Interim Action to Extend the Mid-Atlantic Sea Scallop Closed Areas under the Atlantic Sea Scallop Fishery Management Plan

Environmental Assessment
Essential Fish Habitat Assessment
Regulatory Impact Review
Final Regulatory Flexibility Analysis

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January 2001

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1.0 Introduction

The New England Fishery Management Council (Council) began the development of a fishery management plan (FMP) for Atlantic Sea Scallops (*Placopecten magellanicus*) (scallops) in 1982. The objective of the FMP was to maximize, over time, the joint social and economic benefits from harvesting and use of the sea scallop resource. To attain this goal, the FMP was designed to:

< Restore adult stock abundance and age distribution;
< Increase yield per recruit for each stock;
< Evaluate FMP research, development and enforcement costs; and
< Minimize adverse environmental impacts on scallops.

Since the original FMP there have been 7 amendments and 13 framework adjustments (frameworks) to modify the scallop management measures and implementing regulations to address changing conditions in the scallop resource and fishery. Two actions were of particular importance to the proposed action described in this document. Both of the actions were based largely on the 23rd Northeast Regional Stock Assessment Workshop (SAW 23), in March 1997, which identified high fishing mortality rates, low stock size, and lack of significant recruitment in the scallop fishery. To reduce immediately and significantly fishing effort for scallops in the Mid-Atlantic region in order to preserve spawning stock biomass and improve the yield per recruit, as recommended in SAW 23, the National Marine Fisheries Service (NMFS) implemented an interim final rule on April 3, 1998 (63 FR 15324, April 3, 1998), that established the Hudson Canyon South and Virginia Beach Closed Areas (Chart 1) in the Mid-Atlantic region and closed these areas to all scallop fishing. These two areas were identified because the areas contained large concentrations of small and juvenile scallops that could provide for future recruitment. The interim final rule was subsequently extended for 180 days (63 FR 51862, September 29, 1998) and on March 29, 1999, Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (64 FR 14835, March 29, 1999) extended the effective date of the closures through March 1, 2001.

While there are still concentrations of small scallops in the Hudson Canyon and Virginia Beach Closed Areas, recent surveys by the Northeast Fisheries Science Center (NEFSC) and Virginia Institute of Marine Science (VIMS) indicate that a large portion of the protected scallops have grown and could be of considerable value to the fishing industry. Because of the vulnerability of these scallops to fishing upon the re-opening of the areas on March 1, 2001, concern was expressed by scientists in the 2000 sea scallop Stock Assessment and Fishery Evaluation (SAFE) report (New England Fishery Management Council, Scallop Plan Development Team, September 8, 2000) that uncontrolled fishing effort in these areas would increase fishing mortality beyond management thresholds, would cause overfishing, and could compromise future recruitment. To address these concerns, the Council is currently developing Framework 14 to the FMP, the annual framework adjustment, with the intention of including an area access program for the Mid-Atlantic closed areas. This program would restrict scallop vessels, when fishing in the Mid-Atlantic closed areas, to a scallop possession limit and a limited number of trips, among other measures. Because the Council is preparing a Supplemental Environmental Impact Statement (SEIS) for Framework 14, it is highly unlikely that Framework 14 will be implemented by March 1, 2001, the date that the Mid-Atlantic closed areas are scheduled to re-open. An interim action is therefore necessary to ensure that the areas do not open prior to being afforded some protection from fishing.

2.0 Purpose and Need for Action

Section 305(c)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) states that if the Secretary of Commerce (Secretary) finds that an emergency or overfishing exists, or that interim measures are needed to reduce overfishing for any fishery within its jurisdiction, he may promulgate emergency regulations or interim measures necessary to address the emergency or overfishing. The emergency or interim action can remain in effect for not more than 180 days after the date of publication, and may be extended, by publication of a notice of extension in the Federal Register, for one additional period of not more than 180 days, provided the public has had an opportunity to comment on the emergency regulation or interim measure, and, in the case of a Regional Fishery Management Council recommendation for emergency regulations or interim measures, that the Council is actively preparing a fishery management plan, plan amendment, or proposed regulations to address the emergency or overfishing on a permanent basis. Interim measures addressing overfishing may be implemented even if they are not sufficient in and of themselves to stop overfishing.

The Council is currently developing Framework 14 to the FMP, which will include analyses of the impacts of a controlled access program for the Mid-Atlantic closed areas along with other alternatives. However, because an SEIS is being prepared for Framework 14, implementation is not expected to occur until after March 1, 2001. Without an interim action to keep the Mid-Atlantic areas closed beyond March 1, 2001, there would be a period when these areas would be open with few management restrictions on scallop fishing. Therefore, the reasons for this interim action are: (1) To prevent overfishing from occurring by preventing a rapid increase in fishing effort in the re-opened closed areas; and (2) to protect very high concentrations of commercially valuable scallops in these areas until an area access program can be put in place to regulate the harvest of these scallops. This document examines three alternatives, one of which, the development of a controlled area access program, is considered not feasible at this time, given the necessity to prepare an SEIS for the fishery; that alternative is therefore rejected from further consideration. The remaining alternatives would either allow the areas to open on March 1, 2001, as currently scheduled, without additional protective measures (status quo), or extend the closures until such time that Framework 14 can be implemented (proposed). The analyses presented in this document examine which course of action is more appropriate with regard to the environmental consequences and economic impacts of each alternative.

The basis for this action is a recommendation by the Scallop Plan Development Team (PDT) in its 2000 SAFE Report . This document also relies on documents developed in support of the previous actions that implemented the closures: Amendment 7 to the FMP and the 1998 interim final rule for scallops.

In the 2000 SAFE Report, the PDT recommended an area access program to control the amount of effort that is expended on the scallop resource within the two Mid-Atlantic closed areas. The SAFE Report also presents information on the status of scallops in the Hudson Canyon South Closed Area. Information on the resource abundance in the Virginia Beach Closed Area is absent from the SAFE Report, as is information from the just completed NMFS 2000 Scallop Survey.

3.0 Alternatives

3.1 Alternative 1 - No Action

The no-action alternative would allow the Hudson Canyon South and Virginia Beach Closed Areas to re-open, as scheduled, on March 1, 2001. The expected reaction to these openings is an immediate increase in fishing effort within these areas, as vessels would likely want to fish in these areas to take advantage of the scallops that have grown in number and in size during the period that these areas were closed. The absence of access controls would also occur in conjunction with the scheduled effort reduction program established in Amendment 7, which would reduce full-time, part-time and occasional scallop days-at-sea (DAS) to 49, 19, and 4, respectively, beginning March 1, 2001. It is possible that a large number of full-time vessels would use up to 49 DAS in the areas beginning on March 1, 2001. As a result, the amount of exploitable scallops in the area would be reduced, possibly to the point where the area access program in development by the Council in Framework 14 would be ineffective. In the longer term, allowing unrestricted fishing in these areas could lead to closures of these areas in 2002 and beyond, should fishing mortality targets in the area be exceeded. If these future closures were to occur, in concert with expected DAS allocations in 2002, fishing mortality rates might exceed the FMP targets in 2002, and could require that the overall scallop catch be reduced (i.e., additional measures to reduce fishing mortality on the stock as a whole might be required).

