



New England Fishery Management Council Scallop Oversight Committee Meeting Summary

Tuesday, March 20, 2007 – Radisson – Warwick, RI

Attendance:

Committee Members: David Simpson (Chair), Dennis Spitsbergen (vice-Chair), Hannah Goodale (designee for Pat Kurkul), Terry Stockwell, Dana Rice, Rip Cunningham, Jim Salisbury and Rodney Avila, Michelle Peabody (not present).

Council Staff: Deirdre Boelke and Demet Haksever

NMFS Staff: Peter Christopher and **NOAA General Counsel:** Gene Martin

There were about 40 members of the public present at the meeting.

David Simpson reviewed the agenda and purpose of meeting. The primary purpose was to review Amendment 11 and identify preferred alternatives for the Council to consider in April. The Committee also discussed development of measures to improve the observer set-aside program in Framework 19 and the need to initiate Framework 20 to prevent overfishing in 2007.

Several announcements were made. First, Peter Christopher informed the Committee that the Elephant Trunk Area closed to general category effort on March 15 because the allocation of fleetwide trips had been taken. A total of 865 trips were allocated and approximately 890 were taken before March 15 (two weeks after the area opened on March 1). About 139 vessels participated in the access program; 124 of them were general category vessels and 15 limited access vessels took approximately 52 trips fishing outside DAS and under general category rules (about 17% of total trips). Deirdre Boelke informed the Committee that Scallop Amendment 13 was submitted to NMFS as approved at the February Council meeting and the Notice of Availability was published on March 19. This action will provide a mechanism for industry to fund observers through the set-aside program. Ms. Boelke also announced that a new reference document was published related to estimated loggerhead turtle bycatch for scallop trawl gear (Murray, 2007). Ms. Boelke then ran through the meeting materials.

Mr. Simpson started the discussion of Amendment 11 by summarizing the main purpose and need for action. He also paraphrased the vision statement defined by the Council to help keep the Committee focused on identifying preferred alternatives that would be in line with the vision statement. The first decision the Committee tackled was allocation of scallop catch between limited access and general category fisheries. Ms. Boelke summarized relevant sections of the DSEIS and reviewed input from the advisory panel meeting that was held the previous day. The breakdown of landings between the two fisheries since 1994 were presented and the range currently in the document is 2.5 to 11% for the general category fishery.

Motion 1: Spitsbergen/Cunningham: Select 5% as preferred for Alternative 3.1.7.

The maker of the motion explained that the intent of the general category fishery when it was created in Amendment 4 was to be relatively small compared to the limited access fishery. It has grown over time and that should be recognized. The seconder of the motion added that 5% seems like a reasonable place to start if you look at the average of the last few years.

**Motion to amend: Stockwell/Rice:
Select 7% as preferred for Alternative 3.1.7**

Several other Committee members voiced that 7% would be more reasonable to stay in line with the vision statement to provide opportunity for participants from smaller coastal communities in this region. While this fishery may have started as a supplemental fishery, it has changed and in the last few years it has become more directed, and some vessels have become dependent on it. So if there is an opportunity to “spread the wealth” around and not adversely impact limited access vessels the Council should consider it.

Several members of the audience commented on the amended motion. One noted that the fishery is highly cyclic, and in recent years when general category landings have increased are the same years that there have been concentrated scallops near shore. He added that those scallops are gone now and identifying a percent based on those “boom” years would be a mistake and difficult to sustain. He added that the Council needs to remember that many of these general category vessels have other permits so they have other options compared to the limited access fishery. Another noted that it is very challenging to develop a plan for diverse components of the same fishery; in addition, total scallop catch fluctuates. Rather than allocating a high percent to the fishery overall, it may be more advantageous to address access to this resource through other alternatives in the document such as the NGOM program. On the other hand, another commented that the Council should not feel it has to “keep” the fishery as a supplemental income fishery. He added that Amendment 4 notes that depending on resource condition the general category fishery could include supplemental fishing and directed effort. Regardless, he commented that the fishery has evolved and this resource has increased more than anyone imagined, it has enabled both the general category and limited access fisheries to expand and flourish. He added that if the general category vessels were permitted to fish in access areas since 1999, then the percent of landings from that sector would have been higher in earlier years as well. Another commenter added that general category landings would have probably been higher in earlier years except limited access vessels were permitted to deckload and come in the demarcation line so inshore areas were fished down and it was less attractive for general category vessels. Another commented that the Council needs to remember that the control date was put in for a reason; the Council recognized the increased growth in 2004, and in his opinion the lack of management since that control date has caused high dependence on scallops for many general category vessels in recent years. Another added that there are going to be winners and losers in this action; there is no way to get around that in a limited entry program.

