

Appendix IV

Written Public Comments on  
Amendment 15



## Amendment 15 DEIS Written Public Comments

Comment #	Sender
1	Gary Tyler (Maryland DNR)
2	Mayor Scott Lang, City of New Bedford
3	Jeffrey Pike, Scallop Capacity Reduction Coalition
4	Arthur Ochse
5	Cameron S. Miele
6	Andy Mays
7	Paul Weckesser
8	Harriet Didriksen (115+ similar letters submitted - see separate table for names)
9	William Costigan, Chieftan Scallop Company
10	Ray Starvish
11	Thomas Coley
12	Gail Isaksen
13	A member of the industry
14	Chad Maguire, Carkez Fisheries
15	C.H. Maguire, Carkez Fisheries
16	Denis Lovgren
17	Joseph Gilbert
18	Robert Wassell
19	Hank Lakner
20	James Lovgren
21	John Cole, Fishermen's Dock Cooperative
22	Michael Marchetti
23	Curtis Truex
24	Roy Enoksen, Nordic Fisheries
25	Dan Farnham, Blue Water Fisheries Inc.
26	Curtis Spalding, U.S. EPA
27	Dick Grachek, referenced letter by Meghan Lapp
28	Robert Maxwell (20+ similar letters submitted - see separate table for names)
29	Ray Starvish (second comment)
30	Kathleen and David Wilhelmsen, Admiral Inc.
31	Kieth Lauderman
32	Carrie Kennedy, Maryland DNR
33	Ronald Enoksen, Future Fisheries
34	Andrew Raddant, U.S. DOI
35	Pat Kurkul, NMFS
36	James Kendall, New Bedford Seafood Consulting
37	Harriet Didriksen (second comment)
38	Petition - 14 individuals
39	Harvey Mickelson, Mickelson Barnet P.C.
40	Greg DiDominico, Garden State Seafood
41	Paul Yarmosh

- 42 Brian Yarmosh
- 43 Rep. Christopher Smith (NJ)
- 44 Priscilla B. Wells
- 45 Arnold Leo, Town of East Hampton Fisheries Committee
- 46 Tom Dempsey, Cape Cod Commercial Hook Fishermen's Association
- 47 John Wood
- 48 Peter Anthony, Future Fisheries
- 49 William E. Nelson, B&C Scallop Company
- 50 Jeffrey Reichle, Lunds Fisheries
- 51 James Gutowski
- 52 Jeffrey Pike (Second Comment)
- 53 Stephen Ouellette, Ouellette & Smith
- 54 Sigurd Johannesen
- 55 Fisheries Survival Fund, Kelley Drye & Warren LLP
- 56 M. Silver
- 57 Gib Brogan, Oceana
- 58 Peter Hughs, Atlantic Capes Fisheries
- 59 Jack Morris
- 60 Ray Starvish Jr.
- 61 David Wiscott
- 62 Frank O'Hara, O'Hara Corporation
- 63 James Fletcher
- 64 Tim Harper

**LATE COMMENTS RECEIVED AFTER AUGUST 23, 2010 DEADLINE**

- 65 Steve Zevitas, Edgar Seafood Products
- 66 Sigurd Johannesen, Warrior Fuels (second comment)

Similar comments to original letter submitted by Harriet Didriksen (Comment #8)

First Name	Last Name	Company	Vessel
1	<i>signature</i>	Dictator, Inc.	DICTATOR
2	Todd Curtis	Dictator, Inc.	DICTATOR
3	William McMahon	Dictator, Inc.	DICTATOR
4	Ricky Captain	Dictator, Inc.	DICTATOR
5	Mark LeClair	Dictator, Inc.	DICTATOR
6	Tim Harper	Dictator, Inc.	DICTATOR
7	<i>signature</i>	New Bedford Ship Supply	
8	Michael Parry	New Bedford Ship Supply	
9	<i>signature</i>	New Bedford Ship Supply	
10	Jose Costa	New Bedford Ship Supply	
11	<i>signature</i>	New Bedford Ship Supply	
12	Peter F. Knight	New Bedford Ship Supply	
13	Jose Aquier	New Bedford Ship Supply	
14	Justin Miles	New Bedford Ship Supply	
15	Matthew DaRocha	New Bedford Ship Supply	
16	Harriet Didriksen	Frontier Fishing Corp.	SETTLER
17	Gary Hatch	G.L. Hatch Inc.	SHEARWATER
18	Gary Hatch	Galley Hatch Fisheries	CAROL ANN
19	Gloria Britton	G.L. Hatch Inc.	SHEARWATER
20	John F. Myers Jr.	G.L. Hatch Inc.	SHEARWATER
21	Jessica C. Wagner	G.L. Hatch Inc.	SHEARWATER
22	Betty Davis	G.L. Hatch Inc.	SHEARWATER
23	<i>signature</i>	G.L. Hatch Inc.	SHEARWATER
24	Chuck Wagner	G.L. Hatch Inc.	SHEARWATER
25	Steve Dowd, Jr.	G.L. Hatch Inc.	SHEARWATER
26	Tara Haff...	G.L. Hatch Inc.	SHEARWATER
27	George Myers, Sr.	G.L. Hatch Inc.	SHEARWATER
28	Mya Haskell	G.L. Hatch Inc.	SHEARWATER
29	Daniel Batchford	G.L. Hatch Inc.	SHEARWATER
30	Joanne Campbell	G.L. Hatch Inc.	SHEARWATER
31	Janice St...	G.L. Hatch Inc.	SHEARWATER
32	Alan Bragg	G.L. Hatch Inc.	SHEARWATER
33	Edward Welch	E&J Scallop Corp.	WESTPORT
34	Christopher Cassidy		CHIEF CLYDE, WARRIOR
35	Rigoberto Gomez		CHIEF CLYDE, WARRIOR
36	Curtis Misiaszek		THE CHIEF, STARDUST
37	Bon Dang		THE CHIEF, STARDUST
38	Thomas Nichols		THE CHIEF, STARDUST
39	James D. Carney		THE CHIEF, STARDUST
40	Anthony Winchenbach		THE CHIEF, STARDUST
41	Eric Parcia		THE CHIEF, STARDUST
42	Steve Medeiros		CHIEF CLYDE
43	Jose Vega	Leon W. Vona, Inc.	NANCY ELIZABETH
44	Robert Copson	Leon W. Vona, Inc.	NANCY ELIZABETH
45	Jay Bruce Hill Jr.	Leon W. Vona, Inc.	NANCY ELIZABETH
46	Reys Garcia	Leon W. Vona, Inc.	NANCY ELIZABETH
47	Leon Vona	Leon W. Vona, Inc.	NANCY ELIZABETH

48 Timothy	Manley	Boat Mary Ann, Inc.	MARY ANNE
49 Jonathan R.	Wright	Expedition Fishing	DONNY C
50 John F.	Cardarelli	Jenlee Fisheries, Inc.	JENNA LEE
51 Arthur A.	Ochse	Trawler Dianne and Maureen Inc.	CHRISTIAN & ALEXA
52 Joestsien	Mjolfhus		SANDRA JANE
			MISS GEORGIE, AMANDA ASHLEY, HELEN LOUISE
53 Forest	Williams		
		Michigan Fishing Co., MI Fishing Inc., J&M Fishing	SANDRA JANE, CONTENDER, CONCORDIA
54 Malvin	Kvilhaug		ENDURANCE
55 Armando	Estudante	SAI Fisheries, Inc.	
56 Marc	Lareau		
57 Michael	Amarante	Shoreside Marine Electrical	
58 John R.	Mitchell	Challenge Fisheries	BELLA ROSE, SOVEREIGN STAR
59 Peter T.	Benson V		BELLA ROSE
60 Daniel	Tichon	Raiders Corp., Patriots Corp.	RAIDERS, PATRIOTS
61 John	Martin	Suzee Q LLC	SUZEE Q
62 John	Martin	Crystal & Katie LLC	CRYSTAL & KATIE
63 Michael	Ireland	Misty Seas, Inc.	FORTUNE HUNTER
64 Russell J.	Paiva	T & R Fishing Inc.	INDEPENDENCE
65 J. Brett	Mitchell		BELLA ROSE, SOVEREIGN STAR
66 Charlie M.	Lopes, Jr.	Fishing Vessel Columbia, Inc., Brian Marder	COLUMBIA
67 Michael	Hill Jr.	Hill Enterprises Inc. of NJ	TINA LYNN
68 David	Hickman	David Hickman	GOLDEN NUGGETT
69 Pat	Kavanagh	Kavanagh Fisheries	ATLANTIC
70 Owen	Smith	OAJ Inc.	RELENTLESS
71 James	Harris	Trawler Abracadabra, Inc.	ABRACADABRA
72 John	Fernandez III	Ian Nigel, Inc	IAN NIGEL
73 Frank	Patania	Boat Santa Rita II, Inc.	LINDA
74 Brian	Kvilhaug	Michigan Fishing/Brian Kvilhaug	CONTENDER, CONCORDIA
75 Lisa	Weckesser	Mass Contracting & Construction	
76 Paul	Weckesser	Mass Fabricating & Welding	
77 Paul	Weckesser	Mass Fishing Corp.	MISS LESLIE
78 Paul	Weckesser	Miss Shauna LLC	MISS SHAUNA
79 Paul	Weckesser	Mirage Fishing	MIRAGE
80 Daniel	Wood		
81 Donald	Price		
82 Ray	Soto		
83 Jay	Elsner		
84 Antonio S.	R.....	Miss Shauna LLC	MISS SHAUNA
85 Chad	Almeida	Miss Shauna LLC	MISS SHAUNA
86 <i>signature</i>			MISS SHAUNA
87 <i>signature</i>			MISS SHAUNA
88 Antonio	Alvernaz	Hunter Scalloping Co.	HUNTER
89 Antonio	Alvernaz	Kathryn Marie Scalloping Co.	KATHRYN MARIE
90 <i>signature</i>			SANTA BARBARA
91 <i>signature</i>			SANTA BARBARA
92 <i>signature</i>			SANTA BARBARA
93 <i>signature</i>			SANTA BARBARA
94 <i>signature</i>			SANTA BARBARA

95	<i>signature</i>		SANTA BARBARA
96	Joseph	Swift	Crystal Ice Co.
97	Randall	Martin Jr.	Harbor Hydraulics Machine
98	John P.	Ulricksen	Harbor Hydraulics Machine
99	Jens P.	Ulricksen	Harbor Hydraulics Machine
100	Aaron	Feener	Beth Anne Fishing, S&F Fishing
101	John	Gonsalves	Arnies Fisheries, Inc.
102	Paul	Rosonina	Arnies Fisheries, Inc.
103	Jose P.	Santos	Arnies Fisheries, Inc.
104	Tony	Melo	Arnies Fisheries, Inc.
105	Nen	Chow	Arnies Fisheries, Inc.
106	Donald	Rosonina	Arnies Fisheries, Inc.
107	Jarry E.	Shervo	Arnies Fisheries, Inc.
108	Abel G.	Arauso	Kathy Jackie Fishing Corp.
109	Jose	Gaspar	Kathy Jackie Fishing Corp.
110	Jose	Barboza	Kathy Jackie Fishing Corp.
111	Jonathan	Bergeron	Kathy Jackie Fishing Corp.
112	Humberto	Bolorinto	Kathy Jackie Fishing Corp.
113	Christopher	Ajayo	Kathy Jackie Fishing Corp.
114	Andrew	Stanley	Kathy Jackie Fishing Corp.
115	Christina	Rosonina	Kathy Jackie Fishing Corp.
116	Manuel	Vieira	Guidance Fishing Corp. Hunter Scalloping, Kathryn Marie Scalloping Co.
117	Antonio	Alvernaz	HUNTER & KATHRYN MARIE
118	Arnold	DeMello	Arnies Fisheries, Inc., AJ Scalloping, Inc.
119	Cheryl	Correia	AJ Scalloping, Inc.
120	Mark	Bergeron	Kathy & Jackie Fishing Corp.
121	Antonio	Pacheco	Predator Fisheries, Inc.
122	Mark	Bergeron	Sovereign Star Fishing Inc.
123	Joao	Saores Jr.	Christina & Sandra Fishing Corp.
124	Edward	Welch	E&J Scallop Corp.
125	Terje	Tonnessen	Bronco Inc., Sam Tonnessen Thor Fishing Corp., Gabriel, Ellen and Jeff Skaar
126	Jeffrey	Skaar	THOR
127	Christopher	Simbajon	THOR
128	Gabriel	Nerbonne	THOR
129	Joseph	DiMello	THOR
130	Mike	DiMello	THOR
131	LE	Khay	
132	Kiet	Tran	
133	Dona	Trunka	
134	<i>signature</i>		Oneante Fishing
135	Safero	Paijan	Leon W. Vona, Inc.
136	D... Y.	S....	Leon W. Vona, Inc.
137	Adrian	Nietz	
138	Donald P.	Sawyer	
139	Robert	Smith	
140	John	Fernandez III	Beachcomber Inc.
141	John	Fernandez III	WWJT, Inc.
			RESILIENT
			NANCY ELIZABETH
			NANCY ELIZABETH
			BELLA ROSE
			BELLA ROSE
			BELLA ROSE
			BEACHCOMBER
			CAPTAIN LYMAN

142 Paul Weckesser W Trading, Inc.

143 *signature*

144 *signature*

145 *signature*

146 Donald Calnan F/V MAJESTIC INC

MISS SHAUNA

MISS SHAUNA

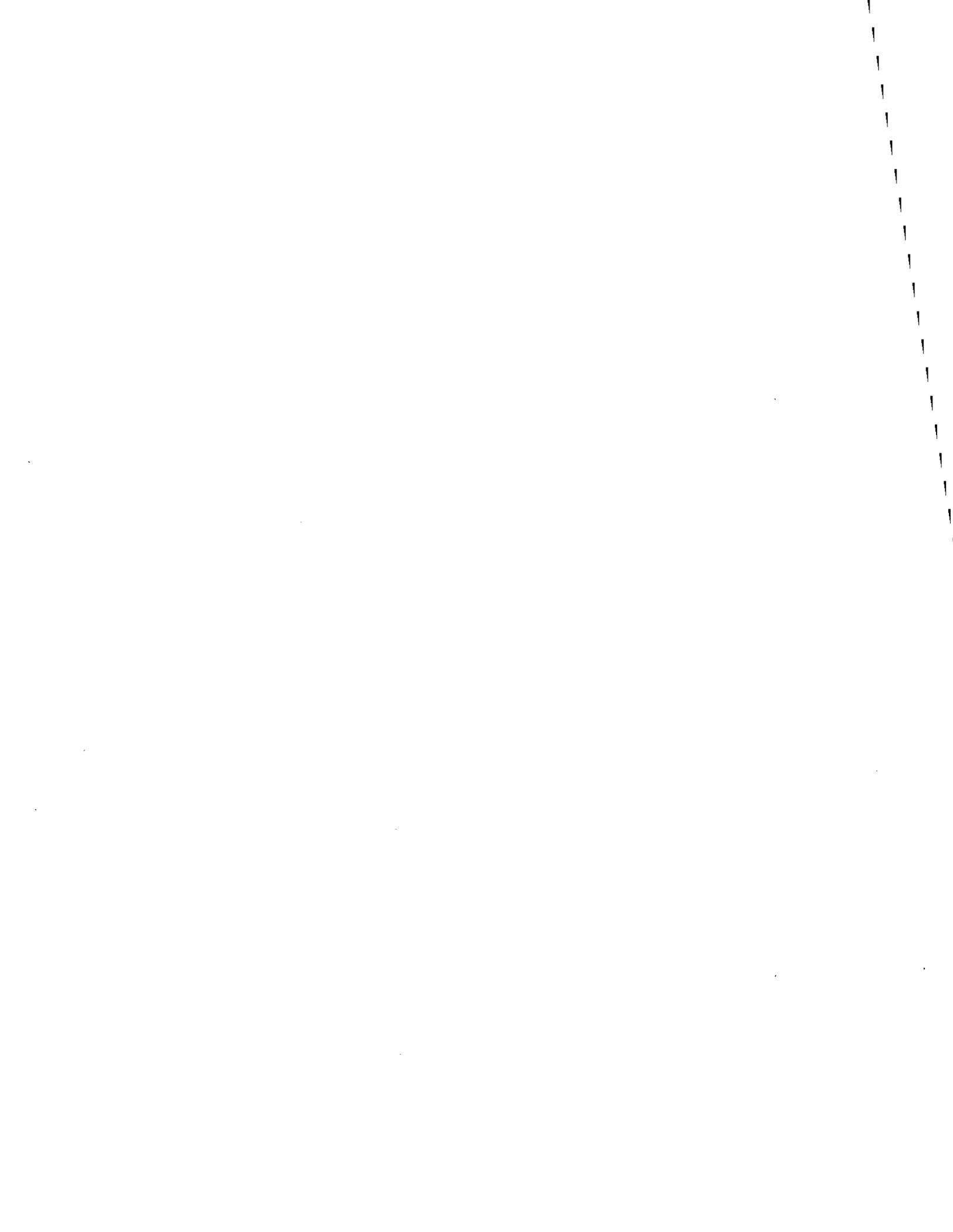
SANTA BARBARA

MAJESTIC

**Similar comments to original letter submitted by Robert Maxwell (Comment #28)**

(Note that individuals have included various suggestions for possible gen cat possession limit - not all the same)

- 1 James. D. Elliott
- 2 Harold Meyers
- 3 Michael Green (3 form letters)
- 4 Nascimento Ruela
- 5 Virgilio Ruela
- 6 Hans Myklebust
- 7 Marc Vitolo
- 8 James Gutowski
- 9 James Mears
- 10 Curtis Truex (second comment)
- 11 Debra Maxwell
- 12 Jason Meyers
- 13 Edward Eckert (2 form letters)
- 14 Randal Trinkka
- 15 James Meyers
- 16 Peter Benya
- 17 Carl Jansen
- 18 Robert Brewster (2 form letters)
- 19 Timothy Brindley
- 20 Keith Larson
- 21 Kieth Lauderman



#1

**Deirdre Boelke**

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**From:** Tyler, Gary [GTyler@dnr.state.md.us]

**Sent:** Friday, July 09, 2010 11:35 AM

**To:** 'amendment15@noaa.gov'

**Cc:** Kennedy, Carrie; Willey, Angel

**Subject:** scallops comment

I am a fisheries biologist in Maryland. I get constant complaints from scallop fishermen about the amount of summer flounder that is wasted in the scallop fishery in the mid-Atlantic. I have been told that this last winter they were working ground off of Ocean City, Maryland and the dredge came up with stinking and putrefying summer flounder carcasses where they were working from all the flounder they had throw over dead. From what I understand there is little observer coverage in this fleet. The area where they work locally is the overwintering area for summer flounder in this region in the winter and spring.

The amount of mortality of summer flounder is so large that that I believe it actually affects the stock of summer flounder. This has been going on for years now and the mortality of summer flounder is unacceptably high from this harvest method. I think that like yellowtail flounder, that summer flounder should have to be retained and accounted for in this amendment and by the fishery.

Steve Doctor  
Fisheries Biologist  
Maryland DNR  
410-213-1531  
12917 Harbor Rd  
Ocean City, Maryland 21842



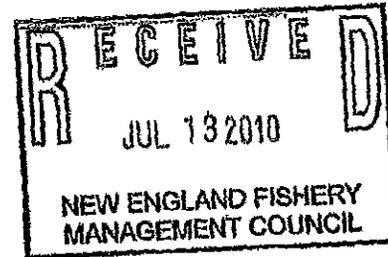


**CITY OF NEW BEDFORD**

**SCOTT W. LANG, MAYOR**

July 13, 2010

John W. Pappalardo, Chairman  
Paul Howard, Executive Director  
New England Fisheries Management Council 50  
Water Street, Mill 2  
Newburyport, MA 01950



Dear Mr. Pappalardo and Mr. Howard,

As Mayor of New Bedford and the nation's number one fishing port, I write to you today to put forth important considerations as you make decisions regarding the management of New England fisheries and Amendment 15. New Bedford is a full service port with hundreds of businesses that support commercial fishing. The industry creates a \$1 billion economic impact and employs over 4,000 people. The jobs as well as the tax base the businesses provide to the City are significantly impacted by each management decision made by the New England Fisheries Management Council (NEFMC).

The scallop industry represents one of New Bedford's key industries making us the top value fishing port and employing thousands. According to a study performed by Daniel Georgianna, Chancellor Professor of Economics for the University of Massachusetts School of Marine Science and Technology, from a regional perspective, the scallop industry in 2009 generated \$1,041M in sales, \$473M in income and employed 5,277 people (Source: Short Term Economic Impacts of Scallop Framework 21). This same study illustrates that the resource is not overfished. The very face of this, calls into question Amendment 15 and the NEFMC move toward capacity reduction via a strategy of stacking/leasing limited access scallop permits. Given the tremendous economic contribution of this industry to New Bedford and our region and the fact the resource is not overfished, it is only prudent that the NEFMC implement the following before adopting Amendment 15:

1. *Comply with National Rule Number 8 and implement a more comprehensive assessment of the socio-economic impacts on New Bedford, the number one US scallop fishing port, and other impacted fishing communities*
  - o There needs to be a comprehensive assessment of the entire fishing community including housing, education, taxes, unemployment, etc.
  - o The City of New Bedford unemployment fluctuates from 9% - 15% during the recession and cannot absorb additional job losses
2. *Call for a Referendum*
  - o Make this an industry decision and call for an industry wide vote
  - o Although a vote for stacking/leasing of permits is not mandated by Magnuson, there is precedent; 16 US Code 1853 calls for a 2/3<sup>rd</sup> vote for ITQs and IFQs

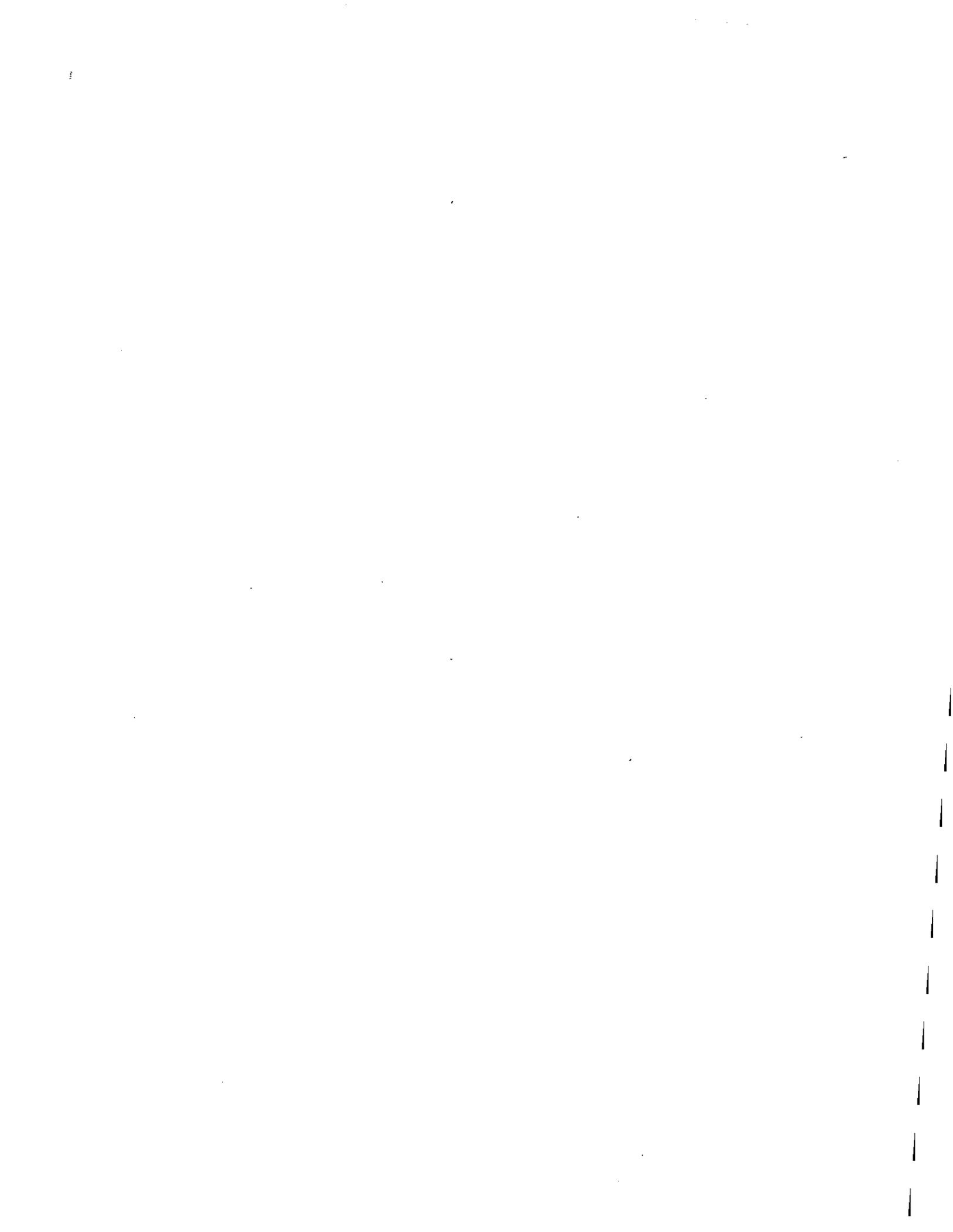
NEFMC's management plans impact our employment, our economy, our infrastructure, and our fishermen and their families. I urge you to work with fishermen, research institutions and Port communities to effect change in the system that makes conservation and economic sense. Thank you for your consideration.

Sincerely,

Scott W. Lang  
Mayor

not'd @ 7/13 public hearing Fairhaven

#2





#3

July 19, 2010

Ms. Patricia Kurkul, Regional Administrator  
Northeast Regional Office, National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
55 Great Republic Drive  
Gloucester, MA 01930

RE: Comments on Scallop Amendment 15

Dear Administrator Kurkul:

I am writing on behalf of the Scallop Capacity Reduction Coalition (Coalition) to provide comments on Scallop Amendment 15. The Coalition is a group of scallop vessel owners representing about 100 limited access permits from Maine to New Jersey. The Coalition was formed for the specific purpose of reducing excess fishing capacities in the sea scallop fishery. As such, these comments will be restricted to the stacking and leasing sections of A15.

### 3.3 Measures to Address Excess Capacity in the LA Scallop Fishery

No one can deny there is excess harvesting capacity in the limited access sea scallop fishery. Section 312(b)(6) of the Magnuson-Stevens Act requires the Secretary of Commerce to submit a report to the Congress that identifies the 20 fisheries in the United States with the most severe examples of excess harvesting capacity. The most recent report sent to Congress by the National Marine Fisheries Service identified the Atlantic sea scallop fishery as having the highest overcapacity rate of any fishery in the nation (67%). A high overcapacity rate means that the fleet has the ability to harvest much more than the annual quota. Today a full-time limited access scallop vessel fishes approximately 80 days a year and is tied to the dock the other 285 days. Appropriately, the NEFMC identified the need to address excess capacity as a priority of A15. *The Coalition strongly supports rationalization of the scallop fishery—reducing harvesting capacity to more closely match resource productivity—and believes that the suite of voluntary stacking and leasing measures included in A15 can result in capacity reduction at no cost to the government.*

In addition to reducing the fleet size, an effective capacity reduction program will provide other industry wide benefits such as:

- Creating new opportunities for single vessel owners to increase fishing activity through leasing trips or DAS instead of purchasing an entire vessel and permit;
- Upgrading the fleet profile. Good boats from which permits were stacked will be cycled through the fleet resulting in the retirement of older vessels and improving overall safety;
- Reducing port congestion;
- Softening the impacts of derby fishing in closed areas due to the reduction in vessels and improving safety in those areas; and,
- For the first time ever, providing all vessel owners an opportunity to receive income from leased trips or DAS in the event of a catastrophic incident to his fishing vessel.

To be clear, stacking and leasing can form the basis for an effective capacity reduction program but only if the program is attractive to vessel owners. From the beginning, our members have supported a "conservation neutral" program so that vessel owners that did not stack/lease would not be disadvantaged. The Coalition has always supported a fair stacking/leasing program, but not one that penalizes vessel owners with excessive taxes on DAS leased/stacked and the imposition of undue restrictions. In the development of A15, opponents of stacking/leasing have consistently supported measures that would create disincentives and penalties on those owners that participate in voluntary capacity reduction. They understand and frankly hope that the Council will include significant restrictions and penalties on stacking/leasing to make the program unattractive to vessel owners resulting in continued overcapacity.

### 3.3.2.1 Restrict Stacking to Two Permits Only

*The Coalition supports this measure restricting the number of permits that may be stacked on one vessel to two.* Even though all our vessels are fully capable of fishing the allocation of three stacked limited access permits (80 days/year x 3= approximately 240 days/year), our members felt that this could disadvantage those boats that don't stack. This measure would also allow stacking of two unlike permits (categories 2 through 9) as well as unlike baselines. We believe this flexibility is critical to an effective program because of the multiple permit categories and vessel baselines.

*We strongly support the proposal that each stacked permit retain its individual identity.*

The DEIS (p.84) identifies a problem that may arise when a LA scallop permit with other limited access permit is stacked from a smaller vessel onto a larger vessel and the other limited access permits have different baseline restrictions. We disagree that the stacked vessel would be required to permanently relinquish the other limited access as a result of stacking. Instead, because the two scallop permits on the stacked vessel retain their individual identity, any other limited access permits assigned to the stacked permit could be put in CPH while stacked or they could be considered inactive. In other words, if as a result of stacking, the stacked permit with other limited access permits is assigned to a scallop vessel that exceeds the vessel replacement criteria for the other limited access permits, those permits would be considered inactive (not relinquished) while stacked on the larger vessel. We do not want other limited access fisheries to be negatively impacted as a result of stacking in the scallop fishery; however, we do not believe scallop vessel owners who stack should be disadvantaged by forfeiting other limited access permits for which they qualified. An alternative approach is to authorize permit splitting of those other limited access permits and allow the scallop vessel owner to sell those permits as opposed to relinquishing them.

### 3.3.2.2-3.3.2.2.1 Fishing Power Adjustment (FPA) for Stacking Permits

*The Coalition supports a power adjustment for stacked permits when appropriate to avoid increasing capacity relative to the entire fleet.* We understand the FPA only applies to DAS allocations for the open areas, but open area catch constituted approximately 40% of total scallop landings in 2007 (DEIS p.166) and continues to be a very important component of the overall vessel allocation.

The Council designated this measure as a Preferred Alternative "so that landings will not increase as a result of stacking" (DEIS p. 85). The basis for the Council decision was a production model designed to estimate fishing power per vessel based on historical data. This model examined landings per DAS or LPUE for different categories (sizes) of vessels. The model demonstrated that a DAS transfer—either through stacking or leasing—from a small vessel to a large vessel would increase LPUE and overall scallop landings. What the model doesn't reflect is the changes that are already occurring in the fishery under the current rules and the concomitant increase in LPUE or landings. In other words, the model looked at the

effects of stacking/leasing DAS in a vacuum and did not consider the changes that have occurred and will continue to occur under the present rules.

Consider that since 1994 LPUE for the limited access scallop fleet has increased steadily (DEIS p. 169). There are a number of factors that have caused this improvement including the health of the resource, management strategy to pursue high LPUE and minimize bottom dredge time and improvements and upgrades in the fleet.

Absent any leasing or stacking the LPUE will likely continue to increase, which is a good thing. We believe that the continual upgrading of vessels has a great deal to do with this trend. NMFS estimates that approximately 1/3 of the current limited access vessels have completed their one-time vessel upgrade allowance meaning that about 2/3 of the fleet could still upgrade their horsepower beyond 10%. Under current rules owners may replace their vessel within the 10:10:20 restrictions meaning that increased performance, efficiency and landings will occur as older vessels are replaced with newer ones. Under current rules and absent stacking/leasing LPUE and landings per DAS can be expected to increase. In other words LPUE can be expected to increase absent any stacking/leasing of DAS. What the production model does not show is a comparison between the expected increase in LPUE occurring under the current upgrade and replacement rules versus an increase in LPUE from stacking/leasing.

We believe that applying a FPA to stacked/leased DAS among vessels within the same replacement criteria unduly penalizes those vessels compared to the rest of the fleet. If the real concern is that permits from small vessels will be stacked on large vessels, then applying a FPA makes sense in those situations. *Consequently, the Coalition supports Alternative 3.3.2.2.3 where permits in the same replacement criteria have no FPA and permits from different categories would be subject to a FPA.* To do so would penalize vessel owners that stacked permits (relative to those that do not but will increase LPUE by upgrading or replacing their vessels) among similar vessels and create a disincentive for reducing capacity through stacking.

