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## Scallop Committee Meeting

January 22, 2009

Warwick, RI

**Committee members in attendance:** Mark Alexander, Rodney Avila, Rip Cunningham, Jim Fair, Hannah Goodale, Sally McGee (Chair), Dave Preble, Dana Rice, Rick Robins, Dennis Spitsbergen (Vice-Chair), and Mary Beth Tooley.

**NEFMC staff:** Deirdre Boelke, Sarah Pautzke, and Demet Haksever

**NMFS staff:** Peter Christopher, Gene Martin, and Earl Meredith

Audience: ~60 members of the public attended.

**Goal of this meeting:** to clarify the full range of alternatives for the Council to approve for analysis in Amendment 15 at the February 2009 Council meeting.

There were 10 documents handed out for this meeting.

### NMFS LAGC IFQ Status Update

Staff from NMFS Sustainable Fisheries informed the Committee that the general category IFQ program will not be implemented until March 2010 (rather than March 2009 as the Council hoped). It is taking NMFS longer to review permit applications and appeals than expected. For the upcoming year, the general category fishery will continue to operate under quarterly TACs and will receive 10% of the full scallop allocation, as they did in 2008, because we are still in transition to the IFQ program. *Currently issued:* 278 IFQ permits, 53 CPH for IFQ eligibility, 91 NGOM LA access permits, and 243 incidental permits. Eighty additional permits have been approved in various categories, but NMFS is waiting for VMS compliance before permits are issued. There are also vessels that are currently under appeal: 50 applications in 1<sup>st</sup> round, 82 in the 2<sup>nd</sup> round of appeal.

### STACKING

There were two discussions pertaining to stacking: bycatch and vessel power adjustments.

#### *Bycatch Sideboard*

The Committee clarified that the final alternative for stacking says that all permits go with the vessel purchasing the permit, so there is no need to have an alternative to address fishing on the vessel that has sold its permits because that vessel would no longer have permits. Therefore, the Committee made a motion to strike Alternative 3.3.2.4 from Amendment 15 based on this clarification.

**MOTION 1 (Cunningham/Avila):** Move alternative 3.3.2.4 - sideboard for bycatch for stacked permits - to considered but rejected section.

*Motion carried unanimously.*

There was concern voiced about losing the sentence from 3.3.2.4 "Provided that all permits from the vessel that is relinquishing its scallop permit (Vessel B) go with the vessel that is purchasing

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the scallop permit (Vessel A), Vessel B will not be permitted to fish for anything it used to have a permit for.” It was suggested by a Committee member that this text be added to 3.3.2.4. There was also a question about whether the vessel relinquishing its permits could ever fish again through the subsequent purchase of another permit. It was discussed that as long as the permit purchase is legal, the vessel owner could subsequently purchase another license and enter the vessel in a different fishery; this action would not prohibit the purchase of a future permit.

### *Power adjustments*

Two overall options have been discussed with respect to power adjustments for stacking: 1) permits can be stacked with no power adjustment if the baseline specifications of the permits involved are within the same vessel replacement criteria, or 2) a fishing power adjustment would be applied regardless of whether the two permits being stacked are compatible based upon current replacement criteria.

A Committee member questioned if the fishing power adjustments were sufficient to ensure conservation neutrality. He highlighted that the intent of the fishing power adjustment alternatives is to maintain effort at the same level, and requested that the analyses prepared by the PDT provide a discussion of risk in terms of whether the adjustment is sufficient enough to prevent increases in effort. Staff responded that the analyses will show how stacking could impact effort and if the Committee wants to be more risk averse down the road, higher adjustments can be applied.

However, public comment was that it is almost impossible to figure out a conservation neutral approach because even with the 10-10-20 ratios, a boat can still be designed that has increased production. This individual provided that this increase in production happens over time anyhow as vessels are replaced, but is a much more gradual process than the one the industry fears may happen quickly with the current alternatives. Another member of the public agreed, adding that because the drive-train adjustment (wheel size alternative) was removed, the remaining alternatives are unable to maintain neutrality. It was suggested that no matter how hard the PDT tried to develop an alternative that will maintain effort levels, the tools and data are not available. Engine companies will respond and fishing power will increase no matter what regulators try to do; that is what has happened in the past and that will happen again.

