

Framework 20 to the Atlantic Sea Scallop FMP

Including an
Initial Regulatory Flexibility Analysis

Prepared by the New England Fishery Management Council, in consultation with the National Marine Fisheries Service and the Mid-Atlantic Fishery Management Council

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Executive Summary

The Scallop Plan Development Team (PDT) updated scallop resource projections in the fall of 2006, after the most recent survey data were available. These projections indicated that overfishing was expected to occur in fishing year 2007 unless action was taken to reduce scallop mortality. This information was presented to the Council in November 2006 and the Council requested NMFS take interim action to prevent overfishing.

NMFS implemented interim action to reduce overfishing in FY2007 on December 20, 2006 by reducing the number of trips in the Elephant Trunk Access Area (ETAA), delaying the opening until March 1 and prohibiting deckloading before leaving the access area (71 FR 76945). The interim action was justified because the recent projection indicated that overfishing of the scallop resource may occur in FY2007 under status quo measures under Framework 18. The new information presented by the Scallop PDT included previously unforeseen circumstances and potentially serious management problems to the fishery. The interim action states that overharvest of the ETAA in FY2007, and any resulting overfishing, could undermine the goals and objectives of area rotation-the cornerstone of the Atlantic Sea Scallop Fishery Management Plan (FMP). NMFS recently published a second interim action to extend these measures for a second 180-day period through December 23, 2007 (72 FR 29889).

After December 23, 2007 status quo measures implemented under Framework 18 would revert back for the last two months of fishing year 2007 (January and February 2008). If additional effort is taken in January and February that would reduce the effectiveness of the interim action to reduce overfishing for FY2007. In order to reduce overfishing for the entire fishing year, Framework 20 is considering an extension of the same measures implemented by interim action through February 29, 2008. The ETAA has an unprecedented high abundance of scallops, which needs to be husbanded with caution to effectively preserve the long-term health of the scallop resource and fishery.

Framework 18 already assessed the impacts of a reduced level of trips in the ETAA, therefore this extension of interim measures would qualify for a categorical exclusion under the National Environmental Policy Act (NEPA). In summary, Framework 18 concluded that reducing the number of trips in the ETAA would provide long-term benefits to the scallop resource and fishery. The resource could sustain more effort in the future as a result of the biological benefits of the reduction in trips. Furthermore, the scallop industry expressed strong support for interim action to reduce effort in the ETAA in order to prevent overfishing in FY2007.

During development of Framework 20 the Council became aware of a regulation that is in effect that is not consistent with Council intent. Under Amendment 4 (1994) the Council recommended, and NMFS approved a maximum possession limit of 400 pounds of scallops per trip for general category vessels. Amendment 4 intended that restriction to be a maximum landing limit per day. The regulations prohibit a vessel from “fishing” for scallops more than once in a single calendar day, so a vessel is prohibited from leaving on another trip the same day it landed scallops. This is an additional restriction

that is not consistent with Council intent and may have unintended safety and fishing behavior affects. Since this regulation is not currently written as it was intended under Amendment 4, the Council requested that NMFS make a regulatory change to the possession limit regulation to uphold the original intent of the restriction. Attachment A to this framework action describes more background information from the current Council discussion of this issue, as well as information about the original intent of this restriction under Amendment 4.

List of Acronyms

A10 – Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan
A13 – Amendment 13 to the Northeast Multispecies Fishery Management Plan
BMSY – Biomass Maximum Sustainable Yield
BO – Biological opinion
CEQ – Council on Environmental Quality
CAI – Closed Area I
CAII – Closed Area II
DAS – Day-at-sea
DSEIS – Draft Supplemental Environmental Impact Statement
EA – Environmental Assessment
ESA – Endangered Species Act
EFH – Essential Fish Habitat
EFH designation life stages
 A – Adult life stage
 J – Juvenile life stage
 E – Egg life stage
ETAA – Elephant Trunk Access Area
FMP – Fishery Management Plan
FR – Federal Register
FSEIS – Final supplemental environmental impact statement
FW18 – Framework Adjustment 18 to the Atlantic Sea Scallop Fishery Management Plan
GB – Georges Bank
GOM – Gulf of Maine
HAPC – Habitat Area of Particular Concern
LPUE – Landings per unit effort, usually a DAS in this document
IRFA – Initial Regulatory Flexibility Analysis
MA – Mid-Atlantic
MAFMC – Mid-Atlantic Fishery Management Council
NEFMC – New England Fishery Management Council
NEFSC – Northeast Fisheries Science Center
NEPA – National Environmental Policy Act
NLSA – Nantucket Lightship Area
NMFS – National Marine Fisheries Service
NOAA – National Oceanographic Atmospheric Administration
PDT – Scallop Plan Development Team
RIR – Regulatory Impact Review
SAP – Special access program
SARC – Stock Assessment Review Committee
SAW – Stock assessment workshop
SBNMS – Stellwagen Bank Marine Sanctuary
SEIS – Supplemental Environmental Impact Statement
SMASST – School of Marine Science and Technology, University of Massachusetts
Dartmouth
SNE – Southern New England

TAC – Total Allowable Catch. This includes discards for finfish species, but not for scallops which have a much lower discard mortality rate.

U10 – A classification for large scallops, less than 10 meats per pound.