3.2 Alternative 2 - (Proposed) Extend in Time the Hudson Canyon South and Virginia Beach Closed Areas and Prohibit Federally Permitted Scallop Fishing Vessels from Fishing for, Possessing, or Retaining Scallops in Both Areas

The Proposed Alternative would continue the current prohibition on vessels to fish for, possess, or retain scallops in Hudson Canyon South and the Virginia Beach Closed Areas (Chart 1). These areas are historically important scallop fishing areas. The Virginia Beach Closed Area was an area of very high fishing effort in 1997. Fishing effort in the Hudson Canyon South Closed Area was low in 1997, but recruitment was relatively high. Based on NMFS survey results presented in the 2000 SAFE Report, including preliminary results from 2000, the combined index of biomass of scallops in the two closed areas has increased from 0.8 kg/tow in 1997 to 9.2 kg/tow in 2000. Under this alternative, the Hudson Canyon South and the Virginia Beach Closed Areas would remain in effect until measures to control effort in the closed areas, when they re-open, can be implemented through Framework 14. Vessels would still be allowed to fish their scallop DAS allocations outside of the closed areas. DAS would be subject to the scheduled effort reduction program established in Amendment 7, which would reduce full-time, part-time and occasional scallop days-at-sea (DAS) to 49, 19, and 4, respectively, beginning March 1, 2001.

The two areas are relatively small and, combined, represent approximately 1,900 nm^2 (Hudson - 1,469 nm^2, VA - 420 nm^2). For comparison, the existing year-round multispecies Georges Bank and Southern New England closures cover approximately 5,000 nm^2. The Mid-Atlantic closed areas were selected on the basis of abundance of small scallops, as identified by the 1997 NEFSC Sea Scallop Research Vessel Survey.

The Hudson Canyon South Closed Area is defined by straight lines connecting the following points in the order stated:

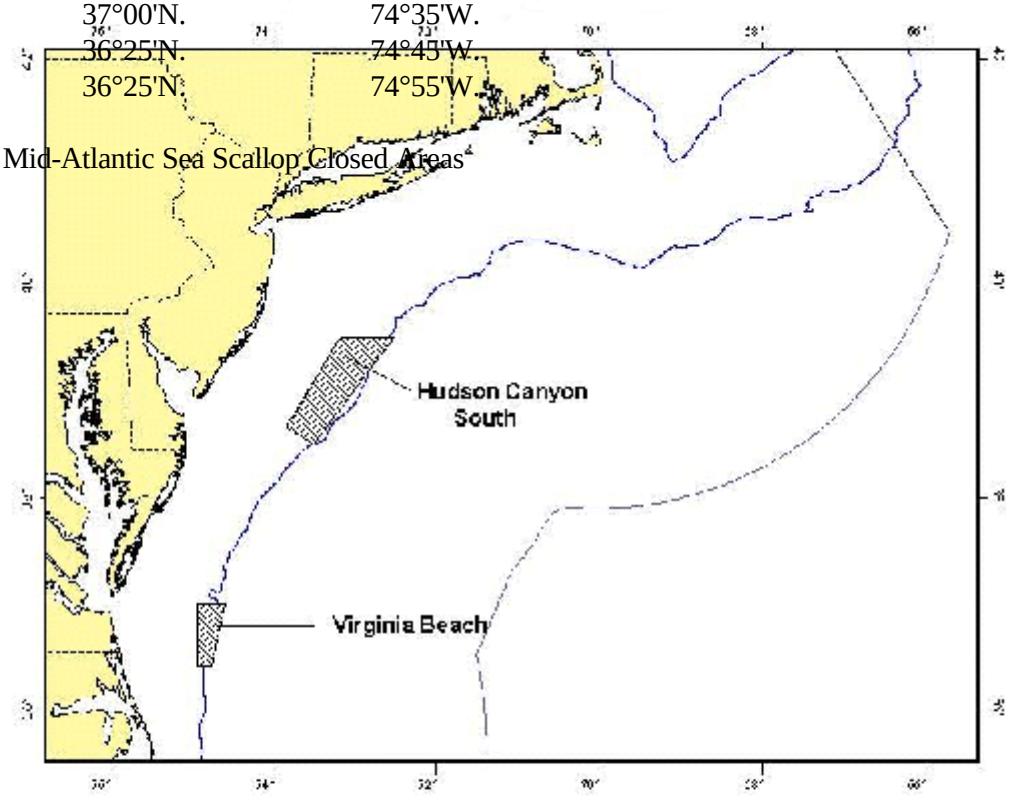
Point	Latitude	Longitude

H1	39°30'N.	73°10'W.
H2	39°30'N.	72°30'W.
H3	38°30'N.	73°30'W.
H4	38°40'N.	73°50'W.

The Virginia Beach Closed Area is defined by straight lines connecting the following points in the order stated :

Point	Latitude	Longitude
V1	37°00'N.	74°55'W.
V2	37°00'N.	74°35'W.
V3	36°25'N.	74°45'W.
V4	36°25'N.	74°55'W.

Chart 1 - Mid-Atlantic Sea Scallop Closed Areas



Under this alternative, no vessel could fish for, possess, or retain sea scallops from the Hudson Canyon South or Virginia Beach Closed Areas, or possess sea scallops in this closed area, or transit this closed area, for up to 180 days, with the possibility of extension for another 180 days, unless all scallop fishing gear on board is properly stowed and not available for immediate use in accordance with the

provisions of 50 CFR 648.23(b).

The closed areas were originally implemented to reduce catches of small scallops by otter trawl and dredge vessels, increase scallop yields, and allow more scallops to reach a catchable size. In the EA for the initial interim action that closed these areas, it was noted that discard mortality is extremely high for trawl- and dredge-caught scallops and the problem is particularly acute when new year-classes are abundant. The EA further mentioned that even these relatively small closures can result in significant reductions in fishing mortality and increases in yield per recruit. Greater gains may accrue to fishers through protecting scallops until they reach catchable sizes. The benefits of this interim action will also be manifested through a more balanced age structure of the scallop stock. Although the scallops have grown in abundance and in size since the initial action that closed these areas, this proposed alternative would afford additional protection until such time that a controlled access program for the areas is developed and implemented through Framework 14.

3.3 Alternative Considered but Rejected

A third alternative that NMFS considered for this action is a controlled access program to ensure that new fishing effort in the Mid-Atlantic closed areas would not compromise the goals of the FMP and the condition of the scallop resource in the closed areas. The Council is currently developing such an alternative (Framework 14), which is expected to include a complex set of management measures. Based on a preliminary analysis contained in the 2000 SAFE Report, an area access program is expected to provide the greatest benefits to the industry while taking into consideration the affects of the program on the scallop resource. While the scallop resource would be protected from increases in fishing effort that could increase mortality beyond the management thresholds, the industry would be allowed to concentrate some effort on a valuable portion of the resource. This would allow the industry to take advantage of the improved condition of the portion of the resource while still preserving the future recruitment potential of the stock.

Upon considering this alternative, NMFS determined that it is not feasible to implement an area access program by March 1, 2001, due to the time constraints of developing such an action. Therefore, this alternative is not analyzed further in this document. In particular, the Council has preliminarily determined that the scallop fishery could have a significant impact on the human environment, which requires preparation of an SEIS to comply with the National Environmental Policy Act (NEPA). NEPA requirements specify statutory timeframes for obtaining public review and comment, which are inconsistent with the March 1, 2001, reopening of the closed areas. The Council is completing a full environmental and economic impact analysis for this alternative in Framework Adjustment 14.

