

**DRAFT**

Scallop Committee Meeting
 September 10 and 11, 2008
 Providence, RI

#4

Committee members in attendance: Dana Rice, Rick Robins, Sally McGee, Mary Beth Tooley, Rip Cunningham, Dave Simpson, Dennis Spitsbergen, Hannah Goodale, and Rodney Avila

NEFMC Staff: Deirdre Boelke, Demet Haksever, Sarah Pautzke
 NMFS Staff: Lynn Lankshear, Peter Christopher and Gene Martin

DRAFT

About 25 members of the public attended.

Day 1 included a presentation by Jamie Goen (NERO) about the status of LAGC permit approvals, discussions about how to proceed with the turtle Biological Opinion (BiOp) including a presentation about the BiOp by Lynn Lankshear (NERO-PRD), and ended with presentations given by Dr. Dvora Hart (NEFSC) regarding the recent NEFSC survey and the proposed revision to the overfishing definition under consideration in A15. On Day 2 of the meeting the Committee focused on developing alternatives for A15 based primarily on advisory panel input.

DAY 1 – September 10, 2008

Jamie Goen – NERO

This presentation was in response to a request from the AP meeting to the Regional Office to provide an update on the status of LAGC permits issued to date. The deadline for applications was August 30th. There were about 1,200 applications received, 50% of which were issued permits (518 total: 196 incidental catch permits, 75 NGOM permits, and 247 LAGC or IFQ permits). About 435 were denied. Of those 435, 280 applicants appealed. Of those 280, 49 were denied again. Of those 49, 4 have returned for the hearing level appeal. A total of 98 LOAs have been issued to date. March 1, 2009 is the target date for implementation of the IFQ program and so far everything is still on schedule.

Lynn Lankshear – NERO PRD

Lynn Lankshear provided a presentation about the process NMFS uses when completing a BiOp. She provided a summary of each section of the recent opinion for the scallop fishery. In summary, Ms. Lankshear pointed out that with respect to turtle population size, there are no estimates; the best available data is for nesting females based on the number of nests laid. She went on to describe the anticipated effects of the proposed action (scallop fishery). The conclusion of the BiOp is that the proposed action may adversely affect, but is not likely to jeopardize, the continued existence of the four sea turtle species. Ms. Lankshear ended the presentation with a follow-up to “Reasonable and Prudent Measure” (RPM) #1: NMFS/NERO has requested that the NEFMC develop measures to meeting RPM #1 (limiting effort during designated time periods) through Framework 21 to the Scallop FMP, taking into consideration the impacts of possible effort shifts of the fishery and other potential impacts. NMFS/NERO recommends that the Council conduct an analysis of the RPM measure to determine whether the RPM and Term and Condition (T&C) is reasonable and prudent in light of the guidance and if not, then identify what revisions are necessary to make it reasonable and prudent or identify why there is no acceptable revision that would meet the standard. Ms. Lankshear responded to questions from both the Committee and audience for roughly an hour.

Discussion and questions about BiOp presentation:

A Committee member argued that no credit was given for the increased survival due to chain mats. Another expressed concern that no distinction was made in the BiOp between various sources of impacts to the turtles in the scallop fishery (i.e. impacts to turtles encountered on the bottom, in the water column, or handling impacts), since turtle chains may have already minimized handling impacts on the turtles. However, NMFS replied that there is no data yet to get at that specific information, but that there is an RPM instructing NMFS to investigate this issue. A member of the audience asked when the agency plans to comply with that RPM, and it was explained that the other RPMs (other than the effort reduction RPM) have a start date, but at this time, there is no deadline for completion because NMFS does not know the required duration of the study.

Another Committee member pointed out that there is an exception for leatherbacks in terms of impacts from turtle chains and wanted clarification. Ms. Lankshear explained that leatherbacks could be captured in dredge gear, but because they spend most of their life in the water column and not on the bottom, impacts from dredge gear should be minimal. Thus, if a leatherback is kept out of the gear in the water column by chain mats they will not be affected during the haul. An audience member then asked several questions about turtle behavior. Specifically, if it is known how much time loggerhead turtles spend on the bottom then perhaps the survival rate of 64% could be revisited, since it is 100% for leatherbacks because they spend most of their life in the water column and not on the bottom.

One Committee member asked why turtle takes have increased when effort has decreased. Ms. Lankshear replied that the primary factor that changed over time is the level of observer coverage. It came up during the discussion that NMFS compare the rate of takes to the rate of observer coverage more closely. In addition, the changes in effort levels compared to rate of takes should be explored in more detail as well. It was pointed out, however, that a change in the rate of takes would probably not change the outcome of the opinion – loggerhead status is declining so the fishery still needs to minimize impacts. An audience member then asked about tagging turtles and asked if we can learn anything from turtles that have been recaptured. The response was that turtles, when captured, are tagged and observers look for tags on captured turtles.

An audience member asked what the result of the 2008 nesting study for loggerheads looked like and was told that the population may be looking better this year. It was explained that if the status of loggerhead turtles is stable or increasing, NERO would assess if that information triggers initiation of a new BiOp. If it did so, NERO PRD would inform the Council that we have met the criteria for consultation based on the findings of the turtle expert working group.

