

RECORD OF DECISION
FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT
AMENDMENT 10 TO THE
ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN

National Marine Fisheries Service

This document comprises the National Marine Fisheries Service's (NMFS) Record of Decision (ROD) for Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP) (Amendment 10) as required by the National Environmental Policy Act (NEPA). The ROD is based on and incorporates, as described below, the Northeast Regional Administrator's (RA) Decision Memorandum dated April 7, 2004, Amendment 10, the Final Supplemental Environmental Impact Statement (FSEIS) and all other analytical documents prepared for this action.

Background:

The New England Fishery Management Council (Council) has been developing Amendment 10 since 1999. Amendment 10 establishes a long-term, comprehensive program to manage the sea scallop fishery through an area rotation management program to maximize scallop yield. Area rotation would close and re-open areas based on the condition and size of the scallop resource in discrete areas. Area-based management has been used in the FMP since 1998, with controlled access to the Georges Bank and Southern New England groundfish closed areas and the Hudson Canyon and Virginia Beach scallop closed areas. Amendment 10 and its accompanying FSEIS also evaluate and include measures to minimize the adverse effects of fishing on Essential Fish Habitat (EFH), to the extent practicable, in accordance with the Joint Stipulation resulting from the legal challenge American Oceans Campaign et al. v Daley et al. (Civil Case Number 99-982 (GK) (D.D.C. December 17, 2001)).

Proposed Measures for Amendment 10

After evaluating all of the measures contained in Amendment 10 and the analyses contained in the FSEIS, NMFS is disapproving two measures proposed by the Council, as specified in the RA's Decision Memorandum dated April 7, 2004. NMFS is disapproving the new restriction on Limited Access scallop vessels fishing outside of scallop days-at-sea (DAS) and the cooperative industry scallop resource survey provision. The approved measures include: A modification to the overfishing definition to bring it into compliance with National Standard 1 guidelines; an

adaptive area rotation program; an initial area rotation closed area; continuation of the Hudson Canyon controlled access area through 2005; area specific DAS for the area rotation program; access area trip exchange and broken trip provisions; DAS allocations for the 2004 and 2005 fishing years and default DAS for the 2006 fishing year; an increase in the minimum ring size for scallop dredge gear; an increase in the minimum twine top mesh size for scallop dredges; measures to minimize the adverse effects of fishing on EFH to the extent practicable; set-asides of total allowable catch (TAC) and DAS to pay for scallop resource and fishery-related research; set-asides of TAC and DAS to help defray the cost of at-sea observers; a new biennial framework process; and a process to proactively address interactions between the scallop fishery and species protected under the Endangered Species Act (ESA).

In addition to the measures developed for other aspects of the management program, the Council also considered various measures to practicably minimize adverse fishing impacts on EFH. The EFH measures recommended by the Council consist of: The complementary benefits of other Amendment 10 alternatives (Habitat Alternative 2); an increase in the minimum ring size used in scallop dredges (Habitat Alternative 11); and areas closed to scallop fishing for protection of EFH in portions of the existing groundfish closed areas (Habitat Alternative 6). The Council also recommended that habitat research be funded through the TAC set-aside program included in Amendment 10 (Habitat Alternative 12). NMFS is approving all of the proposed EFH alternatives as described in the RA's Decision Memorandum dated April 7, 2004.

Other Alternatives Contained in Amendment 10

Amendment 10 and its FSEIS document considered other fishery management alternatives, including: A revised overfishing definition; a no action alternative, whereby, the fishery would revert to the fishery management measures implemented by Amendment 7 to the FMP; a status quo alternative that would implement measures to achieve the prescribed fishing mortality rate under the FMP; measures to improve yield from the scallop fishery, including several area rotation program alternatives; measures to control effort in access areas under area rotation; gear restrictions, bycatch species possession limits, bycatch species TACs, and closed areas designed to minimize bycatch and bycatch mortality; measures to manage fishing by General Category vessels and vessels fishing outside of scallop DAS; measures to improve data collection and monitoring; measures to facilitate research relative to the scallop fishery; and methods to adjust management measures. For a description of the alternatives in Amendment 10, see pages 5-54 through 5-152 in the FSEIS. For a full analysis of these alternatives see corresponding sections of the FSEIS.

