



**New England Fishery Management Council
Scallop Committee Meeting**

May 25, 2011

Fairfield Inn - New Bedford, MA

Committee members in attendance: David Pierce (Chair), Mary Beth Tooley, Mark Alexander, Dave Preble, Peter Christopher (designee for Pat Kurkul), Rip Cunningham (vice-Chair), Jim Fair, Rodney Avila, and Erling Berg.

NMFS Staff: Emily Gilbert and Gene Martin

NEFMC Staff: Deirdre Boelke

There were about 25 people in the audience.

Dr. David Peirce began the meeting at 9am. The Committee reviewed the agenda and staff began a presentation of Framework 23 alternatives with preliminary input from the Scallop PDT and AP. The Committee went through all four topics in the framework and made several motions related to each during the review of updated alternatives. The Committee decided to forward the range of alternatives to the Enforcement Committee for additional input on the enforceability of the measures under consideration.

In the afternoon there were several specific presentations not related to Framework 23: impacts of tunicates on the scallop fishery by MIT, updated estimate of 2010 YT bycatch in the scallop fishery by NMFS FSO, and review of the NMFS Strategic Plan for Cooperative Research given by a staff person from the Cooperative Research Program. Lastly, the Committee discussed a specific request from Mr. Riddick Baker concerning a potential action to grant him a limited access scallop permit due to a medical hardship.

Draft Framework 23 Alternatives: Turtle Deflector Dredge (TDD)

Staff reviewed several slides explaining PDT and AP input regarding specific area, season, vessel, and timing options for the potential TDD requirement. Three area boundaries were considered, three seasons, three vessel alternatives in terms of which vessels would be required to use this dredge, and two timing alternatives. After each topic the Committee either made a motion or agreed with the options as drafted by the PDT.

- *Area for TDD requirement*

To date the first alternative, the 71W boundary, has the most support from both the PDT and AP. The Committee reviewed turtle sightings data as well as observer data of turtle interactions and noted that many of the observations farther north were with different gear types and in depths greater than the scallop fishery works. Several Committee members noted some of the comments made at the PDT and AP meetings about the boundary used for the turtle chain regulation, 41 09N and commented that the TDD boundary should not use that boundary just because it exists. The Committee agreed that for simplicity the boundaries should be the same, but there was no sense keeping a boundary that did not make the most sense, so instead the Committee recommended that alternative be moved to the considered and rejected section of the document and tasked the PDT to evaluate if there is justification to revise the turtle chain boundary and if there is, that information should ultimately be forwarded to NMFS.

One Committee member pointed out that 71 W may be the best boundary for turtles, but if this gear modification also reduces finfish bycatch a different boundary could be considered. Staff explained that the PDT did discuss the impacts on bycatch and so far there are promising preliminary results that this dredge will also substantially reduce finfish bycatch, but the PDT did not explore specific alternatives based on bycatch until more data are available. This summer the dredge is being tested in more areas, and specific bycatch information is going to be collected.

MOTION 1: Preble/Tooley:

Eliminate Alternative 2.3.2.1.3 – boundary of TDD requirement of 41 09N from FW23.

Move to the considered and rejected section.

Vote: 7:0:1

Charge to PDT – Evaluate if there is justification to revise the turtle chain boundary adopted under ESA by NMFS action.

- *Season for TDD*

Staff explained that the PDT would like more time to flesh out the season alternatives. The PDT plans to evaluate all sightings data as well as bycatch analyses of other gear types in the region to determine if adding May and/or November is a reasonable alternative in addition to the range in the document already (June – October). One member of the audience requested that the PDT stay focused on scallop gears and use more recent data since situations have changed and this fishery should not be managed for all takes. Another argued that the season is not very critical for this dredge; season is a big deal when discussing effort limits like the RPM, but because this dredge does not impact scallop selectivity, the season picked should not make a big difference. Instead, he argued that the season decision should be linked to the boundary; if a boundary is picked farther to the north, then the season will make a difference. The Committee agreed to let the PDT further develop season options; they did not specify exact seasons at this time, but were supportive of variations within the overall range in the document, May through November.