Another question was asked about whether the opinion considered if take rates varied between trawls and dredge gear. Ms. Lankshear clarified that the opinion did not distinguish between the gears in terms of take rates, but it is known that the level of injury for dredge gear is higher. It also came up during the discussion that the observer data should be separated out to determine if there are substantial differences in take rates between the two gear types. The opinion recognizes that the level of injury has likely declined since use of chain mats for dredge gear, but there is no precise estimate that can be used to change the value used for determining percent of survival since use of chain mats. Ms. Lankshear explained that it is difficult to collect data because these interactions are so rare. Dredge gear is suspected to strike turtles at the floor, but again, few turtles make it onboard the vessel because they escape. Thus, NMFS is stuck using numbers from before chain mat implementation. Additionally, there is no information to determine when interactions occur on the bottom versus in the water column.

DRAFT

Another audience member asked about hotspots, to which Ms. Lankshear replied that NMFS/NEFSC is currently investigating whether there are hotspots of turtle aggregations. When this item was in the previous BiOp, the agency took steps towards researching it and became aware that the Science Center was already starting a study that assesses sea turtle bycatch in all fisheries. However, no date of completion of this study is known. It was specifically asked if and how the hotspot study Oceana submitted to NMFS prior to this opinion was considered. Ms. Lankshear replied that NMFS PRD considered all information submitted prior to publishing the BiOp but could not get into the specifics.

Another audience member spoke to the timeframe of the reported turtle takes and if there is any way to continue observing a turtle after its first catch. Ms. Lankshear responded that observers look for tags, and if none are present, will tag the turtle. Information about this specific turtle is reported. Genetic analyses have been done since about 2001.

A representative from the observer program asked for clarification about the years of data used, mentioning that data was available at the time for 2006-2007 from the observer program, including information about the gear including the number of ticklers and the chain mat set-up. Ms. Lankshear responded that discussions with observer program staff concluded that with the use of the chain mat, which is expected to exclude all turtles, the estimates of “take” may not be reliable since they are trying to estimate gear-turtle interactions. Therefore, observer data was excluded for 2006-2007.

An audience member asked that with respect to the issue of quantifying takes, if it would make sense to require a video to be attached to gear as part of ongoing studies. Ms. Lankshear responded that NMFS did look at video feasibility in conjunction with observers on the vessels, but it was not feasible to have cameras mounted on the dredge gear for the purpose of monitoring takes. However, it may be useful as part of the research RPM for quantifying the impacts of turtle chains.

Draft Memo to Committee from PDT regarding BiOp

Ms. Boelke presented to the Committee a memo from the PDT in response to the biological opinion. As drafted, the PDT asserts that the first T&C is not reasonable and prudent because it would not allow for at least one trip to be allocated per vessel during either time period specified, thus constituting more than a minor change to the fishery as defined in the letter from NMFS. Ms. Boelke summarized the analyses completed by the PDT to date, primarily effort data by month from 2004-2007. The number of trips and DAS used by area were summarized from both VMS and DAS data. Initially, it appeared that under the longer time period the plan may be able to allocate at least one trip in the access areas, but it was clarified subsequently that based on the average level of effort used in 2004-2007, fewer trips were taken in the summer and fall and reducing that by 50% or 30% would not enable each limited access vessel to use at least one trip during those seasons. It was pointed out that the focus of the first RPM is limiting effort for the limited access fishery only because Amendment 11 recently reduced the number of general category vessels that can participate in that fishery; hence impacts have been sufficiently minimized in terms of the opinion.

Staff summarized that there are five decisions before the Committee: 1) does the Committee agree that the first T&C should be redefined; 2) if yes, does the Committee want to draft a letter to the Council explaining why it is not reasonable and prudent, including new ideas and justifications; 3) can the Committee identify a new T&C today; 4) identify if the threshold where impacts on turtles are minimized and impacts on the fishery are not more than minor for both access areas and open areas, i.e. identify if the threshold the agency defined for access areas is appropriate (at least one trip during the summer/fall); and 5) does the Committee agree that the first RPM is reasonable and prudent.

DRAFT

After about 2.5 hours of discussion, and several versions of a split motion the Committee finally passed a single motion to send this issue back to the PDT for more analysis. The Committee agreed that the first T&C *may* not be reasonable and prudent because it *appears* it would cause more than a minor change to the fishery based on preliminary analyses. They further tasked the PDT to conduct more analysis to justify why the first T&C would have more than minor impact on the fishery and explore additional ways to consider effort and impacts to help identify a more appropriate threshold or balance of minimizing impacts on turtles and impacts on the fishery. The paragraphs below characterize some of the discussion before, during and after the Committee motion was made. Comments have been summarized by several different overall topics. Some spoke in favor of the final motion and others against.

Discussion on PDT Memo and Committee motion

- Rotational Management

A Committee member pointed out that one of the most fundamental problems with making this work in the scallop fishery is that limiting effort by space and time by a substantial percentage is in direct conflict with rotational management. The scallop fishery is managed by putting effort in places where certain biological parameters are met. The current RPM and T&C will inhibit rotational management no matter what is done. An audience member added that increasing CPUE (through rotational management) has reduced the footprint of the fishery and minimized impacts on bycatch, habitat and protected resources. It was suggested that this opinion should have compared rotational management versus non rotational management to see what benefits this style of management has for the turtles, rather than compared to a baseline period of years that is not based on anything. Several pointed out that this T&C (seasonal reduction of effort) will cause effort shifts, and effort was constrained during the baseline for a variety of reasons that will be difficult to tease out in the analysis.

