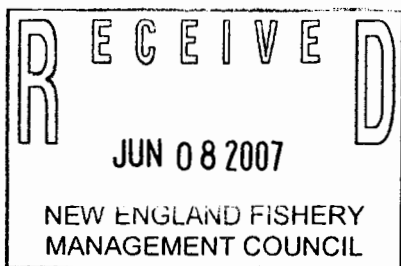


#6

**WRITTEN COMMENTS ON AMENDMENT 11 DSEIS**

(Deadline for comments June 11, 2007)

Comment #	Date Received	Name	City, ST
<b>BATCH 2</b>	<b>COMMENTS RECEIVED AFTER MAIL DATE - BUT BEFORE DEADLINE</b>		
22	6/8/07	Denis Lovgren	Point Pleasant, NJ
23	6/6/07	John, Mary and AJ	
24	6/8/07	Eric L Lundvall	Little Egg Harbor, NJ
25	6/11/07	Walter Jessiman	Cutler, ME
26	6/11/07	Troy Ramsdell	Cutler, ME
27	6/11/07	Robert W. Maxwell	
28	6/11/07	Stephen M. Ouellette	Gloucester, MA
29	6/11/07	David E. Frulla	Washington, DC
30	6/11/07	Richard Taylor	Gloucester, MA
31	6/11/07	Ronald Enoksen	New Bedford, MA
32	6/11/07	Phillip Michaud	Wellfleet, MA
33	6/11/07	Heinz J. Mueller	Atlanta, GA
34	6/11/07	William D. Delahunt	Washington, DC
35	6/11/07	Stanley C. Sargent	Milbridge, ME
36	5/30/07	Wallace A. Gray	Stonington, ME
37	6/5/07	Jimmy Hahn	Ocean City, MD



DENIS LOVOKEN  
306 SUDBURY RO.  
PT. PLEASANT, N.J.  
08742  
F.V. KAILEY ANN

# COMMENT # 22 #

DEAR MS. KURKUL,

I AM A THIRD GENERATION COMMERCIAL FISHERMEN WHO HAS FISHED OUT OF PT. PLEASANT, N.J. FOR 35 YEARS. I HAD A 70 FT WOOD VESSEL (F.V. LEAH) THAT I UPGRADED TO A 78 FT STEEL VESSEL IN 2006.

I WOULD LIKE TO COMMENT ON SOME OF THE PROPOSALS ON ADDMENTMENT II. I AM IN FAVOR OF LIMITED ENTRY TO CONTROL CAPACITY. I THINK THE ALLOCATION FOR THE GENERAL CATEGORY SHOULD BE 7-10 PERCENT WHEN LIMITED ACCESS WAS IMPLEMENTED IN 1994. ONLY 2 YRS 1988-9 WERE USED AS BASE YEARS LEAVING ALOT OF PEOPLE OUT OF THE FISHERY. I THOUGHT AT THAT TIME THE GENERAL CATEGORY FISHERY WOULD BASICALLY BE A PART TIME AND BYCATCH FISHERY WHICH I STILL THINK IT SHOULD BE.

WITH THAT IN MIND I THINK BOATS THAT HAD LANDING OF 100 LBS OR MORE BEFORE THE CONTROL DATE SHOULD QUALIFY. I ALSO FEEL THAT A

FLEETWIDE HARD TAC BY QUARTER,  
WOULD WORK BEST. THE HARD TACS  
WHETHER QUARTERLY OR TRIMESTER  
HAVE WORKED VERY WELL IN  
MID-ATLANTIC FISHERIES SUCH AS  
FLUKE, SCUP, SQUID AND OTHERS.

WHEN I BOUGHT MY NEW  
BOAT REPLACING MY OLD ONE I  
ALSO INVESTED IN DREDGES TO  
GO SCALLOPING PART TIME,  
FIGURING MY PERMIT WOULD STILL  
QUALIFY, BUT NOW I AM CONCERNED  
ABOUT HOW THIS PLAN ENDS UP.

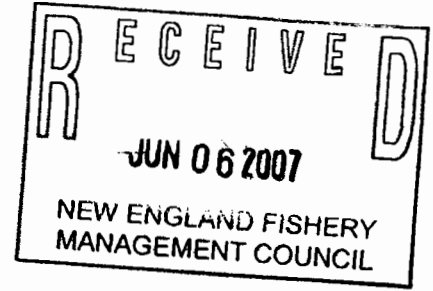
THANK YOU FOR YOUR TIME  
AND CONSIDERATIONS.

DENIS LOVGREN

Comment #23

**Woneta M. Cloutier**

**From:** Peter Christopher [Peter.Christopher@noaa.gov]  
**Sent:** Monday, June 11, 2007 9:35 AM  
**To:** Deirdre Boelke; Chris Kellogg; Woneta M. Cloutier  
**Subject:** [Fwd: [Fwd: [Fwd: [GEN. CAT. SCALLOPERS]]]]



Comment on Amendment 11

----- Original Message -----

**Subject:** [Fwd: [Fwd: [GEN. CAT. SCALLOPERS]]]  
**Date:** Mon, 11 Jun 2007 09:31:54 -0400  
**From:** George Darcy <George.Darcy@noaa.gov>  
**Organization:** NOAA NMFS  
**To:** Hannah F. Goodale <Hannah.F.Goodale@noaa.gov>, Peter Christopher <Peter.Christopher@noaa.gov>

----- Original Message -----

**Subject:** [Fwd: [GEN. CAT. SCALLOPERS]]  
**Date:** Wed, 06 Jun 2007 16:47:00 -0400 (EDT)  
**From:** pirate@midmaine.com  
**To:** Pat.Kurkul@noaa.gov  
**CC:** George.Darcy@noaa.gov

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-----  
-----

TO WHOM IT MAY CONCERN,

AS A SCALLOPER MY WHOLE LIFE, WE'VE GONE THROUGH THE UPS AND DOWNS OF ALL THE RULES AND REGULATIONS THEY'VE THROWN AT US. WE ARE GENERAL CATEGORY, WHICH WE ACCEPTED 13 YEARS AGO INSTEAD OF GETTING THE BLACK BOX (WHICH LIMITED ACCESS LICENSES ARE WORTH UP TO \$1,000,000.) LAST YEAR THEY MADE US GET THE BLACK BOX ANYWAY, ALONG WITH A PERMANENT MONTHLY BILL TO PAY FOR BIG BROTHER TO TRACK OUR EVERY MOVE. AT THAT TIME, THEY CUT THE GEN. CAT. BOATS IN HALF, BECAUSE SOME BOATS JUST DIDN'T WANT THE AGGRAVATION.

NOW WE SMALL BOATS ONLY DRAG 5-8% OF ALL TOTAL LANDINGS AND THEY ARE TRYING TO KNOCK US OUT THE REST OF THE WAY. THE TRIP BOAT (LIMITED ACCESS FISHING GEN CAT PERMIT ARE FIGURED INTO THIS NUMBER)

MY STAND IS, IF YOU GOT THE BLACK BOX, THAT'S IT. YOU SHOULD BE IN THE FISHERY THAT YOU COMMITTED TO. THERE'S PLENTY OF ROOM TO DROP LANDINGS OTHER WAYS. LIKE STOPPING THE TRIP BOATS FROM FISHING GEN. CAT. (THEY PURPOSELY USED UP THE TRIPS IN THE ELEPHANT TRUNK THIS SPRING TO KNOCK US OUT OF THE BUSINESS, OVER 1/2 THE TRIPS ALLOCATED). THE BIG TRIP BOATS ARE RUN BY PEOPLE WHO COULD CARE LESS ABOUT THE RESOURCE. OWNERS ARE NEVER ON BOARD. CREWS ARE OFTEN ILLEGAL ALIENS WHO PAY NO TAXES, OR JUNKIES. FOR THEM TO BE PICKING ON THE MINORITY FOR THEIR REDUCTIONS IS

ABSURD. WE USUALLY DON'T EVEN FISH WHERE THE BIG BOATS DO. THEY CAN'T MAKE MONEY FISHING 400# IN 24 HOURS...

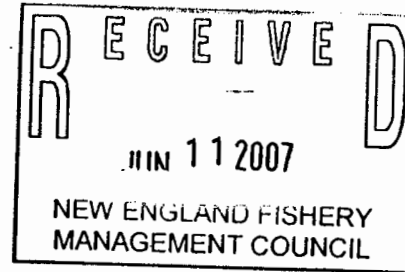
ONE MORE  
THING I'D LIKE TO SAY IS I HOPE EVERYONE WHO LIKES SCALLOPS IS LUCKY ENOUGH TO EAT THE ONES CAUGHT ON THE LAST COUPLE DAYS ON THESE TRIP BOATS BECAUSE THE REST OF THEM SIT ON ICE FOR 8-10 DAYS BEFORE THEY EVEN HIT THE MARKET. ALL THE RESTAURANT SCALLOPS COME FROM DAY BOATS. I HOPE YOU CAN HELP US SINCERELY, JOHN, MARY & AJ  
PS IF THIS GOES THROUGH OUR BOAT WILL BE USELESS EXCEPT FOR A CABIN CRUISER.

Comment #24

**F/V RAYNA & KERSTIN**

**INSHORE & OFFSHORE CHARTERS, INC.**

400 Wood St.  
Little Egg Harbor  
New Jersey, 08087  
Capt.lars@verizon.net



June 8, 2007

Ms. Patricia Kurkel, Regional Administrator  
National Marine Fisheries Service  
1 Blackburn Drive  
Gloucester, MA 01930

"COMMENTS ON SCALLOP AMENDMENT 11"

Dear Ms. Kurkel,

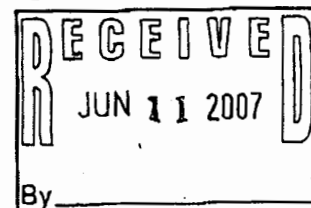
My name is Eric L. Lundvall owner/operator of the F/V Rayna & Kerstin, Barnegat Light New Jersey. My vessel is a current participant in the general category fishery and has history of participation in that fishery since 1994.

I support limited entry for the general category scallop fishery using the control date of November 1, 2004. Allocation for the general category fishery should be implemented. I support an allocation of the projected TAC at a minimum of 5%, to a more appropriate 11% of the TAC. Even with the higher general category landings of 14.09% and 12.18% in 2005 and 2006, the limited access fleet continues to prosper in the Mid-Atlantic.

Please also note that the same open bottom area off of New Jersey that some limited access scallop vessel owners say are being depleted by the general category fleet is the same open bottom area where they have produced some of their biggest trips in years. I would question who is doing the damage.

Landing criteria for qualification for limited entry should be 5,000 pounds between March 1, 2000 and the control date of November 1, 2004. This is the only alternative that would keep the pool of vessels receiving permits to a lower level to sustain a viable fishery with a TAC of 5%. The 1,000 pound, 10 year criteria would work, if there was a higher TAC in the range of 10%-11%.

After reviewing the amendment 11 scoping hearing summary for Manahawkin, NJ, I believe I was not clear or misquoted at what I stated at that hearing. I stated that I have two vessel permits that have general category history that would qualify under the preferred 1,000 pound, 10 year criteria, but only one would qualify under the 5,000 pound criteria. I then stated that I would rather see the 5,000 pound criteria used for qualification and in turn qualify for only one of my vessels. I was trying to point out how



too many qualifying participants would dissolve a fishery into a few days or pounds to make the fishery economically feasible.

I believe there should be absolutely no re-rigging clause in this amendment to qualify vessels for a permit.

The access to qualifying vessels should be allocated on a tiered system, possibly part-time and full-time. ITQ's are very complicated and would further extend the transition period. If an ITQ alternative was chosen, I believe leasing and permit stacking should go along with that alternative.

I believe limited entry provisions should include preferred alternative: 3.1.2.5.1.2. One vessel potentially qualifying more than one permit.

An interim measure of a hard 10% TAC during the implementation period would be acceptable. A TAC lower than this would hurt legitimate qualifying vessels due to boats trying to buy time through an appeal and limited access vessels that might choose to "help burn up" an interim TAC in lieu of using their DAS at the beginning of the fishing year.

I agree that a separate limited entry program for the NGOM, with an allocation derived from the overall total allowable catch.

Limited access fishing vessels meeting the same qualifying criteria as general category vessels should receive a permit to land scallops under the general category. Landings outside their DAS should come from the overall TAC.

Table 19, impacts of the general category TAC on limited access vessels (Sec. 5.4.17.4 of the DSEIS) clearly shows that if Amendment 11 allocated an 11% TAC to the general category there would be a 0% change in limited access net boat share in the full range of scallop TAC scenarios from 40 million through 70 million. In other words, the limited access fleet is doing just fine at status quo.

Unfortunately, there is a fair percentage of limited access participants who have chosen to wage a war against the general category, in an effort to eliminate it as any form of a directed fishery. They appear to have an upper hand in trying to influence this management decision; they are highly organized and have plenty of money for attorneys, lobbyists and scientists. I keep hearing the same general statement from them: "the sacrifices that we endured through the 1990's to rebuild the depleted scallop stocks and now that we rebuilt the stocks, the general category wants to reap

the benefits of our suffering." I believe good fisheries management should be credited for rebuilding the scallop stocks to what they are today not the limited access vessels that depleted the stocks in the first place.

I believe strongly, that qualifying general category vessels should be permitted to continue a full time directed general category fishery. There is now a strong seafood consumer demand for "day boat" or "sushi grade" scallops that has developed with the general category fishery. Consumers have come to know the difference between trip boat scallops and day boat scallops. There needs to be a consistent supply of these high quality day boat scallops that for the most part, the general category scallopers have been supplying.

Thank you for reviewing my comments.

Sincerely,



Eric L. Lundvall, President





**Amendment 11 Scoping Hearing Summary**  
 Holiday Inn – Manahawkin, NJ  
 May 30, 2007

Almost 30 individuals attended the public hearing in Manahawkin, NJ, and about a dozen gave oral comment. David Simpson, Chair of the Scallop Committee welcomed the audience and gave an overview of the process and purpose of the meeting. Deirdre Boelke, NEFMC staff then reviewed the public hearing document and explained the preferred alternatives the Council has identified for Amendment 11. The meeting was held from about 6:00-7:45 PM.

Overall the majority of comments at this meeting were about the allocation decision for the general category fishery. Unique to this meeting compared to other public hearings, there was general consensus and support of the preferred alternative of 5%. Several speakers argued that 5% is too high, and it is inappropriate for the Council to support an allocation that is above the historical average of this fishery, especially when limited access effort was reduced during the same time period. One general category vessel owner added that 5% is reasonable, but is only workable if the qualification criteria are more restrictive; he argued that the 1,000 pound and 11-year criteria would qualify too many vessels and no one would be able to make a living.