USGS – United States Geological Survey

VIMS – Virginia Institute of Marine Science

VMS – Vessel Monitoring System

TABLE OF CONTENTS

1.0	Background and Purpose	1
1.1	Background.....	1
1.2	Purpose and Need	2
2.0	Goals and Objectives	2
3.0	Management Alternatives Under Consideration.....	3
3.1	No Action.....	3
3.2	Extend interim measures through February 29, 2008 (or until framework 19 is implemented) (<i>Proposed Action</i>).....	3
4.0	Impacts of Management Alternatives	5
4.1	Scallop resource.....	5
4.2	Physical environment and essential fish habitat	7
4.3	Protected resources	7
4.4	Economic and social impacts.....	7
4.5	Non-target species.....	7
5.0	Consistency with Applicable Laws.....	8
5.1	Magnuson-Stevens Fishery Conservation and Management Act.....	8
5.1.1	National Standards.....	8
5.1.2	Other Required Provisions of the M-S Act.....	8
5.1.3	Executive Order 12866 (Regulatory Impact Review)	10
5.1.4	Initial Regulatory Flexibility Analysis.....	11
5.2	National Environmental Policy Act.....	14
5.3	Marine Mammal Protection Act (MMPA)	14
5.4	Endangered Species Act (ESA)	14
5.5	Administrative Procedure Act (APA).....	14
5.6	Paperwork Reduction Act (PRA).....	14
5.7	Coastal Zone Management Act (CZMA)	14
5.8	Data Quality Act	14
5.9	E.O. 13132 (Federalism).....	16
5.10	E.O. 12898 (Environmental Justice).....	16

ATTACHMENT A

Background on general category possession limit regulation and request for regulatory change.....17

TABLE OF TABLES

Table 1 - Summary of projections for calendar year 2007 under status quo (Framework 18 measures) and the interim measures to reduce ETAA trips in 2007 (Alternative 2)..... 6
Table 2. Active scallop vessels by permit category (Dealer data)..... 12
Table 3. Scallop Permits by category 12

TABLE OF FIGURES

Figure 1 – Boundary of the Elephant Trunk Access Area..... 4

1.0 BACKGROUND AND PURPOSE

1.1 BACKGROUND

Due to uncertainty, Framework 18 included a regulatory mechanism that allowed NMFS to reduce the number of trips in the ETAA if updated biomass estimates indicate that the ETAA biomass is significantly lower than projected levels. This Notice Action procedure includes a review by the Scallop PDT of all available survey data. In October 2006, the Scallop PDT reviewed information from three separate biomass surveys conducted in 2006: The federal dredge survey conducted by NMFS; a dredge survey conducted by VIMS; and a video survey conducted by SMAST. The results from all three surveys were reviewed and the PDT determined that biomass was lower than projected under Framework 18, but it was not low enough to trigger a Notice action to reduce the number of trips allocated for the ETAA.

While the updated biomass estimate did not trigger a notice action to reduce the number of trips in the ETAA, the PDT urged precaution in managing the scallop fishery in 2007 because preliminary fishery projections indicated that overfishing of the scallop resource could occur in 2007 under the scheduled management measures. The updated projection found that biomass was overestimated and FW18 underestimated fishing mortality for a variety of reasons.

Projections in Framework 18 were made using survey and fishery information through 2004. When survey data for 2005 and 2006 and landings data from 2005 were added to the model, biomass was lower, and overall fishing mortality higher, than what had been projected under Framework 18. Several factors may have contributed to the overestimation of biomass and underestimation of mortality. The model projections in Framework 18 assumed future recruitment would follow similar patterns to the observed (past) recruitment time series. Over the past two years, recruitment in Georges Bank has been very poor, and only around average in the Mid-Atlantic, so the Framework 18 projection overestimated the actual recruitment. Additionally, the number of open area DAS allocated under FW18 (20,000 open area DAS) may not have been precautionary enough. The PDT never reached consensus on a number during the Framework 18 process but recommended nothing above 20,000. The 20,000 DAS option chosen by the Council in FW18 allowed for higher than optimal fishing mortality in open areas. Together with the decrease in recruitment, this has led to reduced open area biomass and catch rates. Moreover, the 20,000 DAS estimate was based on an assumption of only modest increases in effort in general category effort. It appears that general category effort may have been higher than assumed. In addition, the model uses an estimate of growth from a rate determined in the 1970s. More recent work suggests that the estimated growth rate for Georges Bank is relatively accurate, but the growth rate for the Mid-Atlantic is slower than the rate used in the model. Other possible contributors to the observed discrepancies include reduced meat weights due to the seasonal spawning cycle, and higher than estimated discard and natural mortality. For these reasons, the PDT was concerned that various assumptions used in the projections combined with unquantifiable factors left to overly optimistic projections and unlikely underestimate of fishing mortality in 2007.

As a result of the issues described above, the PDT developed a memorandum for Council review at the November 2007 Council meeting. The Council in turn recommended that NMFS take

interim action to prevent overfishing in FY2007 by reducing the number of trips in ETAA, delay the opening until March 1 and prohibit deckloading before leaving access areas. NMFS considered this request and implemented interim action on December 22, 2006 for 180 days until June 20 (71 FR 76945). NMFS recently published a second interim action to extend these measures for a second 180-day period through December 23, 2007 (72 FR 29889).