It was also argued that the stacking alternative puts the small boat owners at a financial disadvantage by devaluing the smaller boat permits. Another concern voiced was that jobs will be lost if permits can be stacked, and family businesses will be converted to big businesses. In addition, several speakers argued that these alternatives are going beyond the charge of the Council to protect the resource; the Council should not be designing the make-up of the fleet. It was argued that this FMP already dictates the inputs and the outputs, so why is the Council concerned about which and how many vessels are catching the harvest that is allocated? Lastly, a Committee member reminded people that there is a “no option” alternative that excludes stacking and said that this alternative does need to go through the whole public hearing process.

A counter argument was provided by another speaker, who said his company owns eight boats and runs four crew; crews are already working more than one vessel – jobs will not be lost. He said that this alternative will allow him to run his business more efficiently by allowing him to

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not maintain some boats. Proponents of stacking argued that they are just trying to run their business more efficiently and reduce waste, not put others out of business or increase capacity or fishing power. It was pointed out that the fishing power adjustment alternative may be more restrictive than the current 10:10:20 restriction if vessels are increasing power as described by some speakers today. Another boat owner said that, while he is just trying to run his business more efficiently, he agrees with concerns about job losses associated with this alternative; capacity reduction hurts the communities. He said there needs to be a charge to stack – i.e., permit owners must be willing to give something up to stack the second permit to maintain conservation neutrality because he also agrees with the comment that newer better boats will fish faster and harder. A proponent provided that there are two options: 10-10-20 rule or a specific vessel adjustment.

Lastly, a commenter said that this Council made a commitment during development of Amendment 11 to look at excess capacity. He argued that current replacement criteria are relatively working and are a way of capping increases in effort. He then asked what would happen if vessels do not meet the criteria and said that he wants to see a public hearing document that provides more information on the technical aspect of fishing power adjustments. A Committee member said that since these alternatives are very important and contentious it would be beneficial to get input from the Advisory Panel, thus the PDT should present the fishing power analyses to the advisors later in the process.

### **LEASING**

Staff reviewed the leasing section of Amendment 15 (Section 3.3.3). Many of the details of leasing have not been developed yet so the Committee discussed this topic for the majority of the day. Multiple provisions were added that would restrict who can lease, when and how much. Similar fishing power adjustment alternatives were discussed for leasing that were also developed for stacking. It was also stated that we do not want to compromise the ownership cap through a loophole, thus the Committee discussed modifying the ownership cap restriction to include leasing. The Committee worked on several motions that include various aspects of leasing, which are described at the end of this section. In addition, it was discussed that as the PDT works on the analyses, if there are aspects of this leasing program that should be clarified, the Committee will do that at a later date. Lastly, the Committee discussed whether leasing from CPH should or should not be permitted. Ultimately, the Committee decided to consider both options.

#### *Permit Leasing*

A Committee member offered that 3.3.3.1 should be removed (leasing of whole permits) because that is encompassed by the alternatives to lease DAS and access area trips (3.3.3.2 and 3.3.3.4 in Document 2). Many Committee members agreed, but concern was expressed about being able to monitor all the various transactions if all vessels could lease as little as one DAS to multiple vessels. NMFS responded that the leasing program in GF is going ok, but it would be important to include certain deadlines etc. A member of the public agreed and argued that leasing is more flexible than stacking and offers more opportunities for various individuals. He did express reservation about the alternative being more restrictive than necessary – transferring of trips should be allowed to be done multiple times throughout the year because if you've transferred DAS or trips to a vessel that then gets a blown engine, the permit owner should be able to

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transfer the permit again. A couple audience members agreed that “re-leasing” or sub-leasing should be allowed. He also said that cut-offs should be included: 45 days between lease and use of leased allocation, and 60 days before end of fishing year the last lease can be done to help with monitoring issues. An audience member said that if the next amendment includes the ability to trade trips, then no more than the correct number of trips to particular areas should be allowed because the intent of the motion is not to remove that regulation.