- RPM

It was argued by several that the provisions (30% and 50% reductions compared to the baseline average) seem arbitrary, and will cause major changes in how the fishery is allocated. It was suggested by an audience member that the Committee should not feel constrained by the 30% and 50% values or the threshold of one access area trip. There may be more reasonable thresholds. Another speaker urged the Committee to consider the importance of fishing in the summer and fall in the Mid-Atlantic; weather is good (safety at sea during winter months is a concern), the scallops spawn out in the fall so fishing after that time is not ideal and yields are highest in the summer in the Mid-Atlantic, and the markets are good during those seasons.

- Legal Discussion

There was a discussion about whether or not rejecting the T&C would trigger a new BiOp and also about what constitutes a minor change. One Committee member offered that he does not agree with it because the first T&C causes more than a minor change. Many audience members agreed with this point of view. However, one audience member argued that the Committee should not reject the T&C because in his opinion, if the Council rejects it, a new BiOp would be triggered as a best case scenario. He suggested that a new BiOp would open the agency up for litigation and scrutiny and asserted that until then, the T&C is binding. He argued that there are many “shaky things” about the current BiOp that would be open for litigation if the Council and Agency do not proceed with this opinion. For example, he argued that “reduce appreciably” is a change that can be noticed, going by the dictionary definition of “appreciably.” The BiOp concluded that the scallop fishery does make a noticeable change in the chances for extinction of loggerhead sea turtles; hence in his opinion a jeopardy finding should have been made, instead of arguing that the fishery has “considerable” impacts, not noticeable. Second, he commented that the BiOp did not consider the affects of reducing scallop fishing together with the affects of reducing effort in other fisheries. In addition, an arbitrary measurement for what constitutes extinction is in the BiOp, and there is no justification for it. ESA requires the monitoring of takes, and there is no step in the

DRAFT

opinion to require monitoring of takes on gear with turtle chains. In his opinion, if it is perceived that the agency is moving forward to minimize takes, these deficiencies may be overlooked. But, if the opinion is reopened and loggerheads are still declining, the finding of no jeopardy would be questionable and would be open for litigation.

However, another audience member refuted that argument saying that the Committee can reject the T&C because it causes more than a minor impact to the fishery. He argued that the analysis of fishing effort conducted to date already shows that the T&C will be more than minor. Another added that it would then be up to the Agency whether it agrees and whether the Council recommendation is a functional equivalent that could be considered instead. There is precedent that RPMs can be amended without necessarily initiating another biological opinion, depending on what is recommended. The existing BiOp would remain in place even if a subsequent opinion is initiated. An audience member reminded the Committee that great progress has been made in the other RPMs that are focused on research efforts and those benefits should be specified more clearly in the Council response to the opinion. A Committee member added that the Council is bound under the MSRA to minimize impacts, not minimize takes. He argued that if you look at the gear improvements like chain mats and turtle chains, we are minimizing impacts. And, we have reduced handling impacts through other RPMs. He asserted that NMFS needs to start researching the impacts of these gears on turtles on the bottom and the interactions between turtles and gear, not just simply close areas in a way that is incompatible with rotational area management.

A Committee member pointed out that a finding of no jeopardy limits NMFS to only making minor changes, thus we are not driven by what is “needed” for the turtles’ benefit, but instead we can consider measures that will not impose more than a minor impact on the fishery. Staff informed the Committee that at this point, the PDT has not addressed whether the impact would be minor or major because it felt that was a policy decision. If the Committee needs more analysis to address what is more than minor then the PDT can try to explore ideas to do that for a future meeting. Several Committee members voiced concern that the original motion should be more specific so it is clear what the PDT should work on. The Committee was supportive of considering alternatives that are not based on a baseline, using area swept as a metric, and investigating any other ideas that come up as a result of this meeting.

In terms of the first part of the motion, another Committee member argued that to him, more than a 5% economic impact on the fishery would qualify as more than minor. It was suggested that it would be helpful to have some kind of economic analysis of the impact of the various options available for the T&C. One audience member said that according to the analysis of the baseline, on average the fleet took less than one trip during the window so with respect to a minor change; it could be argued that limiting the fishery to one trip would not be more than minor compared to what the fishery has done in recent years. One Committee member argued that there is more rationale for the decision to reject the T&C within the PDT analysis provided because it would allocate less than one trip and there are other concerns described in the memo about the baseline period, etc. This may not be accurately reflected in the Committee motion since we are sending it back to the PDT. Lastly, an audience member pointed out that minimizing impacts can be done a number of ways, not just through effort reduction. He argued that the Committee should not feel constrained by thinking effort limits are the only reasonable approach; he added that the shrimp fishery takes hundreds of thousands more turtles per year than the scallop fishery, and measures other than effort limits are justified in that fishery.

- Habitat

An audience member reminded us that there is more harvestable biomass on Georges Bank that we cannot access because of habitat closed areas, and as such, we need to remain cognizant of habitat decisions that are being made under other amendments before shifting effort yet again. If we reduce CPUE, we will exacerbate effort-shift issues; this turtle issue cannot be considered separately from the rest of the FMP.

- Baseline

Some Committee members voiced the same concerns as the PDT regarding the use of the baseline period. One person argued that on an interim basis, the options that would probably work are those that move away from a baseline model. An audience member said that the baseline period does not work because you cannot relate rotational management to an overall baseline that encompasses the mid Atlantic. For example, ETA is closing and the HC is reopening, which changes effort both spatially and temporally. It was mentioned by a staff member that based on our model informing us of resource distribution, the majority of harvestable biomass for 2010 will be in the Mid-Atlantic instead of Georges Bank.

