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October 24, 2008

David Simpson  
Chair, Scallop Committee  
New England Fishery Management Council  
Connecticut Department of Environmental Protection  
PO Box 719  
Old Lyme, CT 06371

Deirdre Boelke  
Chair, Scallop Plan Development Team  
New England Fishery Management Council  
50 Water Street Mill 2  
Newburyport, MA 01950

Re: Development of Annual Catch Limits and Accountability Measures for the Atlantic Sea Scallop Fishery Management Plan

Dear Mr. Simpson and Ms. Boelke:

Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan is scheduled to be the policy vehicle to implement the new Annual Catch Limit (ACL) and Accountability Measure (AM) as requirements of the Magnuson-Stevens Reauthorization Act of 2006 (MSRA). Although the committee has not begun developing these important elements of the Fishery Management Plan (FMP) and will not need them until 2011 for scallops, ACLs and AMs will be needed for other stocks that are components of the fishery by 2010. The important issue of ACLs and AMs should receive the immediate attention of the scallop committee and the Plan Development Team (PDT).

The National Marine Fisheries Service's proposed guidance on ACLs and AMs correctly interprets the MSRA to require ACLs and AMs not just for target stocks, but also for, *inter alia*, "non-target stocks that are not retained for sale or personal use and that are either determined to be subject to overfishing, approaching overfishing, or overfished . . ." Proposed Rule, 73 Fed. Reg. 32526, 32529 (June 9, 2008). Therefore, the scope of the ACLs and AMs extends well beyond scallops. It is important for the committee to give this issue its immediate attention to avoid a rushed effort to meet its obligation later in the process.

At the September 29 Scallop Plan Development Team meeting, the PDT had initial discussions about the development of Annual Catch Limits and Accountability Measures for the scallop fishery as part of Amendment 15 to the Scallop Fishery Management Plan. As part of this discussion, the PDT discussed species and stocks for which ACLs and AMs would be required under the Magnuson-Stevens Reauthorization Act and the National Standard 1 Proposed Rule.

Oceana was given the opportunity at this meeting to comment on the scope of these measures for the scallop fishery with respect to measures for target, non-target, and ecosystem component stocks. At the

time, Oceana strongly urged that it was the Council's prerogative and perhaps its responsibility to establish ACLs and AMs to limit and account for takes of threatened loggerhead sea turtles in the scallop fishery.

Oceana would like to provide the Scallop Committee and the PDT with some of the rationale for this position and urge the PDT and committee to continue developing ACLs for sea turtles under one of two authorities laid out in the NS1 Proposed Rule:

**1) The NS1 Proposed Rule requires ACLs and AMs for all stocks 'in the fishery'**- The NS1 Proposed rule defines stocks in the fishery as 1) target stocks, 2) non-target stocks retained for sale or use, and 3) non-target stocks not retained for sale or use that are overfished, subject to overfishing, or could become so.<sup>1</sup>

**2) The NS1 Proposed Rule requires an ACL and AMs for loggerhead sea turtles** - The Magnuson-Stevens Act (MSA) defines the term *fish* to mean ". . . all other forms of marine animal and plant life other than marine mammals and birds." 16 U.S.C. § 1802(12). Exceptions are given for mammals and birds that are protected under the Marine Mammal Protection Act and the Migratory Bird Treaty Act, but ESA-listed marine species are defined as fish under the MSA. Although Oceana understands that turtles are not biologically fish or the subject of current or future fisheries, the Councils have the authority and the duty to regulate catch of sea turtles in accordance with both the ESA *and* the NS1 proposed rule.

The loggerhead sea turtle is listed as threatened under the Endangered Species Act and the most recent March 14, 2008, Biological Opinion for the scallop fishery found that its population was declining and that the species was trending towards extinction. Furthermore, the recently released Draft Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle states that "Bycatch in commercial fisheries (particularly longline, bottom trawl, and gillnet fisheries) is the most significant anthropogenic threat to the conservation of Atlantic loggerhead populations."<sup>2</sup> While the agency has not made a formal declaration of an overfished condition or that overfishing is occurring, clearly the loggerhead sea turtle is overfished and overfishing is occurring. Therefore, the Scallop FMP must include ACLs and AMs for the loggerhead.

\* \* \*

Oceana recommends that the Council establish an Annual Catch Limit for loggerhead turtles in the scallop fishery at a level equal to or lower than the current Incidental Take Statement (ITS) issued to this fishery under the ESA. An ITS is required by law to be formulated to prevent a fishery from

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<sup>1</sup> "Stocks in the fishery" would include target stocks (i.e., stocks that fishers seek to catch for sale or personal use, including "economic discards" as defined under MSA section 3(9)), non-target stocks that are retained for sale or personal use, and non-target stocks that are not retained for sale or personal use and that are either determined to be subject to overfishing, approaching overfished, or overfished, or could become so, according to the best scientific information available, without conservation and management measures. (Proposed Rule Section VII (A)).

<sup>2</sup> National Marine Fisheries Service and U.S. Fish and Wildlife Service. DRAFT Recovery Plan for the Northwest Atlantic Population of the Loggerhead Sea Turtle (*Caretta caretta*) Second Revision. 2008. p. 77.

jeopardizing the continued existence of a species and should serve as a backstop ACL for this fishery to further insure against the adverse effects of this fishery on loggerhead sea turtles.

Oceana thanks the PDT for considering this important issue and looks forward to participating in the full development of Annual Catch Limits and Accountability Measures in Amendment 15.

Sincerely,

Gib Brogan  
Campaign Projects Manager  
Oceana  
Wayland, MA