- *Vessels required to use TDD*

Overall the Committee was supportive of the idea to make this restriction based on dredge width and not permit type. The main rationale for the dredge width alternative is that smaller dredges have not been tested extensively yet, and practically speaking, having a “bump out” on either side of a nine foot dredge is not feasible. One speaker from the audience argued that all scallop vessels should be required to use this dredge, and others argued that it would be too expensive for some operations that do not have a lot of access to the scallop fishery, such as smaller LAGC vessels with lower ITQ allocations. However, it was pointed out that some smaller dredge LAGC permits actually have more access to the scallop resource than occasional and part-time limited access vessels, especially with leasing and permanent transfer of quota. The Committee passed the same motion developed by the AP and just clarified that in some cases the boundary is not just to the west and occasional vessels should be added to the clarification in italics.

MOTION 2: Avila/Berg

Specify that Alternative 2.3.2.3.3 to be consistent with the recommendation from the Scallop AP.

AP motion: LAGC vessels that use a dredge 10.5 or less would be exempt from this restriction except when fishing in an access area west of this line in the Mid-Atlantic.

Clarification: This exemption does not include part-time (and occasional) limited access vessels that have upgraded their limited access permit – those vessels will need to use the dredge regardless of dredge width.

Vote: 8:0:0

- *Timing of TDD*

The Committee discussed that some delay is needed so that these dredges can be ordered and built, but delaying it too long could negatively impact the future findings of a new biological opinion, if one is reinitiated. It was discussed that if there is reinitiation of the current biological opinion, it would be advantageous if this dredge were required so that the overall impact of this fishery on turtles could take the new dredge requirement into consideration. Several speakers discussed that having this dredge requirement in the FMP would probably provide more flexibility of future RPMs since the severity of impacts are expected to decrease substantially with this gear modification. One speaker from the audience pointed out that even if the dredge is not fully implemented by NMFS during development of a new biological opinion, if it has been approved by the Council with a delayed implementation that should be able to be considered, similar to how the limited entry general category program adopted by A11 was taken into account in the last biological opinion, even though the full ITQ program was not effective at that time.

The Committee also discussed the idea developed by the AP of increasing incentive to switch over to this dredge before it is required as a way to get out of RPM#1 restrictions. However, it was discussed that the current biological opinion requirements are non-discretionary, so it did not seem that a Council framework could change an RPM, at least not one already set for 2012 under FW22. NMFS reported that it seemed very likely that the current biological opinion would be reinitiated, but the timing is still not clear. In the end the Committee decided to include two timing alternatives: one would be 90-180 days after FW23 is effective, and a second alternative that would be March 1, 2014, or two years after FW23 is implemented.

While some vessels have and may order this now because they think it is coming, it was pointed out that many individuals in the fleet will not go and order a \$3,000 dredge until it is required, so until the final rule comes out around January 30, 2012 for a March 1, 2012 implementation, that is when many individuals in the fleet will wait to order it. So if 20% of the fleet is using them already, and it takes a week to build one, and only four places currently making them, it will take time to build over 600 dredges. The Committee wants the PDT and AP to further discuss this timing issue and provide more information on what length of time is appropriate for this requirement, keeping in mind that too much time could have negative impacts on future biological opinions of this fishery.

Several speakers from the audience raised concern about “credit”. Many vessels are using this dredge already and have been for several years, and will that be factored into the next biological opinion? Another added that the fishery has been using turtle chains for years, and still no “credit” is given since the impact cannot be quantified.

MOTION 3: Alexander/Avila

Modify Alternative 2.3.2.4.2 to read Effective March 1, 2014, two years after FW23 scheduled to be effective.

Vote: 8:0:0

MOTION 4: Tooley/Fair

Clarify that Alternative 2.3.1.4.1 should include a delay of effectiveness of 90-180 days after FW23 is effective.