A Committee member asserted that, while he is uncomfortable with many aspects of this alternative, leasing options do need to be vetted through the public process before making any decisions. He’s concerned that this is just a social engineering exercise because, unlike GF, the scallop stock is not overfished, thus some of these alternatives may not be necessary. Another Committee member agreed, but argued that decisions should go through the full Council, not just the Committee, so alternatives should not be removed. Another Committee member, however, reminded the Committee that although there’s been a lot of comparison to the groundfish fishery, the Council’s responsibility is to manage all fisheries regardless of whether they are overfished or not. Just because the scallop fishery is not overfished does not mean it does not need management. A Committee member asked if stacking and leasing are both approved, whether a boat could then end up with four permits (stacking to 2, then leasing 2); people (Committee and audience) were strongly against this idea. A Committee member asserted that there needs to be a socioeconomic look at this leasing alternative, but differently than we have done in the past. He wants a strong look at who really will be the losers in this situation. He suggested that scenario analyses be completed to see what will happen with stacking and leasing to answer what would happen if all the small boat owners went away. He suggested that the PDT look at whether this truly is capacity reduction and/or effort reduction and if it will unintentionally increase effort on the resource.

Some members of the public stated that they are completely against leasing. One major concern of the industry is that ownership will not remain with the scallopers, but instead will shift to large corporations. An audience member asked if leasing between gear types has been considered and someone else asserted that, as written, the alternatives currently do not address leasing between categories and between single and double dredges. Lastly, an audience member argued that leasing will not result in capacity reduction because the vessels leasing out their quota will still have history. He argued the whole scallop fishery regime is controlled through ring size and other input controls and that capacity reduction will not occur as a result of these alternatives; just a reduction in capitalization. Another speaker argued that there are too many loopholes related to leasing and people will find ways to abuse it; why put the resource at risk. They stated that leasing does not help single boat owners; it only helps the bottom line of a few.

### Fishing Power Adjustments

A member of the public offered that it is good that the document acknowledges that fishing power is not an issue in access/closed areas because of set poundage allocations, but is an issue in open areas. He said that although we have two options (adjustment based on production model developed by PDT or based on vessel replacement criteria), he believes we have a third: individual adjustment criteria if the permit is going from a small to a large vessel and falls outside the vessel replacement criteria, which will capture any outliers from the standard vessel replacement criteria. He argued that there is no issue if the permit is being leased from a larger

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to a smaller vessel, and if the permit is being leased to a larger vessel it should be subject to the existing replacement criteria that are already understood by scallop fishermen because those rules have been in place since 1993.

With respect to access area trips (3.3.3.4), a member of the audience clarified that there are 2 options: 1) leasing within the same permit category and 2) leasing between any vessels with the maintenance of whatever the trip relationship would be. He argued that this should not be an issue because any vessel that goes on a broken trip is going out on a unique number for that trip, which NMFS is capable of tracking. There are little to no occasional vessels and all the rest are part or full time, which have the same trip limits. Adoption of the leasing alternative should provide to all vessels, regardless of their size.

It was suggested by a Committee member that if the full time and part time trips have the same possession limits, that leasing within the same permit category should not matter. Thus, an option was added to the motion below that leasing can occur between same permit categories for open area DAS; but for access area trips, leasing will be limited to the smaller possession limit of the lessor's days.

### Sideboard for fishing in other fisheries

There was some confusion about "sideboard." A Committee member offered that the title of these options should be changed from "bycatch" to "catch in other directed fisheries," and added that it may be useful to include a "stand down" alternative.

A Committee member questioned what would happen to the other permits if a vessel leased its full permit or its full DAS and had other permits. A concern is that if there is a vessel that leases its whole scallop permit to another vessel but retains its fluke permit (for example), it could then put that vessel into the fluke fishery full time. Staff replied that this concern has been voiced previously and that the most restrictive approach to solving this dilemma is to prohibit the use of other permits associated with a vessel if you lease your scallop permit. Another option is to restrict how much a vessel can participate in another fishery, but this idea has not yet been developed. A Committee member asked if it would be possible or feasible to limit a boat to its historical basis of participation in another fishery, to which a NMFS representative replied that the plan could be constructed to do that, but it's unclear how easy it would be. A Committee member stated that a sideboard would need to be tied to scallop management and NMFS Counsel agreed, stating that these kinds of measures may not have the rationale for how it relates to scallops – it would be difficult to justify limiting access to another fishery without a clear nexus to the scallop FMP. The primary concern is that if capacity reduction is achieved and vessels lease their DAS/effort, they can potentially redirect their effort to other fisheries, thereby increasing their impact on those fisheries (unintended consequence of leasing). NMFS' legal advisor argued that spillover in other fisheries should be dealt with in other fisheries.