The interim action:

- Reduced the number of trips from five trips to three trips for full-time scallop vessels in the ETAA (scallop possession limit would remain at 18,000 lb);
- Reduced the maximum number of ETAA trips from three trips to two trips for part-time scallop vessels. Part-time scallop vessel owners could choose to take one or both trips in the Closed Area I and Nantucket Lightship Access Areas (i.e., one trip in each area) rather than fishing in the ETAA. The scallop possession limit for part-time vessels would be increased from 16,800 lb per trip to 18,000 lb per trip;
- Reduced the occasional vessel possession limit from 10,500 lb per trip to 7,500 lb per trip;
- Reduced the general category scallop fleet trip allocation from 1,360 to 865 trips in the ETAA;
- Delayed the opening of the ETAA until March 1, 2007;
- Prohibited the retention of more than 50 U.S. bushels of in-shell scallop outside of the boundaries of the ETAA for all vessels on ETAA trips (i.e., prohibit deckloading).

These measures expire on December 23, 2007 and if no action is taken under Framework 20, then allocations under Framework 18 will become effective and vessels would be permitted to take trips in ETAA starting on January 1, 2008 (including the last two months of FY2007).

1.2 PURPOSE AND NEED

The purpose of this action is to extend the same measures implemented by interim action through February 29, 2008, specifically for a two-month period (January 1 – February 29, 2008) until the start of FY2008. The need for this action is to reduce overfishing for the entire 2007 fishing year. The ETAA has an unprecedented high abundance of scallops, which needs to be husbanded with caution to effectively preserve the long-term health of the scallop resource and fishery.

2.0 GOALS AND OBJECTIVES

There is a timing issue with measures implemented under the interim action to reduce ETAA trips to prevent overfishing in FY2007 and the end of the scallop fishing year. Interim action was taken in December 2006 to prevent overfishing. As requested by the Council, NMFS reduced the number of trips in the Elephant Trunk Access Area for all permit categories, delayed the opening until March 1, and prevented deckloading from the area. That action can only be extended for two 180-day periods (Dec 06 - June 07 and June 07 – Dec 07). After December 23, 2007 status quo measures implemented under Framework 18 would revert back for the last two months of fishing year 2007 (January and February 2008). In order to prevent overfishing for

the entire fishing year, the goal of this action is to extend the same measures implemented by interim action through March 1, 2008.

3.0 MANAGEMENT ALTERNATIVES UNDER CONSIDERATION

3.1 NO ACTION

If Framework 20 is not implemented then status quo measures implemented under Framework 18 would revert back for the last two months of fishing year 2007 (January and February 2008). Specifically the original number of trips allocated under Framework 18 for 2007 would be allocated to vessels on January 1, 2008. The allocations per full-time will stay at 5 trips, for part-time vessels at 3 trips, for occasional vessels at one trip (with a 10,500 lb. possession limit) and the general category fishery will be allocated a total of 1360 trips to the EETA. These allocations would be allocated on January 1, 2008.

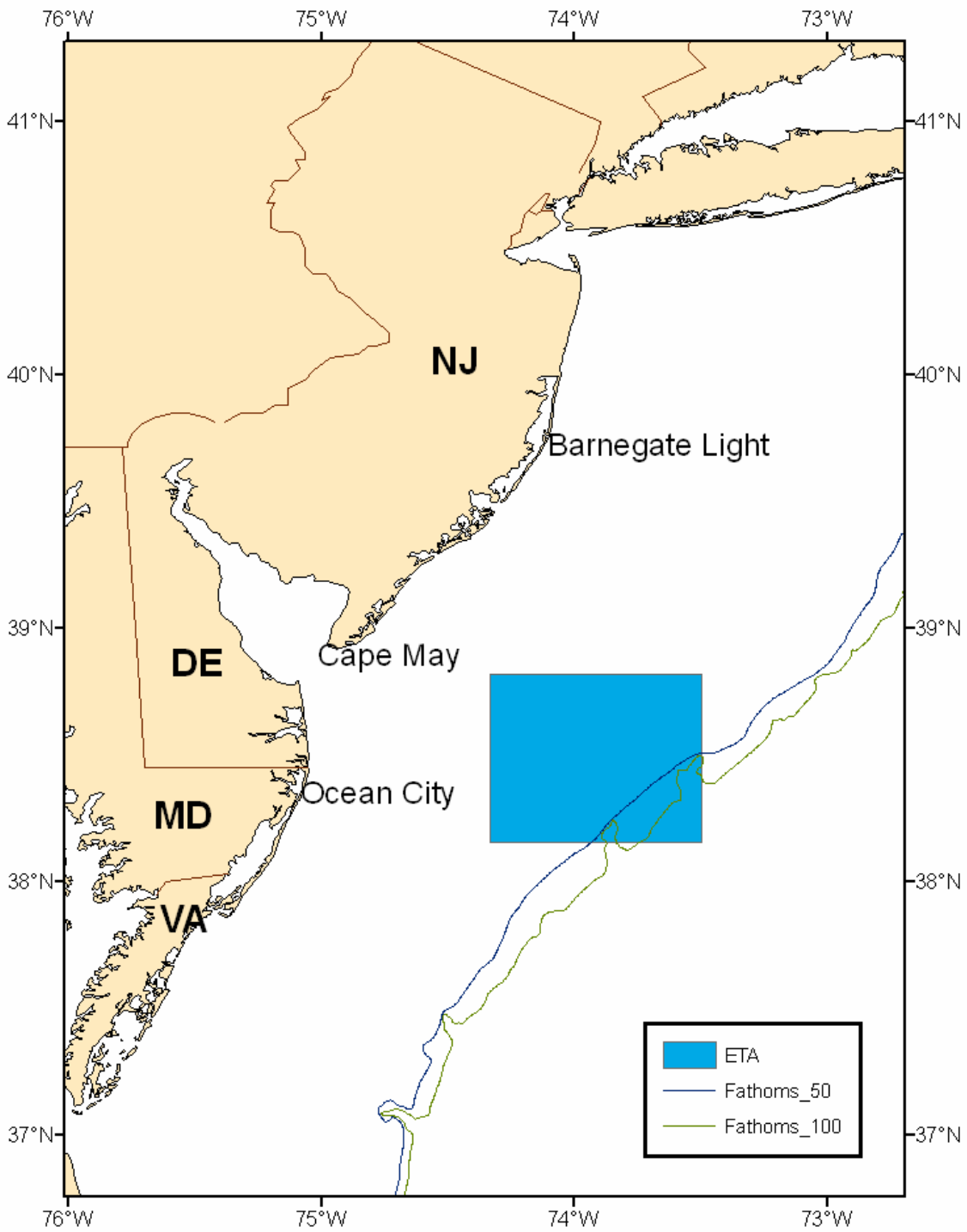
3.2 EXTEND INTERIM MEASURES THROUGH FEBRUARY 29, 2008 (OR UNTIL FRAMEWORK 19 IS IMPLEMENTED) (PROPOSED ACTION)