Amendment 10 and its FSEIS also analyzed and considered several other alternatives to minimize adverse fishing effects on EFH that were not recommended by the Council. These alternatives generally fall into the following four categories:

1. Those that involved no new management measures to minimize adverse fishing effects, including Habitat Alternative 1 (the no action alternative implementing no further direct or indirect measures to minimize adverse fishing impacts on EFH).
2. Those that impose habitat closed areas, including: Habitat Alternative 3 (habitat closures designed to protect hard-bottom habitats inside and outside existing groundfish closed areas); Habitat Alternative 4 (habitat closures based on modified Habitat Alternative 3 areas that overlap modified groundfish closed areas originally proposed to address stock rebuilding in Amendment 10); Habitat Alternative 5 (options for habitat closures based upon EFH importance and fishery productivity); Habitat Alternative 7 (habitat closures designed to protect areas of high EFH value and low scallop productivity); Habitat Alternative 8 (habitat closure on eastern portion of Georges Bank (inside and outside of Cod HAPC)); and Habitat Alternative 9 (habitat closures in existing groundfish closed areas).
3. Those that impose additional gear restrictions, including Habitat Alternative 10 (restrictions on the use of rockchains).
4. Those that establish area-based management, with area rotation based on habitat protection (Habitat Alternative 13).

For a description of the alternatives see pages 5-98 through 5-116 in the FSEIS. For a full analysis of these alternatives see corresponding sections of the FSEIS.

Factors Considered in Making a Decision on the Proposed Action

Through the FSEIS as documented in this ROD, NMFS analyzed alternatives, associated environmental impacts, the extent to which the impacts could be mitigated, and has considered the objectives of the proposed action. NMFS has also considered public and agency comments received during the NEPA and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) review periods.

With respect to the scallop fishery, NMFS and the Council are required by the Magnuson-Stevens Act, the agency's National Standard Guidelines, the EFH regulations and other applicable law to determine whether Amendment 10 contains adequate measures to prevent overfishing and achieve optimum yield (OY) on a continuing basis, minimize bycatch to the extent practicable, and minimize to the extent practicable adverse effects of fishing on EFH, among other things.

With regard to EFH, NMFS may only implement those measures to minimize adverse effects of fishing on EFH that are practicable, as well as compliant with the National Standards and other provisions of the Magnuson-Stevens Act. The EFH regulations provide guidance on conducting a practicability analysis on alternatives considered to minimize fishing effects on EFH. To make this determination, Councils and NMFS are encouraged to consider the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the Nation, consistent with the National Standards. A practicability analysis was prepared and is contained in Section 8.5.6 of the FSEIS. NMFS is limited in its authority under the Magnuson-Stevens Act to choose only those alternatives that meet the EFH requirements of the statute. Consistent with the Magnuson-Stevens Act, NMFS has approved only those alternatives that minimize, to the extent practicable, adverse effects of fishing on EFH.

Decision on the Proposed Action

Amendment 10 is a comprehensive management program designed to improve yield from the scallop fishery, control fishing mortality, minimize bycatch to the extent practicable, minimize effects of fishing on EFH to the extent practicable, address interactions between the scallop fishery and species protected under the ESA, improve the management of the scallop fishery through more efficient management, and to address other conservation and management issues consistent with the Magnuson-Stevens Act.

