

- (14) *to the extent that rebuilding plans or other conservation and management measures which reduce the overall harvest in a fishery are necessary, allocate any harvest restrictions or recovery benefits fairly and equitably among the commercial, recreational, and charter fishing sectors in the fishery.*

### **6.3 DISCRETIONARY PROVISIONS RELATED TO LIMITED ACCESS**

Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act also includes discretionary provisions for FMPs, one of which relates to the development of a limited access program for a fishery and is discussed below.

#### **[To be completed for final submission document]**

Any FMP prepared by any Council, or by the Secretary, with respect to any fishery, may:

- (6) *establish a limited access system for the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account --*
- (A) *present participation in the fishery,*
  - (B) *historical fishing practices in, and dependence on the fishery,*
  - (C) *the economics of the fishery,*
  - (D) *the capability of fishing vessels used in the fishery to engage in other fisheries,*
  - (E) *the cultural and social framework relevant to the fishery and any affected fishing communities, and*
  - (F) *any other relevant considerations.*

## **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, Massachusetts, New Jersey and North Carolina. The Council took public comment until the end of the public comment period (June 2, 2007). The Council is scheduled to approve the final management action and vote 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. 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. One 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**

*[to be completed for FSEIS]*

### **7.1.4 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

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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

#### **7.1.5 DSEIS 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 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.

### **7.1.6 DSEIS Public Comments and Responses**

**[to be completed after public hearings before final selection of measures in June]**

### **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 when the Council adopts final measures for Amendment 11.

### **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 MMPA will be made when the Council adopts final measures for Amendment 11.

### **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. Once the Council has adopted final alternatives and has submitted Amendment 11 to NMFS, the collection of information requirements would be submitted to the Office of Management and Budget for review and approval.

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

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

## **7.7 DATA 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 AND REGULATORY FLEXIBILITY ACT (RFA)**

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.

### ***Regulatory Flexibility Act***

Under Section 603(b) of the RFA, each initial regulatory flexibility analysis is required to address:

1. Reasons why the agency is considering the action,
2. The objectives and legal basis for the proposed rule,
3. The kind and number of small entities to which the proposed rule will apply,
4. The projected reporting, record-keeping and other compliance requirements of the proposed rule, and

5. All Federal rules that may duplicate, overlap, or conflict with the proposed rule.

***E.O. 12866***

NMFS Guidelines provide criteria to be used to evaluate whether a proposed action is significant. A significant regulatory action means any regulatory action that is likely to result in a rule that may:

1. *Have an annual effect on the economy of \$100 million or more, or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.*
2. *Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.*
3. *Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.*
4. *Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.*

**7.9 E.O. 13132 (FEDERALISM)**

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

**7.10 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.