One Committee member argued that all boats with multiple permits that qualify for summer flounder and scallops do access both fisheries because there are only 80 days of scalloping and the window is open for fluke (summer flounder) at a different time. Therefore, if a boat owner has a permit in NJ, VA, or NC, they fish in both fisheries. His concern is that if we add

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restrictions to vessel owners who lease their scallop permit, the fluke fishermen will be further restricted beyond the 1 week to 1 month fishing season that already restricts fluke fishermen.

An audience member suggested that we want to ensure that nothing done in the scallop fishery negatively impacts other fisheries by transferring effort to them. Therefore, he suggested that there be 4 options: 1) limit catch to vessel's best year in that fishery, i.e. tie it to historical catch and make that the vessel's limit, 2) no restriction in the other fisheries (those other fisheries are already very restricted), 3) if a vessel leases out more than 50% of its days, it cannot do anything else (you're allowed to lease only a certain percentage), 4) if you lease anything at all, you pay your price and cannot fish any other fisheries.

Overall, the intent of these measures is to keep fishing in other fisheries by scallop vessels neutral as well. Another Committee member said that this may hang up this Amendment greatly. A friendly amendment to motion 7 was created that stated that the Interspecies Committee needs to review sideboards. Although this motion passed, a Committee member did voice a concern that if this needs to be reviewed by another committee, it may not end up in Amendment 15 if the review takes too long. However, because the Interspecies Committee meeting is scheduled for February, although they will not review the sideboard alternative in time for the Council meeting, it will be good to have them review this alternative.

### History

An audience member asked who gets the history on the leased trip or DAS. A major concern of the audience member is that the end result of leasing could be a system whereby permit owners who do not own a vessel could lease to anyone, including people outside the scallop fishery. He argued a safeguard should be put in place to prevent this from happening.

It was confirmed by a Committee member that for the groundfish fishery, the lessee (person obtaining the leased permit) gets the landings history while the lessor (person leasing out their permit) retains the DAS usage history. But DAS usage may not be as important in this fishery.

One member of the audience argued that the cost will be driven up if vessel owners lose the value of the history as time goes on if the history goes to the vessel with the landings. If the permit owner receives the history, it is a better situation. Another audience member asserted that the history accrued will be associated with future management decisions, so the history should be associated with the permit, not the vessel. There was additional concern voiced about restricting the landings history to the vessel doing the landing, which would hurt the individual boat owners because they would eventually lose their permit history. This individual asserted that the industry will turn into a mega-industry and that leasing is for the benefit of a few big corporations.

One member of the audience asked which days belong to the permit out of the days fished, i.e. if a boat fishes for 14 days and one of those was the leased day, how does anyone know which day was leased? Another audience member clarified (in a sidebar conversation) that the groundfish plan states that the first days of the vessel's fishing year are the ones leased, even if the lease did not occur until mid-way through the year. In other words, if a vessel leased 10 days and fished 40 (30 of its own, 10 leased), and fished its 30 days *before* leasing the 10 days, it does not matter

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– the first 10 days count as the leased days, which gets around “which day counts” and makes it more difficult to own a devalued permit from the lessees attributing the lousy fishing days to the leased permit and great fishing days to their own. Then if there are any DAS to carryover, they are the vessel’s DAS, not leased DAS. The Committee discussed these issues for sometime and decided to include several alternatives in the final leasing motions below.

### Monitoring

A Committee member expressed concern about the ability to monitor leasing. He questioned if monitoring all leasing transactions would pose a substantial problem for NMFS, particularly if smaller units of leasing are chosen, like leasing 1 day, and potentially with the added aspect of sideboards. The NMFS representative Committee member replied that NMFS has considered the monitoring aspect and sideboards are a questionable area. Currently NMFS is monitoring leasing allocations on a per-vessel basis with no bycatch problems and potentially the scallop model could be crafted based on the groundfish model, which seems to be working. It was pointed out that a major difference between the scallop and groundfish leasing plans is that the scallop plan has bycatch issues for which there may need to be some bycatch quota shifting that currently has not been assigned on a by-permit basis; there is concern that this avenue will get complicated. A Committee member asked if there was a way to develop monitoring provisions such that leased trips or days could be tracked through VMS. It was suggested that something like that may be possible through a new VMS code.