This alternative would extend the interim measures for reducing overfishing for FY2007 through the end of FY2007 (a two-month time period including January and February of 2008). The interim measures currently in place expire on December 23, 2007. The measures include a reduction in the number of trips in ETAA for each scallop permit category and a prohibition on “deckloading” before leaving the access area.

Although the interim action also delayed the opening of the ETAA to March 1, 2007, such action is not included in this alternative because Framework 18 allowed access to the ETAA for the full fishing year once it opened in the 2007 fishing year (i.e., access to the area for scallop vessels through February 29, 2008). No action has contemplated closing the ETAA in January and February 2008.

Rationale: These interim measures are expected to help prevent overfishing for the overall scallop resource for FY2007. The ETAA has an unprecedented high abundance of scallops, which needs to be husbanded with caution to effectively preserve the long-term health of the scallop resource and fishery. ETAA is about 35 nautical miles southeast of Delaware Bay and Cape May, NJ (Figure 1).

Figure 1 – Boundary of the Elephant Trunk Access Area



4.0 IMPACTS OF MANAGEMENT ALTERNATIVES

Framework 18 established management measures for the 2006 and 2007 fishing years under the umbrella of Amendment 10 to the FMP and its EIS. Therefore, NEPA documentation for a reduction in the ETAA trip allocations was previously prepared and is complete. In summary, the prior analyses indicated that reducing the number of trips in the ETAA would provide short-term and long-term benefits to the scallop resource. In addition, while short-term economic impacts may be negative because vessels would be allocated fewer trips, the long-term economic impacts would be positive. The resource could sustain more effort in the future as a result of the biological benefits of the reduction in trips. The impacts of the measures were determined to be insignificant, supporting the Finding of No Significant Impact in the EA for Framework 18.

The prohibition on deckloading (loading the working deck of a scallop vessel with unshucked scallops) for vessels on ETAA trips, which will only be in effect for a maximum of 360 days under the interim rule, does not result in a change in the findings of the Final EIS prepared for Amendment 10 to the Atlantic Sea Scallop FMP or of the EAs for the annual fishing measures for the Atlantic sea scallop fishery. In addition, the scallop industry commented that most of the scallop industry has operated in Access Areas as if there were a prohibition on deckloading. Therefore, NMFS concluded in the interim action that the prohibition on deckloading in the ETAA does not impose additional impacts that have not been considered in prior actions, particularly since it will only be in effect for up to 360 days. Although the benefits are not quantifiable, the prohibition on deckloading is a complementary measure that will help reduce overfishing in 2007.

The following sections are a summary of analyses already prepared in the Framework 18 Environmental Assessment that considered fewer trips in the ETAA and delaying the opening in that area until March, rather than January. This document does not contain new analyses and is categorically excluded from additional analyses under NEPA since the impacts of this action have already been assessed in a previous action (Framework 18). Overall, the impacts described in Framework 18 were found to be positive from these measures. Furthermore, the proposed action in Framework 20 to extend these measures through the end of the 2007 fishing year will help eliminate the need for more conservation actions, which may potentially result in adverse impacts on the scallop resource and industry, if no action is taken to extend these measures to prevent overfishing.

4.1 SCALLOP RESOURCE

The ETAA has been closed to fishing since July 2004 to protect two very strong year classes. The area has an unprecedented high abundance of scallops, which needs to be husbanded with caution to effectively preserve the long-term health of the scallop resource and fishery. Framework 18 analyses suggested that excessive fishing effort in this area would likely have undesirable effects including higher safety risks, greater effects on the bottom environment from discarded scallop viscera and a spike in landings, which may adversely affect price.

As for opening the area in January versus March, the Council originally supported a January opening to give the fleet more flexibility to fish trips over a longer period of time, especially when relatively long seasonal closures were being considered to reduce potential interactions with sea turtles. A January 1 opening would miss growth that occurs during the spring. The

proposed action in Framework 20 to keep the reduced number of allocated trips in effect until March 1, 2008 will increase yield by giving scallops two more months to grow. Shifts of fishing effort to seasons when meat yield is lower increases mortality and fishing time because it takes more scallops to equal 18,000 lbs. of scallop meats. This change can be amplified if effort shifts to an earlier period before seasonal growth has occurred.

