an overfished condition or is overfished, contain conservation and management measures to prevent overfishing or end overfishing and rebuild the fishery.”

Overfishing reference points describing targets and thresholds for biomass and fishing mortality are presented and explained in Section 5.1.1. These reference points were chosen as a proxy for our best estimate of levels that will produce MSY and prevent an overfished condition (that will threaten spawning potential) from developing. These reference points were derived based on median recruitment data from 1982 – 2002 and yield-per-recruit analyses conducted by SARC 32 (NMFS 2000). The basis for using these reference points as a proxy for MSY are given in Section 3.4.2 based on analysis conducted by Applegate et al. (1998).

6.2.10 Standard Reporting Methodology

“Establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority--

- (K) Minimize bycatch; and*
- (L) Minimize the mortality of bycatch which cannot be avoided.”*

The FMP relies on a standard data collection program, the Sea Sampling Observer Program, and provides a funding mechanism to increase the level of sampling (Section 5.1.8.1). These data will improve and be used for assessing the amount and type of bycatch occurring in the scallop fishery.

6.2.11 Recreational Catch and Release

“Assess the type and amount of fish caught and released alive during recreational fishing under catch and release fishery management programs and the mortality of such fish, and include conservation and management measures that, to the extent practicable, minimize mortality and ensure the extended survival of such fish.”

Recreational fishing for sea scallops is rare and immaterial to the success of the FMP.

6.2.12 Description of Fisheries

“Include a description of the commercial, recreational, and charter fishing sectors which participate in the fishery and, to the extent practicable, quantify trends in landings of the managed fishery resource by the commercial, recreational, and charter fishing sectors.”

A description of the fishery and a summary of trends in landings by the commercial fishery is given in Section 7.1. Recreational fishing for sea scallops is rare and there is no charter fishing for sea scallops.

6.2.13 Fair and Equitable Distribution Amongst Fishery Sectors

“To the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.”

The proposed action does not affect recreational fishing for sea scallops (should it occur), there is no charter fishing for sea scallops, and the commercial fisheries will benefit from any short-term reduction in harvest. The allocations amongst these fishing sectors is therefore fair and equitable.

6.3 DISCRETIONARY PROVISIONS

6.3.1 Permits

Require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to--

- (A) Any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;*
- (B) The operator of any such vessel; or*
- (C) Any United States fish processor who first receives fish that are subject to the plan.”*

The FMP requires dealer and vessel permits for participants in the scallop fishery. Any vessel landing more than 40 lbs. of scallop meats must obtain a general category permit from the NE Regional Office and any vessel landing more than 400 lbs. of scallop meats must obtain a limited access scallop permit.