Vote: 3:4:1, motion failed (Chair voted to break tie).

Back to main motion:

Select 5% as preferred for Alternative 3.1.7.

Vote: 6:0:1, motion passed

The Committee moved on to Decision 2 – should capacity and mortality in the general category fishery be addressed by limited entry, hard TAC, or No Action? Ms. Boelke reviewed input from the advisory panel meeting on this decision and relevant analyses in the DSEIS. The advisors did not support No Action, or hard-TAC; they believe limited entry should be the preferred alternative. In general the analyses in the DSEIS also support limited entry as the preferred strategy to address capacity and mortality in the general category fishery.

Motion 2: Stockwell/Avila

Recommend Limited Entry as a preferred strategy to control capacity and mortality in the general category fishery.

Vote: 7:0:0, motion passed

The Committee then discussed who should qualify. Ms. Boelke summarized the different qualification alternatives and the various analyses of those alternatives. The general category advisors forwarded a preferred alternative of 5,000 annual pounds during the 5 year qualification time period (FY2000 through the control date).

Motion 3: Cunningham/

Identify 3.1.2.2.2 as preferred for qualification years (FY2000-control date) and 3.1.2.1.3 for 5,000 pound criteria as the landings criteria.

Motion failed - Lack of a second.

In general the Committee voiced that this alternative was too restrictive and would eliminate diversity of the general category fleet. One member commented that he could support a more restrictive alternative if he could be assured the NGOM alternative would also be recommended to provide reduced access to the resource in that area. The Committee then discussed the longer time series as an option as well as a lower poundage criterion. Several motions and friendly amendments were made during the discussion. Some comments from the audience included that 5,000 pounds is not as restrictive as people think; he argued that poundage signifies a level of dependence without being too restrictive. Another commenter opposed the longer time series because vessels that qualify in the earlier years and not since 2000 are not in the fishery any longer and do not rely on scallops for their income. Going back to 1994 in his opinion would take care of vessels that scalloped incidentally ten years ago and at the expense of people that depend on the fishery now, and vessels not fishing for scallops now would likely sell their permits anyway. However, in general the Committee voiced that a longer time period and lower poundage criterion would support a more diverse fishery of both more directed and supplemental participants, as the vision statement specifies.

Motion 4: Avila/Spitsbergen

Identify 3.1.2.2.2 as preferred for qualification years (FY2000-control date) and 3.1.2.1.2 for 1,000 pound criteria as the landings criteria.

Motion to amend: Salisbury/Rice

To identify the 11 year time period (1994-2004) and the 1,000 annual poundage criteria as preferred for qualification alternatives. (*Originally had 5,000 pounds, but a friendly amendment was made to change 5,000 to 1,000*)

Vote: 4: 1: 2, motion passed

Main motion: vote: 6: 0: 1, motion passed

Next staff summarized the discussion at the advisory panel meeting and analyses related to the contribution factor alternatives (best year and best year indexed by years active in the fishery). The advisors were split on this issue; one noted that Amendment 11 is going to reduce access to the fishery for more directed participants and the index alternative would reduce the “sting” for participants that have been in the fishery for longer. Another advisor suggested that so far all the alternatives are going out of their way to accommodate vessels that are not currently dependent

on the fishery, and using the best year alternative would be the most fair alternative. The Committee discussed the best year index option and Option B (multiplier of 25%) was selected because it gives more weight to vessels with longevity in the fishery. Ms. Goodale suggested that the document clarify that determining if a vessel was in the fishery for the index alternative means the vessel had to have a federal general category permit.