The decision to partially approve Amendment 10 is based on the rationale contained in the RA's Decision Memorandum dated April 7, 2004, the analyses prepared for Amendment 10 and the FSEIS, and all other analytical documents prepared for this action. Because of the complexity of Amendment 10 and the fishery management measures being implemented, only the general components of Amendment 10 are discussed herein, broken into four categories: 1) Measures to improve yield; 2) measures to minimize bycatch and bycatch mortality to the extent practicable; 3) measures to facilitate management of the scallop fishery; and 4) measures to minimize the adverse effects of scallop fishing on EFH to the extent practicable. The specific measures selected for implementation and those that have been disapproved are described in the Regional Administrator's Decision Memorandum dated April 7, 2004.

1) Measures to improve yield

First, with respect to improving yield in the scallop fishery, preventing overfishing, and maintaining OY on a continuing basis, NMFS determined that the adoption of an area rotation program along with associated effort allocation method and new gear restrictions is consistent with the Magnuson-Stevens Act and the National Standards. Area rotation and associated measures will ensure that scallop fishing effort is managed to ensure that smaller, less valuable,

and more biologically vulnerable scallops will be avoided to the extent possible, and ensures that OY is achieved.

2) Measures to minimize bycatch and bycatch mortality to the extent practicable

Amendment 10 contains an increase in the minimum ring size used in scallop dredges and an increase in the minimum twine-top mesh size to minimize bycatch and bycatch mortality to the extent practicable. The increase in the minimum ring size is designed to reduce bycatch of small scallops and demonstrated reductions in finfish and benthic invertebrates. Reductions in finfish bycatch may also be realized through reduced fishing time expected with 4-inch rings. The increase in the minimum twine-top mesh size would reduce bycatch of finfish, particularly flatfish, vulnerable to capture in scallop dredges, including yellowtail, winter, and summer flounder. Sea turtles are also vulnerable to capture in scallop dredges. Amendment 10 includes a measure to ensure that additional management measures are considered and developed by the Council if there is an increase in takes of sea turtles in the scallop fishery or when additional information is gathered relative to the interactions between the scallop fishery and sea turtles. On February 23, 2004, NMFS completed a biological opinion (BO) under Section 7 of the Endangered Species Act (ESA), which concluded that the continued operation of the scallop fishery, including measures proposed in Amendment 10, are expected to adversely affect endangered and threatened sea turtles (loggerhead, Kemp's ridley, green, and leatherback), but would not jeopardize these species. The BO anticipates and authorizes the take of up to 111 of the affected sea turtles annually in the scallop fishery. Sea turtle takes in excess of the incidental take statement, or new information that reveals effects of the fishery that were not previously considered during consultation, would require NMFS to reinitiate Section 7 consultation and would trigger the Council's development of measures to mitigate takes under the proposed Proactive Protected Species Program described in the attachment. NMFS determined that, with these measures, Amendment 10 is consistent with the Magnuson-Stevens Act and the National Standards and other applicable law. NMFS made this determination with full consideration of the requirements of National Standard 9 and the ESA.

3) Measures to facilitate management of the scallop fishery

Amendment 10 includes measures to make the management of the scallop fishery more efficient by incorporating a framework process that adjusts management measures biennially, though the process allows action at any time if it is deemed necessary. Amendment 10 establishes a set-aside of scallop TAC and DAS to help scallop vessel owners and researchers defray the cost of research and to help scallop vessel owners defray the cost of observer coverage. NMFS has determined that these measures help achieve the goals of the FMP and are consistent with the Magnuson-Stevens Act and applicable law.

4) Measures to minimize the adverse effects of scallop fishing on EFH to the extent practicable

NMFS has determined, through the analysis conducted in the EFH components of the FSEIS, that the approved EFH and other conservation measures minimize, to the extent practicable, adverse effects of fishing on EFH. Amendment 10 implements a series of management measures that represent several major strategies for providing explicit and implicit protection to a wide variety of vulnerable habitat within EFH, including reductions in overall fishing effort that will reduce impacts to benthic habitats. The measures intended to improve yield and minimize bycatch and bycatch mortality provide implicit benefits to EFH because they are intended to reduce fishing mortality through controls on effort, but they provide additional EFH benefits due to reduced contact with the benthic habitat. In the long-term, the habitat impacts from area rotation are less when compared to the level of effort maintained prior to the implementation of Amendment 10.