**Measures to control capacity and mortality in the general category fishery**

Very few speakers addressed this issue directly, but most that did supported limited entry alternatives. One argued that unless controls are put in place some general category vessels will just move to areas of concentrated scallops and fish them out. He explained that some of the general category vessels that used to land in Cape May, NJ have moved north to Point Pleasant because the inshore areas around Cape May have been fished out. Another explained that the limited access boats did the same thing when the resource was in bad shape – they fished out areas until there was nothing left because they did not have incentive to move. He argued that without constraints on the general category fishery aside from a possession limit, they too have little incentive to move out of less productive areas. One individual said that he is happy the Council is finally addressing the general category fishery and wished it could have been done sooner. Another added that he was around in 1994 and we should do everything we can to avoid getting in that situation again. One commenter added that this fishery as a whole has to do everything it can to prevent overfishing. He added that if this resource approaches overfishing all the “eco-friendly” markets will disappear and the price will drop having negative impacts on both fisheries. No one voiced support for the No Action alternative or a hard-TAC as a preferred strategy for controlling capacity and mortality in the general category fishery.

**Qualification for limited entry**

Several speakers supported more restrictive qualification criteria, specifically 5,000 pounds and the five-year timeframe of 2000-2004. They argued that the preferred alternatives for qualification would create too many permits and no one would be able to make a living, particularly if the Council was serious about the 5% allocation. One limited access vessel owner added that the preferred alternative may estimate 459 vessels now, but when it is all said and done that number is bound to go up. \*One speaker added that he has two vessels that will only qualify under the 1,000 pound alternative but he supports the 5,000 pound alternative because

\* my comment that I referred to. in

~~1,000 qualifies too many and there is not enough to go around for 500 vessels.~~ Another argued that the 11-year time period is just too long and another commented that he understands why the Council wants to be inclusive, but in his opinion the preferred alternatives would qualify too many. Furthermore, he supports the alternative that would index a vessels contribution based on the number of years active in the fishery.

Several commented on the access strategy for qualifying vessels. Some supported an individual allocation in trips or pounds. However, several supported a tier system arguing that an individual allocation would be overboard for this fishery. Another voiced support for a tier system if it was easier to implement, but suggested that an additional tier should be considered above the 20,000 pound tier in the document for more directed vessels (i.e. a fourth tier at 40,000 pounds and above).

#### **Allocation of scallop TAC to the general category fishery**

Several speakers noted that the general category fishery has increased as a result of controls and innovative changes in the limited access fishery such as crew limits, minimum ring size, and DAS effort controls. One argued that the limited access fishery has made sacrifices and it would be fundamentally wrong to base this allocation decision on post control date landings data. Another argued that it would be a mistake to allocate more than historical contributions; he added that the general category has experienced a bubble in the last few years and it should not be rewarded. Another added that if the Council wants the general category fishery to be more of a mom and pop operation then 2.5% is more reasonable. One speaker voiced support for 5% because that is about the level of total general category landings when the control date was put in place; he argued that would be consistent with the qualification alternatives that are through the control date.

#### **Limited access fishing under general category**

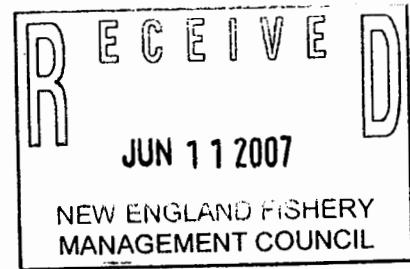
Not many speakers spoke to this issue, but most that did agree with the preferred alternative. One speaker noted that the Council is considering an allocation to the general category that is over 200% of the historical average but the 0.5% allocation for limited access vessels under general category would be over a 50% reduction, based on historical landings. Several speakers voiced that the allocation should be in line with each other, and be based on historical averages.

#### **Interim measures for transition to limited entry**

The majority of commenters spoke to this issue in disbelief that an 18-24 month transition period would be necessary; they did not understand how it would take so long or why the Council and NMFS would support continued overfishing of inshore areas. Several suggested that NMFS and the Council should be more creative about measures that can control capacity until Amendment 11 can be fully implemented. For example, it was suggested that NMFS can send out letters now requesting individuals to get their landings history in order. In addition, NMFS could identify the potential qualifiers and allocate an interim individual access (in number of trips or pounds) until the final universe of vessels is known. He added that NMFS could allocate one amount the first year, and then a higher or lower amount the following year after the final pool of qualifying vessels is known. Several argued that a derby for two years would have negative impacts, and several commented that 10% is way too high. Another suggested that based on the analysis in the document, NMFS must have a pretty good idea of who is going to qualify and it should not take 18 months. Another voiced support for the interim alternatives, but wished Amendment 11 could be implemented faster. Lastly, another commented that for the interim period the percent of access general category vessels are allocated in access areas should remain at 2%.

Comment #25

Walter Jessiman, Captain  
F/V Dreamcatcher  
P.O. Box 273  
Cutler, Maine 04626  
(207) 259-3640



April 11, 2007

National Marine Fisheries Service

Subject: Comments on Scallop Amendment 11

To Whom It May Concern,

I, Walter Jessiman, would like to register my adamant disagreement with any changes with/in the General Catch permit being currently considered.

I have attended meetings/forums at which these proposed changes were discussed and to my knowledge every local (Maine) fisherman registered strong objections to changes. Changes, as presented, would discriminate against Maine scallop fisherman and favor those from the southern region of the district.

Let me briefly present my personal issues. My lifetime dream (adult) has been the ownership of a scallop dragger. To accomplish that goal it became necessary for me to temporarily relocate to Connecticut. In 2001 I laid the keel for the vessel of my dreams. At that time I was notified that there was open access and did not need to acquire a license. As soon as the status changed I did apply and acquire necessary licensure.

Every aspect of the construction has been documented by photos and material receipts. I personally laid every weld and did the entire construction. After the boat was launched I did all of the electrical, hydraulic, and mechanical work on it.

As soon as the construction was completed I steamed the vessel to its' home port in Cutler, the place that has been home for me all during my adulthood. Since last December I have fished the boat every day the waters permitted for safe passage.

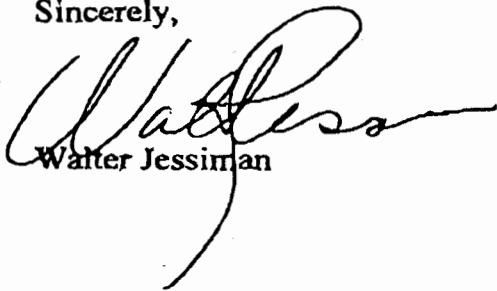
On several occasions the US Coast Guard has boarded the vessel for safety checks. On every boarding comments were made on the excellent craftsmanship and it being "state of the art" in safety and technology.

Several times during construction, and since, I asked advice regarding permit issues and was consistently informed that the construction time counted as landings and not to worry. This vessel was constructed as a scallop dragger and very impractical for any other purpose. It would be highly unfair for the rules to change after I have invested my life and resources into the boat understanding that I would be able to fish with it.

Please allow me to express another concern. Under proposed changes the fishermen of Maine would lose further control over their livelihoods. I, like most or all Maine fishermen, want to be good stewards of the marine resources.

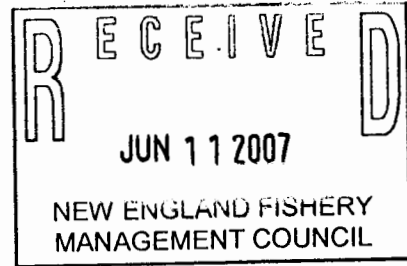
Thank you for accepting my written comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Walter Jessiman". The signature is written in dark ink and is positioned above the printed name.

Walter Jessiman

COMMITMENT #26



1862 cutler rd  
cutler, maine 04626

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To: NEFMC  
 Fax number: 1 978 281-9135

From: Troy Ramsdell  
 Fax number:  
 Business phone:  
 Home phone: 207-259-7748

Date & Time: 6/9/2007 9:34:03 AM  
 Pages: 1  
 Re: Scallop License

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Hi,  
 My name is Troy Ramsdell of Cutler, Me. I'm writing in response of the Amendment 11. Me and my dad had a boat in 2004 with the scallop license. The boat burt off the Cape in 2005. All doc's were on the boat so they didn't get sent in. I also had another boat that I had the license on but didn't show any landings because their were no scallops off Cutler to get. I bought a new boat to go scalloping in state and federal waters , but i was just told I would loose my license if I got it. I didn't get it because of the required VMS. I was afraid of buying it and not able to get my license and be out of \$1500. All I want to do is day trips out off Cutler Harbor. I believe something has to be done but not to keep out the people that that are still willing to work for a living.

I think for the gulf of Maine region licenses should given to people who held a license up until the upcoming decision regardless of what they had for landings or ever if they had none. It's not fair to people that gave up everything and invest all they have into scalloping to have it taken away for a few greedy fisherman. Even if you issue a 150 -200 lb day license would all we ever need. I'm not asking for the 400 lb. I think they should be some compromise for us. The 1994-2004 is ridiculous. What about recent fisherman, do they sell or try sell their boat just because you wont let them work. I've recencently heard from fisherman in other towns talking of a class action lawsuit if they don't get their license. I'm not part off this. I just want to work and pay my bills with out worrying of my license being takend away. Please make an exemption for peope like us. 1. Have the license so it can't be sold. 2. Have the license whom it is given to, be on the boat that's registed to the license. So they can only have one license not multiple. Thanks for your time and efforts.

Try Ramsdell

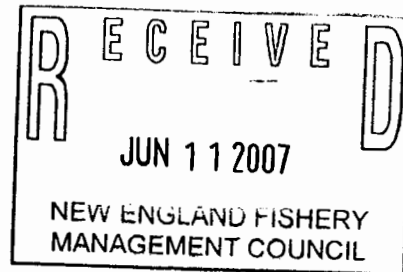
comment #27

**Woneta M. Cloutier**

**From:** Robert Maxwell  
**Sent:** Monday, June 11, 2007 3:38 PM  
**To:** Scallop.Eleven@noaa.gov  
**Subject:** Comments on Scallop Amendment 11

Patricia Kurkul, Regional Administrator  
 NMFS  
 One Blackburn Dr.  
 Gloucester, MA 01930

6/10/07



Re: Comments on Scallop Amendment 11

Thank you for the opportunity to comment on the General Category Amendment 11. My name is Robert Maxwell and I am a day scalloper and have been day scalloping full time since 2001 to date. Unfortunately the General Category is over fishing open bottom inshore beds – for this reason the control date of November 1, 2004 was implemented and should be used as it states, “control date”. It is important that Amendment 11 be completed as soon as possible and not take 2 years longer or the entire scallop fishery will suffer.

**Overall Allocation & Qualification Criteria:**

The control date should be mandatory! I support the allocation of **5.5% to 7%** for the time period of **2000-2004 with a qualification criteria of 5000 pounds..** Should the time period of 1994-2004 be used, the allocation should be increased to 11%. According to the DSEIS, the number of qualifying boats for the 2000-2004 time period would be 188, the lower allocations would be acceptable, however if the preferred alternative is used (1994-2004/ 1000 pounds) the number of qualifying boats would increase to 459 this would be unacceptable, as of 2004 the limited access fleet total was **323 vessels landing ( 59,494,630 ) pounds ! this is 94.5% why would we give 459 vessels only (3,272,204) pounds 5.5%** We cannot allow this to happen, please think of the fishery as a whole and what you are doing to the new participants. Do not over qualify and under allocate. I

**Stacking & Consolidating:**

I support stacking and consolidating of permits to the 60,000 pounds or 150 trips to be adjusted annually and be consistent with the total TAC as of 2004. This will allow flexibility in the GC fishery for those participants that do not have enough allocation to make a living. This will also allow other participants to lease and purchase as necessary. This will also make for a more efficient access fishery.

**Individual Allocation**

I support individual allocation based on your best year from 2000-2004, this would be the fairest way to allocate to all qualifiers (your effort would equal your history in the fishery)

**Vessel upgrades**

I support no upgrade restriction, if stacking and leasing is acceptable vessel upgrades etc, would not be necessary.

**Interim measures**

I do not support the 10% tac or it extended for 18-24 mon, 2010-FY this will make a derby style fishery.

**Appeals**

06/12/2007

I do not support appeals but if you have history on or before the control date **nov,1 2004** this would activate an appeal –with a 90 day qualifier window  
**NGOM**

I support the Gulf of Main Exemption area 43 degree N.

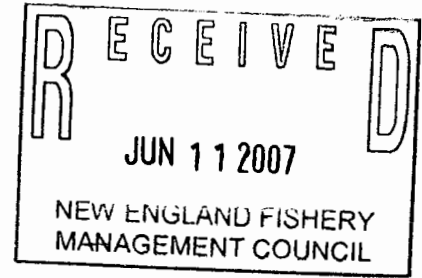
Thank you,

Robert W. Maxwell  
Miss Halie LLC  
Debbie Sue LLC  
Robert Christian LLC

Comment 28

**OUELLETTE & SMITH**  
ATTORNEYS AT LAW AND PROCTORS IN ADMIRALTY  
A Professional Association

127 EASTERN AVENUE  
SUITE 1  
GLOUCESTER, MASSACHUSETTS 01930



Stephen M. Ouellette\*  
David S. Smith\*

\*Also Admitted in Maine

Telephone: (978) 281-7788  
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E-mail: fishlaw@aol.com  
<http://www.fishlaw.com>  
<http://www.maritimelawusa.com>

June 11, 2007

Patricia Kurkul, Regional Administrator  
National Marine Fisheries Service  
Northeast Regional Office  
One Blackburn Drive  
Gloucester, MA 01930

**BY HAND AND BY EMAIL**

Re: Comments on Scallop Amendment 11

Dear Ms. Kurkul:

I am submitting comments on the proposed Scallop Amendment 11 on behalf of general category vessels fishing from the Barnegat Light, New Jersey area. My clients are supportive of the proposed Amendment and options implementing a limited access program with individual allocation, in trips or pounds, based on a vessel's landings in its best year from 2000 to 2004. We encourage adoption of such a plan as soon as possible, and make suggestions to streamline the process.

Recent growth in the General Category Scallop Fishery has obviously placed new stresses on the scallop stocks, particularly within inshore areas, and my clients recognize the need for implementation of new conservation measures, including limited access to slow growth in the fishery and protection of the resource. At the same time, measures should be designed to protect the nature of the General Category fishery, taking into account developments leading up to the control date. Entrants into the general category fishery prior to the 2004 control date did so with the expectation they could continue to fish in an open access fishery. As such, we believe that the best approach to the issue is to start with an assessment of the fishery as it existed leading up to the control date of November 2004, and to establish an allocation and rules that essentially allow fishermen participating at that time the opportunity to continue fishing. Some consideration should be given to the potential for reductions in effort based on stock considerations, particularly if measures are implemented in inshore areas to protect local concentrations of scallops.