Motion 5: Cunningham/Spitsbergen

Preferred alternative for contribution factor be best year indexed by years in the fishery with Option B (25%).

Vote: 6:0:1, motion passed

Next the Committee discussed how access should be allocated to qualifying vessels. Ms. Boelke summarized the discussion from the general category advisory panel meeting as well as the analyses in the document comparing the individual allocation alternatives, ITQs, and hard-TAC alternatives. The advisors support individual allocation in pounds (Option A). Several members of the audience and Committee members commented on the pros and cons of allocating in pounds. Arguments were made about monitoring concerns of allocation in pounds. On the other hand several audience members suggested that individual allocation in pounds provides the most flexibility; it does not put this diverse fleet into broad tiers increasing impacts on vessels in the upper bounds of each tier. Mr. Rice expressed concern that there could be unintended consequences of individual allocation in pounds. Mr. Simpson asked the agency if allocation in pounds would be very difficult to implement with all the data quality issues that have been identified. Ms. Goodale responded that verifying more years of landings is more complex, but if that is the strategy the Council wants the agency will take the project on. Staff from NOAA General Counsel reminded the Committee that under both the SFA and reauthorized Magnuson Act of 2007 the agency is mandated to collect up to 3% of ex-vessel value of landed product to cover actual costs directly related to enforcement and management of an individual fishing quota program ([Section 7](#) of the Sustainable Fisheries Act of 1996). He explained that individual allocation in trips is not under the same requirement because allocation of trips (even with a 400 pound possession limit) is NOT and individual fishing quota; allocation in trips is not a guaranteed amount of fish.

Motion 6: Cunningham/Avila

Under allocation method alternatives select Alternative 3.1.2.4.1 - Individual allocation with Option A (allocation in pounds) as the preferred alternative.

Vote: 2:3:3 – motion failed (Chair voted)

The Committee decided to break for lunch and would discuss identifying a preferred allocation strategy when the meeting resumed. Several Committee members voiced that the allocation method is complex in order to accommodate both small periodic vessels as well as more directed, year-round effort. Therefore, the Committee then discussed the two permit (full-time and part-time) alternative and the tier system alternative that would include different permits for different levels of participation. Both of these options however have impacts on some vessels. For example, under the two permit system the analysis shows that there are vessels that have historically landed over 200 pounds per trip that would only qualify for the 200 pound permit. Furthermore, under the tier system, all vessels in each tier would be allocated an equal allocation in pounds or trips. Therefore, some vessels would be brought down and some vessels would be allocated more than their historical participation. Some members of the audience commented that the three tier system would be more straight forward, but others commented that the impacts

on individual vessels would be substantial depending on where that vessel falls within a tier. In order to reduce those distributional impacts the Committee discussed the possibility of an alternative with more tiers as a compromise between individual allocation and the three tier alternative. For example, adding one or two tiers above 20,000 would create a tier of more directed vessels with high dependence on the fishery.

Motion 7: Spitsbergen/Stockwell

Add another alternative to section 3.1.2.4 that would include more tiers (up to five) with different historical landing criteria (Direct staff to identify appropriate tiers and present at the April Council meeting). Access could be allocated in either Option A and B.

Vote: 3:3: motion failed

The Committee revisited the individual allocation alternative, not satisfied with the three tier or two permit type alternatives in the document. The Committee did not voice support for the hard-TAC alternatives or the stand alone alternatives (ITQ and hard-TAC). The Committee recognized that some vessels do not land up to the possession limit and allocation in trips would not be preferable for those vessels, but individual allocation in pounds does not seem promising at this time.