#### Mortality Adjustment

The PDT recommended that a second adjustment be applied to all stacked/leased DAS transactions to recognize that LPUE increases when DAS increase. This conclusion was based on "simulation model estimates", not actual performance data from vessels that fished more DAS than the initial DAS allocation awarded to each LA vessel. The simulation model suggests that landings per DAS usage (LPUE) increase as the number of DAS fished increases. In addition the PDT supported a second mortality adjustment because of other factors that could increase LPUE such as the skill of the captain and the crew, the age of the vessel, reduction gear ratio, size and shape of the kort nozzle, etc. (DEIS p. 88).

The Coalition does not agree with these conclusions because we believe the models vastly overstate the benefits and grossly underestimate the costs of stacking/leasing DAS. The DEIS (p. 89) identifies a number of potential reasons why LPUE might increase as a result of stacking/leasing DAS, but most of these are theoretical. For example, one reason is that "it is assumed that DAS will transfer to the boat with more experienced and skillful crew and captain (p. 89)." Yet in the same discussion it is revealed that "three fourths of the boats share the same crew" and that "there might not be significant impacts on LPUE from changing fishing patterns" resulting from stacking/leasing DAS. These two statements are inherently contradictory. Another example of underestimated costs is when there are area closures due to attainment of the YTF TAC. In the past a multi-vessel owner would send two vessels to fish at the same time before an area is closed, but with one stacked vessel that would no longer be possible. While the simulation model and the PDT have recognized the possible increase in

LPUE resulting from stacking/leasing DAS, they have not given enough weight to the risks and lack of flexibility resulting from stacked/leased DAS.

Vessel owners will have to scrutinize the combined impacts of the mortality and fishing power adjustments when considering whether to stack/lease permits and DAS. The Coalition is deeply concerned that the combined impact of the proposed adjustments (loss of DAS) will be too great; that it will disadvantage them compared to other vessel owners and will ultimately not result in capacity reduction. *Consequently, the Coalition supports starting out with the lowest possible mortality adjustment (5%) so as not to discourage capacity reduction.* Since the FPA and mortality adjustments can be changed by a framework action, the Coalition believes the Council and NMFS should review the impacts of stacking/leasing DAS after the first year and if needed change those adjustments (either up or down) depending on what the actual data reveals.

#### 3.3.2.3.2 DAS Carryover Provision for a Vessel with Stacked Permits

This measure would allow a vessel with 2 stacked permits to carry forward up to 20 unused DAS from one fishing year to the next. *The Coalition supports this provision and encourages its inclusion in A15.*

#### 3.3.2.4 Status of Stacked Permits

*The Coalition supports this measure, which would limit the maximum number of permits (2) that can be stacked on a vessel. We also strongly support “de-stacking” under certain conditions and encourage the Council and NMFS to allow stacked permits to be de-stacked in the future.*

Our Coalition understands that unfettered de-stacking could lead to an increase in the number of active vessels at some point in the future and does not support this approach. Rather we support de-stacking but with the requirement that the de-stacked permit may only be assigned to another limited access active scallop vessel (or its replacement) or moved to CPH for leasing purposes. These two conditions would ensure that fishing capacity is not increased through de-stacking while maintaining enough flexibility so as not to discourage vessel owners from stacking.

For vessel owners, stacking limited access scallop permits will be a very difficult and serious issue. A prohibition on de-stacking will obviously create another disincentive to stacking permits and reducing active fishing capacity. For example, an owner of a stacked vessel who wants to sell his boat could have a very difficult time because of the cost. There is a very limited market. If an owner knows that he will be able to de-stack his vessel and sell the permits separately he will be more inclined to stack permits and reduce the number of permitted vessels.

Lastly the DEIS (p. 91) seeks clarification on how catch histories would be dealt with for stacked permits since catch history is based on dealer reports, not tracked at the permit level. To minimize record keeping, the Coalition supports the simple concept that if a stacked permit is de-stacked, the scallop fishing history is evenly split between the two permits for the period of time the permits were stacked.

#### 3.3.2.5 Restrictions on Vessel Upgrades for Vessels That Participate in Stacking

The DEIS identifies 3 alternatives for possible restrictions on vessels that stack permits and later consider upgrading their vessel. Because we are uncertain about the extent to which vessel owners will stack permits due to the uncertainty of the restrictions, it is difficult to determine whether this could be a major issue. *The Coalition supports Option A, which subjects any upgrades on vessels to the 10/10/20 rule.*

### 3.3.3.1 Leasing Open Area DAS

*The Coalition strongly supports leasing because it can provide the greatest amount of flexibility to the greatest number of vessel owners without increasing fishing effort in other directed fisheries. Leasing DAS would allow vessel owners to increase their fishing opportunities without having to purchase an entire additional permit. Vessels could lease one full day or up to double the initial DAS allocation. Leasing also gives vessels owners the opportunity...for the first time ever... to lease out their allocations for whatever reason. In the past if a vessel caught fire or sank, the owner could not recoup any value for the lost DAS and trips. Under the leasing alternative vessel owners would be allowed to receive some compensation for their loss should a vessel catastrophe occur.*

#### 3.3.3.1.1 FPA for Leasing Open Area DAS

*Consistent with our comments on the FPA for stacked DAS, the Coalition supports Option C: No adjustment would be applied if vessels in the same upgrade restriction category, and if vessel are from different categories the same power adjustment from Option A would be applied to lease DAS if vessels are from different categories.*

Vessel owners seeking to lease additional DAS will predictably look to lease DAS that are not discounted by a FPA. If leasing is approved as part of A15, owners will only be able to lease whole day units. However, if as proposed in Option A, a FPA is applied in most leasing instances, owners that lease DAS will receive some portion of a DAS which they will need to monitor. We believe this is far too confusing and the cost of such an approach far outweighs the benefits. Rather, encouraging owners to lease DAS from vessels in the same upgrade category (by not applying the FPA) will greatly simplify the system.

#### 3.3.3.2 Leasing of Access Area Trips

This alternative would allow any limited access vessel to lease one or more access area trips on an annual basis. *The Coalition strongly supports this measure.* Currently vessel owners trade access trips to better accommodate their needs but are not allowed to increase fishing opportunities by adding another access area trip to their vessel. This measure is most likely to help single vessel owners that cannot afford to purchase an entire permit but can afford to lease a trip. Once again, should a vessel experience a catastrophic event, an owner would be allowed to recover some of his losses by leasing out the remaining trips. Since output controls are applied to access areas trips, leasing will not increase landings.

#### 3.3.3.3 Maximum DAS and Access Area Trips That Can Be Leased

*The Coalition agrees that a lessee may lease up to twice the amount of annual allocations of DAS and access area trips, exclusive of carryover DAS from a previous year.*

#### 3.3.3.4 Ownership Cap Provision

*The Coalition supports application of the current 5% ownership cap the amount of leased access trips and DAS that may be leased-in by an owner. However, the Coalition requests that A15 be clarified to ensure that this restriction only applies to leasing-in DAS and access trips and does not limit a 5% owner's ability to lease-out DAS and access trips. This clarification is needed in the event that a vessel of a 5% owner experiences a catastrophe and is unable to utilize its DAS and access trips. That owner should have the ability to lease out those DAS or access trips to another owner. We believe this is consistent with the original intent of the restriction which was ensure that owners did not exceed the 5% ownership cap through leasing.*

#### 3.3.3.5 Leasing Restrictions Options

This section proposes two additional restrictions on leasing based on permit categories. Leasing access trips with the same possession limit (trip limit) regardless of permit category will

have no impact on landings. Similarly if an owner leases an access trip from a vessel in a different permit category and with a higher possession limit, it will not impact landings. *The Coalition supports the leasing of access trips among and between all categories because it will provide the most flexibility to vessel owners.*

If as proposed, a fishing power adjustment and mortality adjustment is applied to leased DAS then a further restriction on leasing DAS within the same permit category is unjustified. *The Coalition does not support either of these two alternatives as they are unnecessary and will only serve to discourage leasing.*

#### 3.3.3.7 Leasing from Vessels in CPH

*This alternative is the single most important ingredient to a successful capacity reduction program and the Coalition very strongly endorses the position that leasing should be allowed from permits in CPH. Obviously for a permit to be placed in CPH, it cannot be assigned to a vessel. Instead of stacking, some owners may prefer to first place the permit in CPH and lease from it. We believe that leasing from CPH has the potential to result in the largest reduction of vessels in the fleet.*

#### 3.3.3.8 Sub-Leasing

*The Coalition supports sub-leasing and encourages the Council and NMFS to approve this measure. Sub-leasing could be particularly important to those vessel owners that leased DAS or access trips at the start of the fishing year and then experienced a vessel catastrophe resulting in the vessel being unable to fish. In such a case, sub-leasing would be the only way in which the lessee could recoup a portion of his investment. Authorizing sub-leasing should encourage leasing overall resulting in further capacity reduction.*

#### 3.3.3.9 Other Provisions for Vessels that Lease

*In light of all the other measures discussed and proposed in the DEIS, these issues have already been dealt with and the Coalition suggests eliminating this alternative as unnecessary.*

### 3.5 Items to be Added to the List of Frameworkable Items in the FMP

#### 3.5.3 Fishing Power and Mortality Adjustments

*The Coalition supports making the fishing power and mortality adjustments frameworkable items. This approach should provide a level of comfort that if in fact the adjustments are too high or too low, the Council can more easily adjust them. The Coalition is concerned, however, about the status of stacked permits and the level of adjustments applied to them in the event of a change. This issue is not addressed in the DEIS and requires further clarification.*

For example, when a permit is stacked onto another vessel, a fishing power adjustment and/or mortality adjustment will likely be applied to the DAS assigned to the stacked permit. The DAS allocated to the stacked permit will be discounted (based on the FPA and mortality adjustment) because of its stacked status. Should the Council and NMFS make changes to the adjustments in a framework action, it is very probable that the annual allocation of DAS assigned to the stacked permit will be too high or too low.

Once a permit is stacked, should the adjustments to DAS become permanent? Vessel owners will be making decisions on stacking permits in large part based on the level of adjustments applied to the DAS. If the adjustments change and stacking no longer makes sense the owner is stuck, particularly if de-stacking is not authorized. On the other hand, if the adjustments are lowered then the DAS on the stacked permit would be discounted more than necessary.

*The Coalition believes that the only fair approach is to make clear in A15 that if the fishing power or mortality adjustments are changed, the annual allocation of DAS assigned to all*

*stacked permits will be similarly adjusted going forward (the following fishing year). Because of this situation, the Coalition reiterates its support for and the need for de-stacking as part of a successful capacity reduction program.*

#### Summary

Members of the Coalition have pursued the ability to stack and lease permits and DAS within the scallop fishery for a number of years because of the continual reduction in fishing opportunities allocated to scallop permits (240 days in 1994 down to approximately 80 days in 2010). It simply makes no sense to perpetuate overcapacity in a fishery where vessels spend 285 days tied to the dock. The Coalition strongly supports the stacking and leasing measures identified in these comments.

Some have argued that stacking and leasing will lead to consolidation. However, the fact is ownership consolidation has been occurring for years under the 5% ownership cap. As indicated in the DEIS (p. 307) the number of single vessel owners is 22% of all limited access permits. In other words, almost 80% of vessel owners are involved in more than one vessel. This 80% of the owners are the ones paying for the current overcapacity in the fishery. Ownership consolidation has already occurred and we do not expect that stacking and leasing will change that!

Some have also suggested that the 22% of vessel owners that only own one vessel will be disadvantaged under stacking and leasing. However, what we have seen over the past half decade under the current management regime is that fleet owners are the ones losing position in the fishery. Indeed, single vessel owners have increased their percentage of scallop landings since 2005 while the percentage of landings from fleet owners has declined.

Capacity reduction achieved through stacking limited access permits or leasing DAS in the scallop fishery will yield many positive benefits. Vessel owners will be able to downsize their fleets and assign more fishing opportunities to individual vessels. Eliminating excess vessels means that owners will avoid the costs of maintenance, repairs, insurance and other costs associated with operating larger fleets. Crews will no longer have to rotate from vessel to vessel, moving gear and equipment among excess boats.

The 22% of single vessel owners will, for the first time, have an opportunity to increase fishing opportunities on their vessels without purchasing another vessel and permit. Clearly, the value of their operations will increase with the ability to stack or lease their permits. In the process of reducing capacity, the oldest and less safe vessels are expected to be filtered out of the fishery. As owners downsize their fleets, other scallop vessel owners will seek to purchase these non-permitted vessels to replace their older vessels. We fully expect that capacity reduction will not only reduce the number of vessels but also decrease the average age of the scallop fleet as the oldest vessels leave the fleet. At the June Council meeting, the U.S. Coast Guard presented their preliminary findings on the relationship between vessel age and safety. Approximately 66% of all scallop vessels are between 21-40 years old, with a large percentage of those vessels over 30 years old.

Just a few days ago, the Nantucket Lightship access area opened to the scallop fleet. The Coast Guard has observed at least 250 scallop vessels fishing in this area at the same time. Fog has created unsafe conditions where rammings and collisions have occurred. This derby-like fishing and unsafe conditions are only exacerbated by excess vessels. Capacity reduction now, through voluntary stacking and leasing, will foster a safer industry and healthier fishing businesses while creating more opportunities for single vessel owners. Acting now to

more closely match harvesting capacity with resource availability will help avoid the very serious problems associated with overcapitalized fisheries.

Sincerely,

Jeffrey R. Pike /obo  
Scallop Capacity Reduction Coalition

#4

**Deirdre Boelke**

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**From:** Amendment15 [Amendment15@noaa.gov]  
**Sent:** Tuesday, July 27, 2010 9:23 AM  
**To:** Deirdre Boelke; Jessica H. Melgey  
**Subject:** [Fwd: Comments on Scallop Amendment 15]

----- Original Message -----  
Subject: Comments on Scallop Amendment 15  
Date: Fri, 23 Jul 2010 00:46:18 +0000 (GMT)  
From: ochse@optonline.net  
To: Amendment15@noaa.gov

Arthur Ochse Jr.

F/V /Christian & Alexa/

2 Muriel Place

Manasquan, NJ 08736

732-233-1309

July 22, 2010

New England Fishery Management Council

50 Water Street, Mill 2

Newburyport, MA 01950

Dear Council Members,

I am writing to object to leasing and stacking of scallop permits as is proposed in Amendment 15 to the Scallop Plan.

First, let me begin by saying that it is wrong that leasing and stacking is the Council's preferred alternative. I say this because the majority of permit holders are against stacking and leasing permits as it will lead to large conglomerate fishing operations taking over the industry at the expense of small family and small business owned operations. If the bigger entities are allowed to swallow up the 1, 2 and 3 boat operations the vitality of our fishery will be compromised.

There is only a very small group of people that are for stacking & leasing, whose interest it is to consolidate the sea scallop industry. This would put many small businesses at risk of collapse and failure. In addition, consolidation will also lead to the loss of many fishing and shore side support jobs.

We do not need to consolidate our fishery. It is not over fished and our industry is vital. Everyone is making a profit and why try to "fix something that ain't broke?" If you do this, you only risk breaking something that didn't need to be fixed to begin with.

Furthermore, Dr. Julia Olsen, who works for NMFS wrote extensively about the consequences caused by consolidation and the loss of jobs, business and its effect on the communities involved. Allowing a few small groups to become too powerful will compromise conservation and will lead to over fishing because they will have too much influence over the fishery. This is not something that we need in our current economy.

In presenting this as the preferred alternative, the council is pandering to special interests and not considering what is best for our nation, working people and our industry. Thank you in advance for your consideration in this matter.

Respectfully,

Captain Arthur A. Ochse Jr.

F/V /Christian & Alexa/

#5

**Deirdre Boelke**

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**From:** Amendment15 [Amendment15@noaa.gov]  
**Sent:** Tuesday, July 27, 2010 9:23 AM  
**To:** Deirdre Boelke; Jessica H. Melgey  
**Subject:** [Fwd: Comments on Scallop Draft Amendment 15]

----- Original Message -----

**Subject:** Comments on Scallop Draft Amendment 15  
**Date:** Tue, 20 Jul 2010 22:00:47 +0000 (GMT)  
**From:** Cameron S. Miele <cmiele@scallopfishing.net>  
**To:** Pat.Kurkul@noaa.gov, Amendment15@noaa.gov  
**CC:** david.pierce@state.ma.us, rodavila@comcast.net, mark.alexander@ct.gov, ripc@comcast.net, jimfair@comcast.net, fishearlybird@cox.net, mbtooley@roadrunner.com, mtalvernaz@verizon.net  
**References:** <207809537.128055.1279204337843.JavaMail.mail@webmail10>  
<7D55933B3AFC0848B9238E77B62AF8EF3740D80157@cleex01.bglco.com>  
<1418854723.129171.1279206994809.JavaMail.mail@webmail10>  
<1654964569.129240.1279207134174.JavaMail.mail@webmail10>  
<000001cb282e\$302e150\$d908a3f0\$@com>  
<1097161542.258344.1279653919992.JavaMail.mail@webmail01>  
<1030401057.259241.1279656072745.JavaMail.mail@webmail01>  
<1774972708.260654.1279658950853.JavaMail.mail@webmail01>  
<1246502644.262245.1279662773237.JavaMail.mail@webmail01>

Dear Ms. Kurkul,

Good evening. My name is Cameron Miele. My business partner Tony Alvernaz and I own two New Bedford based scallopers: F/V Kathryn Marie and F/V Hunter. I am writing to you today to express our concern over Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan.

Specifically, with regard to consolidation.

From our perspective, the Atlantic Sea Scallop Fishery is the best managed; most successful fishery in the world. That is not to suggest that there are not some opportunities for improvement. However, despite some weaknesses the fishery is extremely successful. Simply look at the fishery from top to bottom:

\* \*The resource is not overfished:\* Since the introduction of Limited Access permits and rotational management the biomass has recovered to well above target levels. In 2009, the Atlantic Sea Scallop biomass was estimated to be 129,700 metric tons meats, above the target biomass level of 125,000 metric tons meats.

\* \*Strong safety, environmental and bycatch record:\* As one of the most profitable fisheries in the world, boat owners have continued to invest in their vessels, which has contributed to safer and more efficient operations. As an added benefit to safer and more efficient vessels, we are also diminishing our environmental footprint per vessel. In addition, the industry continues to invest in research and equipment modifications to prevent interactions with species such as sea turtles and yellow tail flounder.

\* \*Favorable long-term outlook and price stability:\* Over the past five years, pricing has been very strong and stable. Over the

same time, the outlook for the industry has become increasingly favorable. This stability and favorable outlook has provided confidence within the industry, which has allowed boat owners, dealers, and support businesses to invest in their operations. This confidence has resulted in both jobs and additional tax revenue.

Consolidation will lead to job losses at a time when this country cannot afford it. It will also lead to permit owners consolidating their permits onto their largest and most efficient vessels. The Fishing Power Adjustment is a nice idea, but unrealistic. Boats of moderate size and power will continue to be replaced by larger and more efficient ones, which over time will create overfishing and the need to drastically reduce effort. In addition, those who cannot invest in ever larger vessels will be squeezed out by the better capitalized corporate fishing conglomerates.

History has shown us that permit stacking leads to two kinds of permit owners: (i) large fishing conglomerates and (ii) Wall Street investors. Do we really want our American resource controlled by so few? Monopoly power is never a good thing. A few large owners dominating the industry will likely lead to unfair business practices, unemployment, lower wages, lower tax revenue, and monopoly pricing. If times get tough will investor owners work to fix the fishery, or will they write it off and move on to the next investment? What about foreign ownership? Over the next 15 years how many U.S. banks will be purchased by foreign entities? Do we want an American fishery dominated by foreign players?

Our fishery should be a model for the rest of the world. The boat owners are doing well and investing in their businesses. The crews have stable employment with above average wages. The support businesses are investing in themselves to keep up with the demands from a growing industry. Why are we trying to drastically change something that is a success?

The people who fish the waters should be the ones who own the permits. Not far off investors looking at ways to securitize or wrap fishing permits. We should not stand by and let an American resource be transformed into a security to be bought and sold on Wall Street. We cannot afford consolidation. Not from a sustainable, economic, or political standpoint.

Thank you,

Cameron S. Miele

Cameron S. Miele  
Chief Executive Officer  
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Hunter Scalloping Company, LLC  
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<<mailto:cmiele@scallopfishing.net>>

#6

August 1, 2010

Andrew Mays  
PO Box 1176  
Southwest harbor, Maine 04679

Paul Howard, Executive Director  
New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01950

Re: Scallop Fleet Consolidation

Dear Mr. Howard

I'm against the consolidation of the limited access scallop fleet through vessel permit stacking. Eliminating scallop boats by putting all the permits onto a few vessels is a job killer! It takes the traditional fishery out of the hands and care of those with the best interest in the future of the scallop resource, the individual boat owners and crew, putting it squarely in the pockets of a few corporations that own all the "rights" to the resource. They lease those rights and collect the money, eventually without even owning a boat. It's happened all around the world with dire consequences. Opportunities are lost, fishermen are displaced and fishing communities suffer.

Scallops are not overfished and consolidation is not warranted. Leave the rules as they are. I want to continue to have the opportunity to earn a living from scallop fishing for me, my sons and other people in my community.

Sincerely,



Andy Mays  
Southwest Harbor, Maine



# 7  
SP

**Mass Fabricating & Welding, Inc.  
Mass Contracting & Construction, Inc.  
W Trading, Inc.  
F/V Miss Shauna  
F/V Miss Leslie  
F/V Mirage  
1 Cape Street  
New Bedford, MA 02740  
Phone (508) 993-9505  
Fax (508) 993-1910**

National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
55 Great Republic Drive  
Gloucester MA 01930  
Attn: Patricia Kurkul

July 29, 2010

RE: Comments on Scallop Amendment 15

Dear Ms. Kurkul:

I am writing to you to voice my objection to the consolidation provision in the Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan. My objections are based on two issues: 1. the consolidation plan does not reduce harvesting capacity in the fleet, and 2. the plan is solely based on the economic benefit of a few at the expense of many and is therefore, in violation of the National Standards in the Magnuson – Stevens Act.

The term “capacity reduction” that is being used as a justification for the permit stacking/leasing measures for the Atlantic Sea Scallop fishery is something of a misnomer. When using the terms “capacity reduction” or “capacity reduction measures” what is actually being referred to is “harvesting capacity” which is defined by the National Marine Fisheries Service (NMFS) as “the capability of one or more specific vessels to catch fish and it measures harvesting capacity in terms of their potential pounds or tons of catch, and not in terms of the number, size or horsepower of those fishing vessels”.<sup>1</sup> The use of the words “capacity reduction” by the NMFS, the New England Fisheries Management Council (NEFMC), environmental groups and the proponents of the permit stacking/leasing measures is intentionally used to confuse the layperson to believe the permit stacking/leasing measure will lead to a reduction in harvesting capacity when in fact it is not the case.

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<sup>1</sup> “Excess Harvesting Capacity in U. S. Fisheries a Report to Congress” April 28, 2008, p.3

The permit stacking/leasing option does not and will not reduce the capabilities of the fleet to harvest scallops, in fact the proposal will actually increase the ability to harvest more scallops by eliminating inefficiencies. The New England Fisheries Management Council (NEFMC) along with the National Marine Fisheries Service (NMFS), environmental groups and the proponents of permit stacking/leasing are using this misconception in order to make it sound as if they are protecting the resource when their only object is to increase the profitability of a select few.

Throughout the entire process of drafting the consolidation plan (permit stacking and leasing) the scallop boat owners, fishermen and members of the fishing community have repeatedly told the New England Fishery Management Council (NEFMC) that permit stacking and leasing would not reduce the fishing catch level in the fleet, but would actually increase the fishing catch levels of the fleet bringing with it the negative effects of harvesting more scallops that were mandated, increase drag bottom time, and increase pressure on by-catch. Greater harvesting capabilities because of the permit stacking and leasing proposal would come from several sources.

First would be the elimination of less efficient vessels in favor of the more efficient vessels. No one argues the fact that the least efficient vessels would be scrapped in favor of the more efficient vessels. Current regulations limit a fishing vessel by length, horsepower and tonnage and allow a limited increase on these restrictions when an owner wishes to upgrade his vessel. However, there are many ways in which a vessel can increase efficiency which the Council is aware of but has yet to address.

A second source of fishing efficiency would come from the ability to fish for longer periods of time with less overall transit time. Let us assume there are 42 fishing Days at Sea in areas that are not restricted by area closures. Generally, most vessels divide that time into three trips which would have six fishing days transiting to and from the fishing ground leaving 36 days of actual fishing. For two vessels that would be 72 days of fishing with 12 days of transiting.

In order to reduce the anticipated extra landings permit stacking/leasing will have the Council has decided to come up with a "tax" or mortality adjustment of 5-11% on all vessels that have stacked or leased permits. This mortality adjustment would only apply to the second permit that was placed on a boat. Using 42 fishing Days at Sea if the mortality rate for the second permit was regulated at 10% then the second permit would lose 4.2 Days at Sea leaving a balance of 37.8 Days at Sea on the second permit. Therefore the combined permits would have a total of 79.8 Days at Sea. The stacked/leased vessel would then be able to make four trips of twenty days each with only eight days of transit meaning they could have 72 days of actual fishing time; the exact same amount of actual fishing days two boats will have. But because the vessel has a stacked permit it can extend the length of trips thereby reducing the time lost in transiting. Two vessels would have three trips each, with two days of transiting for each trip leaving twelve days of transit. But the stacked vessel could take four - twenty day trips and reduce the transit time from a potential of twelve days to eight days. This in turn would nullify the mortality adjustment "tax". While the proponents of permit stacking and leasing would prefer not to have a mortality adjustment "tax" they are fully aware the "tax" is set so low the opportunity to fish for longer periods of time more than compensates for the few days they will lose because of the "tax". Considering the greater efficiency that would be created by stacking a permit onto the more

productive vessels along with the increased catch that would be generated by the vessels taking longer trips, most people in the industry do not believe the mortality adjustment is high enough.

If the NEFMC does not pass or incorrectly guesses the mortality adjustment "tax" rate and the stacked/leased vessels harvest more than what was anticipated then the scallop catch for the following year will be adjusted downward to compensate for the additional harvest. For the majority of people who will not participate in the stacking/lease program they will face the risk of losing Days at Sea next year because of the greed of a few individuals.

In fact a good argument can be made that the stacking/leasing program gives all of the advantages to the few larger vertically integrated corporations. The fact that permit stacking/leasing will lead to more scallops being harvested is uncontested. There are no punitive measures for the stacked/leased vessels if they exceed harvestable projections, however if they do, then all vessels will suffer reduced Days at Sea. This may lead to what many permit owners fear will be a death spiral where the larger corporations with better resources will continually and intentionally overharvest the catch which will lead to lower ex-vessel prices and fewer Days at Sea each succeeding year. With their savings associated with the economies of scale and their greater resources the stacked/leased vessels will slowly be able to decrease the profitability of the individual and small fleet owners leaving them vulnerable to a hostile takeover by the larger corporations.

The proponents of stacking and leasing along with the National Marine Fisheries Service will argue that there is a five percent ownership cap that cannot be exceeded, but the truth be told many people in the scallop industry believe it is already happening in the scallop industry and other places. There is a strong belief that if several of the proponents of capacity reduction are not in violation of the letter of the law they are in violation of the spirit of the law and are acting in collusion in order to influence the industry as a whole and the NEFMC in particular. Many people firmly believe the NMFS refuses to investigate these violations because it runs contrary to their primary objective of privatizing a public resource and putting the family owned vessels out of business.

While there is a five percent ownership cap on the scallop fleet there is no cap on the scallop buyers/wholesalers. By increasing the profitability of the few large vertically integrated companies they in turn will have a greater ability to increase their purchasing power and their market share of the product giving them more control and influence over the industry by being able to determine the ex-vessel and wholesale prices which will create further economic hardships for the individual and small fleet owners and the small fish houses. If enough independent buyers/wholesalers are forced out of business then the independent and small fleet owners will eventually be at the mercy of the few large corporations to buy their scallops. Examples of this lopsided abuse of power can be found by looking at the rationalization programs in the Pacific Northwest fisheries and at the Atlantic clam industry here.

My second argument against the permit stacking and leasing option is because I believe it is in violation of the Magnuson – Stevens Act under National Standard 5. National Standard 5 reads: "Conservation and management measures shall, where practicable, consider efficiency in the

utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.”

In its initial argument for the passage of the capacity reduction measures the Council noted the scallop fishing season comprises of approximately 80 days. The Council further stated: “Some members of the industry have approached the Council explaining that this level of effort is insufficient to maintain vessels and crew throughout the year with increasing costs. Some crews routinely work on multiple vessels in one fishing year. The Council has heard that some ports are congested with vessels tied to the dock for the majority of the year causing safety and space issues. *While this fishery remains profitable, concerns have been raised about the continued ability to remain profitable while operating inefficiently; wasting fuel, electricity, maintenance expenses.* Therefore, the Council is considering a range of options to reduce excess capacity in the limited access fishery and thereby increase the efficiency of the fishery overall, improve safety, and reduce costs of the limited access harvest of scallops.” (Emphasis added.)

I would like to take a moment and address some of the issues mentioned in the paragraph above. Part of the supposed reasoning for permit stacking and leasing would be to help ease the overcrowded and congested fishing ports “with vessels tied to the dock for the majority of the year causing safety and space issues.” Here in the Port of New Bedford, Massachusetts we have a serious overcrowding issue where the majority of vessels are tied up to the dock for the majority of the year. However, most of those vessels are not scallop vessels but are vessels in the ground fish industry which this Council has continually cut back fishing days which has led to this overcrowding issue. As far the safety issue goes, being tied to the dock is generally far safer than going out to sea.

The proponents of capacity reduction complain about the costs associated with inability to fish for longer days when they say they are wasting fuel and electricity. This Council has recognized that vessels may be in port for extended periods of time therefore, the Council approved the VMS power down exemption whereas a vessel upon approval from the NMFS may shut off its engines and power down the boat in order to conserve fuel and electricity. As far as maintenance costs, things generally don’t break down if they are not being used.

The Atlantic Sea Scallop is a fully recovered and sustainable fishery that is a successful example for all other fisheries. The capacity reduction proposal does nothing to reduce harvesting capacity and in fact the Council is debating how large a mortality adjustment “tax” should be in order to reduce the increase in the harvesting capabilities the Council knows will come with the passage of this measure. This in turn suggests the capacity reduction program is not about protecting the natural resource but protecting the economic interests of a few. It is not the NEFMC’s right or decision to determine who should be advantaged or disadvantaged by passage of a measure that is based solely on economic determinations. However cleverly worded, the permit stacking and leasing issue comes down to a purely economic decision and is therefore in violation of the National Standard 5.

One of the Councils’ favorite National Standards, number 2, states the Council must use the best science available. The Council is fond of throwing this Standard in the face of the fishermen

especially when they are trying to push their agenda forward against the advice and wishes of the industry and to dismiss collaborative research that points to inconsistencies in their own flawed science. National Standard 8 states the Council must take into consideration the economic and social implications the regulations will have on the fishing communities.

In order to meet the requirements of National Standard 8, the Council must use the best available science as required by National Standard 2. The scientific reports that were used in the Draft of Amendment 15 to the Scallop Fishery Management Plan state how jobs were lost, fishing fleets were dramatically reduced and communities destroyed. On page 301 of the Draft Amendment 15 to the Scallop Fishery Management Plan, June 17, 2010 the Council wrote "... consolidation measures like ITQ's, but also more generally leasing and stacking, tend to have their negative impacts on those less powerful segments of the fishing industry, namely the crew, or the small business owners without a fleet of vessels or vertically integrated business. Those who are better able to take advantage of measures like leasing or stacking are then increasingly able to exert control in various markets, such as leasing quota, hiring crew, or even affecting prices that fishermen receive for their product".

The Council had Dr. Olsen draft a report on the impacts the permit stacking/leasing measure would have on the scallop fishery and while I will not go into detail regarding the conclusions of this report which this Council has commissioned and presumably read, I will note Dr. Olsen points out job losses in the fishery and the fishing communities will occur. The report highlights the negative affects consolidation measures have on the individual boat owners, the small fleet owners, the crewmen, the shore support industries and the communities at large. The report does mention that large vertically integrated corporations would see their profits rise while they gain a larger percentage of the market.

The permit stacking/leasing measure may also violate National Standard 4 which reads, "Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges." It is my opinion that the permit stacking and leasing measure violates each of these three requirements of Standard 4.

Permit stacking and leasing is not fair and equitable to all the fishermen because an individual who owns one vessel does not have the right to stack another permit onto his vessel and leases may not be available and may be cost prohibitive. Under the second requirement that the measure should promote conservation, we have already established the fact that permit stacking and leasing will actually increase the harvesting capacity of the fleet, hence the Council's attempt to attach a "mortality adjustment tax" to this measure. As far as the third portion of this Standard, the Council's own scientific report on the affects of consolidation point out the many negative costs with the only beneficiary being the larger, vertically integrated corporations.