4.0 Affected Environment

The environment affected by this action, including the physical environment in which scallops are found, biological, and human environment, is as described in detail in the EIS for Amendment 7 to the FMP, in Amendment 9 to the FMP, and in the EA for the interim final rule published on April 3, 1998, which initially closed the areas to protect scallops. In addition, an excerpt from the 2000 SAFE Report, included as an appendix to this document, describes the condition of the scallop resource in the closed areas. This information was obtained from a recent experimental fishery conducted by VIMS, as well as

from preliminary information from the 2000 NEFSC Sea Scallop Survey. These data have not yet been formally analyzed for the purpose of an area access program, and will be included in the SEIS for Framework 14.

4.1 Marine Mammals, Endangered Species and Other Protected Resources

A description of potentially affected protected species (marine mammals, sea turtles and shortnose sturgeon), including those that are threatened and endangered or proposed to be listed as threatened or endangered, was provided in Amendment 4 to the FMP. Impacts of the fishery and management measures were most recently reviewed in Amendment 7 to the FMP. Prior to those actions, potentially affected species were also discussed in the EA completed for NMFS' interim action to implement scallop protection measures in the scallop fishery, dated February 1998.

Detailed information for all marine mammal species in the U.S. Atlantic Ocean may be found in stock assessment reports prepared by NMFS pursuant to Section 117 of the Marine Mammal Protection Act (MMPA). The initial stock assessments were presented in Blaylock, et al. (1995) and are updated in Waring, et al. (1997). The most recent report, U.S. Atlantic Marine Mammal Stock Assessments -- 1998 (Waring et al., 1999), contains assessment reports for the Atlantic stocks. Information presented includes stock definition and geographic range, population size and productivity rates, and known impacts. Information on sea turtle status is contained in the 1995 and 1997 status reviews of listed turtles prepared jointly by NMFS and the U.S. Fish and Wildlife Service (NMFS and USFWS, 1995).

4.1.1 Threatened and Endangered Species

Northern Right Whales - The northern right whale population, which numbers less than 300 animals, ranges from wintering and calving grounds off the southeastern United States to summer feeding grounds off New England, in the northern Bay of Fundy, and on the Scotian Shelf. New England waters are a primary feeding ground. Principal prey items include copepods in the genera *Calanus* and *Pseudocalanus*, although they may feed on similar-sized zooplankton and other organisms. Feeding efficiency may depend on the ability of whales to find and exploit dense zooplankton patches. They are considered to be the most endangered whale in the world. Sources of mortality include ship strikes and entanglement in fixed fishing gear. Mobile scallop gear is not known to interact with northern right whales.

Sea Turtles - Loggerhead, leatherback, Kemp's ridley, and green turtles are known to inhabit the action area and are susceptible to entanglement in dredges used in the sea scallop fishery. Given the available information, however, there is no reason to conclude that the fishery or the proposed action represents a major source of human-induced serious injury or mortality.

Shortnose Sturgeon - Although shortnose sturgeon have the potential to interact with sea scallop dredge gear, the possibility is remote given that they are benthic fish that mainly occupy the deep channel sections of large rivers.

4.1.2 Species of Concern

Harbor Porpoise - Harbor porpoise are widely dispersed from New Jersey to Maine but are generally most abundant in the western Gulf of Maine, moving northward to the Bay of Fundy in the summer. The most common cetacean species caught in commercial fishing gear in the Northeast, harbor porpoise is the subject of a Take Reduction Plan (TRP) implemented by NMFS in December 1998. To reduce takes, the TRP targets the Gulf of Maine multispecies gillnet and Mid-Atlantic coastal gillnet fisheries. Requirements include the use of acoustic deterrents (pingers) on nets, time/area closures and gear modifications.

Barndoor Skate - On March 30, 1999, the Center for Marine Conservation petitioned the Secretary to list barndoor skate as an endangered species. Acting on behalf of the Secretary, NMFS will determine if the petition is warranted, and if so, will conduct a status review. The Agency will make a decision to list or not, based on its finding. This issue is relevant because a relatively large number of barndoor skates (148) were taken as bycatch in the summer, 1998, cooperative NMFS/industry survey undertaken to determine scallop abundance in Closed Area II on Georges Bank. In a 1999 joint NMFS/industry dredge survey, 61 barndoor skates were taken in 132 10-minute tows in the Nantucket Lightship Closed Area and 114 were taken in 188 10-minute tows in Closed Area I. However, the range of barndoor skate as presented in the most recent stock assessment for barndoor skate (30th Stock Assessment Workshop -SAW - NEFSC, 1999) extends from the Scotian Shelf to southern Georges Bank. Dwindling concentrations of barndoor skate occur from southern Georges Bank to the Hudson Canyon. Very few, if any, barndoor skate are recorded south of the Hudson Canyon area (30th SAW) and it is not likely that barndoor skate will be encountered in the Hudson South or the Virginia Beach Closed Areas or in the areas surrounding the closed areas.

4.2 Essential Fish Habitat (EFH)

The area affected by the proposed action in the Atlantic sea scallop FMP has been identified as EFH for species managed by the Northeast Multispecies; Atlantic Sea Scallop; Atlantic Monkfish; Summer Flounder; Scup and Black Sea Bass; Squid, Atlantic Mackerel, and Butterfish; Atlantic Surf Clam and Ocean Quahog; Atlantic Bluefish; Atlantic Billfish; and Atlantic Tuna, Swordfish and Shark fishery management plans. A detailed description and definition of EFH for species managed in these FMPs is contained in the NEFMC Omnibus EFH Amendment, 1998.

5.0 Environmental Consequences

The effects of the proposed action, as well as the no-action alternative, that are described in this section are largely based on the effects as described in Amendment 7 to the FMP and the 1998 interim rule, which originally established the Mid-Atlantic closed areas. Effects of the alternatives on marine mammals, endangered and threatened species, and other protected resources, as well as EFH are also based mainly on information and analyses contained in these previous actions and Amendment 9 to the FMP. The Council is currently developing Framework 14 and is preparing an SEIS for the scallop fishery. The Council will be conducting additional meetings to complete the analyses necessary to support a range of options for Framework 14 (the preferred options have yet to be approved by the full Council). Because some of these analyses have not yet been finalized, this EA incorporates preliminary information included in the 2000 SAFE Report, as well as analyses included in the EIS for Amendment 7 to the FMP and the April 1998 EA for the interim rule.

5.1 No-Action Alternative - Allow Areas to Re-open on March 1, 2001

5.1.1 Impacts on the Biological Environment

5.1.1.1 Impacts on Scallops

Two important questions come into play in evaluating the proposed action relative to the status quo: Is the fishery expected to generate enough effort in the re-opened areas to deplete scallops in these areas in the time interval between the re-opening of an unrestricted fishery in the areas and when an area access program can be implemented, particularly since full-time scallop vessels will be allocated only 49 DAS? Do the conservation benefits that could accrue in areas outside the re-opened areas that might be expected to be abandoned by the fleet compensate or ameliorate the effects of intensive fishing for scallops inside the re-opened areas?