Vote: 8:0:0

Draft Framework 23 Alternatives: YT Flounder AMs

There were five major topics the Committee asked the PDT and AP to work on related to YT AMs. Staff presented updated information on each topic. The Committee agreed with progress made so far (Issue #1 and #4), decided to stop development on Issue #3, and passed a motion to forward to the full Council related to potential work priorities under GF for 2012 (Issue #2 and #5).

1. Refine when seasonal closure AM should start

One Committee member wanted to review the LAGC observer data in more detail because he found it hard to believe that 20% of the total SNE/MA YT was caught by the LAGC fishery. Was it from one or two trips, were they fishing in different areas than the rest of the LAGC fleet? He requested that knowing the variance of the new YT bycatch estimates would be critical to get a better idea of the accuracy of these estimates. Staff from NMFS FSO responded that more LAGC trips had been observed in 2011 than in years past, and he will try to produce variance estimates if time permits. Overall, the Committee agreed to leave Alternative 2.4.1 in the document and the PDT will continue refining the seasonal closure schedule with percent savings for each month the areas are closed.

2. Measures to address the disconnect between how LAGC YT catch is addressed

The Committee was uncomfortable just pushing this issue back to the GF Committee and preferred to keep this issue under the Scallop FMP. There was concern that if the revised estimate of 20% for the LAGC fishery is accurate, then lumping YT catch from the LAGC fishery with other subcomponents may not be appropriate. How does their catch compare to other fisheries in the other subcomponent? Again the Committee requested a better description of the LAGC observer data separately to help decide how to change the current AM. The Committee discussed whether the sub-ACL should be further divided, but did not put a specific alternative in FW23 to consider that. Instead, if the current AM area is too large for the LAGC fishery since that fleet is not as mobile, then the Committee discussed that the PDT should explore if smaller areas, or maximum length of time for closures should be used instead.

In addition, the Committee discussed that the YT sub-ACL allocation decision to the scallop fishery should be revisited. Rather than an allocation based on projected catch only, the Committee discussed that the Council should also consider allocating the scallop fishery a baseline, or simple percentage of the total YT ACL based on historical catch. Once the percent allocation is determined the Scallop FMP could explore DAS reductions as AMs instead of the area closures in place. The Committee wants these two topics to be forwarded to the full Council

to possibly consider as priorities in the next GF action in 2012. The Committee was not comfortable including a DAS reduction AM alternative in FW23 until the allocation decision was discussed under the GF plan first.

MOTION 4: Tooley/Avila:

Forward two topics to the full Council for consideration during 2012 priority setting:

- a. **Consideration of LAGC as “other subcomponent” for YT ACLs under the GF FMP**
- b. **Section 2.4.5 in FW23** (*see discussion under YT #5 below*)

Vote: 7:0:1

3. *Seasonal closure AM for SNE/MA and reduced possession limit for GB*

This alternative was discussed as an alternative that would potentially be more effective than a seasonal closure for GB, but after considering AP input the Committee decided to move this alternative to the considered and rejected section of FW23. The AP argued that reducing possession limit on GB would complicate trip trading, cause enforcement concerns, and would increase highgrading. An access area trip has a possession limit, so if the possession limit is reduced vessels will have more incentive to make as much as they can with a lower possession limit so they will highgrade and may end up fishing more bottom time to land more U10s to make up for lost possession limits in CA2. In terms of enforcement, the fleet is now very aware and used to what 18,000 pounds looks like in their hold; if the possession limit reduces to 16,000 or 15,000 pounds as a result of an AM, vessels may be at a higher risk of exceeding the possession limit. A speaker added that the AM for CA2 should be that the area is closed the following year under the rotation schedule and the YT savings from that area being closed should count as an AM; the fishery never gets credit for any savings, just overages.

4. *Proactive AMs*

The Committee requested that the PDT describe all the proactive AMs that have been in place. The PDT did that and they will be included in FW23, but they do not qualify as an automatic measure that is implemented to prevent future overages.