Throughout the process of developing the permit stacking and leasing proposal many members of the industry stood up and asked the Council to reject this measure and vote to have this

measure tabled under the "Considered but Rejected" alternative. Many members of the industry spoke to the Council saying it appears as though the Council had already made up their mind to pass this measure over the objections of the majority of the permit owners, but the Council repeatedly assured the permit owners it was merely studying the issue and no determination had yet been made. These comments were met with the skepticism they deserved.

During the fall of 2008 I sent a brief survey to all limited access permit holders asking if they were for, against or undecided about the permit stacking/leasing issue. Of the returned surveys the permit owners who were opposed to permit stacking outnumbered the proponents by almost a 3 to 1 margin. In November, 2008 I wrote a letter to the Council of my findings along with a copy of each signed survey. I then followed this up at a Council meeting where I was told by Committee Chairperson Sally McGee that this was an unofficial survey therefore the Council would not recognize the petition to shelve the permit stacking/leasing issue.

Now over a year later and against the majority of permit holders' objections the Council has decided to adopt the permit stacking/leasing measures as a preferred alternative. Once again with their livelihood at stake permit owners went to the Council hearing in Fairhaven, Massachusetts to once again express their opposition to the measure and once again the Council showed their complete indifference by not even bothering to show up. Only two Council members took their obligations seriously and attended the meeting, one of them was Dr. Pierce unfortunately I was unable get the name of the other Council member. I was especially disappointed that the "local" Council representative who lives in the next town over did not even bother to appear.

It is this apparent indifference and disregard by the Council to the plight of the small business fishing owner that has caused such distrust between the Council and fishing community. What is the point of having a Council Hearing if the Council can't be bothered to attend? It reminds me of the old philosophical question; if a tree in the forest falls and there is no one to hear it, does it make a sound? If the Council holds a hearing and the quorum is not met, does that mean a hearing took place?

Our brothers in the ground fish industry are closely watching this Council's actions with suspicion and dread. For if the Council can arbitrarily determine the fate of the family owned vessel owner in a recovered, sustainable, and financially profitable fishery then what fate awaits them when their fishery becomes sustainable. What is the point of passively following the Councils' regulations now because when the stocks recover the Council is just going to pass regulations that will take away their livelihood so large corporations can reap a higher percentage of profit?

Once again I ask the Council to reject the permit stacking/leasing issue and vote for the "No Action" alternative. Unfortunately though I suspect this letter will not be read just as my words at the Council Hearing were not heard and the Councils' mind is made up to destroy the fishing families and communities so the large conglomerates may prosper.

Sincerely,



Paul Weckesser

cc:

Dr. Jane Lubchenco, NOAA  
Secretary Gary Locke, Dept. of Commerce  
Sen. John Kerry  
Sen. Scott Brown  
Rep. Barney Frank  
Governor Duval Patrick  
Rep. William Straus  
Mayor Scott Lang  
John Pappalardo, NEFMC



**New Bedford Ship Supply, Inc.**

108 Front Street  
New Bedford, MA 02740

August 4, 2010

Patricia Kurkul, Regional Administrator  
NOAA/NMFS  
55 Great Republic Drive  
Gloucester, MA 01930

John Pappalardo, Chairman  
NEFMC  
50 Water Street  
Newburyport, MA 01950

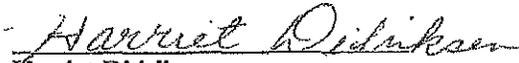
COMMENTS IN OPPOSITION TO THE PROPOSED RULE IN AMENDMENT 15 TO  
ALLOW STACKING OR LEASING IN THE LIMITED ACCESS SCALLOP SEA  
SCALLOP FISHERY

Dear Ms. Kurkul and Chairman Pappalardo:

I am writing in opposition to the current proposals to consolidate the Limited Access Scallop Fishery through leasing and stacking of permits. I am the owner of New Bedford Ship Supply, Inc. a shoreside business that is dependent on the limited access scallop fishery and employs 11 people.

I believe this move to consolidate the fleet will undermine our traditional fisheries and way of life by encouraging larger fishing operations, while placing single vessel or small fleet owners at a competitive disadvantage. This will result in fewer fishermen employed on vessels and loss of fishing related shoreside jobs, and the negative impact on fishery infrastructure will carry-over into all fisheries. The scallop fishery is currently stable and profitable, and I do not believe it needs consolidation. The harm to fishermen, shoreside businesses and fishing communities, outlined in the Amendment documents, far outweighs the benefits that will be conferred on a very few large fleet owners. Please vote against stacking and leasing or any other consolidation in this fishery.

Thank you for the opportunity to comment.

  
Harriet Didriksen

Leon W Vona Finc (company/owner name)  
Nancy Elizabeth (vessel name, if applicable)  
724 Spring Ln (address)  
Cald Spring N.J. 08204 (city/state/zipcode)

Patricia Kurkul, Regional Administrator  
NOAA/NMFS  
55 Great Republic Drive  
Gloucester, MA 01930

John Pappalardo, Chairman  
NEFMC  
50 Water Street  
Newburyport, MA 01950

**COMMENTS IN OPPOSITION TO THE PROPOSED RULE TO ALLOW STACKING OR LEASING IN THE LIMITED ACCESS SCALLOP SEA SCALLOP FISHERY**

Dear Ms. Kurkul and Chairman Pappalardo:

I am writing in opposition to the current proposals to consolidate the Limited Access Scallop Fishery through leasing and stacking of permits.

1. I am the owner/operator of 1 (# of vessels) limited access scallop vessel(s) NANCY ELIZABETH (name of vessel) and employ 2 (# of employees) people. or
2. I am employed as a crewmember on a limited access scallop vessel, or
3. I own or am employed by a shoreside business that is dependent on the limited access scallop fishery and employs \_\_\_\_\_ (# of employees) people.  
(pick one of the above)

I believe this move to consolidate the fleet will undermine our traditional fisheries and way of life by encouraging larger fishing operations, while placing single vessel or small fleet owners at a competitive disadvantage. This will result in fewer fishermen employed on vessels and loss of fishing related shoreside jobs, and the negative impact on fishery infrastructure will carry-over into all fisheries. The scallop fishery is currently stable and profitable, and I do not believe it needs consolidation. The harm to fishermen, shoreside businesses and fishing communities, outlined in the Amendment documents, far outweighs the benefits that will be conferred on a very few large fleet owners. Please vote against stacking and leasing or any other consolidation in this fishery.

Thank you for the opportunity to comment.

Jose Vega (name)

#9

Chieftain Scallop Company  
PO Box 657  
Essex, CT 06426

August 5, 2010

NOAA Fisheries Service  
Partnerships & Communications  
1315 East West Highway  
Silver Spring, MD 20910

RE: Amendment 15

To Whom It May Concern:

As the owner of one sea scallop vessel; the F/V CHIEF-permit # 330668, I would like to voice my opposition to the proposal in Amendment 15 which would allow permit stacking and /or leasing.

I fear that these proposals would not accomplish a reduction of effort on a fishery which is not over-fished, but would lead to a reduction of value on a vessel and permit for the single family boat owner, who cannot compete with fleet owners.

The original conservation measures adopted in the 1990's were meant to protect the family boat owning tradition. Presently the single vessel owner and the fleet owners are all doing well in the sustainable scallop fishery. The consolidation proposal would enrich the already prospering fleet owners at the expense of the single vessel owner, many of whom have their homes pledged against the vessel. In addition, there is reason to believe that what occurred in the clam industry, an 80% loss of jobs in 9 years, could also happen in the scallop industry at a time when job creation is most urgently needed.

One hears that consolidation would lead to greater efficiency, but worldwide evidence indicates that the opposite has occurred.

Thank you for your consideration of these issues vital to the scallop industry, and please support the single-vessel owner.

William Costigan  
President  
Chieftain Scallop Company

Cc: Patricia Kurkul, John W. Pappalardo; Paul J. Howard



Patricia Kunkul  
Regional Administrator N.M.F.S.  
55 Great Republic Drive  
Gloucester Ma. 01930

8-3-10

Dear Pat  
Yes I do support leasing and or  
stacking of Limited Access Scallop Permits.

- 1) If leasing is approved it should be restricted  
to like categories
  - Full-time with Full-time
  - Part-time with Part-time
  - Occasional " occasional

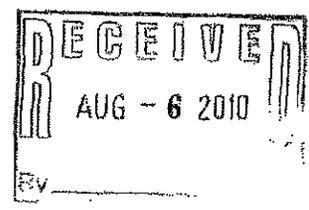
This would insure that the historical make  
up of the scallop fleet remains the same.

- 2) I do not support the efficiency tap.  
How do you know how much to charge?  
Then how do you know its correct? Too high  
or too low? Once you do the horsepower  
adjustment there isn't any purpose for an  
efficiency adjustment because both permits  
are the same.

- 3) I do support the changes to the E.F.H. Closed  
areas

- 4) Yes, I do support leasing from C.P.H.

Best Regards,  
Ray Starvish





#11

To: Patricia Kurkul, Regional Administrator, N.M.F.S.

8/6/10

My name is Thomas Coley. I am a resident of CT., and I am a captain in the full time Scallop fleet. I write this letter on behalf of myself and five crewmen that work with me. This letter is to speak against scallop Amendment 15, specifically the section concerning Stacking and leasing of permits. I feel there are many problems with this intent to allow Stacking and leasing of scallop permits. First I believe it goes against National Standard 4. Because these measures are not "fair and equitable to all such fishermen". The reason being that single permit holders cannot participate in these stacking provisions. And when stacking is allowed, the fishing capacity of the fleet will increase, not decrease. The permits will always go to newer more efficient vessels when permits are stacked. These vessels will then land more scallops per DAS. And with the new accountability Measures this would result in future cutbacks for the entire fleet. Any such cut backs would hurt single permit holders the most. So even if a boat owner decides not to participate in stacking, they could be adversely affected by the actions of others. The fact that fishing capacity will increase with stacking measures is known by the council,

Because they have tried to alleviate it with two measures, a "horsepower adjustment" And a "mortality adjustment". In my opinion these measures fall short of controlling The increasing catching capacity caused by permit stacking. Based on my thirty year Experience as a captain in the scallop fleet, I believe this "mortality adjustment" should Be in the 15 to 20% range to keep the catch neutral. Also concerning the "horsepower Adjustment" these horsepower figures can be easily manipulated, and fishing power can be increased by reduction gear ratios and propeller size.

There will also be losses of jobs around the fleet, on deck and shoreside as the Number of boats declines. I would like to refer to a paper written by Dr. Julia Olson, Titled "social impact assessment literature review: leasing and permit stacking". In which she states: The primary social impacts that have been documented in cases Involving consolidation range from [ employment loss, decreased income, decreased Quality of life, structural disadvantages to smaller vessels and firms, dependency and Debt patronage, concentration of capital and market power, inequitable gains, reduced Stewardship, and so on]. These are not encouraging statements.

I am also against the leasing of scallop permits or trips. With leasing the lay Of the settlement usually changes in favor of the owner to pay for leasing fees. The captain and crews always end up paying for the leasing of trips or quota, Resulting in lost wages.

The bottom line on these stacking and leasing measures is that they do nothing To benefit the resource. They are not conservation measures. To the contrary they Will probably cause overfishing. There is nothing in these measures to benefit the Captain or crews working the boats. They are designed only to benefit fleet owners, Who can increase their bottom line. This has nothing to do with capacity reduction, Only economic benefits for some. This I believe violates National Standard 5 which States " no such measure shall have economic allocation as it's sole purpose". This fishery is not in a position where it needs stacking to survive. Everyone is viable. I say no action on stacking and leasing.

Sincerely,

Thomas Coley  
Clinton, CT.



RE: Comments on Scallop Amendment 15

#12

August 9, 2010

National Marine Fisheries—NOAA

- Who would prefer to lose 250-plus jobs in a thriving industry such as scalloping?
- Who would prefer to give New Bedford another and possibly fatal economic hit to its already shaky economy?
- Who would prefer to favor big business at the expense of the small, independent guy?
- Who would prefer to downgrade to a lower income level for the jobs that are left standing?
- Who would prefer to pay for, and then ignore the Olsen report?

The scallop fisherman and boat owner have suffered through years of making our century old fisheries less efficient in the name of conservation. Some schemes have worked and others have not. Some people have made it while others have not -- resulting in more boats in fewer hands. Now, surprisingly, you want to increase efficiency by allowing consolidation through stacking of license. This is particularly efficient if you stack with your own boats, while others are left with virtually half a license. Now the "less efficient" boats are sold, retired, scrapped whatever. Of course with increased efficiency comes increased productivity. How is that a conservation move?

Scallop fishing stocks have never been higher and every boat and fisherman has never been better off. New Bedford also ... the scallop and fishing capital of the country. The wealth is spreading to everyone from ship handlers, painters, hydraulic, propeller, shipyards, and electronics and yes, banks for not only boat loans but home mortgages also. The list is very long. No one is having their boats or homes foreclosed on. Everyone is driving a new car just like you.



We want the fisheries management to be efficient and accuracy is imperative in defining stocks. Perhaps it is time to utilize the fisherman to not only insure correct numbers but to gain credibility in the industry. We need stock number we can trust. Perhaps it's time to pay attention to trip figures- i.e.- length, location, pounds and count. An easy and extremely cheap way to do surveys without you ever leaving the dock. Why reinvent the wheel? If you continue to do your own survey, we want a fishing boat to go tow to tow with you side by side. Let's compare data. You may be precise but we need accuracy. Our livelihoods depend on it.

We can't say it better than Mayor Lang, Rep. Straus and Congressman Frank common sense must rule. America rests on the backs of small independent businesses. How could you prefer otherwise.

Sincerely,



Gail Isaksen

FW *Hortress*  
FW *Boontiful II*

CC: Rep. Straus, Cong. Frank, Mayor Lang



#13

## **YOUR VIEW: New scallop rules could violate Magnuson Act**

By WILLIAM M. STRAUS

Rep. William M. Straus, D-Mattapoisett, represents the 10th Bristol District.

August 11, 2010 12:00 AM

Right now a regional fishery panel is reviewing a critically important issue affecting the future of the scallop industry in Massachusetts. A new regulatory plan known as Amendment 15 will determine the future of our scallop fleet and the local community of people who have brought real success to this fishery.

Any slight change in Federal fishing policy has a tremendous impact on our region.

The port of New Bedford is the No. 1 fishing port in value in the United States with total landings in 2008 of 65.5 million pounds of seafood worth \$280 million. But for those who live and work here, it's not just about the seafood. It's also about the community and the fact that this industry operates with a diversity of often local owners. Individual families who live right here own vessels and operate them in our port; this is unlike other sectors of our local economy where there is a concentration of a few businesses owned and managed from somewhere else. In my view, this aspect of our local seafood industry is worth protecting.

Last year, I wrote on these pages about the dangers of the federal government's plan to move our groundfish fleet to a so-called "sector" or "catch shares" system, which I believe will inevitably lead to fewer jobs in the industry and a concentration of management and ownership into just a few hands. Today, a similar type of plan is under consideration by the federal government for the scallop fishery; scalloping ironically benefits from a thriving resource of ocean scallops and is the reason for much of the economic success in our port. The scallop fishery today is stable and profitable; it depends on a biomass which is actually in abundance. The scallop fishery doesn't need a new management plan which includes a radical change.

Whether we need another management plan or not, there are actually some within the government as well as outside groups who are determined to see that a new management scheme include the idea of "stacking." As part of the new Amendment 15, the idea is to allow the stacking or grouping of existing licenses under single ownership. Adopting a "father knows best" attitude, federal officials believe that the scallop industry has "excess capacity" (their belief that there are too many people and vessels engaged in scalloping).

Under stacking, multiple licenses, which historically were used for multiple boats, would now be aggregated under a single owner fishing a single vessel. The certain result of this approach is that fewer owners will be using fewer vessels, meaning less crew members, less shore-side support businesses, less purchasing of supplies, less boat repairs, and on and on. Fishing ports like ours will have a smaller scallop fleet and a smaller fleet support network of businesses.

Who would argue for a smaller scallop fleet when there are plenty of scallops to be harvested? The idea is being promoted by the Scallop Committee of the New England Fishery Management Council. Ironically, the Scallop Committee is chaired by the Massachusetts state designee to the full Fishery Council. I hope that he (and his bosses) will challenge Amendment 15 at the full council level. Meetings are occurring as you read this, and the last chance to head off this plan will be in September at the next full meeting of the New England council.

The federal law governing fisheries, known as the Magnuson Act, prohibits the federal government from issuing regulations which only amount to economic allocation. The proper focus of regulation is

supposed to be the seafood itself. In this case, it is only about allocating the economic resources by which scallop fishing is conducted. Amendment 15 will change the way the scallop fleet functions with absolutely no link or justification that the change is designed to promote conservation of the scallop population itself.

I don't think the Magnuson Act permits the government to pick winners and losers in our fishing industry. I always thought that was what capitalism and a market economy were all about.

Of course there will be a few in the industry who may already own large fleets who will benefit and probably view the plan as a good one. My sense is that most of those involved in the industry want little part of Amendment 15 and the certain drop in employment which will follow; that clearly was the tone I observed at the public hearing which the Scallop Committee held in Fairhaven on July 13.

Public comment in opposition to Amendment 15 is needed now. New England Fishery Management Council members, especially those from Massachusetts, need to be alerted to the dangers inherent in a management plan which is only designed to reduce the number of people who are employed in our local seafood industry.

undefined

#14

29 Bridgeport Ave.  
Tiverton, RI  
August 5, 2010

Dear Ms. Kurkul  
NMFS Regional Administrator

Mr. John Pappalardo  
Chairman, NEFMC

My name is Chad Maguire, I'm 35 years old, and I oppose Scallop permit stacking, but support Scallop permit leasing.

About 20 years ago, after pulling twine in the trap fishery, I started out in a 21 ft skiff gill netting. My company now owns a 55 ft. scalloper and a 40 ft. gill net/lobster boat. In those intervening years, I graduated from Maine Maritime Academy and after fishing in Alaska and along the East Coast, I bought a lobster boat. In my second year of fishing, I experienced financial devastation as a result of shell disease. Next, after borrowing some money, I took that lobster boat gill netting, only to end up with 8 days at sea - because I had less than two years of history. After borrowing more money, I rigged up and entered the scallop business because it was recovered and managed.

However, I soon realized that to achieve scallop recovery, NMFS management practices put the American Dream out of the small entity's reach. Limited Access permit prices now are millions of dollars - if one can be found that's for sale.

Scallop permit stacking will encourage the large multiple boat companies to cut their expenses, increase their profits, put a lot of people out of work and further exclude the few small business folks like myself from access to the publicly owned resource.

I do support a leasing option with controls that prevent the equivalent of stacking. Leasing allows a boat owner with a blown engine or unforeseen catastrophe to get income that otherwise would be lost. Leasing also would open an avenue for small businesses to remain scalloping and perhaps achieve the American Dream by allowing them to buy into a permit.

Thank you for your consideration,



Chad Maguire

AUG - 9 2010

#15

From: CARKEZ Fisheries Inc.  
113 Mac Arthur Dr.  
New Bedford, MA 02740

To: Patricia Kurkul, Regional Administrator, NMFS  
John Pappalardo, Chairman, NEFMC

Subject: CARKEZ OPPOSES SCALLOP PERMIT STACKING and SUPPORTS  
PERMIT LEASING

1. CARKEZ Fisheries is a father son company with one under 60 ft. single drag scalloper. Because of Federal Resource Management Strategies designed to limit the number entities managed by Agencies and implemented in the 1970s - before the computer revolution and Vessel Monitoring Systems - small businesses in the fishing industry are becoming extinct. CARKEZ and companies like us -less than four boats - have a less than 5 per cent share of the publicly owned scallop resource. More than 85 per cent of the resource "belongs" to individuals/corporations that support permit consolidation.

3. Stacking spells more economic hardship for the fishing industry. For every 50 boats lost to fishing due to stacking, 500 to 700 crew jobs are lost. This reduction will ripple through the industry. Supply houses, shore technical support (e.g., welders, electronic technicians) all the way to the small shipyards will be adversely impacted. The trickle down effect will eventually reach landlords and even the local coffee shops.

4. To permit stacking and allow some to greatly increase profits from a public resource is contrary to Federal policy and would be contrary to the National Environmental Policy Act. NEPA and case law requires a hard look at the cultural and socio economic effect of Agency decisions. Where is that hard look in this proposal?

5. CARKEZ supports permit leasing. With the controls contemplated, permit leasing levels the playing field. It would allow small businesses to lease days and keep us working throughout the year and if we were not able to fish, we could lease our days and not lose the income completely. Because of no significant change to existing conditions, permit leasing also would greatly simplify NEPA compliance for NMFS.



C. H. Maguire  
Capt. USCG-R ret .  
President, CARKEZ Fisheries  
252.945.9931

AUG - 9 2010

NOW MY COMMENTS ON THE GEN CAT IFO PROPOSAL. I LIKE MANY OTHERS FEEL I GOT SCREWED FIRST IN ADM 2 AND THEN ON ADM. 11, ADM 11 WAS THE MOST UNJUST AND CRIMMINAL ACT NMFS AND THE N.E. COUNCIL EVER COMMITTED. ADM 11 WILL PROBABLY PUT OUT OF BUSINESS 600 BOATS. THE 100 OR SO BOATS WITH MOST OF THE QUOTA HAVE PERMITS THAT ARE NOW WORTH OVER 500,000 EACH, HOW IS THAT FAIR. THE GEN CAT FISHERY WAS DESIGNED TO BE A PART TIME SMALL BOAT FISHERY. NOW YOU ARE INTERGRATING IT INTO THE LIMITED ACCESS FISHERY.

PROPOSALS TO CHANGE THE 400 LB DAILY LIMIT SHOULD NOT BE CHANGED. ALLOWING THEE CHANGES ONCE AGAIN WILL PUT MORE PRESSURE ON OTHER SPECIE. SUCH AS FLUKE, SCUP WHITING, SQUID AND OTHERS. THE 400 LB IFO LIMIT IS ALREADY VERY PROFITABLE FOR THE CHOSEI FEW. THEY DO NOT NEED TO PROFIT ANYMORE AT MINE AND EVERY OTHER PERMIT HOLDERS EXPENSE

THANK YOU

*Dem Jones*

DENIS LOVGREN  
306 SUDBURY RD.  
PT. PLEASANT, N.J.  
08742

#16

AUG 5, 2010

DEAR MS. KURKUL,

I WAS UNABLE TO ATTEND THE PUBLIC HEARINGS IN CAPE MAY SO I WOULD LIKE TO MAKE A FEW COMMENTS ON ADM. 15

I AM A THIRD GENERATION COMMERCIAL FISHERMEN WITH OVER 40 YEARS EXPERIENCE I CURRENTLY OWN A 78FT DRAGGER WITH A SMALL IFG SCALLOP PERMIT ALONG WITH OTHER PERMITS.

IT HAS BECOME APPARENT THAT NMFS HAS DECIDED THAT IF YOU DON'T HAVE A SCALLOP PERMIT YOU WILL BE PUT OUT OF BUSINESS. HOW ELSE TO EXPLAIN THE LATEST MOVES TO BENEFIT THE CHOSEN FEW AT THE COST OF THE REST OF THE FISHING INDUSTRY.

I OPPOSE THE STACKING OF PERMITS IN THE LIMITED ACCESS FISHERY. MY MAIN CONCERN IS THAT THE BOATS THAT WILL GIVE UP THEIR SCALLOP ALLOCATION WILL THEN GO FULL TIME INTO OTHER FISHERIES SUCH AS FLUKE, SCUP, WHITING, SQUID, AND OTHERS THAT ALREADY HAVE TOO MUCH EFFORT AND ARE PLAGUED BY LOW PRICES. IF STACKING IS TO OCCUR THEN THESE BOATS MUST SURRENDER THEIR OTHER PERMITS.

Public Hearing Document  
For Amendment 15

August 9, 2010  
(typo corrected paragraph 5)

To: NEFMC

From: Joseph J. Gilbert  
F/V Regulus  
F/V Furious

Reasons against consolidation (Stacking)

- Consolidation will disadvantage single permits through increased efficiency and eventual effort reductions.
- The folks pushing consolidation are the ones with the problem. Overcapitalization of their own fleets has created internal economic inefficiencies for them.
- The scallop stocks are not overfished. Overfishing is not occurring.
- The scallop fishery is profitable. In fact a single vessel, after expenses, including high monthly mortgage expenses will still net over \$200,000 for the owner. Calculations show consolidated vessels increasing profitability by 20% to 30%.
- This is an economic **end** run disguised as capacity reduction.
- Reductions in fleet sizes will hurt everyone except consolidated vertically integrated owners. Consolidated fleets will concentrate economic power and incorporate what were once shore side vendors to "in house" services. The effect in the community will be negative.
- The effort reductions proposed are not adequate. The HP table can easily be defeated. It doesn't account for reduction gear size or wheel size. Smaller engines with big reduction and wheel, can create more bollard pull than some large engines.
- Capacity reduction coalitions claim to represent many. Who are they? Probably less than real owners, and if you count husbands/wives/children as the same entity then it's probably six or seven entities. The financial desires of a few should not affect the majority of owners who know the fishery is functioning sustainably and profitably.
- We don't want regulations manipulated for business gain of a few.
- As stated by the capacity reduction coalition, these owners have too many boats. The fishery doesn't have too many boats. This is a hardware, machinery problem for owners who made runs at maximum ownership. While they were accumulating boats and permits, one more boat was the goal, grow the fleet and now they don't like their position.

## REASONS FOR STACKING

- There are none that benefit the entire fishery or fleet.
- Some fleet owners have over-capitalized their own fleets and now need/want to economically improve their own position with disregard for the consequences to others. If we want to help them improve economic position we should allow stacking.
- I met a fleet owner in the hall after an A.P. meeting. A wealthy man who owns many boats, an enviable position. He was angry and wanted more. His greed deafened him to all but his own words. This is your proponent of consolidation.
- If we want regulations manipulated for business gain of fleet owners.

## REASONS AGAINST LEASING

- Leasing is another form of stacking without effort reductions.
- Leasing should not be allowed except in case of catastrophe.
- Unrestricted leasing will act like stacking with less controls.

**I am against leasing except in case of catastrophe and only with strict controls.**

## REASONS FOR LEASING

- Leasing should occur only in case of hardship as a relief valve. They should only be allowed during a small window of necessity. Suppose a vessel suffers catastrophe and can't fish its season. Rather than unused trips or too many days to carry forward go wasted, this time could be leased to another vessel. To avoid abuse, leasing could only occur during the last month of the year and with documentation of catastrophe. (Surveyor/mechanics letters).

**There should be no other reason for leasing.**

## Amendment 15 Questions:

Purpose I – The commenter's position is consistent with Fisheries Survival Fund and I agree with their statements to Purpose II.

Purpose 2 –

7. Do you agree that there is a need to address excess capacity in the Limited Access scallop fleet?

**No. The fleet developed to it's current configuration and is healthy.**

8. Do you support stacking and leasing as a way to address excess capacity and provide more flexibility for efficient utilization of the resource? Why?

**No. Stacking and leasing are driven by efficient utilization of machinery, not efficient utilization of resource. Efficient utilization of resource is a different issue that can be addressed by reforming regulations to allow access to the resource before it become aged.**

9. If stacking and/or leasing is adopted should the Council also adopt a fishing power adjustment? Are the fishing power adjustment alternatives reasonable and do you believe they will minimize increases in mortality from stacking/leasing?  
**Fishing power adjustment is not enough of a reduction. Secondly, the questions phrase minimize increases in fishing mortality. Hold on minimizing increases is NOT the goal. This measure is supposed to be conservation positive and your questions elicits suspicion that the council knows the formula is not restrictive enough.**

**I support leasing only in a back to the wall, must finish the season option. And only after a situation that prevents a vessel from finishing it's season, such as engine failure/fire/sinking, and then only with NMFS approval of circumstances.**

10. Whether you support stacking and/or leasing, do you believe both adjustments are necessary? Is the 5-11% range appropriate for the second adjustment? Too low? Too high?

**I do not support stacking. Both adjustments are necessary. The range 7-11% was established by an economist and then was arbitrarily lowered to 5% on a council members whim. No science, just whim. 7-11% is too low.**

**NEFMC wants comment on a moving target. I don't know the final product of stacking or leasing, so comments are given with concern that the document will evolve in the manner that 7-11% was lowered to 5-11%.**

11. If stacking is approved, do you support that the 10 DAS carryover provision stay the same or be increased?

**I do not support stacking. Only the original stacked on permit should function with carryover 10 DAS.**

12. If stacking is approved, do you support that de-stacking should be allowed or prohibited?

**I do not support stacking. Make a decision to stack or don't stack. Too much council time and effort is being wasted on this already. De-stacking should be prohibited. The government should stay out of difficult partner scenarios, and estate planning, leaving that to the lawyers and businessmen themselves.**

13. If stacking is approved, do you believe there should be any restrictions on vessel upgrades?

**I do not support stacking. Yes there absolutely must be restrictions on vessel upgrades. The 10/10/20 rule is already being usurped if stacking is approved.**

14. Should there be any restrictions leasing?

**Yes. Leasing should not be done for business economics. It should be a relief for vessels that suffer a catastrophic event and can't finish the season. It should not allow leasing to act like stacking. It should be like categories, unless it's an access are trip. Then the control is the trip limit.**

15. If leasing is approved, should a vessel be permitted to lease from Confirmation of Permit History (CPH)?

**Only if permit wound up in CPH through hardship, i.e. sinking, fire etc., and only with proof/evidence of replacement vessel on the way, under construction. Permit leasing should have a time limit reasonable to allow replacement vessel purchase/construction. Unrestricted leasing from CPH would be no different than unregulated stacking.**

### **PURPOSE 3**

19. For the measures that consider adjusting the overfishing definition, which one do you support (No Action, A10 time-averaged, or hybrid alternative)?

**No Action. Until the Habitat Committee has finalized a new set of alternatives for the habitat closures they will not know what the biomass will be available. Because the scallop fishery is not geographically balanced they should wait for the most up to date science to be available until they change the OFD.**

20. Will the general category alternatives help to add flexibility to the LAGC management program? Do you support an allowance of IFQ rollover up to 15%? Are you in favor of changing the possession limit? If yes, by how much? Or should it be eliminated? Are you in favor of modifying the maximum quota one vessel can fish to 2.5% compared to 2%? Do you support allowing transfers of IFQ to other IFQ vessels and/or permit banks?

**Rollover of 15% is OK.**

**No change in possession limit. Fishery should remain a small boat fishery. The landing limit change will change interest in fishery and attract different players and alter the make up of the General Category Fleet.**

**Cap should remain at 2%, to allow as many participants as possible  
As long as it doesn't exceed 2%, but I'm not sure about permit banks and transfers. As long as the transfer does not exceed 2%**

**This fishery began as a small boat and by catch fishery. It should not result in 50 boats having 2% of the fishery each.**

21. Do you support establishing a process that would allow for the establishment of Community Fishing Associations (CFAs) in the LAGC fishery? Would a permit bank be helpful in your community or port, or would you consider participating in one?

**YES, depending if the individual fisherman is in charge. We do not want to work for the 'company store'.**

22. Do you support making the EFH closed areas consistent with EFH closed areas implement in Amendment 13 to the Multispecies FMP? Has anything changed in the last few years that would change the conclusion of the Council made in a previous action to make the areas consistent?