A member of the audience argued that the harvesting vessel should be responsible for any harvesting violations. Additionally, any vessel that is actively fishing has to meet fishing regulations.

### Maximum Ownership Cap

A Committee member questioned whether the language was specific enough with respect to the ownership cap. He asserted that in light of leasing, the currency of the ownership cap will need to be redefined – the ownership cap cannot simply apply to the number of permits, but instead needs to reflect the total number of DAS and poundage allocations, or DAS and access area trips. He suggested we may also want to be specific in that any individual that currently owns the maximum share of permits as currently defined could not be allowed to add to that position via leasing. He also argued that ownership and leasing should be restricted to the greater of 5% of the permits or 5% of the allocation of scallop DAS and poundage. The Committee Chair noted that she received a letter from the public that addressed these same issues.

One item that needs clarification is what to do in a situation where an entity currently has 5% of the allocation, then we switch currency resulting in them potentially owning >5% of the new currency – would they be required to divest of the excess above the new 5% cap? Staff asked if, since the current ownership restriction varies yearly based on how many permits are active, if the percentage cap would also vary by year. Committee response was that their maximum percentage would be the same, but an individual’s limit in DAS and/or trips may vary.

CPH Inclusion

There was concern expressed by a Committee member that if a bunch of boats are inactive, they may suddenly become active if leasing is allowed, which would hinder the goal of capacity reduction. However, the opposite concern was also voiced: if permit holders lease out their permits, would the vessels be tied to the dock for an indeterminate amount of time such that they then become CPH? Another concern expressed about timing and CPH by a Committee member was if a boat sank, whether the permit would default to CPH during the time the vessel is being replaced and if that permit could be leased during that period. An audience member agreed that leasing from CPH should be allowed. One way or the other, a Committee member explained that the FMP should not stay silent on the issue: if leasing from CPH is permitted say it is permitted, and if prohibited, explicitly list it as prohibited. Another Committee member explained that in Amendment 13 to the Groundfish plan leasing from CPH permits was specifically prohibited, and now A16 is reversing that decision.

One audience member mentioned that there is no rationale for CPH in GF Amendment 13, so we should not look there for guidance – we will need to create the rationale ourselves for either argument. This individual advised that if we are looking to eliminate pieces of steel, permits will need to be allowed to go into CPH. This was echoed by other audience members, who said that if a vessel leases out DAS and remains tied to the dock, there is no resulting capacity reduction. Several times during the day the Committee turned to the GF leasing program as an example since that is a program people are familiar with, but it was recognized that a scallop leasing program may evolve very differently for justified reasons.

**MOTION 2 (Cunningham/Avila):**

Clarify alternative for leasing so that:

- Leasing be allowed at any time during the year up to 60 days prior to the end of fishing year, with a 45 day notice period
- Prohibit carryover of leased DAS or access trips
- Leased DAS or access trips may be “re-leased or sub-leased” with the same restrictions
- For history of leased effort, include 2 options:
  1. History of leased effort will be the same as it is done in the Groundfish FMP: lessor will maintain DAS usage history and catch from leased effort would accrue to lessee
  2. Keep history of DAS usage and catch history with lessor
- Fishing power adjustment for leasing would mirror alternatives developed under stacking section

*Motion carried unanimously.*

**MOTION 3 (Cunningham/Avila):**

Clarify leasing alternative so that:

- Two options for who can lease are considered:
  1. Restrict leasing to same permit category only; or
  2. Leasing will be allowed between different permit categories for access area trips only. If possession limits are different, the lessee would be limited to the

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possession limit of the lessor AND leasing of open area DAS between different permit categories would be prohibited.