Vision of General Category Fleet

The General Category encompasses a wide variety of vessels, fishing at greatly differing levels depending on their participation in other fisheries. Most General Category participants are



## OUELLETTE & SMITH

Patricia Kurkul, Regional Administrator

June 11, 2007

--2-

smaller vessels, and are thus able to operate profitably on as little as 400 pounds per day, as a primary species, or as a supplemental seasonal component of their overall fishing activity. My clients seek preservation of this diverse fleet and this level of fishing, through adoption of a plan based on individual fishing history as the best means of preserving the fleet as close to its present form as possible. This also includes allowance for vessels with a history of landing scallops as a bycatch to continue to do so. My clients are not supportive of a plan that simply results in another small sub-category of the limited access fleet by limiting entry to very few vessels through initial allocation or eventual consolidation.

### Limited Access Vessels Outside of Scallop DAS

Limited Access vessels fishing with a fishing history outside of their scallop DAS should also be given individual allocations to do so. A number of vessels, particularly occasional and part-time vessels, rely on the open access days as an important component of their income. Some full-time boats use this open access as a means of maintaining crews, by affording some fishing opportunity when limited access vessels would otherwise be tied up. These vessels should be permitted to continue these practices in accordance with their individual history. As noted below, landings for the limited access vessels should be charged against the limited access vessels' allocation of the total TAC.

### Limited Entry

There is no question that the general category fleet needs to be governed by a limited entry strategy. Continued growth after the control date has placed an extreme burden on the stock, and traditional general category fishermen are now faced with declining catch rates, making profitability elusive. Leaving the sector open will force either more restrictive trip limits, thereby eliminating profitability, or require hard TAC's, with resulting derby style fishing. Neither option is acceptable. We recommend adoption of a limited access system based on individual vessel's participation in the fishery in the years leading up to the control date.

The issue of minimum qualification criteria depends on the manner in which allocations to vessels are made. We strongly urge individual allocation based on the best year between 2000 and 2004, while granting some additional weight for vessels that have more time in the fishery. If trips are to be allocated on an individual basis, then there needs to be no threshold qualification-any vessel with landings prior to the control date will qualify, however its allocation will be based on its activity. By adopting a "best year" strategy in the 2000-2004 time frame, vessels will be able to participate in the fishery at the highest level they had achieved prior to the control date, with the General Category using about 5% of the total scallop TAC.

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### Percentage of TAC to Allocate to the General Category

We urge the adoption of then allocating 5-7% of the total scallop allocation for the general category. The intent of the allocation is to allow vessels to continue at the level they achieved in their highest year from 2000 to 2004. Since it is generally assumed that most vessels had their best year in 2004, and the General Category landed approximately 5% of the total TAC in 2004, this percentage should allow the general category to achieve this level in years when the TAC is also at that level. Any extension of the qualifying period, however, without an increase in allocation for the overall General Category would most likely result in a downward adjustment for all individual allocations, and as such would require a larger General Category allocation to sustain vessels at that level they had reached prior to the control date. As such, if the Council extends the qualification period to a period earlier than 2000, more of the quota should be allocated to the General Category to account for the additional vessels that will qualify.

The TAC attributable to Limited Access vessels fishing outside of their scallop DAS allocation, and any bycatch, should be charged to the limited access TAC, or should be an additional quota that does not diminish the allocation of TAC to the General Category.

### Qualifying Period

My clients support implementation of the limited access program for General Category vessels based on a vessel's fishing activity prior to the control date. The period of 2000-2004 reflects recent history and identifies those currently invested and participating in the fishery. Since activity in those years was increasing, it is difficult to imagine vessels that would benefit more from earlier years, but the potential exists to activate effort that is truly dormant. Activation of this latent effort, again, would either reduce opportunity for current participants, or require a higher allocation of quota to the General Category. For these reasons, we recommend limitation of the qualification period to the 2000-2004 time frame.

### Minimum Qualification Criteria

We urge the adoption of a minimum qualification criterion of 2500 pounds, in conjunction with an individual allocation strategy. Vessels that fish only a few trips per year, based on seasonal access and rely on participation in other fisheries should be allowed to continue to do so. Thus, vessels that have only a few hundred pounds landed should qualify for a permit, and should be able to lease or acquire access if abundances in their region support limited

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participation in the fishery at another time. If the Council adopts a tiered system, or a means of allocation access other than individual allocation based on individual fishing history, then a minimum qualification of 5,000 pounds should be used to limit entry.

### Best Year and Individual Allocation Strategy

Since my clients desire to preserve the General category as it had come to exist through 2004, we recommend adoption of individual allocations based on individual fishing activity. This best allows vessels to continue to fish at levels they have become accustomed to. The concepts of tiered allocations present significant problems for full-time participants, who would most likely see their effort reduced to a mean or average. Vessels with more history would see a reduction in opportunity, while vessels with less history would receive a windfall at the expense of those with a longer participation in the fishery. My clients strongly believe allocations should be reflective of individual fishing activity, and that this best preserves the nature of the General Category fishery and avoids the potential for negative impact on larger producers. Individual allocation offers the best chance of each vessel's survival under the new Amendment, as if 5% or more of the quota is allocated to the General Category, these vessels will most likely continue to have the access they have become accustomed to, at least through the control date. If additional effort reductions are required, leasing or transfer of access offers vessels the opportunity to remain viable.

Because of the broad variations in fishing activity among the diverse sectors of the general category, we strongly urge adoption of an individual allocation system, based on pounds or trips landed, so that vessels' allocation will reflect their activity.

### Extension of Qualifying Period

My clients oppose extending the qualification period to the pre-2000 fishing years. Most vessels dependent on the fishery would have had sufficient activity in the 2000 to 2004 time frame to qualify to fish at a sustainable level. A longer qualification period creates the danger that dormant permits may be resurrected and result in an increase in potential permits. This will effectively dilute any allocation of TAC to the point that vessels dependent on the fishery for some or all of their income, can no longer survive without buying out the latent effort.

If the qualification period is extended, the TAC allocated to the General Category should be increased to account for the additional qualifying vessel. Additionally, a recent history requirement should be added, so that individuals who sold vessels and who did not replace them,

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can not now seek to speculatively activate latent effort, to the detriment of active participants in the General Category fishery.

### Effort Control

Landings in the new limited access category should still be controlled through the same 400 pound landing limit, with no additional limits on gear, vessel size, etc. With an individual allocation in pounds or trips, the manner in or speed at which scallops are harvested or shucked is inconsequential. Vessels engaged in multiple fisheries will remain bound by any upgrade restrictions on their other permits. We discourage developments that will allow landings of multiple trip limits, as this essentially changes the character of the fishery.

We are aware that a small number of General Category vessels target scallops using trawl gear, either as a directed fishery, or as a bycatch fishery, while using multispecies DAS. This activity is already limited by the use of DAS, and we see no reason why it cannot continue.

Vessels should be afforded some time to determine whether they can safely complete a trip, and should be allowed to terminate a trip, before crossing back over the demarcation line, without any scallops on board. In such event, the vessel should not be charged for that trip.

### Transferability

Since there will likely be some reduction in each vessel's fishing activity based on the proposed allocation, and future TACs, vessels should be permitted to consolidate their DAS and to lease them to account for reductions based on stock fluctuations, but not to create a new, lesser, category of limited access vessels. Vessels should be governed by daily limits of 400 pounds, subject to possible adjustment when the TAC increases.

### Gulf of Maine Exemption

My clients do not oppose the effort to maintain open access in the Gulf of Maine. If this can be accomplished, however, the rationale for extending qualification to the early 1990's disappears. If the Gulf of Maine exemption is approved, the qualification period for General Category vessels should be limited to the 2000-2004 time frame.

### Effect of Retention of Permit History

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We support the proposed measures that allow vessel owners who retain and utilize fishing history, even where they have transferred their vessels with other limited access permits-a position directly contrary to the limitations in the recently amended herring FMP. Contrary to statements in the herring FMP documents, vessel owners have never been advised that open access history remained inextricably attached to limited access fishing and permit history. NMFS regulations expressly provide that only "limited access" permits may not be split, and NMFS vessel replacement forms only provide for transfer of limited access permit history. Vessel owners have long believed that they could retain open access history upon sale of a vessel to apply for any future limited access permit. As such, we urge adoption of an explicit provision that sellers of vessel who retained their history be allowed to qualify a replacement vessel. If a Seller did not acquire a replacement vessel, then he should be given a confirmation of permit history. Retention of such history should be limited to history accrued in the years 2000-2004.

### Implementation should be accelerated

We were disappointed to hear that NMFS believes implementation of a limited access plan for the General Category may take as long as two years following adoption of the Amendment. We strongly urge NMFS to impose the plan as soon as possible. Current permit holders should be advised to review their NMFS landings history to determine if they will pre-qualify for a limited access general category permit, and begin to gather their own records and confirm that their landings were properly reported by dealers. Vessels that do not pre-qualify, or contest an individual allocation, should be denied permits, or limited to landings based on NMFS' records, unless and until permit holders present actual landings records to NMFS, along with a verification that the information is accurate to the best of their knowledge and belief. Such vessels should then be given a Letter of Authorization to fish to the level justified by the proffered materials. This will prevent vessels from fishing based on a groundless appeal.

### Conclusion

We thank the Council, Council staff, PDT, NMFS, advisors and industry participants for the hard work in putting together the proposed Amendment. We believe that through adoption of a limited access program, based on individual allocation, with sufficient quota, the General Category can remain a viable fishery, both for its full time participants, and for those who rely on it as a component of their fishing effort, with adequate protection of the resource, and without unfairly impacting the current limited access participants. We thank you for the opportunity to comment on the proposed Amendment.

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Very truly yours,

*/s/ Stephen M. Ouellette*

Stephen M. Ouellette

Comments submitted on behalf of:

Rebait Commercial Fishing, Inc.  
Miss Halie, LLC  
F/V SNOOPY II  
Sea Dog Commercial Fishing, Inc.  
Salty Knight  
Brewster Fishing  
F/V RESOLUTE, Inc.  
F/V RETRIEVER  
Coppa-Setic, LLC  
H&H Fisheries-Blair Hansen  
Native Sun  
F/V CASSIAR  
F/V PRETTY LLADY  
Gipper Seafood  
Island Blue, Inc.  
Inshore and Offshore Charters, Inc.  
Fishing Vessel Vivian, III, Inc.  
Rebait Commercial Fishing, Inc.  
Mandy Ness, LLC  
Robert Christian, LLC  
KJK Fishing, LLC

comment # 29

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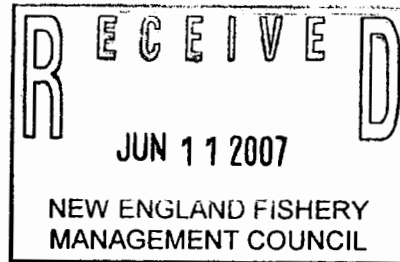
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June 11, 2007

**VIA ELECTRONIC MAIL**

Patricia Kurkul, Regional Administrator  
National Marine Fisheries Service  
Northeast Regional Office  
1 Blackburn Drive  
Gloucester, MA 01930



**Re: Comments on Scallop Amendment 11**

Dear Regional Administrator Kurkul:

We represent the Fisheries Survival Fund ("FSF"), which is comprised of the bulk of the limited access full time scallop fleet. The FSF has a critical interest in Amendment 11 and we appreciate the opportunity to provide public comment.

Consistent with Amendment 11's Vision Statement, the Fisheries Survival Fund has always recognized a discrete, historical, in-shore, small vessel, day-boat fishery along the New England coast, as well as that scallops were caught incidentally in other fisheries. The fishery was prosecuted from existing vessels and generally seasonally.

FSF continues to support the Amendment 11 Vision Statement, and the alternatives for Amendment 11 that promote the Vision Statement. Almost all of the preferred alternatives the Council has selected for Amendment 11 support the Vision Statement.

**Executive Summary**

The Public Hearing Document ("PHD") Amendment 11 Vision Statement summary states, among others, "Amendment 11's overall intent is to ... maintain the diverse nature and flexibility within this component of the scallop fleet, and preserve the ability for vessels to participate at various levels. The Councils' vision for the general category fishery ... is a fleet made up of relatively small vessels, with possession limits to maintain the historical character of

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this fleet and provide opportunities to various participants including vessels from smaller coastal communities.” PHD, at 1.

The Vision Statement can best be realized with a five percent allocation, and other long-term problems with creating a limited access sector (such as latent effort and disproportionate shares) can be avoided. Such a five percent share may be most effectively divided among General Category qualifiers under the Vision Statement if: (1) the control date is maintained; (2) directed day boat scallopers landing over 5,000 pounds in their best year are provided with allocations limiting them to 400-pound trips; (3) a “contribution factor” should be used to recognize multi-year participation during the qualifying period (Alternative 3.1.2.3.2); (4) General Category fishery qualifiers landing between 1,000-4,999 pounds in their best year (most likely these are incidental catches) are limited to 200-pound trips under Alternative 3.1.2.4.2; (5) General Category qualifiers directing on scallops with a net should have a reduced possession limit of 250 or 300 pounds so as to equalize mortality in recognition that scallop trawls demonstrably catch smaller scallops (Alternatives 3.1.2.6.3.1; 3.1.2.6.3.2); (6) provision of “dredge-only” permits for vessels qualifying and fishing with dredges during the qualifying period (Alternative 3.1.2.6.2); (7) the Consistency Amendment should be maintained and only one permit should qualify per vessel (Alternative 3.1.2.5.1.1); (8) illegal and unrecorded landings should not count toward qualifications or allocations; and (9) a Northern Gulf of Maine exemption area makes far more sense for that very episodic fishery than an additional overall allocation of scallops, especially in terms of not creating latent effort.

#### **Responses to Questions in Public Hearing Document**

**Do you agree that capacity and mortality in the general category fishery should be controlled?**

Yes. FSF supports a General Category limited access regime, but not one that is set up to favor new entrants to the fishery who have turned to directed scalloping in recent years as a full-time pursuit, often because of conservation problems in their main fisheries. Accordingly, the Council should create a new limited access dayboat permit that would be allowed to prosecute the in-shore scallop fishery at no more than 400 pounds per day. The 400-pound limit should apply whether allocations are made in trips or pounds.

**If limited entry is adopted, which qualification alternatives would you support and why? Do you support the preferred alternatives for qualification: 1,000 pounds and 11-year time period for qualification?**

First, the Council should apply the November 1, 2004, control date.