**Consistent with the Fisheries Survival Fund position.**

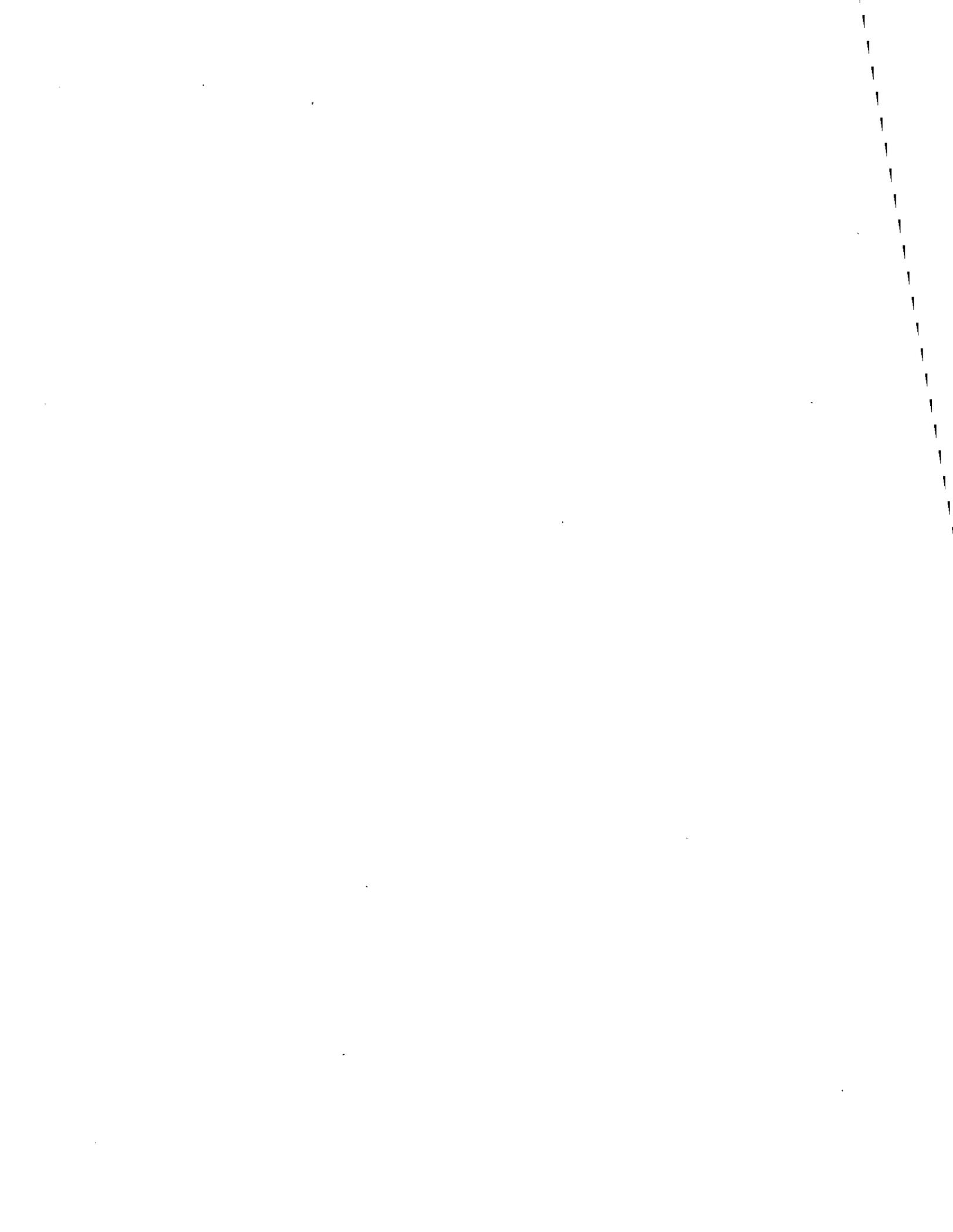
23. Do you support any of the measures to improve the research set-aside program? Which ones? Are there any you do not support?

**Consistent with the Fisheries Survival Fund position.**

24. Do you support changing the start of the scallop fishing year to May 1? Please provide specific reasons why you do or do not?

**March 1 has been a traditional season opening and I would like to maintain a status quo.**

CC: Mark Alexander, NEFMC  
Sally McGee, NEFMC  
Harriet Didriksen, NB Shp Sply



#18

**Deirdre Boelke**

**From:** Pat Kurkul  
**Sent:** Wednesday, August 11, 2010 10:56 AM  
**To:** George Darcy; Hannah F. Goodale  
**Subject:** [Fwd: Views on Stacking]

----- Original Message -----

**Subject:** Views on Stacking  
**Date:** Wed, 11 Aug 2010 13:46:23 +0000  
**From:** karina tilio <karina\_tilio@hotmail.com>  
**To:** Pat.Kurkul@noaa.gov, Amendment15@noaa.gov, david.pierce@state.ma.us, rodavila@comcast.net, mark.alexander@ct.gov, ripc@comcast.net, jimfair@comcast.net, fishearlybird@cox.net, mbtooley@roadrunner.com, mtalvernaz@verizon.net

Robert B.

Wassell

P.O.Box 817 Monument Beach Ma. 02553

508-221-4622

8/11/10

To whom it may concern,

My name is Robert Wassell, I'm 27, married, and have two children. I'm currently employed on the F/V Katharine Marie, and F/V Hunter (both limited access sea scallopers.) I'm also a former general category owner operator, and currently hold 3 Massachusetts state permits as well.

In my opinion allowing owners to stack permits is a bad idea. When I think about it the first thing that comes to mind is economy. This is the worse I've ever seen it in my life. If the stacking of permits is allowed, then half of the sea scallop vessels would disappear. That means less work for marine mechanics, painters, welders, shipyards, marine suppliers and more. I also believe that there will be less jobs available for commercial fishermen. This would be a devastating event for the water front in an already struggling economy.

Boat brokers will be flooded with former scallopers if stacking is allowed. What will they be used for? There isn't demand for a dragging vessel with no permits. So once the market is flooded with these ex-scallopers their values will plunge. This may not affect the fleet owner that is happy about the insurance, maintenance savings, but it is detrimental to the small companies. A company that owns 2 say... 3mil\$ boats will be forced to stack in order to stay competitive. At that point the boat with both permits will be worth 5mil\$ and the other boat will be worth only about \$100,000 IF anyone wants to buy it because the market will be so flooded.

If stacking goes through the value of licensed vessels will be so high the only one that will be able to afford boats would be the fleet owners. Forget about average Joe fisherman like myself. My hopes of owning a boat will be gone. Smaller companies will be absorbed by bigger ones. Scallop fishing will become corporatized. Crew wages, and incentives will diminish. The ones that will feel it the most are the fishing families like mine, and the many others. So please I ask you to not allow stacking. Thank you for your time and consideration,

sincerely,

Robert B. Wassell



#19

08/11/10

To Pat kurkul,

I am writing this letter in opposition to the proposed stacking and or leasing of Scallop permits as written in amendment 15. I am the owner and operator of 2 trawlers here in the mid atlantic and am very fearfull of the implications these proposed laws will have on our fisheries. The proposed stacking and leasing is going to lead directly to increased LATENT effort in all other trawl fisheries.

As we well know, in these trying economic times, the stacking or leasing of permits is going to lead to a surplus of used, non active boats, all of which possess latent effort permits for other fisheries. The owners off these boats are not just going to let the boats sit still and rot, they are going to rerig them to enter other fisheries for which they have permits. (I have been told this by several owners) This being their attempt to solidify some form of earnings history. A perfect example of this, is the increase in boats now targeting mid atlantic species since the implementation of groundfish sectors in new england. Owners are now leasing there allocation and directing there efforts to other species. (scup, fluke, squid and whiting) In reading the proposed ammendment, the stacking provision appears to have some merit, but the leasing portion needs to be removed.

It is my opinion, the leasing portion of the amendment is potentially more detrimental than the stacking provision. By pushing this part of the amendment through without thoughly examing its implications on other fisheries, is a CRIME. For every law that is set forth in one fishery it directly has an impact on another and, I do not feel enough analysis has been done here!

Until some form of qualification system is laid out in the mid atlantic, determining who the historical participants are, stacking and leasing should be put on the back burner. Most Mid atlantic communities are hanging on by the skin of their teeth and any more participants will be devastating.

Perhaps, including a provision in the stacking and leasing portion of the amendment, that includes the surrendering of all other permits and decommissioning of the vessel, may help decrease the latent effort issues. If I am not mistaken, this will not by any means, be a groundbreaking precedent. I believe this is what has taken place of the west coast of the USA.

Thanks,

Hank Lackner



#20

James Lovgren  
17 Laurelhurst dr Brick NJ 08724

Patricia Kurkul  
NOAA/NMFS  
Aug. 8, 2010

Comments on Scallop Amendment #15

Following are my thoughts and comments on Scallop Amendment 15. I am a third generation fisherman, and have been fishing for over 35 years, Two of my sons also work on my boat with me, despite my urging them to get a Gubment job. My boat is 70 feet long and we fish in the historic mixed trawl fisheries of the Mid Atlantic and southern New England consisting of Scallops, Fluke, Flounders, Squid, Scup, Sea Bass, Whiting, Ling, Mackerel, Bluefish, Butterfish, Monkfish, ect. Whatever fish are within my fishing grounds are what I have historically targeted since long before the U.S. government nationalized the resources outside of 12 miles with the Magnuson Act in 1976.

Like the rest of the fishing industry I have been personally devastated by the effects of the general category amendment that went into effect last year., along with the ban on Blackback flounder, and the total destruction of both my GC scallop and Multispecies permits. I have been a historic holder of a scallop permit since they were created in the 1970's. Now I have less then 2,000 pounds allocated to me for the year. I have been robbed twice now in regard to scallops because in Amendment two, which created the DAS and General category permits a 2 year time frame was used [1988 and 89] to decide who got a DAS permit. If a 5 year time frame was used, which is the minimum of any other FMP, such as 1985 to 1989 I would have qualified for a DAS permit.. Instead I was given the general category permit which allowed me 400 pounds, which at the time was not worth catching. And let me set the record straight in regard to the creation of the general category permit, It has been stated many times by certain council members that this permit was only created to address the Maine inshore Scallop fishery, that is far from the truth. It was created because if it wasn't NMFS would have been sued by the over 700 scallop permit holders who would have just been kicked out of the fishery because they didn't qualify under the two year time frame designed by certain members of the scallop AP to rid the fishery of competition. The 400 pounds at least allowed us to have some type of participation in the fishery. The problem was that the GC permit should have been limited access right off the bat, because it wasn't, the amount of permit holders grew many times the original number and created a gold rush into the fishery in the last 12 years. Now thanks to The general category genocide plan, many of us historical permit holders have lost access to a fishery that we have over the years relied on. In the mean time thanks to "insider knowledge" certain people bought up as many GC permits as possible that had landings within what would become the required timeframe and now own most of the GC quota.

With this background information now supplied, its shouldn't be too hard to figure out that ; I TOTALLY OPPOSE ANY CHANGE IN THE GENERAL CATEGORY POSSESSION LIMIT. This permit was created as a small boat day fishery, if the council now changes it so that a small group of quota stealers can now basically

turn their GC permit into a part time DAS permit, this would be the worst, most CORRUPT management measure ever enacted by the NEFMC, and that's saying a lot. By the way, I do not consider a change in the GC possession limit to be a minor change, it is a major change that changes the whole complexion of the fishery as it was created. Therefore I support the No Action alternative in regard to the possession limit. If this limit is changed these newly minted millionaires will catch their quota in a month and then engage in the few fisheries that I have left, such as Fluke, Scup, Sea Bass, and Squid. They will create over capacity and depress prices, and since they now have deep pockets eventually drive the rest of us out of business and buy our permits cheap. {hey there's a hot tip for Jane, Sally and the rest of their EDF investor crooks}.

I support a limited rollover of up to 15% of unused quota to the next year.

I support the current ownership restrictions despite their inconsistency. I do not believe that a bunch of permit stealers should benefit anymore than they already have.

I do not support any form of quota transferring from one boat to another, or to a permit bank. If the council decides to allow this, then ALL OF A VESSELS PERMITS SHOULD BE TRANSFERRED OR SURRENDERED. To allow the transfer of only the GC permit, will once again result IN OVERCAPACITY IN OTHER FISHERIES.

I do not support the transferring of quota to a community based trust or permit bank unless ALL PERMITS ARE SURRENDERED. IF ALL PERMITS ARE NOT SURRENDERED THEN OVERCAPACITY WILL BE CREATED IN OTHER FISHERIES.

I support the establishment of a process for community fishery associations, as this is basically what a fishermen's Co-op is. Once again, though, if permits are bought then all permits from the vessel must be purchased.

Regarding section 3.3 measures to address excess capacity; I favor the no Action alternative, these guys are millionaires already, how much more do they want?

If permit stacking is approved, [and it will be since it's the preferred alternative] then STACKING SHOULD BE LIMITED TO TWO PERMITS ON ONE BOAT, AND ALL PERMITS MUST BE SURRENDERED SO THAT THE BOAT CANNOT ENGAGE IN OTHER FISHERIES.

I support the fishing power adjustment for stacking in 3.3.2.2.1.

I support the NO Action alternative on DAS carryover provision for vessel with stacked permits.

Once a vessel stacks a permit then upgrades should be prohibited.

I TOTALLY OPPOSE ANY LEASING OF DAS EITHER OPEN AREA OR ACCESS AREA TRIPS. LEASING WILL CREATE OVER CAPACITY IN OTHER FISHERIES BY THE LEASOR VESSEL. HE WILL NOT SIT AT THE DOCK.

VESSELS IN CONFIRMATION OF PERMIT HISTORY SHOULD NOT BE ALLOWED TO LEASE DAS OR ACCESS AREA TRIPS. LET THEM SELL THEIR PERMIT TO ANOTHER VESSEL AND STACK THEM. WE DO NOT NEED TO ENRICH A BUNCH OF ARMCHAIR FISHERMEN/ INVESTORS.

Lastly, the actions that this council makes in amendment 15 can have serious repercussions throughout the surviving industry. If it is perceived that the management decisions are purposely benefiting a certain group of fishermen/ investors to the detriment of other fishermen, then I can foresee a criminal investigation in the future.

Thanks  
Jim L.

#21

# FISHERMEN'S DOCK COOPERATIVE, INC.

PO BOX 1314 - 57 CHANNEL DRIVE  
PT. PLEASANT BEACH, N.J. 08742

OFFICE 732-899-1872 DOCK 732-899-1697 Aug. 8, 2010

## Comments on Scallop Amendment #15

The Fishermens Dock Co-op Inc. has been in existence since 1952 and presently has 13 members who are all owner operators of their fishing boats. Our boats average size is 72 feet and we engage in the historic mixed trawl fisheries of the Mid Atlantic and southern New England consisting of Scallops, Fluke, Flounders, Squid, Soup, Sea Bass, Whiting, Ling, Mackerel, Bluefish, Butterfish, Monkfish, ect. Whatever fish are within our fishing grounds are what we have historically targeted since long before the U.S. government nationalized the resources outside of 12 miles with the Magnuson Act in 1976. We employ 50 to 70 people and land 6 to 10 million dollars of seafood annually.

Like the rest of the fishing industry our boats have been devastated by the effects of the general category amendment that went into effect last year. All of our members have been historic holders of a scallop permit since they were created in the 1970's. Now half of them either had their scallop permit taken away or were allocated so little quota as to be worthless. [2,000 lbs or less]. We have been robbed twice now in regard to scallops because in Amendment two, which created the DAS and General category permits a 2 year time frame was used [1988 and 89] to decide who got a DAS permit. If a 5 year time frame was used, which is the minimum of any other FMP, such as 1985 to 1989 all of our boats would have qualified for a DAS permit. Instead we were given the general category permit which allowed us 400 pounds, which at the time was not worth catching. And let me set the record straight in regard to the creation of the general category permit, It has been stated many times by certain council members that this permit was only created to address the Maine inshore Scallop fishery, that is far from the truth. It was created because if it wasn't NMFS would have been sued by the over 700 scallop permit holders who would have just been kicked out of the fishery because they didn't qualify under the two year time frame designed by certain members of the scallop AP to rid the fishery of competition. The 400 pounds at least allowed us to have some type of participation in the fishery. The problem was that the GC permit should have been limited access right off the bat, because it wasn't the amount of permit holders grew many times the original number and created a goldrush into the fishery in the last 12 years. Now thanks to The general category genocide plan, many of us historical permit holders have lost access to a fishery that we have over the years relied on. In the mean time thanks to "insider knowledge" certain people bought up as many GC permits as possible that had landings within what would become the required timeframe and now own most of the GC quota.

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AUG 13 2010

created. Therefore we support the No Action alternative in regard to the possession limit. If this limit is changed these newly minted millionaires will catch their quota in a month and then engage in the few fisheries that we have left, such as Fluke, Scup, Sea Bass, and Squid. They will create over capacity and depress prices, and since they now have deep pockets eventually drive the rest of us out of business and buy our permits cheap. {hey there's a hot tip for Jane, Sally and the rest of their EDF investor crooks}.

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We support the current ownership restrictions despite their inconsistency. We do not believe that a bunch of permit stealers should benefit anymore than they already have.

We do not support any form of quota transferring from one boat to another, or to a permit bank. If the council decides to allow this, then **ALL OF A VESSELS PERMITS SHOULD BE TRANSFERRED OR SURRENDERED.** To allow the transfer of only the GC permit, will once again result **IN OVERCAPACITY IN OTHER FISHERIES.**

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Lastly, the actions that this council makes in amendment 15 can have serious repercussions throughout the surviving industry. If it is perceived that the management decisions are purposely benefiting a certain group of fishermen/ investors to the detriment of other fishermen, then I can foresee a criminal investigation in the future.

Thanks

John Cole, President FDC

Jim Lovgren

#22

**Deirdre Boelke**

**From:** Amendment15 [Amendment15@noaa.gov]  
**Sent:** Thursday, August 19, 2010 9:53 AM  
**To:** Deirdre Boelke; Jessica H. Melgey  
**Subject:** [Fwd: comments on scallop amendment 15]

----- Original Message -----  
**Subject:** comments on scallop amendment 15  
**Date:** Mon, 16 Aug 2010 11:30:03 -0400 (EDT)  
**From:** FVCaptainRobert@aol.com  
**To:** Amendment15@noaa.gov  
**CC:** fvcaptainrobert@aol.com

To Patricia Kurkul or Whom it may concern,

Public comment to Amendment 15 to the Sea Scallop FMP. August 16, 2010.

- \* I have no comment on the management considerations for the capacity and economic efficiency of the Limited Access fleet other than it must be entirely voluntary and not lead to over consolidation while reducing somewhat the LA fleet capacity. I feel the opportunity exists to gather too much quota in too few hands, ending up like the surf clam fleet, with super harvesting vessels and NO BENEFIT to the resource or smaller owner/operators who will be disadvantaged. I point to what just happened in LAGC scallops as another example of how this could happen and has happened.
- \* Section 3.2.3.3; NGOM ACL at 70,000lbs. While I feel strongly there should be an allocation for this area, I see that very little of it is harvested. Some 65,000lbs go unused and disappear back into the system. I feel they should get their annual allocation in case their fishery happens, BUT I would like to see the remaining unused portion annually rolled back to the LAGC fleet for the next year to catch since the NGOM is dedicated to a portion of the LAGC fleet! I feel strongly about this.
- \* I mostly agree with, but not totally, the restructure flow chart for ACL's for the scallop fishery, BUT I am still cautious as to whether this insulates the LAGC/ IFQ fleet enough from the potential of reductions if the LA fleet were to overfish by some chance. I actually think the LAGC quota should come directly after the OFL as does the NGOM. The LAGC is very highly unlikely to overfish on an ITQ with personal AM's as well as daily catch limits! We need insulation from that potential scenario. I find it unconscionable that we can allow for a system that could allow a group with open access and no catch limits in many open areas with incredible harvest ability/ capacity and bycatch ability to potentially negatively affect a smaller disadvantaged group in a fixed IFQ and daily TAC system. Also I see the incidental catch coming from the ABC=ACL section. That was supposed to come from the LA sub-ACL, not off both! This system needs some more fine tuning!!
- \* 3.2.3.8 Management uncertainty for Gen Cat fishery; I support option 1 with zero buffer as I said previously there is little to no uncertainty with ITQ AND daily TAC, with personal AMs.
- \* 3.2.3.9.3 NGOM AM's; As I said before, there is a provision for when they catch their quota, but no provision for not utilizing it, see my previous comment on NGOM.
- \* 3.2.3.11.1.1.1 Seasonal closure of portion of stock area

PRE-Identified as having high bycatch; Looking at this chart suggested, I strongly oppose option A and marginally support option B. I very highly and strongly object to the wording in the rationalization paragraph in this section suggesting a closure of SNE/MA areas 539,537,613. I do not agree the LAGC should pay for any portion of high bycatch due to "26.7% yt bycatch but only 6.7% scallop catch.". I would agree if it was only on LA access as the few LAGC vessels remaining in SNE do not produce that high bycatch number and for those of us here it is the only areas we fish. As a member of the joint groundfish/scallop AP, I recommended that LAGC be removed from these penalties as our effort AND bycatch represent an insignificant DE-MINIMUS portion of the bycatch, there for we should not pay the price and lose access to our only grounds!! I do not agree to ANY closure of LAGC in any form since we are now on IFQ fishing system!

- \* 3.2.3.11.1.1.4 I do not agree with any closure or percentage required for the LAGC fleet to work in any given stock area !!

Comments specific to the LAGC portion of AMD 15:

- \* 3.4.2.1.2 Allow IFQ rollover up to 15%; I mostly agree with this as it is proper that unused IFQ is utilized. There are few provisions that account for possible hardships that may have caused under harvest. I actually forwarded as an advisor on the scallop AP that 100% of unused allocation be rolled over. I see NO uncertainty as we are dealing with fixed numbers and actually the uncaught harvest benefits the resource for that year as well as reduced bycatch. I support 15% only because it is the only option offered but highly support 100%.
- \* 3.4.2.2 Modify General Cat possession limit; At this time, I do not support raising the limit. I also polled the membership of my group in Eastern New England Scallop Assoc., we represent LAGC scallopers along the East coast. Responses were mostly keep the 400lbs limit to keep the nature of the fishery stable. Less than half indicated they would like to see an increase, but non above 600lbs and most said NOT at all if it may change the nature of the fishery! Overall that recommends no-action/ status quo.
- \* I/WE DO NOT agree with raise to 1000lbs or eliminate possession limit!
- \* 3.4.2.3.1 support no action on current 2% rule.
- \* 3.4.2.4; and 3.4.2.3.1; I support option B at this point. Option A also looks attractive if this frees up quota FROM some LA vessels TO LAGC, BUT with quota as tight as it is now IT should not go from LAGC TO LA.
- \* 3.4.2.5 Implementation of CFA's; At this time when quota is impossible to find due to hyper consolidation I wonder where the permits/quota will come from. I support the concept wholly as an experiment, BUT due to the restricted nature of IFQ availability, it cannot be allowed at this time to be over 5%. The LAGC needs time to settle out now and a CFA buying up remaining available quota to lease out or allow new entry may seem on the obnoxious side of business on the backs of all who were forced out or are barely viable due to this new regime. I would only support option A at this time, if at all.
- \* Measures to improve RSA; There needs to be some further clarification of how LAGC vessels may participate. For instance how can an IFQ vessel apply to RSA to survey NGOM, SNE, or NJ waters under the new priorities?
- \* 3.4.5.2; I do not support the idea of changing the scallop fishing year from March 1 to May 1. Keep status quo!

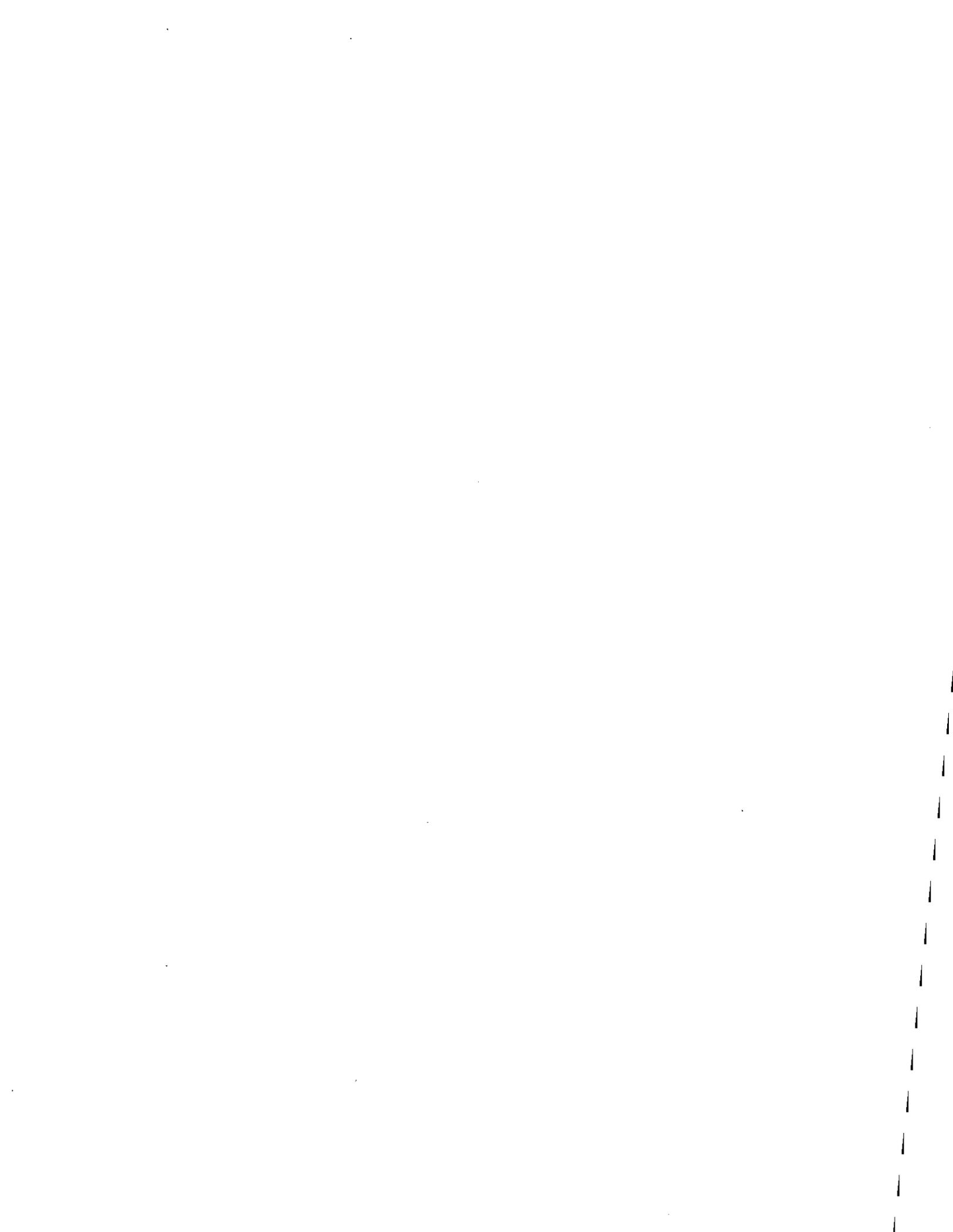
Thank you,

Michael L. Marchetti

Scallop advisor

FV Captain Robert Fisheries, Inc.

Pres. Eastern New England Scallop Ass'n.



July 19, 2010

Patricia Kurkul  
Regional Administrator  
NMFS  
55 Great Republic Drive  
Gloucester, MA 01930

Re: Draft Amendment 15 & DEIS to Atlantic Scallop Fishery Management Plan

Dear Ms. Kurkul:

Concerning the public comments on Scallop Amendment 15, we would like to share with you the following comments and concerns:

**3.2.3.8 Description of Management Uncertainty "under the General Category Fishery"**

- 1. Option #1 – Zero Buffer (LAGC ACL = LAGC ACT)
- 2. Option #2 – Up to 5% Buffer to account for potential monitoring concerns, IFQ carry over provisions and other implementation error.

*Comment:*

*The General Category is currently paying up to 3% to NMFS to manage our fishery. If a quota holder harvests over his allocation, he would be in violation which would then trigger an enforcement action and also reduce his quota allocation for the following year. Option #2 is unacceptable. The quota system should take the uncertainty out of the fishery. An additional 5% buffer is unreasonable and a hardship to the fisherman.*

**3.4.2.1.2 Allow IFQ Rollover up to 15%**

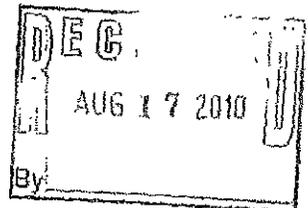
*Comment:*

*We are in agreement with this. This is necessary for unforeseen events in the fishing year.*

**3.4.2.2.2 Modify the Possession Limit up to 1,000 Pounds**

*Comment:*

*An increase in the daily limit would allow the fishermen to run more efficient and economical.*



**3.4.2.3.2 Modify the Maximum Quote One Vessel can Fish From 2% to 2.5% of Total General Category Allocation**

*Comment:*

*We are in agreement with the Maximum Quote per one vessel to be increased to 2.5%.*

**3.4.2.4 Implementation of Community Fishing Associations (CFA's)**

**3.4.2.5.1 No Action**

*Comment:*

*We believe this needs further review, not enough detail to comment properly.*

**3.4.5 Measures To Change The Scallop Fishing Year**

**3.4.5.1 No Action**

*Comment:*

*March 1<sup>st</sup> fishing year should remain as is. Should the date be changed to May, this would be a negative impact because it would be reducing our ability to catch scallops at the premier time of the year (the best yield) We need to adjust the data and all other information that is needed by the agency so we can maximize our optimum yield.*

We thank the council and staff members and all involved that worked diligently on creating amendment 15 with understanding the complexity of it. Thank you for your consideration in regarding this matter.

Respectfully,

*Curtis Truex*  
*Curtis Truex*  
*Tyler Lee*

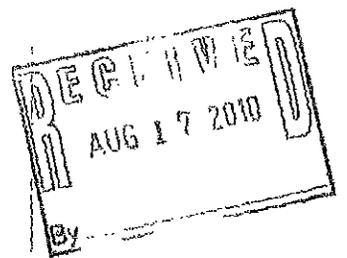
F/V  
Permit #

*I do not believe in Stacking  
Permits for Full Time Boats because  
it would put to many people out of  
work I've seen it in Claming  
I've Clamed for 20 years for m v E. I.*

When They Stacked Permits it  
gave the owners too much  
Power and then they controlled  
all of it! and also put too  
many people out of work. It  
risked too many jobs by doing so.  
I've seen it in (claming)

Less Boats Less

Jobs



Curtis Truitt



#24

Ms. Patricia Kurkul, Regional Administrator  
Northeast Regional Office, National Marine Fisheries Service  
National Oceanic and Atmosphere Administration  
55 Great Republic Drive  
Gloucester, MA 01930

July 22, 2010

RE: Comments on Scallop Amendment 15

Dear Administrator Kurkul;

I am writing on behalf of Nordic Fisheries in regard to A15. My comments are directed to stacking and leasing since Nordic Fisheries is a member of Fisheries Survival Fund and Scallop Capacity Reduction Coalition. I strongly support their positions but felt that I would like to make comments on stacking and leasing.

I believe over capacity in the limited access scallop fishery is obvious when a boat only works 75-80 days a year and that allowing stacking and leasing would improve that situation. If two like boats within the 10/10/20 baseline stack their permits onto one boat it does not increase capacity because both permits cannot be used at the prime time of the year. In fact it might reduce capacity. I therefore I do not believe a mortality adjustment is necessary but if one is imposed it should be at lowest level of 5%. There is a power adjustment when a small permit is put on a larger boat, which maintains the overall harvesting mortality.

Stacking does not only help to reduce the costs for fleet owners but it gives the single boat owner the ability to perhaps purchase and share additional permits as a group. Leasing would also help everyone, what single boat owner would not want to lease his permit if he had a major problem with his vessel.

Stacking would improve safety because this would allow a boat owner to retire his older boat for a newer one; this is needed because the average age of a scallop boat is much older than it should be. Currently no one can own more than 5% of the permits and whether you stack or not, consolidation has taken place, only 22% of the limited access permits are owned by single boat owners.

Stacking and leasing would change employment in that today crews go from boat to boat which is additional work for them. As far as shore side businesses goes one boat with double the allocation doing the work of two vessels should require about the same maintenance over all.

The main thing to remember about this issue is that it is an option; no one would be forced to stack or lease. If some permit holders would want the option why shouldn't they have it. Just like in the Multispecies a boat owner was allowed to lease prior to forming sectors.

AUG 17

I believe that stacking and leasing would make for a safer and better industry for the long run, but for those that do not want to stack or lease that is their right, this is an option.

A handwritten signature in black ink, appearing to read "Roy Enoksen", with a horizontal line extending to the right from the end of the signature.

