

#### **6.5.4 Conclusions**

Section 5.7 (Cumulative Effects Analysis) demonstrates that the overall habitat impacts of all the measures combined in this action have positive impacts on habitat relative to No Action. The action proposed under this amendment will have no more than a minimal adverse effect on EFH of federally managed species. Because there are no substantial adverse impacts associated with this action, an abbreviated consultation may be the only required action.

## **7.0 RELATIONSHIP TO OTHER APPLICABLE LAW**

### **7.1 NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)**

#### **7.1.1 Introduction**

NEPA requires preparation of an Environmental Impact Statement (EIS) for major Federal actions that significantly affect the quality of the environment. The Council published a Notice of Intent (NOI) to prepare this Amendment and the EIS in the *Federal Register* on February 6, 2006, which was followed by three scoping meetings in Cape May, NJ, Portsmouth, NH, and Hyannis, MA. The Council prepared a scoping document that outlined some of the major issues and types of management measures that the Council might consider during the development of Amendment 11. The Council invited discussion on the scoping document and any other issues of concern at the scoping meetings as well as suggestions for appropriate management measures to consider during the development of this amendment.

To prepare the DSEIS, the Council held numerous meetings of its Scallop Oversight Committee, Scallop Advisory Panel, and Scallop Plan Development Team. The Council assembled a specific advisory panel with general category participants within the region while Amendment 11 was developed and discussed. The two advisory panels often met simultaneously, and sometimes they met separately. All of these meetings, as well as several related Council meetings, were open to the public. A list of public meetings held during the development of Amendment 11 is provided in Section 8.0 of this document.

The preferred alternatives, as well as the other management measures in this document were the subject of public hearings in May 2007. Public hearings were held in several locations in the Northeast including Maine, New Hampshire, Massachusetts, New Jersey and North Carolina. Complete meeting summaries from these hearings are included in Appendix III. The Council took public comment until the end of the public comment period (June 11, 2007). The responses to comments received on the DSEIS are included in Section 7.1.4. The Council approved the final management action and voted to submit Amendment 11 to NMFS at its June 2007 meeting in Portland ME.

#### **7.1.2 Scoping Process**

During the scoping period for Amendment 11, three scoping meetings were conducted, and numerous written comments were received. The digital recordings from the three scoping hearings are available on the Council website, or by request from the Council office. This

section summarizes the issues raised during the scoping period for Amendment 11, through both the scoping meetings and written comments. The Scallop Committee, Advisory Panel, and Plan Development Team considered all of the scoping comments during the development of the range of alternatives for consideration in Amendment 11.

#### **7.1.2.1 Scoping Comments**

The scoping period was from February 6 – March 6, 2006. Over 50 written comments were received during that time period and two comments were received after the scoping period deadline. In general, the scoping comments identified numerous issues for consideration in this amendment, and perspectives on each of the issues varied widely. The summary below identifies specific measures that were suggested regarding the seven scoping issues, and summarizes a sample of other comments received about scallop management in general. This summary is not intended to reflect every scoping comment that was received. The letters and scoping meeting summaries should be referenced to gain a better perspective on individual comments, ideas, and suggestions. The actual scoping comments are included in Appendix I.

- **Limited Entry**

Most commenters felt that limited entry is necessary. However, one voiced that it should only be considered if it can be proven that limited entry in the general category fleet is necessary to prevent overfishing. In addition, one suggested that what we are seeing is just the cyclical nature of the scallop fishery; if we wait the price will drop and effort will leave. Many commented that when the Council considers who should qualify it needs to remember that a certain poundage or number of trips is necessary to sustain an active day boat vessel. A handful suggested that the permit could be reserved for owner operators. One suggestion was made that consolidation of permits and trips/pounds should be considered in this action. Another voiced that there may be historic participants fishing in state waters that do not fall under Amendment 11 and these vessels should be identified and kept separate. Several suggested some sort of tiered permit system; with vessels that have a significant level of dependence, then vessels that do not qualify but have history, and then a bycatch fishery that reflects actual bycatch numbers. It was suggested that the bycatch permit could be different for various fisheries and areas. Or there could be “full-time” and “part-time” general category permits. There was concern expressed that we are shutting people out who have not had an impact on the fishery or caused overfishing. For example, when the resource returns in the GOM, the state of Maine needs to preserve the right to catch scallops. So Maine recommends an open access fishery for waters north of 43° 00 with a maximum of 200 pounds and the same input controls as required in the small dredge exemption area (max dredge of 10.5, 4-inch ring, 10-inch twine top and 5 person max crew). New requirement would be that the vessel must be owner operated. Another suggestion was made that the Council should consider a very small open access fishery with a lower possession limit, a hard TAC by region or season.

#### Control Date:

There were commenters in favor of using it, as well as against it. Some additional suggestions were going back to 1994 to identify the original historic participants, on the other hand there were suggestions to use the VMS data instead (Dec 2005), April 2005, or even the end of 2006. One recommended that for comparison the document should consider the full range (Nov 1, 2004 through end of 2006). One commenter voiced that if the goal of the action is to halt

expansion than the control date should be the only criteria used. Another idea was to use the control date as well as any vessels that have purchased VMS that did not have a permit before the control date. To get the smallest number of vessels, some suggested using the control date as the first “cutoff”, then the requirement to have VMS, and then a certain poundage/trip requirement. A few commenters voiced that history should not be included and a limited access permit should be given to all vessels that had a permit before the control date, “The use it or lose it approach is unfair.” While others said that history needs to be considered so permits are not given to people that have never landed scallops. A few voiced concern that if history is not considered an open access permit would all the sudden have value, and people who never scalloped would then just turn around and sell those permits for the profit. He estimated that a limited entry general category permit could go for as much as 40,000 to 100,000 dollars. However, one person stated that the general category was supposed to be relatively small and using a high poundage for qualification criteria would only reward those who have abused the original purpose and punish the occasional users. Another stated, the purpose of the general category permit has been lost; most of the boats are now full-time scallop boats that fish more than half the year, it used to be more like 70 to 100 trips a year.

#### Potential Qualification Criteria:

Numerous qualification criteria were suggested: 1) identify a certain number of pounds for 1998-2003 and give an incidental permit to the vessels that do not qualify; 2) vessels need to show 50 trips or 20,000 pounds (2,500 bushels) in one year; 3) vessels need to show 250 days fishing during a qualification period; 4) use the control date, and VMS and then average landings from five previous years; 5) 20,000 pounds prior to the control date; 6) use VMS date and 30 trips or 5,000 pounds in one year during a qualification period; 7) allocated days to individuals based on best year from 2000-2004; 8) only give a permit to vessels with scallop landings - vessels that are obviously direct in other fisheries such as clam or quahog should not get a permit; 9) based on the number of trips or pounds from 1994-1999 because that range of dates is before higher abundance and the number of participants was less; 10) allocate days based on highest year from 1994-2004 and if no landings from 1999-2004 then you get an incidental permit; 11) average landings from 1999-2004 because during this time frame the scallop and other fisheries have fluctuated; 12) days allocated based on total pounds from highest year from 2000-2005; 13) identify tiers of permits that would be based on percent of income from scallops landed after the control date; 14) control date plus 3-5 years of prior or consecutive landings; 15) 20-25 trips a year and/or 8-10,000 pounds and those permits should only be permitted to fish in inshore areas only; 16) days or pounds allocated in tiers based on history and/or other criteria – 30 days, 30-60 days, 60-90 days etc.

Several stated that if the control date is used, then landing history should not be used post the control date. Several commenters said that if and when the Council considers history, it needs to address the inability to transfer general category permit history because it is an open access fishery. One person said that the qualification issue is going to be very difficult for vessels that diversify specifically small boats from the Cape. He described that fleet as “ever-changing to remain the same,” and it would not be right to keep them out of this fishery because they did not have a high level of landings. Several suggested that an appeals process needs to be identified upfront. For vessels that do not qualify, it was suggested that a small number of days could be set aside for those vessels. Another commenter said that the Council needs to identify what the

level for “incidental catch” is compared to the “directed” day-boat fishery and those vessels should be treated separately. There is no need to limit truly incidental scallop catch in this action. One commenter suggested that the VMS date is enough to be used as a mechanism to reduce the number of permits (2,800 to 800); “if that is not a reduction I do not know what is.” Many commenters suggested that a re-rigging clause needs to be included, however several warned that too many vessels have been given permits in other limited entry programs because of re-rigging, equipment and retrofitting clauses (i.e. monkfish plan).

- **Allocation**

A range of allocations were suggested for the general category fleet: 3%, 1-5%, 5-7.5%, 5.8%, 15%, 20%, 25%, and 35%. Several commenters suggested that the percentage should be based on the historical average from 1994-2004 (about 3%). One added that since Amendment 4 stated that if general category landings increased the Council should reduce landings, which he argues implies that total allocation should not be higher than the historical average. Furthermore, it was stated that Amendment 11 should not fundamentally revisit the decisions made under Amendment 4 (related to implied allocation for the general category fleet). One commenter added that since the Council managed the limited access fleet out of other fisheries, they have become very dependent on scallops and that needs to be considered during allocation discussions. On the other hand, another commenter said that resource recovery and market price have created a scenario of success few could have imagined when Amendment 4 was implemented, and since conditions are different now we should not have to stick with Amendment 4. Therefore, he argued a higher percentage is needed to sustain an economically viable day boat fleet. Another suggested that the percent of landings would be higher for the general category fleet if the scallop resource was not fished out in inshore areas, so the percentage should be higher for when it returns. Furthermore, it was stated that while there may be reason to limit continued expansion of the general category fleet, it has not been proven that increased general category landings have contributed to overfishing, so there is no justification to reduce the present catch. Another suggested that this fishery should help cuts in other fisheries and be used as a way to spread the wealth along the coast, thus a higher allocation is justified.

There were many commenters that had additional suggestions about how the allocation could be further broken down within the general category fleet. Some suggested that allocations should be in pounds and others suggested days. One suggested half of the general category allocation should be divided between the north and the south. A handful suggested that allocation on an individual basis may be the best way to allocate this resource. Some suggested equal allocations that could be transferable in 1,000 pounds increments. Another suggested 150-200 days for “full-time” general category users with history and 50-75 days for “part-time” vessels without history. Another suggestion was to just allocate 80,000 pounds per boat. One idea was presented that individual allocations should be based on the percent of revenue generated from scallops. Another suggested that general category allocations should be limited to a season from April 1 – October 31. Several recommended that leasing and consolidation should be allowed.

- **Dual permits for limited access fleet**

The comments were pretty divided on this issue, some in favor of allowing limited access vessels to target scallops under general category rules, and others opposed to it. Several suggested that if a limited access vessel with history of fishing under general category rules can qualify for a

general category permit based on the same criteria, then those limited access vessels should also be eligible for a general category permit. It was also suggested that a percent of the total TAC could be allocated to the limited access fleet to fish for under general category rules; the historical average (less than 1% of the total) was recommended for consideration.

Arguments in favor included that fishing under general category rules is important for limited access vessels because it provides an opportunity to train captains and help pay for fuel. Another commenter pointed out that not all limited access vessels are the same, specifically fishing under general category rules is an important component of part-time and occasional permit owners especially because they are not given many scallop DAS. One limited access vessel owner pointed out that if this right was taken away it would diminish the value of a limited access permit. The right to land 400 pounds while not on a DAS is currently folded into the limited access permit; they are not separate, so it is not appropriate to take that right away. Several commenters voiced that limited access vessels should not be allowed to land under general category rules because they already have been given a significant portion of the resource. Furthermore, in a fishery where overfishing is occurring it does not make sense to allow the biggest, most effective harvesting platforms to fish outside regulations. It was suggested that if limited access vessels are fishing for other species, maybe a 200 pounds incidental catch limit would be more appropriate. On the other hand another individual recommended that “bycatch” is alive and should be thrown back- no incidental catch allowance. Lastly, one commenter pointed out that this is not an issue that will solve overfishing, the number of vessels that participate in this component of the fishery is very small and this is only an issue because there is a perception of fairness of access.

- **Hard-TACs**

Overall, there was consensus that a TAC program should not be developed that has the potential to lead to a derby fishery. Commenters across the board said that derbies are dangerous and uneconomical. Many commented that a hard TAC for the general category fleet would only make sense if the limited access fleet was under a hard TAC as well; one suggested a hard TAC of 80% for limited access, 19 % for general category and 1% for bycatch. One commenter said that the limited entry general category fleet should be monitored for one year and then implement a hard TAC if it is still necessary. If a hard TAC is still not enough then consider a max dredge width of 10 feet. Some suggested that an individual TAC would have the highest probability of preventing a derby fishery and would be the easiest to enforce. But several recommend that ITQs would be a mistake. One recommended that individual TACs could be implemented on a trial basis for one year. Another suggested that the document should consider stacking, but another recommended no stacking – should be the same for both fleets of the industry.

Lastly, some noted that allocating a share to each general category vessel will require new enforcement and monitoring capabilities.

Many had comments related to area TACs. It was suggested that area TACs would be effective because each area could develop rules that work for them. One person suggested a division for an area TAC could be the 73° 00 line. A few commenters suggested implementing a line that would identify an inshore area, and general category vessels could fish in that area and limited access vessels would have to fish to the east of that area (i.e. 50 miles offshore). One

recommended that the Council should not allocate by area based on recent data because that would be unfair to reward areas and participants that are primarily new entrants. Lastly, one commenter suggested that TACs are not necessary because as scallop and multispecies fisheries improve the DAS boats will return to those fisheries and less pressure will be on the general category fishery.

- **Sectors and harvesting cooperatives**

Many commenters were not sure what sectors really were so did not comment. A handful expressed concern that allocations should not be stacked on one large general category vessels so that it becomes like an offshore boat. Several felt that this should be considered in a future amendment after the participants in the general category are identified. Others believe that sectors are important to consider now. “Individual allocation may be the most simple, but community quotas are the next best thing.” Sectors are useful because they police themselves. On the other hand one responded that the general category fleet is very diverse and the Council would be hard pressed to find even two fishermen who agree, “So forcing us into formal groups would be a disaster.”

- **Incidental scallop catch**

Majority of commenters said that a relatively small level of scallop incidental catch should be permitted. Some felt that it should remain at 40 pounds so it is a truly incidental catch. Others suggested that 100 pounds should be considered to minimize impacts for vessels that do not qualify for a limited entry general category permit. In addition, it was recommended that the Council could consider developing a bycatch cap for each fishery. Another suggested that a range of incidental catch limits from 40-400 pounds should be analyzed for vessels that do not have more than 10% of revenues from scallops. Several commenters said that the incidental permit should remain open access. On the other hand, there were a handful of commenters that felt there should be no incidental catch limit; the scallops are alive so they should be thrown back.

- **Change the scallop fishing year**

All individuals that commented on this issue opposed considering a change for the scallop fishing year in this action except one. One individual suggested that August 1 could work, otherwise all others that concentrated on this issue suggested that the Council wait to consider this in a future amendment. This decision should not be done “casually or repeatedly.” Most explained that it would cause disruptions to the established practices and scallop markets, and since the scallop survey is currently being changed, the Council should wait until the new scallop survey is designed and then see if it is still necessary to change the scallop fishing year.

- **Other issues related to Amendment 11**

- We need to recognize that as a result of management as the rich get richer, the little guy is not protected.
- Request that the science center survey the Gulf of Maine. Assessing the biomass in the GOM should be a research set-aside priority because it is a wildcard.
- New entrants into the general category fishery should have to use dredges.
- Council may want to identify discrete, historic day boat fisheries in state waters outside of assessment area (north of 42° 00).

- To address overfishing not fair to only look at general category fleet – not clear where and why overfishing is occurring.
- In order to reduce effort could consider increasing ring size to 4.5-inches.
- When management addresses scallop overfishing it should be by resource area (Delmarva, NY Bight, South Channel and southeast part of GB, NE peak and northern part of GB, and the GOM).
- Before major changes are made it would be better to monitor general category fleet under VMS for several years.
- Consider allowance of new entrants into the general category fishery like the lobster apprentice program.
- Council should consider allowing vessels that land roe on scallops to have a higher possession limit.
- Council should revisit scallop overfishing definition.
- New measures should attempt to preserve the newly developed fishery at 2004 levels.
- Allocate a maximum of 200 trips and max dredge width of 16 feet to reduce effort.
- Not fair to have people invest in Skymate to keep an existing permit and then take it away.
- Many disenfranchised groundfish vessels need this permit as a matter of survival.
- Several suggestions were made to minimize impacts on habitat, to name a few, limit the time gear can be used by seasons and regulating horsepower inshore.
- Several suggestions were made for ways to use the scallop resource as a way to restore fleetwide historic balance and help communities.
- Allow “buyboats” to purchase scallops at sea for general category vessels. It would save fuel, reduce dock space needed, and an enforcement agent could be put on every vessel. Buyboats could be put in areas that are farther from shore than general category vessels would normally go but not in areas where limited access vessels work, that way resource could be harvested in areas that are underutilized (i.e. Virginia Beach).
- Do not reduce possession limit.
- No nets should be allowed, and another suggested prohibiting shell stocking.
- In 1994 some vessels took the general category permit because VMS was \$8,000 and they did not want to pay for it. The price has come down so those vessels that originally qualified should be considered for a limited access permit again.
- Max dredge of 8 feet, another suggested 15 ft.
- In the Mid-Atlantic should require a 6.5-inch square codend and 6-inch twine top.
- Dealers should not be allowed to buy more than 400 pounds of scallops from a vessel at one time.
- One effective way to reduce effort is to take permits away from people who cheat.
- Several suggested that the Council should combine Amendment 11 and Amendment 12 and address overfishing in one major amendment.
- Requests a printout of VMS tow tracks to identify where the limited access fleet fished, then a line can be drawn along the coast and limited access fisheries can fish to the east of the line and general category vessels will have to stay to the west.
- Document should try to show where overfishing is occurring and by who.
- All states should have a minimum number of participants to assure all states represented based on port of landings.
- Implement a vessel size limit for general category vessels to reduce effort.

- In ten years all limited access vessels will be ashore with hired skippers – is this what we had in mind? Permits should expire when an owner dies.
- The general category fleet has not been integrated in rotational area management or research and they need to be.
- Consider a harvest period for general category and keep in mind that more bushels are needed in the winter to get 400 pounds.
- **Other issues not related to Amendment 11**
  - The general category fleet needs to be able to get back into the Great South Channel.
  - Require drug testing for scallop captains and crew.
  - Why weren't the shrimpers that were landings over 1,000 pounds of scallops a day off New Jersey not busted?
  - Too many scallops die from wasteful deckloading, up to 10% of total scallop landings.
  - Support for increase in enforcement to reduce illegal fishing.
  - Recommend that a research set-aside program be developed for the general category fishery.
  - Not likely that the 2% set-aside for general category vessels in CA II is going to be harvested, can that be traded for a different area?
  - When an application is sent to a permit holder NMFS should include some background information. For example, when I applied for my general category permit this year it would have been nice to know that the Council was developing Amendment 11.

### **7.1.2.2 Scoping Meetings**

Three scoping meetings were held in February 2006. A summary of each meeting is described below. Actual audio transcripts of these meetings are available by contacting the NEFMC Office at 50 Water Street, Newburyport, MA 01950 (phone: 978-465-0492).