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Second, FSF understands the Council's preference, so far, to include a wide range of participants via the 1994-2004 qualifying period and the 1,000 pound catch standard. That choice is consistent with the Vision Statement's goal to maintain a diverse fishery, but it would qualify a relatively large number of vessels (459). It is important to recognize that increasing the landing criterion to 5,000 pounds could substantially reduce the number of qualifiers (from 459 to 203). (Public Hearing Document ("PHD") Table 11.) However, increasing the poundage threshold would narrow the types of General Category participants post-Amendment 11 to directed dayboat operators, many of whom are late entrants into the fishery.

FSF notes two important issues with such a large qualifying pool of 11 years and 1000 pounds. First, in general, allocations to individual qualifiers will be somewhat reduced. That said, the Council's preferred alternatives, including individual allocations, will mitigate the impact of these reductions considerably for "highliners." Indeed, Table 17 of the Public Hearing Document explains that, with a 50 million pound overall total allowable catch and the preferred 5% allocation, the average "highliner" (that is, a vessel landing over 20,000 pounds in any year<sup>1</sup>), would be allocated approximately 20,500 pounds or 51 400-pound trips. Significantly, moreover, this figure represents an average, which will increase for both: (1) above-average qualifiers in the 20,000 pound-plus segment; and (2) those who had these levels of landings in several years. Under the Council's preferred alternative, vessels with scallop landings in four or more years during the qualifying period will see their individual allocation increased using a "contribution factor" (Alternative 3.1.2.3.2). Further, on June 6, the Scallop Committee opted to allocate opportunity in pounds (subject to a 400-pound per day cap), rather than trips, which will further ensure that complete allocations are available to qualifiers.<sup>2</sup> Finally, Amendment 11

<sup>1</sup> This contingent of "highliners" has been, understandably, well-represented in the Amendment 11 development process (including among the General Category Advisors), but they are not a large group. Only 37 General Category participants landed over 20,000 pounds of scallops in the control date year of 2004. This number of "highliners" was 23 in 2003, only 9 in 2002, and 19 in 2001. (PHD Table 7.) Certain of them were present, in particular, at the Hyannis public hearing.

<sup>2</sup> FSF had advocated for Alternative 3.1.2.4.2, which would provide for a lower landing limit (perhaps a 200-pound trip limit) for a tier of qualifiers between 1,000 and 5,000 pounds. In any year, the General Category fishery is about evenly split between those landing over and under 5,000 pounds. In 2004, 114 vessels landed over 5,000 pounds, and 109 vessels landed between 1,000 and 4,999 pounds. In 2003, 71 vessels landed over 5,000 pounds, while 58 landed between 1,000 and 4,999 pounds. In 2002, 55 vessels landed over 5,000 pounds, while 72 landed between 1,000 and 4,999 pounds. In 2001, 60 vessels landed over 5,000 pounds, while 45 landed between 1,000 and 4,999 pounds. (PHD Table 7.) As would a poundage-based allocation system, a tiered system would help these lower level qualifiers better utilize their allocation. More specifically, most such lower-level participants likely landed scallops incidental to other directed fishing operations. A lower daily limit would allow them to spread out their individual allocations over more trips, particularly if the Council selects allocations in trips,

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would improve the prospects for any directed Cape-based General Category participants by allocating most of the General Category permits to New England, although the large majority of recent landings are from the Mid-Atlantic. See footnote 3, within.

Second, and perhaps more importantly, coupling a large group of qualifiers with individual allocations presents the risk of creating significant latent effort. The Public Hearing Document shows the General Category to include many very episodic participants. In fact, of the 459 estimated qualifiers under the 1994-2004/1,000-pound option, only 234 (or roughly half) of the qualifiers had any recorded scallop landings at all in 2005, the year after the control date. (PHD Table 11.) If the preferred alternative of individual allocations is chosen, then there is a strong likelihood that up to half of the General Category quota could go unused by these episodic participants. This would be a huge loss of sustainable scallop yield—yield that the Limited Access fleet would fish each year, because scallops are their fishery, and dependently so, ever since Amendment 4.

In fact, the Scallop Committee and Council will need to be careful not to end up creating the same kind of latent effort that plagues the groundfish fishery, via significant, permanent, individualized allocations of scallops to vessels that will not regularly harvest them. Thus, if the Council does opt for individual allocations, it should not allocate a disproportionate share of the overall resource (that is, any more than 5% to the General Category).

The potential for such latent effort from a disproportionate overall allocation is even more evident when potential Maine qualifiers are considered. According to the Public Hearing Document, 130 Maine vessels would qualify under 11-year timeframe, but only about half that number, or 70, would qualify under a 5-year period. Put differently, 60 projected Maine qualifiers under the preferred alternatives have not landed even 1,000 pounds of scallops in any qualifying year since 1999, but they would get a dedicated, individual allocation of scallops under the Council's preferred alternatives. (PHD Table 13.)<sup>3</sup>

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rather than pounds. Such an approach could also work well with poundage-based allocations, to help ensure that incidental scallop fishing permits are not used for directed activity, for instance, if stacking and leasing is ultimately allowed. Further, such a tiered approach is consistent with Amendment 4. That amendment specifically stated that, if the General Category grew, the Council should reduce the General Category trip limit, as opposed to re-doing the allocation of the fishery established in Amendment 4. See Amendment 4, at 30.

<sup>3</sup> To provide some scale, the Public Hearing Document projects that 310 of 459 qualifiers (or about 32% overall), under the preferred approach will be from New England. (PHD Table 13.) By contrast, in recent years, about 70% of General Category landings have come from the Mid-Atlantic. (PHD Table 10.) Of the 310 projected New England qualifiers, 130 are from Maine, 168 are from Massachusetts and New Hampshire, but only 12 are from Connecticut and

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In order to maintain a reasonable number of qualifiers, the Council may wish to reconsider its preferred alternative of allowing landings from one vessel to qualify for more than one permit (Alternative 3.1.2.5.1.1).

Finally, FSF strongly believes that unrecorded landings should not be permitted to count towards qualifying. Nor should illegal landings be permitted to count towards qualifying.

**How should access be allocated to qualifying vessels if limited entry is adopted?  
Do you support the preferred alternative for individual allocation in number of trips?**

FSF has supported allocations based in trips, as opposed to pounds. As explained above, the Scallop Committee voted on June 6 to change its recommendation to a poundage-based allocation system to ensure maximum flexibility for vessels to catch their respective allocations, without recourse to broken trip provisions or tiering of trip limits. FSF participants, like Council members themselves, have mixed views about ITQs.

However, FSF's participants all agree that, if the Council does opt to allocate the fishery by pounds, then it must also maintain the 400-pound trip limit. The Council staff's summaries of the public hearings reveal that many General Category participants favored maintaining the 400-pound daily limit even if allocations are in pounds. The 400-pound limit's maintenance will help ensure that individual General Category allocations are not consolidated onto a new group of directed off-shore trip boats—a result that FSF strongly opposes. The Amendment 11 Vision Statement likewise states that, "The Councils' vision . . . is a fleet made up of small vessels, with possession limits to maintain the historical character of this fleet and provide opportunities to various participants including vessels from smaller coastal communities." (PHD at 1.)

**Do you believe any of the additional permit provisions or additional alternatives under a limited entry program should be adopted?**

For the reasons set forth directly above, Amendment 11 should not allow, through stacking, the creation of sectors or other forms of consolidation, for the grouping of poundage onto larger vessels capable of and planning to fish offshore. Maintaining a maximum trip limit of 400 pounds per day should ensure that the character of the fleet is not changed.

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Rhode Island. And, regarding the Mid-Atlantic's 149 qualifiers, 88 are from New York and New Jersey, and 61 are from other Mid-Atlantic states. (PHD Table 13.)

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FSF understands that certain directed General Category fishermen would like to stack trips on their vessels to seek to reasonably maintain their operations. In support of these wishes, the preferred alternatives in the Public Hearing Document allow for a substantial amount of consolidation of individual allocations. The Public Hearing Document sets a range of 1-5% of the overall allocation as a cap on the amount of total permits that one vessel could own. While the percentage chosen may depend on the number of permits that ultimately qualify, a cap at 5% would allow for a fairly significant concentration of ownership, especially in light of the Amendment 11 Vision Statement to maintain a diverse General Category fleet.

**Do you agree that a separate system should be adopted to manage the general category fishery in the Northern Gulf of Maine (NGOM)?**

Yes, to the extent that the NGOM exemption area program would create a partially separate system. (However, under the preferred alternative, landings limits are somewhat integrated for those who might participate inside and outside an NGOM program.) As explained above, the fishery in Maine is very episodic. Individual allocations to vessels that have not landed over 1,000 pounds of scallops during the 1999-2004 period (that is, 60 of the 130 Maine qualifiers), will create significant latent effort. The potential for such latent effort is especially high in the NGOM, where the scallop abundance is very uneven from year to year. Moreover, many of the participants in the Ellsworth public hearing wanted to remain in the scallop fishery but had not had 1,000 pounds of landings in any year, even during the 11-year qualifying period, with some claiming an interest in the fishery, but stating they had not landed scallops since the 1980's.

**Do you support the preferred alternative to implement a separate limited entry for general category fishing in the NGOM?**

FSF supports the creation of an NGOM exempted area north of 42° 20'. Creation of such an exempted area should accommodate concerns expressed by vessels fishing in the Gulf of Maine about being excluded from fishing for scallops because of the episodic nature of Gulf of Maine scallop abundance. FSF is not particularly troubled if the NGOM allows qualification at 100 pounds of landings in that area, provided that: (1) such low level qualifiers are not permitted to fish outside the NGOM area unless they meet the general 1,000 (or 5,000) pound qualification criterion for the Amendment 11 fishery as a whole; (2) this NGOM exempted area is and should be confined to an area outside the surveyed area for the Atlantic scallop resource currently managed under the FMP, so that mortality from the NGOM area can be accounted for separately; and (3) landings from the NGOM are not counted in a way that would require a change in the overall allocation of the coast-wide resource from the Council's preferred 5% allocation to the Amendment 11 General Category fishery. Creation of an NGOM exempted area would better accommodate certain professed historic (but clearly episodic) fishing interests than a disproportionate allocation of the overall total allowable catch.

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Finally, in this regard, FSF is troubled by the comments from the Regional Administrator regarding the proposed NGOM management area. Contrary to the assertions of NMFS, the NGOM management area is consistent with the conservation of the scallop resource. The scallops in the NGOM are considered a separate stock from the scallops managed under Amendment 11. Under the NGOM exemption area approach, this separate stock would be managed under a separate regime with a hard TAC and limited entry. The NGOM would be analogous to a special access area, which is commonplace in current scallop management. The State of Maine has stated that it will continue its effort to survey the scallop resource in the NGOM, and this survey can be used to set TAC levels consistent with conservation standards.

**Should the current privilege for limited access vessels to fish under general category rules change as a result of Amendment 11?**

**Do you support the preferred alternative to allow limited access vessels to fish under general category only if they qualify under the same criteria?**

Yes, to both questions. FSF believes Limited Access vessels should be able to participate in the post-Amendment 11 General Category fishery to the extent that they qualify to do so. Their allocation should be limited to their historical share as well.

**Do you support an allocation of a percentage of the total projected annual scallop catch to the general category fishery?**

Yes.

**Do you support the preferred alternative to allocate 5% of the total projected annual scallop catch to the general category fishery?**

Yes, Amendment 11 should not fundamentally reallocate the scallop fishery. The new General Category limited access program (not including current Limited Access vessels that might qualify or incidental landings) should be allocated no more than 5%. In 2004, the year of the Amendment 11 control date, these landings were 5.26%. In 2004, scallops were abundant and General Category effort wide-spread.

An allocation above five percent would represent a windfall and would credit overfishing by the post-control date fleet to the historical General Category fleet. Such a result is not only unjustifiable as a matter of policy, but defeats the purpose of establishing the control date in the first place. Notably, many General Category participants at the public hearings, especially the directed New Jersey fleet that participated at the Manahawkin public hearing, support the 5% overall allocation.

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Certain participants in the modestly-sized (*see* comments at page 3, above) directed day boat fishery contingent from New England have been steering the Amendment 11 process toward individual allocations so they can maximize their personal shares.<sup>4</sup> Significantly, however, especially if the Council chooses to accede to the requests for individual allocations, the overall General Category allocation should not exceed 5%. As explained above, an allocation of greater than 5%, when coupled with an individual allocation system, would create significant amounts of latent effort and unused optimal yield. (According to PHD Table 11, of the 459 estimated qualifiers, only 234 had any recorded scallop landings in 2005, the year of the General Category fishery explosion and the year after the control date.)

Further, the General Category should maintain its historical character and share of the fishery, as the Amendment 11 Vision Statement prescribes. From 1994-2004, the eleven-year qualifying period selected by the Council as a preferred alternative, General Category landings by non-Limited Access vessels averaged 1.96%. For instance, in 1999, landings by non-Limited Access vessels were 0.71%, and in 2001, they were 2.69%. The 1994-2004 time period includes periods of high and low scallop abundance, as well as different points in the abundance cycle for a range of other New England and Mid-Atlantic fisheries. (Even adding in 2005 and 2006, General Category landings by non-Limited Access vessels averaged 3.68%.) The Council's preferred 5% allocation alternative thus represents a 255% increase over average 1994-2004 landings.

Finally, reallocation of the fishery via a disproportionate allocation would not be consistent with Amendment 4. Amendment 4's primary purpose was to include essentially the entire scallop fishery so that it would be easier to control fishing mortality. Amendment 4, at 13. The Council created the General Category in Amendment 4 as a compromise to allow some modest scallop landings for those vessels which could not meet these limited standards, did not or could not document their landings history, or otherwise decided not to accept the burdens of a scallop limited access permit, including limited opportunities to participate in other fisheries.

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<sup>4</sup> Some in their number have been claiming, in the public hearings and at the Scallop Committee, that the General Category needs an average of 4.0 million pounds to be "satisfied." An allocation at that level would provide every qualifier with virtually his or her best year as a dedicated allocation, notwithstanding the episodic nature of most of the General Category fishery. (*See* PHD Table 11, which reports "total best year landings" for preferred option qualifiers as 4,187,916 pounds.) It is worth noting in this regard that individual allocations will ensure they maximize their shares (*see* PHD Table 17, and FSF's discussion of this table, above) and that Amendment 11 will allocate 70% of the permits to New England, even though its participants have only amounted to 30% of the fishery in recent years.