Roy Enoksen, President  
Nordic Fisheries, Inc  
14 Hervey Tichon Ave.  
New Bedford, MA 02740

#25

F/V Megan Marie  
Blue Water Fisheries Inc.  
P. O. Box 2242  
Montauk, NY 11954

Patricia Kurkul, Regional Administrator  
Northeast Regional Office  
NMFS NOAA  
55 Great Republic Drive  
Gloucester, MA. 01930

Re: Comments on Scallop Amendment 15

Dear Ms. Kurkul,

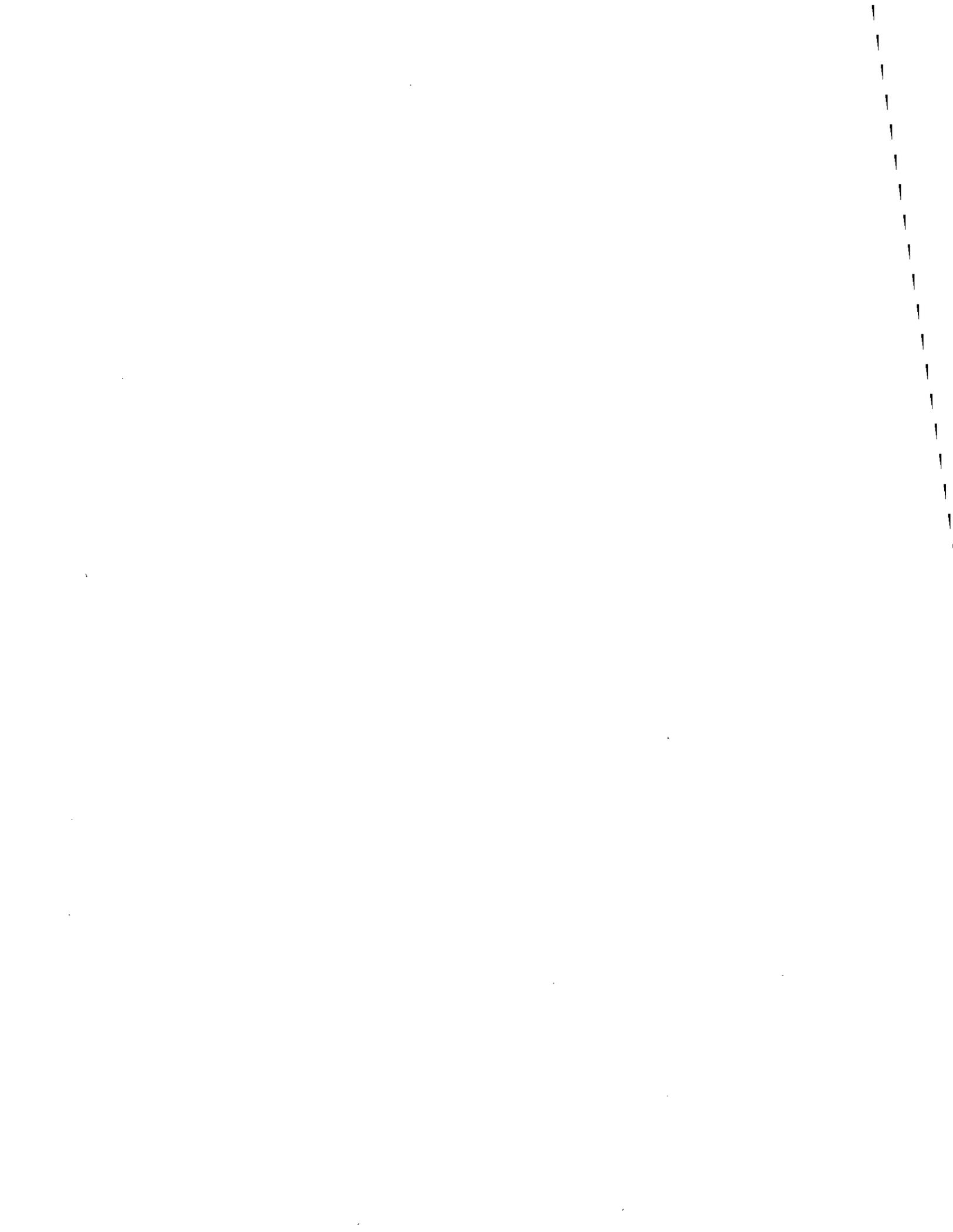
I am writing this letter to comment on the proposed Amendment 15 to the Scallop fishery, specifically the permit leasing option. The leasing option would allow vessels with other unused permits the option to lease out their scallop days and then fully utilize the remaining permits on the vessel.

Many of these scallop boats also have squid, scup, fluke, monk and small-mesh multispecies permits that have not been used through the years. Most of these leases will be between vessels owned by the same owner in order to make their boats more efficient. I honestly don't believe that anyone will let an existing vessel sit inactive while there is an existing set of permits available for use already on the vessel.

When the multispecies DAS leasing plan went into effect we saw an increase in effort in other fisheries by vessels which had leased out their groundfish DAS to partner vessels. Many of these other fisheries have their own challenges with excess capacity and do not need an increase in effort that another leasing plan will create. We should address excess capacity in all fisheries before allowing any more leasing programs to be developed.

Sincerely,

Dan Farnham V.P.  
Blue Water Fisheries Inc.



#26

**U. S. Environmental Protection Agency  
New England Region  
1 Congress Street, Boston, MA 02114**

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**FAX COVER SHEET**

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**TO:**patriciakurkul  
Timmermann/OU=R1/O=USEPA/C=US

**FROM:**CN=Timothy

---

**FAX NUMBER:**19782819135

**DATE:**08/19/2010

---

**SUBJECT:**EPAs Comments on the Draft Amendment 15 to the Scallop Fishery Management Plan/DEIS

Ms. Kurkul:

attached please note our comments on the Scallop DEIS. Please contact me with any questions.

Tim

Timothy L. Timmermann  
Environmental Scientist  
Office of Environmental Review

EPA New England, Region 1  
5 Post Office Square, Suite 100  
Mail Code ORA 17-1  
Boston, Massachusetts 02109-3912

Telephone: 617-918-1025  
E-Fax: 617-918-0025

timmermann.timothy@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

August 18, 2010

Patricia A. Kurkul  
Regional Administrator  
Northeast Regional Office  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

RE: Draft Amendment 15 to the Scallop Fishery Management Plan (FMP) Including a Draft Environmental Impact Statement (DEIS) (CEQ# 20100246)

Dear Ms. Kurkul:

In accordance with our responsibilities under the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency (EPA) has reviewed the Draft Amendment 15 to the Scallop FMP and DEIS. Based on our review, we have several comments that warrant a response prior to the conclusion of the NEPA process.

Changes in ocean chemistry and temperature as a result of global climate change can have significant implications on many marine organisms, particularly shell-building creatures such as sea scallops. The absorption of excess carbon dioxide in the world's oceans is causing acidification, which can impair growth rates for some shell-building organisms, such as scallops, particularly during the larval stage.

Similarly, the documented appearance and apparent proliferation of the invasive colonizing tunicate, *Didemnum vexillum*, at three high-value sea scallop habitat areas in New England waters represents a potentially significant threat to scallop resources in these areas. Potential impacts on sea scallops from *Didemnum* include inhibiting the settlement of larval scallops, and the smothering of individual scallops as it grows and covers the scallop's outer shell.

While these stressors are not caused by commercial fishing, they may contribute to scallop mortality by impairing their ability to grow, survive, and reproduce. Combined with fishing mortality and increased natural mortality from predation, population-level effects could result in the foreseeable future. Therefore, the potential contributing effects of invasive tunicates, and changes in water quality resulting from increasing acidification and water temperature should be discussed under Section 5.7 (Cumulative Effects) in the FEIS for the Amendment 15 Scallop FMP.

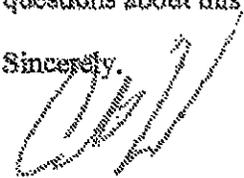
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We appreciate the opportunity to comment on the DEIS for Amendment 15 to the Scallop Fishery Management Plan. Based on our review of the DEIS we have rated the DEIS "LO-1---Lack of Objections-Adequate" in accordance with EPA's national rating system, a description of which is attached to this letter. Please contact Timothy Timmermann (617-918-1025) of EPA's Office of Environmental Review with any comments or questions about this letter.

Sincerely,



Curtis H. Spalding  
Regional Administrator

enclosure

## Summary of Rating Definitions and Follow-up Action

### Environmental Impact of the Action

#### **LO--Lack of Objections**

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

#### **EC--Environmental Concerns**

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts:

#### **EO--Environmental Objections**

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

#### **EU--Environmentally Unsatisfactory**

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

### Adequacy of the Impact Statement

#### **Category 1--Adequate**

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

#### **Category 2--Insufficient Information**

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

#### **Category 3--Inadequate**

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.



Dear NEFMC Scallop Committee Members,

My name is Meghan Lapp, and I attended the Public Hearing meeting for Scallop Amendment 15 in Fairhaven, MA on July 13, 2010. I am a member of the American Alliance of Fishermen and their Communities, employed by shoreside infrastructure, and possess a Masters of Legal Science. In my short time in the fishing industry, I have been astonished at the way this Council habitually quotes and utilizes the federal legal requirements and National Standards from the Magnuson Stevens Act that it desires, in order to achieve its predetermined agenda, and conveniently ignores others- usually the requirements that are designed to be safeguards for fishermen and fishing related industry against harmful and over-regulation. My comments are for the purpose of both reminding the Council of its duties and demanding that it comply with the federal fishing regulations that govern its actions.

Amendment 15, according to the Council has a goal to "address excess capacity in the limited access (LA) scallop fishery" (taken from a Council handout at the July 13 meeting). First of all, in my opinion, when you have scallops dying on top of each other from old age, you do not have an excess capacity problem- you have an under-harvesting problem. Secondly, in an "Excess Harvesting Capacity in US Fisheries: A Report to Congress Mandated under Section 312(b)6 of the Magnuson Stevens Fishery Conservation and Management Act" dated April 28, 2008, compiled by NMFS, NOAA and the Department of Commerce, harvesting capacity is defined as "the maximum amount of fish that the fishing fleets could have reasonably expected to catch or land during the year....given.....some or all fishery regulations." (p. 6). Given that Amendment 15 establishes ACLs and AMs, the maximum amount of scallops that can be harvested will be a set figure. It does not matter if two boats, twenty boats, or two hundred boats harvest this amount, the same amount will be harvested. Therefore, the harvest capacity is determined by the regulations themselves, as stated above, not by the number of vessels. National Standard 5 dictates that <sup>to</sup>~~so~~ such [management] measure shall have economic allocation as its sole purpose." However, that is exactly the only purpose Amendment 15 permit stacking and leasing can and will have once an ACL is set in place. It will be an economic redistribution amongst vessels (since no conservation purpose is to be found in stacking and leasing), which will cause some vessels and vessel owners to be big winners, some to be big losers, in an economic and financial sense. This on its own renders the bulk of the Amendment illegal under National Standard 5.

National Standard 4 also demands that "If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen [which it is not, since only vessel owners of two or more boats may stack permits], (B) reasonably calculated to promote conservation [again scallops will not



be conserved by permit stacking and leasing; this is an economic tool]; and (C) carried out in such a way that no particular individual, corporation, or other entity acquires an excessive share of such privileges (which will undoubtedly happen should a permit stacking and leasing program be developed; this has happened in EVERY OTHER COUNTRY WHERE SUCH A PROGRAM HAS BEEN PUT INTO EFFECT)." In fact, just about every other country around the world where such a program has been adopted is trying to move away from this type of system due to the devastating effects it has had on fishing communities, which brings me to my next point.

A significant problem Amendment 15 encounters is National Standard 8, which reads: "Conservation [i.e., the level of ACL later established- remember those wasted, dying scallops and the jobs they could support if harvested] and management measures shall, where practicable, consistent with the conservation measures of this Act ...take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2) [i.e., "the best scientific information available"], in order to provide (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities." Firstly, Amendment 15 stacking and leasing will cause fleet consolidation, causing many single owner-operators to be unable to compete with fleet owners, thereby causing job loss and loss of an entire dimension- small, single boat owners- of the fishing community. That is not "minimizing adverse impacts" nor "providing for the sustained participation of such communities". It is exactly the opposite, thereby contravening National Standard 8. Secondly, Dr. Julia Olson, whom I believe is a social scientist, was employed by NMFS and the Council to produce "Social Impact Assessment Literature Review: Leasing and Permit Stacking", a document released in August, 2009. This document is the closest I have seen to a social and economic impact assessment, per National Standard 8. Therefore, it comprises "the best scientific information available" and binds the Council as effectively as a stock assessment binds quotas. Let me enlighten the Council as to her findings:

"The primary social impacts that have been documented in empirical cases involving consolidation...range from employment loss, decreased income, decreased quality of life, changing relations of production, structural disadvantages to smaller vessels and firms, dependency and debt patronage, concentration of capital and market power, inequitable gains, regulatory stickiness, reduced stewardship, decreased community stability, loss of cultural values, and so on." (p.1)

"Thus, ... consolidation measures like ITQs, but also more generally leasing and stacking, tend to have their negative impacts on those less powerful segments of the fishing industry, namely the crew, or the small business owners without a fleet of vessels or vertically integrated



business. Those who are better to take advantage of measures like leasing and stacking are then increasingly able to exert market control in various markets, such as leasing quota, hiring crew, or even affecting prices that fishermen receive for their product. These kind of changes, in turn, affect the structure of communities- through changing relations between people and shifts in dominant values- and affect the viability of fishing communities as some are disproportionately impacted by geographic shifts in fishing businesses. National Standard 8 requires that fishery management plans "take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B), to the extent practicable, minimize adverse economic impacts on such communities."... NS8 directs important attention to how measures like leasing and stacking may impact the sustained participation of fishing communities dominated by smaller operations and the cumulative effects of market changes reflecting more dominant interests, in which new participants find entry increasingly difficult and smaller operations are increasingly dominated by larger ones...Thus the question of capacity reduction is ultimately not simply an issue of economic efficiency [notice not directed towards conservation], but a question of what values to promote and what the future of the fishery and its fishing communities should look like." ( p. 6).

This report effectively demonstrates a huge contravention of the safeguards of National Standard 8. If this Council chooses to ignore all of the above, it not only does so in blatant violation of federal requirements but also of the best interests of fishermen and fishing communities. In conclusion, I wish to affirm my call for "no action" as regards to the Amendment 15 plan.

Sincerely,

Meghan Lapp

From Dick Grachek  
New London  
7/19/2010

July 19, 2010

Patricia Kurkul  
Regional Administrator  
NMFS  
55 Great Republic Drive  
Gloucester, MA 01930

Re: Draft Amendment 15 & DEIS to Atlantic Scallop Fishery Management Plan

Dear Ms. Kurkul:

Concerning the public comments on Scallop Amendment 15, we would like to share with you the following comments and concerns:

**3.2.3.8 Description of Management Uncertainty “under the General Category Fishery”**

1. Option #1 – Zero Buffer (LAGC ACL = LAGC ACT)
2. Option #2 – Up to 5% Buffer to account for potential monitoring concerns, IFQ carry over provisions and other implementation error.

*Comment:*

*The General Category is currently paying up to 3% to NMFS to manage our fishery. If a quota holder harvests over his allocation, he would be in violation which would then trigger an enforcement action and also reduce his quota allocation for the following year. Option #2 is unacceptable. The quota system should take the uncertainty out of the fishery. An additional 5% buffer is unreasonable and a hardship to the fisherman.*

**3.4.2.1.2 Allow IFQ Rollover up to 15%**

*Comment:*

*We are in agreement with this. This is necessary for unforeseen events in the fishing year.*

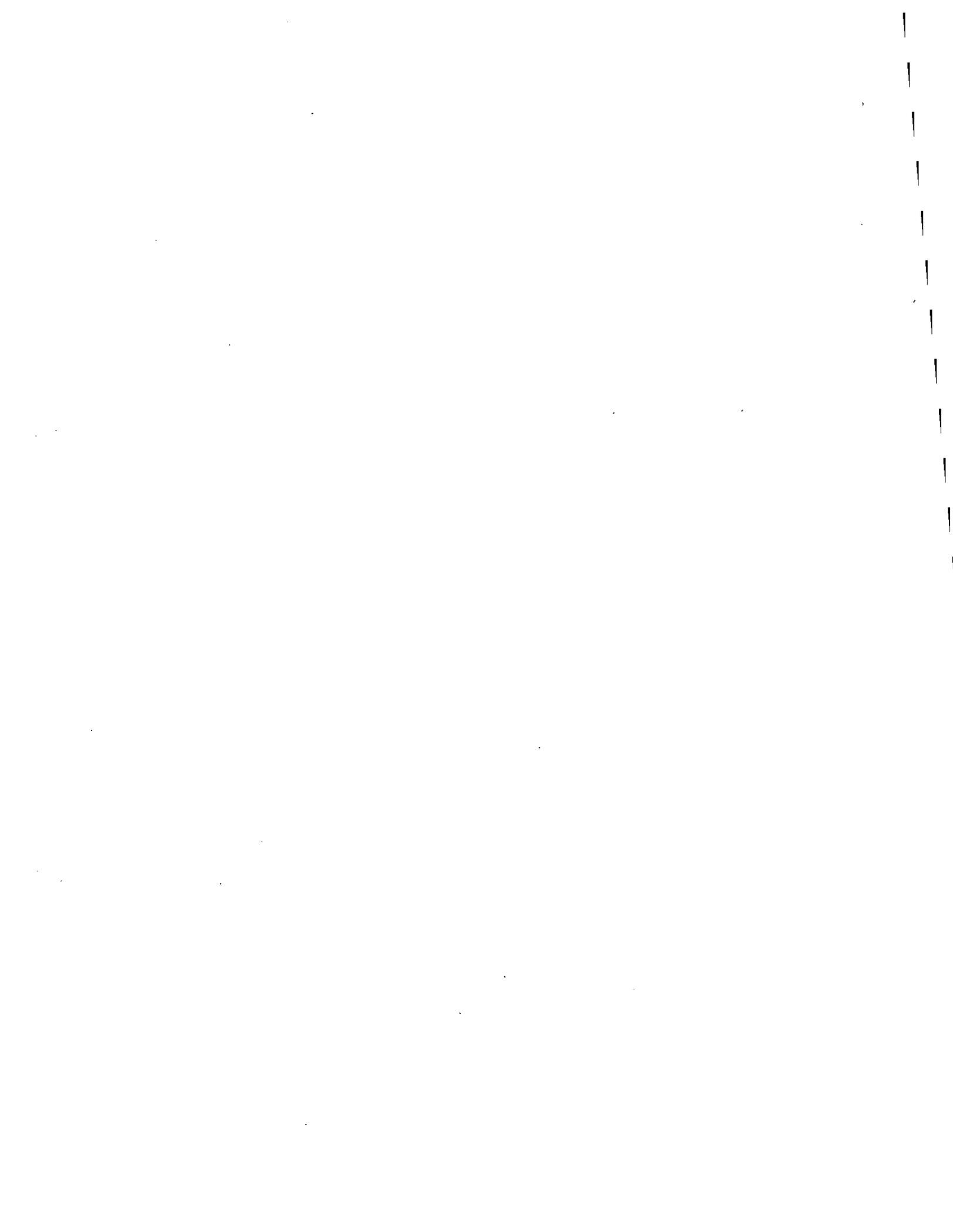
**3.4.2.2.2 Modify the Possession Limit up to 1,000 Pounds**

*Comment:*

*An increase in the daily limit would allow the fishermen to run more efficient and economical.*

**3.4.2.3.2 Modify the Maximum Quota One Vessel can Fish From 2% to 2.5% of Total General Category Allocation**

*Comment::*



*We are in agreement with the Maximum Quote per one vessel to be increased to 2.5%.*

**3.4.2.4 Implementation of Community Fishing Associations (CFA's)**

**3.4.2.5.1 No Action**

*Comment:*

*We believe this needs further review, not enough detail to comment properly.*

**3.4.5 Measures To Change The Scallop Fishing Year**

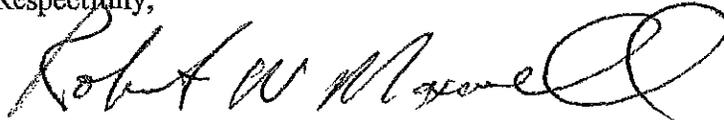
**3.4.5.1 No Action**

*Comment:*

*March 1<sup>st</sup> fishing year should remain as is. Should the date be changed to May, this would be a negative impact because it would be reducing our ability to catch scallops at the premier time of the year (the best yield). We need to adjust the data and all other information that is needed by the agency so we can maximize our optimum yield.*

We thank the council and staff members and all involved that worked diligently on creating amendment 15 with understanding the complexity of it. Thank you for your consideration in regarding this matter.

Respectfully,



Robert Maxwell

F/V Top Dog Permit #240538

F/V Discovery Permit #330103

Theresa & Dawn Permit #310178

Kellies Heroes Permit #233131

Snoopy II Permit #250653

Sugar Foot Permit #330837



#29

8-11-2010

ACTION  
SPD

P.O. Box 231  
Fairhaven, MA 027

Dear Pat,

I am requesting that the Full Council repeal "the small dredge exemption" that is in amendment 4. Part-time and occasional permits are allocated 40% and 8.3% of a full-time permit. I believe that these two user groups are over fishing their allocation by 6-8 million pounds per year. If the ACL that is put in place for the 2011 fishing year is exceeded, AM will be triggered and the days reduced next year, 2011. If the small dredge exemption is allowed to continue, the 255 full-time will lose between 8-10 days at sea.

Another way to fix this would be to create 4 ACL full-time, part-time, occasional, and general category.

Best Regards,  
Ray Starvick

F.T. - 255 - Boats

38 DAYS  
3000 - lbs. Per DAY  
114,000 lbs.

4 - Trips  
x 18,000 per trip  
76,000

- TOTAL - 190,000 lbs Per Year

PT. - 57 - BOATS

15 - DAYS  
x 3000 - lb. Per DAY  
45,000 lbs.

2 - Trip  
14,400 per trip  
28,800 lbs.

- TOTAL - 73,800 lbs Per Year

31 - BOATS

3 - DAYS  
3000 lb Per DAY  
9,000 lb.

1 - Trip  
6,000 lbs.  
6,000

- TOTAL - 15,000 lbs per year

PT. S. D. 57 - BOATS

38 - DAYS  
x 2000 - Per DAY  
76,000 lbs.

4 - Trip  
x 18,000 per trip  
76,000 lbs.

TOTAL - 152,000 lbs

PT. S. D. 31 boats

15 - DAYS  
2000 - Per DAY  
30,000 lbs.

2 - Trips  
x 14,400 Per Trip  
28,800 lbs.

TOTAL 58,800 lbs per Year

PT - 57 boats x 73,800 = 4,206,600 lbs.  
D - 31 boats x 15,000 = 465,000 lbs.  
4,671,600 lbs.

TS D - 57-boats x 152,000 = 8,664,000 lbs.  
TS D - 31-boats x 58,800 = 1,822,800  
10,486,800

10,486,800  
4,671,600  
5,815,200 lbs. area.

23,000 lbs - from the  
F.T. fleet  
or  
8-DAY-AT-SEA-LESS

#30

Admiral Inc.  
Fishing Vessel Legacy  
5 Acorn Lane  
Mattapoisett, MA 02739

Patricia Kurkul, Regional Administrator  
NOAA/NMFS  
55 Great Republic Drive  
Gloucester, MA 01930

John Pappalardo, Chairman  
NEFMC  
50 Water Street  
Newburyport, MA 01950

COMMENTS ON AMENDMENT 15 IN OPPOSITION TO THE PROPOSED RULE  
TO ALLOW STACKING OR LEASING IN THE LIMITED ACCESS SEA SCALLOP  
FISHERY

Dear Ms. Kurkul and Chairman Pappalardo:

I am writing in opposition to the current proposals to consolidate the Limited Access Scallop Fishery through leasing and stacking of permits.

We are owners of one (1) limited access scallop vessel, F/V Legacy, and employ ten (10) people. This is a third generation fishing family business. For over 70 years, this family operated business has supported multiple families in the New Bedford/Fairhaven/Dartmouth area. Throughout these years, many of us in the fishing industry have made multiple financial and personal sacrifices in order to remain in business through out the ups and downs of the industry. Many sacrifices that was necessary and supported in the effort of conservation and sustaining the industry. Amendment 15 stacking and leasing will cause fleet consolidation, causing many single owner-operators to be unable to compete with fleet owners. The loss of the single vessel owner will have a negative socio-economic impact on the fishing community. A negative impact that is NOT conservation driven and strictly economically driven.

This is clearly violating national standards and yet there has been no outreach to our business and family. How can an amendment such as this be instituted without consideration of the families that will lose their livelihood? We have read and support Dr. Julia Olson's Social Impact Assessment Literature Review: Leasing and Permit Stacking", a document released in August 2009. In addition, we are in full support of Rep. Barney Frank and Rep. William Strauss position on Amendment 15.

I believe this move to consolidate the fleet will undermine our traditional fisheries and way of life by encouraging larger fishing operations, while placing single vessel or small fleet owners at a competitive disadvantage. This will result in fewer fishermen employed on vessels and loss of fishing related shoreside jobs, and the negative impact on fishery infrastructure will carry-over into all fisheries. The scallop fishery is currently stable and profitable, and I do not believe it needs consolidation. The harm to fishermen, shoreside businesses and fishing communities, outlined in the Amendment documents, far

outweighs the benefits that will be conferred on a very few large fleet owners. Please vote against stacking and leasing or any other consolidation in this fishery.

Thank you for the opportunity to comment.

Kathleen Wilhelmsen

David Wilhelmsen

8/22/10

cc. Barney Frank, William Strauss, Scott Brown, Mayor Lang

#31

August 20, 2010

Ms. Patricia Kurkul, Regional Administrator  
Northeast Regional Office, National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
55 Great Republic Drive  
Gloucester, Ma. 01930

Re: Comments on Scallop Amendment 15

Dear Administrator Kurkul:

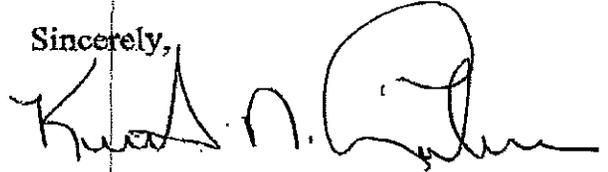
I am writing on behalf of my company, Cold Spring Fish & Supply Co. in support of the leasing provisions contained in Amendment 15. We own and operate 9 scallop boats.

We support leasing because it is an effective management tool that would provide benefits to all permit holders in the scallop fishery while still allowing for fleet reduction. Leasing is an opportunity for single vessel owners to supplement their initial fishing allocations by leasing additional DAS or trips from other vessel owners without having to purchase an entire additional permit. Leasing would also allow multi-vessel owners to utilize their fishing allocation of DAS and trips on fewer boats by leasing within their fleet.

Perhaps most importantly, leasing gives vessel owners the opportunity...for the first time ever...to lease out their fishing allocations for whatever reason. In the past if a vessel caught fire or sank, the owner could not recoup any value for the lost DAS and trips. Under the leasing alternative vessel owners would be allowed to receive some compensation for their loss.

From a southern New Jersey perspective, we believe leasing offers the most benefits to the industry while achieving the overall goal of capacity reduction.

Sincerely,



Keith N. Laudeman

KNL/cb

F/V Vaud J	Permit #410201
F/V Susan L	Permit #410232
F/V Alexandra L	Permit #250968
F/V Sea Quest	Permit #330783
F/V Mariner	Permit #320662
F/V Capt Bucky Smith	Permit #320333
F/V Makayla Jane	Permit #330845
F/V Stacy Lee	Permit #310311
F/V Captain Jeff	Permit #330626

#32



*Martin O'Malley, Governor*  
*Anthony G. Brown, Lt. Governor*  
*John R. Griffin, Secretary*  
*Joseph P. Gill, Deputy Secretary*

Patricia Kurkul  
Regional Administrator  
Northeast Regional Office  
National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
55 Great Republic Drive  
Gloucester, MA 01930

August 20, 2010

Dear Patricia Kurkul;

As you are aware, Amendment 11 to the Scallop Fishery Management Plan has affected many fishermen along the East Coast. Specifically, harvesters out of Ocean City, Maryland have been significantly limited in their ability to harvest scallops. Sustainable fisheries management is a priority for Maryland and our stakeholders. We fully understand the challenges of trying to balance conservation measures with socio-economics impacts, and hope that the Council will consider the following strategies both to improve the health of the resource and to mitigate the economic impact of Amendment 11 on Maryland scallop fishermen.

In case you are not aware, the majority of Maryland's scallop harvesters operate smaller-scale vessels that entered this fishery during a time of rapid change in both the fishery and the regulatory environment. These individuals made significant investments to enter the fishery, and are now faced with a dire economic situation. Several fishermen did not meet the qualifying criteria; others met the qualifying criteria but received a scallop allocation that may not be large enough to keep their fishing businesses economically viable. We are concerned that many Maryland scallopers may not be able to survive financially during this transitional period as both the fishermen and the financing institutions adjust to the new regulatory environment.

There are several options that Maryland would like to propose that will expand the opportunities for our scallop fishermen.

First, it is our understanding that, under the Sustainable Fisheries Act (SFA) amended section 1104A(a)(7) of Title XI of the Merchant Marine Act and section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act, the New England Fisheries Management Council could request that the National Marine Fisheries Service establish a program that makes favorable financing available to specific categories (new entrants, smaller-scale fishermen) of the General Category scallop fishermen. Such a lending facility would allow new entrants and smaller-scale fishermen, like those in Maryland, to acquire and lease General Category permits and increase their allocation.

Second, Maryland requests that NOAA expands the grant program that is currently funding the establishment of state-operated permit banks for Northeast groundfish permits to include the Mid-Atlantic States and sea scallop permits. These permit banks will allow states to maintain access to local resources for local boats.

Third, we request NEFMC to allow permit banks to purchase limited access scallop permits to be converted into General Category scallop quota. Amendment 11 reduced the percentage of the scallop total allowable catch that is available to the General Category fleet from a maximum of 14% in 2005 to 5% in 2010. The purchase of limited access permits for the purpose of restoring access to the General Category fleet is entirely appropriate and in keeping with the market-based approach that was adopted by the Council in Amendment 11. This mechanism could restore access without taking anything away from the limited access fleet involuntarily.

Fourth, we ask the NEFMC to create an inshore scallop management area that would be managed for and by the General Category fleet with the objective of bringing about similar increases in scallop yield as have been seen through improved management of the offshore scallop grounds.

Fifth, access to capital is an essential component of market-based fishery allocation programs like the General Category scallop ITQ. Financial institutions need to know that their security interest in fishing permits and quota shares is recognized and recorded. A workable central registry system would be an important tool for improving financing for vessels of all sizes in any limited access fishery, and we would ask that you formally support the establishment of such a central lien registry.

Due to the nation's commitment to protect jobs, we ask that you consider opportunities for these fishermen in future management decisions.

We appreciate your dedication to responsible management of our coastal fisheries.

Sincerely,



Carrie Kennedy  
Coastal Fisheries Program Manager

#33

Ms. Patricia Kurkul, Regional Administrator  
Northeast Regional Office, National Marine Fisheries Service  
National Oceanic and Atmosphere Administration  
55 Great Republic Drive  
Gloucester, MA 01930

August 17, 2010

RE: Comments on Scallop Amendment 15

Dear Administrator Kurkul;

As for the comments on Amendment 15 (A15) of the Scallop Fishery Management Plan (FMP), I would like to comment on the management uncertainty alternative in the Limited Access (LA) Fishery. Since Annual Catch Limit (ACL) is the threshold once reached, it calls for Accountable Measure (AM); I strongly support using the Annual Catch Target (ACT) which is set below ACL just like the recommendation by the Fisheries Survival Fund. Basically create a buffer between ACL and ACT. It's important for this fishery being a hybrid using days-at-sea (DAS)/access area rotation fishing regime to have a buffer between the ACL and ACT. This buffer is needed to address the unknowns of science and management. The key thing is that this ACT is a target not a trigger for any AM's. Using ACT will take away the incentive to have derby fishery, the industry doesn't want to race to catch like the recent derby activity within the Nantucket Lightship Closed Area. It is not safe and highly disruptive to the shore side support business and market conditions. It's OK to exceed ACT in any year as long the industry doesn't exceed the ACL, basically stay in between ACT and ACL. I envision using the ACT as a powerful in-season proactive AM's. Now if the ACL for the scallops is exceeded then I advocate making the AM adjustment during the following year or year(s) not during the same current fishing year. This correction or adjustment should be done on the open DAS not the access area allocations.

Now switch to AM's for by-catch such as yellowtail (YT). Again I suggest that the overages should be allowed and adjusted after each fishing year(s) is completed. These AM's should have no impact on any access area fishing because of recent discussions among the Scallop Plan Develop Team and the Joint Groundfish /Scallop Advisory Panel support lifting the 10% ACL cap.

Having in-season AM's either for scallop or YT will be negative for the industry. It will shift the fishing effort into other areas which could cause undesirable conditions such as derby fishing in smaller areas, less catch rates, smaller count scallops, possible turtle interactions, timing of spawning seasons, and timing of seasonal weather. However if the by-catch conditions arise if the landings exceed the YT ACL then consider a closure within open areas but it should be kept small as possible and seasonal.

Now I would like to comment on research set aside (RSA). It's time to switch the entire RSA allocation into pounds. I support eliminating the two percent of access area and DAS allocations set aside instead use a fixed poundage. I support keeping the fixed poundage in the range of 2%. This alone should speed

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up the process to award the researchers. I support putting some of the fixed poundage into for the scallop biomass surveys. I strongly support using the RSA to be used by only the academic world and gear technologists. I don't support having the government agencies using the industry's set aside for their biomass surveys. I support RSA rollover and multiple year projects.

As for Essential Fish Habitat (EFH) boundaries, I support the Council's preferred alternative to modify the existing EFH boundaries on the George's Bank to be the same as the EFH boundaries under the Multispecies Amendment 13. This is long overdue.