#### **Cape May, NJ – February 21, 2006**

About 120 individuals signed in for the scoping meeting in Cape May Court House, NJ, and probably closer to 150 people were there. Michelle Peabody, a Mid-Atlantic Council member and Scallop Committee member welcomed the large crowd and Council staff (Deirdre Boelke) reviewed recent trends in the general category fishery and summarized the scoping document the Council approved for Amendment 11. About 25 individuals gave oral comments during the meeting and two written comments were submitted. The meeting began at approximately 7:15 PM and adjourned around 9:30 PM. The majority of comments were very focused to the seven issues summarized in the scoping document. This meeting summary will first describe a few overall statements about the meeting and then summarize the comments by issue. See the scoping document for a detailed description of each of the scoping issues.

Overall, very thoughtful comments were made from all components of the scallop industry that were present at the scoping hearing. Limited access owners and captains were present, as well as general category permit owners from Georgia to Massachusetts. Some of the individuals present have been involved in the general category scallop fishery for many years, while others are more recent entrants that have been fishing for scallops under general category rules since implementation of the control date (November 1, 2004). There was general consensus that the

Council needs to control effort in the general category fishery and limited entry is probably the way to go. Most speakers supported the use of the control date within reason, meaning some exceptions may need to be considered. Some individuals supported the need for additional qualification criteria such as minimum landings during a specified time period. In terms of allocation between the limited access and general category fleet, most commenters supported the use of an historical average of landings.

- **Limited Entry**

Many individuals voiced support of the control date with additional qualifications identified that would identify a group of vessels that could remain in the general category fishery and actually stay in business. There was concern that too many permits would be allocated, and the general category vessels that have always made a living fishing for scallops would not receive enough allocation to make a living. However, there were a handful of individuals who strongly opposed the use of the control date. “NMFS gave me a permit, I invested a lot of money to go scallop fishing and now they are going to take it away?” “Why should 300 people get all the scallops, it’s not right.” A few individuals suggested that the Council should consider allowing vessels an opportunity to fish for scallops when conditions are good like they are now. It was said that the intent of this permit was to provide opportunity for vessels, and this permit helps new fishermen get into the business, “fishing is a family tradition and a general category scallop permit helps to maintain a way for guys to save money and start fishing.”

Several individuals in the audience explained that they had a boat and applied for a general category permit before the control date, but due to paperwork delays, they did not receive their permit until after the control date; it was suggested that a clause should be considered for those types of vessels and a very specific appeals process should be defined during the development of this action. Furthermore, it was suggested that a re-rigging clause should be included, similar to what was used in the monkfish plan. In addition, one individual suggested that rather than the control date, a more suitable date to use is the date vessels were required to use VMS in the general category fishery; in his opinion that would qualify a smaller, more appropriate number of vessels that intend to fish for scallops (around 800). Lastly, one commenter suggested that it may be appropriate to use a ten year time period for qualification criteria (1994-2004); a long time period is the fairest way to do it.

- **Allocation**

Several commenters suggested that Amendment 4 already allocated the resource between the limited access and general category fleet. It never specified a number, but one speaker commented that there is language in Amendment 4 that says all directed effort should be for the limited access fleet and general category landings are small enough that they are insignificant to fishing mortality. Furthermore, the amendment states that if the general category fishery grows, the possession limit should be reduced, rather than “allocating” more resource to the general category fleet. Therefore, he stated that it was not appropriate to allocate more than the historical average to the general category fleet (average from 1994-2004 is 3.5% based on data in scoping document). One general category fisherman honestly commented that he would like the Council to allocate a high percent to the general category fishery, but it is probably fair to consider the historical average. Another commenter suggested that if the control date is used, it makes sense to base the allocation on a historical average before the control date, since that date landings

have gotten out of control and effort is not consistent with past activity. One commenter suggested that the Council specify the allocation in pounds rather than as a percentage of total landings, because the condition of the resource has changed over time and 5% today is very different in actual pounds landed compared to 5% in 1994. The Council must consider the pounds needed to sustain the general category fleet, not the percentage of the total because that fluctuates.

Several commenters warned that they believe this resource is on the decline and there is not going to be fishing like this again for sometime. “This fishery is not sustainable at 60 million pounds so we should not base allocations on that number, I do not expect to see this level of landings for long.” Another commenter voiced that this action is pushing small boats against big boats, and that was unfortunate, he added, “It is supposed to be us against the government.” On that note, several commenters did voice that it was critical for the general category boats to work together to devise a limited entry program that worked for their fishery, and they needed to keep in mind that the big boats do not have the ability to diversify; “they are the directed scallop fishery and they do not have other options.”

- **Limited access under general category**

Many commenters were against preventing the limited access fleet from landing under general category rules when not fishing on a DAS. It was further suggested that limited access vessels with a history of landings under general category rules should definitely not be prevented from continuing that activity. Furthermore, it was pointed out that not all limited access permits are part of a huge, fully integrated corporation. There are a number of full-time limited access boats that are owner-operated, and there are part-time and occasional limited access vessels that are not given many scallop DAS that should be able to fish under general category rules. One commenter suggested that it would be appropriate to allocate the percent of total landings caught by the limited access fleet while fishing under general category rules to the limited access fleet. For example, an average of 0.5% of the total was landed by these vessels from 1994 to 2004; therefore, that allocation could be reserved for limited access vessels fishing under general category rules. Several people suggested that gear requirements for the limited access and general category fleets should be consistent, especially if limited access vessels are permitted to fish under general category rules.

- **Hard-TACs**

Overall there was support for the idea of a hard TAC to control effort in the general category fishery, but it was pointed out by many individuals that it would have to be designed very carefully to prevent negative, unintended consequences. There was general consensus that a hard TAC alone was not the answer, and we need to be careful to design a plan that does not promote a derby fishery. Furthermore, some speakers were in favor of TACs by area, TACs by community, individual TACs and seasonal TACs; the pros and cons of each approach were briefly discussed. For example, one speaker suggested that a community TAC could work better than an area TAC because an area TAC would just make vessels move to different areas once a TAC was reached. He pointed out that not all vessels can move to different areas, so that would be unfair, and potentially unsafe. It was suggested that a hard TAC used over time might work. Another individual suggested that an individual TAC would prevent derby fishing and unsafe situations. “If a hard TAC is used, we need to pick the right number of vessels because if the

pie is cut between us too small this will be a big waste of time because none of us will be able to stay in business.” It was suggested that the Council needs to identify the number of general category boats that can make a living or create a few different permit categories potentially with different possession limits, so that this action protects the vessels that directly fish for scallops under general category. One individual suggested that there could be different rules for different areas; for example, trawls could be prevented in areas east of 73° 30.

- **Sectors and harvesting cooperatives**

Not many commenters focused on this issue. One person suggested that if an individual owns several general category boats, stacking should not be allowed, similar to the current restrictions on the limited access fleet. It would not be fair to allow general category boats to stack permits or quota on one vessel if the limited access fleet is not allowed to do the same.

- **Incidental scallop catch**

Most individuals that commented on this issue agreed that scallop bycatch should not be zero. If a limited entry program is established, or if a hard TAC is reached during the fishing year, vessels should be allowed to land an incidental level of scallops. “We do not want to support any measures that increase scallop bycatch.” One commenter suggested that the current incidental catch limit of 40 pounds is still appropriate and should not be changed up or down.

- **Change of scallop fishing year**

None of the individuals that commented on this issue supported changing the fishing year. “Industry has said time and time again that this should not be considered, how does this issue keep coming up?” Most suggested that the Council remove this issue from consideration in this amendment. They stated that the scallop survey program is currently being reconsidered, so it would make more sense to see what comes of that process and then adjust the scallop fishing year if necessary. Several went on to explain that the range last considered in Amendment 10 was inappropriate anyway. One individual said that the range of July through September is too late because restaurants need the product sooner, and another suggested that January 1 is the only other date that might make sense.

- **Other**

There were a variety of comments about other measures that could be considered in this action to control effort in the general category fishery. For example, it was suggested that some requirements for the limited access fishery could be applied to the general category fishery and that would help reduce fishing mortality like restrictions on trawl nets and a prohibition on shell stocking. However, several general category fishermen replied to these ideas negatively, and explained that they would not work for their businesses. For example, one individual lands scallops under his general category permit when fishing on a multispecies DAS and he uses a net, and another individual supplies a small market that demands live scallops so he needs to land his product in the shell.

Overall there was confusion about why an increase in general category landings is a bad thing. It was voiced that the small day-boat fishery is not the main culprit in scallop mortality and if the Council is serious about addressing overfishing in the scallop fishery they should focus on the

real problem, the limited access fishery that lands the vast majority of scallops. It was said that the new effort in the general category fishery has helped some boats operating on the margin to stay in business. Because of major restrictions implemented in other fisheries, this opportunity has allowed more fishermen to keep fishing, and it was stated that the Council should be supportive of maintaining opportunities for fishermen to remain in business. One individual suggested that this “problem” will fix itself; once the price of scallop drops; “you will see a lot of this effort disappear when the price drops as we expect it to do relatively soon.” As mentioned earlier, there were several comments about the future health of this resource, and it was stated that the Council never should have let 60 million pounds get caught, that is too high for this resource. On a different note, one commenter voiced that this is a serious issue and the timeline for this action is still too long even though it is relatively short compared to other amendments recently developed by the Council.

### **Portsmouth, NH – February 22, 2006**

About 18 individuals signed in for the scoping meeting in Portsmouth, NH, and 15 individuals gave oral comments and two written comments were submitted. Thomas Hill, the Chair of the Scallop Committee welcomed the audience and gave an overview of the process and purpose of the meeting. Deirdre Boelke reviewed recent trends in the general category fishery and summarized the scoping document the Council approved for Amendment 11. One additional Council member, David Goethel from New Hampshire, was present to listen to public comments. The meeting was held from 7-9 PM. Due to the small size of this scoping hearing, there was time to answer more questions and an opportunity for more informal feedback from the public. This meeting summary will first describe a few overall statements about the meeting and then summarize the comments by issue. See the scoping document for a detailed description of each of the scoping issues.

Overall, the public stressed that it is important for the Council to clearly identify what the primary goal of this action is; is Amendment 11 trying to protect small directed dayboat vessels, or is the main intent to provide diversity for small boats to participate in a variety of fisheries. It was suggested that before the Council identifies how many vessels should get this permit, the goal should be defined. Furthermore, it was suggested that the Council needs to define what the target mortality for the general category fleet is and what percentage of the long term optimum yield should be harvested by the general category fishery. It was agreed by all commenters that limited entry is needed, and one individual commented that “we are a victim of our own success.” The general category fishery has evolved into an overcapitalized fishery; there has been an explosion of effort and the general category fleet was never supposed to be this large.

- **Limited Entry**

Many people supported the control date with additional qualifications intended to protect the directed general category fleet. One individual stated that new entrants after the control date were warned that their permit was given under speculation, and “the Council should not extend the control date for cry babies.” It was also suggested that rather than the control date, the Council should use the date VMS was required, that is when the serious boats decided to bite the bullet and invest. Another individual voiced that Amendment 4 wanted to protect the inshore directed dayboat scallop fleet, so this action should focus on the same thing. Another person suggested that similar criteria could be considered as was in the Amendment 4 limited entry

program in terms of landing categories and number of years fishing. One commenter said that the general category fleet is the best group to identify what qualifications should be, “They should identify how many boats they want in their fishery.” Another suggestion was that the Council could consider only giving general category permits to vessels that are owner operated, similar to the lobster apprentice program. On a different note, one individual suggested that this action should preserve options for small boats to stay in business, and since there are few opportunities left for fishermen, this permit could, and was intended to help vessels diversify.

- **Allocation**

A number of individuals suggested that an allocation should be based on the intent of Amendment 4, a small amount of effort that will not impact the overall mortality of the scallop resource. Several voiced that the allocation should be based on a historical average before the control date was implemented. One speaker suggested that the percent of total landings attributed to the general category fleet may only seem higher than other years because the limited access landings were lower because of poor fishing conditions in the Hudson Canyon area. The Scallop PDT can review this, but the Committee Chair replied that he did not completely agree with that statement.

- **Limited access under general category**

Several individuals were against preventing the limited access fleet from landing under general category rules when not fishing on a DAS. On the other hand, one member of the public suggested that this situation should be treated the same way as the Council handled it in groundfish, each vessel gets one type of permit; you can't have both.

- **Hard TACs**

Overall there was support for the idea of a hard TAC to control effort in the general category fishery, but one TAC for the entire fleet was dangerous. Several individuals discussed the possibility of an individual TAC or quota, and while there was some support for this concept, they pointed out that if the individual poundage comes out to be something like 5-7,000 pounds, that would put every directed dayboat scalloper out of business. One speaker opposed the Council considering individual quotas, and supported the use of additional input controls instead.

- **Sectors and harvesting cooperatives**

The several speakers who spoke about this issue raised concern that the formation of sectors for this fleet may be premature at this point. Another individual suggested that the Council has to be cautious when approving sectors because they could change the nature of the dayboat fleet. For example, if many small boats get together and pool their allocations, one dayboat may end up fishing more like an offshore boat, and that would change the historic characteristics of the dayboat fleet.

- **Incidental scallop catch**

Most individuals that commented on this issue agreed that scallop bycatch should not be zero. One individual suggested that it may be possible to increase the incidental catch, especially if a relatively small number of vessels receive a limited entry general category permit. Furthermore, he suggested that the Scallop PDT should run several projections to see what the impacts on

mortality would be if the incidental catch remained at 40 pounds, or if it was increased up to 200 pounds.

- **Change of scallop fishing year**

None of the individuals who commented on this issue supported changing the fishing year. One person suggested that the Council should wait until the new scallop survey program is defined, and then consider whether the fishing year still needs to be changed. Another commented that August would be far too late for small boats in the north to start their fishing year; bad weather could prevent them from fishing earlier in the season than under the status quo fishing year of March 1.

- **Other**

There was a substantial amount of discussion about the term ‘overfishing’, and what this action (amendment 11) proposes to do in terms of addressing overfishing in the scallop fishery. It was stated that the overfishing definition is too complex and confusing, and it is hard to fathom that overfishing is currently occurring when both the fishery and resource seem to be healthier than ever. This action will set itself up for failure if it tries to address overfishing. If the goal of this amendment is to address capacity in the general category fishery, that should be the stated goal. Limiting effort only in the general category fishery is not going to fix the current overfishing problem, so the Council should not identify that as a primary goal of the amendment. One individual pointed out that it was always awkward in the past that even when the resource was in trouble and the limited access fleet was being cut back, additional open access permits were being given out; that never should have happened.

There were a variety of comments about other measures that could be considered in this action to control effort in the general category fishery. For example, it was suggested that nets should be prohibited. Also, if effort needs to be reduced by the general category fleet, maybe just the possession limit should be lowered. Another speaker suggested that if individual TACs or allocations are considered in this action, permit owners should not be allowed to stack allocations, and the possession limit should not increase. Another speaker suggested that gear regulations should be the same for both the limited access and general category fleets.

Lastly, several people commented that there is a major problem with vessel history and the open access nature of general category permits. If the Council is going to consider limited access it needs to address the problem that in the past when a vessel was sold or upgraded, the history associated with that vessel’s general category permit was lost because a new permit number was issued. Measures should be considered for individuals who lost history due to the open access nature of the general category permit.

### **Hyannis, MA – February 23, 2006**

About 50 individuals signed in for the scoping meeting in Hyannis, MA, but more people were probably in attendance. Close to 30 gave oral comments and one written comment was submitted. Thomas Hill, the Chair of the Scallop Committee welcomed the audience and gave an overview of the process and purpose of the meeting. Deirdre Boelke reviewed recent trends in the general category fishery and summarized the scoping document the Council approved for Amendment 11. John Pappalardo and Sally McGee, both members of the Scallop Oversight

Committee were present at the hearing to listen to public comments. The meeting was held from about 7-9:30 PM. Unfortunately the meeting space was smaller than expected, but the audience was patient and there was opportunity for everyone to speak that wanted to. This meeting summary will first describe a few overall statements about the meeting and then summarize the comments by issue. See the scoping document for a detailed description of each of the scoping issues.

There were a significant number of limited access permit owners, captains and representatives at this public hearing. They had many comments about the specific scoping issues as well as overall advice to the general category fleet in terms of establishing a limited entry program. One limited access permit owner suggested that this action should not try to do too much, and the general category fleet can learn from the limited entry programs established under Amendment 4 for scallop as well as Amendment 5 for groundfish. Specifically, “Too many groundfish permits were given out based on a qualification that was set too low; do not make the same mistake.” Another commented that the limited access scallop fleet worked with the Council to develop a limited entry program that worked for them, and he suggested that the general category fleet do the same. Lastly, a limited access representative explained that he has seen this resource come and go and he thinks even though the last few years have been great fishing; he thinks scallops are on their way out again.

There were also many individuals with general category interests present at the meeting. Some explained that they did not want to get regulated out of the fishery. Another commenter expressed concern about how quickly the Council was planning on developing this important action. Can anything be done to slow the process down? He suggested that the Council and industry need time to do this right and the Council should not rush into anything. A different commenter later said that if this decision is dragged out the decision will just become harder and more people will invest and potentially suffer negative consequences. Others explained that it was obvious to them that all the small boats in the region were not going to be able to make it. “Why die a slow death,” one said, “if we don’t do something now the problem could get worse.” Why would we want to let more people in this fishery, it is clear that there are too many already, so why have more people invest to only later be put out of business? One speaker gave an emotional statement that he loves fishing, “I want to save it; we need rules to preserve it. I do not understand why other general category boats would want to see more boats in this fishery, so many guys are just coming into this fishery to make money; they do not care about scallops. But I get it, limits work, organizations work; I am not a member of one but I see that they make fisheries better and boats safer.”

- **Limited Entry**

There was general consensus that this action should address the “explosion” of effort in the general category fishery and this fishery can’t be open access anymore. One commenter said that Amendment 4 clearly states that if the effort in general category fishery gets too large, it is going to be cut. There was a lot of support for developing a limited entry program for the historic, directed day-boat scallop fishery. One individual stated that this local, traditional fishery has been in New England for a long time and it needs to be preserved. Day-boat fishing is a quality of life issue, “I do not want to fish way offshore and be away from my family for two weeks at a time.” One person commented that this action could implement limited entry for

historical participants only, and then leave the rest of the general category fishery as an incidental fishery with a lower possession limit. There was concern that overcapacity should not be built into the program from the beginning; if a limited entry program is implemented a relatively small number of directed boats need to be identified. One individual suggested that 200 pounds per trip would work for his vessel, and if that would allow more vessels to get permits that may be an option. Another suggestion that several people supported was that a limited entry program should be limited to owner operators; “This amendment should support owner operators.” Another commenter said that since the explosion of effort has been in the south, New England boats should not pay the price. He further suggested that each area could be managed differently; if the current system is not broken in the north than we should leave it how it is.

In terms of the control date, many commenters were in favor of using it, but others were not in favor of using any cut off dates. For example, one individual has had a permit, but he has not used it; but he would like the ability to use it in the future when the conditions are right for him to do so.