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For its part, the Limited Access fishery provides thousands of jobs at sea, as well as many more in processing, marketing, and other shore-side businesses in communities from New Hampshire to North Carolina. These businesses chose to invest in and rely on the scallop fishery during lean times. Those who opted to participate in the Limited Access fishery have made conservation sacrifices, invested in organized activity and cooperative research, participated constructively in the management process, and advocated for new and creative regulatory approaches, such as area management, that have rebuilt and helped sustain the scallop resource. All scallop fishermen, including those in the General Category, have benefited.<sup>5</sup>

It would be bad resource management, horrible precedent for the Council, and unfair to fundamentally reallocate the scallop fishery based on post-control date landings from a time when the scallop resource was at its high point. Moreover, in recent years, Limited Access effort has been substantially cut back by regulation, but the General Category effort has increased in the absence of regulation.

**Do you support an allocation of a percentage of the available yellowtail flounder bycatch TAC for access areas to the general category fishery equivalent to the percentage of scallop catch that may be allocated to the general category fishery?**

FSF agrees that the General Category should receive a dedicated allocation of yellowtail flounder for their access area trips. Any yellowtail access area allocation for the General Category should match the allocation of scallops that the General Category receives for each such access area, rather than being based on the overall allocation of the scallop resource fishery-wide. Amendment 11 does not set an overall scallop allocation to the General Category for every subsequent access area program. Thus, it is not appropriate to set a one-size-fits-all yellowtail flounder access area allocation for each access area program. Instead, the yellowtail access area allocation and scallop access areas allocations should match.

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<sup>5</sup> Further, the full-time Limited Access fleet has grown by over fifty permits since the late 1990's. Opportunity has been expanded in two ways. First, latent permits have been activated. Second, part-time vessels using a single 10-1/2 foot dredge have been able to upgrade to full-time. With high levels of scallop abundance, and in trip limit-based access areas, these upgraded permits are very valuable. Notably, moreover, Amendment 4 created this upgrade provision for "Gulf of Maine fishermen [who] commented that their historical practice of scalloping in state waters and occasionally at Fippennies Ledge and Georges Bank with smaller dredges was not taken into account." Amendment 4, at 4. This is yet another way Gulf of Maine fishermen have already been accommodated through the existing program.

Patricia Kurkul, Regional Administrator  
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**How should incidental catch be addressed in Amendment 11?**

FSF does not, in theory, oppose allowing vessels landing scallops during 1994-2004, but not meeting the landing criteria, to be allowed 40 pounds of scallops for sale, to accommodate historical fishing patterns and prevent discarding of scallops in directed fishing for other species. However, the Scallop Committee did correctly recognize that such a result would create a new permit regime for only a small amount of scallops per vessel.

**Do you support any of the alternatives in Amendment 11 related to better and more timely integrations of recent data into the management process?**

FSF reiterates its participants' long-standing opposition to changing the long-standing fishing year, upon which they have based their business plans and operations. The current fishing year matches well with the best scallop yields, with fishing commencing in the spring. Amendment 10 likewise seeks to maximize yield per scallop recruit. In addition, scallop inventory management and marketing have been set up over the past fifteen years to have fishing concentrate in the spring and summer when the season starts, and weather and yields are good. These successful business models should not lightly be discarded.

Significantly, moreover, new surveys are being designed for the scallop fishery that might better match the current fishing year, to the extent that there is a concern by managers. The Council should not change the fishing year, only to have to change it back (or again) to accommodate the new survey.

**Do you support any of the "other measures" included in Amendment 11 (i.e. trawl sweep alternative and increased possession limit seaward of the demarcation line)?**

In line with Amendment 10, the Council should factor in gear selectivity in setting qualification and participation standards under Amendment 11. Scallop netting is demonstrably less selective than scallop dredging. Further, increased possession limits present the opportunity for deck-loading and discard mortality if too many scallops are deck-loaded.

**Do you have any other comments for the Council to be aware of when considering final action for Amendment 11?**

NMFS should work quickly to implement Amendment 11. It should not take two years to implement a limited access regime. It only took months for Amendment 4, and the records were far less systematically maintained in 1993-1994 when that amendment was implemented for several hundred qualifiers. FSF thus supports the Scallop Committee's motion to limit the application period for Amendment 11 permits to 90 days after the start of the 2008 fishing year.



Patricia Kurkul, Regional Administrator  
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Further, notifications of this application period can be made, via NMFS Notices to Permit Holders, even as Amendment 11 is being finalized.

Amendment 11 will need to cap General Category effort during this transition period. It would be terrible management to allow many General Category vessels, with no long term interest in the fishery, to file baseless appeals and then get to keep fishing for up to two years (or even up to one year). Such participants with no long term interest in the fishery could inflict considerable damage to the resource.

That said, a 10% cap is too high for this interim period. NMFS should be able to sort through frivolous appeals quickly enough that a cap more consistent with a long-term allocation and historic landings levels should be able to be selected.<sup>6</sup> In fact, as non-qualifiers are sorted out, a 10% cap might end up allowing the remaining General Category qualifiers to inappropriately increase their individual (and perhaps overall) landings from current levels. It is worth noting that overall General Category landings decreased from 14% in 2005 to 12% in 2006.

Amendment 11 should also confirm that existing access area caps will be maintained during any transition period. The Elephant Trunk General Category derby shows how intensely General Category access area effort can ramp up. By contrast, the Limited Access fishery has sought to conserve this extremely important access area by calling for an emergency cut-back in trips for 2007.

\* \* \*

FSF appreciates this opportunity to comment on Amendment 11. Please do not hesitate to contact us if you have any additional questions about our comments.

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<sup>6</sup> Moreover, of four alternatives in Amendment 4 to control fishing effort and create a tiered permit system, three had no allocation for General Category landings. Alternative 3, the only alternative mentioning such landings, stated there should be "a 5% reserve for appeals and boats landing under the 400-pound trip limit." Amendment 4, at 5. That less than-five percent reserve for appeals applied to the entire Amendment 4 scallop fishery rationalization program, so it would not be consistent to reserve what would amount to a full five percent just for General Category appeals in Amendment 11.

KELLEY DRYE & WARREN LLP

Patricia Kurkul, Regional Administrator  
June 11, 2007  
Page Twelve

Sincerely,

A handwritten signature in black ink, appearing to read 'David E. Frulla', with a long horizontal line extending to the right.

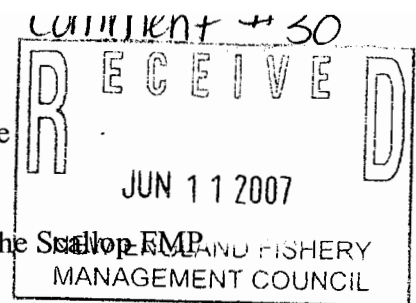
David E. Frulla  
Shaun M. Gehan  
Andrew E. Minkiewicz

Counsel for Fisheries Survival Fund

DATE: 10 June 2007

TO: Pat Kurkul, Regional Administrator, NMFS Northeast Regional Office

FROM: Richard Taylor, Box 7002, Gloucester, Mass 01930



RE: Comments regarding public hearing document for Amendment 11 to the Scallop FMP

While the increase in General Category fishing in the Mid-Atlantic was widely known as early as 2002, the options presented in the public hearing document for Amendment 11 are significantly off target as potential solutions. Overall my recommendations are to select the NO ACTION alternatives for all but one of the options in the document as presented as the remainder ignore the basic reasons for the progress made during the last twelve years of management changes to the scallop FMP, particularly those of Amendment 10. The presented options also do not develop the effective tools that avoid a repetition of the earlier influx of General Category vessels off New Jersey (see attached graphics of VTR reports), a recurrence of which is in progress at this time in the Hudson Canyon scallop access area. We have not learned that lesson and are concentrating on solutions that do not enable us to effectively and rapidly address this and other problems. For example we do not require the Scallop PDT, Advisors, and Committee to monitor General Category (or Limited Access) fishery in a more real time manner or provide the tools for rapid meaningful action, leaving only those available to the Regional Administrator.

The single option that seems worthy of development, though not entirely fleshed out, is presented in section 3.1.4, establishing a Gulf of Maine management area, that might, in final form, be structured to preserve distributed access to the scallop fishery by this and succeeding generations of General Category participants. This approach is the only one that is in line with the principles developed over 3 years of work in Amendment 10 to the scallop FMP, which focused on area management with rotational fishing opportunities based on stock assessment in the area, with area TACs, and trip limits to hold catch to ~25%. This option should have been developed and presented for all of the more inshore areas along the entire coast in order to prevent the type of unmonitored General Category fishery that occurred off New Jersey.

#### Background

The adoption of the US Exclusive Economic Zone 1976 and MSFCMA had central goals of removing the foreign fleets, promoting development the US fisheries, and establishment the Fishery Councils with the structure, methods, and processes that would be used to administer the fisheries. However by 1980, just 4 years later, it was clear that the massive investment in the larger offshore capable vessels in the hands of experienced skippers along the US east coast was leading to further rapid depletion of the remaining stocks. In the scallop fishery this situation was brought to an end in late 1994 with the implementation of Limited Access permits and DAS allocations with the vessel history qualification period retroactively fixed to the years 1985-1990, a mere 9 to 14 years after implementation of the MSFCMA.

In 1995 and 1996 approximately 12 million pounds of scallops were landed by the Limited Access fleet working 204 DAS (total ~50,000 DAS). In the last 12 years we have made great strides at turning things around. Sweeping changes have been instituted including an increase in ring size, limits on crew size, closed areas for growout of smaller scallop identified in the annual NOAA survey, and area management. In each of the fishing years of 2005 and 2006 over 50 million pounds were landed with the fleet fishing less than 100 DAS (~25,000 DAS total) implying an increase in daily production of 800%. Best estimates of fishing mortality are in the 25 to 30% range, implying that 2 to 3 times the amount landed remained on the bottom each year (100 to 150 million pounds) or that total biomass on the grounds was 150 to 200 million pounds. The overall implications are that the scallop population is at least an order of magnitude larger than it was in 1994, and that the overall biomass is significantly larger than it has ever been since

the scallop fishery began. Significant secondary benefits have realized in the areas of bycatch reduction and gear effects with a 50-75% a reduction of bottom time and swept area by the gears, along with corollary fuel savings.

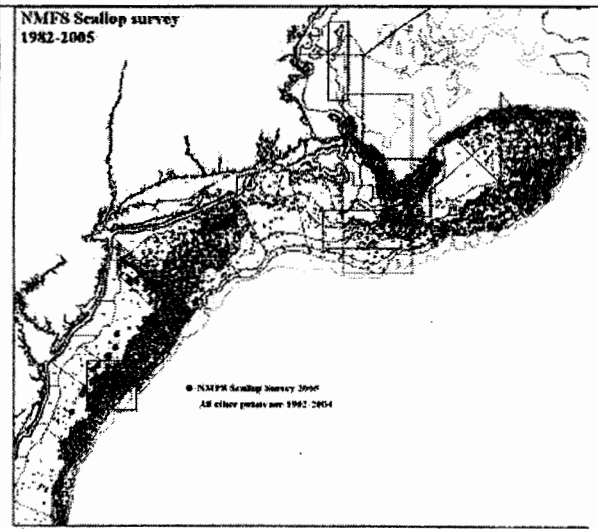
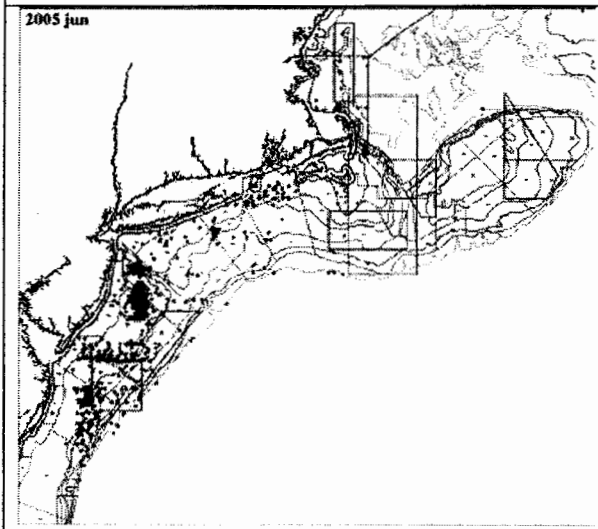
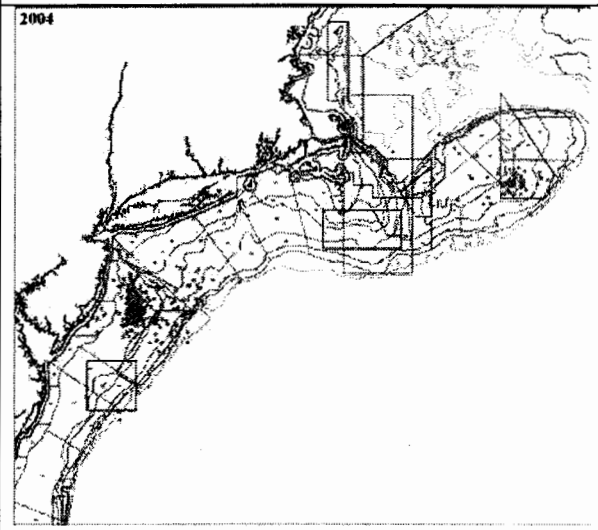
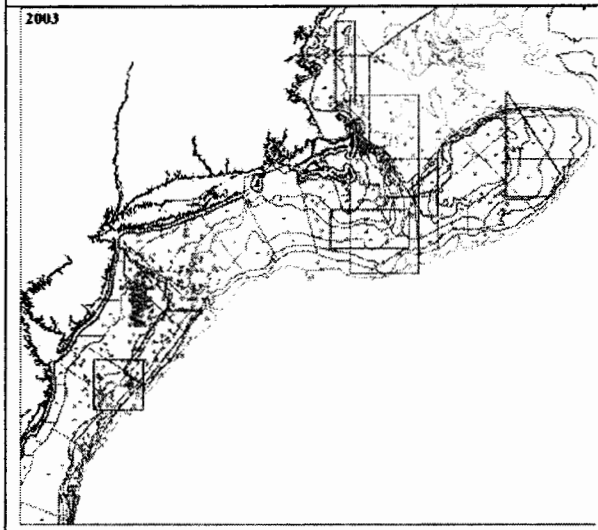
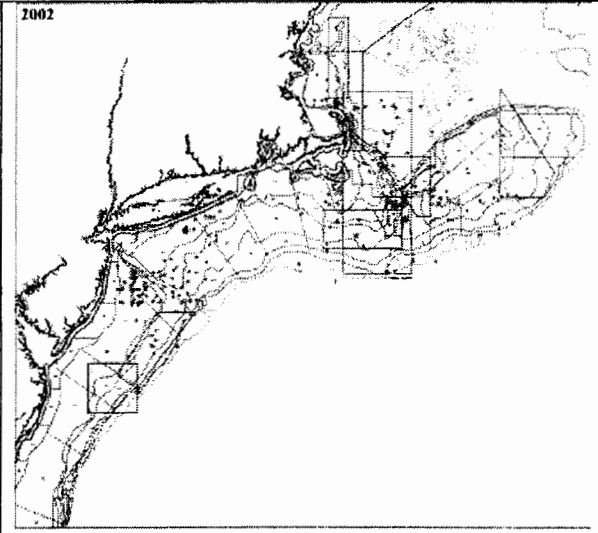
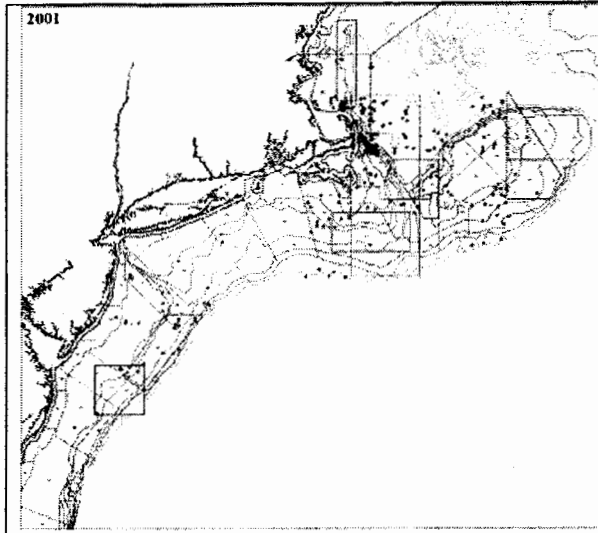
Careful analysis of the contribution of the various management changes to the rebound in scallop biomass and landings suggests that maintaining large spawning stocks and increasing the yield per recruit have had the greatest impacts. For many years meat counts were mandated at 33-36 and routinely exceeded. In the open area portion of the fishery 4 inch rings alone bring the meat count to the mid to low 20s, an increase in yield per recruit in the 50-100% range. Average landings from the closed areas have averaged near 15 count, an increase of well over 200% of pre-1994 average size, and well beyond the growth allowed by 4" rings, suggesting that the rotationally fished areas have been the greatest source of the landings increases.

