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Scallop Committee Meeting
September 7, 2010
Radisson Airport Hotel, Warwick, RI

Committee members in attendance: David Pierce (Chair), Rick Robins, Mary Beth Tooley, Mark Alexander, Dave Preble, Rodney Avila, Jim Fair, Rip Cunningham, Erling Berg, Hannah Goodale (designee for Pat Kurkul).

NMFS Staff: Peter Christopher, Emily Bryant, Gene Martin.

NEFMC Staff: Deirdre Boelke, Jessica Melgey, Demet Haksever.

There were about 20 people in the audience.

Purpose of Meeting: Review summaries of public hearings and written comments on Amendment 15, review PDT response to memo from Committee Chair, and discuss outstanding A15 issues including consideration of an alternative to update the overfishing definition with results from the recent stock assessment (SAW50).

Summary of A15 Public Hearings and Written Comments

Staff presented a summary of the comments on alternatives in Amendment 15 voiced at public hearings and received in written form. All comments submitted were made available to the public at the meeting today. Written comments were extensive and very detailed, so Staff tried to pull out comments that highlighted sections of the document that needed work and clarification by the Committee. Most comments focused on the stacking and leasing alternatives in the DEIS. There was strong opposition to the stacking/leasing alternatives, but 15-20 comments did support stacking and or leasing. There was support for the ACL flow chart and AMs, with some concerns and needs for clarification. General category input was mixed, so it is difficult to summarize what the public is in favor of. Support for opening the EFH closed areas was nearly unanimous, as was opposition to changing the fishing year.

Review of PDT Response to Memo from Scallop Chairman

Staff presented the response from the PDT which includes answers to questions raised by the Committee after the last meeting. These are subjects that will affect and inform both A15 and FW22. The first questions had to do with the estimates of LPUE in the fishery. LPUE is difficult to summarize because there is a large range and reporting an average often causes people surprise because one vessel may fish much higher or lower than the average. A Committee member was surprised that open area LPUE was actually higher than access area LPUE in 2009, and while Staff did not analyze the direct cause of this, it is likely at least partially due to low biomass in ET access area.

A member of the audience feels that the LPUE metric is not the best way to evaluate what is going on with the fishery. In his opinion, biomass is being underestimated in shallow areas due to problems with the survey dredge on that type of bottom. Landings were high in 2009, but they were high-grading, so catch was actually much higher than reported (need to see observed trips). Scientists are underestimating meat weight:shell height and that also plays into the

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equation. He feels that 9.5 lbs per bushel compared to 7 makes a big difference in estimating F, etc. as well as high-grading. There is a real need to get a handle on open area biomass especially in shallower areas, because scallops are much more prevalent in shallow waters (20-40 fm) than they used to be. Another member of the audience also feels that something is missing from the LPUE data. The meat count data from the South is part of this – if smaller meat weights are used biomass will be underestimated. He feels we are looking at pounds when we should be looking at numbers of individuals. Staff responded that the PDT does look at the dealer weigh-out data on landings by size class and it is used in economic analyses as well as biomass calculations. Another audience member asked if small areas cannot be estimated accurately, how do we think we can accurately predict large area biomass? People know that there are problems with the shell height:meat weight relationship. The updated LPUE value accounts for the increased catch from what was expected based on projections. The implication of these numbers is that we have lower DAS with the same catch. It was then asked if lower DAS will be accounted for in future allocations and whether LPUE increases are considered a function of increased biomass or increased efficiency. The PDT believes that it is a combination of things, but higher biomass is definitely a part of it. An audience member said LPUE is not reflective of the real situation; open area landings have been off by as much as 75% in past. Someone else pointed out that open area DAS have a crew limit and therefore it's not efficiency, but the high density of the resource driving these values.