- Options/Research

An audience member argued that the main issue is that we do not know if the turtles will benefit from this effort limitation because we are not sure where the turtles are at any given point in time. However, if we knew exactly where the turtles are (hotspots), the scallop industry would be more accepting of a seasonal and area closure during a specific time in a specific area because they would actually provide a benefit. An audience member offered that there is current research that will provide answers to some of the questions regarding turtle takes in the benthic environment; we just need a little more time. He also said that a dredge has been developed that prevents turtles from being run over that has been tested on turtle carcasses. The dredge also increases CPUE and decreases bycatch. He argued that these are examples of how previous RPMs are working and minimize impacts on turtles directly. A Committee member further asked if the observer data of turtle takes could be further refined to identify areas within the access areas that have a higher take rate, perhaps those areas could be managed differently to further minimize impacts on turtles.

The following options for alternative T&Cs were offered by Committee members but were not made in the form of formal motions:

- 1) Have a cap on the amount of allowable turtle bycatch and close the fishery in the Mid-Atlantic when it is reached. However, Ms. Lankshear replied that the opinion does not specify an acceptable amount of bycatch.
- 2) Have more rotational areas in general, which would decrease area swept for the fishery as a whole.
- 3) Lease Mid-Atlantic DAS and trips from that time window. Staff replied that that approach may be a way for the framework to mitigate impacts of the T&C, but it does not specify what the actual T&C is – whether it would be a one trip maximum, a certain percentage of trips, etc.
- 4) Allocate partial trips because the PDT identified that we cannot allocate a whole trip *and* comply with the current T&Cs – so allocate a portion of a trip per vessel (offered by an audience member).

MOTION (1) (Robins/Rice): The Committee finds the first T&C is not reasonable and prudent because it will cause more than a minor change to the fishery and directs the PDT to explore other alternative options. The PDT should also provide an analysis to justify amending the T&C.

MOTION TO SPLIT (McGee/Tooley)

Vote: 7:1:0. Motion is split with no abstentions. Motion passes.

SPLIT MOTION AS AMENDED:

Part 1 of Motion

The Committee finds that the first Term and Condition may not be reasonable and prudent because it appears it would cause more than a minor change to the fishery (i.e., it would result in less than 1 trip per vessel in access areas under either time period based on preliminary analyses from PDT).

Vote: 7:0:1, motion passed.

Part 2 of Motion

The Committee directs the PDT to further justify an amendment to the first T&C by providing more analysis and tasks the PDT to explore option 2 and option 3 in the to explore alternative T&Cs.

Vote: 8:0, motion passed

Dr. Dvora Hart – NEFSC – Presentation on 2008 Federal Scallop Survey

Dr. Hart gave a brief summary of what both legs of the federal dredge survey saw in terms of the scallop resource. She explained that this is the first year the survey has been conducted on the R/V Sharp, the university vessel that has been contracted to potentially conduct the federal survey for the next few years. This year analyses will have to be completed to calibrate the Sharp with the Albatross as well as updated biomass estimates for the scallop resource by area. In 2008, survey biomass concentrated in ETA, Delmarva, GB closed areas and the channel. Strong recruitment in both GB and MA, especially in Delmarva, the channel and CA2. The PDT is updating biomass estimates for ETA and Delmarva later this month and will be working on the overall updated estimates for FW21 next year using results from this survey as well as survey results from SMAST and VIMS.

Dr. Dvora Hart – NEFSC – OFD Presentation

Dr. Hart provided a presentation describing the suggested revision to the overfishing definition (OFD). Rotational and long-term area closures (rotational management) increase spatial variability in fishing mortality (F). Averaging over space does not provide the best yield at a particular F; however, averaging F over time within areas does. This is because, with the current definition, a closed area that receives no fishing is averaged with open areas, thus the open areas must be fished at a higher F in order to compensate for the “0” fishing mortality in the closed area, which results in overfishing of the open areas. This was an issue in FW19 and it was not a popular decision by the Council to fish open areas at a lower F to prevent localized overfishing of the open areas. With the new overfishing definition, long-term closed areas will not be incorporated in the overall calculation of F and an area that has been closed for several years but is part of the rotational strategy could potentially be fished harder than an open area. Dr. Hart also presented some potential updates to the suggested OFD from A10: 1) split Georges Bank and the Mid-Atlantic open areas, and use separate Fs (because growth rates and biomasses are different), and 2) use a higher percentage of the target when there are long term closures, instead of the current 80%.

OFD Discussion

An industry member said that in principle the new definition makes sense, but he is wary of this turning into a legal term with different ramifications of “overfishing” and “overfished” being used when only a portion of the resource is fished at higher F rates. He is concerned that this will take flexibility away from how area rotation works now under the current overfishing definition. Dr. Hart explained that the legal status definitions (overfishing and overfished) would not change as a result of this definition; the status would still be based on the F rate for the overall stock complex; the new definition only changes the F targets for particular areas over time. A Committee member then asked how the agency would determine whether the stock is overfished on an annual basis. Again, it was explained that the overall F would not change, just the targets by area; which do not have legal ramifications if exceeded.