- Ownership cap restrictions apply to leasing
- Leasing could be between scallop-permitted vessels only. In terms of leasing from CPH vessels, two options will be considered:
  1. Allow leasing from CPH vessels
  2. Prohibit leasing from CPH vessels
- A vessel can only be allowed to lease twice the amount of allocation of annual DAS and access area trips of the lessee, carryover DAS would not be included
- Leasing would be prohibited for vessels that have stacked permits (if stacking is adopted)

*Motion carried unanimously.*

**MOTION 4 (Spitsbergen/Tooley):**

Remove alternative 3.3.3.1 – allow leasing of a scallop permit.

*Motion carried unanimously.*

**MOTION 5 (Tooley / Avila):**

Add a 3<sup>rd</sup> option, or sub-option, for fishing power adjustment alternatives. The 3<sup>rd</sup> option would limit the use of an adjustment to stacking/leasing of permits that are not in the same 10:10:20 vessel upgrade restriction category. If vessels are in the same upgrade restriction category, an adjustment would not be applied. Add this sub-option to alternative 3.3.2.2 and 3.3.3.3.

*Motion carried unanimously.*

**MOTION 6 (Robins/Preble):**

Include an option, if leasing is approved, to amend the current ownership cap to include two new options:

1. Any individual that owns the maximum number of permits allowed may not lease additional scallop DAS or access area trips.
2. Notwithstanding (1) above, permit ownership and leasing of scallop DAS and access area trips shall be limited to the greater of 5% of the permits or 5% of the allocation of scallop DAS and access area trips or poundage.

*Motion carried unanimously.*

**MOTION 7 (Tooley/Spitsbergen):**

A. Include sideboard alternatives for other directed fisheries prosecuted by permitted scallop vessels that lease allocation to another vessel:

1. No restriction on fishing in other fisheries for which the vessel has a permit
2. Limit catch of other directed fisheries to vessels “best year” from historical landings
3. If a vessel leases >50% of total effort (DAS and access area trips), the vessel would not be allowed to participate in other fisheries
4. If a vessel leases any amount, it is not permitted to fish in other fisheries
5. If a vessel leases, it must “stand down” from all fisheries for the number of days/trips equal to the lease

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- B. Forward this issue to the Interspecies Committee to address as soon as possible. Ideas from the motion above and discussion on this issue should be forwarded as well.

*Motion carried 8:1:1 for both parts of motion.*

*Intent of all leasing motions is to prevent vessels from increasing effort in other fisheries if that vessel has stacked or leased its scallop allocation – keep conservation neutral in Scallop FMP and other fisheries as well.*

### ACLs

After a brief presentation, the Scallop Committee discussed the structure of OFL through ACT, whether we want to include an ACT, and how the new hybrid overfishing definition may affect this ACL structure.

A Committee member asked if there was any benefit in trying to maintain a uniform alphabet soup between all the fishery management plans – do we really want an ACT if the groundfish plan does not have one? Alternatively, the skate plan does have an ACT. Staff pointed out that the main reasons the PDT supports inclusion of an ACT is to stabilize landings and because we do not want to go over the ACL. Industry supports shooting lower and not running the risk of triggering AMs. An audience member pointed out that the final rule suggests that ACTs are now considered an AM and agreed with staff's comments about not triggering additional AMs. Additionally, the audience member tried to clarify the SSC's involvement in determining ACLs: the SSC recommends an upper limit of the ABC that the Council can then not exceed. However, the Council sets the ABC after hearing this upper limit.

A discussion arose about the 10% buffers. We agreed that ABC (= to ACL) is 10% below OFL, but it was asked if ACT is intended to be 20% below OFL or 10% below ACL. There is about a 1 million lb difference between the two. Staff replied that we will get that clarified by the PDT. Further, staff's intent is to bring this structure to the SSC for review on February 5. With regards to making recommendations to the Council, a Committee member felt that there was too much that still needs to be understood by the Committee before this goes before the Council for review. Another Committee member stated that we should also be sure we are clear with the intent of the final rule because there is concern that some items may have changed with regards to ABC (should the ABC include all states of mortality (discards, etc)?).

There was discussion about the NGOM because at first read, it seems the final rule is more decisive about requiring an ACL for state waters. It seems that now we will need an ACL or sub-ACL for NGOM and state landings will need to be accounted for because it is managed under a federal FMP. Committee members discussed whether this should be a separate ACL from the primary fishery ACL because the scallop stock assessment does not include resource information or stock information from the NGOM so we do not want it subtracted from the primary fishery ACL. A couple audience members agreed, saying that because it is not part of the assessment, it does not fit well with the primary fishery ACL. Thus, it should have its own ACL and AMs.