I do agree that there is excess capacity on the waterfront. Just the fact this fishery has seen a major reduction in allocations for each LA full time scalloper. Prior to 1994 which was the first year of DAS management regime, a lot of the full time scallopers were fishing 12 months year round which it was well over 260 DAS with 9-13 man crews. Currently our DAS is at 38 DAS and four access area trips for each vessel which translate into being offshore 75-80 DAS. In which for the remainder of the year it is causing shortage of dockage berthing in many ports up and down the coast. In addition many captains with his crew have consolidated; most of these captains with his crew are working on two vessels each year, that way they want to work about 160 days offshore. So, I strongly support stacking and leasing for the LA scallopers. Just like the groundfish vessels were allowed to lease prior to the formation of sectors and the Gen Cats are allowed to exchange quota.

I support allowing a vessel to stack only two permits on one vessel. Each stacked permit should stand alone to count towards the ownership cap. This will encourage safer vessels being used for stacking. This will be a positive shift within the industry since the recent USCG report on the relationship between the average age of vessels and safety is reported.

In the A15 document here are two adjustments for the DAS under the DAS regime. I support using the HP/length adjustment for unlike permits stacked outside of the 10:10:20 baseline. As for the second adjustment - mortality adjustment I don't agree with it because it is all based on models and predictions, not real world data. The rationale is that I have witnessed among my Captain and his crew using two boats, the second vessel in the open area doesn't produce as well as the first one does. The second vessel is tied to the dock during the "productive spring/summer" fishing periods while the Captain and his gang are on the first boat. Regarding the mortality adjustments for harvesting efficiency, it's not about size of HP, or length of boats, it's all about one key thing ....SHUCKING CAPACITY. Sometimes the shucking capacity is maxed out. It's during these seasonal periods in which the boats are bringing scallops on deck faster than a 7 man crew can shuck so it becomes a shucking contest among boats. I have observed a captain and his gang having excellent shucking capacity on an 800HP boat land equal or more scallops than the crew on an 1100 HP vessel. That's why I have reservations about using the mortality adjustment; it's based on theories, models, and estimations not it not real world conditions. Not only that what about the fact that there some identical sister ships having same hull and engine power package desiring to stack have to pay the mortality adjustment; so how does that increase the mortality when it is currently fishing? So I suggest if the Council wants to use mortality tax, start with a number as low as possible such as 5% and take a wait and see approach. Another concern is how will

this mortality adjustment be monitored without having a baseline? There hasn't been any discussion as how this will be measured for comparisons?

interesting there has been few discussions about the job losses in the implementation of LAPP management for the Scallop Industries which have occurred since the Amendment 4 (A4). For example shortly after the implementation of the DAS regime our crews were restricted to 7 men per vessel to control the manual shucking capacity for mortality control. Currently 78% of the permits are in the hands of multiple vessel owners. The fishing job losses among multiple vessel owners will be on small scale; because right now most of the multiple owners have their captains with their gangs operate two vessels. I believe the job loss will not be as drastic when you compare to the jobs lost since A4.

I support de-stacking on three conditions. First is to allow de-stacking onto another LA scalloper or CPH at the time of permit renewal. Basically the permit moves from one vessel to another vessel or into CPH. This will take care of any sidebar issues and allow owners to separate from un-healthy partnerships. Secondly the catch history on stacking, it only makes sense to go 50/50 when de-stacking. Divide the history equally down in the middle between the two permits. It would be an administrative nightmare for NMFS to monitor or figure out which of the two permits the stacked vessel was utilizing while harvesting scallops. Thirdly, the baseline of the permit being removed should revert to its baseline from the previous vessel it was attached to prior to stacking.

As for leasing, I support it as long the maximum allocation is equal to two permits per vessel. And I support allowing sub leasing. Leasing and sub leasing will increase flexibility and opportunities for any vessel that doesn't want to stack. For example, a single vessel owner can lease a couple of access area trips. Allowing leasing from a CPH will reduce the crowding of dock berthing. It will reduce fuel consumption, insurance cost, and maintenance cost of a vessel that is tied up. It's advantageous to be using same HP/Length and mortality adjustments measures for leasing as I mentioned for stacking provisions.

Addressing the overcapacity by allowing stacking and leasing will encourage better fishing opportunities which will be matching the scallop biomass. The key thing about stacking and leasing alternatives in this current public document is that it is voluntary. It's intended to be voluntary for any permit holder to decide if they want to participate. It is important to move forward on stacking and leasing by creating incentives for vessel owners to reduce overcapacity with better flexibility.

Thank You.



Ronald Enoksen

Future Fisheries, Inc  
14 Hervey Tichon Ave.  
New Bedford, MA 02740





## United States Department of the Interior

OFFICE OF THE SECRETARY  
Office of Environmental Policy and Compliance  
408 Atlantic Avenue -- Room 142  
Boston, Massachusetts 02210-3334



August 19, 2010

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Patricia A. Kurkul, Regional Administrator  
Northeast Region, National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
55 Great Republic Drive  
Gloucester, MA 01930

**RE: COMMENTS**  
**Draft Environmental Impact Statement (DEIS) for Amendment 15**  
**Atlantic Sea Scallop Fisheries Management Plan**  
**Gulf of Maine, Georges Bank**

Dear Ms. Kurkul:

The U.S. Department of the Interior (Department) has reviewed the Draft Environmental Impact Statement (DEIS) for Amendment 15 to the Atlantic Sea Scallop FMP, Implementation of the Annual Catch Limits and Accountability Measures to Prevent Overfishing, Gulf of Maine, Georges Bank. The Department has no comment on the DEIS.

Thank you for the opportunity to review and comment on this DEIS. Please contact me at (617) 223-8565 if I can be of assistance.

Sincerely,

Andrew L. Raddant  
Regional Environmental Officer



#35



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
55 Great Republic Drive  
Gloucester, MA 01930-2276

AUG 23 2010

John Pappalardo, Chairman  
New England Fishery Management Council  
50 Water Street  
Newburyport, MA 01950

Dear John:

We have reviewed the public hearing document and Draft Environmental Impact Statement for Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan (Amendment 15). I submit the following comments on the proposed alternatives for consideration by the Council in its final deliberations on Amendment 15.

**Change of the Fishing Year**

Over the past decade, it has become increasingly common for annual scallop specifications to be implemented after the start of the fishing year on March 1<sup>st</sup>. This is largely due to the desire to utilize the results of the summer resource surveys in setting annual specifications. The Council should recognize that, in order to use the data from the most recent summer survey, it is necessary to adjust the start of the fishing year to later in the calendar year. I strongly urge the Council to adopt the proposed May 1 start of the scallop fishing year to allow updated survey information to be incorporated into management decisions while ensuring annual measures are implemented at the start of the fishing year. The current process causes unnecessary confusion for the industry, and requires equally unnecessary administrative "patches" to be devised to ensure that conservation objectives are achieved. It also delays the award of research set-aside, creating difficulties for researchers.

The need for this adjustment is intensified with the increased complexity that is likely to result from some of the Amendment 15 measures, such as annual catch limits (ACL); accountability measures (AM) for scallops and yellowtail flounder (yellowtail); and potential stacking, leasing, and de-stacking measures. Making mid-year modifications to these measures would become even more confusing to the industry and would be difficult to implement effectively. Yellowtail bycatch limits are dependent on catch limits established under the NE Multispecies Fishery Management Plan, which has a May 1 fishing year. Shifting the start of the scallop fishing year to May 1 would simplify implementation of the yellowtail ACLs and AMs for the scallop fishery with a May 1 start date. The Standardized Bycatch Reporting Methodology observer coverage requirements are finalized in April, and could also be better coordinated with the scallop fishery.



cc: Council DB, JM (8/24)

I understand that many commenters have expressed concern about this provision, and I realize that the transition to a new fishing year could be challenging.

### **Overfishing Definition (OFD)**

I encourage the Council to adopt the "hybrid" OFD in Amendment 15. This OFD will be much more consistent with the Council's area rotation program than the current OFD. I recommend updating the OFD Alternatives in Amendment 15 to incorporate the new reference points that have been established through SARC 50. Reference to  $F_{MAX}$  and  $B_{MAX}$  should be changed to  $F_{MSY}$  and  $B_{MSY}$ , respectively. In order to ensure opportunity for public comment on these adjustments, the agenda for the next Scallop Committee meeting should announce that this change will be considered by the Committee, and the public may comment at that time. Alternatively, if Amendment 15 is delayed, Framework 22 could incorporate the reference point updates into the FMP.

### **Annual Catch Limits (ACL)**

Overall, the Amendment 15 document contains an excellent presentation of measures to comply with the new MSA ACL provisions, in particular the method to account for scientific uncertainty and the ACL flowchart developed by Council staff and the Scallop Plan Development Team (PDT). The ACL discussion could be improved by describing the steps the PDT will take to establish the values associated with the various catch levels in the flowchart. I make this suggestion because the development of annual values for ACLs will need to be more transparent than it has been in the past. In prior actions, our staffs have often had to work out the details of the suballocations of total allowable catch (TAC) to open area and access area TACs by fleet.

### **Monitoring ACLs**

The Council needs to clarify the relationship between the overall yellowtail ACL for the scallop fishery and the access area allocation of 10 percent of the overall yellowtail ACL. We believe that the 10-percent access area allocation is intended to be part of the overall yellowtail sub-ACL for the scallop fishery, but it is not clear in the document.

In general, my staff advise that the monitoring requirements associated with ACLs are more burdensome for the alternatives that include real-time monitoring requirements and associated area closures than those with outyear AMs (e.g., the adjustment in DAS for any overages would be made for 2012 for a 2010 ACL overage). We offer the following specific monitoring recommendations:

Information on the yellowtail stock area fished is important to effectively monitor the yellowtail ACL, in particular if the Council adopts inseason yellowtail AMs. The simplest way to do this is to require vessels to report the yellowtail stock area fished for each trip through an expanded VMS activity code. This would also facilitate year-end monitoring of yellowtail catch for the reactive yellowtail AMs proposed in Amendment 15.

The Council should clarify whether or not vessels would be allowed to fish in multiple yellowtail stock areas on a single trip. If this is the case, vessels would need to submit multiple VMS catch reports at the end of the trip, similar to those recently implemented in the multispecies fishery, to specify their catch by yellowtail stock area.

In addition, VMS catch report requirements applicable to yellowtail bycatch estimation in the scallop fishery should be revised to include entry of the total pounds of all species kept to compare to yellowtail caught, rather than only scallops kept.

#### **Scallop Days-at-sea (DAS) Stacking and Leasing**

I would like to reiterate the concerns raised by my staff during the Committee's development of measures to allow destacking of catch histories. While we believe that a destacking provision could be designed for permits, attributing landings made by vessels fishing under stacked permits to distinct permit histories would be very complicated. Because such provisions are not fully discussed in Amendment 15, it is not possible to evaluate fully. There has been some discussion of allowing the parties to a stacking agreement to specify the way in which catch could be attributed to each permit, but this could be difficult for long-term stacking arrangements. For example, if there were such an agreement, what is the effect on it of a vessel sale? If permit stacking is implemented, it must be done so in a way that can be administratively feasible for the long run.

In Section 3.3.2.4, the Council recognizes that it needs to clarify details of the stacking and de-stacking provisions to ensure effective implementation. I suggest that the following issues are among those that must be resolved:

- If a scallop permit can be stacked onto another vessel without following baseline restrictions, it should be clarified whether or not the destacked permit's baseline would revert to the previous vessel that held the permit prior to stacking. In addition, the Council should clarify whether the fishing power adjustment and mortality adjustment are permanent or are rescinded once a permit is destacked and moved to another vessel or into confirmation of permit history (CPH).
- If destacking is allowed, what is the Council's intention for the limited access permit eligibilities for fisheries other than scallops? Are those permit eligibilities to remain linked to the scallop permit history? Are they also to be destacked? If the original permit stacking required the relinquishment of other limited access permits due to duplicative permits, the Council must clarify whether or not it intends that those relinquished permits would be reinstated through destacking of the scallop permits. In other words, the Council should clarify whether permit stacking would allow for a new method of permit handling that is specific to stacking, where duplicative permits would be considered dormant, rather than be permanently relinquished, when the scallop permit to be stacked is part of a suite of limited access permits.
- If the Council decides not to require stacking to adhere to the current scallop baseline requirements, some permits may also be relinquished during stacking due to incompatible baselines of other limited access permits in a permit suite. If the Council decides to allow destacking of scallop permits, I am concerned that the ability to keep other limited access

permits dormant while a scallop permit is stacked is not fully discussed, and appears to conflict with current permit consistency provisions in the various fisheries. This appears to allow someone to circumvent the baseline requirements of the permit suite.

- What happens to stacked permits that are placed in CPH? The Scallop Committee has discussed the possibility of limiting the transfer of stacked permits to vessels previously determined to be eligible for a limited access scallop permit. If a vessel becomes unseaworthy, does that mean the owner of a vessel with stacked permits cannot use the CPH provision to transfer those stacked permits to a newly constructed vessel?

With regard to scallop days-at-sea (DAS) leasing (Section 3.3.3.1.2), I urge the Council to adopt measures consistent with the NE multispecies DAS leasing program, where the catch history would be allotted to the vessel landing the catch (i.e., the lessee), rather than the vessel that leased out the DAS (i.e., the lessor), and the DAS usage history would be applied to the lessor. Although there is no discussion of catch history under the access area trip leasing alternative, I recommend that the Council apply catch history and access area trip usage in the same manner as with DAS leasing.

#### **Individual Fishing Quota (IFQ) Carryover**

Amendment 15 includes an alternative that would allow a vessel that has not used all of its IFQ to carry over up to 15 percent of its allocation. The carryover provision is in place for other fisheries to allow a small amount of effort to be carried into the subsequent fishing year to address unforeseen events that prevent full utilization of a vessels' allocations. A 15-percent IFQ carryover allowance may be more than is necessary to account for unforeseen events in the IFQ fishery. I suggest that the Council may want to consider a lower carryover percentage. The Council needs to consider the impacts of various carryover levels on ACLs. The Council will also need to address the IFQ cap per vessel (2 percent, currently) since it is possible that a vessel already at the 2-percent cap could carry IFQ over, causing it to exceed the 2-percent cap. Finally, the Council will need to clarify how the provision would apply to leased IFQ—I recommend that the Council should be consistent with the provision in the NE multispecies leasing program, under which DAS are carried over by the recipient vessel (lessee).

#### **IFQ Leases and Transfers**

The Council has included an alternative that would allow IFQ transfers (leases and permanent transfers) between vessels with IFQ permits and vessels with IFQ and limited access DAS (IFQ/DAS vessels). I am concerned that allowing leasing and transfers between the two IFQ fleet components may alter the character of the IFQ fishery. The Amendment 15 document does not address how this would be administered, given that it would mix the two TACs allocated to the separate IFQ fleets. IFQ/DAS vessels are not subject to a 2-percent ownership cap, so if such a vessel accumulates IFQ through the transfer process, it can acquire substantial amounts of IFQ, unless the cap provision is extended to this fleet. This appears to be at odds with the original reason for allowing scallop DAS vessel to qualify for IFQ permits based strictly on their activity, which split the vessel's time between DAS and general category fishing. It would be especially problematic if the Council adopts a higher possession limit for IFQ vessels.

If a higher possession limit is adopted, the Council must consider the impacts on its original intent to maintain the character of the general category IFQ fleet.

### **Community Fishing Associations (CFA)**

The alternative that would authorize the establishment of CFAs is not fully developed, and the need for the measure is not clear. It appears that CFAs could currently be formed without government involvement. While I compliment the Council staff on their efforts to fully develop the details of the original industry proposal, substantive questions remain about the measure. I suggest that the Council should not move this measure forward, but instead reconsider such a measure when it can be more fully developed in a future management action. There are a number of concerns in the current CFA discussion:

- The rationale and goals in Section 3.4.2.5.2 state that CFAs would “provide opportunities for qualified new entrants to the fishery.” It is not clear if this means new owners of vessels with limited access IFQ permits, or entrants who would not currently be eligible for IFQ permits.
- The definition of a CFA states that it may be a partnership, voluntary association, or other non-profit entity. The section titled “qualification of a CFA” states that a CFA must be organized and maintained as a non-profit corporation. These sections appear to be inconsistent.
- The geographic area of a CFA is defined to be fewer than 10 coastal towns, perhaps all contained within one county. Prior to approval, CFAs must demonstrate “substantial support of community members and governing jurisdictions...[such as] community petitions and written endorsement from community leaders.” This criterion is too general to be used to distinguish one proposal from another, and could not be applied consistently.
- The proposal would require CFAs to develop community sustainability plans that address specific factors. The requirements listed in Item 2, (a)-(e), raise a number of questions. Why are sea scallop CFAs required to sustain effort by groundfish fisheries? Can criterion (c) be satisfied if there is no local processing activity? What sort of local community and municipality needs are appropriately met by a CFA? How does a CFA demonstrate that it is investing in local infrastructure? Must the infrastructure be related to fisheries?
- The proposal lists the required contents of a CFA application. It is unclear what is meant by Item 4, “All information needed for NMFS to assess compliance with control limits.” There is no other reference in the CFA section to control limits, or to a requirement for NMFS to make a compliance determination.
- Can a CFA application be denied for reasons other than incompleteness? The section related to the application approval process states, “CFA will be approved provided a complete application has been provided.”
- There is a lack of specifics in the section related to program evaluation, which states that the CFA program would be reviewed at an unspecified point in the future. The purpose of the review is not clear—are CFAs provisional until it occurs? Is it a routine review? How does it relate to the review process outlined for individual CFAs? How does it relate to the 5-year review noted at the end of the section?

- The section related to organization and operational standards states that CFAs will comply with existing relevant leasing and transfer regulations, including the current ownership and vessel cap restrictions of 5 and 2 percent, respectively. Based on the description of CFA accumulation limits, it is my understanding that the 5-percent ownership cap is intended to apply to CFAs. However, it is unclear how the CFA alternative is structured to account for the vessel IFQ cap that would apply to a vessel participating in a CFA. Current IFQ restrictions do not allow for a vessel to have an ownership in IFQ in excess of 2 percent of the IFQ TAC in a given fishing year, and a vessel that leases in IFQ is considered to have ownership in that IFQ. With regard to monitoring CFAs, the Amendment 15 document states the need to have additional VMS requirements for vessels in order to indicate when they are fishing under CFA quota. It is unclear why this would be necessary, unless it is the intent of the Council to allow a vessel to exceed the vessel ownership cap, as it is currently defined, when it leases in CFA IFQ. This must be clarified.
- The section related to CFA monitoring notes that each CFA would specify whether the CFA or the vessel landing the scallops is responsible for cost recovery payments. The current regulations require that the cost recovery fee is incurred by the vessel owner who lands the scallops. I encourage you to be consistent with the cost recovery requirements for vessels that would not be participating in CFAs, unless there is a specific rationale outlined in the CFA section to justify doing otherwise.

#### **RSA Program Improvements**

I suggest that the Council should modify Alternative 3.4.4.1.1. This alternative would exempt all research projects from the regulations that currently require issuance of an Exempted Fishing Permit (EFP) to confer exemptions from the sea scallop crew size restrictions; the Elephant Trunk Access Area (ETAA), and presumably Delmarva (DMV), seasonal closure; and the restriction on fishing in only one access area during research activity. These exemptions appear intended to apply to RSA scallop research trips and the RSA compensation trips, but, as worded, would be established as blanket exemptions that would apply to any EFP request. It is not clear why these exemptions would be extended to all EFP requests and this must be clarified if it is not intended by the Council. There are various references within the document to the intent of the exemptions, but the description of the exemptions does not limit them consistent with such intent. For example, the impacts analyses conclude that the impacts of these exemptions would be relatively minor because the RSA allocations are a small percentage of the overall scallop harvest; however, as worded, these exemptions are not limited to projects funded through RSA. This is a particular concern as it relates to the interactions of scallop fishing activity with sea turtles. I therefore recommend that the Council eliminate consideration of any blanket exemptions from the measures established to protect sea turtles.

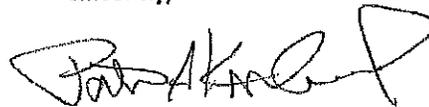
I believe that the existing EFP process provides the best opportunity to review individual exemption requests to assure that such exemptions are granted appropriately. In addition, while permits or consultation may be required under the Endangered Species Act and Marine Mammal Protection Act,

scientific fisheries research conducted from a scientific research vessel is already exempt from any and all regulations promulgated under the Magnuson-Stevens Act.

In Section 3.4.4.8, more explanation is needed in the discussion of the alternatives for RSA rollover. It is unclear whether the term "unused RSA" is consistently defined across the five alternatives. It should be clarified where this term refers to any remaining RSA not allocated to specific projects, and where it refers to RSA that has been assigned to a project, but was not harvested in the fishing year for which the RSA award was granted.

As the Council considers these issues, and those raised by the public, it must be cautious about including additional measures in Amendment 15. A recent letter from David Pierce to Gene Martin asked for legal counsel on what kinds of measures would classify as clarifications of proposed measures and would not trigger revisions of the DEIS that would require additional analysis and public comment prior to the Council's adoption of Amendment 15. As we have advised on other Council actions, additional measures must be within the scope of the measures already included and analyzed in the DEIS. We will work with the Council as it develops these clarifications and additional details, but it is not possible to make a determination until such measures are discussed. My staff will continue to provide advice during Scallop PDT and Committee meetings relative to the issues raised in this letter and any issues raised in upcoming discussions. Please note that some minor text clarifications will be relayed staff-to-staff. I look forward to working with the Council as it works to complete this action in September.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia A. Kurkul". The signature is stylized and cursive, with a large, sweeping flourish at the end.

Patricia A. Kurkul  
Regional Administrator



#36

# New Bedford Seafood Consulting



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Fisheries Management

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August 19, 2010

Patricia Kurkul  
Regional Administrator  
NMFS Northeast Region  
One Blackburn Drive  
Gloucester, MA 01930-2298  
Via email/ Amendment15@noaa.gov

## **RE: Comments on Scallop Amendment 15.**

Dear Ms. Kurkul:

Please accept these comments on Amendment 15 (A 15) to the Sea Scallop Management Plan. I am submitting them as an interested party who has nearly 50 years involvement within the scallop fishing industry. My involvement includes 32 years as a commercial scallop fisherman, half of which were as a captain of several highline scallop vessels. The remainder of my involvement includes six (6) years as a member of the NEFMC's scallop committee, & as a member of the NEFMC. All of these years were part of a formative process which has led to the Atlantic Sea Scallop fishery being one of, if not "the most" valuable fisheries on the East Coast of the USA.

It is therefore inconceivable as to how the Service is so intent on restructuring what the scallop industry has worked so hard for, & suffered so much to achieve over these past 16 years. I am referring to the unabashed attempt to consolidate the fishery through the permit stacking process.

There are three (3) stated goals for A 15; the 1<sup>st</sup> is to bring the Scallop FMP into compliance with the re-authorized MSA; the 2<sup>nd</sup> is ostensibly to address excess capacity & to provide more flexibility & efficient use of the resource, the 3<sup>rd</sup> is to consider measures to adjust several issues in the Scallop FMP itself.

The 1<sup>st</sup> & 3<sup>rd</sup> goals are seemingly necessary to comply with the MSA, but the 2<sup>nd</sup> goal has nothing at all to do with conservation, nor effort or capacity reduction! The allowance for permit stacking, particularly with consideration to allow future destacking, is nothing other than an attempt to drive out the smaller vessel owners. Individual permit holders, or those who may have several, will not be able to withstand the financial onslaught that will occur when the feeding frenzy begins.

A very similar example of this can be seen when one looks back, & sees that this is what happened in the Nova Scotia scallop fishery when Clearwater of Canada consolidated all of their individual scallop permits (approximately 100 permits) onto several very large processing vessels.

I have said all along, that stacking, &/or consolidation may make good business sense in a purely commercial aspect, but it will mean the demise of the small individual nature that the majority of small scallop business owners strive to maintain. Many of these owners still view this as a community oriented family business, not as a Wal-Mart type venture. I recognize & understand the goals of the larger corporate owners, but I do not feel that the NMFS should be a seemingly willing co-conspirator or accomplice to those business plans; any attempt to do so is bad public policy!

It is hard to understand this rationalization since the recent report by NMFS's Dr. Julie Olsen states that such consolidation would bring about many changes & economic harm to much of the affected members of the industry as a whole. This is not a win-win situation; this is a circumstance where you cannot have winners, without having losers.

Consolidation in the form of permit stacking will bring about an irreversible alteration to not only the Scallop Industry, but the local communities as well. Stacking will have a similar irreconcilable effect to the supporting infrastructure that has been a part of this industry since its inception. The NMFS & the NEFMC should not be part of a process of "Social Engineering" all the while in the name of conservation & fishery management. The profound impacts & resulting harm upon New Bedford & other fishing communities will never be assuaged or mitigated!

As evidence to this, I would refer you to testimony given at the Fairhaven public hearing by Paul Weckesser, a vessel owner, & owner of a shore-side support facility. As part of his public comment, he proffered a list of names of 130 scallop permit holders, who comprise a majority of the individual scallop permit holders, who do not want to be forced into a stacking or leasing management policy program. It is my understanding that the majority of comments given to date are of the similar opinion. I do hope that the will of the majority of individuals, within this industry, will be counted as we do elsewhere in this democratic land & society.

In alternative 3.3.2, it states that the NEFMC selected stacking & leasing as a preferred alternative noting that it would reduce capacity & add flexibility & efficiency as compared to the "No Action" alternative.

The stacking of permits would not reduce capacity in any conceivable fashion, as the permits would only be placed upon the most efficient vessels available, & unless very substantial adjustments are made, the CPUE is more likely to increase. This would further disadvantage those unable or reluctant to stack.

In alternative 3.3.3, which addresses leasing, it provides a litany of details & restrictions which are so broad in spectrum that it would be extremely difficult to formulate a cohesive plan to meet these requirements & still hope to reach the earlier stated goals of the Amendment. E.g., would a vessel which has a stacked permit be able to catch & land the sum total of both permits (36,000 lbs.) in a trip? This would seem to be possible, as it would increase his efficiency while not increasing mortality?

Another option not fully defined in this alternative is regarding ownership cap; how this would affect current owners who might already meet or exceed the possible cap limits? Yet another example is

regarding the two options of DAS & landing history of leased effort, one of which would only serve to put the leasing scallop vessel owner in the same position that many groundfish permit found themselves in following their leasing program; a permit with no landing history. This might be likened to an owner of a house who rents it out for a fair rent, only to find that after a period of use, the renter now owns the property. Renting or leasing should not be equated with selling or surrender of history!

As far as I have been able to ascertain, there has been no viable evidence provided through analyses available to date that stacking &/or leasing will meet any of the stated goals of the Amendment. There is only an assumption that stacking would reduce capacity; "Permit stacking & leasing expected to provide increased flexibility for vessels to adjust efforts to changes in biomass, management, & market conditions".<sup>1</sup>

How does permit stacking reduce fleet size if there is no expectation or requirement to remove the extant vessel from the fleet? Where is that vessel expected to go? Into another fishery? Sit at the dock waiting for an opportunity to destack? If so, how does that reduce congestion at the dock, reduce fuel, & electricity wastes, etc., etc.? These expectations seem to be based entirely upon an obsession or fetish adopted by many who also champion the "Catch Share/Sector Management" schemes!

A continuation of the "Capacity & efficiency analyses"<sup>2</sup> offers some insight as to the negative social impacts that might occur for stacking/leasing. Job losses are expected & the model used predicts that 250 jobs would be lost. What would a different model predict? What about the shore side related job losses? What about the impacts upon the families of those who suffer these "job losses"? It does state that lower impacts could occur if less stacking/leasing takes place, but it is silent about the consequences if more were to stack or lease!

The supporting infrastructure for this industry, along with their communities, have received little consideration throughout these proceedings, & must be considered when evaluating the consequences of the final results of stacking. They exist because of the diversity of the scallop industry as it exists today. However, even now this is a far cry from what it once was, & these proposals will only wreak havoc on those remaining. The larger fleet owners have grown stronger, & more integrated over the years, & further consolidation will only mean more integration & less diversity, at the expense of these supporting businesses & communities.

If & when considered, this is how these small individual vessels, shops, chandlers, & suppliers should be viewed; each as a small business entity within the local community. After years of struggling, they are beginning to reap the rewards of a successful industry that has had a resurgence due to a rebuilt & sustainable resource that they all helped to rebuild. They have invested in the science, both by actual participation in the research, & through unselfish contributions in time, effort & money! Many have done so far longer than those who would allow or abet it now being taken away from them as it nears its zenith.

During the Fairhaven public hearing, I asked if the figures in the table shown in the Power Point slide #11 were a representation of the actual adjustment rates, or merely an example. I was told that they were just an example. My comment then was, & still remains so, "that this should not be part of the document in that case, particularly if they were not plainly represented as such". Such an example

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<sup>1</sup> Powerpoint slide 21; Scallop Amendment 15, NEFMC Public Hearing document July 2010; "Capacity & efficiency analyses"

<sup>2</sup> Powerpoint slide 22; Scallop Amendment 15, NEFMC Public Hearing document July 2010; "Capacity & efficiency analyses"

might only cause a misunderstanding to some as to how this might apply in an actual stacking or leasing situation.

Regarding Alternative 3.4.1 & the Overfishing Definition; I would support the "No Action" alternative as preferred since there is little to no explanation or understanding given as to how these other Alternatives would relate to actual catch limits or landings. Emphasis should be put upon better surveys that at least try to include the areas that the scallop fleets fish, as well as the current survey areas. Much of the scallop landings come from areas that are not surveyed, & therefore do not contribute to the biomass total.

Regarding 3.4.2 Minor adjustments to LAGC IFQ; I do not support raising the landing limits for these vessels. While it may seem minor, each time their management plan changes it has an impact on the LA vessels. Their higher landings could have an effect on market & pricing situations, particularly if several LAGC vessels land at the same time. This fishery was intended to be a supplement to many of the smaller vessels, who were catching scallops often while they were targeting other species, or during periods where they had few other options. It has morphed into something entirely different, & at times, allowances have been made to & for them merely as precursors for changes to the LA fleet.

Alternative 3.4.5; The LA scallop industry has repeatedly stated that they are NOT in favor of a change in their fish year. We have also repeatedly stated why. A change if necessary should come from within management. If necessary change the "sync" of the FW process. After all, it was the management process that knocked the GF & scallop fishing years out of "sync".

Finally, let me reiterate; I do not support the stacking/leasing alternatives in Amendment 15! I believe that they are ill-conceived, & poorly supported by fact, need, or rationalization. The scallop resource is a fully rebuilt stock, & if there is a failure it is that; we have yet learned to harvest it to its full potential. There is an age related mortality that is much higher than the current harvest levels. It is there that the Service & the NEFMC should direct their efforts. This would better serve the industry, community, & Nation while meeting National Standards 1; 4; 5; & 8!

Thank you for consideration of my comments regarding Amendment 15 to the Sea Scallop Fishery Management Plan.

Jim Kendall

New Bedford Seafood Consulting  
New Bedford, MA  
[nbsc@comcast.net](mailto:nbsc@comcast.net)  
(508) 997-0013

#37

Harriet Ane Didriksen  
New Bedford, MA 02740

August 22, 2010

Patricia Kurkul  
Regional Administrator NMFS Northeast Regional Office  
1 Blackburn Drive  
Gloucester, MA 01930  
[Amendment15@noaa.gov](mailto:Amendment15@noaa.gov)

### **Amendment 15 Public Comment**

Dear Ms Kurkul:

I am submitting these comments on behalf of myself & the approximately 17 people who are employed in one of my two businesses. One is a full-time Limited Access scallop vessel that I have owned for 30 years, & currently has a crew of 7 people. The other business is a ship chandlery which my family has owned since 1938. I myself have worked there since I was 11 years old, some of the remaining 10 current workers have worked there for over 30 years.

I want to impress upon you that I feel that Amendment 15 poses an extreme risk to their continued employment as well as the well-being of the scallop industry & its supporting industries, & communities as we know them. To further compound the injury, this is occurring with no scientific justification or conservation benefits. Amendment 15 is an attempt to address a problem that doesn't even exist, as the resource is rebuilt, & overfishing is not occurring. As it currently stands, vessel owners, crew, & supporting infrastructure are now doing well after years of sacrifice & struggle.

To move towards a stacking/leasing Amendment at this time as stated in section of the document 3.3, is a violation of several National Standards, & should be dropped. It is not the role of the NEFMC to insure a windfall profit for a minority of permit holders at the expense & sacrifice of the majority of permit holders, crew, & communities! This action is in violation of National Standard 5 of the MSA.

The portion of National Standard 5, as stated on page 18 of the June 2010 DEIS for Amendment 15, has been truncated in order to support the goals of obtaining stacking. The remaining portion of National Standard 5 not included in this document states "except that no such measure shall have economic allocation as its sole purpose."

Given that Amendment 15 will establish ACLs & ACMs, the maximum amount of scallops that can be landed will be a finite amount. The amount of vessels that land this total is of no consequence, the harvest levels will still remain as capped.