Another audience member pointed out that we have addressed some of the problems associated with overfishing in open areas, but in his opinion this would not be as necessary if we could actually implement scallop rotational areas on Georges Bank. If the Council focused on providing access to scallops that are on GB then the open areas would not need to be fished as hard. He also expressed concern that area based determinations could cause marketing problems, if sectors of the public learn that one area is fished harder and do not understand that is by design then there could be impacts on that market (i.e. if open areas in Mid-Atlantic are fished at higher F because new access area closed). Lastly,

he requested that the amendment document include some real examples of how this definition would translate into allocations, as opposed to just the methodology behind it; before the industry buys off on this approach they will have to understand how it translates into allocations and yield in the short and long term.

DAY 2 – September 11, 2008

Purpose and Need for Amendment 15

Ms. Deirdre Boelke walked the Committee through the needs and goals of Amendment 15, including: 1) bringing the scallop FMP into compliance with MSRA including ACLs, 2) addressing excess capacity in LA fishery, and 3) adjusting the scallop fishery program to make the FMP more effective (OFD adjustment, minor adjustments to LAGC program, make the EFH closed area consistent between groundfish and scallops, make adjustments to the RSA program, and put the scallop FMP in sync with the May 1 fishing year). Staff pointed out that any guidance and suggestions from the Committee regarding ACLs and AMs are welcomed by the PDT as they begin developing a strawman approach.

A Committee member pointed out that Section 2.0 (Goals and objectives) has stronger language than Section 1.2 (purpose and need) and suggested altering some of the objectives from “change” to “consider altering.” ***By consensus the Committee requested staff make these adjustments and approved the rest of the language for these two sections (Purpose and Need and Goals and Objectives).***

Development of A15 Alternatives Based on AP Input

Ms. Boelke reviewed the AP meeting summary and highlighted the suggestions made by the panel concerning three of the seven management topics: measures to address capacity, measures to adjust the LAGC program and measures to improve the research set-aside program. The Committee addressed each topic in order of where it is in the amendment document and a summary of the discussion and relevant motions are below.

- ***Permit Stacking***

The Committee discussed various aspects of permit stacking. One question was what the fate is of the vessels that end up with no permits. The concern is that capacity might be transferred to another fishery. One Committee member argued that he is against a mandatory scrap of the vessel if it has no permits, to which another member replied that she wasn't suggesting scrapping the vessel, but was concerned about the capacity export to a non-limited access or non-federally managed fishery.

It was also pointed out that we need to be careful about assessing what will happen in the future, not just during the year of implementation. It was asked if there would be a limit on the number of stacks per year as well as in the future: could owner A stack onto owner B's boat one year and then owner B stack onto owner C's boat the following year? The main concern here is that one might be able to double stack – i.e., in the previous example, owner B would not first destack the permits before stacking with owner C, which would result in 3 permits on one vessel. It was pointed out that in this case, many people supported that only 2 permits should be allowed to be stacked. In addition, it was raised that the action should consider how to treat part time vessels that converted to small dredge full time permits – how will those permits be considered under stacking?

Dr. Demet Haksever (NEFMC staff) provided a presentation that assessed several fishing power adjustment alternatives based on vessel characteristics for permit stacking and leasing alternatives. There

DRAFT

is a concern that if DAS are transferred from a vessel that has a lower fishing power to a vessel that has a higher fishing power with no adjustment, the capacity and fishing mortality in the fishery could increase.

Aspects of the fishing power adjustments (FPA) were then discussed. One Committee member argued that the gross and net tonnage factor should be eliminated altogether. It was suggested that fishing power adjustments seem integral to stacking between and even within categories. It would be nice to allow all types of permits to stack to provide maximum flexibility, but adjustments would need to be made. Several speakers were in favor of eliminating DAS units if stacking is permitted so fishing power adjustments would be unnecessary – vessels would get a certain number of trips with a possession limit. If there is an overall 18000 lb limit per trip, people can harvest only that amount regardless of their horsepower. A couple Committee members voiced support for switching to trips with possession limits or pounds with respect to ACLs, too. However, Dr. Haksever argued that you would still need a power adjustment if we switched the pounds as the currency.

A Committee member cautioned that it is administratively complex to stack permits and to that end, it may be difficult for NMFS to administer on a per vessel basis. It is not clear from the alternative what NMFS would actually do when 2 permits wanted to stack. There was also concern voiced about how to explain the stacking alternatives to the public; it was suggested that a table could be provided with “look-up” type of examples. Another Committee member expressed concern that the scallop fishery is going in the direction of groundfish and that this management program is getting too complex with built in inefficiencies. Thus, the argument for switching to pounds makes sense and should be considered. However, several speakers offered that there would be timing concerns for this action if allocation in pounds was included.

Several Committee members seemed to support that stacking should be limited to two permits only and the alternative with unlimited stacking be removed, but no motion was made. **The Committee did have some suggestions about reordering the alternatives so that the FPA alternatives come under the stacking alternatives and directed staff to make those changes in the DEIS.** The Committee passed the following motion that included revisions to some of the stacking alternatives.

MOTION (2) (Robins/Spitsbergen):

- Include only option 3 for alternative 3.3.2.1 (stacking any two permits).
- Under fishing power adjustments (3.3.2.3) add a new option (option 5): permits would only be permitted to stack between 10:10:20 vessel baselines – no specific adjustment would be applied.
- Under 3.3.2.3: Delete option 4 (gear and wheel size) and option 3 (equal adjustments regardless of permits being stacked – flat tax of some percentage).
- And, remove use of gross [and net] tonnage from all fishing power adjustments alternatives (option 2, option 5).