5. *Allocate 100% of projected catch OR baseline allocation based on historical catch of YT in the scallop fishery; AM would be a DAS reduction*

The Committee was in favor of developing this idea further, but did not think FW23 was the appropriate place. The Committee did not want to pursue a DAS cut AM as a strategy until the overall allocation discussion occurred under the GF plan first. Therefore, the Committee decided to forward this issue to the full Council for the 2012 priority setting meeting in November 2011 as a possible priority item for a future GF action. Some concerns were raised by the public that the current system based on a 90% allocation is too difficult to work with because the scallop fishery will constantly be ratcheted down. It will be complex to determine what the percent allocation should be, but once that decision is made under the GF plan it will be easier to develop AMs based on a percent and not a moving target. The Committee asked staff to confirm if that type of adjustment could be changed by framework, or if it would need to be an amendment.

Draft Framework 23 Alternatives: NGOM

The Committee reviewed the NGOM related alternatives. Based on input from the public the Committee requested the PDT to evaluate if other options are warranted for Alternative 2.5.4: Adjustments to the 2012 NGOM hard TAC. Currently the document is only considering an alternative of 31,000 pounds consistent with analyses from FW22. A member of the audience argued that the PDT should review the different assumptions used for dredge efficiency and other precautionary decisions related to that estimate to see if 31,000 pounds is still the best estimate of biomass in the federal portion of NGOM. It was suggested that SMAST has new biomass data from portions of NGOM that could be used in the estimate as well. Without objection the Committee requested that the PDT pursue this and report back to the Committee so it can assess risk and identify the best hard TAC for 2012 based on new analyses, if available.

The Committee Chair reported that FW23 will need more detail on the current state water scallop management programs in order to assess the potential impacts of the alternatives under consideration. For example, if vessels with federal NGOM or IFQ permits would be allowed to fish exclusively in state waters and not have that catch apply against the NGOM TAC or individual ITQs as a result of this action, that could have impacts on state fisheries, potentially increasing effort in those areas. The Chair will report back to the Committee on the development of the state water program under consideration in Massachusetts, and the PDT will have to investigate what other programs are in place up and down the coast if the ITQ alternative is adopted.

A member of the audience also requested that another option be included in the document that would restrict LA vessels to 200 pounds when fishing in the NGOM, but the Committee did not act on that suggestion.

Draft Framework 23 Alternatives: VMS

The AP discussed allowing a vessel to declare in (and out of) the fishery both on the way to the fishing grounds, as well as on the way back from the grounds. They suggested that an alternative to address the steam time to the grounds was potentially warranted, but they felt declaring out of the fishery with scallops onboard had enforcement implications. One commenter added that many vessels are actually still “fishing” on most of their steam back to port because they are shucking scallops. Some scallop vessels want the ability to declare into the fishery inshore of the demarcation line, instead of from port; having to declare from port raises safety concerns. Scallop vessels used to be able to declare from inshore of the demarcation line and it is not clear when and why this provision changed.

Right now many vessels from the south steam to Delaware Bay, and start their trip there. Once they leave Delaware Bay they are on the DAS clock; a typical steam time from Delaware Bay to the primary fishing grounds off of Barnegat, NJ is 12 hours. If vessels used to declare closer to the fishing grounds (before 2002 or so), are now charged for that steam time, what would the impact be on future DAS allocations if this was reversed again? The Scallop Committee passed a motion to include the AP motion in FW23, and decided to forward FW23 to the Enforcement Committee to get initial input of the range of alternatives under consideration. One speaker reported that the accuracy of the units should provide adequate enforcement to enable a vessel to declare into the fishery inshore of the demarcation line, compared to in port.

MOTION 5: Avila/Berg

Vessels be allowed to declare into the LA or LAGC fishery west of the demarcation line, not necessarily from a port area due to safety concerns.