It is against this background that the options presented for Amendment 11 have been developed.

Overall the options presented do not include further development of the methods that have helped to increase the overall scallop biomass which in turn have led to a stable, profitable, and "sustainable" offshore scallop fishery. This oversight is especially troubling in light of the progress exhibited to date where increasing the biomass and landings has been significantly more beneficial to both the fishing communities and the overall economy than limitation of the number of participants. While no absolute linkage between the large spawning biomasses in the mid-Atlantic closed areas and new recruits appearing down current has been proven, it is certainly evident that area closures are a significant improvement over previous management methods, and should be not only continued but expanded. Transfer of the most successful techniques, specifically by widening the scope of area management to include the more inshore areas within the more limited range of smaller vessels, stock assessment, and limited removal offers the only clear path to continue the increase in biomass. The option establishing an inshore management area along the Gulf of Maine coast is the only one that might move us in that direction.

NO ACTION is preferable to assigning a fixed percentage of landings. Nowhere in the original or successive iterations of the MSFCMA does it specify that the Limited Access participants identified in the first 9 to 14 years of the regulations should have perpetual rights to a large fixed share of the clearly renewable and, more importantly, expandable scallop resource. Attempting to further solidify the situation that we found ourselves in in 1994 by fixing the share of all further entrants to the fishery, at least for the limited 2 to 11% options presented here, is confiscatory to both existing and future participants. While it is clear that measures including Limited Access were required to develop effective management, it is not at all clear that the benefits of the considerable investment of public funds expended in stock assessment and management of the scallop resource over the last 30 years should perpetually accrue to a small number of citizens. Put another way, granting of perpetual rights to enhanced future scallop populations to a select few that happened to be fishing from 1985 to 1990, or in the present case of the current General Category participants, will not survive thoughtful scrutiny over time.

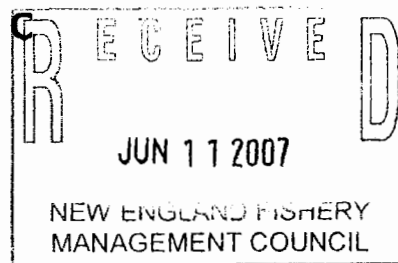
Below are plots of General Category Vessel Trip Reports for the years 2001 through June 2005, though containing significant errors and omissions were the best data available at the time. The expansion of effort to the west of Hudson Canyon scallop growout area was quite evident by 2002, yet these reports were not a part of the management discussion until June 2005. The last image at lower right is a plot of all NMFS scallop survey tows for the years 1982 to 2005, and gives indication of how lightly sampled the area of greatest General Category impact has been over time. It seems likely that the large biomass in the Hudson Canyon Access Area had a successful spawning event and that we missed it in the surveys. We need both access to data and the tools to be able to rapidly react to this type of situation. Without them we will fail.



**FUTURE FISHERIES, INC**

June 6, 2007

Patricia Kurkul, Regional Administrator  
NMFS – Northeast Regional Office  
1 Blackburn Drive  
Gloucester, MA 01930



**SUBJECT: "COMMENTS ON SCALLOP AMENDMENT 11"**

Dear Ms Kurkul:

I would like to express my thoughts on the Public Document for Amendment 11 of the Scallop FMP.

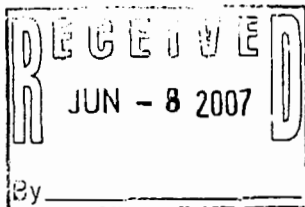
I do agree that the capacity and mortality in the General Category fishery should be controlled. Allocating number of trips (whether it is one or two tiers) per qualified vessel should control it. It allows opportunities for the vessel owners to use them at will, without encouraging derby style fishing which is not safe. As for those vessels that do not qualify, I would continue the current regulations regarding to the incidental catch of scallops for all vessels. The two issues that I disagree with which are the allocation percentage and the transition period.

First, I am not comfortable with the recent New England Fishery Management Council's (NEFMC) position on the preferred alternative for the allocation for the General Category, which is proposed to be 5%. Historically it has been a lot less than 5%. The public hearing document even states that the average is just below 3%. The allocation percentage should not be on the recent "best" years. It is just last few years that at the expense of the conservation measures applied on the limited access vessels since 1994, the scallop biomass rebounded. The limited access scallopers have their overall fishing days reduced more than 50%. It is down to about 50 open days and several access area trips subjected to by-catch Total Allowable Catch (TAC), gear restrictions and a reduction in size of crew. Most of the limited access scallopers (especially in New Bedford/Fairhaven area) do have extra fishing permits but it is primarily for incidental catches which makes us depending on revenue from scallops close to 100%. During the last few years the General Category vessels who have been part of the explosion in fishing are being displaced from their traditional directed fishery at the expense of the gains on reductions and cut backs on the limited access scallopers. I would like the Council to consider using the historical percent, if not then stop at no more than 5%.

Second issue is the allocation percentage (10%) hard TAC to use during the two year transition period. This increased percentage and longer length of transition period to cover the appeal process is beyond in scope of what NMFS and Council has done in all previous implemented FMPs whether it's scallops, groundfish, or monkfish etc. The appeal process will determine the qualifying vessels rapidly, that could translate into substantially larger landings by the smaller pool of qualified vessels. If a hard TAC is needed during transition then use the final percentage selected before allocating fishing opportunities per qualified vessel.

Respectfully,

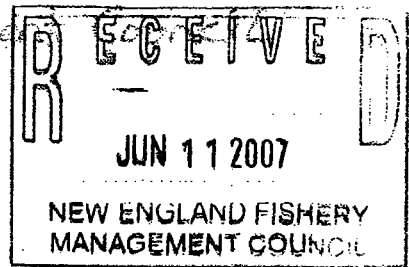
Ronald Enoksen



Phillip Michael Jr  
Scout Fisheries  
Wellfleet MASS

Comment #32

John Pappalardo, chairman  
New England Fishery Management



Re: Scallop Amendment 11

Dear Council members the traditional dayboat scalloper, dependent on the resource will suffer the greatest with the preferred alternatives, 11 year, 1000 lb, 5% TAC.

I refer to table 17 included with letter.

Best year landings per vessel

20,000 lbs or greater 41.36% cut in effort

5,000 lb to 19,999 37.63% cut in effort

under 5,000 lb 17.17% cut in effort

To determine my percentage cut I used

Best year landings per vessel 20,000 lb or

greater. The Average allocation in pounds

per vessel is 20,522 lbs. Divide this number

by Average pounds of scallops per vessel

35,000 lbs (history)  $20,522 \div 35,000 =$

$58.63\%$  minus 100 equals 41.36% cut

Our advisory panel recommended

5 yr 5000 lb resulting in a 29% cut.

Increasing percentage TAC to 7%

with 11 year 1000 lb represents a 17.9%

cut. Include best year indexed  
(option B) there will be no cut back  
for boats that have depended on this  
fishery for 5 years or more.

Allocating in 400 lb trips only can be  
a serious problem. Many vessels in my  
area do not land the maximum possession  
limit day fishing, bad weather and breakdowns  
are a factor also. Perhaps a cost recovery  
program. Perhaps allocate in units of  
100 lbs, allowing up to 4 units per trip  
declaring how many units through VMS  
before crossing demarcation line (100, 200, 300  
or 400) This would provide flexibility  
and can be monitored and enforced.

Sincerely

Phillip R Michaud/  
F/V SUSAN C III  
508 776 8569



Table 17 - Distributional impacts of qualification criteria and time period alternatives combined with % TAC, assuming 50 mil. total scallop catch.

Best year landings per vessel (lb)	1 Year period					5 Year period					2 Year period						
	100 lb. Criteria	1000 lb. Criteria	5000 lb. Criteria	Stand alone-ITQ	100 lb. Criteria	1000 lb. Criteria	5000 lb. Criteria	100 lb. Criteria	1000 lb. Criteria	5000 lb. Criteria	100 lb. Criteria	1000 lb. Criteria	5000 lb. Criteria				
	Average allocation (pounds) per general category vessel at 50 million lb. scallop harvest																
>=20,000 lb. (average pounds of scallops per vessel were about 35,000 lb.)	62	62	62	62	62	62	62	62	62	62	62	62	62	44	44	44	44
Number of vessels	62	62	62	62	62	62	62	62	62	62	62	62	62	44	44	44	44
% share of TAC	49.7%	50.9%	59.1%	53.6%	53.8%	54.9%	61.4%	51.1%	52.0%	58.1%							
% TAC	Average allocation (pounds) per general category vessel at 50 million lb. scallop harvest																
GC TAC (Mill. lb.)	10,419	10,671	12,398	11,241	11,276	11,508	12,867	15,084	15,376	17,170							
2.50%	20,037	20,522	23,842	21,617	21,665	22,131	24,744	29,008	29,569	33,019							
5%	28,052	28,730	33,379	30,264	30,360	30,983	34,641	40,612	41,396	48,226							
7%	40,074	41,043	47,684	43,235	43,371	44,262	49,488	58,017	59,137	68,038							
10%	44,081	45,147	52,452	47,558	47,708	48,688	54,436	63,818	65,051	72,642							
11%																	
5000 lb. to 19,999 lb. (average pounds of scallops per vessel were over 10,000 lb.)	141	141	141	126	126	126	126	126	99	99	99	99	99	99	99	99	99
Number of vessels	141	141	141	126	126	126	126	126	99	99	99	99	99	99	99	99	99
% share of TAC	34.3%	35.2%	40.9%	33.8%	33.9%	34.6%	38.6%	36.8%	37.5%	41.9%							
% TAC	Average allocation (pounds) per general category vessel at 50 million lb. scallop harvest																
GC TAC (Mill. lb.)	3,167	3,243	3,768	3,482	3,493	3,565	3,986	4,832	4,925	5,500							
2.50%	6,090	6,237	7,248	6,697	6,718	6,856	7,666	9,292	9,471	10,577							
5%	8,526	8,732	10,145	9,376	9,405	9,599	10,732	13,009	13,260	14,807							
7%	12,179	12,474	14,492	13,394	13,436	13,712	15,331	18,584	18,943	21,153							
10%	13,397	13,721	15,942	14,733	14,780	15,084	16,864	20,442	20,837	23,269							
11%																	
<5000 lb. (average pounds of scallops per vessel ranged between 1,300 lb. with 100 lb. criteria to 2,300 lb. with 1000 lb. criteria)	502	256	None	489	360	181	None	256	134	None							
Number of vessels	502	256	None	489	360	181	None	256	134	None							
% share of TAC	18.0%	13.9%	0.0%	12.6%	12.4%	10.6%	0.0%	12.2%	10.5%	0.0%							
% TAC	Average allocation (pounds) per general category vessel at 50 million lb. scallop harvest																
GC TAC (Mill. lb.)	572	880	No allo.	465	618	1,049	No allo.	855	1,404	No allo.							
2.50%	1,113	1,905	No allo.	904	1,202	2,041	No allo.	1,662	2,731	No allo.							
5%	1,558	2,667	No allo.	1,266	1,683	2,857	No allo.	2,328	3,823	No allo.							
7%	2,226	3,809	No allo.	1,809	2,404	4,081	No allo.	3,324	5,461	No allo.							
10%	2,448	4,190	No allo.	1,990	2,644	4,488	No allo.	3,656	6,007	No allo.							
11%																	

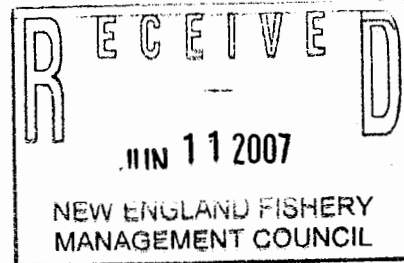
Preferred alternative for allocation and qualification shaded, assuming total scallop catch of 50 million pounds



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

SF  
Comment # 33

June 11, 2007



Patricia A. Kurkul  
Regional Administrator  
Northeast Region  
NMFS, NOAA  
One Blackburn Drive  
Gloucester, MA 01930-2298

RE: Draft Supplemental Environmental Impact Statement (DEIS) for Amendment 11  
to the Atlantic Sea Scallop Fishery Management Plan CEQ No. 20070160

Dear Ms. Kurkul:

EPA is providing the comments to the National Oceanic and Atmospheric Administration (NOAA), the National Marine Fisheries Service (NMFS), and the New England Fishery Management Council (Council) on the referenced document. These comments are offered in accordance with EPA's responsibilities under Section 309 of the Clean Air Act, Section 102(D)(2)(C) of the National Environmental Policy Act (NEPA), and the Council on Environmental Quality's regulations for implementing NEPA.