Vote: 7:1:0. Motion passes.

In the end, the document is left with options 1, 2, and 5 for FPA alternatives.

Audience members gave input on permit stacking. One audience member said that his organization is in favor of the previous motion because the goal is to reduce the number of boats and not result in increased mortality of any resource. He went further to say that permit stacking does not disadvantage any group of scallop fishers, the process should be transparent, and that they are not in favor of stacking any more than 2 permits to address concerns of excess consolidation. A Committee member questioned where stacking would end – would someone be able to stack two double permits? Another member said that although 2 permits is what’s currently being discussed, he does not want to completely close the door on the possibility of being able to stack 3 permits down the road, maybe via a framework action. Legal counsel advised that this could probably be done via a framework, but that would depend on the extent to which it

DRAFT

would impact allocations. He suggested we might want to do it via an amendment because it is somewhat controversial. Lastly, another Committee member said that what we're after with the motion (below) is ensuring only 2 permits can be stacked per vessel at any one time, but is concerned with the wording of the motion if it precludes stacking again if the permit was first destacked.

However, another audience member stated that most permit holders are against stacking or leasing. A suggestion was made for a buyout to attain fair capacity reduction, with available DAS going back into the system with everyone getting an equal opportunity to obtain them. The argument is that stacking and/or leasing will create monopolies. In addition, another speaker warned that jobs will be lost as a result of stacking. Several motions were made to clarify some of the stacking alternatives. A subsequent motion (Motion 4) was passed at the request of a Committee member to clarify that Motion 3 would allow a vessel to destack then stack again.

MOTION (3) (Rice/Goodale):

Explicitly state under this alternative you can only stack a permit once (vessel could not stack 2 permits one year and then stack a third permit in the future). Section 3.3.2.1 would be clarified so that a vessel could only participate in stacking "once." Additional permits could not be stacked.

Vote 7:1:0, motion passed

Motion 3 Intent: Only 2 permits can be stacked at any one given time per vessel. If vessel A stacks permit B (2nd permit) one year, that vessel cannot stack permit C (3rd permit) the following year. If de-stacking is also permitted, vessel A can de-stack permits A and B; vessel A would then be permitted to subsequently stack a different permit (A and C, for example).

MOTION (5) (Spitsbergen/Avila):

Motion to permit de-stacking AND if a vessel has multiple permits, all permits count toward the 5% ownership restrictions.

Vote: 7:0:0, motion passed

The Committee requested that staff clarify in the DEIS that all permits (all species) from vessel B would need to be stacked with vessel A.

A concern was raised; however, about having a penalty for every stack and destack. A Committee member said we would need to address this issue in the action and it should be clarified at some point.

• *Permit Leasing*

A brief discussion happened pertaining to permit leasing. A Committee member pointed out that this seems like a follow-on from the stacking conversation. Based on a request from correspondence, the Committee discussed if LAGC vessels should be permitted to lease or buy LA permits and/or allocations of trips and DAS. Several concerns were raised. It was pointed out that there are allocation currency differences between the LA and LAGC fisheries, so we would need to decide if that should be permitted and determine how that would work. Another question asked was if the leased LA effort would be bound by the LAGC rules if one permit type leased another, i.e. 400 lb limit, gear restrictions, etc.

An audience member spoke against permit leasing between LA and LAGC and said it should be ruled out of order because it seems to be a reshuffling of LA and LAGC permits. However, another audience member urged the Committee to consider it as an option because it is going to be difficult for some LAGC vessels to stay in business if limited to purchasing and leasing effort from other LAGC vessels only. He explained that the structure of the market for LAGC permits is not very functional because so many permits are tied to other limited access permits like GF, thus this alternative would be a way to open

DRAFT

dialog to assess how to create a liquid pool of quota that small boat owners in NE can take advantage of. It was then asked if this ability should work in the opposite direction as well: LA vessels leasing LAGC permits. The previous speaker argued that LA vessels should not be permitted to lease LAGC permits because of the disparity in the amount of quota each groups receives and LA access is worth more per unit than LAGC effort.

MOTION (6) (McGee/Avila):

Develop an alternative for LAGC permit holders or LAGC sectors to lease or transfer (sell) allocations from a LA permit. *Ruled out of order by the Chair because it is beyond the scope of Amendment 15.*

The Committee also discussed how the leasing alternative affects the 5% ownership restriction in the LA fishery. Would anything leased not count toward the 5% maximum restriction (because technically, you don't own it, you're just leasing), or would it count as a permit? It was pointed out that the original ownership cap is a proxy for preventing one person from having an excessive share in the fishery, thus even with leasing we need to be conscious of excessive shares. He said that to the extent leasing results in control of the resource, we need to think about implementing the same ownership cap so that leasing does not become a loophole around the ownership cap.

Currently the ownership cap is based on the number of LA permits one person has ownership interest in. The question was raised about how to equate leasing DAS to number of permits. It was suggested that if we switch to catch limits, permit tracking may become irrelevant; instead, how much catch one person controls is more pertinent. Staff asked if there would have to be restrictions on when stacking and leasing could take place so NMFS could monitor the ownership cap. However, if it is limited to before the start of the fishing year there would have to be some sort of hardship clause in case a vessel sinks later in the year for example. It was also recommended that the original ownership clause be revisited, and if possible change to 5% of allocation or catch – compared to 5% of permits because permits vary in what they are allowed to catch (full-time, part-time and occasional).