- **Allocation**

It was clear from this hearing that the Council should make the allocation decision first before determining how many vessels should qualify in a limited entry general category fishery. Depending on the allocation the fleet is given, that will identify how many people can make a living. How many people can make a living will depend on the amount of the allocation the fleet is given. One commenter suggested that when the Council is considering allocation between the two fleets it is important to recall that the limited access fleet gave up other permits when they became limited access vessels; therefore, their options are limited and they have more to lose. “The Council has a special obligation to these vessels because management but them in a box.” Another individual stated that this action should be consistent with the de facto allocation made in Amendment 4 (relatively small amount of the total) because the limited access fleet has made significant investments based on that decision, “Don’t throw away all the work that was done in Amendment 4.” Another individual commented that allocation should not be based on history because if this biomass is managed carefully it can produce more harvest than it has in the past. It was suggested that while Amendment 4 specified that the general category would be cut if effort got too high; it also stated that if conditions improved and the resource became healthy; general category effort could increase. It was recommended that the Council allocate the highest percentage possible to the general category fleet that does not impact the economic stability of the limited access fleet. There was one suggestion that the Council could consider allocating the resource by fleet, but it would be hard to identify a way to treat all the fleets of the general category fishery fairly.

- **Limited access effort under general category**

Many commenters stated that the general category permit was made for boats that did not qualify for a limited access permit, so it does not make sense that limited access vessels should still be able to land under general category rules once limited entry is implemented for the general category fishery as well. One person suggested that the level of landings by the limited access fleet under general category rules will decline when the price drops. More limited access vessels

may be fishing now because the price is so high, but it is not economically feasible for most of these vessels to go out for 400 pounds of scallops when the price is lower.

- **Hard TACs**

There were some comments related to different hard TAC options. One individual suggested that individual TACs would be more successful than a fleet wide allocation. It was noted that a fleetwide allocation could cause price and safety problems. Another individual suggested that the Council could consider giving a certain number of DAS to the general category vessels with a 400 pound possession limit rather than a TAC.

- **Sectors and harvesting cooperatives**

Not many people commented on this issue. One individual that did voiced support for the concept, and suggested that the Council consider sectors as a pilot program first. It may be premature to approve a sector program at this stage for the general category portion of the scallop fishery.

- **Incidental scallop catch**

Two opinions on this issue were voiced. One, if incidental scallop catch substantially impacts the available resource for the directed general category fishery, then bycatch should be zero. Two, incidental bycatch should be permitted. It was suggested that the incidental category could potentially remain open access for vessels that did not qualify for a limited entry general category permit. And if the number of limited entry permits is small and there is resource available, the incidental limit might even be raised. Increasing the possession limit to 100 pounds may accommodate vessels that are in between and do not qualify for a limited entry general category permit, but generally land more than 40 pounds per trip.

- **Change of scallop fishing year**

All speakers who commented on this issue recommended removing it from consideration in this amendment. Several stated that March 1 works for the fishery, markets have been developed around that date, and changing it will affect the price. A handful of commenters expressed that they did not understand the benefits of changing the fishing year, and how those benefits would outweigh the cost and inconvenience to the industry. One commenter added that NMFS takes too long with the data anyway, so changing the fishing year will not solve that problem; the data should be processed faster. Several commenters from the general category fleet said that this issue seemed out of place in this amendment and suggested considering it in a future action.

- **Other**

There were many comments made about other issues concerning the public as well as specific suggestions for the Council to consider when developing this action. In terms of general scallop issues, several people voiced that the scallop resource is on the decline. The industry is not confident that the Elephant Trunk will produce as much yield as projected. In addition a portion of the general category fishery takes place in areas in the Mid-Atlantic that inshore of the areas surveyed by NMFS; therefore, abundance is unknown in these areas. As for how this action affects what the Council considers in a future action for the limited access fishery, one commenter voiced concern that this action should not dictate what is considered in the next scallop action. For example, if the general category fleet decides to implement ITQs, it should

not be assumed that is a good idea for the limited access fleet. On a different note related to scallop fishing, one commenter explained that the percent of general category landings for 2006 are going to be low because NMFS closed the Great South Channel to day-boats. In terms of fishing in this region in general, one commenter said that the Council forgets that fisheries management is like a balloon. When one area is closed offshore, vessels move inshore, bottom conditions decline and resources are affected in all areas. The Council needs to recognize their responsibility to help fishermen; because of strict regulations in one fishery it is natural for fishermen to expand into other fisheries, especially when the price is good. Displaced boats need to be remembered in this process. One commenter added that 4-inch rings have really helped the health of the resource. Another commenter suggested that the PDT needs to look into whether nets really catch more scallops. If it is found that they do, maybe this action should consider eliminating the use of nets for the general category fleet.

As mentioned earlier there was some discussion of only restricting the “new” general category effort in the south because that is where the major problem is. One person suggested that if landings are too high in one area than that is where restrictions should be. But another speaker warned the group that if restrictions are only put in the south, than that effort is going to eventually move up here (north).

In terms of suggestions for the development of this action, one individual suggested that the Council needs to remember impacts on land based businesses. General category effort is important to many land- based businesses, particularly in remote areas. Also, the Council should remember that overfishing is an issue of scale; the day-boat fishery is not affecting mortality on the same degree as limited access effort. There is still a large incentive to cheat in the general category fishery and this action should address that. As discussed at other hearings, the issue of losing general category history when a boat is sold or upgraded needs to be addressed in this action. The Council should consider a way to incorporate that history if a limited entry program is developed.

One person came to this meeting because he heard the Council was considering allocating 25% of the total scallop resource to the general category fishery. The general category fleet is allowed to fish 365 days a year if they want to and in his opinion, 25% would have a large impact on the limited access fleet. There was some confusion that the estimates for landings by the general category fishery for 2006 and 2007 were actually allocation decisions made by the Council. That is not the case, they are estimates based on projected effort by the general category fishery and resource conditions.

### **7.1.3 Determination of Significance**

National Oceanic and Atmospheric Administration Administrative Order 216-6 (NAO 216-6) (May 20, 1999) contains criteria for determining the significance of the impacts of a Proposed Action. In addition, the Council on Environmental Quality regulations at 40 CFR. 1508.27 state that the significance of an action should be analyzed both in terms of “context” and “intensity.” Each criterion listed below is relevant in making a determination of significance relative to the Proposed Action and has been considered individually, as well as in combination with the others.

The significance of this action is analyzed based on the NAO 216-6 criteria and CEQ's context and intensity criteria. These include:

1. Can the Proposed Action reasonably be expected to jeopardize the sustainability of any target species that may be affected by the action?
2. Can the Proposed Action reasonably be expected to jeopardize the sustainability of any non-target species?
3. Can the Proposed Action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat as defined under the Magnuson-Stevens Act and identified in FMPs?
4. Can the Proposed Action be reasonably expected to have a substantial adverse impact on public health or safety?
5. Can the Proposed Action reasonably be expected to adversely affect endangered or threatened species, marine mammals, or critical habitat of these species?
6. Can the Proposed Action be expected to have a substantial impact on biodiversity and/or ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?
7. Are significant social or economic impacts interrelated with natural or physical environmental effects?
8. Are the effects on the quality of the human environment likely to be highly controversial?
9. Can the Proposed Action reasonably be expected to result in substantial impacts to unique areas, such as historic or cultural resources, park land, prime farmlands, wetlands, wild and scenic rivers or ecologically critical areas?
10. Are the effects on the human environment likely to be highly uncertain or involve unique or unknown risks?
11. Is the Proposed Action related to other actions with individually insignificant, but cumulatively significant impacts?
12. Is the Proposed Action likely to adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural or historical resources?
13. Can the Proposed Action reasonably be expected to result in the introduction or spread of a non-indigenous species?
14. Is the Proposed Action likely to establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration?
15. Can the Proposed Action reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment?
16. Can the Proposed Action reasonably be expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?

The Council has reviewed the above criteria relative to the action proposed in Amendment 11 to the Atlantic Sea Scallop FMP. Based on these criteria, the Council has determined that the Proposed Action represents a significant action and has prepared an EIS in accordance with the National Environmental Policy Act. The Final EIS for the action proposed in this amendment is included in this integrated document.

#### **7.1.4 DSEIS Public comments and responses**

Public comments on the Amendment 11 DSEIS were accepted during a formal comment period, April 18, 2007 through June 11, 2007. Comments were accepted at public hearings or received at the NMFS Regional Office in Gloucester by letter, email, or fax. The Scallop Committee met on June 6, 2007 to review public comments and the full Council met on June 20, 2007 to review all public comments and make final recommendations.

The responses below are based on all written and oral comments received. Thirty-seven written comments were received before the public comment period deadline, and no written comments were received late. In general, all oral comments made at public hearings were also raised in written comments received. The comments below are summarized by topic. Many commenters voiced support or opposition of specific alternatives. Those comments are noted but are not addressed in the following discussion.

##### **7.1.4.1 Purpose and Need for Action**

Very few comments discussed the purpose and need for this action.

- 1. If the general category fishery was deleted from the fishery would the mortality rate decrease? How can controlling 5-10% of the fishery reduce mortality?*

This action did not consider “deleting” the general category fishery. General category fishing does contribute to overall mortality, so if for some reason there was no fishing effort by the general category fishery, overall fishing mortality would decrease. However, the goal of Amendment 11 is not to reduce mortality from the general category fishery, rather it is to control it. Currently the general category fishery is an open access fishery, and while fishing mortality projections estimate the expected level of mortality from this component of the fishery and reduce that from the allocated effort in the limited access fishery, there is uncertainty in the estimate of mortality from the general category fishery, and there is increased risk the estimated level of mortality could be exceeded. These risks are increased under an open access fishery if conditions are right (i.e. high price for scallop meat and resource availability near shore) as they have been in recent years (2005).

##### **7.1.4.2 Alternatives under consideration**

Most comments focused on the alternatives under consideration and provided input on which measures should and should not be adopted.

###### No Action

Some commenters voiced support for the No Action alternative.

###### Limited Entry

Some commenters voiced support for limited entry. The comments on various topics within the limited entry program are discussed below.

###### ***Qualification criteria and allocation***

Most comments focused on the qualification criteria alternatives under the limited entry program. Some were in favor of the preferred alternative and others were not. Several commenters, including NMFS, expressed concern about adopting limited access qualification

criteria that were overly liberal that would allow a relatively large number of vessels to qualify and impact participants that are dependent of the fishery.

2. *Several commenters explained that they have maintained their general category permit over the years but have not fished with it. They argue that the opportunity should not be taken away from them just because they did not fish during the qualification time period. For example, some explained that if the lobster fishery is not as profitable in the future vessels that have maintained their permit and invested in VMS should be permitted to scallop in order to diversify and make up for revenue lost in other fisheries.*

The Council agrees that an opportunity should exist for scalloping at a reduced level for vessels that do not qualify for a limited access general category permit. The Council approved a separate limited entry program for the Northern Gulf of Maine for vessels that had a permit before the control date but no landings history. These vessels will be permitted to possess up to 200 pounds per trip under a hard-TAC (See Section 3.1.4.4 for details). In addition, the Council also approved a separate limited entry incidental catch scallop permit. Vessels that had a permit in any one year during the qualification time period selected (March 1, 2000-November 1, 2004) would be permitted to land up to 40 pounds of scallops while fishing for other species. Both of these opportunities provide some access to the scallop fishery for vessels that had a permit before the control date but did not land scallops.

3. *Several commenters expressed concern that they were issued a permit after the control date and were not going to qualify, but they depend on this fishery. For example, one argued that consideration should be given to vessels that only fish for scallops. Those after the control date that have fished over 200 days since the control date should be given something. Another stated that according to the document, 699 permits have been issued after the control date and only 119 of them have landed scallops. Those 119 should be included in the limited access fishery. Another suggested that the Council should consider special circumstances for individuals that were in the process of purchasing a vessel when the control date was implemented. Another explained that he started work on a new boat in 2001 and it took about five years until it was ready to fish. Lastly, several suggested that vessels should not have been given permits after the control date.*

Section 5.4.6.1.4 of the document summarizes the impacts on vessels that have gotten a permit after the control date (Group 4 in the economic analyses section). While some vessels have become very dependent on this fishery the Council felt that restricting the limited entry program to vessels with history before the control date was justified. The Council decided to include the control date cut off in the proposed action for qualification to be consistent with the decision to implement a control date in the first place. In 2004 the Council recognized that there was a substantial increase in general category fishing effort and requested NMFS to implement a control date to put permit owners on notice that future management actions may follow. A control date promotes awareness of potential eligibility criteria for future access and is intended to discourage speculative entry into a fishery while a Council considers whether and how access to the fishery should be controlled. The Council supports use of the control date in this case in particular due to the explosion of effort in the year following the control date by many vessels that are no longer, or were not involved in the fishery before the control date. The Council did discuss several different alternatives that could have permitted some vessels that got a permit

after the control date, but in the end it decided that if alternatives were developed for all the different vessels that had special circumstances, the number of vessels that would likely qualify would exceed the desired number of general category qualifiers and the risk of potentially abusing a “re-rigging” clause would increase with that many participants. Lastly, in terms of giving permits after a control date, while the permit is open access NMFS would issue new permits until the Council developed an action to set a moratorium or limited entry program(as it did under Amendment 11).

4. *One commenter voiced that he has a general category permit but no history. He has it in case the lobster fishery should fail and he invested in VMS to maintain that opportunity to land 400 pounds of scallops. He argued that anyone that had VMS when it was required should be granted a general category permit.*

The Council did approve a separate limited entry program with reduced access in the NGOM for vessels that had a permit in 2004 before the control date, but there is no landings requirement. This provision will provide an opportunity for vessels like this commenter. However, related to using VMS as the qualification criteria the Council does not agree that would be an appropriate criterion. This alternative was considered in Amendment 11 and rejected (Section 3.5.1.1.1.2). The main rationale for rejecting it is because it would be unfair to exclude vessels based on the VMS date for 1B permits (December 1, 2006). In the notice regarding the VMS requirement for 1B permits there was never mention that investing in VMS could be used as a qualifier for a future limited entry program. It was suggested that there is a big difference between knowing you have to get VMS to participate in the fishery for the following year, and having to get VMS to participate in the fishery indefinitely. On the other hand, the notice for the November 1, 2004 control date clearly states that vessels getting a permit after that date may be treated differently and that date could be used for establishing eligibility criteria for determining levels of future access to the scallop fishery.

5. *Several commenters, including NMFS, suggested that there are negative consequences of allocation in trips and a broken trip provision, or a similar measure should be considered.*

The Council agrees with this comment and ultimately selected allocation in pounds to prevent some of the negative consequences of allocation in trips that were raised during the public comment period. As the Council discussed potential broken trip provisions, the benefits seemed outweighed by the costs of developing a complex broken trip provision for these relatively small trips (maximum of 400 pounds per trip).

6. *NMFS expressed concern in several alternatives that use a five-year rolling average to calculate allocations for quarterly hard-TACs.*

The language for these alternatives has been clarified so that they are not five-year rolling averages. Rather, the Council and PDT are given the flexibility to adjust the percent of TAC per quarter based on new landings information, future projections, and consideration of anomalous year's landings.

7. *One commenter suggested that under some of the alternatives there is a likelihood that some of the general category allocation will go unharvested, reducing optimum yield and*

*creating latent effort. Another asked, "What happens to quota that is given to people that do not use it? Is it saved for the next year or lost?"*

If a vessel is allocated general category scallop quota there is the potential that quota will not be harvested under Amendment 11. That vessel can sell or lease that quota to another vessel. Or if a substantial amount of quota is not harvested in one year the biennial framework can take that into account when future allocations are made to achieve optimum yield.

*8. Unrecorded or illegal landings should not count toward qualification.*

The Council agrees and within the permit provision section there is reference to this point. The Council recommends that NMFS dealer data be used for eligibility. All trips should be capped at 400 pounds per trip for qualification purposes. The appeal process would allow a vessel to provide information to demonstrate that NMFS relied on incomplete data to deny eligibility and/or limit contribution factor. During the appeals process, if there is controversy over qualification, the Council recommends that NMFS apply/incorporate VTR data with dealer data.

*9. Qualifiers should not be penalized for not abusing the original purpose of the general category permit. One commented that those who did work full-time and abused the original intent of the permits will be rewarded with higher allocations than those that did not. Everyone who had a license before the control date should receive a limited entry permit with an equal allocation.*

Equal allocation was considered during this process, as well as equal allocation for several tiers with different historical activity. Ultimately, the Council adopted an individual allocation strategy because it was viewed as the fairest strategy to incorporate past history and dependence on the fishery.

*10. Each coastal state adjacent to the scallop grounds should have a minimum number of participants to promote parity among those states with active fisheries.*

This recommendation was raised during scoping and was considered by the Scallop Committee early in the Amendment 11 process. The Committee never recommended it as a final alternative to be considered by the Council. This fleet is some what mobile and the Council is supportive of qualifying vessels on an individual basis rather than a minimum number of vessels per state. Based on the data available, the expected qualifiers are from a variety of coastal states (See Table 82)

*11. If I am shut out of this fishery I feel I should be reimbursed by the government for my investments.*

The Magnuson Act states that fishing permits do not confer any right of compensation if they are revoked, limited or modified.

*12. Portion of allocations should be set aside for young fishermen from rural coastal areas that would like to follow traditional pursuits.*

The Council is supportive of young fishermen having an opportunity to fish in the general category scallop fishery. Since Amendment 11 will qualify vessels at various levels the cost of entering into the fishery should be reduced for permits with lower allocations. This may provide a better way for younger fishermen to afford entry into the fishery compared to a single class of limited entry permits without transferability provisions.

*13. One commenter explained that he upgraded his vessel after the control date and was issued a new permit number so will not qualify with the landings he caught with his original vessel.*

This issue was raised during scoping and the Council developed and approved an alternative that would allow a vessel to qualify for a permit if it upgraded or was sold, provided the vessel owner retained the general category history from the original permit (See Section 3.1.2.5.1.2). If a vessel upgraded during the qualification period or after, it can still use the landings history from the original qualifying vessel, provided the original owner retained the general category history.

*14. There should be no “re-rigging” clause.*

The Council agrees with this commenter. The Council did consider a “re-rigging” clause based on comments during scoping that some vessels were in the process of purchasing a vessel when the control date was implemented. But in the case of the general category scallop fishery, the Council does not support a “re-rigging” clause due to the explosion of effort in the year following the control date by many vessels that are no longer, or were not involved in the fishery before the control date. The risk of potentially abusing a “re-rigging” clause would increase with the high number of vessels that entered into the fishery after the control date was implemented and could ultimately qualify more vessels than the desired number of general category qualifiers under this program.

#### ***Permit Provisions***

Several comments addressed the permit provision section. There was both support and opposition to the alternatives for stacking permit allocations. Some also commented on the provision to allow permit history to qualify if it was retained by the selling vessel.

*15. NMFS commented that the Council should clarify their intent with stacking in terms of it being permanent and/or temporary, as well as several other stacking related clarifications.*

Based on the comment letter from NMFS during the public comment period, the Committee and Council clarified several issues that were not adequately explained in the DSEIS. The clarifications below were added to the document in response to concerns raised by NMFS and were included in the final motion that approved Amendment 11 at the June 2007 Council meeting.

#### Clarifications (from final motion):

- Section 3.1.2.5.4 (permit stacking) is for limited access general category qualifiers only – these alternatives would not apply to limited access vessels that may also qualify for a general category permit. Those vessels would not be permitted to stack limited access general category permits on a vessel that is limited access already.
- Clarify language of stacking alternatives to be that stacking could be permanent or on an annual basis and that a vessel could only lease/sell their entire allocation – not a portion of their allocation.
- When a vessel wants to permanently stack a general category limited entry permit it also must either transfer all of its federal limited access permits or permanently cancel such permits.