Since stacking/leasing will have the effect of increasing the LPUE by moving the effort to more efficient vessels. Therefore the premise of reduction, is actually defeated by the actions proposed as "Preferred".

The goal of more flexibility & efficiency as proposed in the document, is in actuality an attempt to increase individual profits of a few, from a public resource at the expenses of the industry & the Nation.

I feel that the portion of Amendment 15 which attempts to force the industry to adopt leasing/stacking has been an unfair process. It has continually ignored the wishes of the majority of permit holders, & does not show where any true conservation will occur.

The document is in violation of National Standards; 2; 4; 5; & 8 as well as NEPA. The planners' have also ignored the advice as given by NMFS's Social Scientist, Dr Julie Olsen, in her report.

#### **Problematic Issues**

- How can the agency ignore the Olsen report
- 3.3.2.2.2 Rational is incorrect
- 3.3.2.4 Status of stacked permits is open ended
- 3.3.2.2.1 scientific formula ignored – AP by reducing the formula
- Scallop AP makeup is weighted
- Scallop Committee previously chaired by non-impartial party
- 3.3.3.7 Leasing from CPH is not capacity reduction
- Page 64 regarding horsepower is incorrect (percentage?)
- 5.6.4.2 LPUE due to stacking
- Numerous other problems, & issues still unresolved & open ended.

Please remove section 3.3 from the document.

Respectfully;

Harriet Ane Didriksen

#38

### PETITION -- Increase of Day Scallop Quota

We the undersigned being Captain's, Crews, Owners and Family Members of Day Scalloping Vessels are petitioning to have the daily landing raised from 400 lbs to 600 lbs a trip.

Since we are now on a quota system with a dedicated TAC and set individual quotas to catch and therefore cannot over fish, we would not be catching any more scallops per vessel by doing this. What we would be doing is making the fishery more profitable for the same amount of scallops since every 2 trips would eliminate steaming for a 3<sup>rd</sup> trip. This would eliminate numerous man hours to & from the grounds, wear & tear on vessels/engines and hundreds of dollars in fuel. With the world going green, raising the quota and eliminating the extra steaming as this proposal would do, it would make it a cleaner fishery for carbon emissions as well as doing our small part in eliminating our dependency on foreign oil.

It would make the fishery safer. It would be easier to time your trips to get a weather window to catch 600 lbs then it would to try to do trips for 400 lbs within 24 hrs so that you could head back out to get another trip for a daily landing. It would make it easier and make the trip more profitable due to the fact that you are often times running smaller boats you would be able possibly three trips worth scallops in two trips making it a safer. This would not have any effect on the full time fishery because we are not catching anymore quota then we are allowed to already and the fact that we are only going to land 200 lbs a day more is not going to affect the market conditions for the full time boats because it's a minuscule amount compared to the closure area trips when they land 18,000 lbs per day.

The TAC Management Fishery and Individual Quota System is set up to theoretically eliminate a derby fishery allowing us to land the 600 as opposed to 400 would be one more step towards managing this particular aspect of the fishery for safety & economic viability.

Phone #

Name	Address	Signature
Elizabeth Diamond		301 801 907 Elizabeth Diamond

Name	Address	Signature
Henry Hollenweger Jr	83 Coral ave Bridgeton	<i>Henry Hollenweger Jr</i>
Edward Parent	872 steep Run Road Millville	<i>Edward Parent</i>
Doreen Martin	419 N <sup>th</sup> 4 <sup>th</sup> Street	<i>Doreen Martin</i>
Mike Franchetta	564 N. 3rd St. Vineland	<i>Mike Franchetta</i>
Albert Franchetta	564 N. Third St Vineland	<i>Albert Franchetta</i>
Roland Hoffmann	418 Main Street Dorchester	<i>Roland Hoffmann</i>
Samuel Cardew	97 Poplar dr. Bridgeton, NJ	<i>Samuel Cardew</i>
Scott Bailey	1415 Vine Rd. NJ	<i>Scott Bailey</i>
DONALD SITTLE	106 4 <sup>th</sup> W. ST. LEBANON	<i>Donald Sittle</i>
Susan Bradbury	2925 Crane St Vineland	<i>Susan Ann Bradbury</i>
Iris Burt	2300 Lincoln St. Pt. Norris	<i>Iris Burt</i>
Jennifer Gius	1751 Clover Ave, Vineland	<i>Jennifer Gius</i>
LORRAINE ELIAS	1142 MAW ST, Pt. Norris	<i>Lorraine Elias</i>

Please mail Back To  
 Bailey's Oysters  
 P.O. Box 107  
 Port Norris N.J. 08349  
 Au Aug 13th 2010

#39

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David S. Barnet  
(1937-1994)

August 19, 2010

Ms. Patricia Kurkul, Regional Administrator  
Northeast Regional Office  
National Marine Fisheries Services  
National Oceanic and Atmospheric Administration  
55 Grand Republic Drive  
Gloucester, MA 01930

Re: Comments relating to Scallop Amendment 15

Dear Administrator Kurkul:

On behalf of myself and several members of the American Scallop Association who are buyers, processors and distributors of a substantial portion of the scallops resulting from fishing activities in the scallop grounds off the east coast of United States, allow me to express that I and the people whom I have mentioned support stacking and leasing being considered in Section 815 of the Amendment.

In spite of the fact that the scallop biomass has grown and maintained a very high productive level, it appears that the National marine Fisheries Services has confirmed that the sea scallop industry has the highest overcapacity rate of any fishery. The overcapacity level converts to a fleet that has the ability to harvest more than the annual quota and results in the vessels fishing approximately 80 days and being tied to the dock 285 days. It appears that the voluntary stacking and leasing being considered in Amendment 15 would result in a capacity reduction without interference by the government.

It appears that an effective capacity reduction program would in effect have benefits for the industry by laying the groundwork for upgrading of the fleet, increasing fishing activity through leasing trips or DAS and providing vessels owners with the opportunity to receive income from leased trips or days at sea in the event of an unforeseen incident to a fishing vessel.

AUG 23 2010

Patricia Kurkul, Regional Administrator  
August 19, 2010  
Page 2

It is our understanding that those who support the stacking/leasing concept does not penalize vessel owners with the imposition of undue restrictions. They, in fact, understand and hope that a stacking/leasing program adopted by the Council will be attractive to vessel owners in general. The current management regime requires scallop vessel owners to operate in an inefficient manner, wasteful of resources and does not allow the vessel to achieve its highest economic return for the vessel and crew.

We, therefore, heartily support the provisions of Sections 3.3.2 and 3.3.3 that would allow stacking and leasing in the scallop fishing industry. This would allow the fleet as a whole to reduce operating costs, retire older vessels and additionally reduce congestion at the docks.

Sincerely,

MICKELSON • BARNET, P.C.



Harvey B. Mickelson

HBM/mls  
mlhasakurkul 819

#40



212 West State Street  
Trenton, New Jersey 08608  
office (609) 898-1100  
[gregdi@voicenet.com](mailto:gregdi@voicenet.com)

August 23, 2010

Ms. Patricia Kurkul, Regional Administrator  
Northeast Regional Office, National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930  
Sent Via fax (978) 281-9135

**Comments on: Amendment 15 to the Scallop FMP**

Dear Ms. Kurkul:

Please accept these comments on behalf of the Garden State Seafood Association (GSSA); GSSA is comprised of commercial fishermen, shore-based processors, commercial dock facilities, seafood markets, restaurants, and various industry support businesses from New Jersey. Our members operate in fisheries that could be negatively impacted by effort shifts caused by actions taken in Amendment 15.

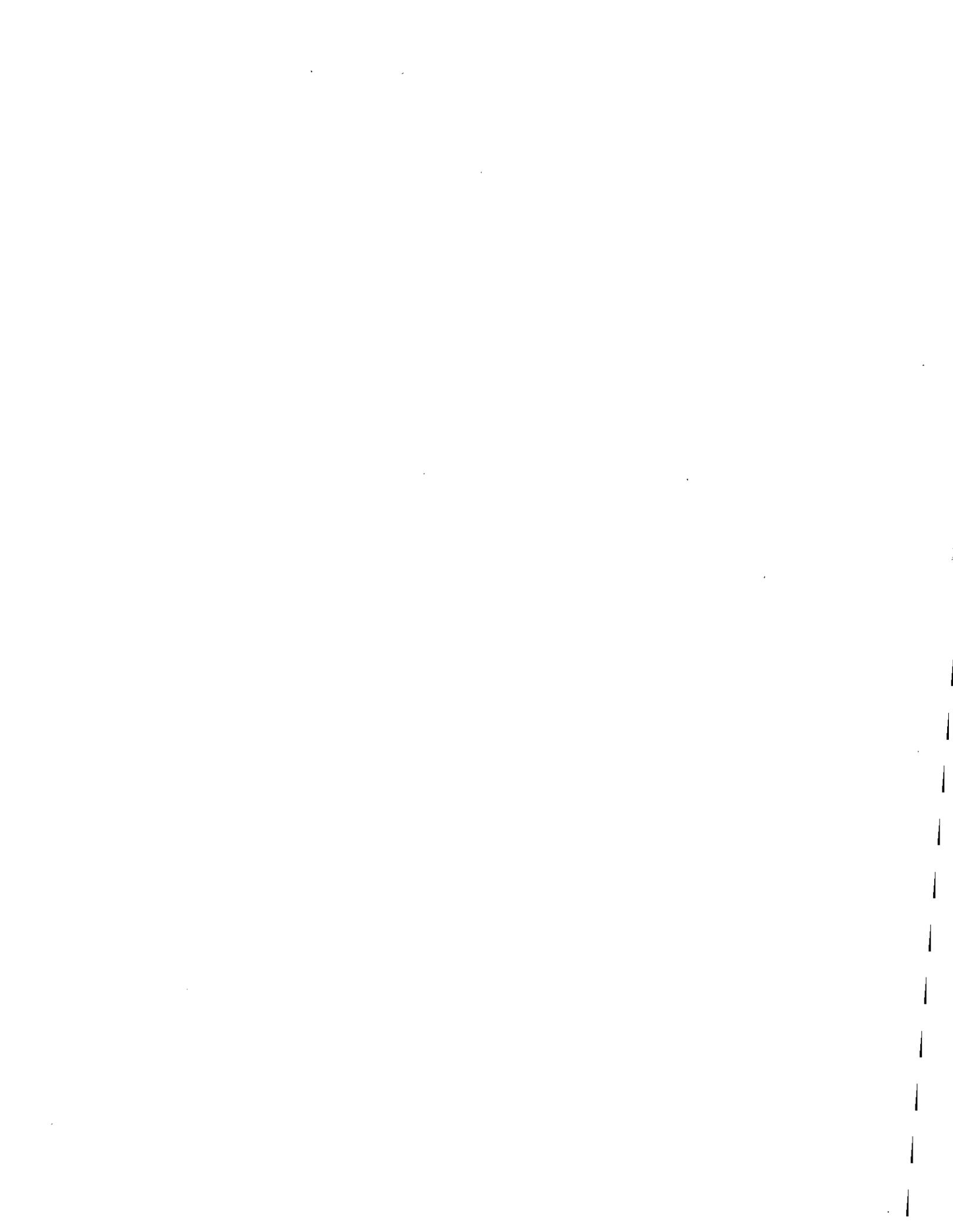
**Permit Stacking / Additional effort in other fisheries**

We agree that some consolidation of scallop permits may be a valuable tool for some limited access scallop permit holders. We do not agree that the New England Council should create a situation with the development and implementation of Amendment 15 that will cause a shift of effort into other fisheries by creating active permits out of latent permits. The possible negative impacts could range to fisheries under the jurisdiction of the NEFMC and MAFMC and more importantly on the fishing communities that exist in those regions.

You can be assured that fishing communities are very aware of this situation and expect that the NEFMC and the NMFS adequately address this concern. We feel that the Option 3.3.2.4 Status of Stacked Permits is an appropriate measure. The NMFS should require all permits from the stacked permit to remain with the main permit.

Sincerely,

Gregory P. DiDomenico  
Executive Director  
Garden State Seafood Association



#41

Comments on Amendment 15

August 23, 2010

Dear NEFMC Council members:

As a local Connecticut Fisherman I don't have the time to spend reviewing all of the changes that are being considered in the Scallop Fishery Management Plan. However, I have been receiving information from my employer and the Fisheries Survival Fund.

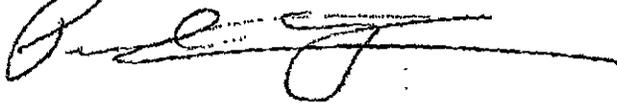
Please be advised that my position on all of these intricate issues would be consistent with those of the Fisheries Survival Fund.

Since I am not able to be more involved and informed in this process due to my responsibilities as an operator of a fishing vessel, I must rely on those groups who support my interests in allowing me to continue to be able to fish in these American waters and earn a living.

Thank you for your service.

Sincerely,

Paul Yarmosh





#42

Comments on Amendment 15

August 23, 2010

Dear NEFMC Council members:

As a local Connecticut Fisherman I don't have the time to spend reviewing all of the changes that are being considered in the Scallop Fishery Management Plan. However, I have been receiving information from my employer and the Fisheries Survival Fund.

Please be advised that my position on all of these intricate issues would be consistent with those of the Fisheries Survival Fund.

Since I am not able to be more involved and informed in this process due to my responsibilities as an operator of a fishing vessel, I must rely on those groups who support my interests in allowing me to continue to be able to fish in these American waters and earn a living.

Thank you for your service.

Sincerely,



Brian Yarmosh



**CHRISTOPHER H. SMITH**  
17th District, New Jersey

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**Congress of the United States**  
**House of Representatives**

COMMITTEES:

#43

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RANKING MEMBER

WESTERN HEMISPHERE  
SUBCOMMITTEE

COMMISSION ON SECURITY AND  
COOPERATION IN EUROPE  
RANKING MEMBER

CONGRESSIONAL EXECUTIVE  
COMMISSION ON CHINA  
RANKING MEMBER

DEAN, NEW JERSEY DELEGATION

**Facsimile Cover Sheet**

**To:** Patricia A. Kurku  
**Organization:** NEFMC  
**Fax:** (978) 281-9135  
**From:** Cate Benedetti  
**Date:** 20 Aug 2010  
**Subject:** Comments on Scallop Amendment 15  
**Number of pages to follow (excluding cover sheet):** 1  
**Comments:**

**CHRISTOPHER H. SMITH**  
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**Congress of the United States**  
**House of Representatives**

COMMITTEES

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RANKING MEMBER

CONGRESSIONAL-EXECUTIVE  
COMMISSION ON CHINA

RANKING MEMBER

DEAN, NEW JERSEY DELEGATION

August 20, 2010

Mr. John Pappalardo, Chairman  
Mr. Paul Howard, Executive Director  
New England Fisheries Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01950

Dear Mr. Pappalardo and Mr. Howard,

It is my understanding that the New England Fisheries Management Council is finalizing its review of public comments solicited on the Draft Environmental Impact Statement, regarding provisions of Amendment 15 to the Council's Scallop Fishery Management Plan.

It is my further understanding that small, family owned fisheries along the Atlantic coast, including a constituent company that operates out of the Fourth Congressional District of New Jersey, are deeply concerned that this proposal could lead to a consolidation of the scallop industry which may disproportionately impact smaller business. In light of this concern, it is hoped that the Council will thoroughly review comments put forth by all venders and seek a working consensus among all interested parties regardless of their size.

Protection is important for the continued availability of the species but we have a responsibility to ensure that efforts are based on need and that they are balanced with the economic impact. It is my understanding that questions have been raised on the necessity of reducing capacity, particularly in New Jersey and Massachusetts at this time. Since the capacity reduction provisions of Amendment 15—stacking permits and leasing allocations—may result in the elimination of smaller businesses, I am urging you to ensure that careful consideration is given to the economic impact on these businesses and appropriately incorporated in the implementation of any final proposal.

I appreciate your time and attention to this request and I look forward to working with you to ensure that this proposal represents the best interest of all individuals in the scallop industry.

Sincerely,  
  
CHRISTOPHER H. SMITH  
Member of Congress

#44

Amendment 15 Comments  
Submitted by: Priscilla B. Wells  
Mystic, Connecticut

May 22, 2010

Dear NEFMC Council,

My name is Priscilla Wells and I have been working in the fishing industry in Connecticut for more than 20 years. I have my Bachelors degree in Accounting and Finance, and an MBA from the University of New Haven. I could not have accomplished these degrees without the income that was derived from working in this industry.

I have some concerns about the proposed actions on Amendment 15 that this council is reviewing. However, in order to ensure that my comments are based on education, I have taken the time to read the entire Public Hearing Document summarizing the DEIS to the Scallop FMP. I have also reviewed the pertinent sections of the Magnuson-Stevens Act so that I had a more clear understand of this Council's goals by virtue of this legislative act.

***Purpose #1 is to consider measure that will implement actual catch limits (ACLs) and accountability measures (AMs) to prevent overfishing.***

By NMFS/NOAA's own website information, and in the Public Hearing Document for the DEIS page 5, the scallop industry is not overfished. The number of days at sea has been reduced over the years, which has effectively increased the scallop population. I heard at public testimony in New London that at the NLCA this year, fishermen had to throw over aged scallops because the area had been under-harvested for such a long time. The scallop boats that are currently working are working well and making money. They are employing a number of crewmen, gear laborers, shoreside marine supply houses and a multitude of other stakeholders in this industry (including me). In Sec. 2. Paragraphs 95-354, 96-561, 104-297 paragraph (6) of the Magnuson-Stevens Act you are ***to encourage the development by the United States fishing industry of fisheries which are currently underutilized or not utilized by United States fishermen.*** It seems to me that this council is wasting taxpayers money by considering measures for a fishery that is not overfished and in direct violation of this section of the act by trying to implement measures that would reduce the coastal fishing industry.

In fact, in the MS Reauthorization Act of 2007 is specifically states, that ***"Most notably, the Magnuson-Stevens Act aided in the development of the domestic fishing industry by phasing out foreign fishing."*** ***"The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of the United States fishermen.***

In reading this act, it is my opinion that it was developed to strengthen our U.S. coastal fishing industry. However, the strong environmental groups have waged a war against our local fishermen and have lead the general public to believe that the overfishing that they claim has happened is because of our fishermen. It is the foreign fisheries that need to be controlled, not us. These comments in the act, also speak to Purpose #2 below.

***Purpose #2 is to address excess capacity in the limited access scallop fishery and provide more flexibility for efficient utilization of the resource while considering impacts on various fisheries and fishing communities.***

Your definition of excess capacity is “the capacity of individual vessels and the fleet as a whole is greater than what is needed to harvest sustainable levels of catch.” I’d like to ask you if you really feel that this is an issue for this council. If boat owners haven’t managed their own mechanics over the years as the industry has changed, then it really is their own personal economic, business or corporate issue. This entire concept of a fishery council trying to manage mechanical inventory is a direct violation of National Standard 5, which states that, “no such measure shall have economic allocation as its sole purpose”. It seems that a small number of multi-boat owners are trying to rid themselves of unfishable vessels because they expanded too quickly and were not able to address permit reductions when they arose.

I believe this council already has the tools they need, by managing permit restrictions, gear and crew restrictions, vessel upgrade restrictions, possession limits and other controls to manage the under-harvesting problem, which has been mis-labeled as excess capacity. I urge the council to take No Action on “excess capacity” issues.

***Purpose #3 is to Adjust several aspects of the overall program to make the scallop management plan more effective.***

Question 19 asks whether I support considering adjusting the overfishing definition. I oppose this adjustment because from everything I’ve read I don’t believe that anyone has applied “the best scientific information” available and again, the scallop fishery is not overfished. There has been quite a bit of discussion about the precision of the surveys that are being used to create these definitions. It would seem to me that if the Council wanted to fulfill the MSA and build our coastal fishing communities, it would make more of the scallop biomass available to some of those shoreside boats either through opening new access areas or by increasing generally open areas.

I do believe that some of these questions are too difficult to answer when asking “general public” specifics in percentage amounts. I admit I do not have enough technical or industry understanding to know exactly how a 2% or 2.5% maximum quote would affect a fishing vessel. However I have also read many of the positions that the Fisheries Survival Fund has stated and my overall feeling is that for purpose #3, my position would be consistent with that of the Fisheries Survival Fund.

I have just one other comment I'd like to make. In reviewing all of this documentation and reading the MSA it says in SEC 302, which is the establishment of the Regional Fisheries Management Councils paragraph (A) states that the New England Council shall have *17 voting members, including 11 appointed by the Secretary [of Commerce] in accordance with subsection (b)(2) (at least one of whom shall be appointed from each such State.)* However, when I went to the NEFMC council web page to learn who was on this council, I counted 18 voting members. I called the NEFMC office and spoke with a knowledgeable person who agreed with me that there seemed to be one too many people on this Council. As of the time of this writing, I still have not gotten a sufficient answer as to where this 18<sup>th</sup> vote came from. If there is somewhere else in the act that adds additional voters I sincerely apologize to the council for mis-representing this information. But I want to point it out because in researching this issue I have come to believe that fishermen just want to fish. And biologists would like to be accurate and listened to. And during these difficult economic times it is just not appropriate for any government agency to push an agenda that will destroy jobs in the long run. If it is true that this council has one too many people on it, and they can't count to 17 correctly, then how is it possible that they can expect fishermen to interpret these laws and keep up with the changes that are so overwhelming.



#45

Town of East Hampton  
*Fisheries Consultancy and Committee*

159 Pantigo Road  
East Hampton, NY 11937

Richard Etzel, Chairman  
Arnold Leo, Consultant

Tel.: 631-324-3187  
Fax: 631-324-6280

August 23, 2010

New England Fishery Management Council  
By e-mail: [Amendment15@NOAA.gov](mailto:Amendment15@NOAA.gov)  
Atten: Comments on Scallop Amendment 15

The Fisheries Committee of the Town of East Hampton has asked me to write with comments on the stacking and leasing provisions of Amendment 15 as presented in Section 3.3 of the Amendment 15 DEIS of June, 2010

Our concern is that latent effort will be activated when a vessel gives up its scallop permit. It seems clear that owners of boats will be motivated to enter other fisheries for which they have permits once they are no longer engaged in scalloping. To some extent this happened after the implementation of groundfish sectors in New England, when vessel owners leased their allocations of groundfish and began to target species in the Mid-Atlantic, such as scup, fluke, squid, and whiting.

It is our understanding, however, that stacking of scallop permits will entail the transfer of all permits held by the vessel that is making the transfer, and will become the property of the vessel that is stacking the scallop permit. This provision of Section 3.3 would make stacking acceptable as a means of creating greater efficiency in the scallop fishery without adding to the pressure on fisheries that are already feeling effects of crowding.

According to our reading of Section 3.3 of Amendment 15, leasing appears to be an entirely different matter. Owners would be allowed to lease their scallop permits and retain any other permits attached to their vessels, thereby significantly increasing the likelihood of latent effort being activated.

It is our belief that this Section of Amendment 15 should include a requirement that leasing of scallop permits will entail surrender of all other permits and perhaps decommissioning of the vessel that has given up the scallop permit.

Sincerely yours,

Arnold Leo  
Consultant

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#46

August 23, 2010

Patricia Kurkul, Regional Administrator  
Northeast Regional Office, National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
55 Great Republic Drive  
Gloucester, MA 01930

RE: "Comments on Scallop Amendment 15"

Dear Pat,

I am writing to provide comments regarding the New England Fishery Management Council ("Council") decisions on Amendment 15 to the Sea Scallop Fishery Management Plan. Over the last few years, the Cape Cod Commercial Hook Fishermen's Association (CCCHFA) has become increasingly active in sea scallop management, as we work to preserve the small-boat General Category scallop fleet on Cape Cod in the face of the ongoing transition to quota-based management. This transition has been a difficult one, with a range of unintended negative impacts on small fishing businesses and coastal communities. CCCHFA continues to work with General Category scallopers to address these problems and to build towards lasting solutions for fishermen and their communities.

While this amendment considers a wide range of issues regarding the management of this fishery, I'd like to take this opportunity to specifically highlight some of the most pressing concerns for the viability and future success of the General Category fleet.

### Fishery-wide Policies

We strongly support establishing and strictly adhering to annual catch limits (ACLs), as required by the Magnuson-Stevens Reauthorization Act (MSRA). It is also critical to identify meaningful proactive and reactive accountability measures (AMs) for each component of the fishery to ensure that any potential overage is accounted for and to preserve the Council's allocation between the Limited Access and the General Category.

To this end, we support the proposed ACL structure outlined in Alternative 3.2.3.2 and depicted in the ACL-flowchart. However, it is unclear whether this flowchart adequately achieves the primary goals of 1) ensuring that the Council's allocation between the Limited Access and General Category fleets is achieved and 2) ensuring that the component of the fishery not responsible for an overage is fully protected from resulting 'repayment' or harvest reductions.

For instance, while it seems likely that relatively small overages would be handled appropriately, it is less clear how the General Category would be protected in the event that the Limited Access fleet exceeded, not only their sub-ACL, but the acceptable biological catch (ABC) and even the overfishing level (OFL). Regardless of the reasons for these overages, it is unacceptable that the over-harvest of scallops by the Limited Access fleet would result in a revised status of the fishery (declared overfished or to be overfishing) which would unfairly reduce the amount

of scallops available to the General Category in subsequent years. The events of recent years have demonstrated that such a situation is not merely a hypothetical scenario, but an actual possibility.

**Specifically, in both 2008 and 2009, the General Category remained within their hard total allowable catch (TAC), while the Limited Access portion of the fleet exceeded their catch targets by approximately 20 and 25%, respectively.** Such overages and the recent troubling findings of the SAW-50, suggest that the Council must explicitly outline how they plan to protect the General Category in these circumstances. Additionally, the Council must identify mechanisms to ensure that their decision to allocate 5% of the harvest to the General Category is actually achieved. The Limited Access overages of 2008 and 2009 resulted in the General Category harvesting substantially less than the transitional 10% (approximately 8.1% in 2008 and 7.9% in 2009). **Taken together, this led to a net loss of 2.2 million pounds of scallop yield and approximately \$15.9 million dollars of ex-vessel revenue for the General Category fleet during these two years alone.**

Clearly, this situation has to be addressed and corrected through Amendment 15. Both fleets must be allowed to benefit from the recent increases in the scallop biomass, and both fleets must be fully protected from any and all potential harvest reductions resulting from overages of the other. This could be achieved with specific language stating that, in the event that Limited Access overages result in the fishery exceeding the ABC or OFL, the General Category receives a subsequent allocation based on their performance relative to their sub-ACL the previous year. This could lead to a situation in which the General Category actually receives an initial allocation larger than 5% in the year(s) following a Limited Access overage.

Additionally, we cannot support any AM 'disclaimer' which allows the Limited Access fleet to benefit from updated stock information after the end of the fishing year while providing no such opportunity for the General Category. Such a situation is inherently unfair and runs counter to the Council's intent when establishing two separate portions of this fishery. Specifically, a Limited Access overage in a given year reduces the realized percent harvest of the General Category in that season (less than the 5% intended by the Council). If, following such an overage, the Limited Access portion of the fleet was not held accountable for this overage because of an 'AM disclaimer', the General Category would essentially be 'punished' for having adhered to their sub-ACL, while the Limited Access fleet would be 'rewarded' for having far exceeded their sub-ACL. Clearly, such a scenario is entirely unacceptable and at odds with the fundamental concept of catch accountability.

### General Category Measures

This amendment addresses a number of issues pertaining exclusively to the General Category IFQ program. Below, I have briefly outlined our opinions on several of these alternatives.

We support the alternative to allow for the 'rollover' of up to 15% of IFQ allocation to the following fishing year; such a measure will allow for much-needed flexibility in the program and will allow fishermen to avoid potentially dangerous foul-weather trips without forfeiting fishing opportunities. However, additional clarification is needed that this alternative would allow a permit-holder to roll-over 15% of their initial allocation (as opposed to 15% of their remaining quota at the end of the fishing year). This was, we believe, the intent of the Council; however it is not entirely clear in the document.

We also support the alternative which would allow for the permanent transfer (sale) of some or all of the quota associated with an LAGC IFQ permit to another LAGC IFQ permit-holder. This provision will help provide active General Category fishermen with affordable opportunities to access additional fishing quota to support their businesses. This flexibility is absolutely essential for a viable IFQ program.

While an informed discussion must be had as to what the most appropriate trip limit should be for the General Category, we strongly oppose efforts to eliminate the trip limit. Doing so would have lasting negative impacts on the small-boat owner-operators within the General Category and would undermine the traditional day-boat

nature of this fleet. We do agree that trip limit changes should be added to the list of 'frameworkable' items for this management plan, in order to allow for more timely future revisions if and when appropriate.

**Finally, we fully support the creation and formal recognition of Community Fishing Associations (CFAs) in the General Category scallop fishery.** CFAs and permit-banks are among the most effective means of protecting New England's traditional fishing communities from the unintended negative impacts of the transition to quota-based management. We applaud the Council's efforts to draft explicit regulatory language recognizing and supporting non-profit CFAs that purchase and hold IFQ permits and/or quota to be leased to qualified local fishermen at affordable rates. While, we and several other organizations in New England have already begun work to protect our communities' fishing fleets by creating non-profit permit-banks, specific Council-generated eligibility criteria and organizational parameters for CFAs and lease applicants are crucial to ensuring conformity with fishery objectives. Without explicit recognition and support of the Council, the potential of these entities to preserve our traditional fishing communities and coastal economies will not be fully realized.

CCCHFA appreciates the opportunity to provide comments on this important regulatory action, and looks forward to a bright future for our fish stocks and fishermen.

Sincerely,

Tom Dempsey  
Policy Director



**Deirdre Boelke**

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**From:** Amendment15 [Amendment15@noaa.gov]  
**Sent:** Tuesday, August 24, 2010 8:44 AM  
**To:** Deirdre Boelke; Jessica H. Melgey  
**Subject:** [Fwd: Amendment 15 comment]

#47

----- Original Message -----  
Subject: Amendment 15 comment  
Date: Mon, 23 Aug 2010 11:24:57 -0400  
From: Doug & Anne Wood <adwood@ainop.com>  
To: Amendment15@noaa.gov

Dear NOAA Fisheries:

I am writing to provide comments concerning Amendment 15 to the Federal Scallop Fishery Management Plan.

The way the Northern Gulf of Maine (NGOM) TAC is established and managed must be corrected. The NGOM TAC should not be based exclusively on the federal portion of the resource if both state and federal water landings will be counted against it. When the first NGOM TAC was developed state waters were responsible for roughly half of northern Gulf of Maine landings. This meant that a TAC for the entire NGOM was based on approximately half the resource.

Since that time, the ratio of state to federal waters landings has changed, with an even greater percentage of landings coming from state waters. If federally permitted fishermen are to be bound by a TAC based exclusively on the federal resource, their landings from state waters should not count against it.

I hold a federal scallop permit, and also serve on Maine's Scallop Advisory Council (SAC). The SAC has worked in recent years to improve the management of Maine's state water scallop fishery. These efforts are beginning to bear fruit, and the state water resource is recovering. If this problem is not resolved, federally permitted scallop fishermen will not be able to share in the bounty of a healthy state water scallop fishery. They will be forced to stop fishing on a healthy state water resource once the TAC based on a much smaller federal resource is reached. And it is worth noting that this federal TAC will likely be reached as a result of state water landings.

Last year during the Amendment 15 scoping period, the SAC voiced opposition to the way the NGOM TAC was established and accounted, and offered potential solutions. Unfortunately, all comments concerning ways to improve management of the Northern Gulf of Maine (NGOM) scallop fishery were considered and rejected.

I understand that compared to the large and lucrative federal scallop fishery conducted south of 42°20', the Northern Gulf of Maine fishery is a low priority. However I can assure you that it is a very high priority to those Maine fishermen who chose to hold on to their federal permits.

I believe we should have the same rights to participate in the state water fishery as those fishermen who do not hold federal permits. The NGOM Management area was created as a way to preserve traditional fishing rights in the NGOM. Currently, the exact opposite is occurring:  
by retaining federal permits, our right to participate in the state water fishery is threatened.

Because Amendment 15 will not offer an opportunity to correct this situation, I would like to request that this issue be placed high on the list of priorities to address in the next Amendment.

Sincerely,

John D. Wood

Maine Scallop Advisory Council Member

Maine Scallop Fisherman

Patricia Kurkul, Regional Administrator

#48

Northeast Regional Office, National Marine Fisheries Service

National Oceanic and Atmospheric Administration

55 Great Republic Drive

Gloucester, MA. 01930

Aug. 21, 2010

Re: Comments on Scallop Amendment 15"

Dear Administrator Kurkul

Measures to Address Excess capacity in the Limited Access Scallop Fishery and Provide More Flexibility for Efficient Utilization of the Resource.

