

unnecessarily well below OY and cause substantial adverse economic and social effects on the scallop industry under rebuilt resource conditions.

The F in the Mid-Atlantic continues to be high, despite efforts in recent years to reduce the effective F through the Area Access Program. However, the FMP does not prescribe different management measures for each stock, consistent with National Standard 3. To enhance the incentive to fish in the Access Areas, Framework 15 allows for an increase in the F for the Area Access Program, which results in an increase in the possession limit. It is expected that this enhanced incentive will reduce fishing pressure in the Mid-Atlantic region outside of the Access Areas.

Comment 4: Oceana/CLF commented that the 100 DAS alternative has greater environmental, biological, and economic benefits than the 120-DAS alternative. Oceana/CLF commented that it is unclear what rationale NMFS is using to justify its proposed action of 120 DAS, when the analyses in Framework 15 clearly support the 100-DAS allocation alternative, touting the following environmental, biological and economic benefits: (1) Reduced unsustainable fishing mortality in the open fishing areas; (2) higher long-term net benefit (\$38 - \$42 million); (3) likely increase in future landings, rather than the sharp decline predicted under the proposed action; (4) reduced area affected by scallop dredging; and (5) reduced operational costs, and increased producer surplus and net benefits.

Response: Oceana/CLF has focused on the long-term effects of the DAS to be implemented through Framework 15. Framework 15 is intended as a short-term action while the comprehensive Amendment 10 is developed and implemented. In light of the short-term context of Framework 15, NMFS disagrees that Framework 15 clearly supports the 100 DAS alternative, since short-term losses associated with the alternative are not clearly outweighed by the benefits of the reduced DAS. The analysis demonstrates that the 120-DAS alternative, combined with the Area Access Program, has noticeably higher economic and social benefits with only marginal loss of benefits to the scallop resource overall and the environment in the short-term. NMFS believes that the short-term effects of the action are more relevant, because Framework 15 does not contemplate continuation of these measures alone for more than 1 year, despite the analyses that project the effects of the action over as many as 10 years.

Comment 5: Oceana/CLF commented that Framework 15 does not contain measures adequate to minimize adverse fishing impacts on known gravel habitats and sensitive EFH in open areas on Georges Bank. Oceana/CLF asserts that the 120-DAS alternative in Framework 15 "dramatically increases" the amount of EFH impacted by scallop dredging by 60 to 80 percent. Oceana/CLF also commented that the increase in EFH affected by scallop dredging under the 120-DAS alternative is exacerbated by a lack of management measures specifically designed to protect EFH. Oceana/CLF contends that prior scallop amendments modified the framework process "...so that habitat conservation measures may be approved by the Council in a more timely manner than the plan amendment process." Oceana/CLF commented that NMFS and the Council cannot rely on future amendments in the Scallop and Northeast Multispecies FMPs to implement appropriate measures to minimize the impacts on EFH. Finally, Oceana/CLF urged NMFS to take immediate action under Framework 15 to minimize fishing impacts on known gravel habitats and sensitive juvenile cod EFH and other groundfish EFH in the open areas on Georges Bank.

Response: NMFS disagrees that Framework 15 dramatically increases the amount of EFH impacted by scallop dredging. To draw that conclusion, Oceana/CLF compares the action in Framework 15 to the default measures that would otherwise become effective March 1, 2003. These measures include 45 full-time, 18 part-time, and 4 occasional DAS allocations that are well below any level of fishing effort that has occurred in the scallop fishery under recent management and recent historical scallop fishing activity. This conclusion ignores the practicability standard for analyzing the appropriateness of habitat mitigating measures. The 120-DAS alternative maintains the DAS allocations that have been in place since 1999. Therefore, the Framework 15 DAS allocation does not actually increase impacts on EFH at all, when compared to the status quo of current fishing activities.

Frameworks are required to comply with the Magnuson-Stevens Act and minimize the adverse effects of fishing on EFH to the extent practicable. In light of the drastic DAS reductions that would occur under Amendment 7, Framework 15 implements a more appropriate DAS allocation and takes practicable steps to minimize the impacts of the scallop fishery on EFH in order to comply with the Magnuson-Stevens Act and to meet the goals and

objectives of the FMP. It is not correct that framework actions must necessarily include a full reconsideration of EFH, or of any of the other 21 frameworkable measures included in the FMP.

Framework 15 was developed during the latter stages of development of Amendment 10 because it was clear that Amendment 10 would not be implemented by the start of the 2003 fishing year and, therefore, Framework 15 is considered to be an action of limited scope, which is intended to be a stop-gap measure until Amendment 10 is implemented. The Council is required to adjust management measures on an annual basis in order to make measures consistent with the condition of the resource and the status of the fishery. The Council and NMFS are maintaining extensive closures of areas of high scallop abundance and potential prime scallop fishing areas on Georges Bank and in Southern New England waters, which provide substantial protection of habitat. The Council is carrying out a full reconsideration of measures to address EFH through the more extensive public process associated with Amendment 10. NMFS notes that the measures have been highly controversial and complex and have been the subject of lengthy debate.

Taking into account the short-term context of Framework 15, the OY calculations, the areas closed to scallop fishing, and other measures already in place that provide extensive EFH protection, Framework 15 minimizes the impacts on EFH to the extent practicable.

Comment 6: Oceana/CLF commented that Framework 15 does not contain measures adequate to accurately report or minimize bycatch of overfished groundfish, skates and other marine life. Specifically, Oceana/CLF commented that high levels of bycatch of fish and other marine life continue in the scallop fishery--most of it unaccounted for due to a lack of observer coverage and unreliable vessel trip report data. Oceana/CLF urged NMFS to improve its compliance with the Endangered Species Act (ESA) with regard to the scallop fishery and to complete a Biological Opinion (BO) for Framework 15 prior to its approval and implementation. Oceana/CLF concluded by requesting that NMFS not approve Framework 15 until it contains adequate measures to: (1) protect sensitive juvenile cod and other sensitive groundfish EFH; (2) increase levels of observer coverage throughout the entire scallop fishery; and (3) stop all illegal takes of threatened and endangered sea turtles and minimize bycatch of other overfished and at-risk species (e.g.,