16. NMFS commented that the Council needs to specify how the 5% ownership cap is calculated – is it to be based on permits or percent of allocation – the document is not clear.

The Council agreed and instructed staff to clarify the language in the FSEIS that the 5% ownership cap is calculated based on percent of general category allocation and is specific to any ownership interest by an individual, corporation or other entity.

17. Some comment letters suggested that Amendment 11 include an owner operator requirement for general category vessels.

This issue was raised during scoping and the Scallop Committee considered it during development of Amendment 11. At the advisory panel level there was some support for this idea, but the motion to consider an owner operator requirement ultimately failed because some advisors explained that many vessels in the fishery now are not owner operator. After more investigation at the Committee level, it became clear that an owner operator clause would be difficult to implement and may not be effective in the federal process like it is at the state level (i.e. in the Maine lobster fishery).

#### ***Alternatives to reduce incentive to use trawl gear***

Most comments did not address this issue. However, NMFS included several comments about this section. First, NMFS commented that the alternative that includes a restriction specific for trawl gear when scallops is more than 5% of total regulated species onboard is not enforceable. NMFS also stated that general category vessels that qualify to use trawl gear should be issued a permit for trawl gear, as is done for the current limited access trawl fishery. NMFS requested that it be clear in the FSEIS if a current owner who fishes with trawl gear can qualify for his permit if the scallop landings used for eligibility were harvested with a dredge by a previous owner. The Council changed the proposed action so that it is consistent with NMFS' comment.

#### ***Sectors***

Several commenters, including NMFS and EPA, suggested that would general category vessels should be allowed to form voluntary sectors. One commenter did not support the 20% maximum allocation per sector; arguing that it simply restricts the number of members within a sector.

#### ***Interim measures***

Some expressed concern about derby fishing under the hard-TAC alternative, and supported the alternative without a hard-TAC. Several commented that a 10% TAC is too high for the interim period.

18. One suggested that vessels should be advised to review their NMFS landings history to determine if they will pre-qualify. Vessels that do not pre-qualify, or contest their individual allocation, should be denied permits, or be limited to landings based on NMFS records until the level of landings history is verified.

Because of due process law vessels under appeal should not be treated differently than vessels that qualify for a permit. Therefore, NMFS would not be able to deny a vessel a permit while an appeal was being considered. However, it is possible that some appeals could be settled relatively quickly, especially those appeals related to having a permit before the control date.

19. Amendment 11 should confirm that existing access area caps will be maintained during any transition period.

The specific general category management measures during the transition period will be specified in Framework 19, the action that will set specifications for fishing years 2008 and 2009. The transition period is expected to be about 12-18 months after Amendment 11 is implemented. Therefore, the specifics of the quarterly hard-TAC will be implemented in Framework 19 and at that time the Council can consider what percentages of access area TACs the general category fishery should be allocated per area.

#### Hard-TAC

Several commenters were in favor of an overall hard-TAC. Some (including NMFS if a hard-TAC was approved) suggested it be divided by quarters to minimize the incentive to derby fish. On the other hand, many commenters were not in favor of hard-TACs. EPA for example, suggested that unrestricted TACs encourage risk-taking behaviors.

#### Northern Gulf of Maine

Most comments were in favor of considering a separate program for the NGOM. One commenter opposed Option B as the boundary because it does not correspond with the exemption area established in Multispecies FW21, nor the historic availability of scallops in the GOM, and another commenter supported Option B. Several commenters supported No Action for the NGOM.

*20. NMFS commented that the Council needs to sufficiently justify the NGOM alternative in terms of conservation.*

The Council is supportive of a separate management system in the NGOM for the general category fishery. The rationale for this alternative explains why it is justified in terms of conservation of the scallop resource in the NGOM (See Section 3.1.4.4). In summary, a hard-TAC will be implemented for the federal portion of the scallop resource. All scallop landings in this area will count against the TAC including incidental levels of scallop catch. The reduced possession limit and other restrictions are expected to minimize increased effort in this area. Furthermore, regulations are under proposed rule that would prevent a vessel with a limited entry permit to declare out of that federal fishery and then fish in state waters. These measures are all reasons why this alternative is justified in terms of conservation. The Council designed this alternative to allow for a placeholder for future management of scallops in the NGOM if and when they return.

*21. One commenter suggested that the NGOM license should be given to people that held a license up until the Amendment 11 decision regardless of what they had for landings.*

The Council agrees that a vessel should not have to demonstrate landings history to qualify for this permit so that a wide range of vessels can maintain the opportunity to fish the scallop resource in this area. However, the Council selected the November 1, 2004 control date as the cut off to be consistent with the rest of the limited entry program under Amendment 11. The number of vessels that are expected to qualify under this alternative is about 2,484, vessels that obtained a general category permit in 2004 before the November 1, 2004 control date (reduced by the approximately 369 vessels that will qualify for the general category limited access permit).

#### Monitoring

Most comments did not focus on this topic.

1. *A comment from NMFS suggested that trip by trip reporting through VMS or IVR is not necessary to monitor an overall TAC or individual allocation.*

The Committee and Council considered this comment, but the Council's final recommendation includes mandatory reporting through VMS. While monitoring this fishery through VMS may be burdensome because of the number of permits and number of trips taken per year, the Council recommends that vessels be required to declare they are going on a general category trip and report scallop landings through VMS. The Council believes that reporting through VMS will improve enforcement and monitoring under an individual quota program. Enforcement will have a better idea of where and when IFQ vessels are going to land and how much scallop they should have on board.

#### Limited access fishing under general category

Some voiced support for these vessels to be permitted to fish under general category, and some did not. One commenter argued that permits should not be taken away from general category fishermen and given to limited access vessels under this action. Most of the commenters who supported that vessels should have the ability to fish under general category felt it should be restricted to those limited access vessels that qualify under the same criteria. Furthermore, most felt that allocations should be from a separate TAC, not the general category allocation.

*Response: See Section 3.1.6 and 5.1.1.6.1 for the rationale as to why the Council selected the proposed alternative compared to the other alternatives for this topic.*

#### Allocation alternatives

There was diverse input on this subject. Some argued that the general category allocation should be set at the lowest possible value to insure that overfishing does not occur and the fishery becomes sustainable. Furthermore, an allocation above 5% to the general category fishery defeats the purpose of establishing the control date in the first place. On the other hand many comments supported a higher allocation for the general category fishery. Several comments voiced concern that it is not right that the vast majority of the resource is going to be allocated to a relatively small number of limited access vessel owners. Furthermore, one argued that scallops are on federal bottom and public money is used to study, protect and regulate them, so more people should benefit from the resource. Lastly, several commenters touched on the issue of relative scale in terms of the impacts on the scallop resource from a general category vessel compared to a limited access vessel. One commented that his annual catch will be far less than the catch from one limited access trip, so the impacts are on a different scale.

*Response: See Section 3.1.7.2 and 5.1.1.7.2 for the rationale as to why the Council selected the proposed alternative compared to the other alternatives for this topic.*

2. *NMFS commented that it would not be able to effectively monitor a yellowtail flounder bycatch TAC specifically for the general category fishery because the yellowtail flounder bycatch TAC for that portion of the fleet could be extremely small.*

The Council agrees that for now it is not practical to monitor a very small yellowtail flounder TAC and recommends that the yellowtail flounder bycatch TAC remain as a fleetwide TAC.

Incidental catch - Not many comments focused on this issue.

24. NMFS commented that the Council must provide a description of how it will account for all scallop catch, specifically incidental catch, and cannot leave any harvest unaccounted for in mortality estimates.

In response to this comment the FSEIS clarifies that the Scallop PDT will estimate the amount of mortality from incidental catch in future framework actions. That level of mortality will be removed from the overall available scallop catch, similar to how TAC is reduced for both the research and observer set-aside program. The level of mortality from incidental catch will not be a hard TAC, rather the PDT will make an estimate in each biennial framework based on available information.

25. *The incidental catch alternatives do not adequately address historic incidental catch in excess of 40 pounds per trip. If the Council chooses to allocate in trips, then even if some vessels qualify they will be restricted to a specific number of 400 pound trips; which is not how they have historically fished.*

The Council recognized this issue as one drawback of allocation in 400 pound trips under the original preferred alternative for the limited entry general category program. The Council's final recommendation includes allocation in pounds; therefore, this issue is addressed and a qualifying vessel could land its scallop allocation in whatever amount it wants (up to 400 pounds per trip). Therefore, if a vessel is fishing for other species and catches 250 pounds of scallop, for example, if that vessel has an allocation of scallop quota it can land 250 pounds on that trip.

#### Measures to improve integration of data

Most public comment was opposed to changing the scallop fishing year in Amendment 11. However, NMFS voiced support for changing the fishing year and suggested that the arguments against changing the fishing year were not sufficiently articulated in the DSEIS. During the public comment period the industry provided reasons why not changing the fishing year outweighed the benefits of improving the timing and integration of survey and fishery data and these reasons have been added to the FSEIS as justification for the proposed action not to change the fishing year.

The list of reasons given include: 1) there is always a boom in fishing effort when a fishing year begins and that should be when yield is high. In the case of scallops, yield is highest in late spring so a March 1 start date is favorable to reduce mortality; 2) spring and summer are good weather months so more effort during that time of year is beneficial for safety; 3) scallop yield falls off in the fall when scallops spawn, so an August 1 start date would increase mortality; 4) the processing industry has developed over the last decade based on a March 1 start date, and there would be inventory management issues if the year changed. For example, since most scallops are caught in the spring and summer some are frozen and sold off during the winter when supply is lower. It is true business models could be changed if the fishing year changes, but that would come at a cost to the industry; 5) the market is better in spring and summer when demand for fresh scallops is higher, so it makes sense to keep the start of fishing year when demand is highest; 6) since the entire scallop survey program is in flux and we are not sure what vessel or vessels are going to be used, when the survey is going to take place, and how the scallop resource is going to be assessed in the future why change the fishing year now when everything could be different next year; 7) survey technology is improving and information is becoming available much sooner; and 8) from a port and fishing pier perspective it helps that the

scallop and groundfish fishing years are staggered. Vessels are usually worked on right before the opening of a fishing year, so the scallop vessels are worked on first, and then the groundfish vessels. In a port like New Bedford, it would be very difficult for all the vessels to get worked on at the same time if the fishing years both started on May 1.

#### Other measures

Not many comments focused on this issue.

*26. One way to solve the issue of 50 bushels not equally 400 pounds would be to change the regulations to be consistent with how the possession limit is worded for vessels that today fish south of 42 20N, they are restricted to the 50 bu. cap when the vessel is shoreward of the demarcation line [648.52 (d)]. If 42 20N was removed from the regulations then it would apply for all areas and achieve then same thing.*

The Committee discussed this option during development of Amendment 11 but recommended a maximum of 100 bu. rather than no cap seaward of the demarcation line. One-hundred bushels was recommended as a level that would improve compliance with the possession limit while fishing, but not increase the incentive to highgrade.

#### **7.1.4.3 Description of affected environment and impacts of alternatives under consideration**

Overall, there were not many comments related to the description of the environment section or the analysis of impacts section. After review of the DSEIS, EPA rated this action as “LO” (lack of objections); the alternatives that were examined, and the description of impacts were satisfactorily addressed.

*27. One commenter said that Amendment 11 is not based on scientific information that can be replicated. And it does not comply with several other national standards related to the needs of affected states, and efficiency.*

The Council disagrees with this comment. Section 6.1 summarizes how this action and the FSEIS is in compliance with all national standards, including use of best scientific information, needs of different coastal states and efficiency.

#### **7.1.4.4 Other comments / General Comments**

The comments below were from written comments on Amendment 11 but were not directly related to the alternatives under consideration. In general these comments were not relative to the scope of Amendment 11 and the stated purpose and need for the action. The comments have been listed below since they are part of the public comment process, but individual responses have not been prepared since they are not related to the proposed action or alternatives under consideration. Some of these comments may be addressed in future scallop actions if the Council decides to identify them as priority issues.

- *All quotas should be cut by 50% this year and 10% each year thereafter; the interests of our children are being severely compromised. Stop catering to the commercial fish profiteers and the fake information they provide to you.*
- *Regulations have changed the industry, and the general category fishery is no longer the traditional small boat fishery it used to be.*

- *If there are any members on the board from any one user group, there should be an equal number of board members from the other user group providing equal representation. If this cannot be done, then no one on the board should have any affiliation to any particular user group. Another commenter raised concern about conflict of interest in this process.*
- *The management process has ignored science that supports the cyclical nature of scallops and the benefits of harvesting slower growing scallops. Management measures like larger ring sizes have targeted the fastest growing scallops of the year class thus creating reverse genetic selection over time. Ring size increase has also created a market share for small imported scallops.*
- *Managers have not investigated how predation of scallops by starfish is impacting mortality. If general category vessels were required to land starfish the mortality from that fishery could be offset by removing the predators.*
- *The fishery should be managed on a more real-time basis, with tools for rapid action.*
- *Scope of Amendment 11 should be widened to include use of area management in mire inshore areas.*
- *The scallop survey should be expanded to cover more areas where general category vessels have been fishing; we may be missing recruitment events in areas that are not sampled on the survey.*
- *Why did the Elephant Trunk Area open in March? It should have opened later so the scallops in there could spawn.*

### **7.1.5 List of Preparers**

This document was prepared by members of the New England Fishery Management Council staff and Scallop Plan Development Team, with input from both the Scallop and General Category Scallop Advisory Panel

#### ***Scallop Plan Development Team***

Deirdre Boelke, NEFMC Staff, PDT Chair  
 Peter Christopher, NMFS Sustainable Fisheries  
 William DuPaul, VIMS  
 Demet Haksever, NEFMC Staff  
 Dvora Hart, NEFSC  
 Kevin Kelly, Maine DMR  
 Erin Kupcha, NMFS Observer Program  
 Lynn Lankshear, NMFS Protected Species  
 Edward Marohn, USCG  
 Kimberly Murray, NEFSC Protected Species  
 Julia Olsen, NEFSC Social Sciences  
 Sarah Thompson, NMFS NEPA Staff  
 Stanley Wang, NMFS Fisheries Statistics

#### ***New England Fishery Management Council Staff***

Deirdre Boelke, NEFMC Staff, Scallop FMP Coordinator  
 Andrew Applegate, NEFMC Staff

Christopher Kellogg, NEFMC Staff  
 Patricia Fiorelli, NEFMC Staff, Public Affairs, Protected Resources  
 Louis Goodreau, NEFMC Staff, Enforcement Analyst  
 Demet Haksever, NEFMC Staff, Economic Analyst  
 Leslie-Ann McGee, NEFMC Staff, EFH Coordinator  
 Woneta Cloutier, NEFMC Staff, Administrative Assistant for Scallop FMP

***Other Contributors***

Louis Jachimczyk, NMFS Office of Law Enforcement  
 Kurt Wilhelm, NMFS Fisheries Statistics Office

***Scallop Advisory Panel***

Dan Cohen, Cape May, NJ	Frank McLaughlin, Yorktown, VA
Gib Brogan, Mystic, CT	Donald Myers, West Creek, NJ
Ron Enoksen, New Bedford, MA	Ray Starvish, Jr., Taunton, MA
James Fletcher, Manns Harbor, NC	Richard Taylor, Gloucester, MA
Gary Hatch, Owls Head, ME	Edward Welch, New Bedford, MA
Kirk Larson (Vice-Chair), Barnegat Light, NJ	William Wells (Chair), Yorktown, VA
Michael Marchetti, Wakefield, RI	

***General Category Scallop Advisory Panel***

James Brindley, Barnegat Light, NJ	Phillip Michaud Jr. (Chair), Eastham, MA
Raymond Hilshey, Gloucester, MA	Donald Myers, West Creek, NJ
Robert Keese (Vice-Chair), W. Chatham, MA	Mark John Plachowicz, Atkinson, NH
Jeffrey Kraus, Southampton, NY	John Stuart, Portland, ME
Michael Marchetti, Wakefield, RI	John Wood, Machiasport, ME

The following agencies were consulted during the development of this amendment, either through direct communication/correspondence and/or participation on the Scallop Committee or PDT:

- NOAA Fisheries, National Marine Fisheries Service, Northeast Regional Office, Gloucester MA
- Northeast Fisheries Science Center, Woods Hole MA
- Mid-Atlantic Fishery Management Council

**7.1.6 DSEIS and FSEIS Circulation List**

Initially, the Council distributes the Draft Amendment 11 document and DSEIS to individuals who contributed to the development of this document, including Scallop PDT and AP members. These individuals are listed in the previous section of this document.

As part of the review process for consistency with applicable laws such as the CZMA and the ESA, the Council distributes the Draft and Final FMP/EIS to the following coastal states and agencies:

Maine Coastal Program  
 New Hampshire Coastal Program

Massachusetts Coastal Zone Management  
Rhode Island Coastal Resources Council  
Connecticut Office of Long Island Sound Programs  
New York Division of Coastal Resources  
New Jersey Division of Coastal Resources  
Delaware DNREC  
Maryland Coastal Zone Management Division  
Virginia Coastal Resources Management Program  
North Carolina Division of Coastal Management  
Pennsylvania Department of Environmental Protection  
South Carolina Ocean and Coastal Resources Management  
Mid-Atlantic Fishery Management Council  
Atlantic States Marine Fisheries Commission

In addition, the Council prepares a notice to its “Interested Party” list for Atlantic sea scallop that announces the availability of the DSEIS and public hearing document and announces the schedule for public hearings. A Notice of Availability of the DSEIS is also published in the *Federal Register*. At that time, anyone on the “Interested Party” list or any other member of the public may call the Council office and request a copy of the DSEIS for their review. There are over 500 individuals on the “Interested Party” mailing list for Atlantic sea scallop. The Council also made the Amendment 11 DSEIS available for downloading through its website ([www.nefmc.org](http://www.nefmc.org)).

A similar process will be used by the Council for distribution and circulation of the final Amendment 11 and FSEIS document.

## **7.2 MARINE MAMMAL PROTECTION ACT (MMPA)**

Section 4.3 contains a description of marine mammals potentially affected by the Scallop Fishery and Section 5.3 provides a summary of the impacts of the range of alternatives. A final determination of consistency with the MMPA will be made by the agency when Amendment 11 is implemented.

## **7.3 ENDANGERED SPECIES ACT (ESA)**

Section 4.3 contains a description of marine mammals potentially affected by the Scallop Fishery and Section 5.3 provides a summary of the impacts of the range of alternatives. A final determination of consistency with the ESA will be made by the agency when Amendment 11 is implemented.

## **7.4 ADMINISTRATIVE PROCEDURE ACT (APA)**

The Council has held numerous meetings open to the public on Amendment 11. A summary of where these meetings have been held is provided in Section 8.0 of this document. Opportunity for public comment on Amendment 11 will be provided when the DSEIS for Amendment 11 is released for public comment and the Council will meet in a public meeting to adopt Amendment 11. After submission to NMFS, a proposed rule and notice of availability for Amendment 11 under the M-S Act will be published to provide opportunity for public comment. If approved,

NMFS would consider an appropriate delay in effectiveness for Amendment 11 to provide the public with opportunity to prepare for the new regulations.