Several questions in the memo are more focused on A15 issues including how the uncertainty regarding LPUE will affect the stacking and leasing alternatives. One Committee member pointed out that a major concern with stacking is that if efficiency increases all vessels will have to “pay” in the form of future DAS reductions if the fishery later exceeds their sub-ACL. He asked if the idea of only having vessels that stack have reduced DAS in future years was even contemplated, if it was shown that their increased efficiency is what lead to excess landings. Staff responded that neither the Committee nor the PDT ever discussed that as an option. A Committee member asked if increased trip length is an assumption used in the FPA model because there has been indication that trip length may increase (larger boats being built with larger refrigeration capacity, etc.) to 20 days or more. Staff responded that the FPA model does not assume 20-day trips or any specific trip length. The examples that are used to show the impacts of flexibility on LPUE assumed varying trip lengths with a maximum trip length of 12 days (for illustrative purposes only). The Committee member then asked for verification that the basis of the FPA is all of the matched landing records that match dealer reports for all vessels, and Staff responded yes, not 100% of the trips but definitely a large enough data set to base assumptions on. An audience member asked how this would impact the LAGC fleet if overages are occurring based on error in LPUE. Staff responded that impacts on the LAGC fleet from the FPA alternatives should be minimal. A member of the audience argued that he was not confident that NMFS would be able to administer all the various FPAs and mortality adjustments, instead the Committee may want to just change a flat tax of 5 DAS or something if a vessel wants to stack – a onetime change and be done with it.

Another part of the memo asked if a higher mortality adjustment for stacking/leasing should be selected because the recent stock assessment determined we are close to the overfishing

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threshold. The PDT responded that addressing risk of overfishing should be done in the upcoming FW, not in A15. But that being said, picking a higher percentage for the mortality adjustment is more risk averse. A Committee member pointed out that only 1/3 of the fleet has upgraded, and more may do so. This could mean that increases in LPUE can still be expected based on newer boats being added to the fleet. Staff responded that the risk of increased efficiency is incorporated into the plan – in the management uncertainty buffer – but it is true that source of uncertainty may be a greater source of increased efficiency than stacking/leasing.

Another question the memo asked is about the break point at which the mortality tax outweighs the benefit of stacking. This number is quite high because there will be a large cost savings from stacking and leasing; the adjustment would have to be as much as 35% or more before profits are zero. Several members of the audience were threatened by this discussion and felt that because we cannot predict whether it will be conservation neutral it is an action based solely on economic savings and thus a violation of national standard 5. They feel the brunt of the cost will be borne by crew and there will be substantial job losses, and that these fears voiced by those unsupportive of the change are supported by the social impact analysis literature review done by Dr. Julie Olsen in Amendment 15 (Section 5.5.2). One Committee member pointed out that this break point would be lower with leasing since savings are less with leasing compared to stacking. However, it was pointed out that leasing is complicated because if a permit is put in CPH and effort leased from their savings are higher, and if a vessel leases its scallop effort but increases effort in other fisheries, additional revenue may result in that situation. The take home message from this analysis is that 11% does not seem to be anywhere near the breakpoint for stacking or leasing.

Several questions at the end of the memo focused on the model overall used for identifying the adjustments and one Committee member noted that there is not much risk based on the results of the model. Specifically, the results show that the model is comprehensive in identifying sources of risk and since the confidence intervals are so tight, there is statistically little risk. Therefore, he has confidence in the adjustment values it produces in terms of reducing the risk of increased efficiency from stacking/leasing.

Discussion and Clarification of Outstanding Amendment 15 issues

Staff reviewed a document with about 18 issues that were identified during the public hearing process that need more clarity.

Issues under Objective 1 – ACLs and AMs

Several comments were received regarding the potential for overages in the LA fishery to affect the LAGC allocation. The EIS can be expanded to be clearer about how the flow chart works, and there is need for what happens in future years to be included. Staff reviewed Doc 5b and detailed the way AMs will work in the event of overages between the fleets. AMs are a pound for pound payback by fleet, so it is more likely that public concern is centered on how future allocations will be affected by overages. A Committee member pointed out that if ABC/OFL is exceeded, the overage is still going to be tied back to the LA fleet in the following year. Another