With respect to the first question, the precise length of time between March 1, 2001, and the implementation of Framework 14 is unknown, although Framework 14 is expected to be implemented in May, 2001. If this period is, for example, as short as 1 month, then it is possible, given highly focused fishing, that scallops in an area such as the Virginia Beach Closed Area could be fished down to a level that would produce catch rates similar to those currently being observed in the open areas (which are currently high due to relatively good recruitment in all areas). Based on re-openings of other areas to scalloping, once catch rates are decreased 50-60% from the beginning of the fishery in the re-opened areas, the requirement that 10 DAS be charged for each trip in the re-opened areas (as is being considered in Framework 14) results in most vessels choosing to fish in other open areas. In this case, with no access limitations in place, there would be no such trade-off. Under the no-action alternative, full-time vessels' DAS allocation would be reduced to 49 DAS, which may precipitate intensified fishing in these re-opened areas because of expected high catch rates per DAS. Moreover, even if it appears likely that Framework 14 will increase DAS allocation to 2000 fishery year levels, vessels may still have a strong incentive to fish in these re-opened areas. It is likely that the re-opened areas will be depleted rapidly of under-10-count scallops (10 scallop meats per pound), which bring high prices; once the catch per unit effort (CPUE) approaches that of the surrounding area, the fleet will neither be attracted nor avoid the re-opened areas. The Hudson Canyon South Closed Area is over three times as large as the Virginia Beach Closed Area, as noted previously, and thus, the potential for rapid resource depletion is much greater in the Virginia Beach Closed Area. If unrestricted fishing is allowed for a long enough period, possibly even 1 or 2 months, it is expected that catch rates within the re-opened areas would approach those in the already open areas, given the proximity of the re-opened areas to shelter and ports, and considering favorable weather conditions in March, April and May.

With respect to the second question, if the re-opened areas become the focus of a substantial portion of the scallop fishing effort (as is likely), then other areas currently being fished (e.g., Great South Channel) will be subject to less overall effort. Given the prevalence of pre-recruits and larger sized scallops in the re-opened areas, yield per recruit will likely be high there. A detailed analysis of scallop densities, sizes, and fishing effort patterns would be necessary to compute the biomass gains and losses accruing from a strategy that refocused the fishery in a smaller portion of the resource range for an undetermined period. Such an analysis is not possible at this time. It is not known whether a greater increase in scallop stock biomass would occur by leaving the Mid-Atlantic areas closed and allowing the

current pattern of fishing, or by re-opening the closed areas and allowing areas currently open to experience lower overall fishing effort. Since there is an overall cap in DAS in the scallop fishery, overall fishing mortality is also capped.

Although irreparable consequences probably would not occur under the no-action alternative, it is clear that an extended closure would contribute to the reduction of overfishing and produce higher yields than would the no-action alternative. The last Stock Assessment Review Committee (SARC) to review the status of scallop stocks noted the potential for a mosaic of overfished and underfished stock components resulting from a system of closed and open areas. In this regard, a strategy that maximizes cohort yields (from all age classes in the stock) would result in an overall yield potentially far greater than would a strategy that allowed some areas to be fished at rates that exceed the maximum sustainable yield fishing mortality rate for some of the stock components. Unrestricted fishing on areas currently closed in the Mid-Atlantic would thus likely result in less than maximum yields.

5.1.1.2 Impacts on Other Species

The no-action alternative would not substantively impact other species currently harvested by other Federal permit holders. The impacts of the no-action alternative on other species are discussed in the SEIS for Amendment 7 to the FMP, in the section pertaining to the impacts of the resource rebuilding program on other fisheries. Scallop vessels typically catch several other species, including primarily monkfish, Northeast multispecies, lobster, and summer flounder. However, most of the landings of these species occurred exclusive of scallop landings. While scallop trawl gear and dredge gear may capture these species, the effort controls, other management measures (such as gear requirements for bycatch reduction), and management measures for other fisheries would ensure that impacts of re-opening these areas on other species is minimal. The no-action alternative would reflect scallop fishing effort levels such as were anticipated in Amendment 7 and therefore would not alter the conclusion in the SEIS for Amendment 7 that impacts on other species would be minimal. In addition, the operation of fisheries targeting other species has not been prohibited in the Mid-Atlantic closed areas and would not be affected by the re-opening of the areas.

5.1.1.3 Impacts on Marine Mammals, Endangered and Threatened Species and Other Protected Resources

The no-action alternative would not have any additional impacts on marine mammals, threatened and endangered species, or other species of concern that have not been previously analyzed in Amendment 7 to the FMP, Framework 13 to the FMP, or the original Interim Action that established the closed areas in 1998. The level of fishing effort and the management measures that were in place under Amendment 7 to the FMP would be implemented as scheduled until the Council develops, and NMFS implements, Framework 14 to the FMP. The impacts of the measures proposed in Framework 14 would again be evaluated for the framework action.

5.1.2 Impacts on the Physical Environment / EFH

A detailed description and definition of physical environment / EFH in which scallops are found is contained in Amendment 9 to the FMP (NEFMC Omnibus EFH Amendment, 1998). In addition,

Amendment 9, Framework 12 and Framework 13 to the FMP contain an assessment of the impacts on habitat resulting from scallop fishing practices. In relation to current scallop fishing effort allowed by the FMP, the no-action alternative could be expected to increase the total adverse impacts on the physical environment / EFH of the re-opened Mid-Atlantic closed areas; however, it might also reduce impacts to areas that are more sensitive, such as the hard-bottom areas of the Great South Channel.

The no-action alternative would result in the re-opening of the Hudson Canyon South and the Virginia Beach Closed Areas that have been closed since April 3, 1998. While the areas have been closed only to scallop fishing, the lack of scallop fishing with dredge and trawl gear may have provided some relief from habitat impacts caused by the scallop gears. Re-opening the areas without additional restrictions would re-introduce this effort and may raise the habitat impacts to the level prior to the areas being closed. The impacts would likely be more adverse within the closed areas than they would be under the proposed action or a controlled access program.

Under the no-action alternative, fishing effort re-introduced into the Mid-Atlantic closed areas would likely be a shift in effort from other areas. Given the bottom substrates on the Mid-Atlantic shelf (broad expanses of sand with small areas of clay - from Poppe, et al., 1989), these habitats are less susceptible to impacts from bottom-tending mobile fishing gear since they are unlikely to support a complex community of bottom fauna such as those associated with hard-bottom habitats. Thus, all things being equal, some areas that may experience a decrease in effort (e.g., the Great South Channel) are more susceptible to impacts of scallop fishing - and thus may benefit more from effort reduction, particularly as it relates to EFH for associated fish species. The relative tradeoffs in habitat impacts cannot be quantifiably assessed. The limited timeframe of this action minimizes the significance of any effort shift that may occur as a result of this action.

5.1.3 Impacts on the Human Environment

5.1.3.1 Social/Cultural Impacts

Impacts of the Mid-Atlantic closed areas and the alternatives on communities are discussed in detail in the SEIS for Amendment 7 to the FMP and are based on closure action that would last for an extended period. The proposed alternative in this interim action is expected to last only for a short period of time. Therefore, the actual impacts on communities as a result of this interim action would be a fraction of the impacts associated with the original closure of the Mid-Atlantic areas.