Stacking and leasing took up most of the day and one Committee member voiced concern that the amendment is getting bogged down with alternatives related to capacity and other issues and has not spent any time on the primary objective of this action: development of ACLs. Another member suggested that the PDT may want to prioritize work on ACLs over work in response to the turtle biological opinion because those measures do not need to be developed until 2009. *Staff will work on timelines with NMFS and report back to the Committee/Council on what should be completed when.*

- ***IFQs***

Ms. Boelke explained that most AP members felt that development of IFQs would delay the amendment. The Committee did not move to remove this alternative so it will remain in the amendment.

- ***Convert open area DAS to access area management***

Next the Committee discussed the alternative that would convert open area DAS into access area trips in "open areas". This alternative needs more development still and may be moved to the ACL section because it does not address efficiency and capacity directly. But, time has not been spent yet on this alternative in detail because the question has come up that it may be an allocation of quota, which would trigger new MSA requirements such as a 2/3 referenda and required cost recovery program. Legal counsel replied that it depends on how the measure is ultimately designed – if it guarantees a specific amount of fish as defined as an overall TAC, it probably is a TAC (i.e. if it looks and sounds like a duck, it probably is a duck). But, if the allocation is 4 trips at 18,000 lbs and you can take it or not without compensation trips for example, then it is probably not an IFQ. Another Committee member asked if it would not qualify as an IFQ if we are just modifying the pre-existing rotational management program that

DRAFT

already includes making up for broken trips. The reply was that no referendum was required when the LA fleet was first allocated access area trips and DAS, so although it would simply be an adjustment of how open areas are managed, it is probably now subject to the new requirements. An audience member said that it's important to keep this option open, but perhaps look at different rules for them, like no broken trip provisions, 9000 lb trips, 1 open area DAS, for example. Ultimately, before the Committee spends more time on this alternative they requested more legal clarification.

Request legal clarification whether an adjustment to an existing program developed pre-MSRA triggers a referendum and 3% cost recovery requirement for IFQs.

• *General Category Measures*

The Committee considered several suggestions by the AP about existing alternatives for this section as well as several new ideas that came up at the AP meeting.

Allocation of IFQ by Area (3.4.2.2)

Ms. Boelke explained that the AP advises that this alternative be eliminated from the Amendment. The original people who supported this approach now think it should be removed. **The Committee agreed by consensus that this be removed from Amendment 15.**

Consideration of GC Sector Applications (3.4.2.3)

CCHFA are planning on including a specific sector application in this Amendment and will work with staff to provide the necessary information when needed.

Modification of the GC Possession Limit (3.4.2.4)

Advisors agreed to leave this in. It was asked if there are options for this other than 1000 lbs and if that was sufficient for analysis. Staff response was that something lower may be justified, but we said 1000 lbs to allow flexibility for the Council – they can pick any possession limit within that range.

Separation of YTF quota by LA and LAGC fisheries

Ms. Boelke explained that the advisors requested that this alternative be considered in A15 or FW21. A Committee member said that they do not want to consider forwarding this option because NMFS has already told the Council they are unable to monitor it because the allowable bycatch limit would likely be very low for the LAGC fishery so it would automatically shut down. **By consensus, the Committee agreed not to include this in A15 or FW21 because it is not manageable, and do not support adding this to the list of frameworkable items.**

Switching gears once qualified for an LAGC permit

Ms. Boelke explained that the AP requested that the Committee consider some restriction for trawl use in the LAGC fishery. There is concern that some LAGC vessels are switching to nets to target smaller scallops, thus having more impacts on scallop mortality. It was discussed that gear restrictions are a frameworkable item so this could be addressed in FW21. At first the Committee discussed that a vessel should be limited to the gear type they qualified with: if it was dredge they would have to remain dredge, and if it was trawl they could switch to dredge, but dredge vessels could not switch to trawl gear. Rather than go back to determine what gear the vessel used to catch it's qualifying pounds, it was suggested that it be linked to whatever gear type they got their initial LAGC permit with. But it was pointed out that currently there is no gear endorsement with a LAGC permit; applications have been listing several gear types to keep their options open and perhaps a framework action could restrict them to picking one gear type. It was mentioned that this gear issue has been exacerbated by the appeals process because vessel owners keep appealing a permit rejection so that they can keep fishing. However, it was voiced that most of these vessels will likely be out of the fishery when the appeals process is done so at least the majority of this problem will be relatively short term.

- ***Modifications to the RSA program***

The Committee considered AP input on RSA alternatives and made some adjustments. First, it was suggested that Alternative 3.4.4.4 (convert DAS to pounds in open areas) seems straightforward and should remain in the document – **and the Committee supports by consensus adding a value of 1 million pounds as recommended by the AP. It is understood that this value could be changed in the future by framework (increased or decreased). It was also suggested that language be added to Alternative 3.4.4.7 that if the Council supports converting % to pounds, that poundage amounts could be applied to this alternative as well.**

The Committee discussed the recommendation to remove Alternative 3.4.4.8.4 – Rollover of unused RSA TAC to Observer set aside program. One Committee member said that there have been complaints that there is not enough TAC for the observer set-aside program so if there is unused research TAC why not use it. Staff pointed out that the AP was in favor of rolling unused TAC into research instead of observer coverage and to date the full observer set-aside has not been exhausted – the concern has been that the compensation rate is set too low. Ultimately, the Committee did not act on removing the alternative, so it remains in the document.