To ensure that Amendment 10 practicably minimizes adverse effects of fishing on EFH, NMFS has approved Habitat Alternative 6 which establishes a series of closed areas within the Gulf of Maine, Georges Bank, and Southern New England Regulated Mesh Area to prohibit scallop fishing in recently unfished regions of the existing groundfish closed areas (areas not included for closure were opened to scallop fishing in FMP actions in 1999 and 2000). Habitat Alternative 6 has been shown to be effective in protecting vulnerable EFH from the effects of scallop fishing. Alternative 6 was shown to minimize adverse impacts to EFH to the extent practicable as compared to the other alternatives. This analysis is included in Section 8.5.6.4 of the FSEIS. Alternative 6 is the most practicable alternative, based on the balancing of protection to EFH versus its economic cost to the fishing industry and fishing communities. Habitat Alternative 2 (benefits of other measures included in Amendment 10) and Habitat Alternative 11 (4-in ring requirement) provide indirect benefits to habitat through reductions in area swept resulting from effort reductions, area rotation, more efficient fishing. Both of these measures are more practicable than other non-selected EFH alternatives because Alternatives 2 and 11 are integrated into the overall management scheme for scallop fishing under Amendment 10 which is expected to result in improved yield from the scallop fishery over the long term. Finally, Habitat Alternative 12 provides for habitat research funded through a scallop TAC set-aside. Research is needed to quantify or evaluate the long-term effects of scallop fishing on EFH to estimate habitat recovery rates. This alternative would broaden the range of research types that would be funded through the scallop research TAC set-aside. TAC set-aside research funded through this mechanism would identify fishing gear or methods that have fewer habitat impacts, or might be useful to identify ways that fishing is managed to minimize related habitat impacts.


Other significant alternatives considered, but not recommended include Habitat Alternatives 3, 4, 5, 7, 8, 9, 10, and 13. Alternatives 4, 5, 7, 8 and 9 (closed area alternatives) are fairly similar in terms of providing habitat protection when compared to Habitat Alternative 6. However, these alternatives have been determined to be impracticable in terms of their costs to the fishing industry and, therefore, were not selected. Habitat Alternative 10 was determined to be impracticable and inconsistent with National Standard 10 because fishing in areas with hard

bottom (e.g., boulders) without rock chains would result in dangerous fishing conditions. Habitat Alternative 13 was not recommended by the Council because there was insufficient development of methods to establish area rotation schemes on the basis of multiple reference points (habitat protection and scallop yield).

The combination of Habitat Alternatives 2, 6, 11, and 12 minimize, to the extent practicable, the adverse effects of fishing on EFH as required by the Magnuson-Stevens Act.

After careful review of the proposed measures, the associated analyses, and the public comments that NMFS received on Amendment 10, NMFS is partially approving Amendment 10, including most of the measures recommended by the Council. NMFS has determined that, overall, the combination of approved measures represent the environmentally preferable alternatives when considering the balance of environmental and economic effects and benefits that might accrue from these measures within the context and strictures of the Magnuson-Stevens Act. Further, NMFS has determined that these alternatives will promote the national environmental policy as discussed in Section 101 of NEPA. NMFS also concludes that all practical and legally justifiable means to avoid, minimize, or compensate for environmental harm from the proposed action have been adopted. NMFS has considered responses to all applicable public comments received on Amendment 10 and its proposed implementing rule, including some comments applicable to the NEPA process. These comments have been considered by NMFS, as described in the RA's decision memorandum dated April 7, 2004. Responses to all comments on Amendment 10 and its proposed rule will be included in the final rule implementing Amendment 10.

Further information regarding this ROD may be obtained by contacting George H. Darcy, Northeast Region, NMFS, 1 Blackburn, Gloucester, MA 01930, (978) 281-9331.


for Assistant Administrator, National Marine
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Date