Framework 18 explains that Atlantic sea scallops of equal size exhibit seasonal changes in meat weight, related to the annual reproductive cycle. Scallops also exhibit seasonal changes in growth that usually peak during the early spring when the water is clearer and food is plentiful. These seasonal cycles in growth and reproductive activity also vary with latitude, but are important determinants of mortality for a TAC regulated fishery and when recruitment to the fishing year occurs. These factors will also affect how seasonal effort shifts affect scallop fishing mortality.

Summary of discussion at Council level related to request for Interim Action

Based on fishing patterns for the first few months the ETAA opened in 2007, effort is expected to be higher following an opening. So if No Action is taken most if not all general category trips and some limited access trips are expected to be taken in the ETAA starting in January 2007. If that is the case then the overall fishing mortality for FY2007 will increase and may exceed the overfishing threshold for FY2007. Table 1 describes the projections for calendar year 2007 under status quo (Framework 18 measures) and the interim measures recommended by the Council and implemented by NMFS on December 20, 2006 (Alternative 2). These estimated were prepared by the Scallop Plan Development Team and used by the Council and NMFS to justify the need for interim action. The overfishing threshold is $F=0.24$, so under status quo measures the projections suggest that overfishing would occur. Since interim measures were put in place it is likely that overfishing did not occur in 2007, but Alternative 3.2 in this document (extend interim measures) will help ensure that effort does not spike in January – February 2008, the end of the 2007 fishing year. If additional effort is taken in January and February that would reduce the effectiveness of the interim action to prevent overfishing for FY2007.

Table 1 - Summary of projections for calendar year 2007 under status quo (Framework 18 measures) and the interim measures to reduce ETAA trips in 2007 (Alternative 2)

	Status Quo FW18	Alternative 2 (3 ETA trips + no open area DAS reductions)
2007 Fishing mortality (all areas)	F=0.26	F=0.22
2007 ETA Fishing mortality	F=0.22	F=0.13
Landings (all areas)	70 million	61 million
Landings (ETA only)	24.7 million	15.4 million
DAS (open and access area DAS)	37,633	33,653
Exploitable Biomass	330 million	339 million
Total Biomass	425 million	415 million

Overfishing threshold for scallop resource is $F=0.24$

4.2 PHYSICAL ENVIRONMENT AND ESSENTIAL FISH HABITAT

In general, Framework 18 concluded that less effort allocated to the area will have positive impacts on the physical environment and EFH. Prohibition on deckloading has negligible impacts on EFH as well.

4.3 PROTECTED RESOURCES

In general, Framework 18 concluded that less effort allocated to the area will have positive impacts on sea turtles due to reduced potential for interaction with scallop gear. Prohibition on deckloading has negligible impacts on protected resources as well.

4.4 ECONOMIC AND SOCIAL IMPACTS

Framework 18 explains that if updated survey information suggests that a reduction in trips in the ETAA is necessary to ensure landings and economic benefits are kept to sustainable levels then overall positive economic impacts are expected from preventing overfishing. Furthermore, the interim measures to prohibit deckloading on ETAA trips are expected to help prevent additional scallop mortality associated with discarding and thus, will result in greater yield, revenues and economic benefits from the scallop resource. Therefore, vessels that participate in the scallop fishery will benefit over the long-term as overfishing of the scallop resource is prevented under the proposed action in Framework 20.

Summary of discussion at Council level related to request for Interim Action

While many limited access vessels would not be expected to fish in January and February, additional effort during that time could lead to overfishing in the 2007 fishing year. However, since trips allocated to the general category fishery are fleetwide, these vessels would be more inclined to fish in January/February, potentially increasing mortality in the fishing year 2007 above the overfishing threshold and thus, reducing scallop biomass. In addition, deckloading could have more scallops on board than are necessary to achieve the possession limit. Although the excess scallops are discarded, scallops remain on deck longer, which may increase discard mortality especially for small scallops. As a result of these negative impacts on scallop biomass, the scallop landings, revenues and total economic benefits could decline in the future years with negative economic impacts on the vessels that participate in the scallop fishery if no action were taken.

4.5 NON-TARGET SPECIES

In general, Framework 18 concluded that less effort allocated to the area will have positive impacts on non-target species due to reduced potential for interaction with scallop gear.

As the Council discussed the request for interim action, it was noted that the prohibition on deckloading may have positive impacts on non-target species by reducing additional time scallop gear may be fished above the possession limit, and then discarded.

5.0 CONSISTENCY WITH APPLICABLE LAWS

5.1 MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

5.1.1 National Standards

Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act requires that fishery management plans (FMPs) contain conservation and management measures that are consistent with the ten National Standards. This action extends interim measures designed to reduce overfishing of the overall scallop resource for FY2007; therefore is compliant with National Standard 1. Interim measures were recommended and adopted based on a report from the Scallop PDT using the most recent scallop survey information available. Results from three surveys conducted in 2006 were used to update the overall estimates of biomass and fishing mortality. Therefore, the measures proposed in this action are based on the best scientific information available (National Standard 2). This action is compliant with National Standard 3 since it manages scallops throughout the range as one unit; reducing effort in the Elephant Trunk Area is expected to reduce the potential for overfishing the scallop stock overall. This action extends the reduction of trips for all scallop permit categories at an equal rate, thus is compliant with National Standard 4, which requires management not to discriminate between residents of different States. Furthermore, economic allocation was not a factor in development of this action; therefore, it is compliant with National Standard 5.