Motion 8: Cunningham/Salisbury

To identify alternative 3.1.2.4.1 with option B (allocation in 400 pound trips) as preferred for allocation of access for general category limited access qualifiers.

Vote: 5:1:0, motion passed

The Committee moved onto permit provisions for a limited entry permit. Staff explained that most of this section is the same as approved in the Consistency Amendment, so is similar to other limited entry programs in the region. However, there are a few different alternatives being considered. First, it was raised during scoping that there are individuals that have sold their vessel but retained their general category scallop history. There is an alternative in the document that would enable that individual to qualify for a permit. Second, to identify the stacking up to 60,000 pounds or 150 trips alternative as preferred. Last, the percent ownership restriction of 1-5% with the change in language of the alternative from “permits” to “access”. The Committee also discussed a pre-qualification process that could be added to the amendment including advice from the Council in terms of how the agency could pre qualify vessels. The Committee asked staff to work with the agency to write up what a pre-qualification process could be and include it for the Council to consider in April.

Motion 9: Cunningham/Salisbury

Identify several permit provision alternatives as preferred: one vessel potentially qualifying two vessels, the 60,000 stacking alternatives, and the excess consolidation alternative (1-5% changing the term permits to access)

Vote: 6:0:1, motion passed

The Committee discussed the measures to reduce the incentive to use trawl gear. The advisors made a recommendation about how to improve one of the alternatives. The Committee did not include that change and did not identify any of the alternatives as preferred.

In the interest of time the Committee decided to discuss at least two more issues related to Amendment 11 preferred alternatives (NGOM alternatives and limited access fishing under

general category). The Committee first discussed the NGOM alternatives. The Committee had several questions about the limited entry NGOM alternative. Of note: a vessel cannot have both permits, once the TAC is reached for the area the area closes for all scallop fishing (general category and limited access), the TAC would be based on historical landings for now and the PDT recommends that amount be reduced by a certain value (i.e. 20%) to prevent overfishing and because many of the areas in federal waters where scallop fishing occurred in the past are currently in closed areas. Mr. Stockwell added that the State of Maine is in the process of securing funds for assessment of nearshore waters in the GOM and they are also trying to work with other states on assessing the resource in that area. Mr. Stockwell made a motion with the southern boundary (Option B) as preferred because that is where the federal stock assessment boundary is and to recognize that this opportunity should be for vessels that fished under general category from other states in Northern New England, not just Maine. It was noted that the larger the area is the faster the TAC may be reached because it would be potentially more attractive for more vessels to participate and would include fishing grounds with more abundant scallop grounds (i.e. east of Cape Anne).

Motion 10: Stockwell/Salisbury

Alternative 3.1.4.3 as preferred with Option A as the boundary alternative (GOM exemption area north of 42 20).

Vote: 6:0:1

Next the Committee discussed limited access fishing privileges under general category. Staff explained the analyses of these alternatives and input from the advisors. The advisors agreed that it would be appropriate for vessels that qualify under the same criteria to continue to have access to this fishery, and those landings should not be included in the general category TAC. Overall the Committee agreed with this principle. Staff noted that the language in the alternative for allocation of quota to limited access vessels under general category is not consistent with new data for landings under this category. The language in the alternative suggests that the level should be about 0.5% based on historical landings since 1994, but updated data has a value closer to 1.12%. The Committee discussed this for some time and rather than base this allocation on an average of landings from previous years, it was decided that identifying 0.5% as a policy decision may be more appropriate. That percentage is closer to what the percent of total landings has been in recent years. The Committee clarified that this amount is not a mathematical derivation of historical landings, it is a policy recommendation.

Motion 11: Salisbury/Rice

Select as a preferred alternative (Alternative 3.1.6.1.2) to allow limited access vessels that qualify to fish under general category rules (all permit types).

They would qualify under the same criteria and be allocated access to the fishery under the same alternatives adopted for the general category fishery.