#### **7.5 PAPERWORK REDUCTION ACT (PRA)**

Amendment 11 contains several alternatives that would have new collection of information requirements subject to the PRA. The collection of information requirements associated with the measures proposed in this amendment were addressed through a separate analysis conducted by NMFS. The PRA package prepared in support of this action, including the required forms and supporting statements, was submitted by the NMFS Northeast Regional Office under separate cover.

#### **7.6 COASTAL ZONE MANAGEMENT ACT (CZMA)**

The Council has adopted final measures and submitted Amendment 11 to NMFS; NMFS will request consistency reviews by CZM state agencies.

#### **7.7 INFORMATION QUALITY ACT**

##### ***Utility of Information Product***

The proposed document includes: A description of the management issues, a description of the alternatives considered, and the reasons for selecting the preferred management measures, to the extent that this has been done. These actions propose modifications to the existing FMP. These proposed modifications implement the FMP's conservation and management goals consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) as well as all other existing applicable laws.

This proposed amendment is being developed as part of a multi-stage process that involves review amendment document by affected members of the public. The public has had the opportunity to review and comment on management measures during several meeting identified in Section 8.0 of this document. In addition, the public will have further opportunity to comment on this amendment through the 45-day public hearing process, and an additional NEFMC meeting, and again after the NMFS publishes a request for comments notice in the Federal Register (FR).

The Federal Register notice that announces the proposed rule and the implementing regulations will be made available in printed publication and on the website for the Northeast Regional Office. The notice provides metric conversions for all measurements.

##### ***Integrity of Information Product***

The information product meets the standards for integrity under the following types of documents:

Other/Discussion (e.g., Confidentiality of Statistics of the Magnuson-Stevens Fishery Conservation and Management Act; NOAA Administrative Order 216-100, Protection of Confidential Fisheries Statistics; 50 CFR 229.11, Confidentiality of information collected under the Marine Mammal Protection Act.)

##### ***Objectivity of Information Product***

The category of information product that applies for this product is “Natural Resource Plans.”

In preparing specifications documents, the Council must comply with the requirements of the Magnuson-Stevens Act, the National Environmental Policy Act, the Regulatory Flexibility Act, the Administrative Procedure Act, the Paperwork Reduction Act, the Coastal Zone Management Act, the Endangered Species Act, the Marine Mammal Protection Act, the Data Quality Act, and Executive Orders 12630 (Property Rights), 12866 (Regulatory Planning), 13132 (Federalism), and 13158 (Marine Protected Areas).

This amendment is being developed to comply with all applicable National Standards, including National Standard 2. National Standard 2 states that the FMP's conservation and management measures shall be based upon the best scientific information available. Despite current data limitations, the conservation and management measures proposed to be implemented under this amendment are based upon the best scientific information available. This information includes complete NMFS dealer weighout data through 2005, and includes incomplete dealer weighout data for 2006. Dealer data is used to characterize the economic impacts of the management proposals. The specialists who worked with these data are familiar with the most recent analytical techniques and with the available data and information relevant to the scallop fishery.

The policy choices (i.e., management measures) proposed to be implemented by this specifications document are supported by the available information. The management measures contained in the amendment document are designed to meet the conservation goals and objectives of the FMP.

The supporting materials and analyses used to develop the measures in the amendment are contained in the amendment document and to some degree in previous amendments and/or FMPs as specified in this document.

The review process for this amendment involves the New England Fishery Management Council, the Northeast Fisheries Science Center, the Northeast Regional Office, and NOAA Fisheries headquarters. The document was prepared by staff of the Council and Center with expertise in scallop resource issues, habitat issues, economics, and social sciences. The Council review process involves public meetings at which affected stakeholders have opportunity to provide comments on the specifications document. Review by staff at the Regional Office is conducted by those with expertise in fisheries management and policy, habitat conservation, protected species, and compliance with the applicable law. Final approval of the specifications document and clearance of the rule is conducted by staff at NOAA Fisheries Headquarters, the Department of Commerce, and the U.S. Office of Management and Budget.

## **7.8 E.O. 12866**

### **7.8.1 Introduction**

The Regulatory Impact Review (RIR) provides an assessment of the costs and benefits of proposed actions and other alternatives in accordance with the guidelines established by Executive Order 12866. The regulatory philosophy of Executive Order 12866 stresses that in

deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives and choose those approaches that maximize the net benefits to the society.

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

The Amendment 11 document contains all the elements of the RIR/RFA, and the relevant sections are identified by reference to the document. The economic impacts section of this document (Section 5.4) provides the basis for the Regulatory Flexibility Analysis and consideration of impacts relative to EO 12866. The Initial RFA will be prepared for the final action and will summarize impacts of the proposed action and its alternatives. The economic impacts of the proposed action will be evaluated relative to EO 12866.

The purpose of and the need for action are described in Section 2.0. The description of the each selected alternative including the no action alternative is provided in Section 3.0.

### **7.8.2 Economic Impacts**

Section 5.4 evaluated economic impacts of the Amendment 11 proposed measures by and alternatives considered by the Council. Sources of uncertainty are identified in Section 5.4.22.3. The combined economic impacts of the limited entry, TAC management, qualification criteria, qualification period, individual allocation, contribution factor and other measures are summarized in Section 5.4.1.1. The individual measures considered by Amendment 11 are discussed in relevant subsections of Section 5.4 shown below:

- Economic impacts of limited entry combined with various qualification criteria and time period alternatives are analyzed in Section 5.4.3 and the impacts of limited access combined with a general category TAC are analyzed in Section 5.4.5.
- Economic impacts of qualification criteria alternatives on the general category permit holders and vessels that qualify for limited access are analyzed in Section 5.4.3. The impacts on revenues, fishing costs, average net revenues, crew and vessel shares are analyzed in Section 5.4.5 for various levels of general category TAC. The impacts of 1000 lb. qualification criteria and other alternatives on recent participants of general category fishery are analyzed in Section 5.4.6.
- Economic impacts of qualification period alternatives combined with the qualification criteria are analyzed in several sub-sections of Section 5.4. The impacts on the general category permit holders and vessels that qualify for limited access are analyzed in Section 5.4.3. The impacts on revenues, fishing costs, average net revenues, crew and vessel shares are analyzed in Section 5.4.5 for various levels of general category TAC. The impacts of 5-year lb. qualification period and other alternatives on recent participants of general category fishery are analyzed in Section 5.4.6.
- Economic impacts of contribution factor (qualification amount) are analyzed in Section 5.4.7.1 – 5.4.7.2.
- Economic impacts of allocation of access for general category limited access qualifiers are analyzed in Section 5.4.8.
- Economic impacts of limited entry permit provisions are analyzed in Section 5.4.9.

- Economic impacts of measures for vessels that fish for scallops with trawl gear are analyzed in Section 5.4.10.
- Economic impacts of sectors and harvesting cooperatives are analyzed in Section 5.4.11.
- Economic impacts of interim measures for transition period to limited entry are analyzed in Section 5.4.12.
- Economic Impacts of Northern Gulf of Maine (NGOM) Scallop Management Area are analyzed in Section 5.4.14.4.
- Economic Impacts of Monitoring Provisions are analyzed in Section 5.4.15.
- Impacts of limited access fishing under general category rules are analyzed in Section 5.4.16.1.
- Impacts of allocation of quota for limited access fishing under general category rules are analyzed in Section 5.4.16.2.
- Impacts of allocation between limited access and general category fisheries are analyzed in Section 5.4.17.
- Impacts of incidental catch permit are analyzed in Section 5.4.18.
- Impacts of changing the issuance date of general category permits are analyzed in Section 5.4.19.
- Impacts of other measures (3.3) are analyzed in Section 5.4.20 and 5.4.21.
- Data, methods and uncertainties are discussed in Section 5.4.23.

### **7.8.3 Summary of economic impacts**

The combined impacts of the proposed regulations on scallop fishery, on consumers and total economic benefits to the nation are analyzed in Section 5.4.3 and the economic impacts of the individual measures are discussed in subsections of 5.4 as indicated above. The economic costs of benefits of the proposed measures are compared to no action. Under no action the general category fishery would remain an open access fishery subject to the 400 lb. trip limit. Status quo scenario is based on the same assumptions except that any short term increase in overfishing of the scallop resource would to be corrected by framework action in accordance with the Sea Scallop FMP regulations.

The combined economic impacts of the limited access program and a separate TAC for the general category fishery are expected to be positive for the sea scallop fishery as a whole compared to taking no action and status quo management for the following reasons:

- Since with no action there are no limits on the number of trips a vessel could take and no limits on the number of vessels able to participate in the general category fishery, total fishing effort in this fishery could increase in response to higher scallop prices, to an increase in resource productivity, or to changes in fishing opportunities in other fisheries. As a result, scallop mortality could exceed sustainable levels, reducing the stock biomass, the future yield, and revenues from the scallop resource. This would have negative economic impacts on the consumer surplus by reducing landings and increasing prices. It would also have negative impacts on producer surplus by reducing revenues and increasing the costs of fishing per pound of scallops (due to lower LPUE). Consequently, total benefits, measured as the sum of consumer and producer surpluses, would decline under no action. Therefore, limited access will have positive economic impacts on the consumer and producer surpluses and total benefits for the nation compared to no action. Limited access will reduce the risks of overfishing of the scallop resource by preventing

new entry to the general category fishery. It will also prevent the profits of the qualifiers and limited access vessels from dissipating due to increase in capacity.

- The economic impacts of separate TAC allocation combined with limited access will also be positive for the sea scallop fishery. In the absence of measures that control overall scallop landings by general category vessels, it is possible even with the limited entry for the fishing mortality to increase beyond the target levels if the vessels that qualify for limited access increase the number of trips targeting scallops. This could have negative impacts on both the limited access and the general category vessels as scallop catch per day-at-sea declines and fishing costs per pound of scallops increase. The increase in costs and landings would reduce producer surplus for the scallop fishery. The decline in landings combined with an increase in prices could result in a lower consumer surplus. Therefore, no action could have negative impacts on the total national benefits, which is measured as sum of producer and consumer surpluses. If scallop harvest is allocated between limited access and general category vessels by a separate TAC for general category, the fishing mortality due to general category fishery will be prevented from exceeding the sustainable levels. Therefore, TAC allocation combined with limited access will have positive economic impacts both on the consumer and producer surpluses and total benefits for the nation compared to no action both in the short- and the long-term. (See Section 5.4.2, Section 5.4.3, Section 5.4.5, and Section 5.4.17 for further analysis).
- TAC management combined with limited entry and allocation for individual vessels will prevent derby-style fishing and the negative economic impacts associated with it.

A brief summary of the impacts of the distributional impacts and the impacts of the individual measures proposed by Amendment 11 are as follows:

- The economic impacts of the proposed action will not be uniform among the vessels qualify for limited access and will vary according to the level of dependence on the general category fishery as a source of fishing income, the income from other species, the vessel size and fishing costs. These impacts are analyzed in several subsections of Section 5.4 and in the IRFA analysis provided Section 7.9.6 below.
- The economic impacts of the proposed measures will be negative on vessels that did not have a permit or did not land scallops before the control date of November 1, 2004. The economic impacts will also be negative on vessels that do not qualify for limited access because they do not meet the 1000-pound poundage criteria. Overall, 373 out of 597 vessels that participated in the scallop fishery in 2005 fishing year and earned \$29.9 million in revenue from scallop fishing will not qualify for limited access. Finally, the proposed 5% TAC allocation will reduce the scallop landings of many vessels that qualify for limited access compared to their best year and/or recent landings. Therefore, short-term economic impacts of the proposed action will be negative on many recent participants of the scallop fishery although the magnitude of impacts will vary from one vessel to according to the level of historical activity, dependence on the scallop fishery, number of years of participation. (See Section 7.9.6 below).
- As a result, the short-term impacts of the proposed action on employment (as measured by CREW\*DAS) in the general category fishery will be negative. The impacts on the employment in the limited access fishery will be positive, however. The percentage

decline in employment in the scallop fishery as a whole could be somewhere between 6% to 15% in the short-term (Table 78). Over the long-term, however, taking no action and letting more vessels to enter the general category fishery and/or letting fishing effort by the participants in this fishery to increase could cause negative impacts on employment. If further expansion of the general category effort is not prevented, overfishing could occur and consequently could lead to more stringent effort reduction measures, such as reduced DAS allocations for the limited access fishery and/or lower possession limits for the general category fishery. Therefore, the proposed action is expected to have positive impacts on employment over the long-term and compared to taking no action.

- Despite these negative short-term distributional impacts on many vessels, the proposed action includes several measures that will provide access to this fishery for a variety of vessels from coastal communities along the east coast. The qualification criteria (1,000 pounds) for limited access is kept at a relatively low level by the Council to provide access to many vessels that have participated in this fishery at various levels. The allocation of fishing privileges considers historical participation in the fishery to the extent possible, but also takes into account the recent levels of general category fishing by providing access to those vessels that participated in the fishery from 2000-2004. Vessels will receive an individual allocation based on landings from their best year, and vessels that have been in the fishery for a longer period of time will have their landings multiplied by a weighting factor. Since the proposed limited access program will allocate access in individual pounds, vessels will have the flexibility to harvest their allocation during most optimum times. Although maintaining the 400 pound possession limit will cause some inefficiencies and result in higher costs compared to a higher (2000 pounds alternative) or no possession limit, this provision will help preserve the historical small-boat character of this fleet and allow the catch to be more effectively monitored.
- The proposed program for separate limited entry for the NGOM will provide a reduced level of access for more vessels, particularly vessels that are from smaller fishing communities in the NGOM that depend on having some level of access to various fisheries. The incidental catch permit will enable more vessels that land a small amount of scallops to benefit by permitting them to sell the product they catch up to 40 pounds. These measures will have positive economic impacts on vessels that do not qualify for limited access general category fishery.
- Several measures included in the proposed action will help to mitigate the potential negative economic impacts on some vessels that qualify for limited access. Qualifying vessels will be permitted to stack allocation up to 2% of the entire general category allocation and to lease or buy allocation on a permanent or temporary basis. This will enable vessels that do not receive an adequate amount of allocation to remain viable and remain in the fishery if they want to purchase additional quota. Furthermore, there is a provision to allow the formation of voluntary sectors, which could have positive impacts on some participants by allowing fishermen to combine their allocations when the allocations of individual vessels are too small to make scallop fishing profitable.
- The 5% general category TAC will have positive economic impacts on the limited access vessels by increasing estimated landings and revenues by this fishery by 7% compared to the status quo levels. Given that the DAS allocations for limited access under the status quo were determined after taking the predicted general category effort from total DAS

(11% in Framework 18), reducing the share general category fishery below the levels experienced recently will increase the total DAS available for the limited access vessels.

- By limiting the general category landings at 10% of the total scallop landings, the proposed interim measures will prevent a short-term increase in overfishing of the scallop resource and also will prevent a consequent decline in limited access allocations to compensate for an increase in general category effort. Quarterly TAC will reduce the derby style fishing and negative impacts associated with it to some extent.
- Proposed permit provisions will indirectly benefit all participants by ensuring that only those vessels that provide verification of permit and landings history will qualify and receive allocation based on accurate records. The proposed action will allow a vessel to increase its fishing power without any restriction providing flexibility for the vessels to adjust their fishing power to changing circumstances and to lower fishing costs. The 5% ownership restriction will prevent a few individuals or corporations from dominating the fishery and will help to redistribute gains from the limited access more equitably among more fishermen. Voluntary Relinquishment of Eligibility and Permit Splitting (3.1.2.5.6) provisions are expected to have positive economic impacts on the sea scallop fishery as a whole by reducing and/or preventing an increase in capacity in the general category fishery. Permit renewals and confirmation of permit history provisions would enable vessel owners that qualify for limited access to retain their fishing history and to transfer it to a replacement vessel in the future with positive economic impacts. Reporting landings through VMS as proposed by this amendment will have positive indirect economic benefits for the sea scallop fishery by improving the monitoring of the fishing effort in the general category fishery and ensuring better compliance with the regulations. Changing the general category permit to March 1 will allow a better estimation of the number of participants, the level of effort in the fishery and allocation of TAC by aligning the issuance date with date for the limited access fishery.
- The results of the analyses summarized above and in the following sections should be interpreted with caution. The number of affected vessels, scallop landings and revenues were estimated from the 2005 and 2006 fishing year (up to January 2006) data. These numbers could change in the future depending on several factors, including in changes in scallop resource biomass and yield, scallop prices, import prices for scallops, fishing expenses, VMS costs, changes in profitability of the scallop trips relative to trips targeted on other species, and changes in management measures affecting scallop fishery and other fisheries that limited access and general category vessels participate.

#### **7.8.4 Enforcement Costs**

The enforcement impacts and safety implications of the proposed measures are discussed in Section 5.6.3 of Amendment 11. The qualitative analysis included a discussion of the pros and cons of the proposed alternatives from an enforcement perspective. Enforcement costs and benefits of the proposed options for Amendment 11 are discussed in Section 5.4.22. Section 3.1.5 of Amendment 11 also provided a description of the alternatives for improving data collection and monitoring.

If Amendment 11 is approved as the Council recommends, it is the agency's responsibility to implement and enforce the amendment. Overall, there are costs the agency will incur to implement and enforce this action. While there are several mechanisms already in place that will

aid in enforcement and monitoring of this program (i.e. VMS monitoring and data processing), additional enforcement resources will be needed to ensure compliance with the proposed action.

### **7.8.5 Determination of Significant Regulatory Action**

Executive order 12866 defines a “significant regulatory action” as one that is likely to result in: a) an annual effect on the economy of \$100 million or more, or one which adversely affects in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; b) a serious inconsistency or interference with an action taken or planned by another agency; c) a budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; d) novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this executive order.

- Overall impacts on net benefits are expected to be positive, but the proposed regulations are not expected to not have an annual impact on the economy of \$100 million or more. Proposed measures will not adversely affect in a material way the economy, productivity, competition, public health or safety, jobs or state, local, or tribal governments or communities in the long run. In the short-term, however, there could some adverse economic impacts on recent participants as discussed in the summary above and in Section 7.9.6 of IRFA. As a result the proposed action could adversely affect, in the short-term, the jobs and/or communities associated with the vessels that will be excluded from limited access or vessels that will receive allocation pounds much less than their scallop landings in the recent years. For this reason, Amendment 11 would constitute a “significant regulatory action”.
- The proposed action also does not interfere with an action planned by another agency, since no other agency regulates the level of scallop harvest.
- It does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients.
- Amendment 11 it will not raise novel legal and policy issues. Limited access program was implemented in several fisheries of New England and individual allocation of quota was implemented in the other fisheries and regions of the U.S.

## **7.9 INITIAL REGULATORY FLEXIBILITY ANALYSIS (IRFA)**

The purpose of the Regulatory Flexibility Analysis (RFA) is to reduce the impacts of burdensome regulations and record-keeping requirements on small businesses. To achieve this goal, the RFA requires government agencies to describe and analyze the effects of regulations and possible alternatives on small business entities. Based on this information, the Regulatory Flexibility Analysis determines whether the proposed action would have a “significant economic impact on a substantial number of small entities.”

### **7.9.1 Problem Statement and Objectives**

The purpose of the action and need for management is described in Section 1.2 and goal and objectives in Section 2.0 of the Amendment 11 document.