As reported in the SEIS for Amendment 7, vessels from ports in Virginia relied on both the Hudson Canyon South and the Virginia Beach Closed Areas prior to their closure for income from the scallop fishery. The percentage of total port revenues in 1996 from income from scallop landings for the areas combined was over 40% for both scallop dredge and trawl gear. Vessels from the ports of New Bedford, Massachusetts, and Cape May, New Jersey, relied on mainly the Hudson Canyon South Closed Area prior to its closure for income from the scallop fishery. The percentage of total port revenues in 1996 from income from scallop landings for the areas combined was 4.2% and 12.1% for New Bedford and Cape May, respectively, for both scallop trawl and dredge gear. Under the no-action alternative, these communities would again be able to enter the re-opened areas and gain the revenues from scallops caught in the re-opened areas.

The no-action alternative would however, include no controls on access to the specified areas by federally permitted scallop vessels. This alternative could contribute to overfishing in this area, would not provide protection to the relatively high concentrations of scallops in those areas, and would likely not maximize yields over the long term. Consequently, industry and the fishing communities would likely be faced with more restrictive measures in the future, which could impose greater adverse impacts on culture and societies than would the proposed alternative. There may be some short-term positive impacts and short-term economic benefits resulting from higher yields from the areas to be re-opened. However, there may be a longer-term cost in terms of stricter measures to reduce overfishing, should the no-action alternative result in rapid depletion of scallop stocks in the re-opened areas.

5.1.3.2 Economic Impacts

The economic impacts of the alternatives are described in the Regulatory Impact Review (RIR) portion of this document. The no-action alternative is not expected to result in lost revenues, since scallop vessels would likely take advantage of the high density and large size of scallops in the re-opened areas. However, allowing the areas to open on March 1, 2001, with no access controls in place could cause overfishing, and may jeopardize long-term benefits to the industry if restrictive management measures are required in the future to remedy the impacts of overfishing.

5.2 Proposed Alternative - Extend in Time the Hudson Canyon South and Virginia Beach Closed Areas and Prohibit Federally Permitted Scallop Fishing Vessels from Fishing for, Possessing, or Retaining Scallops in Both Areas

5.2.1 Impacts on the Biological Environment

5.2.1.1 Impacts on Scallops

Closures of areas to protect scallops provide conservation opportunities that contribute to the objective of the FMP of maximizing benefits attained from harvesting the scallop resource. Closed area management also may be used to protect concentrations of large, relatively productive spawners by leaving them undisturbed; as well as protecting small scallops to ensure recruitment potential of the areas.

Recent (summer 2000) data from the NEFSC Sea Scallop Survey indicate that, in the Virginia Beach area, the number of pre-recruits has declined to about one third the level observed in 1995-1998. The average size of scallops has increased in the area to about 18 g per individual, meat weight. These animals are large, relative to individuals in the Hudson Canyon South area, where the average weight is 10 g per individual, meat weight, but recruitment remains strong in the Hudson Canyon South closed area. However, even though the average size of scallops in the Virginia Beach Closed Area is relatively large, and there are few pre-recruits, the stock in the Virginia Beach Closed Area has not reached its maximum biomass potential. In fact, based on average growth rates and theoretical maximum sizes, the biomass could approximately double from its current level, assuming natural mortality (M) remains at 0.1. Thus, strictly using the criteria of yield maximization, there is justification to keep the area closed until the stock has reached higher biomass. The situation at Hudson Canyon is different, given the appearance of multiple strong cohorts, and it may be possible that cohorts are separated spatially. These data have not been examined in detail, however, to ascertain the feasibility of such a fishing strategy.

5.2.1.2 Impacts on Other Species

The proposed alternative would not substantively impact other species currently harvested by other Federal permit holders, since this measure continues the status quo in the closed areas for a relatively short time period. Other fisheries would be allowed to continue in the closed areas. This action would not have any new impacts on those fishing activities.

5.2.1.3 Impacts on Marine Mammals, Endangered and Threatened Species and Other Protected Resources

Since this measure continues the status quo in the closed areas, the proposed alternatives would not have any additional impacts on marine mammals, threatened and endangered species, or other species of concern that have not been previously analyzed in Amendment 7 to the FMP, Framework 13 to the FMP, or the original interim action that established the closed areas in 1998. The level of fishing effort and the management measures that were in place under Amendment 7 to the FMP would remain in place until the Council develops, and NMFS approves and implements, Framework 14. The impacts of the measures proposed in Framework 14 will be evaluated when the Council adopts its final proposed measures.

5.2.2 Impacts on the Physical Environment / EFH

A detailed description and definition of the physical environment / EFH in which scallops are found is contained in Amendment 9 to the FMP (NEFMC Omnibus EFH Amendment, 1998). In addition, Amendment 9, Framework 12, and Framework 13 to the FMP contain an assessment of the impacts on habitat resulting from scallop fishing practices. Relative to current scallop fishing effort allowed by the FMP, the proposed alternative is not expected to increase the total adverse impacts on EFH associated with scallop fishing in the EEZ. The following discussion on EFH supports this conclusion.

The proposed alternative would extend the Hudson Canyon South and Virginia Beach Closed Areas until action can be taken to control fishing effort and mortality in the areas. This alternative would prohibit vessels from fishing for scallops with any gear type, for the duration of the closure. Other fisheries could be prosecuted in the areas, as is now the case, provided they do not retain scallops.

The EFH Omnibus Amendment described scallop dredge gear and sea scallop otter trawl gear and the effect that the gear has on EFH. The EFH Omnibus Amendment determined that scallop dredge gear and otter trawl gear would have adverse impacts on EFH. Because dredge gear is heavier and more damaging to bottom habitats than trawl gear, the effects on EFH are considered to be more significant. The EFH Omnibus Amendment also described the effect of the scallop closures implemented through the 1998 interim rule, and concluded that EFH within the closed areas would be afforded some time to recover from the impacts associated with the use of scallop dredges. Under the proposed alternative, this protection would continue. Although other fisheries employing bottom-tending mobile gear types could continue to fish in the areas, the effects on EFH would remain lower than if scallop dredges and otter trawls were allowed to fish in the areas. In addition, since the initial fishing effort is expected to be very high in re-opened areas, in the absence of controls on the effort, effects on EFH within the re-

opened areas under the no-action alternative are expected to be worse than if an area access program is implemented before vessels have any access to the closed areas.

Additional impacts on EFH would occur, however, due to potential redirection of effort from formerly opened areas such as Closed Area I, Closed Area II, and the Nantucket Lightship Closed Area which will be closed to scallop fishing and from the Mid-Atlantic closed areas that would otherwise be re-opened under the no-action alternative. It is possible that some of this effort may be redirected into areas of more sensitive habitat that exist outside of the closed area and in the Great South Channel of Georges Bank. The no-action alternative may therefore have more impacts on EFH outside of the Mid-Atlantic closed areas, but the extent of the effects, as described in Section 5.1.2 above, cannot be quantified. Since the action is short-term and temporary, these impacts are expected to be minimal.

EFH Assessment

This EFH assessment is provided pursuant to 50 CFR 600.920 requirements to initiate EFH consultation with the NMFS.

A. Description of the Proposed Action -- See Section 3.2 of this document for a description of the proposed action. Fishing for scallops occurs throughout the EEZ. Since fishing activity already occurs outside of the closed areas, the range of this activity occurs across the designated EFH of all Council-managed species, species managed by the Mid-Atlantic Council, and Atlantic highly migratory species, including swordfish, tunas and sharks.