Vote: 6:0:2

Presentation: Survey related to tunicates and their potential impacts on the scallop fishery (MIT)

Dr. Judith Pederson from MIT and Doug Cristel from NMFS gave a brief presentation on *Didemnum* on Georges Bank. MIT is conducting a survey of fishermen on where it is found, how it affects other species and vessel operations, identify potential ways to minimize impacts, and improve public education about the species. The presentation included a summary of the biological characteristics of the species, how it is transported, and a review of potential problems it may cause. The research group is looking for industry input and the Committee suggested they start with the Scallop Advisory Panel as well as other academic institutions in the area that have contact with various fishermen groups.

Presentation: Summary of how YT bycatch is estimated and review of 2010 catch estimates

Dr. Charles Adams from NMFS gave a presentation on the estimate of YT catch in the scallop fishery in 2010 as well as a summary of how NMFS plans to monitor the proposed YT sub-ACL in FY2011 and beyond. The agency provided a preliminary estimate of 2010 YT catch in a letter to the Council on April 21, 2010: 24% of GB YT sub-ACL and 139% of SNE/MA YT sub-ACL. The Scallop PDT reviewed these preliminary results and had several suggestions about how the methods for estimating discards should be revised. The PDT suggested that a separate discard rate should be used for: 1) Mid-Atlantic access areas; 2) LA and LAGC vessels separately; 3) and open areas within the Mid-Atlantic should be stratified into two sub-areas with separate discard rates. Lastly, the final estimate needs to include catch from LAGC vessels. Dr. Adams presented an updated estimate based on those suggested revisions, and the new estimates are 24.3% of GB YT sub-ACL and 104.6% of the SNE/MA YT sub-ACL. Applying a separate rate for ETA and Delmarva made a substantial difference and resulted in a 46% decrease in the SNE/MA estimate of bycatch. The discard rate for LA and LAGC vessels were different in the SNE/MA stock area, likely because of fishing location. One Committee member requested that the variance be included in the final estimate and Dr. Adams explained that he already planned to do that.

Discussion of correspondence related to future action related to medical hardship

The Council has received numerous correspondences from Mr. Riddick Baker of Virginia. For the last few years he has requested a limited access scallop permit from NMFS based on medical hardship. He stopped fishing in 1998 due to vision loss from glaucoma. NMFS has denied him a permit since he does not qualify for either a limited access or limited access general category permit, and did not apply for either permit during the application period or period of appeals. He is requesting that the Council develop a new action, framework or amendment, to consider an additional limited access permit, or permits, based on medical hardship. He argued that the Council can make the definition of medical hardship very narrow so the "flood gates" do not open allowing too many new entrants.

Most Committee members spoke on the issue and generally agreed that when the Council develops a new limited entry or catch share program, it should address directly if a percent of the catch or permits should be set aside for hardship cases or new entrants. One cited that the lobster hardship provision process in Massachusetts was very controversial. Since it is impossible to foresee everything in a licensing process, it is useful to have some sort of hardship or exception clause, but it can be very difficult unless there are clear guidelines on what qualifies as a hardship. Eventually the Committee decided that rather than passing a motion specific to the Scallop FMP only, the Committee would instead raise this as a larger, fishery-wide issue to the full Council. For example, should a hardship amendment be developed across all plans, or as the Council considers more catch share programs should this issue be added for consideration? Mr. Baker's situation was cited as an example of why it is important for the Council to consider this issue. Mr. Gene Martin did remind the Committee that both the GF and Scallop limited access programs in 1994 did include a clause for "circumstances beyond control."

Presentation: Review of NMFS Strategic Plan for Cooperative Research

Ms. Carolyn Woodhead from NMFS gave a presentation on the NMFS Strategic Plan for Cooperative Research. One finding of the recent management review panel was that there should be a review of this strategic plan to see if there are ways to improve the program and increase transparency. Her office is attending Committee and Council meetings in the coming months to gather input on ways to improve the cooperative research program. Specifically, are there any management priorities that need to be updated, are there ways to increase efficiency and adaptability of the program; are the research themes still appropriate? The Committee did not have specific advice for the Scallop RSA program since many adjustments were just made under Amendment 15, and the Committee is generally satisfied with the program overall. The Committee members may have more specific input at the full Council meeting in June after they have had more time to review the strategic plan in more detail.