## **7.9.2 Management Alternatives and Rationale**

The proposed action and no action alternative are described in Section 3.0.

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

### **7.9.4 Description of the small business entities**

The RFA recognizes three kinds of small entities: small businesses, small organizations, and small governmental jurisdictions. It defines a small business in any fish-harvesting or hatchery business as a firm that is independently owned and operated and not dominant in its field of operation, with receipts of up to \$4.0 million annually. The vessels in the Atlantic sea scallop fishery could be considered small business entities because all of them grossed less than \$3 million according to the dealer's data for 2004 to 2006 (up to the end of January 2007) fishing years (Table 20). According to this information, annual total revenue averaged about \$940,065 in 2004, and over a million in 2005 fishing year per limited access vessel. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than \$3 million per vessel. Average scallop revenue per general category vessel was \$35,090 in 2004 and \$88,702 in 2005 fishing years. Average total revenue per general category vessel was higher, exceeding \$240,000 in 2004 and 2005 fishing years. According to the preliminary estimates average revenues per vessel were lower in 2006 fishing year for the first 11 months for all permit categories because of lower scallop landings and prices.

The proposed regulations of Amendment 11 would affect vessels with limited access scallop and general category permits. Section 4.4 (Fishery-related businesses and Communities) of Amendment 11 document provides extensive information on the number, the port, the state, and the size of vessels and small businesses that will be affected by the proposed regulations. The current information on the number of scallop permits for the years 1997 to 2006 are provided in Table 209. According to the recent permit data, there were 318 vessels that obtained full-time limited access permits in 2006, including 55 small-dredge and 14 scallop trawl permits. In the same year, there were also 32 part-time and 1 occasional limited access permit in the sea scallop fishery. In addition, 2,501 permits were issued to vessels in the open access General Category and over 500 of these vessels landed scallops during the last two years (Table 20).

**Table 209. Scallop Permits by category**

Permit category	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006*
Full-time	204	203	213	220	224	234	238	242	247	249
Full-time small dredge	3	2	1	3	13	25	39	48	56	55
Full-time net boat	27	23	16	17	16	16	16	15	18	14
<b>Total full-time</b>	<b>234</b>	<b>228</b>	<b>230</b>	<b>240</b>	<b>253</b>	<b>275</b>	<b>293</b>	<b>305</b>	<b>321</b>	<b>318</b>
Part-time	16	11	12	16	14	14	10	4	3	2
Part-time small dredge	9	7	3	4	6	8	19	26	29	30
Part-time trawl	30	27	22	20	18	10	8	3		
<b>Total part-time</b>	<b>55</b>	<b>45</b>	<b>37</b>	<b>40</b>	<b>38</b>	<b>32</b>	<b>37</b>	<b>33</b>	<b>32</b>	<b>32</b>
Occasional	2	3	4	4	5	4	3	3	1	1
Occasional trawl	24	19	20	16	19	15	8	5	5	
<b>Total occasional</b>	<b>26</b>	<b>22</b>	<b>24</b>	<b>20</b>	<b>24</b>	<b>19</b>	<b>11</b>	<b>8</b>	<b>6</b>	<b>1</b>
<b>Total Limited access</b>	<b>315</b>	<b>295</b>	<b>291</b>	<b>300</b>	<b>315</b>	<b>326</b>	<b>342</b>	<b>346</b>	<b>359</b>	<b>351</b>
<b>General category</b>	<b>2002</b>	<b>1939</b>	<b>2096</b>	<b>2263</b>	<b>2378</b>	<b>2512</b>	<b>2574</b>	<b>2827</b>	<b>2950</b>	<b>2501</b>

\* Updated as of October 2006.

**Table 210. Active scallop vessels by permit category (Dealer data)**

Permit Plan	Data	2004	2005	2006*
General Category	Number of vessels	419	598	529
	Total number of trips	8,808	21,497	12,281
	Scallop pounds per vessel	6,721	11,656	9,592
	Average scallop revenue per vessel	35,090	88,702	58,158
	Average total revenue per vessel	249,167	260,942	139,755
	Total scallop landings	2,816,279	6,900,578	5,045,262
Limited Access	Number of vessels	323	334	323
	Total number of trips	4,521	5,292	2,758
	Scallop pounds per vessel	184,194	134,442	127,001
	Average scallop revenue per vessel	940,065	1,038,976	772,914
	Average total revenue per vessel	988,401	1,072,991	803,873
	Total scallop landings	59,494,630	44,903,637	41,021,231
Total number of vessels		742	932	852

\*Preliminary estimates including January 2007. Fishing year February 28, 2007.

## 7.9.5 Determination of significant effects

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

The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of "small entity"), not the difference between segments of small entities. Amendment 11 is not expected to have significant regulatory impacts on the basis of the disproportionality criterion for the following reasons:

1. The majority of the permit holders in the sea scallop fishery are considered small business entities.

2. Although proposed measures are expected to affect some vessels within the scallop fleet differently than others as discussed in Section 7.9.6, these differential impacts are not relevant for disproportionality criterion. The changes in profits, costs, and net revenues due to Amendment 11 are not expected to be disproportional for small versus large entities since all entities, that is, all vessels participating in the scallop fishery are considered small.

3. The proposed action is not expected to place a substantial number of small entities at a significant competitive disadvantage relative to large entities.

The profitability criterion will apply if the regulation significantly reduces profit for a substantial number of small entities. The proposed action is expected to have differential impacts on the profits of the vessels depending on whether they qualify for limited access and whether they derive an important part of their income from scallop fishing. The impacts will also vary according to the permit category. The following section provides a summary of the economic impacts from the proposed action, and discusses the mitigating factors. The relevant section of Amendment 11, which discusses the rationale and impacts of these measures are also identified.

#### **7.9.6 Summary of the combined economic impacts of the limited access measures**

The economic impacts of the proposed action on small business entities were evaluated in Section 5.4 from two perspectives and compared to economic impacts:

- In the short term and under status quo management.
- If no action is taken to prevent new entry and further expansion of effort in the general category fishery (medium to long-term).

IRFA guidelines suggest that the impacts both in the short- and medium-term to be considered.

The short-term economic impacts of the proposed action will be negative for many vessels, but the magnitude of impacts will differ according to the level of historical activity, dependence on the scallop fishery, number of years of participation and whether they qualify for limited access general category fishery. The impacts of the proposed measures on the limited access vessels will also be different. The distributional impacts of the proposed alternatives were analyzed in Section 5.4.6 for four different groups of general category vessels:

- 1) Vessels that had a permit and were active before the control date and qualify for limited access (Group 1).
- 2) Vessels that had a permit and were active before the control date but do not qualify for limited access due to the poundage criteria (Group 2):
- 3) Vessels that had a permit before the control date but were not active until after the control date and thus do not qualify for limited access (Group 3):
- 4) Vessels that did not have a permit before the control date and thus do not qualify for limited access but were active during the recent years (Group 4):

Limited access program will have negative economic impacts on the vessels in groups 2, 3 and 4 since these vessels will not be able to access the limited access general category fishery unless they buy a general category permit from another vessel. According to the estimates, there were 373 such vessels out of a total 597 vessels that were active in the general category fishery in 2005 fishing year, which earned a total of \$29.9 million revenue from scallop fishing. The short-term impacts of the proposed action is evaluated compared to recent activity of these vessels in

2005 fishing year, which represents activity right after the control date for which complete data for the whole fishing year exists. Although the general effort in this year increased to 14.09%, above the 11% estimated in Framework 11 for status quo, it is possible for the same level of activity in the general category fishery to continue and even to increase with status quo management. The impacts of the proposed measures will differ, however, between these groups and from vessel to vessel in each group as summarized below (Table 211 and Table 212):

- Starting with the last group, the proposed limited entry program will have negative impacts on vessels that had their permit after the control date and targeted scallops heavily (Group 4). There were such 81 vessels in 2005 fishing that landed an average of 17,812 pounds of scallops per vessel and derived 87% of their income from scallops. Table 212 shows that only a few (9 out of 81) of vessels in this group earned less than 30% of their income from scallop fishing. The majority of the vessels in this group (72 out of 82), however, earned on the average 97.4% of their revenue from scallops and will be negatively impacted from the proposed action when they lose a major proportion of their income. Overall, vessels in this group earned \$11.2 million from scallop fishing. Because they did not have a general category permit before the control date these vessels will not be eligible to obtain an incidental catch and/or NGOM permit. The preliminary data for the 2006 fishing year suggest that a similar number of vessels (but not in addition to) could be impacted from the proposed action (Table 121).
- The proposed action will impact 172 vessels (Group 3) that had a permit before the control date but participated in the fishery for the first time after the control date. The limited entry program could result in a reduction of \$13.9 million in the total scallop revenue for this group of vessels with an overall decline of 58% in their revenue assuming that in the short-term (under status quo) they could continue to land similar amounts of scallops.
- The limited access program will also have negative economic impacts on vessels in Group 2, consisting of 308 vessels that do not qualify for limited access because they do not meet 1000 lb. qualification criteria for the 5-year qualification period. Since the majority of the vessels in this group (188 vessels) did not participate in the general category fishery during 2005 fishing year, proposed action will have no impacts on the current incomes of these vessels. On the other hand, 120 vessels in Group 2 would not be able to access scallop fishery and could incur a loss of income from scallop fishing (total of \$4.7 million in 2005). Compared to status quo management and assuming that in the short-term these vessels could continue to earn similar amounts of revenue from the general category fishery, the limited entry program could result in an overall reduction of 23% in their revenue.
- The impacts of the proposed action will not be uniform among the vessels in Groups 2 and 3 since they have varying levels of dependence on scallop fishing as a source of income. Table 212 shows that these 292 vessels (172 vessels in Group 3 and 120 vessels in Group 2) exhibit varying degrees of dependence on scallop

fishing as a source of income. A large number of vessels (about 114 in 2005) in this group derived less than 5% of their revenue from scallops, thus will not be impacted from the scallop fishing as much as others. On the other hand, more than one third of the vessels (124 out of 292) earned 50% or more of their revenue from scallops. The proposed action is expected to have negative economic impacts on these vessels given that the percentage revenue from scallops averaged 92.2% for this group.

- There are some measures included in the proposed action that could mitigate some of these adverse economic impacts on these vessels (in Groups 2 and 3), however. Since these vessels had a permit before the control date, they could obtain an incidental catch permit and land up to 40 pounds per trip, thus still earn some revenue from scallops. Some of these vessels could also obtain an NGOM permit and participate in the NGOM fishery when the scallop resource conditions in this area improves --subject to a possession limit of 200 pounds per trip and a hard-TAC. These measures could mitigate the negative impacts on those vessels that fish scallops as a bycatch or have a seasonal participation in the general fishery.
- The adverse economic impacts of the proposed action on the vessels that obtained their permit and either increased their activity in the fishery or started targeting scallops heavily after the control date are not unexpected, however. In 2004 the Council recognized that there was a substantial increase in general category fishing effort and requested NMFS to implement a control date to put permit owners on notice that future management actions may follow. As a result, some vessels in these groups might have made their plans accordingly considering scallop fishing as a temporary source of income in the short-term. There is no question that including the vessels and effort levels after the control date would compromise the entire limited entry program for vessels that have historically participated in this fishery at various levels. Particularly because of the explosion of effort in the year following the control date by many vessels were not involved in the fishery in previous years, the Council felt that restricting the limited entry program to vessels with history before the control date was justified. Although taking no action in the short-term would prevent the adverse impacts on the recent participants of the fishery, letting more vessels to enter the general category fishery over the long-term would have the negative impacts on scallop yield and revenues and profits of the participants of both the limited access and the historical participants of the general category fishery as discussed above.

The limited access program by itself will benefit 369 vessels that qualify for limited access general category fishery (Group 1). But the short-term economic impacts of the proposed action *compared to the* recent or status quo levels could be negative on many qualifying vessels due to the 5% general category TAC. Assuming that the sustainable level of scallop harvest would range from 50 million to 60 millions pounds in the future in line with the recent biological projections, the vessels that qualify for limited access (Group 1) would receive a total allocation of 2.5 million to 3.0 million pounds of scallops. These amounts are 10% to 24% lower than the

landings of these vessels in 2005 (3.3 million pounds), and 21% to 34% lower their best year landings (3.3 million pounds) during the five-year qualification period (from 2000 to 2004). In addition, the general category TAC will have to be divided among 369 qualifying vessels, including 145 qualifiers that were not active in the fishery in the recent years (Table 213 and Table 214). The proposed action will have positive economic impacts on those 145 vessels by allocating them scallop pounds they could either land, lease or sell to other vessels while increasing the negative impacts on the qualifiers that continued to fish for scallops after the control date.

Again, the economic impacts of the proposed action will not be uniform even among the vessels qualify for limited access and will vary according to the level of dependence on the general category fishery as a source of fishing income, the income from other species, the vessel size and fishing costs. The impacts of the proposed measures on gross revenues, costs and net revenues (as a proxy for gross profit) of the vessels that qualify for access were analyzed in Section 5.4.5 according to the vessel size and dependence on the general category fishery. Section 5.4.6.2 of the economic impacts section provided a comprehensive analysis of the distributional impacts of the proposed action on the vessels that qualify for limited access including the preliminary data for 2006 fishing year. The impacts will also vary according to the level of scallop harvest, which will determine total allocation for general category fishery (Section 5.4.17.2). A 5% TAC for the general category fishery will have lower negative impacts on those vessels that have a longer history of participation in the general category fishery than those vessels that were active in the fishery just for a few years because their contribution factors will be increased by an index as proposed by this amendment (option B, 25%).

Table 213 provides an analysis of the short-term impacts using the 2005 fishing year data for the 224 vessels that qualify for limited access assuming a total general category TAC of 2.5 million pounds, which will be divided among the total 369 qualifiers. In estimating the impacts on the allocation pounds the contribution factor is calculated according to the based propose best year-indexed (25%). It is evident from Table 213 that most qualifying vessels will receive allocations less than their best year landings ranging from 23% (for vessels that have longer years of activity) to 42% (for vessels that were active in the fishery 1 to 2 years). This is because best year scallop landings of the 369 qualifiers added up to 3.8 million pounds during the 5-year qualification period, which is much larger than the level of general category TAC assumed here (2.5 million pounds). If it were assumed that in the short-term, these vessels continued to land the amount of scallops they have landed in their best year, the proposed action would have negative economic impacts on all these vessels. This is assuming that there is no change in the scallop resource conditions and the number of general category vessels participated in the fishery.

The landings data for fishing year 2005 indicate, however, that 145 of these vessels did not even participate in the fishery, and the 224 vessels that were active landed about 3.3 million pounds of scallops. Furthermore, while some vessels landed more scallops in 2005 compared to their best year landings, others landed less. Using 2005 fishing year as a proxy for the short-term impacts, it could be seen from Table 213 that the proposed action (assuming a 2.5 million general category TAC) will reduce the total revenues of more than half of the vessels (153 out of 224) participated in the fishery in 2005 although the magnitude of impacts will vary from one vessel

to another. For example, as a result of the proposed action, total revenues of those 26 vessels will decline by less than 5% (compared to 2005 level) because they were active in the fishery relatively longer (average 3.5 years) and earn a small proportion of their income from scallops (9%). On the other extreme, total revenue of 57 vessels will decline by more than 50% compared to levels in 2005 because they participated in the fishery only in the last couple of years before the control date targeting scallops. If total scallop harvest was 60 million instead of 50 million, these negative impacts will be lower but still vary from vessel to vessel. Finally, the total revenues of 71 (33+10+28 vessels in Table 213) qualifying vessels would increase under the proposed action because their allocations (based on their historical participation) would be larger than then scallop landings in the 2005 fishing year.

In summary, the proposed action could have negative economic impacts in the short-term on vessels that do not qualify (373 vessels) with adverse impacts on 119 of these vessels estimated to be less than 5% of their revenue. The measures will also have negative impacts on many (about 153 out of 369 vessels) that qualify for limited access, with adverse impacts on 26 of these vessels estimated to be less than 5% of their revenue. Altogether, the proposed measures could reduce total revenues of 381 (254 vessels that do not qualify for limited access and 127 vessels that qualify for limited access) more than 5% in the short-term. There are several measures in the proposed action, however, to help mitigate and reduce the potential negative impacts on these vessels as discussed above. Qualifying vessels will be permitted to stack allocation up to 2% of the entire general category allocation and to lease or buy allocation on a permanent or temporary basis. This will enable vessels that do not receive an adequate amount of allocation to remain viable and remain in the fishery if they want to purchase additional quota. Furthermore, there is a provision to allow the formation of voluntary sectors. It may be more beneficial for a group of vessels from a fishing community for example to form a sector, and this action implements a mechanism for groups of vessels to organize and apply for a sector in the general category fishery. There is a group of vessels that will qualify for a Northern Gulf of Maine limited entry permit that will be permitted to fish for scallops at a reduced level. In addition, there are hundreds of vessels that will qualify for an incidental catch permit that will have the ability to land a smaller amount of scallops while fishing for other species.

Over the long-term and under no action scenario, however, there is no guarantee that the general category vessels would get a better share of the scallop fishery or that the qualifiers would be able to land more scallops compared to what they could with the proposed limited entry and 5% general category TAC. If general category fishery continued to be open access, there would be always a risk for more vessels entering the fishery, resulting in the overfishing of the scallop resource with a consequent reduction in LPUE, an increase in fishing costs per pound of scallops and dissipation of the profits for all participants, including those of the limited access vessels and of general category vessels that qualify for limited access.

In addition, the status quo management of the general category fishery that prevented an increase in overall fishing mortality (at least to some extent) by reducing the DAS allocations for the limited access could not continue in the long-term without significant impacts on these vessels (Section 5.4.17.1 and Table 167). For example, assuming a scallop harvest of 50 million, an increase in the share of general category landings to 20% of the total scallop landings would result in a decline of 17% to 21% of the net vessel share (as a proxy for profits) for the limited

access vessels. Given that in 2005, the general category landings increased to 14% of the total landings from about 5% in 2004, a further increase in general category effort does not seem to be beyond reach without a limited access program.

Because it will prevent further expansion of general category fishery and overfishing of the scallop resource from further increase in general category fishing, the economic impacts of the proposed measures on the 351 limited access vessels will be positive both in the short- and the long-term. This is because the DAS allocations for limited access under the status quo were determined after taking the predicted general category effort from total DAS (11% in Framework 18). Reducing the share general category fishery below the levels experienced recently will increase the total DAS allocations for these vessels resulting in 7% increase in their revenues compared to the status quo levels. Similarly, general category limited access program will benefit the limited access vessels that qualify although the separate 0.5% allocation could lower their landings compared to the recent levels (1.5% in 2005, 0.75% in 2006) from the proposed action.