B. Analysis of the Effects of the Proposed Action -- Scallop dredge and otter trawl fishing in the closed areas would continue to be prohibited until controlled access to the areas is authorized through future Council action. The two closed areas would remain open to other fishing activity such as fishing for summer flounder, scup, black sea bass, multispecies, and monkfish. In areas outside of the closed areas, effort may be redirected to areas of more sensitive habitat, but the extent of the impact on these habitats cannot be quantified. Because the action is short-term and temporary, these impacts will not be substantial.

C. Conclusions -- The action proposed under this interim action may have an adverse effect on EFH, although it will not be substantial. This potential impact is minimized by the short duration of the action and no conservation recommendations are necessary.

D. Proposed Mitigation -- None.

5.2.3 Impacts on the Human Environment

5.2.3.1 Social/Cultural Impacts

Impacts of the Mid-Atlantic closed areas on communities are discussed in detail in the SEIS for Amendment 7 to the FMP and are based on closure action that would last for an extended period. The proposed alternative in this interim action is expected to last only for a short period of time. Therefore, the actual impacts on communities as a result of this interim action would be a fraction of the impacts

associated with the original closure of the Mid-Atlantic areas.

As reported in the SEIS for Amendment 7, and in Section 5.1.3.1 above, vessels from ports in Virginia relied on both the Hudson Canyon South and the Virginia Beach Closed Areas prior to their closure for income from the scallop fishery. The percentage of total port revenues in 1996 from income from scallop landings for the areas combined was over 40% for both scallop dredge and trawl gear. Vessels from the ports of New Bedford, Massachusetts, and Cape May, New Jersey, relied on mainly the Hudson Canyon South Closed Area prior to its closure for income from the scallop fishery. The percentage of total port revenues in 1996 from income from scallop landings for the areas combined was 4.2% and 12.1% for New Bedford and Cape May, respectively, for both scallop trawl and dredge gear. While this revenue may not be available from scallops caught in the re-opened areas, vessels would be allowed to fish in other areas and recoup this income. Further, implementation of this interim action would protect concentrations of scallops in the Mid-Atlantic closed areas until such time that an area access program, currently in development by the Council, can be implemented.

This action is a desirable precursor to the orderly exploitation of the resource in the closed areas. Furthermore, economic losses resulting from the implementation of this interim action are expected to be more than recouped in the long-term, as the health and balance of the resource is maintained, providing for a sustained fishery with maximized yields. Overall, the communities that rely on the Mid-Atlantic scallop fisheries in particular, would realize greater benefits through preserving the effects of an area access program through extension of the Mid-Atlantic closed areas.

5.2.3.2 Economic Impacts

The economic impacts of the alternatives are described in the RIR portion of this document. The proposed alternative is not expected to result in lost revenues since the scallop fishery is not entirely closed and vessels will still be able to fish in other areas. Further, keeping the areas closed until an area access program can be implemented will provide for long-term benefits to the industry in producing higher yields per unit of effort and enhancing long-term productivity.

6.0 Finding of No Significant Impact

National Oceanic and Atmospheric Administration Administrative Order (NAO) 216-6 (revised May 20, 1999) provides nine criteria for determining the significance of the impacts of a proposed action. These criteria are discussed below:

1. *Can the proposed action be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action?*

The proposed action to extend the time period of the Mid-Atlantic closed areas would provide protection for a portion of the scallop resource that would be expected to be fished at a high level of fishing effort in the absence of any measures to control that effort. This action is considered necessary to protect the long-term productive capability of the scallop stock. This action would not have any adverse impacts on other species, nor would it jeopardize the long-term productivity of the stocks of those species.

Because the proposed action would not prohibit other fisheries, these fisheries would continue and their affects on other species would remain as considered in previous actions for those fisheries.

2. *Can the proposed action be reasonably expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and identified in FMPs?*

The proposed action would extend a closure period, thereby providing additional protection to ocean and coastal habitats. Adverse impacts to EFH would not be substantial as described in Section 5.5.3 of this document.

3. *Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?*

The proposed action would not alter current fishing practices that have existed for the last 3 years within the areas closed. Vessel owners would have the flexibility to fish in areas outside of the closed areas. With this flexibility, the proposed action is not likely to have an adverse impact on either public health or safety.

4. *Can the proposed action be reasonably expected to have an adverse impact on endangered or threatened species, marine mammals, or critical habitat of these species?*

Amendment 7 to the FMP considered the impacts on endangered and threatened species and on marine mammal populations. This consideration included the impacts of the Mid-Atlantic closed areas and concluded that no adverse impacts of these closures would likely occur. Since this action continues the closures for a short period of time, there is no reason to expect that the action would have any impacts that were not considered in the Amendment 7 analysis. If anything, the extension of the closures would lessen the likelihood of any impacts of the fishery on endangered or threatened species, marine mammals, or their critical habitat.

5. *Can the proposed action be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?*

The proposed action would not result in cumulative adverse effects on target or non-target species because it prohibits fishing for a short period of time in two areas that have been closed since 1998. Fishing activity that would occur outside of the areas was fully analyzed in Amendment 7 to the FMP.

6. *Can the proposed action be reasonably expected to jeopardize the sustainability of any non-target species?*

The proposed action does not result in an increase of fishing effort on any other species and therefore would not be expected to jeopardize the sustainablity of any non-target species.

7. *Can the proposed action be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?*

The proposed action prohibits fishing in the two Mid-Atlantic closed areas and therefore would not directly impact biodiversity and ecosystem function. Amendment 7 to the FMP analyzed the impacts of the fisheries outside of the closed areas and those impacts are not expected to change as a result of the proposed action.

8. *Are significant social or economic impacts interrelated with significant natural or physical environmental effects?*

The social and economic effects caused by this action are related to the operation of the fishery and are not interrelated with natural or physical environmental effects. Further, natural or physical environmental effects are not expected to be significant, as described in this document.

9. *To what degree are the effects on the quality of human environment expected to be highly controversial?*

None of the measures contained in this framework are expected to result in effects that are highly controversial. The extension of the Mid-Atlantic closures would remain in place only until new measures to control effort in the Mid-Atlantic closed areas can be implemented. The proposed action would help ensure that the area access program under development in Framework 14 is effective in providing balance to the size structure of the scallop stock, sustainability of the scallop resource, and potentially for maximized yields from the resource. Some fishermen may be disappointed that these areas will not re-open on March 1, 2001, as scheduled, because they desire to enter these areas to fish on high-density and large-sized scallops in the closed areas. However, they still have the opportunity to fish outside the closed areas and are likely to have access to the re-opened areas later in the fishing year.

Factors relating to significance of an action as specified at 40 CFR 1508.27 were also considered and determined to be consistent with a Finding of No Significant Impact.

FONSI Statement

In view of the analysis presented in this document and in the FSEIS for Amendment 7 to the FMP, it is hereby determined that the interim rule to extend the time period of the closure for the Hudson Canyon South and the Virginia Beach Closed Areas will not significantly affect the quality of the human environment with specific reference to the criteria contained in NAO Order 216-6 implementing NEPA. Accordingly, the preparation of an SEIS for this interim action is not necessary.