The DEIS was prepared to explore strategies needed to control scallop fishing capacity and curb mortality resulting from fishermen who presently have open access to the scallop fishery. "Open access" means that any boat owner that wants his vessel permitted for scallop fishing may do so; there are no specific qualifications needed to receive a general category permit. While allowed under Amendment 4 to the Atlantic Sea Scallop Fishery Management Plan, open access has probably contributed greatly to exceeding current scallop fishery mortality objectives.

The document evaluated a series of "valued ecosystem components" (VECs) which represent both the scallop resources and human communities that will be affected by proposed management actions. Various VECs were assessed to determine the direct/indirect effects and cumulative impacts that resulted from past regulatory actions and their impacts on the basic sea scallop resource, their physical environment, fishing impacts on protected species, and fishery-related businesses and communities. New management options being considered include: limiting entry for general category fishing permits; a hard total allowable catch limit for the general category fishery; the establishment of a separate limited entry program in the Northern Gulf of Maine; incidental catch (meaning scallops taken while targeting other species) provisions; and

JUN 11 2007

other measures to more quickly integrate recent scallop harvest data in the management process.

The document was well-written, rationally organized, and had clearly summarized past management actions that had, according to the DEIS, contributed to excessive scallop mortality in the fishery today. We have commented on two preferred alternatives that were discussed in the Management Plan.

1) Catch Limits - The proposed management plan recommends limiting scallop harvesting by general category fishery boats to 5% of total annual catch permitted to the fishery as a whole. While the DEIS acknowledges that limited access, by itself, will not entirely eliminate unsustainable scallop mortality, it will help reduce the risk of overfishing by preventing new entry to the general category fishery.

2) Limited Entry - The proposed Management Plan recommends limiting entry to the general category fishery, with entry qualifications based upon a license-holder's past years landing activity in the scallop fishery. The number of fishery participants would be selected based upon previous years scallop landing qualification criteria data within the qualification time period.

While EPA defers to NOAA/NMFS to determine the best management techniques that will achieve fishery objectives, we suggest that for the health and safety of fishermen, the Council select strategies that avoid "derby" type fishing. Derby fishing occurs when an annual total allowable catch (TAC) is established without daily catch limitations. Unrestricted TACs encourage risk-taking behavior such as going out in bad weather and working excessively long hours which increases the risk of accidents from operator fatigue.

Fishermen in local hearings (see Scoping Comments, Written Comments Received) suggested that scallop catch limits be assigned to vessels without regard to their size or capacity. EPA notes that this would place smaller-sized boats at a disadvantage because larger boats can generally travel faster and work during more dangerous weather thereby harvesting a greater percentage of TAC. Assigning future daily catch limits to individual vessels based upon their past history of scallop landings seems to be an equitable management plan.

Others suggested assigning catch limits to individual fishermen, rather than the boat, which is now the current practice. There is some risk, however, that assigning pound allotments or catch limits to individuals would create a "harvesting right" which itself could become a commodity to be sold or traded. We can easily envision an individual fisherman who, rather than going fishing, sells or trades his harvesting rights onshore, an undesirable outcome in our view. It is unlikely that creating a secondary paper market in un-harvested scallop meats would achieve fishery resource management objectives.

It is possible, however, that assigning catch limits to an individual (creating harvest rights described above) might be effective if fishing "sectors" and harvesting cooperatives were created, and TAC shares were awarded to each sector within the fishery. Groups would be formed around common fishing practices, common homeport, and common marketing arrangements. Eligibility criteria, operational plans, monitoring, enforcement of TAC, and allocation rules would be controlled by the fishermen themselves. According to previous EISs on the lobster fishery in the northeastern U.S., Maine lobster fishermen heavily depend upon mutual cooperation and self-governance in the management of local lobster resources.

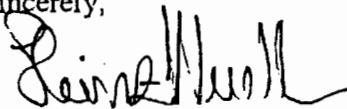
Editorial Comments-

Pg 164, end of first paragraph - The Error note should be deleted and reference source included.

Pg 165, last paragraph, line 5 - The draft EIS states that... "The alternatives under consideration would reduce the potential pool of participants from 143 to around 705..." perhaps was intended to read... "The alternatives under consideration would reduce the potential pool of participants from 705 to 143..."

EPA rates this action as "LO" that is, lack of objections. The alternatives that were examined, impacts on threatened and endangered species, bycatch issues, and public participation processes were satisfactorily addressed in this document. For more information, please contact John Hamilton at (404) 562-9617.

Sincerely,



Heinz J. Mueller, Chief  
NEPA Program Office  
Office of Policy and Management

WILLIAM D. DELAHUNT  
TENTH DISTRICT, MASSACHUSETTS

2454 Rayburn House Office Building  
WASHINGTON, DC 20515  
(202) 225-3111  
www.house.gov/delahunt

SOUTH SHORE  
1-800-794-9911

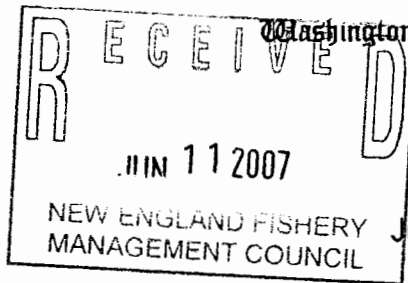
1250 Hancock Street  
SUITE 802 N  
QUINCY, MA 02189

CAPE COD & ISLANDS  
1-800-870-2628

140 MAIN STREET  
HYANNIS, MA 02601

Congress of the United States  
House of Representatives

Washington, DC 20515-2110



June 7, 2007

Comment #34  
COMMITTEE ON FOREIGN AFFAIRS

SUBCOMMITTEES ON:  
INTERNATIONAL ORGANIZATIONS, HUMAN  
RIGHTS AND OVERSIGHT  
CHAIRMAN  
WESTERN HEMISPHERE

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEES ON:  
CRIME, TERRORISM AND HOMELAND SECURITY  
IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER  
SECURITY, AND INTERNATIONAL LAW  
COMMERCIAL AND ADMINISTRATIVE LAW

CO-CHAIR:  
CONGRESSIONAL COAST GUARD CAUCUS  
OLDER AMERICANS CAUCUS

Dear Administrator Kurkul:

I am writing regarding Amendment 11 and the proposed changes to the Atlantic Sea Scallop Fishery Management Plan which seeks to control capacity and mortality in the general category scallop fishery.

I have been contacted by Bob Keese who is a third generation fisherman from Chatham. He is concerned with how the recommendations of the New England Fishery Management Council will impact the general category scallop fishery and their livelihood. I have attached a copy of a guest column that Mr. Keese wrote in the May 2007 edition of *Commercial Fisheries News*.

I would appreciate your taking into account his concerns as you reach a final decision.

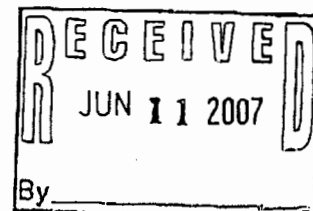
With kind regards.

Sincerely,

A handwritten signature in black ink that reads "Bill Delahunt".

William D. Delahunt

Administrator Patricia Kurkul  
Regional Administrator  
National Marine Fisheries Service  
Northeast Regional Office  
1 Blackburn Drive  
Gloucester, MA 01930



# Gen Cat scallopers deserve larger quota share

In an attempt to control fishing mortality, the New England Fishery Management Council is developing Amendment 11 to change the general category (Gen Cat) scallop fleet into a limited-access fishery.

Qualification criteria, coupled with a November 2004 control date, will be used to identify future participants in this Gen Cat fleet and a portion of the total allowable catch (TAC) of scallops will be allocated to the general category.

It is this portion of the scallop TAC that has caused much controversy throughout Amendment 11. The limited-access fleet believes the allocation should be 2%-3%. This basically would leave the remaining 97%-98% of the TAC for the limited-access fleet. The rationale behind this logic is that the Gen Cat was never meant to be anything more than a bycatch fishery.

For the past seven years, the scallop resource has been at levels higher than anyone ever imagined. Consequently, landings by both the limited-access fleet and the general category fleet have grown significantly.

While the growth of the limited-access fleet has been heralded as the greatest success story in fishery management history, the growth within the Gen Cat has been perceived as nothing more than a threat to the success of the limited-access fleet.

It has been argued that if the Gen Cat is left unchecked, it could lead to the downfall of the limited-access fleet. While there is merit to this concern, general category landings have not even come close to undermining the success of the limited-access fleet.

## Equity issue

In 2005, when the general category harvested an all-time-high 14% of the scallop TAC, the limited-access fleet managed to land 45 million pounds of scallops valued at about \$360 million.

It is true that for every scallop that the Gen Cat lands there is one less scallop that the limited-access fleet can land. Each fleet needs to be assured a certain percentage of the harvest. The need to divide the resource between the two fleets has become the focal point of Amendment 11.

The legislation that directs NMFS on how to manage the nation's fisheries is the Magnuson-Stevens Fishery Conservation and Management Act (MSA). National Standard 4 of the MSA states that if it becomes necessary to allocate or assign fishing privileges among various US fishermen, it should be carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

Although the argument could definitely be made for a much higher allocation, the Gen Cat fleet needs only enough to satisfy those who have an investment and/or history in the fishery before the control date.

Instead of adopting this allocation, which would be no higher than 15%, the council has chosen 5% as its preferred alternative. This would leave 95% of the scallop resource to approximately 351 limited-access vessels.

Although there are 351 limited-access vessels, a much smaller group of individuals own these vessels. In fact, some limited-owners legally own 5% of the entire scallop harvest by themselves. Setting the maximum allotment for the

entire Gen Cat fleet to the same level as that of one person from the limited-access fleet raises some serious questions about fairness and equity.

## GUEST COLUMN

by Bob Kease

### Bycatch fishery?

The limited-access fleet is one of the most lucrative and politically powerful fishing organizations in the world and they have spent much of their effort in the last few years justifying giving the general category the smallest allocation possible.

The limited-access fleet's lawyers,

lobbyists, and consultants have come up with the notion that the general category was established as a "bycatch" fishery only and should never have been allowed to be a successful, directed fishery for scallops. Therefore, their argument goes, an allocation should be chosen to keep the general category from ever becoming more than a part-time income source. This is the rationale behind the motion to allocate 95% to the limited-access fleet.

Furthermore, they contend that anyone who used this fishery for anything other

**General category landings have not even come close to undermining the success of the limited-access fleet.**

—Bob Kease

than a bycatch or "supplemental income" fishery was abusing a loophole in the system and so no consideration should be given to this group of fishermen in Amendment 11.

See GUEST COLUMN, page 21A

catch-share systems.

New sector allocation proposals (i.e. fishing cooperatives) using sector guidance that hopefully will be updated through Amendment 16 are an important means for the groundfish complex to get back on the road to biological recovery while retaining important social and economic components of the fishery.

Also, the Northeast Seafood Coalition point system proposal includes some of the valuable components of catch-share systems, including important accountability measures, incentives to target healthy stocks and avoid depleted stocks, as well as flexibility for the industry to improve economic returns.

Catch-share systems are the ultimate win-win-win situation providing conservation, economic, and regulatory benefits. The New England council will do well to consider these approaches in this latest groundfish amendment.

Sally McGee

Sally McGee is a marine conservation advocate for Environmental Defense and a member of the New England Fishery Management Council, Environmental Defense's report, "Sustaining America's Fisheries and Fishing Communities," is available online at <[www.sustainablefisheries.com](http://www.sustainablefisheries.com)>.



## Guest Column

Continued from page 7A

After hearing this for several years, many council and advisory panel members have adopted this belief that the general category was never meant as anything but a "bycatch fishery" and the council should keep the general category at this bycatch level forever.

### Amendment 4

Since the general category was established in Amendment 4, we should all look to this document if we want to know the truth about the origins of this fishery.

After reading Amendment 4, you will see that the general category was clearly made for two reasons. It was made to provide for a bycatch fishery and it was made to accommodate a directed fishery for scallops with a 400-pound daily trip limit.

Amendment 4 reads as follows: General permit vessels may fish for scallops or possess and land them as bycatch if the meat weight does not exceed 400 pounds or the amount of shell stock does not exceed 50 US bushels.

People involved with Amendment 4 assure us that the general category was made, at least in part, to accommodate a directed fishery for scallops. They recall that, in the early stages, two scallop management areas were proposed to be used exclusively for a directed, day-boat fishery on scallops. One area was the

**The Gen Cat fleet needs only enough to satisfy those who have an investment and/or history in the fishery before the control date.**

—Bob Keese

Gulf of Maine Exemption Area and the other was off the North Carolina coast.

These areas were never adopted due to enforcement issues. Instead, the all-encompassing general category was developed.

### High landings

The scallop resource has changed significantly since 1994 and both the general category and the limited-access fleets have evolved accordingly. In 1994 the total scallop catch was 15 million pounds. In 1994, NMFS believed that the highest long-term sustainable yield would be 29 million pounds.

In the last six years, total scallop landings ranged from 45 million to 61.7

million. This rapid growth in the scallop biomass is the result of the new rotational management measures in use today.

Instead of allocating according to current resource conditions and the guidelines set forth in the MSA, we are using a false interpretation of a previous amendment to steer this decision.

We need to put aside the myth that the Gen Cat was never meant to be anything but a bycatch fishery. Once this is done, we can allocate in a manner consistent with the MSA and allow a small-boat fishery to continue to benefit from this enormous public resource.

The 5% that the council is currently considering will make the Gen Cat into a part-time income fishery for a group of fishermen. Currently, there are 459 vessels that will meet the proposed preferred qualification criteria.

This small allocation will not even allow the qualifying fishermen the opportunity to make a living from this fishery. Amendment 11 is out for public comment. The final vote for the amendment will be in June. Hopefully, enough comments will be sent to the council to convince its members of the need for a more fair allocation scheme.

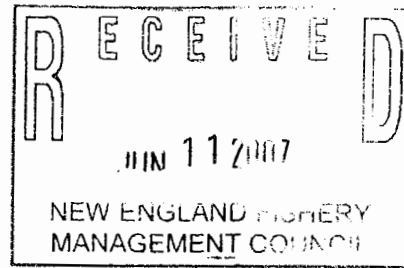
Bob Keese



Bob Keese fishes the Beggar's Banquet out of Chatham. He can be reached at (774) 263-8702.

June 6, 2007

Patricia Kurkul, Regional Administrator  
National Marine Fisheries Service  
Northeast Regional Office  
1 Blackburn Drive  
Gloucester, MA 01930



Dear Patricia Kurkul, Regional Administrator,

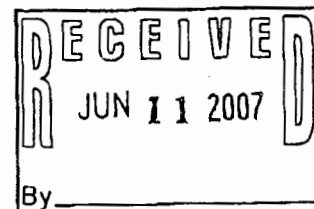
SUBJECT: COMMENTS ON SCALLOP AMENDMENT 11

Attached are my comments concerning the Scallop Amendment 11, Scallop Fishery Management Plan. If additional information or explanation is needed, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Stanley C. Sargent".