Alternative 3.4.4.10 (increase public input of RSA review process) – one audience member spoke in favor of this alternative and suggested that more specific ideas need to be explored for this topic. In addition, the entire review process should be examined more closely before it is continued because there are concerns about the process. In addition, there were additional suggestions for measures that should be added to Alternative 3.4.4.11 (regulations from which RSA projects are exempt) (i.e. use of a second dredge). Staff responded that this suggestion could be added and more ideas could potentially be added later in the process as well, so long as there is time to analyze potential impacts of those measures being exempt from RSA projects.

There was a request by the public to include a summary of what has been gained by the RSA program to date in terms of projects funded, final reports etc. Staff explained that type of information is intended to be included in the FEIS at some point.

- ***Possible Change of the Fishing Year to May 1***

Staff summarized some pros and cons that have been raised about this issue over the years. One Committee member voiced concern about changing the fishing year to May 1 in conjunction with measures implemented due to the turtle BiOp. If the fishing year opens May 1, but immediately closes due to stipulations in the BiOp, we will seriously impact when people can fish and alter the fishery. An audience member asked why everything had to be changed to fit with the GF FMP – is there anything special about the May 1 start date for that fishery – maybe moving that start date would cause fewer impacts. He suggested that the Council should not just assume that all FMPs need to move to May 1 because that the GF FMP start date. Another suggested a compromise of April 1. And another offered January 1 – so that all plans could be on the same timeline for ACLs.

Related to fishing year start dates, an audience member asked if there can be a rollover of closed area trips in addition to DAS. In light of the turtle BiOp there may be more of a need to provide more flexibility into future fishing years if access areas are closed for several months at a time. Staff replied that any rollover measures will be difficult to fit in with ACL management; it may force the ACL to be more precautionary because there is more uncertainty about catch levels by year if rollovers are permitted. It was also clarified that the FMP does already include a provision for taking the rest of a broken trip in the first 60 days of the next fishing year if that area is open the following year.

Correspondence

Six letters of correspondence came in since the last Committee meeting. Some were related to A15 and some were related to other subjects. The Committee reviewed each; only one created an action item.

The first letter was from James Fletcher asking if starfish can be harvested under EFH authority. Specifically can it be argued that harvesting starfish would be altering EFH to increase scallop production. Legal counsel responded that it is not clear exactly what the question is, but the authority of the EFH mandate under MSA is to minimize impacts on EFH, not increase productivity of fishery resources.

Two letters came in from CCHFA with some information about their sector application and other general category issues that were addressed during discussion of LAGC measures under development in A15.

One letter came in from Dan Georgianna from SMAST requesting the Committee consider tabling measures to lease, stack or implement IFQs until more is known about potential impacts and there is more widespread support from the industry.

A letter came in from GOMRI in support of several measures under development for improvements to the RSA program in A15.

Lastly, Fisheries Survival Fund (FSF) sent a letter to the Committee requesting that the Council write a letter to the NEFSC requesting an analysis of YT observer data used in monitoring the incidental catch TAC in access areas. This group has requested data from the observer program to better understand how YT bycatch levels are estimated, but NMFS is unable to provide the full data requested, specifically position data. The concerns raised in the letter are that: 1) observers may be estimating the YT bycatch, not actually counting or measuring the bycatch, which is necessary to conduct all the analyses recommended; 2) observers may be inaccurately estimating the scallop catch by estimating the catch volume and inaccurately converting to meat weight; 3) a vessel with an observer may potentially behave differently from vessels without an observer (shift area fished); and 4) there are also concerns about how the data is analyzed and expanded. Another concern noted was the affect of outliers on the catch projections and a comparison of observed and unobserved trips (from VMS data) in terms of fishing locations, CPUE, meat count, etc. It was suggested that all of these issues could impact how the TAC is monitored and used to close the access area. The letter notes that some improvements seem to have been made since 2006 the last time this was raised to the Council level, but FSF would like to confirm that through an analysis.

It was pointed out by an audience member that issues raised in the FSF letter are precisely what the SBRM Amendment could have done (and should have). He argued that if the SBRM had been stronger, these types of issues and analyses would have already been completed. He went further to say we should suggest looking beyond YT to bycatch estimates of other species as well. A last question by another audience member was if there is a way for the scallop industry to lease GF DAS or pounds so that bycatch (like YTF) does not count against bycatch quotas.

By consensus, the Committee agreed to take this issue to the full Council: send a letter to Nancy Thompson from the SC CMTE/Council that requests the NEFSC conducts an analysis comparing 2006 and 2008 observer data and how that data was used for YT monitoring. Specifically, how is volume converted into lbs, was there an improvement from 06 to 08 concerning how an observer estimates bycatch (count/measure), fish behavior impacts, how data is extrapolated, etc.

Other Business

It was raised by an audience member that there is concern that general category vessels are getting LOAs under appeal for a LAGC permit that clearly did not have a permit before November 1, 2008. The speaker was under the impression from the A11 process that those appeals were going to be taken care of relatively quickly because it is clear cut whether or not a vessel had a permit before the control date. The speaker asked what the affect of vessels under appeal has had on the quarterly TAC for 2008. NMFS responded that the final report has come out for March-May and the TAC was exceeded by about 20,000 lbs over the Q1 TAC. That amount will be removed from Q3, as stipulated by A11. The results for Q2 TAC are not available yet.