_____ _____

Assistant Administrator for Fisheries, NOAA — Date

REGULATORY IMPACT REVIEW AND FINAL REGULATORY FLEXIBILITY ANALYSIS

1.0 Introduction

NMFS requires the preparation of a Regulatory Impact Review (RIR) for all regulatory actions that either implement a new FMP or significantly amend an existing FMP or its implementing regulations. The RIR is part of the process of preparing and reviewing FMPs and provides a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. This analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems. The purpose of this analysis is to ensure that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way. This RIR addresses many items in the regulatory philosophy and principles of Executive Order (E.O.) 12866. It also includes a Final Regulatory Flexibility Analysis (FRFA). This analysis references the economic analysis that accompanied the interim rule that originally implemented the closed areas on April, 3 1998, and in the Final Supplemental Environmental Impact Statement (FSEIS) for Amendment 7 to the FMP (NEFMC, October 7, 1998), which was implemented on March 29, 1999.

The proposed alternative presented in this document would be in effect until such time that the Council's Framework 14 can be further developed, and reviewed and implemented by NMFS, if approved. The analyses being prepared for Framework 14 are incomplete at this time but are expected to include analyses of the economic impacts of a full range of alternatives, including an area access program for the re-opened areas.

2.0 Executive Order 12866

The following discussion demonstrates that, if the proposed alternative were implemented, this regulatory action would not constitute a "major rule" under the criteria described in E.O. 12866. A regulatory program is "economically significant" if it is likely to result in an annual effect on the economy of $100 million or more, or to adversely affect 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.

The proposed action would delay the openings of two areas to scalloping for a short period of time, until an area access program can be implemented through Framework 14. Once the areas are re-opened, assuming that Framework 14 is implemented, vessels are expected to still have enough time to use their full allocation of three to six trips in 2001, depending on their limited access category and the total allowable catch of scallops in 2001. In addition to the scallop fishing that would still occur outside of the closed areas during the extension of the closures, vessels would be able to gain revenues under the possible area access program once Framework 14 is implemented. Vessels are therefore not expected to lose revenues in 2001 as a result of the extension of the closed areas. In contrast, access to the closed areas could be denied in 2002, and possibly longer, if the proposed action is not implemented and

overfishing occurs in the re-opened areas. Because the area access program would likely allow for a more prolonged fishery than would re-opening the areas in the absence of access controls, the proposed action would likely have positive economic benefits. Therefore, the potential impact of this action does not qualify it as a "significant regulatory action" under E.O. 12866.

There is another difference between the no-action and the proposed alternatives, however, that needs to be recognized. Specifically, under the no-action alternative, vessels could use up to their initial effort allocation inside the re-opened areas in 2001 (up to 49 DAS for full-time vessels) and the remaining DAS outside the closed areas under Framework 14, if implemented. An increase in DAS in 2001 from 49 to 120 is one option being considered in Framework 14. However, in 2002 the vessels would have to use their full effort allocation of 120 DAS under Framework 14 outside the re-opened areas, if access to these areas is denied in 2002 because of overfishing. The proposed action would extend the existing closures. Under Framework 14, vessels are expected to be allocated five trips inside the re-opened areas each year, with a DAS tradeoff of 10 DAS per trip (i.e., vessels would be charged 10 DAS for each trip). Under this scenario in both 2001 and 2002, the full-time vessels would be charged 50 DAS regardless of the amount of their actual effort. In 2002, this would leave full-time vessels 70 DAS to use outside the re-opened areas, or 50 DAS fewer than if the proposed action is not implemented and the areas are closed in 2002 due to overfishing. This scenario would clearly result in a greater proportion of scallop landings from outside the closed areas, but that would come at the expense of future landings of scallops from these areas. That is, the conservation benefit (greater future landings) that is supposed to come from being charged 10 DAS for each closed area trip would not occur in 2002 unless the proposed action is implemented.

The proposed alternative will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This action will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. This action is not expected to lead to an increase in costs or prices to consumers, nor will this action have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

3.0 Regulatory Flexibility Analysis (RFA)

Introduction

The Regulatory Flexibility Act (RFA) requires the Federal rulemaker to examine the impacts of proposed rules on small businesses, small organizations, and small governmental jurisdictions. A complete description of the need for, and objectives of this proposed action taken under legal authority of the Magnuson-Stevens Act and regulations at 50 CFR part 648 can be found in Section 1.0 of the EA portion of this document. Management alternatives are described in detail in Section 3.0 of the EA portion of this document. This action does not contain any collection-of-information requirements, implement new reporting or recordkeeping measures, or create other compliance requirements. This action will not duplicate, overlap or conflict with any other Federal rules.

The background information reported here can be found in the 2000 Sea Scallop Fishery Management Plan SAFE Report (SAFE Report), which was prepared by the Scallop PDT for the Council. In particular, Section 3.5, Social Factors, and Section 5.5.3, Impacts on Small Businesses, reported information that is germane to small business impacts.

The proposed alternative would change regulations that control the business activities of scallop fishermen. The Small Business Administration defines a small business entity as an enterprise that grosses less than $3 million per year, including its affiliates.

It is not possible to enumerate accurately the regulated business entities in the U.S. scallop fishery because ownership of multiple fishery permits can not be determined from the information reported on permit applications alone. For example, an individual who owns multiple permits could have them on vessels under different corporate ownership. In addition, some limited access permit holders have other non-fishing business affiliations, including fish processing. This diversification also can not be quantified, however, making it impossible to assess total gross sales. The consequence of both problems is that fisheries economists generally use the number of permits (or vessels) in a fishery to estimate of the population of small business entities.

The 1999 fishing season -- March 1, 1999, to February 28, 2000 -- was the last full year of scallop fishing activity available for analysis. During that season, there were 345 qualified permits in the Limited Access fishery. Two-hundred-and-ninety of these permits were on vessels that landed scallops. The remaining 55 Limited Access permits were in Confirmation of Permit History, a category of permit for vessels that were destroyed or that were sold and the permit eligibility retained by the seller. In addition, 2,095 permits were issued to vessels in the open access General Category, but only 190 of these vessels could be identified in the dealer reports as having landed scallops.

None of the Limited Access or General Category vessels grossed more than $3 million during 1999, judging from the dealer reports; therefore, each permit is considered to be a small business entity. The highest reported revenue was for a full-time limited access scallop vessel that grossed $1.294 million from scallop landings, $1.308 million in total scallop trip revenue (all species), and $1.404 million from all fisheries. One other full-time vessel grossed more than $1 million in scallop landings in 1999, and a total of 10 vessels, all full-time except for one part-time, grossed more than $1 million in all fisheries.

The Limited Access and General Category vessels can be differentiated in a number of ways, including landings, effort allocation (full-time, part-time, occasional in the Limited Access fishery), gear type (dredge, trawl), geography, and vessel size. Limited Access vessels consistently land more than 90 percent of total scallops from year to year. Nearly three-quarters of the Limited Access permits get full-time effort allocations (120 DAS in 2000). The full-time vessels use the highest percentage of their DAS, land the vast majority of the scallops and, unlike the part-time, occasional, and General Category vessels, are highly dependent on scallops for revenues. Most Limited Access vessels use dredges, and the counts are evenly split between New England and the Mid-Atlantic. However, the vast majority of the more than 50 scallop trawl vessels are from the Mid-Atlantic, especially Virginia and North Carolina. In contrast, about three-quarters of the vessels with General Category permits are from New England, especially Massachusetts and Maine. (See the SAFE Report for more discussion of these and other differences.)