Since this action only extends measures already adopted by interim action and previously considered in an earlier framework, it has considered variations in fisheries and catches (National Standard 6). Furthermore, this action does not propose any additional costs or duplication thus is compliant with National Standard 7. Framework 18 included a full analysis of the fishing communities affected by this action, and no impacts are expected (National Standard 8). In addition, this action proposes to extend a reduction in effort for the Elephant Trunk Access Area, therefore impacts on bycatch and non-target species are reduced (National Standard 9). Framework 18 concluded that less effort allocated to the area will have positive impacts on non-target species due to reduced potential for interaction with scallop gear. Lastly, National Standard 10 requires that management actions shall, to the extent practicable, promote the safety of human life at sea. This action extends reduced effort in the Elephant Trunk Area through January and February, arguably the most severe weather months in this region, thus it is compliant with this standard.

5.1.2 Other Required Provisions of the M-S Act

Section 303 of the Magnuson-Stevens Fishery Conservation and Management Act contains 15 additional required provisions for FMPs, which are discussed below. Any FMP prepared by any Council, or by the Secretary, with respect to any fishery, shall be consistent with these provisions. This section summarizes how Framework 20 is consistent with the 15 other required provisions of the M-S Act.

A description of the proposed action is provided in Section 3.2, a discussion of consistency with the National Standards is provided in Section 5.1.1, and a discussion of the consistency with other applicable laws is provided in Sections 5.2 – 5.10 (Provision 1). Provision 2 requires a description of the fishery to be included in each action. Section 4.5 of Framework 18 describes

the permits, vessels, gears used etc., in the scallop fishery. This section also summarizes all economic and social information available about fishing communities and related businesses. In summary, the scallop fishery is one of the most valuable US fisheries. Landings have been in excess of 50 million pounds in recent years, with revenues around 300 million dollars annually. There are about 300 limited access scallop vessels (mostly dredge gear) and several hundred general category vessels have participated in the scallop fishery per year. The present and probable future condition of the resource is described in Table 1. Under the interim measures the total biomass is expected to be 415 million pounds and landings about 61 million pounds in the current fishing year (Provision 3). Framework 18 includes more long-term projections of the resource, and over time landings are expected to increase under the proposed action.

Provision 4 requires that the action assess and specify the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield. The US fishery is expected to harvest the full available catch, no foreign vessels are permitted to fish for scallops. Section 4.5 of Framework 18 and Section 7.1.1.1 of Amendment 10 include a description of the pertinent data with respect to commercial, recreational, charter fishing, and fish processing in the scallop fishery (Provision 5). There are two primary commercial scallop components of the fishery – limited access and open access (general category) vessels. There is very little recreational scallop activity (recreational diving), and there are no charter scallop fishing related activities. The various scallop processing facilities are described in Section 7.1.1.2 of Amendment 10 (Provision 5).

This action does not affect the access of any fishing vessel to any fishery because of weather, ocean conditions, or any other potential concern (Provision 6). Furthermore, the proposed action makes no changes to EFH for any species (Provision 7). Section 4.4 of Framework 18 describes the current EFH definition for scallops and the impacts of gears used in the scallop fishery on EFH of other species. Specific measures have been adopted in previous scallop actions to minimize impacts on EFH. The proposed action contains no measures that will modify the nature and extent of data needed for effective monitoring and implementation of FMP objectives (Provision 8). Section 4.4 of this action describes the expected impacts of Framework 20 on fishing communities and Section 5.1.1 above explains that this action is not expected to have impacts on safety at sea (Provision 9). This action makes no changes to the specification of objective and measurable criteria for identifying when the fishery is overfished (Provision 10). Similarly this action has no effect on the standardized reporting methodology for assessing bycatch (SBRM) in this fishery, and is not expected to have impacts on bycatch mortality (Provision 11). The Council recently adopted an SBRM Amendment to update how bycatch is estimated, and that action is pending NMFS approval and implementation.

This action will have no impact on the very little (if any) recreational scallop effort and mortality of scallops released alive (Provision 12). Currently there are no approved sectors in the scallop fishery, thus this action will not have impacts on sectors related to Provision 13 and Provision 14. Provision 15 is a new requirement under the 2006 M-S Act reauthorization related to establishing a mechanism for specifying annual catch limits, including measures to ensure accountability. The Council plans to initiate an amendment to bring the Scallop FMP in compliance with this provision before the 2011 requirement.

5.1.3 Executive Order 12866 (Regulatory Impact Review)

5.1.3.1 Introduction

The Regulatory Impact Review (RIR) provides an assessment of the costs and benefits of proposed actions and other alternatives in accordance with the guidelines established by Executive Order 12866. The regulatory philosophy of Executive Order 12866 stresses that in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives and choose those approaches that maximize the net benefits to the society.

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

This RIR summarizes the effects of the proposed action. The Framework 20 document contains all the elements of the RIR/RFA, and the relevant sections are identified by reference to the document.

The purpose of and the need for action are described in Section 1.2. The description of the proposed action and the no action alternative is provided in Section 3.0.

5.1.3.2 Economic impacts

Framework 18 explains that if updated survey information suggests that a reduction in trips in the ETAA is necessary to ensure landings and economic benefits are kept to sustainable levels then overall positive economic impacts are expected from preventing overfishing. Furthermore, the interim measures to prohibit deckloading on ETAA trips are expected to help prevent additional scallop mortality associated with discarding and thus, will result in greater yield, revenues and economic benefits from the scallop resource. Therefore, vessels that participate in the scallop fishery will benefit over the long-term as overfishing of the scallop resource is prevented under the proposed action in Framework 20.