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Ultimately, the Committee chose not to make any recommendations and dropped discussing AMs until the PDT can further develop these alternatives. The Committee was comfortable with the progress of ACLs to date and wants to wait until the presentation on the final rule is done at the February Council meeting before making final recommendations about this section. It is understood that the Committee will need to clarify any outstanding issues at future meetings.

### **Converting from Open Area DAS to Open Area Trips**

The Committee discussed the alternative that would convert open area DAS to open area trips. The NMFS representative Committee member argued that with the new MSA requirements and the potential for a referendum to be triggered by an alternative that is interpreted to be an IFQ, the Committee should consider how that could impact the timeline of this action. When the origin of this idea was discussed, an audience member commented that he had suggested it because it was the last chance to get something into the amendment that might address two uncertain issues: 1) turtle management and 2) ACLs and AMs. However, he said that he feels that the turtle BiOp issue has already been addressed and argued that since there is a lot of open area that has not been surveyed, they should remain open instead of being converted to trip limits, partly because there will be a problem determining allocations when we are less sure of the open area biomass. This alternative would have helped address management uncertainty related to ACL management, potentially even eliminated it, but his view is that it does not help with uncertainty regarding biomass and mortality estimates that are incorporated into the biological uncertainty with respect to the assessments.

It was pointed out by a Committee member that this alternative may be a full allocation problem for the fishery because it would convert allocation in DAS to a full allocation in pounds. A few Committee members felt it may trigger a referendum and a couple Committee members said they felt we should not pursue this alternative at this time. A staff member pointed out that the only thing this alternative may do is reduce the buffer between ACL and ACT. However, the PDT noted a handful of issues with getting rid of DAS management that would likely warrant some management buffer. The PDT raised the concern that this alternative would ensure a certain catch, but not a certain fishing mortality, and ensuring a specific fishing mortality is more important in terms of preventing overfishing. It was suggested by an audience member that one benefit of open area DAS is that they are, in a sense, self-regulating. If projections are high and there is less biomass available, then catch per DAS will decline accordingly. However, if vessels were given a possession limit, they would have a higher F to catch that same poundage of potentially smaller scallops, which was a concern voiced previously at the last PDT meeting. An audience member pointed out that pursuing this alternative would be bad for newer fishermen in the business because it would inevitably be based on history, and in his case that would put him out of business because he recently bought a permit with relatively little history.

The chair pointed out that converting some or all of the existing DAS to area based management could have multiple benefits – reducing impacts of the fishery on sea turtles, increasing CPUE, reducing habitat impacts in the Great South Channel and other areas, bringing the fishery into compliance with the new MSA requirements for ACLs and AMs. The chair also suggested the committee should consider sub-options within the existing draft alternative that would convert some, not all, DAS to trips to increase all of these benefits.

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There was also talk about separately creating a new management area. A few Committee members expressed interest in the alternative that would convert open area DAS into trips as a way to identify new access areas. But it was clarified that the area management implemented under A10 would cover closing a new area if biomass in that area warranted it.

### **MOTION 8 (Robins/Cunningham):**

Delete section 3.2.5.4 “Convert open area DAS into access area trips with possession limits” from analysis – move to considered but rejected.

*Motion carried 7:1*

### **RSA PROGRAM**

Earl Meredith of NMFS-NERO delivered a presentation about the findings of a recent RSA programmatic review workshop. NMFS is conducting a review of the four RSA programs in this region. The group wants to evaluate if the program is giving the Councils what they wanted. They also want to ensure the economic performance of the RSA program is not creating unfavorable economic conditions for anyone. The RSA program overseers want to come up with a list of best practices to improve the conduct of this program and because other regions of the country are looking at us for guidance. After running two iterations of parsing out RSA grants for scallops, monkfish, herring, and the mid-Atlantic, there were several primary themes articulated by participants during the review: flexibility, accountability, self organizing, business models and practices, unanticipated costs/unfavorable economic conditions, full utilization of RSA, timing or research projects/duration/grant time-tables, valuation of RSA resources, modification of RSA DAS to pound of resource, and costs and benefits of the RSA program. Staff will work with NMFS on this review and update the Committee on progress and findings. It was pointed out that many of the issues raised in this workshop are being considered in this action already.