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asked, if LA puts the fishery into overfishing status, would that affect both fleets? And the response was that there is a very small chance that an overage is so extreme that it causes a change in the stock status. Staff added that it may not even be possible for an overage of open area catch to cause the entire fishery to exceed the OFL because there is such a large buffer between projected open area catch and the OFL. For example, in 2010 it was estimated that open area catch would be 22 million pounds, and the ABC for that year was 65 million pounds and about 80 million for OFL. It was further noted that projections have been improved and thus such gross overages are less likely. The Regional Office noted that 'hypotheticals' for all alternatives would be helpful for the next meeting. Staff will work with RO on this. An audience member asked, if the Council decided to go with the disclaimer option, how would LAGC be affected and it would also be useful to see a hypothetical example that integrates the disclaimer so the Council can better understand how that would work. Lastly, another audience member said with all the talk about punishment, what about a reward if there is under-fishing due to weather, etc? Staff responded that it is not a guaranteed allocation, so no, but the biomass would remain out there, so arguably future allocations would be higher. Overall, after the explanation of how ACLs and AMs would work, the Committee felt more confident with the flowchart and they are satisfied that concerns have been addressed, namely the general category fishery is protected from LA overages.

Comments called for clarification of the YT 'reachback' provision, and the following motion was made:

Motion 1 (Avila/Cunningham): the Committee include an alternative in A15 to allow an adjustment in 2011 for any overages in the scallop YT flounder subcomponent in 2010 if the overall annual catch limit for YT flounder is exceeded in 2010. The specific measure will be the same measure adopted as the YT AM in A15 for future years.

It was noted that some of the yellowtail AMs are not pound for pound, they are closures, so isn't this meaningless in some options?

A member of the audience noted that one of the area closures (SNE area) shuts down the fishery for him and 12 people his organization represents (within the gen cat). They only harvest 6% of the total scallop catch, so how could shutting them out of the fishery make a difference in total YT catch. He argued again that general category vessels should be exempt from YT AMs.

Vote: 7:0:2, motion carries.

For LA DAS adjustments for scallop and or YT AMs, will partial DAS be allocated, or will we round up or down? The RO noted that partial DAS is not a problem in terms of monitoring, and the following motion was made:

Motion 2 (Preble/Robins): If AMs are triggered, and DAS reduction is selected, partial DAS would be allocated (no rounding).

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There was comment that if some things are rounded and some are not, the math will change, and also the same concerns with general category AMs.

Vote: 9:0:0, motion carries.

In terms of monitoring scallop and YT ACLs, the RO says it's more difficult to monitor in-season options as opposed to looking back, and suggestions from RO regarding monitoring are included in the letter.

Right now vessels are required to report scallops kept and yellowtail caught. The letter from the agency suggests that all species kept be reported (i.e. winter flounder, fluke, etc.). This was a suggestion made by the Center to get a better idea of what comes up on unobserved trips.

A member of the audience said comparing YT to overall biomass caught doesn't make sense when you can only keep yellowtail and maybe monkfish. Reporting stock area fished would be asking us to pre-declare and fish in only one area – this is unacceptable. Others said we already report YT stock area, changing areas is already reported, and landings and discards are already reported. RO Staff said that's all on VTR reports which are monthly, but the reason why these need to be clarified is because the Amendment includes real-time closures of areas. We will need a timely monitoring program if real-time closures are chosen. The Committee Chair said we can confront this when the alternative is chosen. Another Committee member said if in-season options are selected, real-time monitoring should be adopted. The PDT will seek industry input on this.

AMs will never be in place right at the start of the fishing year, but that was the original intent/hope. Minor changes in the document would help to clarify this, and Staff will make these.

Issues under Objective 3: Incorporating the change in overfishing definition from SAW50 is needed. **The Committee by consensus adopted the suggestion to update the overfishing definition to include Fmsy and Bmsy instead of their proxies (Fmax and Bmax) because this represents the best available science.**

A Committee member who will not be at the Committee meeting for choosing alternatives on September 23 asked to raise the issue of stacking next. The Committee member said that in general he supports increased efficiency and less government footprint; but the volume of public concern about stacking means concerns him. He believes it introduces inequality in fishing opportunity. He said the adjustments will help, but it is unknown if they will continue to do the job year to year. Overall the adjustments are micromanaging the fishery, and he thinks that is a bad idea. The written comments against stacking must sense it is unfair, so maybe it is. The Committee Chair allowed another member to make a point against this argument to keep the discussion balanced. Another Committee member said that in his opinion, the volume of public comments and analysis mandates that we need to be sure we have the proper FPA in

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place that is risk averse, and effective monitoring to safeguard equities between all stakeholders. In his opinion, by having the PDT monitor efficiency and make adjustments on a regular basis will ensure that opportunities are equitable.