5.1.3.3 Summary of regulatory impacts

Overall this action is not expected to have regulatory impacts. In summary, Framework 18 concluded that reducing the number of trips in the ETAA would provide long-term benefits to the scallop resource and fishery. The resource could sustain more effort in the future as a result of the biological benefits of the reduction in trips. Furthermore, the scallop industry expressed strong support for interim action to reduce effort in the ETAA in order to prevent overfishing in FY2007.

5.1.3.4 Determination of significant regulatory action

Executive order 12866 defines a “significant regulatory action” as one that is likely to result in: a) an annual effect on the economy of \$100 million or more, or one which adversely affects in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; b) a serious inconsistency or interference with an action taken or planned by another agency; c) a budgetary impact on entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients

thereof; d) novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this executive order.

The preceding analysis shows that Framework 20 would not constitute a "significant regulatory action" since it will not raise novel legal and policy issues. Overall impacts on long-term net benefits are expected to be positive. Therefore, the proposed regulations may not have an annual impact on the economy of \$100 million or more. The proposed action will not adversely affect in a material way the economy, productivity, competition, public health or safety, jobs or state, local, or tribal governments or communities in the long run. The proposed action also does not interfere with an action planned by another agency, since no other agency regulates the level of scallop harvest. It does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients.

5.1.4 Initial Regulatory Flexibility Analysis

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

5.1.4.1 Problem Statement and Objectives

The purpose of the action and need for management is described in Section 1.2 and goal and objectives in Section 2.0 of the Framework 20 document.

5.1.4.2 Management Alternatives and Rationale

The proposed action and alternatives to the proposed action are described in Section 3.0.

5.1.4.3 Determination of Significant Economic Impact on a Substantial Number of Small Entities

5.1.4.3.1 Description of the small business entities

The RFA recognizes three kinds of small entities: small businesses, small organizations, and small governmental jurisdictions. It defines a small business in any fish-harvesting or hatchery business as a firm that is independently owned and operated and not dominant in its field of operation, with receipts of up to \$3.5 million annually. The vessels in the Atlantic sea scallop fishery could be considered small business entities because all of them grossed less than \$3 million according to the dealer's data for 2004 to 2006 (up to the end of January 2007) fishing years (Table 2). According to this information, annual total revenue averaged about \$940,065 in 2004, and over a million in 2005 fishing year per limited access vessel. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than \$3 million per vessel. Average scallop revenue per general category vessel was \$35,090 in 2004 and \$88,702 in 2005 fishing years. Average total revenue per general category vessel was higher, exceeding \$240,000 in 2004 and 2005 fishing years. According to the preliminary estimates average revenues per vessel were lower in 2006 fishing year for the first 11 months for all permit categories because of lower scallop landings and prices.

The proposed regulations of Framework 20 would affect vessels with limited access scallop and general category permits. Section 7.1 (Description of the Fishery) of Amendment 10 document and Section 4.5 of Framework 18 provide extensive information on the number, the port, the state, and the size of vessels and small businesses that will be affected by the proposed regulations. The current information on the number of scallop permits for the years 1997 to 2006 are provided in Table 3. Therefore, the proposed action of Framework 20 potentially affects a substantial number of small entities.

Table 2. Active scallop vessels by permit category (Dealer data)

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

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

Table 3. Scallop Permits by category

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

* Updated as of October 2006.

5.1.4.3.2 Determination of significant effects

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

The disproportionality criterion compares the effects of the regulatory action on small versus large entities (using the SBA-approved size definition of "small entity"), not the difference between segments of small entities. Framework 20 is not expected to have significant regulatory impacts on the basis of the disproportionality or profitability criteria.

The profitability criterion will apply if the regulation significantly reduces profit for a substantial number of small entities. The proposed action is not expected to reduce significantly profit for a substantial number of small entities. The following section provides a summary of the economic impacts from the proposed action. The relevant section of Framework 20, which discusses the rationale and impacts of these measures is also identified.

5.1.4.3.3 Economic impacts on vessels and the scallop fishery

- **Rationale** for the proposed action is provided in Section 3.2.
- **Economic Impacts** are analyzed in Section 4.5. The economic impacts on small business entities, or on individual vessels are discussed in Section 5.1.3.2.
- **Summary of the impacts of the proposed option and mitigating factors:**
Framework 18 explains that if updated survey information suggests that a reduction in trips in the ETAA is necessary to ensure landings and economic benefits are kept to sustainable levels then overall positive economic impacts are expected from preventing overfishing. Furthermore, the interim measures to prohibit deckloading on ETAA trips are expected to help prevent additional scallop mortality associated with discarding and thus, will result in greater yield, revenues and economic benefits from the scallop resource. Therefore, vessels that participate in the scallop fishery will benefit over the long-term as overfishing of the scallop resource is prevented under the proposed action in Framework 20.
- **Comparison of the impacts with the alternative options:**
There are no significant alternatives that would generate higher benefits for the scallop vessels. The only alternative is the no action option, which does not extend interim measures to reduce the potential for overfishing.