### **CCHFA Sector Application**

The CCHFA representative provided a brief overview of the CCHFA sector application and reviewed with the Committee the exemptions that they are seeking during the formation of their sector. It was mentioned by a Committee member that any scallop action can dictate whatever exemptions can be allowed, but a NMFS representative reminded the Committee that under the scallop sector provisions set up under Amendment 11, the only exemption that is currently approved is that vessel in a sector can harvest more than their individual IFQ; the program is very restrictive in terms of exemptions. So if the Council wanted to consider other exemptions they would have to be added to the overall amendment for any sector, not just this one.

It was mentioned that the Committee can recommend the Council consider further development of the application with or without the exemptions approved by the Committee. It was also confirmed that after the Council approves the application, the CCHFA would then submit a draft operating plan and draft harvesting rules a year prior to implementation (if we follow the groundfish approach), then subsequently, 8 months ahead of implementation, final plans and rules are submitted. One concern voiced by a Committee member is that the CCHFA is submitting a proposal when all the ACL regulations are not approved yet and there is no authority in the FMP to approve the sector based on regulations and exemptions that have not yet been approved. Another Committee member offered that they can submit an application for a

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sector under the current regulations, but that they are asking for exemptions that the Committee member is uncertain about. A Committee member said that although the sector concept represents an innovative approach to fishery problems, it should be constructed within the confines of the permit category, which this application does not appear to be. This Committee member argued that given that the Committee has already discussed and rejected the idea of transferring a limited access permit to a sector of LAGC vessels, he would have a hard time supporting that particular exemption (another Committee member agreed).

Staff reminded the Committee that this amendment is also considering increasing the LAGC possession limit from 400 to 1000 lbs, as well as another alternative to eliminate the possession limit, so the request for 2000 pounds in access areas may be an unnecessary exemption. A Committee member offered that it appears that this application is almost trying to create its own category in the sector proposal, but it does stress local management and improvement of local economies, which is a positive. Another Committee member mentioned that boats operating under groundfish sectors have no trip limits – they are exempted, but they are operating under a hard TAC. A few audience members pointed out that many of the requested exemptions were arguments that have already occurred and just because this is a sector application from a group that currently has sectors does not mean that the LAGC sector would get to act like the LA fishery. An audience member argued that sectors for groundfish were seen as a way of giving ownership to the fishery without going to IFQs. But, because the scallop fishery is an IFQ fishery, there is no incentive for sectors from the perspective of the Council; that component of the fishery is already under an output control.

### **MOTION 9 (Cunningham/Preble):**

Include draft sector proposal from CCHFA in A15 with no exemptions.

*Motion carried 8:2:0.*

### **OFD**

The option of including a hybrid overfishing definition in the overfishing definition alternative was presented to the Committee. The main issue with the OFD from A10 is that the  $F_{\text{threshold}}$  changes from year to year. Thus, the status determination of overfishing is difficult to determine because the areas vary annually. An audience member agreed that this is a good alternative – it institutes a policy that supports rotational area management. The initial problem was having a moving target every year and this alternative solves this issue. The Committee expressed a desire to have the SSC review this hybrid definition at the February 6 SSC meeting.

### **MOTION 10 (Spitsbergen/Robins):**

Add a new hybrid alternative to the OFD for consideration.

*Motion carried unanimously.*

### **OTHER BUSINESS**

It was asked to NMFS what happened to the 252,000 lbs that were allocated to the LAGC permit holders for the 4<sup>th</sup> quarter. A NMFS representative replied that a letter was sent out before the start of the 4<sup>th</sup> quarter in which NMFS had predicted there would be about 230,000 lbs available. By the time the fishery was opened and catch reports continued to come in from prior quarters, it came down to 200,000 lbs. For the month of December, that 200,000 lbs was harvested so the

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fishery closed for the remainder of the quarter. Concern was voiced over the fleet being shut down relatively quickly during each quarter this year. However, it was pointed out that when the LAGC fleet goes to 5% of the quota, it will be on an individual quota basis such that a vessel will have its own quota and will not be at the mercy of entire fleet.