Stanley C. Sargent  
207-546-7100



F/V GALE WARNINGS 11  
51 KANSAS RD  
MILBRIDGE, MAINE 04658



- 3.1 Measured to control capacity and mortality in general category fishery.**  
Limited Entry.
- 3.2 Allocation between limited access and general category fisheries.**  
Allocation for General Category Scallop boats is 50,000 pounds per boat a year.  
Non-transferable.
- 3.2.1 Allocation of 5% of the total annual projected scallop catch to the general category fishery.**  
Allocation of 5% over the long term of general category may be an average. But compared to the limited access boats the average of poundage per boat, per trip, has gone up a lot more than 5% since 1994.
- 3.3 Additional alternatives related to a limited entry program for the General Category fishery.**
1. Vessel with a permit from 1994 – 2004.
  2. By poundage per year; 50,000 pounds.
  3. Owner, Operator only.
  4. Yes
  5. Probably Not
  6. No
- 3.3.2.1 Allocation of access for qualifying vessels would be an individual allocation in trips maintaining the 400 pound possession limit.**  
Allocation of Scallops should be X number of pounds, not trips.  
Example: 50,000 pounds and additional 3% for the cost of enforcement and monitoring.
- 3.3.3 Should additional limited entry permits be included?**  
Only if they were between 1997–2004 with landings.  
General Category permits shouldn't be allowed to be stacked. The total number of poundage per permit is 50,000 pounds. One General Category permit per boat only. In addition to that, General Category should be owner, operator only.
- 3.3.3.1 Specific permit provisions for limited entry general category permits.**  
No stacking of permits.
- 3.3.4 Should measures to reduce incentive for qualifiers to use trawl gear be included?**  
Yes, 40 pounds maximum per trip.

- 3.3.5 Should qualifying vessels be permitted to form voluntary sectors?**  
No action.
- 3.3.6 Interim measures for transition period to limited entry.**  
No action.
- 3.4 Establish a northern gulf of Maine scallop management area.**  
Yes.  
Northern gulf of Maine should be a separate permit and a separate quota per boat. A hard tact will lead to derby style fishing and the smaller boats will be put to a disproportionate disadvantage.
- 3.6 Limited access fishing under General Category.**  
Prohibit all Limited access boats from fishing with General Category.  
The word Limited only seems to apply to the vessels that have the smallest access to the fishery.
- 3.7 Allocation of Yellowtail Flounder bycatch in access areas.**  
General Category can't have any bycatch.
- 3.8 Incidental Catch**  
40 pounds per trip. With one trip equaling 24 hours.
- 3.9 Better and More timely integration of recent data.**  
Change the fishing year.

Comments:

General Category was made up for small boats, about 75 boats total, half were from Maine that were actually scalloping at the time. Since then, General Category has been exploited beyond anyone's ideas at the time of the making. Now we have the task to decide who has the right to fish and who does not. Those who qualify must have been there in the beginning. There can only be one set of rules for General Category: Owner, operator; One dredge, 10' 6" maximum; No targeting scallops with trawl nets; Fishing season April 1<sup>st</sup> – November 1<sup>st</sup>. ect.. This also has to apply to Northern Gulf of Maine. Northern Gulf of Maine tac is broken down per boat, per season, not per trip.

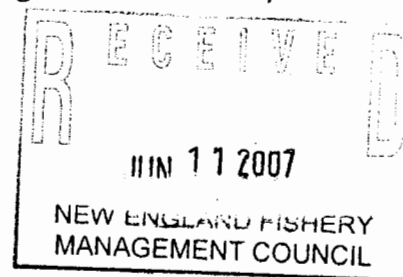
Subject: Comments on Scallop Amendment 11 (Attn. Patricia Kurkul Regional Administrator)

From: my gray <rose\_bud83@yahoo.com>

Date: Wed, 30 May 2007 07:39:06 -0700 (PDT)

To: Scallop.Eleven@noaa.gov

Comment #36



1. Yes, I believe capacity and morality should be controlled in the general category fishery.

2. I am in favor of limited entry.

3. I feel that 5,000 lbs must be used. In reality 5,000 lbs is only a little over 12 days fishing. That should cover even the fishermen who only fish part time. As far as years, 5 or 11 year plan wouldn't make much difference.

4. I believe a tier system would work the best, possibly a 3 year tier.

5. Should be dredge only. 10'6" for everyone.

6. Undecided on a Northern Gulf of ME. fishing area.

7. Limited access vessels should be allowed to fish under general category rules as long as what they catch comes out their tac.

8+9. I conciser this is a very important issue. 5% has been thrown out of many meetings. I believe it must be at the 10-11% level. Many reasons drew me to this conclusion. One is we don't know the average size of vessels that is going make up the general category fleet. If it ends up being more smaller vessels, we will be at a disadvantage trying to get all closes area trips in before they get closed for by catch. For one example: plus, it is not set in stone.

How many vessels are going to be in the fishery. Referring to table 19 at 11% limited access vessels would stay at present levels, which is stated in your document at an average of 1 million dollars a vessel. I believe a 10-11% Limited Access vessels would stay at present levels, which is stated in your document at an average of 1 million dollars a vessel. I believe a 10-11% TAC at this point of forming the criteria of the Gen. Cat. fleet is necessary to ensure you have enough resource to work with to let us have a viable chance of staying in business. I believe if we don't get this much of a percentage you'll have succeeded in putting a lot of us out of the fishery completely. I seriously believe that it is on the minds of most people in the Limited Access fleet. I hope it is not the councils view.

10. Leave it at 40 lbs..

11. Let us as a fisheries use our VMS' to do the trip reports. It would be easier for us and let you receive our data quicker.

12. No

13. Mostly

Comments

14. We must have the option to stack permits in this Amendment. I have fears that we will not get a large

Comments on Scallop Amendment II (Attn. Patricia Kurkul Region...

enough TAC to go around. We will need this option. I believe there is enough resources to support a healthy Limited Access fleet plus a Gen. Cat. fleet. I have been a Captain in the Limited Access fleet and I presently own my own General Category vessel. I believe we could be an asset to each other. For example: My son has fished and trained under me for 3 years and now is a deckhand on a Limited Access vessel. I think in the future you will see a lot of deckhands on Limited Access vessels will be getting to an age they won't be able to or want to still do their jobs on a Limited Access vessel. It would be nice that they still could fish the Gen. Cat. fleet could be the answer. I hope the council thinks long and hard before any decisions are made that will affect so many people. Please, note that this is not just numbers or fishing vessels, peoples lives are going to be affected by your decisions forever!!

Sincerely,

Wallace A. Gray  
F/V Foxy Lady II  
Stonington, Me.  
04621

Comment # 37

**Woneta M. Cloutier**

**From:** jack stormy [stormyseasllc@yahoo.com]  
**Sent:** Tuesday, June 05, 2007 8:20 AM  
**To:** stormyseasllc@yahoo.com  
**Subject:** Re: Fwd: comments on amendment 11

**Hahn** <hammersportfishing@yahoo.com> wrote:

Note: forwarded message attached.

The fish are biting.

Get more visitors on your site using [Yahoo! Search Marketing](#). Date: Mon, 4 Jun 2007 21:33:03 - 0700 (PDT)

From: jack stormy <stormyseasllc@yahoo.com>  
 Subject: comments on amendment 11  
 To: hammersportfishing@yahoo.com

Dear Council:

MY QUESTION TO THE COUNCIL IS? If the general category was deleted from the fishery would the mortality rate decrease? If the answer is anything but yes the vision statement is false and this amendment 11 should be thrown away written to be fair to the general category not the limited access boat that catch 89% of the quota and want 95% of the quota.

My name is Jimmy Hahn I am a owner of 2 general category boats out of Ocean City Maryland. One has no history before the con troll date. Then I purchased another boat that has little history because I was told by NMFS and North England council that as long as I had landing before the control date I would not be out of business. In all of my phone calls and the scoping meeting I was never told about qualification requirements. I would not have bought this boat if I had known. I do not consider getting 10 to 20 trip a year being in business. No where in the proposals for the control date did it say any thing about IFQ or days at sea. I only fish for scallops I do not have any other Limited access permits to fish.

I know the council want to control capacity and mortality. With using the control date it should control capacity but instead of using the preferred option of 1000lb since 1994 it should be more current like 1000lb since 2003. If you did not fish when the scallops were at highest population level and highest price, why would you fish for them in the next couple of years when they are in the down side of there cycle. All a individual quota is going to do is let the people that hold a meet the criteria weather they fish or not make a profit off a permit. The quota should go to real fishermen. What happens to the quota that is given to people that do not use it? Is it saved for the next year or lost?

After listening to the amendment hearing I did not hear many people in support of the preferred

06/13/2007

actions of the council. Most people wanted the opposite, the only people in support preferred action were limited access boat owners. Was amendment 11 written to control capacity and control mortality or to push the little fisherman out of business and give the quota to the limited access boats.

The council should give the general category at least 10% hard tac fleet wide. The preferred 5% is to little. With only 5% the preferred option for allocation would be exceed. How is this make good sense! If we are only allowed to catch 20% of the biomass how can giving us extra 5% increase mortality. With all of the closed areas along the coast how can the fishery be over fished? If the scallop are over fished why did the Elephant Trunk area even open. When it did open why didn't you use the science to catch the least amount scallops possible. You open the season right when they were about to spawn. Three more weeks and they would have all spawned at least once. The distance the spat could a floated would have repopulated some of the Delmarva area. Also the number of bushels to catch 400lb was around 50 one month later it only took 35 bushel for 400lb that's 15 bushels less. In the general category alone that's 12000 bushels less and about 1,620,000 scallops less. With the limited access boats catching 18000lb per trip in 300 trips it would have saved 202500 bushels and over 27,337,500 scallops. Who decided to open the season a month to early. Instead you didn't use the science to protect mortality. Now who to blame for the extra mortality? Not the general category! The general category didn't deplete the scallop in the 1990s it was the limited access boats. They didn't bring the fishery back. More laws and rules were put in place to keep the mortality at a controlled level. The scallops that we are allowed to fish on now were not put there by limited access boats, mother nature put them there. They are on federal bottom that is owned by the citizens of the United States. My tax money is used to study, protect and regulate, why shouldn't I be allowed a percentage of that resource. I have learned that 5 boat owners, currently own 118 limit access boats, that over 27% of the quota. How is that fair, that 5 people own more of the quota then the whole general category can catch in two years at 10%. I really feel the fishery's people should wake up.

My comments to the Questions?

1. IF THE GENERAL CATEGORY WAS DELETED WOULD SCALLOP MORTALITY CHANGE? The answer is NO so how could regulating the general category change mortality. Mortality can not be controlled on the 10% level it must be controlled on the 90% level!

2 and 3 . Capacity is going to be controlled by the control date. I think people currently in the fishery should be allowed to continue to fish. I think the option 1994 and 1000lb is to general, it should be given to fishermen who are currently fishing 2003 to 2004 with a 1000 lb is much better. What about a rigging up clause? We were told by NMFS that if you had a permit before control date with landing you would qualify.

I think consideration should be given to people who fish only for scallops. Those that are after the control date should not be complete pushed out of this fishery. For example if you fished over 200 days since the control date, it your primary fishery and you should be given something.

Mortality should not be blamed on the general category. We are only catching 11%. If you want to control mortality it should be done on the 89% the limited access catch. If you completely deleted the general category the limited access boat would catch 100% instead of 89% so whats the different? I think the limited access boat can afford to give 10%. I think it

would be fair to give the general category a 10% hard tac fleet wide.

4. I think that it should be a hard tac of 10% fleet wide. Let the fishermen who fish get the quota. Why should somebody who fished 10 years ago and is not fishing now get a quota to sell or lease and make money without fishing. What happens if you give out trips and the trip don't get taken?

5. I think we should be able to continue and a 10% hard tac until the in term measures are straightened out.

7. Limited access boat should not be able to fish under general category quota. In 2005 they landed 1.5% 800000 lb and in 2006 they landed .76% 424000 lb after landing there quota of 87% and 89%. How much extra mortality is that. It should be one category or the other not both. Many limited access boat fished the elephant trunk opening under general category first then started the limited access trips. Double dipping.

8. yes Why can't we have at least 10%? That's what the average has been over the last couple of years without being over fished.

9. yes. we should get a 10 % of the total quota.

10. I think there should be another permit for incidental catch, you should be able to sell the catch.

11. I think we should use more science and less political power to regulate and control.

12. increase limit to 100 bushels. Also increase the trip limit to 800lb for a 48 hour period to save fuel. Use vms to regulate hours and trips

13. yes i believe the whole impact to the environment section was written by the limited access boats for the limited access boats. Nowhere does it have a negative statement about limited access boats. How can that be, when they catch 89% of the quota.

14. I think I have made my feeling very clear general category is not the problem for mortality.

3.1.2.1.

Agree with control date and 1000 lb

3.1.2.2

agree with march 1 2000 - 2004 Quota should go to boat currently in scallop fishery. If you did not work in the best years you never will.

3.1.2.3

none Should be a hard tac fleet wide. Not to somebody who does not even own a boat any more just holds a permit. Quota should be given to people who want and only fish for scallops not draggers who only fish for scallop occasional. 2000 - 2004 allows only 369 boats.

3.1.2.4

agree with 3.1.2.4.6

3.1.2.4.1

is not what NMFS told everybody would happen. Some of us bought boat with little history because Pete Christor told us not to worry as long as it is before the control date and has landing before control date nothing would change.

3.1.2.5

agree with 3.1.2.5.1.1 One vessel one permit. Many boat owner sold the boat to family members to be able to get 2 quota out same vessel and permit.

3.1.2.5.4.3

not sure

3.1.2.5.8.1

A limit on the number of permits and boat you can own.

3.1.2.6

No trawl gear

3.1.2.8

agree with 3.1.2.8.1

3.1.4.3.

not sure

3.1.6.1.

disagree with 3.1.6.1.1 Limited access vessels should not be able to fish under general category. They already get 89% how much more do they need. Double Dipping

3.1.7.3

not sure

3.1.8

agree with 3.1.8.2

3.2

agree with 3.2.1.1

3.3

agree with 3.3.2.2.

If the vision statement is false for amendment 11 then how can the council use it to regulate the fishery. The council and NMFS needs to take a better look at the overall status of the fishery, use better science and more common sense. How can controlling 5% - 10% of a fishery reduce mortality. Amendment 11 was written to put the small boat owner out business and increase control and profit for the limited access boats with no regard for the mortality levels of the scallops. The scallop quota should not be owned by 334 limited access boats but shared by all the citizens of the United States.

If you have any comments or questions please feel free to contact me at 410 310 4296

Thanks

Jimmy Hahn

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