The Committee returned to the list of unresolved issues, and started with de-stacking.

Motion 4 (Tooley/): If permits are de-stacked they could only be placed on an active scallop vessel or a permit in CPH. **Motion fails for lack of a second** because there was worry that such a motion would preclude upgrades.

Motion 5 (Alexander/Tooley): If a permit is de-stacked, the permit can only be placed on an active LA scallop vessel already in the fishery OR IT'S REPLACEMENT/UPGRADE. The permit may be placed in CPH until such transfer can occur.

The Committee went around and around on this issue. Some wanted to clarify that upgrades/replacements would not be precluded if de-stacking occurs, and others wanted to clarify that scallop permits should never go on a vessel not already in the scallop fishery. A member of the audience opposed that idea, arguing that it should not matter where the permit goes; as long as the baseline is the same why should current scallop vessels be the only ones that can have scallop permits. NOAA General Counsel argued that alternatives cannot be overly restrictive, and should not dictate that future partnerships are required – once a permit is stacked it can only be stacked with another permit. Is the Committee saying that once a permit is stacked that permit can never be individual again? Others argued to prohibit de-stacking and make it more final; vessels know what they are getting into and working through all the de-stacking issues will be challenging.

Vote: 2:5:2, motion fails.

Motion 6 (Avila/Cunningham): Move Option 1 – allow de-stacking – under alternative 3.3.2.4 to the considered but rejected section. **Motion withdrawn without objection.** The Committee discussed that the agenda for this meeting did not say the Committee would be identifying preferred alternatives, and if this alternative is rejected, it de-facto identifies a prohibition on de-stacking if stacking is selected.

The Committee made two more motions related to de-stacking. The first was related to potential impacts on other fisheries from stacking. One Committee recalled that their options are limited legally, but based on public comment the Council should consider something to prevent increased effort in other fisheries. The second motion had to do with catch history of stacked permit, in terms of how history would be divided if permits later de-stack.

Motion 7 (Cunningham/Avila): Recommend that the LA permits for fisheries other than scallops be held dormant for the second permit while a scallop permit is stacked.

Vote: 7:0:2, motion passes.

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Motion 8 (Cunningham/Tooley): If permits are de-stacked, catch history should be applied 50/50 to each permit stacked for the time period the permits were stacked on one vessel.

One Committee member felt history should stay with the vessel that earned it. A member of the audience suggested that SAFIS is a permit-driven system, so boats must log by permit anyway. Could the individual decide which permit gets the history per trip? NMFS does not think the system could currently support that.

Vote 7:0:2, motion carried

The end of the day was approaching and the Committee identified a few remaining issues they felt could be resolved relatively quickly. Two motions were made and both passed.

Motion 9 (Robins/Tooley): The values for both fishing power and mortality adjustments can be adjusted by FW action. The PDT would evaluate the effectiveness of these adjustments in the regular framework process.

Vote 7:0:1.

Motion 10 (Goodale/Fair): If leasing is adopted in A15 catch history goes to the lessee and DAS usage history goes to the lessor. Leasing should be on an annual basis.

Vote: 6:1:1.

A member of the audience asked if this holds true for access area trips and staff responded yes. One Committee member pointed out that this is the opposite of how some public comment voiced history should be calculated.

Other Business

Two Committee members will not be at the meeting to select preferred alternatives. Both of them had the chance to voice their opinions on the stacking alternative so the rest of the Committee and public were aware of their thoughts on this part of the amendment to date. Echoing earlier comments, the second said that he is also a supporter of the concept of stacking, but is skeptical of doing it now in this amendment. He feels we are not ready to take this step and we need to think about some way of putting this on hold for this amendment and getting it right when we actually do try to put it in place. He believes the PDT did good work and there were good discussions about the issues, but the public comments received confirm his feeling that we are not ready and it is too important that it be done right.