5.1.4.3.4 Indirectly affected industries

Indirect impacts include the impacts on the sales, income, employment and value-added of industries that supply commercial harvesters, such as the impacts on marine service stations that sell gasoline and oil to scallop vessels. The induced impacts represent the sales, income and employment resulting from expenditures by crew and employees of the indirect sectors. Given that overall impacts of the proposed measures on the fleet revenues and costs will be small, their indirect and induced impacts are not expected to be significant.

5.1.4.3.5 Identification on Overlapping Regulations

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

5.1.4.3.6 Conclusion

The preceding Initial Regulatory Flexibility Analysis and the relevant sections of RIR indicate that the regulations proposed in Framework 20 will have not “significant impacts” on a substantial number of small businesses.

5.2 NATIONAL ENVIRONMENTAL POLICY ACT

The proposed action is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement because the action will not have any impacts not already assessed, and the impacts would not have the potential to pose significant effects to the quality of the human environment. The changes in the ETAA trip allocations and opening date were contemplated and analyzed in the Environmental Assessment supporting Framework 18 to the Scallop FMP and are summarized in Section 4.0.

5.3 MARINE MAMMAL PROTECTION ACT (MMPA)

Section 6.4 of Framework 18 contains a description of marine mammals potentially affected by the Scallop Fishery and Section 4.3 above provides a summary of the impacts of the proposed action as analyzed in Framework 18. A final determination of consistency with the MMPA will be made by the agency when Framework 20 is implemented.

5.4 ENDANGERED SPECIES ACT (ESA)

Section 6.3 of Framework 18 contains a description of marine mammals potentially affected by the Scallop Fishery and Section 4.3 above provides a summary of the impacts of the proposed action as analyzed in Framework 18. A final determination of consistency with the ESA will be made by the agency when Framework 20 is implemented.

5.5 ADMINISTRATIVE PROCEDURE ACT (APA)

The Council has held two meetings open to the public on Framework 20. The Council initiated this action at the April 2007 meeting in Mystic, CT and approved final measures at the June 2007 meeting in Portland, ME. After submission to NMFS, a proposed rule and notice of availability for Framework 20 under the M-S Act will be published to provide opportunity for public comment.

5.6 PAPERWORK REDUCTION ACT (PRA)

Framework 20 does not have any new collection of information requirements subject to the PRA.

5.7 COASTAL ZONE MANAGEMENT ACT (CZMA)

Once the Council has adopted final measures and submitted Framework 20 to NMFS, NMFS will request consistency reviews by CZM state agencies.

5.8 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 framework is being developed as part of a multi-stage process that involves review of the document by affected members of the public. The public has had the opportunity to review and comment on management measures during several meetings. In addition, the public will have further opportunity to comment on this framework through the 45-day public hearing process, and again after the NMFS publishes a request for comments notice in the Federal Register.

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 framework 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 framework 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 document are supported by the available information. The management measures contained in the framework 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 framework are contained in the document and to some degree in previous amendments and/or FMPs as specified in this document.

The review process for this framework 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.

5.9 E.O. 13132 (FEDERALISM)

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

5.10 E.O. 12898 (ENVIRONMENTAL JUSTICE)

The alternatives in this framework are not expected to cause disproportionately high and adverse human health, environmental or economic effects on minority populations, low-income populations, or Native American peoples.

ATTACHMENT A

During development of Framework 20 the Council became aware of a regulation that is in effect that is not consistent with Council intent. **The Council requests that NMFS make a regulatory change to the general category landing and possession limit restriction based on the information and Council motion below.**

Under Amendment 4 (1994) the Council recommended, and NMFS approved a maximum possession limit of 400 pounds of scallops per trip for general category vessels. Amendment 4 intended that restriction to be a maximum landing limit per day. The Amendment 4 Final Rule (59 FR 12 January 19, 1994) states in section 650.22, vessels "...are prohibited from possession or landing per trip, more than 400 pounds (181.44 kg.) of shucked scallops, or 50 U.S. bushels (17.62 hl) of in-shell scallops, with not more than one scallop trip allowable in any calendar day."

The regulations prohibit a vessel from "fishing" for scallops more than once in a single calendar day, so a vessel is prohibited from leaving on another trip the same day it landed scallops. NMFS sent out a letter to permit holders on March 27, 2007 clarifying the current restriction. The letter explained the current restriction paraphrased below:

The regulations at 50 CFR 648.14(i)(2) prohibit a general category vessel from "fish[ing] for, possess[ing], or land[ing] scallops on more than one trip per calendar day." The definition of fishing in the MS-Act includes: "...any operations at sea in support of, or in preparation for..." fishing. NMFS therefore determined that in order to enforce this provision, "fish for scallops" includes declaring a general category trip and moving a vessel from the dock or mooring to begin fishing. This interpretation is more restrictive than the original intent of the Council under Amendment 4; therefore the Council now requests that NMFS make a regulatory change to this restriction to uphold the intent of Amendment 4, "...not more than one scallop trip allowable in any calendar day."

The Scallop Committee first discussed this issue that was forwarded to them by concerns raised at an Enforcement Committee meeting. The Council then passed a motion at the June 19-21, 2007 Council meeting related to this issue.

Mr. Simpson moved on behalf of the committee:
to develop an action that will address the 24-hour period issue from the Enforcement Committee to be done in the most expeditious way (regulatory amendment or Framework Adjustment 20). The document would consider allowing one landing per calendar day consistent with how current regulations are worded for limited access vessels fishing outside a DAS. With the understanding that a vessel could leave for a second trip in the same calendar day, but not land until the next calendar day.

The motion **carried** on a show of hands (14/0/0).