In short, the overall economic impacts of the limited entry in the medium to long-term are expected to be positive for the sea scallop fishery as a whole compared to taking no action. If there is no action, that is, there are no new regulations to prevent an increase in fishing effort by the general category vessels, there will always be a potential risk for the scallop mortality to increase beyond sustainable levels and for the scallop biomass to decline due to overfishing. If that happens, the future yield and revenues from the scallop resource would decline, negatively affecting the vessels both with general category and/or limited access scallop permits. The proposed action will restrict the number of participants in the general category fishery to 369 vessels that meet the 1000 poundage qualification criteria within the five-year time period from 2000 to 2004 up to the control date. In addition, a separate 5% TAC for the general category will prevent the fishing mortality to exceed the sustainable levels from an increase in the fishing effort of the vessels that qualify for limited access. As a result, proposed action will have positive long-term economic impacts on the participants of the scallop fishery as a whole by preventing a decline in the scallop yield and revenues (compared to no action). Limited access will also prevent the profits of the qualifiers and limited access vessels from dissipating due to an increase in capacity. TAC management combined with limited entry and allocation for individual vessels (in terms of pounds) will prevent derby-style fishing and the negative economic impacts associated with it.

The results of these analyses should be interpreted with caution, however. The number of affected vessels, scallop landings and revenues were estimated from the 2005 and 2006 fishing year (up to January 2006) data. These numbers could change in the future depending on several factors, including in changes in scallop resource biomass and yield, scallop prices, import prices for scallops, fishing expenses, VMS costs, changes in profitability of the scallop trips relative to trips targeted on other species, and changes in management measures affecting scallop fishery and other fisheries that limited access and general category vessels participate.

The following provides a summary of the impacts of each individual measure proposed by Amendment 11 on small business entities and a discussion of the mitigating factors and significant alternatives considered by the Council.

**Table 211. Impacts by qualification criteria and time period alternatives compared to the recent participation in the fishery**

Vessel Group	The number of vessels active before the control date	Best year scallop landings during 2000-2004	2005 Fishing year							
			Number of active vessels	Total Scallop Landings	Average Scallop landings per vessel	Scallop Revenue as a % of Total Revenue	Average scallop revenue per vessel (\$)	Average Revenue from other species per vessel	Average total revenue per vessel (\$)	Total scallop revenue (\$)
<b>Vessels that qualify for limited access</b>										
Group1	369	3,883,173	224	3,351,971	14,964	61%	113,371	158,177	271,548	25,395,098
<b>Vessels that do not qualify for limited access</b>										
Group2	308	93,091	120	613,086	5,109	23%	39,283	345,405	384,688	4,713,964
Group3	0	0	172	1,843,638	10,719	58%	81,021	148,091	229,112	13,935,636
Group 4	0	0	81	1,442,777	17,812	87%	139,066	13,772	152,838	11,264,313
Total non-qualifiers	308	93,091	373	3,899,501						29,913,913
Grand Total	677	3,976,264	597	7,251,472						55,309,011

**Table 212. Vessels characteristics and percentage revenue of general participants from scallops and (2005 fishing year)**

Qualification for limited access	Data	Percentage of total revenue from scallops				Grand Total
		<5%	5%-29.9%	30% to 49.9%	50% or more	
<b>VESSELS THAT DO NOT QUALIFY FOR LIMITED ACCESS AND WERE ACTIVE IN 2005 FISHING YEAR</b>						
<b>GROUP 4: DID NOT HAVE A PERMIT BEFORE THE CONTROL DATE</b>	Number of vessels	5	4		72	81
	% of total revenue from scallops	2.0%	12.1%		97.4%	87.3%
	Average GRT	23	60		61	59
	Average number of crew	2.6	3.3		3.6	3.5
	Average total revenue per vessel	98,380	84,965		160,390	152,838
	Average scallop revenue per vessel	1,540	8,557		155,866	139,066
VESSELS IN GROUP 2 AND GROUP 3: HAD A PERMIT BUT WAS NOT ACTIVE BEFORE THE CONTROL DATE, THUS DO NOT MEET 1000 LB. QUALIFICATION CRITERIA	Number of vessels	114	39	15	124	292
	% of total revenue from scallops	1.4%	13.4%	36.4%	92.2%	43.3%
	Average GRT	91	77	50	45	68
	Average number of crew	4.5	3.3	3.1	3.3	3.7
	Average total revenue per vessel	483,021	268,516	195,008	137,970	293,048
	Average scallop revenue per vessel	7,618	29,494	69,982	125,262	63,702
Total number of vessels		119	43	15	196	373
Total scallop landings		121,928	160,342	140,760	3,476,471	3,899,501
Total scallop revenue		876,159	1,184,480	1,049,737	26,754,859	29,865,235
<b>VESSELS THAT QUALIFY FOR LIMITED ACCESS AND WERE ACTIVE IN 2005 FISHING YEAR</b>						
<b>HAD A PERMIT BEFORE THE CONTROL DATE AND MEET THE 1000 LB. QUALIFICATION CRITERIA DURING THE 5-YEAR QUALIFICATION PERIOD</b>	Number of vessels	45	24	16	139	224
	% of total revenue from scallops	2.0%	14.3%	40.6%	91.3%	61.5%
	Average GRT	119	84	59	49	67
	Average number of crew	4.6	3.8	3.2	3.1	3.5
	Average total revenue per vessel	514,185	356,795	245,121	181,319	271,548
	Average scallop revenue per vessel	10,173	42,360	99,791	160,605	113,371
Total number of vessels		45	24	16	139	224
Estimated number of crew		205	92	51	437	786
Total scallop landings		55,585	133,578	206,757	2,956,051	3,351,971
Total scallop revenue		457,775	1,016,648	1,596,648	22,324,027	25,395,098
<b>ALL GENERAL CATEGORY VESSELS THAT WERE ACTIVE IN 2005 FISHING YEAR</b>						
Total number of vessels		164	67	31	335	597
Total scallop landings		177,513	293,920	347,517	6,432,522	7,251,472
Total scallop revenue		1,333,934	2,201,128	2,646,385	49,078,886	55,260,333

**Table 213. Percentage change in total revenue of vessels qualify for limited access assuming an allocation of 2.5 million pounds to general category**

Data	Decline in total revenue compared to 2005 level				Increase in total revenue compared to 2005 level		
	Decline 5% or less	Decline 5% to 25%	Decline 25% to 50%	Decline more than 50%	Increase unto 25%	Increase 25% to 50%	Increase more than 50%
Number of vessels	26	30	40	57	33	10	28
Number of years active	3.5	3.1	2.5	1.9	3.0	4.3	3.4
% of revenue from scallops	9%	59%	81%	92%	18%	51%	76%
Average % change in total revenue compared with 2005	-2%	-16%	-39%	-71%	4%	40%	1634%
Best year scallop landings per vessel	3,212	15,633	20,998	10,470	6,643	21,807	14,673
Average allocation at a TAC of 2.5 million pounds	2,369	10,521	13,313	5,947	4,618	16,098	10,680
Average scallop landings per vessel in 2005 fish year	3,750	15,490	26,812	24,557	3,791	9,043	3,645
Reduction in scallop landings compared to best year	-28%	-32%	-37%	-42%	-33%	-23%	-30%
Reduction in scallop landings compared to 2005	-40%	-38%	-52%	-78%	292%	172%	2154%
Average crew	5	3	3	3	4	3	3
Scallop revenue per vessel in 2005	30,054	111,684	206,318	185,579	28,793	70,661	27,702
Average total revenue per vessel in 2005	603,413	257,924	266,485	201,110	382,955	142,849	43,269
Average GRT	139	72	57	48	85	39	48
Maximum landings per vessel in 2005-06 fish years	6,721	17,590	27,395	25,488	6,110	14,652	5,765
Total best year scallop landings	83,522	468,986	839,927	596,775	219,231	218,066	410,846
% share of the group in best year landings	2%	12%	22%	16%	6%	6%	11%
Total scallop landings in 2005 fish year	97,487	464,687	1,072,480	1,399,721	125,103	90,427	102,066
% share of the group in total scallop landings in 2005	3%	14%	32%	42%	4%	3%	3%

**Table 214. The best year landings and allocation for qualifying vessels that were not active in 2005 fish year.**

Data	NOT ACTIVE IN 2005
Number of vessels	145
Number of years active	2.0
Best year scallop landings per vessel	6,965
Average allocation at a TAC of 2.5 million pounds	4,406
Reduction in scallop landings compared to best year	-41%
Average Crew	2.1
Average f GRT	48
Total best year scallop landings	1,009,911
% share of the group in best year landings	26%

### 7.9.7 Summary of the economic impacts of the individual measures

#### Economic impacts of limited entry:

- Rationale is provided in Section 3.1.2.
- The impacts of limited entry combined with various qualification criteria and time period alternatives are analyzed in Section 5.4.3 and the impacts of limited access combined with a general category TAC are analyzed in Section 5.4.5.
- **Summary of the impacts of the proposed option and mitigating factors:**
- Limited access will reduce the risks of overfishing of the scallop resource by preventing new entry to the general category fishery. It will restrict the number of participants in this fishery to vessels that meet the poundage qualification criteria within a qualification time period. As a result, limited access would prevent the profits of the qualifiers and limited access vessels from dissipating due to increase in capacity. On the other hand, limited entry will have negative impacts on those general category vessels that do not qualify for general category access either because they obtained their permit after the control date or because they do not meet the poundage and time period criteria for qualification. The positive economic impacts of limited entry on the qualifiers and on the limited access scallop fishery over the long-term are expected to exceed, however, the negative short-term impacts on the non-qualifiers and on some qualifiers. As a result, overall economic impacts of the limited entry are expected to be positive for the sea scallop fishery compared to taking no action.
- **Comparison of the impacts of the alternative options:** Only alternative option is no action with opposite impacts to limited entry. Under no action there are no limits on the number of trips a vessel could take and no limits on the number of vessels able to participate in the general category fishery. As a result, total fishing effort in general category fishery could increase in response to higher scallop prices, to an increase in resource productivity, or to changes in fishing opportunities in other fisheries. This could cause scallop mortality to exceed sustainable levels, reducing the stock biomass, the future yield, and revenues from the scallop resource. Consequently, no action could have negative impacts on both the limited access and the general category vessels as scallop catch per day-at-sea declines and fishing costs per pound of scallops increase.

**Table 215. Number of qualifying general category vessels and estimated landings based on an individual allocation system and best year of landings during the specified time period.**

Time period (Up to the control date)	Qualification Criteria	Number of vessels that were active and qualify for limited access	Average Best year landings per vessel (lb.)	Total best year scallop landings (lb)	2005 fish year	
					Number of active General category vessels	General category revenue as % of total revenue
11 years 4777 unique general category permits, 924 active vessels	100 lb. Criteria	705	6,084	4,289,220	318	50%
	1000 lb. Criteria	459	9,124	4,187,916	234	60%
	5000 lb. Criteria	203	17,757	3,604,671	131	80%
5 years 3562 unique general category permits, 677 active vessels	Stand-alone ITQ	677	5,872	3,975,344	344	48%
	100 lb. Criteria	548	7,232	3,963,136	301	51%
	1000 lb. Criteria	369	10,524	3,883,356	224	61%
	5000 lb. Criteria	188	18,475	3,473,300	130	80%
2 years 2876 unique general category permits, 482 active vessels	100 lb. Criteria	399	7,443	2,969,757	270	53%
	1000 lb. Criteria	277	10,518	2,913,486	201	62%
	5000 lb. Criteria	143	18,245	2,609,035	114	81%

**Economic impacts of qualification criteria:**

- Rationale is provided in Executive Summary and in Section 3.1.2.1.2.
- Economic impacts of qualification criteria including permit before the control data on general category vessels are analyzed in several sub-sections of Section 5.4. The impacts on the general category permit holders and vessels that qualify for limited access are analyzed in Section 5.4.3. The impacts on revenues, fishing costs, average net revenues, crew and vessel shares are analyzed in Section 5.4.5 for various levels of general category TAC. The impacts of 1000 lb. qualification criteria and other alternatives on recent participants of general category fishery are analyzed in Section 5.4.6.
- **Summary of the impacts of the proposed option and mitigating factors:** The proposed qualification criteria will restrict the number of participants in the general category fishery to 369 vessels that had a permit before the control date and have landed at least 1000 lb. of scallops in their best year during the 5-year qualification period (Table 215). The proposed qualification criteria will allow many vessels with varying rates of participation to qualify for limited access, yet it will prevent spreading allocations among too many vessels. Proposed will have positive economic impacts on these vessels that qualify for limited access over the long-term. It will protect the profits of qualifiers from declining due to new entry especially during favorable times when scallop productivity and/or prices are high. The proposed limited entry program will have negative economic impacts on vessels that entered the fishery after the control date on vessels that had a permit before the control date but participated in the fishery only after the control date as well as on vessels that do not meet the 1000 pounds qualification criteria. The overall long-term economic impacts of the limited entry will be positive. The short-term and long-term economic impacts of the qualification criteria and the mitigating measures are discussed extensively in the Section 7.9.6 above (Summary of the proposed measures) and will not be repeated here.

- Comparison of the impacts of the alternative options:** The alternative 100 lb. criteria would qualify more vessels (548) for limited access and have a lower negative impact on the recent participants (Table 120). On the other hand, this alternative would result in a lower share of general category TAC for each qualifier and will thus have a negative impact especially on vessels that have a higher dependence on scallop revenue as a source of income. For example, average allocation per vessel would decline from 5,429 lb. to 3,650 lb. per vessel if the poundage criterion was set at 100 lb. instead of at 1000 lb. for a general category TAC of 2 million pounds. The alternative 5000 lb. poundage criteria would qualify only 188 vessels for limited access for 5-year qualification period and thus would increase the share of each qualifier in general category TAC. As a result, average allocation per vessel would increase 10,638 lb. with a 2 million general category TAC. Although this alternative would have positive economic impacts on the vessels that higher dependence on scallops as a source of their income, it will prohibit access to a many boats that derive some supplementary income from scallop fishery. The proposed 1000 lb. alternative on the other hand will prohibit access to a large number of boats that have small landings of scallops (landed between 100 and 999 lb.) while providing access to vessels that depend on scallops either as a supplementary and /or as main source of income.

#### **Economic impacts of 5-year qualification time period**

- Rationale is provided in Executive Summary and in Section 3.1.2.2.2.
- Economic impacts of qualification period combined with the qualification criteria are analyzed in several sub-sections of Section 5.4. Combined economic impacts of qualification period and qualification criteria on general category vessels are analyzed in several sub-sections of Section 5.4. The impacts on the general category permit holders and vessels that qualify for limited access are analyzed in Section 5.4.3. The impacts on revenues, fishing costs, average net revenues, crew and vessel shares are analyzed in Section 5.4.5 for various levels of general category TAC. The impacts of 5-year lb. qualification period and other alternatives on recent participants of general category fishery are analyzed in Section 5.4.6.
- Summary of the impacts of the proposed option and mitigating factors:** The proposed 5-year qualification period for limited access combined with 1000 lb. is expected to have positive economic impacts in the long-term on these vessels that qualify for limited access. It will provide access to those general category vessels that were active in the fishery in the recent years as well as to some historical participants that were active in the general category fishery during 2000 – 2004 fishing years up to the control date. For example, with the proposed 1000 lb. poundage criteria, 5-year qualification period would provide access to 369 vessels but would prohibit access to 90 vessels that meet the 1000 lb. criteria for their activity during 1994-1999 fishing years. The economic impacts on these early participants of the general category fishery will be negative in terms of a loss in future potential revenue from scallops unless they buy access general category permit from a vessel that qualify for limited access. The proposed 5-year qualification period will not have any impact on the current income of most of these vessels, however, given that most were not active since 2000 fishing year and only a few (about 10 vessels that would qualify with 1000 lb. and 11 year period) have participated in the fishery after the control date. There are also some measures included

in the proposed action that could mitigate some of these adverse economic impacts, however. Since these vessels had a permit before the control date, they could obtain an incidental catch permit and land up to 40 pounds per trip, thus still earn some revenue from scallops. Some other vessels could also obtain an NGOM permit and participate in the NGOM fishery when the scallop resource conditions in this area improves --subject to a possession limit of 200 pounds per trip and a hard-TAC. These measures could mitigate the negative impacts on those vessels that fish scallops as a bycatch or have a seasonal participation in the general fishery.

- **Comparison of the impacts of the alternative options:** The 2-year period alternative will restrict the limited access to only recent 277 general category vessels that have landed 1000 lb. or more scallops, instead of 369 vessels with 5-year period qualification. Although this alternative will result in a larger share per vessel qualified for limited access, it will be inequitable to those historical participants that did not fish for scallops in 2003-2004. The 11-year qualification period would result in more vessels that were not active recently to qualify for limited access. For example, only 234 vessels out of 459 qualifiers with 11 year and 1000 lb. qualification criteria participated in the fishery in 2005 fishing year. Because the general category TAC will be divided among a larger number of vessels, many of which were not active in the fishery, the vessels that depend on scallops will receive a smaller share than they would with the proposed 5-year qualification period. This would have negative economic impacts on the vessels that depend on scallops as a significant source of supplemental and/or main income.

#### **Economic impacts of contribution factor (qualification amount)**

- Rationale is provided in Executive Summary and in Section 3.1.2.3.2.
- Economic Impacts are analyzed in Section 5.4.7.1 – 5.4.7.2.
- **Summary of the impacts of the proposed option and mitigating factors:** According to the proposed action (Option B of 3.1.2.3.2) each vessel's contribution factor will be determined by multiplying its best year landings by an index that varies with number of "years active" (Option B: 25%). Therefore, the proposed action will allocate more pounds to those vessels that were active in the fishery for a longer period of time and will reduce the share of those participated in the fishery for only a few years (116 vessels that were active for the fishery for only a year and 93 vessels that were active only for 2 years, Table 127). As a result, the economic impacts of the proposed action will be positive on those vessels that had a continued reliance on general category fishery as source of income. There were 43 vessels that were active for 4 years and 47 vessels that were active for 5 years that qualify for limited access with the proposed 1000 lb. criteria and 5-year qualification period (Table 127). The proposed action will have negative economic impacts on those vessels (116 out of 369 that were active only for one year and 93 vessels with two years of activity), however, with more transient activity in the general category fishery. Given that the Amendment 11 proposes to restrict general category scallop landings to 5% of the overall scallop harvest much below than the recent share of general category fishery in scallop landings (about 14% in 2005 and 12% in 2006), the best-year indexed alternative will help to reduce the negative impacts on those participants with an established history and long-term investment in scallop fishing.

- **Comparison of the impacts of the alternative options:** The alternatives to the proposed option would have distributional economic impacts less favorable to the vessels that were active in the fishery for many years. The alternative allocation based on based year (3.1.2.3.1) would have negative (positive) economic impacts on those vessels that had a longer (shorter) history of participation since allocation amounts would be determined regardless of years active. The alternative option A would assign a weight to years of activity but less than that of the proposed option B. Putting a cap on a vessel's contribution factor would prevent a vessel getting a larger share of the fishery due to data mistakes in its historical landings or large volume of activity in the fishery. The prequalification procedure that will set maximum landing from a trip at 400 lb. is expected reduce the negative impacts of data inaccuracies, however. The proposed permit stacking and percentage ownership restrictions (3.1.2.5) will also help to reduce a few vessels or owners acquiring a disproportionate share of the general category fishery.