The proposed action to delay access to the Hudson Canyon South and Virginia Beach Closed Areas until Framework 14 can be implemented (currently estimated to be implemented in May 2001) should have a positive net impact on small business entities during the next few years, and it would not impact segments of the fishery differentially. Without the proposed action, the most likely outcome is that Framework 14 would prevent further access to these areas during 2001, because the vessels would likely have already exceeded the target fishing mortalities and total allowable catch due to unrestricted access to the re-opened areas before Framework 14 measures are implemented. Depending on the amount of fishing prior to the implementation of Framework 14, access during the 2002 season could also be cut back by measures in Framework 14 in order to rebuild the scallop stock. The fishery would also sacrifice the growth potential of recently recruited scallops if overfishing occurred in the re-opened areas in the absence of access controls.

In contrast, the proposed action would not actually reduce overall access to the re-opened areas in 2001 and would protect the growth potential of more young scallops for 2002 and beyond, provided that Framework 14 is implemented in a timely fashion, as anticipated by the Council. The PDT, in preparation of analyses for Framework 14, estimated that each limited access permit will be allocated between three and five trips into the Mid-Atlantic areas, depending on effort category and the fishing mortality scenario selected by the Council. Although 10 DAS would be charged to each trip, the trip limit that meets fishing mortality targets may be able to be taken in 3 to 5 days, as estimated by the PDT. Thus, there may still be time in the season to fish the areas when they re-open as a result of Framework 14. Moreover, vessels would be free to use their effort allocation to fish for scallops outside the closed areas until Framework 14 goes into effect.

3.1 Final Regulatory Flexibility Analysis (FRFA) Supplement

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preamble to the proposed rule and are not repeated here. This action does not contain any collection-of-information, reporting, or recordkeeping requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and regulations at 50 CFR part 648. There are no compliance costs associated with this rule.

There were no public comments submitted in response to the initial regulatory flexibility analysis (IRFA). No changes were made from the proposed rule.

The FRFA considers the impacts that this action will have on small entities, which includes all holders of active scallop permits, since none have reported gross annual revenues greater than $3 million. The 1999 fishing season, March 1, 1999, to February 28, 2000, was the last full year of scallop fishing activity available for analysis. During that season, there were 345 qualified permits in the limited access fishery. In addition, 2,095 permits were issued to vessels in the open access General Category.

The alternatives implemented by the final rule are expected to minimize negative economic impacts on small entities, particularly in the long-term, while achieving the conservation goals and overall objectives of the FMP.

NMFS considered 3 alternatives for action with respect to the Hudson Canyon South and Virginia Beach Closed Areas. The alternative to implement a controlled access program for the two closed areas was rejected because NMFS determined that it is not feasible to implement an area access program by March 1, 2001, due to the time constraints of developing such an action. Analysis of the action was therefore not completed. Two other alternatives were analyzed: re-opening the areas on March 1, 2001, without control (no action); and extending the closures through the interim rule for a period of 180 days or until a controlled access program is implemented (proposed action). NMFS selected the proposed action to extend the closures of the Hudson Canyon South and Virginia Beach Closed Areas for 180 days from March 1, 2001, or until Framework 14 can be implemented (currently estimated to be May 2001), whichever is sooner, because it would prevent overfishing and would be more likely to achieve the goals of the FMP to maximize, over time, the joint social and economic benefits from harvesting and use of the sea scallop resource. The proposed action is not expected to reduce overall access to the closed areas in 2001 and will protect the growth potential of more young scallops for 2002, provided that Framework 14 is implemented in a timely fashion, as anticipated by the Council and NMFS. Vessels will be able to fish their days-at-sea (DAS) allocation outside of the closed areas. Any short-term negative impacts caused by delaying the re-opening of the two Mid-Atlantic areas to scallop fishing are expected to be offset by access to those areas through Framework 14 for the remainder of 2001 and by future recruitment of scallops. Without the proposed action, the most likely outcome would be that Framework 14 would need to implement measures that would prevent further access to these closed areas during 2001 because vessels would have exceeded the target fishing mortalities and total allowable catch by the time Framework 14 becomes effective. Therefore, the no action alternative would likely reduce long-term economic benefits. Under this alternative, overfishing may occur in the areas, and the ability to maximize scallop yields from the areas and ensure that recruitment potential is maintained could be compromised, thereby reducing long-term benefits to the scallop fishing industry. Depending on the amount of fishing that has occurred in the absence of this interim action, access during the 2002 season might also have to be reduced substantially in order to rebuild the stock.

Agencies Consulted in Formulating the Action

National Marine Fisheries Service
New England Fishery Management Council

Preparers of Environmental Assessment

National Marine Fisheries Service
Northeast Region, Gloucester, Massachusetts
Northeast Fisheries Science Center, Woods Hole, Massachusetts

Literature Cited

Blaylock, R.A., J.W. Hain, L.J. Hansen, D.L. Palka, and G.T. Waring. U.S. and Gulf of Mexico Marine Mammal Stock Assessments. NOAA Tech. Memo. NMFS-SEFSC-363, 211 pp. 1995.

National Marine Fisheries Service (NMFS), Northeast Fishery Science Center (NEFSC). Report of the 23rd Northeast Regional Stock Assessment Workshop. Stock Assessment Review Committee Consensus Summary of Assessments. Woods Hole, MA: NOAA/NMFS/NEFSC. NEFSC Ref. Doc. 97-05. March, 1997.

NMFS, NEFSC. Report of the 30th Northeast Regional Stock Assessment Workshop (30th SAW). Stock Assessment Review Committee (SARC) Consensus Summary of Assessments. Woods Hole, MA. NOAA/NMFS/NEFSC. NEFSC Ref. Doc. 00-04. April, 2000

NMFS, Northeast Regional Office. Environmental Assessment for an Interim Final Rule to Close the Hudson Canyon South and Virginia Beach Closed Areas to Scallop Fishing. NMFS, Gloucester, MA. April, 1998

NMFS and U.S. Fish and Wildlife Service. Status Reviews for Sea Turtles Listed Under the Endangered Species Act of 1973. NMFS, Silver Spring, MD. 1995.

New England Fishery Management Council (NEFMC). Supplemental Environmental Impact Statement for Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan. NEFMC, Newburyport, MA. October, 1998.

NEFMC. Supplemental Environmental Impact Statement for Amendment 9 to the Atlantic Sea Scallop Fishery Management Plan. NEFMC, Newburyport, MA. November, 1998.

NEFMC. Environmental Assessment for Framework 13 to the Atlantic Sea Scallop Fishery Management Plan. NEFMC, Newburyport, MA. March, 2000.

NEFMC Atlantic Sea Scallop Plan Development Team. 2000 Scallop Fishery Management Plan Stock Assessment and Fishery Evaluation Report. NEFMC, Newburyport, MA. September, 2000.

Poppe, L.J., Schlee, J.S., Butman, B., and Lane, C.M. Map showing distribution of surficial sediment. U.S. Geological Survey Miscellaneous Investigations Series, Map 1-1986-A. 1989.

Waring, G.T., D.L. Palka, K.D. Mullen, J.W. Hain, L.J. Hansen, and K.D. Bisack. U.S. and Gulf of Mexico Marine Mammal Stock Assessments. NOAA Tech. Mem. NMFS-NE-114, 250 pp. 1997.

APPENDIX

Excerpt from 2000 Sea Scallop Stock Assessment and Fishery Evaluation Report
"Biomass Estimates and TAC Options for the Hudson Canyon and VA/NC Areas"
(TAC Options omitted)

New England Fishery Management Council
September 8, 2000