As for where the landings are removed, 0.5% of the total scallop TAC will be used to identify the level of access for this sector of the fishery. (0.5% is not based on historical landings from 1994-2006 as currently described in Alternative 3.1.6.2.2).

Vote: 6:0:1

The Committee did not have time to identify preferred alternatives for all the decisions in Amendment 11. Furthermore, there was not time to take input from the public on additional alternatives that could be considered in Amendment 11. Instead the Committee switched gears to discuss the need to initiate Framework 20. Staff explained the background and need for

action. In summary, there is a timing issue with measures implemented under the emergency action to reduce ETA trips to prevent overfishing in FY2007 and the end of the scallop fishing year. Emergency action was taken in December 2006 to prevent overfishing. As requested by the Council, NMFS reduced the number of trips in the Elephant Trunk Area for all permit categories, delayed the opening until March 1, and prevented deckloading from the area. That action can only be extended for two 180-day periods (Dec06-June 07 and June07-Dec07). If it is extended for a second 180-day period through December 2007, after that date status quo measures implemented under Framework 18 would revert back for the last two months of fishing year 2007 (January and February 2008). So in order to prevent overfishing for the entire fishing year, the Council may consider initiating a framework to extend the measures implemented by emergency action through March 1, 2008. Staff added that the PDT is supportive of this action, especially since access into ETA for general category vessels is a fleetwide allocation, and since it would be allocated for January 1, the chance of those trips being taken in FY2007 is very high.

Motion 12: Cunningham/Stockwell

Recommend that the Council initiate FW20 at the April Council meeting to prevent overfishing in FY2007.

Vote: 7:0:0, motion passed

Before the Committee broke for the day Mr. Spitsbergen suggested they consider the two motions under other business from the advisory panel meeting the previous day. First there was a motion related to research on turtle bycatch. By consensus the Committee agreed to forward the following statement to the full Council in April. *Suggest that the Council request that the NEFSC remain the lead on ecosystem research including research on protected resources in this ecosystem, rather than those issues being tasked to another science center (i.e. the Southeast Science Center).*

The second issue discussed by the advisors under other business was related to access areas and the EFH closures in place under both the Multispecies and Scallop FMPs as a result of the FW16 lawsuit settlement. It was discussed that the current rotational program is adversely impacted by the habitat closed areas and the system needs to be more flexible. The Committee heard testimony from Dr. William DuPaul, a member of the Scallop PDT and researcher that has recently surveyed the access areas. He informed the Committee of recent discussions at the PDT level that Closed Area I (as reduced by the FW16 settlement) can only support one more access trip in the near future (opening in June 2007). He reported that the biomass in the reduced area will not support another access area trip under FW19 (FY2008 and FY2009) unless the area reverts back to what it was under FW16. He added that biomass in all access areas are going down and recruitment is down. Because the southern part of Closed Area I is off the table, access will be in areas that are less optimal (i.e. Closed Area II or Nantucket Lightship). Staff explained that the analysis used in Framework 16 is complete, but whether that can be added to Amendment 11 should be discussed at the Council meeting. One member of the audience suggested that while analyses was complete to support making the habitat areas consistent in the two FMPs under Framework 16, that may not be sufficient now and should be updated. For example, dynamics in the fishery have changed and new information about impacts of fishing gear are going to be available; he suggested the Council should wait to address habitat closed areas in Phase II of the EFH Omnibus Amendment. Furthermore, Ms. Goodale suggested that Amendment 11 was supposed to be focused on general category issues and the Council did not want to put other issues in the amendment, especially this late in the game.

Motion 13: Avila/Rice

If the analyses is complete and available, and does not slow down Amendment 11, then the Committee would recommend that the habitat closed area in Closed Area I be revisited as an alternative in Amendment 11.

Vote: 5:1:0, motion passed

Very quickly staff reviewed input from the advisors on potential observer set-aside alternatives for Framework 19. A handful of ideas were discussed, but they all need more development. An individual from one of the observer service provider companies explained that they are available to work with the Council and industry to identify ways to potentially improve the system.