#### **Economic impacts of allocation of access for general category limited access qualifiers**

- Rationale is provided in Executive Summary and in Section 3.1.2.4.1.
- Economic Impacts are analyzed in Section 5.4.8.
- **Summary of the impacts of the proposed option and mitigating factors:** The proposed action will allocate pounds (IQ) to each vessel based on its contribution factor (weighted by years active) and general category TAC. The allocation of individual fishing quotas (IQ) will eliminate the need for race-to-fish that occurs with a TAC management only fishery. Since an individual quota assures that each qualifier can land a given quantity anytime during the fishing season, the vessels will have the flexibility to select the time and the area to fish in order to minimize their costs and/or maximize their revenues. Since the fishing effort will be spread over a longer period of time, the price of scallops will be more stable throughout the season. This combined with the availability of a fresh and/or higher quality scallops over a longer season, will benefit consumers as well as producers. Therefore, the proposed allocation alternative will have positive economic impacts on the vessels that qualify for limited access general category fishery. Although maintaining the 400 pound possession limit will cause some inefficiencies and result in higher costs compared to a higher possession limit (alternative 2000 pounds per trip), this provision will help preserve the historical small-boat character of this fleet and allow the catch to be more effectively monitored.
- **Comparison of the impacts of the alternative options:** The individual alternative allocation in trips has an advantage over quota allocation in terms of monitoring and enforcement, but could result in either reduced revenue or increased costs for vessels that usually land less than 400 lb. of scallops from their trips. The alternative with two permit categories would have negative economic impacts on vessels that landed less than 5000 lb. thus would receive a part-time permit and would be restricted to a 200 pound possession limit under this option (3.1.2.4.2). The three-tiered allocation alternative would allocate equal pounds to each vessel within each tier (3.1.2.4.3) and would have negative impacts on vessels that landed larger than the average of the group that were placed in. Stand alone ITQ alternative (3.1.2.4.4) would allocate an individual quota to a larger number of vessels, but would have negative distributional impacts on vessels that have a higher dependence on general category fishery. Instead of individual allocation, managing general category fishery by a hard TAC (3.1.2.4.6) under limited entry could

lead to a race to fish and market gluts, which could have negative economic impacts especially on smaller vessels that fish seasonally and cannot access all areas due to the constraints on their capacity. A quarterly hard TAC with limited access (3.1.2.4.5.) or fleet-wide hard TAC by trimester (3.1.2.4.7, Option B) or by quarter (3.1.2.4.7, Option A) will spread out the fishing season and reduce negative impacts from derby fishing and market gluts to some extent. These alternatives would have larger negative distributional impacts on some vessels compared to the proposed individual allocation system as compared to others as analyzed in Section 5.4.8.

### **Economic impacts of limited entry permit provisions 3.1.2.5**

- Rationale is provided in Executive Summary and in Section 3.1.2.5
- Economic Impacts are analyzed in Section 5.4.9.
- **Summary of the impacts of the proposed option and mitigating factors:** Fishing History and Permit Transfers (3.1.2.5.1) are intended set the rules for determining eligibility for limited access and for appeals for all vessels to follow in case of denial of permit (based on the consistency amendment). These measures will indirectly benefit all participants by ensuring that only those vessels that provide verification of permit and landings history will qualify and receive allocation based on accurate records. The proposed regulations regarding the qualification and retention of permits (3.1.2.5.1.2) would have positive economic impacts on participants that sold their vessel to another but retained the fishing history and also on buyers of general category permit that qualify under their own landings. The proposed action will allow a vessel to increase its fishing power without any restriction providing flexibility for the vessels to adjust their fishing power to changing circumstances and to lower fishing costs. Since the vessels will be allocated individual pounds, this regulation is not expected to impact the total scallop landings or provide an unfair advantage to larger vessels. The proposed action (3.1.2.5.4.4) will allow a vessel to stack up to 2% of the total general category allocation per vessel. This will help vessels to maintain an economically viable operation if the allocations for separate vessels is too low to generate revenue to cover variable and fixed expenses. This measure combined with the 5% ownership restriction (3.1.2.5.8) will also prevent a few individuals or corporations from dominating the fishery and will help to redistribute gains from the limited access more equitably among more fishermen. Voluntary Relinquishment of Eligibility (3.1.2.5.5) and Permit Splitting (3.1.2.5.6) provisions are expected to have positive economic impacts on the sea scallop fishery as a whole by reducing and/or preventing an increase in capacity in the general category fishery. Permit renewals and confirmation of permit history provisions (3.1.2.5.7) would enable vessel owners that qualify for limited access to retain their fishing history and to transfer it to a replacement vessel in the future with positive economic impacts.
- **Comparison of the impacts of the alternative options:** The alternatives to the proposed action for fishing history and permit transfers (one vessel can only qualify for one permit), upgrading restrictions (10:10:20 upgrade restriction), permit stacking (no permit stacking, up to 2 permits, or a maximum of 60,000 lb. of general category allocation), percentage ownership restriction (less than 5%) will provide less flexibility for vessels with reduced economic benefits. There are no alternatives for voluntary relinquishment of eligibility, permit splitting, permit renewals and confirmation of permit history provisions.

### **Economic impacts of measures for vessels that fish for scallops with trawl gear**

- Rationale is provided in Executive Summary and in Section 3.1.2.6.
- Economic Impacts are analyzed in Section 5.4.10.
- **Summary of the impacts of the proposed option and mitigating factors:** The no action alternative proposed by this amendment will have positive economic impacts on vessels that qualify for limited access and use trawl gear to fish for scallops compared to the alternative options that impose restrictions for fishing with trawl gear.
- **Comparison of the impacts of the alternative options:** The alternative options that either prohibit a vessel from switching to trawl gear (3.1.2.6.2) or lower possession limit for vessel that fish with trawl gear (3.1.2.6.3), or limit scallop pounds to 5% of total weight per trip (3.1.2.6.4) will have negative economic impacts on those general category vessels that use a combination of dredge and trawl to catch scallops or their scallop landings per trip exceed 200 pounds or more 5% of the total weight per trip.

### **Economic impacts of sectors and harvesting cooperatives**

- Rationale is provided in Executive Summary and in Section 3.1.2.7.2.
- Economic Impacts are analyzed in Section 5.4.11.
- **Summary of the impacts of the proposed option and mitigating factors:** The proposed action to establish a process for sectors in the general category fishery will provide an opportunity for fishermen to form or join harvesting cooperatives and benefit from an economically viable operation when the allocations of individual vessels are too small to make scallop fishing profitable.
- **Comparison of the impacts of the alternative options:** Only alternative is “no action” which does not establish a process for sector allocations.

### **Economic impacts of interim measures for transition period to limited entry**

- Rationale is provided in Executive Summary and in Section 3.1.2.8.1.
- Economic Impacts are analyzed in Section 5.4.12.
- **Summary of the impacts of the proposed option and mitigating factors:** The proposed interim alternative will help to prevent a short-term increase in overfishing of the scallop resource by limiting the general category landings at 10% of the total scallop landings until the limited access program is fully implemented. As a result, the proposed action will prevent a decline in scallop yield and revenue due to an expansion in the general category export. It will also prevent a decrease in limited access allocations compared to status quo levels to compensate for an increase in general category effort. The interim 10% TAC will also benefit the participants of the general category fishery by providing some adjustment time for the general category vessels until the transition period is over. The allocation amounts for many general category vessels will likely be lower with the proposed 5% TAC for the general category fishery than the amount of scallops these vessels were landing recently. Although management of general category fishery by a hard TAC during the transition period would create some derby style fishing, the division of the total hard TAC into quarterly TACs will reduce race to fish to some extent and lessen the negative economic impacts associated with derby fishing (discussed in Sections 5.4.8.5, 5.4.8.6 and 5.4.13). In addition, a 10% hard TAC may not constitute a significant constraint on recent landings given that only those vessels that qualify for

limited entry will access the general category fishery and that general category scallop landings by those vessels that had a permit before the control date was around 11% of total landings in 2005.

- **Comparison of the impacts of the alternative options:** The annual hard TAC option would increase derby style fishing with negative economic impacts on the participants of the general category fishery. The transition to limited entry without a hard TAC (3.1.8.2) would eliminate the incentives for derby style fishing and if the participation by general category vessels that had a permit before the control date does not increase significantly above the recent levels, the economic impacts of this alternative compared to the status quo would be negligible. On the other hand, it is possible for the number of appeals to be greater than the number of vessels that fished during the recent years, thus for more vessels to participate in the fishery. If this happens and the general category scallop landings increase above 10% of total scallop harvest, then there would be a short-term increase in overfishing of the scallop resource resulting in either lower allocations for the limited access vessels or in a reduction of landings, revenues and economic benefits from the scallop fishery.

### **Economic Impacts of Northern Gulf of Maine (NGOM) Scallop Management Area (Section 3.1.4)**

- Rationale is provided in Executive Summary and in Section 3.1.4.4.
- Economic Impacts are analyzed in Section 5.4.14.4.
- **Summary of the impacts of the proposed option and mitigating factors:** The proposed alternative (3.1.4.4) will have positive economic impacts on a larger number of vessels that are not qualified for limited access but qualify for an NGOM permit since these vessels will have an opportunity to land scallops in this area when the resource conditions are favorable. It would also reduce the possession limit for all vessels to 200 pounds per trip to reduce incentives for larger vessels targeting scallops in this area. Although lowering possession limit will have negative economic impacts on some vessels, majority of the active vessels that would qualify for NGOM (but not for limited access) general category permit landed 200 lb. or less of scallops from any one trip, therefore will not be negatively impacted from 200 lb. possession limit.
- **Comparison of the impacts of the alternative options:** No action alternative would have negative economic impacts for general category vessels that could not establish a scallop landings history especially in the recent years due to the poor scallop resource conditions in NGOM. With alternative 3.1.4.2, Amendment 11 provisions would not apply to NGOM and the general category vessels will retain the opportunity to fish for scallops in NGOM when there is an improvement in the scallop resource in this area. As a result, the economic impacts on these vessels will be positive. On the other had, because this alternative will let any general category fishermen regardless of their homeport to land scallops in this area, it could lead to an influx of vessels from other areas to participate in the open access fishery of NGOM with negative impacts on the general category fishermen that traditionally fished in this area. Alternative 3.1.4.3 is would qualify a smaller number of vessels for NGOM program due to the 100 lb. trip criteria , thus would benefit a smaller number of vessels. This alternative would also provide an advantage to limited access general category vessels by allowing them to land

400 pounds per trip from this area whereas the traditional participants with NGOM permit could fish only up to 200 pounds per trip.

### **Economic Impacts of Monitoring Provisions (Section 3.1.5)**

- Rationale is provided in Executive Summary and in Section 3.1.5.2.
- Economic Impacts are analyzed in Section 5.4.15.
- **Summary of the impacts of the proposed option and mitigating factors:** Reporting landings through VMS as proposed by this amendment will have positive indirect economic benefits for the sea scallop fishery by improving the monitoring of the fishing effort in the general category fishery and ensuring better compliance with the regulations. Since general category vessels that land over 40 lb. are already required to have a VMS onboard, the compliance costs of this action are not expected to be significant.
- **Comparison of the impacts of the alternative options:** The no action and Interactive Voice Reporting (IVR) alternatives does not have advantages associated with VMS reporting such as providing the real time and location information. As a result, proposed action is expected to have greater indirect economic benefits for the sea scallop industry compared to these alternatives.

### **Impacts of limited access fishing under general category rules**

- Rationale is provided in Executive Summary and in Section 3.1.6.1.
- Economic Impacts are analyzed in Section 5.4.16.1.
- **Summary of the impacts of the proposed option and mitigating factors:** The proposed action will have positive economic impacts on 57 limited access vessels (38 full-time and 19 part-time and occasional) that would qualify for general category limited access program under the same criteria as general category vessel (1000 lb. and 5-year period for qualification).
- **Comparison of the impacts of the alternative options:** Alternative 3.1.6.1.4 would prevent any limited access vessel from having a general category permit and alternative 3.1.6.1.3 would prevent full-time vessels from fishing under general category rules with negative economic impacts on these vessels that normally participate in the general category fishery.

### **Impacts of allocation of quota for limited access fishing under general category rules**

- Rationale is provided in Executive Summary and in Section 3.1.6.2.
- Economic Impacts are analyzed in Section 5.4.16.2.
- **Summary of the impacts of the proposed option and mitigating factors:** Proposed action would provide a separate 0.5% allocation of total scallop harvest to limited access vessels that qualify under general category rules without reducing the allocations for the general category vessels. As a result, this action will have positive economic impacts on those vessels. The 0.5% TAC for the limited access qualifiers is less than the percentage share of these vessels in total general category scallop landings in recent years but almost equal to what has been observed at the time of the control date in 2004 fishing year. Under the status quo (without the 0.5% TAC restriction), these vessels would could have landed more scallops with the general category trips, but then any increase in general category effort would be taken out of the limited access DAS allocations. This would

have negative economic impacts on limited access vessels that do not fish for scallops under general category rules.

- **Comparison of the impacts of the alternative options:** Under alternative 3.1.6.2.1, scallops landed by limited access vessels under general category rules would be deducted from the 5% TAC awarded to the general category fleet, negatively impacting the general category vessels that qualify for limited access, with small positive economic impacts on the limited access scallop fleet.

#### **Impacts of allocation between limited access and general category fisheries (section 3.1.7)**

- Rationale is provided in Executive Summary and in Section 3.1.7.2.
- Economic Impacts are analyzed in Section 5.4.17.
- **Summary of the impacts of the proposed option and mitigating factors:** The proposed allocation between limited access and general category will have different distributional impacts on the vessels that participate in these fisheries. The proposed 5% general category TAC will have negative economic impacts on many general category vessels (compared to status quo management) given that the percentage share of this fishery in total scallop landings in the years after the control date was over twice that level (2005 and 2006). On the other hand, 5% TAC is above the long-term average percentage landings by this fishery (about 2.5%) and corresponds to the highest level reached by the general category fishery before the control date (5.26% in 2004 fishing year). Therefore, this allocation is consistent with the Council's decision in 2004 to implement a control date recognizing that that the substantial increase in general category fishing effort could lead to overfishing of the scallop resource and reduce economic benefits for everyone. The short-term and long-term economic impacts of the 5% TAC combined with the limited entry program are discussed extensively in the Section 7.9.6 above (Summary of the proposed measures) and will not be repeated here. There will be no change in the allocation of yellowtail flounder bycatch TAC in access under the proposed action (See Section 5.4.17.5 for a discussion of impacts).

The proposed action includes several measures that could mitigate some of the adverse economic impacts of the limited access program for general category including the 5% TAC. The separate limited entry program for the NGOM is expected provide an opportunity to a larger number of vessels that are not qualified for limited access but have historically participated in the NGOM scallop fishery to fish for scallops at a reduced scale (at a lower possession limit of 200 lb. per trip) when the resource conditions in this area become favorable. The incidental catch permit will provide opportunity for the vessels that land scallops occasionally or as a bycatch to land up to 40 pounds per trip. This measure could also benefit some vessels that qualify for limited access but received allocation pounds lower than they could land with the incidental permit. Furthermore, Amendment 11 includes a provision to allow limited stacking so that vessels that do not receive an adequate allocation can buy or lease additional quota to make up revenue lost if that vessel was very dependent on the general category scallop fishery in the past. Similarly, the proposed action to establish a process for sectors in the general category fishery will provide an opportunity for fishermen to form or join harvesting cooperatives and benefit from an economically viable operation when the allocations of individual vessels are too small to make scallop fishing profitable.

- **Comparison of the impacts of the alternative options:** A lower TAC for general category would have larger negative proportional impacts on general category vessels while potentially increasing the revenues of the limited access fishery by a small percentage. A higher percentage TAC will reduce the negative impacts on general category vessels, but will lower the positive economic impacts on the limited access vessels compared to a level of 11% (see Table 74).

### **Impacts of incidental catch permit (3.1.8)**

- Rationale is provided in Executive Summary and in Section 3.1.8.2.
- Economic Impacts are analyzed in Section 5.4.18
- **Summary of the impacts of the proposed option and mitigating factors:** Proposed action would create an incidental catch permit for vessels to retain and sell 40 lbs. of scallop meat per trip if they meet the qualification criteria for having been issued a permit but not the landing criteria necessary for limited access general category permit. The economic impacts of this alternative will be positive on vessels that do not qualify for limited access because it will allow them to still earn some income from scallops under the incidental catch permit. This measure could also benefit some vessels that qualify for limited access but the allocation pounds they received are lower than what they could land with the incidental permit.
- **Comparison of the impacts of the alternative options:** Only alternative is the no action, which continues the allowance but not sale of incidental bycatch of scallops up to 40 lbs (3.1.8.1).

### **Impacts of changing the issuance date of general category permits**

- Rationale is provided in Executive Summary and in Section 3.2.2.
- Economic Impacts are analyzed in Section 5.4.19.
- **Summary of the impacts of the proposed option and mitigating factors:** Changing the general category permit to March 1 could create some complications for the general category vessels, many of whom participate in other fisheries, which have the May 1 start date. The proposed measure will allow, however, better estimation of the number of participants, the level of effort in the fishery and allocation of TAC by aligning the issuance date with date for the limited access fishery. As a result, the proposed action will have indirect positive economic impacts on the sea scallop fishery.
- **Comparison of the impacts of the alternative options:** The alternatives to change the fishing year to May 1 (3.2.3) or to August 1 (3.2.4) would have some positive impacts over the long-term by aligning the fishing year with the scallop survey. On the other hand, these alternatives would require a change in the business plans of the scallop fishermen and create some risks if plans do not materialize due to unforeseen conditions, increasing the compliance costs for the vessels.

### **Impacts of other measures (3.3)**

- Rationale is provided in Executive Summary and in Section 3.3.
- Economic Impacts are analyzed in Section 5.4.20 and 5.4.21.
- **Summary of the impacts of the proposed option and mitigating factors:** Clarification of trawl gear restriction (3.3.1) for vessels fishing under a multispecies or monkfish DAS will have positive economic impacts on those general category vessels

that catch scallops only incidentally compared to no action. Setting the possession limit to 100 bushels east of the demarcation line (3.3.2) will have positive economic impacts on the general category vessels that are able to shuck before they reach the demarcation line.

- **Comparison of the impacts of the alternative options:** The only alternative is the no action, which does not provide the benefits of the proposed action.

### **7.9.8 Indirectly affected industries**

Indirect impacts include the impacts on the sales, income, employment and value-added of industries that supply commercial harvesters, such as the impacts on marine service stations that sell gasoline and oil to scallop vessels. The induced impacts represent the sales, income and employment resulting from expenditures by crew and employees of the indirect sectors.

Although the proposed action will have different distributional impacts on the participants of the scallop fishery, it is not expected to lower overall scallop fleet landings and revenues. In the short-term, the negative economic impacts on the general category vessels will be counterbalanced by the positive impacts on the limited access fishery and on positive economic impacts on some general category vessels that qualify for limited access. Because it will prevent further expansion of general category fishery and overfishing of the scallop resource from further increase in general category fishing, it will have positive impacts on scallop yield, productivity fleet costs and revenues compared to no action. Therefore, the indirect and induced impacts of the proposed measures are expected to be positive.

### **7.9.9 Identification on Overlapping Regulations**

The proposed regulations do not create overlapping regulations with any state regulations or other federal laws.

### **7.10 E.O. 13132 (FEDERALISM)**

This amendment does not contain policies with federalism implications warranting preparation of a federalism assessment under EO 13132.

### **7.11 E.O. 12898 (ENVIRONMENTAL JUSTICE)**

The alternatives in this amendment are not expected to cause disproportionately high and adverse human health, environmental or economic effects on minority populations, low-income populations, or Indian tribes.