Prior to Amendment-4 in 1994 when the scallop fishery entered into a limited access fishery the full time scallop boats would fish 250/260 day a year. Today with the success of management plan over the past 16yrs these same boats now fish approximately 75/80 days a year. During that 16yr period the management plan has also adjusted crew size from 13 men to today's 7 man crew limit. It has also limited areas to where and when they can fish and many gear modifications to allow for escapement of juvenile. All these changes while helping to rebuild the resource have left the harvesting capacity at the levels they were prior to Amendment-4 limited access.

Today it is common for much of the harvesting sector to have one crew fishing the allocation of two boats. While this allows the crews to work a longer year it leaves the excess boats tied to the dock for 280/285 days a year.

By being allowed to stack and lease two permits onto one boat these same crew would now not have to move from boat to boat moving gear and supplies with them each time. It would then allow vessels the flexibility needed to efficiently fish to a yet to be set ACT/ACL level while using best available science and gear to help avoid the need for AM adjustments.

It is my opinion that stacking and leasing is a move in the right direction to more efficiently utilize the scallop resource. I also believe the HP adjustment alone would prevent any increase in capacity while an arbitrary equity tax will discourage a more efficient utilization of the resource. If allowed to stack the

boats that do stack will already in a since be paying an (voluntary) equity tax by not being able to fish both permits during times of the year when yields and weather conditions are the best as those times of the year are when the largest volume of scallops are landed and demand and prices are also strongest.

#### Carry Over DAS, Catch History and De-Stacking

When/if a permit is stacked or leased it should maintain its individual identity so as to maintain the original base line of each permit then carry over DAS and catch history would follow the permit. The same could apply for de-stacking however De-Stacking should only be allowed if it is going to be stacked with another like permit this would prevent adding capacity back into the fishery. With each permit maintaining its own identity as is done today I would think it would be the best way for NMFS to monitor each permit .

Peter Anthony

Future Fisheries

New Bedford, MA

# 49

**Deirdre Boelke**

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**From:** Amendment15 [Amendment15@noaa.gov]  
**Sent:** Tuesday, August 24, 2010 8:44 AM  
**To:** Deirdre Boelke; Jessica H. Melgey  
**Subject:** [Fwd: Comments on Scallop Amendment 15]

----- Original Message -----  
Subject: Comments on Scallop Amendment 15  
Date: Mon, 23 Aug 2010 11:55:13 -0400  
From: Cathy Nelson <nelsoncapmngt@hughes.net>  
To: Amendment15@noaa.gov

To: Whom It May Concern

I, William E. Nelson, President and Owner of B&C Scallop Company Inc and currently a single boat owner would like to submit the following reasons to support the consolidation of the scallop fleet.

a. I believe that consolidation of the scallop fleet and/or permit stacking would evolve into a more efficient and newer fleet of vessels. Safety should always be a priority for this industry and we should work towards having the best boats in the waters working without penalizing those of us who are single boat operators.

b. Owners of multiple boats could stack permits on their newer more efficient boats thus creating a newer and safer fleet. It will be beneficial for the the crews who work on these boats, for the owners who have the time and cost associated with maintaining these boats and for the Coast Guard who have to respond when there is a problem.

c. Costs are lowered for the boat owner with a decrease in costs associated with insurance coverage, upkeep and maintenance of boats i.e., hauling and painting, engine and winches, etc... The boats will be working more days in the water rather than sitting tied up to docks deteriorating.

d. Dockspace can be opened up because of fewer boats. This frees up space making it easier to load and unload and enter and exit port. We are sometimes four boats out which makes it difficult to get to the dock.

e. Finally, consolidation is beneficial for owners who have multiple boats because of the cost savings involved. For those of us who are single boat owners we would be able to expand if desired due to the savings of not having to own as many vessels.

Thank you for the opportunity to share my thoughts and opinions on this matter.





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997 Ocean Drive, Cape May, New Jersey 08204, U.S.A.

Email to: [jreichle@lundsfish.com](mailto:jreichle@lundsfish.com)

August 23, 2010

Ms. Patricia Kurkul, Regional Administrator  
Northeast Regional Office, National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
55 Great Republic Drive  
Gloucester, MA 01930  
By email: [Amendment15@noaa.gov](mailto:Amendment15@noaa.gov)

Re: **Comments on Scallop Amendment 15**

Dear Pat:

On behalf of the 150 employees of Lund's Fisheries, Inc., and the independent fishermen who supply fish to our processing facility in Cape May, NJ, I am writing to provide comments concerning Amendment 15 (A15) to the Scallop Fishery Management Plan (FMP). Our comments follow the outline of the Council's public hearing document (phd). Unfortunately, as was evidenced at the recent scallop oversight committee meeting, several details of some of the proposals made in the A15 hearing document have not been determined by the Council. Consequently, we are making some recommendations with our comments that go beyond what has been clarified for the public to this point in time.

**Measures to Comply with Re-authorized Magnuson-Stevens Act – ACLs & AMs**

*We have no objections to the definitions and integration of new terms, or the Annual Catch Limit (ACL) structure, proposed in the amendment. We support the proposal that one ACL be established for the entire scallop fishery and that sub-ACLs be established for the limited access and general category fisheries, with different buffers for management uncertainty, to recognize that there are different levels of management uncertainty for these fleets. We are opposed to the suggestion that sub-ACLs also be established for each limited access permit category.*

*For the limited access fishery, we support Option 1, which sets the Annual Catch Target (ACT) at the F rate with a 25% probability of exceeding the OFL. We believe that the OFL should incorporate the updated reference points from the SAW 50 Sea Scallop Benchmark Assessment for 2009. We are not in support of changing the Overfishing Definition (OFD) with A15 and believe that any OFL calculation should include scallops that are available in closed areas.*

Lund's Fisheries to P.Kurkul; Scallop A15, page 2

*For the general category fishery, we support Option 2, which applies a buffer of up to 5% to account for potential monitoring concerns, IFQ carryover or other implementation errors.*

*We agree with the proposal that, if an individual vessel exceeds their IFQ or leased IFQ in a given fishing year, their IFQ in the following fishing year would be reduced by the same amount.*

#### Accountability Measures (AMs)

Lund's Fisheries, as a member of the Fishery Survival Fund supports the following principles concerning reactive AMs, which would be triggered if an ACL is exceeded whether for scallops or species taken incidental to the directed scallop fishery. *We believe that the scallop fishery should be allocated 100% of yellowtail needed to obtain a sustainable yield from the scallop resource, on an annual basis.*

- *Any AM should avoid creating a derby fishery.*
- *The industry needs time to react and plan for any AM-based adjustment.*
- *If an AM is triggered, either for scallops or yellowtail flounder, it should impact DAS allocations only, not access area programs.*
- *AMs for yellowtail (or other incidental catch species) should not reduce scallop yield.*
- *Any AM should be fair to all regions of the fishery.*
- *Any AM should be adjustable by framework to reflect changed management or resource conditions.*
- *Any AM should not create allocation issues within the limited access fleet.*
- *A scallop fishery AM should only be triggered if the scallop overfishing level is exceeded.*

*We agree with the Council that yellowtail flounder should be the only incidental catch species subject to a sub-ACL for the scallop fishery, since this is the only species for which the scallop fleet accounts for over 5% of the species' fishing mortality.*

#### Seasonal Closure of a Portion of a Yellowtail Stock Area pre-identified as Having High Bycatch

*We support Option B, which would close pre-identified areas to scallop fishing, within each yellowtail stock area, in year 3, not the subsequent fishing year, since data would not be available to implement an AM in year 2. Rather than using broad statistical areas to identify closures; smaller, more discrete areas should be identified for closures and these should coincide with where and when the highest concentrations of yellowtail are expected to be found. Any closure should be for the shortest possible period of time and should occur when scallop meats are lowest, following spawning.*

#### Measures to Address Excess Capacity in the Limited Access Scallop Fishery and Provide More Flexibility for Efficient Utilization of the Resource

### Permit Stacking

We agree that some consolidation of scallop permits could assist the limited access scallop fleet to harvest the available scallop resource more efficiently by reducing the amount of "steel" in the fleet, thereby reducing costs to scallop vessel owners. We support scallop management options with efficiency in mind, which is why, for example, our company has argued for changes in scallop gear restrictions through Framework 22, again, this month.

While consolidation may be determined to be a valuable tool for some limited access scallop permit holders, the New England Council should not create a situation with A15 that will cause a shift of effort into other fisheries, by creating active permits out of latent permits, since many fishermen are now only hanging on in a variety of fisheries. A negative impact on some New England and Mid-Atlantic fishing communities can be anticipated if A15 does not comprehensively address this concern.

It makes no sense for the Council to attempt to perfect the scallop fishery, through the benefits of consolidation, when shifting a significant amount of fishing effort to other fisheries would be the result. We understand that the Council has discussed this issue several times and has determined that there is no legal authority to use the scallop FMP to manage impacts on other fisheries in this way.

If the stacking and/or leasing provisions of A15 do result in a shift of effort away from scallops into other fisheries, a management response to a spike in effort in a variety of FMPs would take years to address. A15 is intended to be implemented during the 2011 fishing year; we can expect that significant shifts in effort into other fisheries will overtake the management system's ability to react to them, unless A15 is tailored to, indeed, be "effort neutral", and not only in the scallop fishery.

*The A15 phd states (3.3.2.4 Status of Stacked Permits) "that all permits (all species) from the stacked permit would need to be stacked with the main permit". It is our understanding that other limited access permits can not be stacked and that it is the Agency's position that the occurrence of duplicate permits (other than scallop permits), after stacking, would result in the loss of one of the duplicate limited access permits. Also, if stacking a scallop permit results in exceeding the baseline restrictions for any of the other limited access permits married to the scallop permit being stacked, it is our understanding that those permits would be relinquished.*

*With this understanding, we support allowing a limited access scallop vessel to have up to two limited access permits on board. That vessel would be permitted to fish the allocations for both permits, these permits could be of unlike permit categories and unlike vessel baselines, and the vessel could carry forward up to 20 unused DAS from one fishing year to the next (see 3.3.2.3.2). A vessel with a stacked permit on it would be prohibited from upgrading (see 3.3.2.5).*

### Fishing Power Adjustment for Stacking Permits

*We agree with the Council that a fishing power adjustment should be applied to a stacked permit only if the fishing power of the second permit is higher than the original permit and that the adjustments should be set so that scallop landings per unit of effort (LPUE), will not increase as a result of stacking.*

During the public hearings that we attended, many in the scallop fishery were concerned that the fishing power adjustments proposed by the Council in A15 will be insufficient to ensure that stacking would be effort neutral. We believe that the Council's scallop PDT is very capable of providing the Council with good statistical estimates about the impacts of the range of adjustments, as proposed in the amendment, and we understand that the Council has identified the lowest value of these adjustments as its preferred alternative.

*Without a crystal ball, or a PhD in statistics, it is difficult for us to identify the specific mortality adjustments that would also be applied, but we believe the Council and the Agency should be cautious in this area and establish initial adjustments that provide a reasonable assurance that stacking actions will not increase the LPUE in the fishery, to the extent that this is possible. Choosing mortality adjustments at the lowest value recommended by the PDT (5%) would not be sufficiently cautious, at least for the first year or two, in our view. Consequently, we believe that the application of fishing power and mortality adjustments to stacked scallop permits should be identified in A15 as an action that would be frameworkable in the future.*

### Status of Stacked Permits – De-Stacking

*We support the concept of de-stacking scallop permits, but only if the action is effort neutral across all fisheries. We support the A15 de-stacking option (3.3.2.4) only if the other limited access permits remain behind with the scallop permit not being de-stacked. In other words, only if the de-stacked scallop permit would be split from its suite of limited access permits. We do not agree with the Council that a de-stacked scallop permit should only be placed on another, active scallop vessel and do not agree that this restriction would limit effort in the fishery (since the fishing effort embodied by the permit that is de-stacked remains the same, no matter what boat it may be placed on). A de-stacked scallop permit should be able to be placed on any vessel (as is currently the case when a scallop permit is purchased). The proposal to place restrictions on who can hold the de-stacked scallop permit is unfair and would create a special class of permit holders with those who already operate a scallop vessel. Finally, we believe that A15 should clarify that a de-stacked permit would revert back to its pre-stacked baseline.*

### Leasing

*Due to our significant concerns about the potential for A15 to shift fishing effort from the scallop fishery into other fisheries in the New England and Mid-Atlantic regions, we are opposed to A15 allowing a limited access scallop vessel to lease fishing effort from another limited access scallop permit (3.3.3).*

*Allowing the leasing of scallop effort from a vessel with other limited access permits will have the effect of shifting that vessel's effort into other limited access fisheries, most of which are already struggling under limited quotas and other restrictions. The management system will take years to react to this transfer of effort into other fisheries while A15 is to be implemented in 2011.*

Leasing from vessels in CPH

*We are opposed to allowing leasing of DAS or access area trips from CPH, in addition to our opposition to leasing scallop days or trips from active vessels. The A15 leasing proposals will have the effect of shifting significant effort into other limited access fisheries in the New England and Mid-Atlantic regions. A15 should be effort neutral, not only in the scallop fishery.*

Measures to Adjust Specific Aspects of the FMP to Make the Program More Effective

Measures to Adjust the OFD to be More Compatible with Area Rotation

*We do not agree that A15 should be the vehicle to change the Overfishing Definition for the scallop fishery, particularly at a time when the Council is considering adjusting the boundaries of the existing habitat closures, which could increase the biomass of scallops available to the industry. Scallops in closed areas should be included in any OFD that the Council may use to manage the scallop fishery in the future.*

Minor Adjustments to the Limited Access General Category (GC) Management Program

*We are opposed to A15 modifying the GC management program including:*

- *Allowing IFQ rollover*
- *Modifying the possession limit*
- *Modifying the limit on IFQ one vessel can harvest*
- *Allowing IFQ to be separated from a permit*
- *Implementation of Community Fishing Associations*

Measures to Address Essential Fish Habitat (EFH) Closed Areas

*We support the no action alternative (3.4.3.1), which would maintain the measures in place to minimize impacts on EFH unless modified under Phase II of the EFH Omnibus Amendment (A14 to the Scallop FMP).*

Measures to Improve the Research Set-Aside (RSA) Program

*The scallop RSA program is functioning very poorly. Projects proposed a year ago are yet to be funded. We agree that the Federal Funding Opportunity (FFO) should be published by the June before the following fishing year; that the program be extended to include multi-year projects; that RSA allocations be based upon pounds rather than percent each year; and that unused RSA TAC be rolled over (all options under 3.4.4.8). We also support allowing unharvested RSA TAC to be rolled over through the first quarter of the next fishing year so that the program can benefit from increased flexibility, and recommend adding "Gear Restrictions" to the list of regulations from which RSA projects are exempt.*

Measures to Change the Scallop Fishing Year

*We are opposed to changing the beginning of the scallop fishing year (March 1) to May 1 to accommodate the ACL/AM requirements or any other reason. As this proposal has been discussed in the A15 process, it has become clear to us that the Groundfish Committee staff does not find this change necessary in order to better coordinate the two plans.*

Items to be Added to the List of Frameworkable Items in the FMP

We agree that the list of frameworkable items be expanded to make the management program as flexible as possible, particularly modifications to accommodate necessary changes to ACL management decisions and fishing power or mortality adjustments.

Thank you for the opportunity to comment on Amendment 15 to the Scallop FMP. Please do not hesitate to contact me if I can provide you with any additional information in the context of the proposed amendment.

With best regards,

*Jeff Reichle*

Jeffrey Reichle  
President  
Lund's Fisheries, Inc.

#51

**Deirdre Boelke**

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**From:** Amendment15 [Amendment15@noaa.gov]  
**Sent:** Tuesday, August 24, 2010 8:45 AM  
**To:** Deirdre Boelke; Jessica H. Melgey  
**Subject:** [Fwd: Comments on Scallop Draft Amendment 15]

----- Original Message -----  
Subject: Comments on Scallop Draft Amendment 15  
Date: Mon, 23 Aug 2010 13:55:17 -0400  
From: James Gutowski <jamesgutowski@comcast.net>  
To: Amendment15@noaa.gov

James Gutowski

1809 Central Ave

Barnegat Light NJ 08006

609-548-5020

Jamesgutowski@comcast.net <mailto:Jamesgutowski@comcast.net>

Aug 23, 2010

Patricia Kurkul, Regional Administrator

Northeast Regional Office, NMFS

National Oceanic and Atmospheric Administration

55 Great Republic Drive

Gloucester, MA 01930

RE: Comments on Scallop Amendment 15

Purpose1 (ACL's and AM's)

- \* I support the structure of ACL flow chart with two sub-ACL's one for the limited access fishery and one for the General Category IFQ fishery.
- \* I support the amendments approach with regard to accounting for scientific uncertainty in setting the ACT; furthermore the SSC sanctioned this approach. A 25% chance of exceeding the OFL is appropriate as any reduction in that chance leads to an unacceptable loss of scallop yield.
- \* With regard to management uncertainty: I support Option 1(LA ACT set at F rate with 25% probability of exceeding LA sub-ACL). Changing the ACT should be a framework able action with the more certainty achieved in the fishery.
- \* I support using an ACT as an AM. At this time I support option B (AM effective in year 3) with regard to Yellow Tail by catch: Implementing an AM in subsequent years will cause uncertainty and "in season closers" create derbies like the one recently experienced in the NLCA.

Purpose 2 (Excess Capacity)

- \* I believe there is some excess capacity in the Limited Access

Scallop fleet. I understand both side of the issue and if any form of capacity reduction (stacking or leasing) is allowed in this Amendment the managers need to be keenly aware of ownership caps to ensure the integrity of the historical fishery and avoid the so called "little guys getting swallowed up".

- \* If capacity reduction is supported leasing with both vessel upgrade and fishing efficiency adjustments are supported. Leasing gives the most flexibility and I can support this alternative with the 5-11 % power adjustment, a cap on carry over days, leasing from CPH, subleasing and landings history being accrued to the Lessor.

Purpose 3 (Adjustment to Overall Program)

- \* The Over fishing definition has been very effective during the scallop fishery's rebuilding. I support no action.
- \* General Category options:

Carry over days should be consistent with the historical percentage.

Possession limit increase could change the fundamental character of the fishery, if there is any increase to possession limit I can support 600 pound limit to insure economic feasibility as a one time.

It makes sense to modify the maximum quota for one vessel to 2.5% so a 5% permit holder can operate two vessels.

I support Option A with regard to the LAGC IFQ permit owners leasing in or out of its IFQ pool. The LA and LAGC would become mixed but would not impact the IFQ percent shares. If this option is supported ownership caps and other regulations must be maintained. If this did not happen I would at least like to see LA vessels with Gen Cat IFQ be able to lease within its own IFQ pool.

I support a no action: a process for future CFAs not being established in Amendment 15

- \* I support making EFH closed areas consistent with EFH closed areas implemented in Amendment 13 to the Multispecies FMP. Most recent habitat analysis shows the entirety of Closed Area 1 should be open in its entirety.
- \* I support the RSA program but believe it should be streamlined to help accommodate industry's research needs. Multi-year programs are needed with certain projects. The timing of the final approvals needs to occur earlier in the fishing year.
- \* Changing the fishing year is not supported. It will have negative impacts on established markets and further limited the window of access in the Mid Atlantic with already limited access due to the recent turtle biological opinion. This will result in effort shifting to times of poor yield and months where weather conditions affect safety.

//James M Gutowski//

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#52

August 23, 2010

Ms. Patricia Kurkul, Regional Administrator  
Northeast Regional Office, National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
55 Great Republic Drive  
Gloucester, MA 01930

RE: Comments on Scallop Amendment 15

Dear Administrator Kurkul:

I am writing on behalf of the Scallop Capacity Reduction Coalition (Coalition) to provide additional comments on Scallop Amendment 15 (A15). Specifically, we will address why the stacking/leasing provisions contained in A 15 are fully consistent with M-S Act national standard 5.

National standard 5 states that "conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose". Often referred to as the "efficiency standard", national standard 5 as codified in federal regulations, "prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose". The NEFMC has made it clear that the stacking/leasing options in A15 are intended to address excess capacity in the limited access scallop fishery, not allocate or reallocate the resource. A 15 will not change the current allocation of the resource among limited access permit holders. Indeed, every permit within the same limited access permit category will continue to receive an equal allocation of DAS and access trips under A 15.

The second goal and objective of A 15, as identified by the NEFMC, is to address excess capacity in the limited access scallop fishery and provide more flexibility for the efficient utilization of the resource. To address this need the Council designated stacking/leasing as their preferred alternative in the DEIS. An important objective of stacking/leasing is to more closely match fishing capacity with resource availability. Obviously a full-time scallop vessel tied to the dock 285 days out of the year is a dramatic sign that there is excess fishing capacity in the fishery.

The United Nation's Food and Agricultural Organization (FAO) defines fishing capacity as follows:

*Fishing capacity is, for a given resource condition, the amount of fish (or fishing effort) that can be produced over a period of time (e.g. a year) by a vessel or a fleet if fully utilized. That is, if effort and catch were not constrained by restrictive management measures.*

Clearly a full-time scallop vessel allocated approximately 80 days of fishing per year is not fully utilized. The current fleet, if fully utilized, could harvest as much as 200,000 mt of scallops per year. Excess fishing capacity of this magnitude can put pressure on fishery managers to make

more of the resource available for harvest and it can lead to overfishing. In recognition of this fact, FAO Technical Paper 409 (Rome 2001) includes the following advice to fishery managers:

*Fisheries managers not yet confronted with excessive overcapacity should recognize that the precautionary approach requires the management of fishing capacity be preventative and part of fisheries management, rather than reactive and limited to ex post to the reduction of excess capacity.*

NMFS guidelines for national standard 5 state that "an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable". These guidelines also recognize that management measures minimizing the use of economic inputs to harvest the resource increase efficiency. Efficiency in terms of aggregate costs then becomes a conservation objective, where "conservation" constitutes wise use of **all** (emphasis added) resources involved in the fishery, not just fish stocks".

The conservation neutral stacking/leasing provisions in A 15 are supported by national standard 5 and will achieve the NEFMC's goal of reducing fishing capacity. Permit stacking is not a new concept in fisheries management. The NPFMC authorized stacking of up to 3 sablefish permits on one vessel, the NJ surf clam fishery allows 3 licenses to be combined on one boat and here in New England our largest fishery (groundfish) can transfer and stack permits. We believe incorporating stacking/leasing into the overall scallop management program now is both precautionary and essential to maintaining the health of the industry and resource.

Sincerely,

Jeffrey R. Pike /obo  
Scallop Capacity Reduction Coalition

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ATTORNEYS AT LAW AND PROCTORS IN ADMIRALTY  
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August 23, 2010

By Hand and  
Electronic Submission

Patricia Kurkul, Regional Administrator  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

Re: Comments on Amendment 15 to the American Sea Scallop Fishery Management Plan  
Proposals for Stacking and Leasing of Permits in the Limited Access Scallop Fishery

Dear Ms. Kurkul:

Once again, I have been asked to comment on behalf of 51 limited access scallop vessel owners, including 37 single vessel owners and 14 owners of 2-5 vessels who disagree with Council's decision to proceed with the leasing and stacking provisions of Amendment 15.<sup>1</sup> We believe that the proposals violate the spirit and intent of the Magnuson Act as it will eliminate jobs, disrupt coastal communities, undermine traditional values, all to increase the profits of a very few. Resulting increases in effort by these vessel owners will require reductions in open area days at sea for the entire fleet, effectively allocating a larger portion of the fishery to larger fleet owners solely for their economic benefit. I also note that the process appears to be flawed, as communities have not received adequate notice of the action or its potential impact and, as demonstrated at the last Scallop Oversight Committee meeting, there is substantial dispute as to exactly what is being proposed. On behalf of my clients, I strongly urge the Council to change course and remove the stacking and leasing alternatives from the Amendment.

We have forwarded comments from affected vessel owners, shoreside businesses and their respective crews and employees, all of whose jobs will be negatively impacted by the proposed consolidation.<sup>2</sup> We are also aware that as news of the Council's actions has started to filter through communities, political leaders, including Congressman Barney Frank,

<sup>1</sup> I note again the survey by Paul Weckesser of Mass Fabricating & Welding, Inc. sent to all limited access scallop permit holders, which returned responses from owners of 94 scallop vessels opposed to the capacity reduction proposals which will result in either permit stacking or leasing of DAS.

<sup>2</sup> Some of these were submitted via electronic filing. We have provided a listing of the various comments, along with identifying information, including status of the commenter-e.g. boat owners, crew...

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Representative William Strauss and Mayor Lang of New Bedford have voiced opposition to stacking and leasing provisions of Amendment 15 insofar as they will be detrimental to fishermen and coastal communities, for the benefit of a very few. I strongly urge the Council to reconsider its actions and reject stacking and leasing in the final action on Amendment 15.

The current proposals are aimed at dramatically increasing the profits of a few, while increasing their landings per unit of effort-which will ultimately require across the board reductions in allocated open area days at sea for the fleet. As "efficiency" and profits rise for multi-vessel owners, single vessel and small fleet owners will bear the brunt of the cutbacks, forcing smaller entities to have to merge to remain profitable. As vessels are forced out of the fishery by consolidation, employment will decline on vessels, in shipyards and with suppliers as business decline, resulting in lack of competition and rising prices for the few remaining vessels. The effect will significantly impact coastal communities as fishing operations consolidate, affecting other fisheries as well. The consolidation provisions will undo the planning that went into Amendment 4 to the scallop FMP, depriving many of those who have worked for almost two decades to rebuild this fishery of the benefits they have been promised and to which they are entitled under the Magnuson Act, .

The scallop resource is healthy, the stock is not overfished, and overfishing is not occurring. The current mortality rate is well below the overfishing threshold and the future of this portion of the industry appears to be the one bright spot in a decade of unrealistic fishery management schemes in the Northeast region. Current TACs appear sustainable and potential exists to increase landings in the future according to recent NMFS reports. Nonetheless, the fleet continues to increase landings on open area days through currently permissible upgrades, engine improvements and the fleet's ability to increase efficiency without changing baseline characteristics. Some owners have recently constructed vessels which are designed for easy modification to further expand capacity and effort. ACLs and AMs to be implemented under Amendment 15 will, with a high degree of certainty, prevent overfishing. Recent changes under groundfish Amendment 16 have afforded limited access scallop vessel the ability to become combination vessels and engage in the groundfish and monkfish fisheries, restoring prior flexibility that has sustained the Northeast fleet during cyclical fluctuations in fish stocks.

The current regulations represent years of management and embody the expectations of many current participants, setting limits on vessel size and horsepower, placing restrictions on crew numbers and mechanical processing and prohibiting consolidation of days at sea. These regulations envisioned the current fleet employing many individuals and sustaining the social fabric of the fishery and fishing communities, modeled on smaller businesses. To some extent, inefficiencies retain more, smaller vessels and employ more individuals, while also slowing

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harvest rates, to the benefit of the resource and fishing communities. Economic efficiency is sometimes desirable, but my clients believe it is not necessary in the current fishery, where it will eliminate jobs for the sole purpose of increasing profits for a few, with the potential for significant, adverse effects on communities. These dramatic changes to the measures in place to protect small businesses and the fishery will have so profound an effect on the fishery as a whole that my clients believe the Council should remove them from the Amendment entirely and opt for the status quo with regard to capacity reduction.

### **The Lack of Public Input into the Process Demonstrates the Process has been Flawed**

It has become readily apparent that public input into the consolidation aspects of Amendment 15 has been woefully inadequate. Unlike many recent actions to modify fisheries to meet scientifically driven goals, the present consolidation proposal is geared solely at improving the economic condition of a few, larger fleet owners. It is difficult to understand how a proposal which benefits a very few, but will negatively impact so many has moved so far through the process, indicating a flaw. Under the Magnuson Act Fishery Capacity Reduction Program, The Secretary is required to consult with, inter alia, "... State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations and other interested parties through the development and implementation of any program under this section," 16 USC § 1861a(b)(4) While the current action is not structured under that specific section (which would require vessels owners to relinquish permits), it provides important guidance that measures affecting fleet size have greater social implications and the broader public must be involved.

We believe the failure to consult with community leaders in this effort to be a violation of the Magnuson Act. The makeup of the Council, the Scallop Committee and the industry advisors favors larger vessel owners and elimination of vessels. NOAA has a hand in selection of many of the Council members. Seats have tended to gravitate to recreational interests, NGOs and representatives of larger fleet. This bias is demonstrated on the Scallop Committee and the Scallop Industry Advisors, where individual vessel and small fleet owners are greatly outnumbered, resulting in a general trend of the Council process to favor the interests of large fleet owners. Local community leaders need to be involved in this type of social engineering that threatens to eliminate small businesses.

I also note that the public, despite the far reaching social implications of fleet consolidation, has little notice of impending changes to regulations. Community leaders, such as Mayor Lang are only made aware of changes through their constituents, and seldom have any

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direct notice from NMFS or the Councils as to how proposed regulatory changes may permanently and inalterably change or restructure fisheries affecting their communities. Similarly, shoreside support businesses are only now hearing of the consolidation proposals and how they will affect them

This is one of the first major attempts to restructure a fishery which is driven not by needs of the resource, but by the financial interests of a very few owners seeking to dramatically improve their own profits, at the expense of others in the fishery. It is as much redistribution as it is consolidation, and as such the Council has not taken adequate steps to notify those who will be directly to indirectly affected by the proposed changes, as is required by the Environmental review Process mandated by the Magnuson Act, 16 USC §1854(i). As such, the public process is fatally flawed.

**The Recent Scallop Oversight Committee meeting made it clear that the leasing and stacking proposals are not adequately defined, and that the public is not being given the opportunity to comment on many of the issues raised in the Amendment**

At the Scallop Oversight Committee meeting held on August 11, 2010, the Committee attempted to "clarify" certain aspects of the stacking proposals, which go to the very core of the consolidation issue. These included whether the Council will place restrictions on de-stacking. If de-stacking is allowed, this will eliminate any capacity reduction justification for the stacking/leasing proposal. At the August 11 meeting only one comment was permitted before it became clear that the matter could not be taken up during the public comment period. Nonetheless, that commenter, a proponent of stacking and leasing, presented a very different interpretation of the effect of the stacking proposal on a vessel's suite of permit stacking proposal, which would not tie all of two stacking vessels' Northeast permits together. This interpretation would require amendments to all of the Northeast fishery management plans and would eliminate any capacity reduction effect. There seems to be too much left unanswered in the current Amendment document, to the point that the public has not been adequately informed as to the regulations being proposed and can not fully understand their impacts, as is required by the Magnuson Act and the Administrative Procedures Act.

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**The consolidation proposals are not capacity reduction, are not conservation neutral and will require reductions in fishing activity that will disproportionately impact single vessel and small fleet owners.**

The current proposals advanced for consolidation include both stacking and leasing. Although there is much discussion about reducing capacity in the Limited Access Scallop Fishery. Proponents have pointed to reports on excess harvesting capacity in the American fisheries, drafted in 2008. The primary report, Excess harvesting Capacity in US Fisheries, A Report to Congress, April 28, 2008, is based, in part, on the fact that in 2004 the scallop fishery was overfished, Id. At p. 20. In the interim, the general category scallop fishery has been modified to an IFQ fishery, and the Limited Access fishery has not been overfished nor is overfishing occurring-the imposition of Annual Catch Limits and Accountability measures, with the attendant buffers, makes it highly unlikely that overfishing can occur in the future.

The proposals will not result in actual capacity reduction, since the proponents are seeking to make permit stacking temporary, lease days with minimal, if any, conservation tax, and allow transfers that evade the traditional 10/10/20 upgrade restrictions. Instead of decreasing capacity, the proposals will increase flexibility to avoid fishing power restrictions as vessels could lease from dissimilar sized vessels, with a tax of up to 30%. In effect, this would allow a 40 foot, 300 horsepower vessel, to lease to a 100 foot, 1000 horsepower vessel by taking a 30% reduction in open area DAS. As vessels gain more days, they will be able to modify their practices to make longer trips, using less time for steaming, and will immediately increase overall LPUE. Vessels that do not have the advantage of leasing or stacking will pay the cost as open access days at sea are cut, since this is the preferred method of reducing mortality. The current capacity of the fleet reflects significant increases in efficiency, largely driven by large fleet owners who have activated latent permits and introduced larger and more efficient vessels to the fishery, and now use their own excess capacity to justify consolidation and elimination of independent owners. The 10/10/20 rule was designed to allow fishermen some flexibility in replacing vessels, as directly equivalent replacements are not always available, and horsepower on motors varies with model year and complexity of emission controls. The proposed rule encourages increasing harvesting capacity of each permit through leasing and stacking.

The Plan Development Team determined that access to additional DAS would make vessels significantly more efficient, by allowing them to reconfigure their fishing schedules. The estimates of increased efficiency just from access to a larger pool of DAS have a range of 7-11%, and with high estimates of as much as 25% if all of the open area DAS from one vessel moves to another, such as through stacking. The PDT proposed to reduce transferred *open access* leased

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DAS by 7-11% to offset increased efficiency and avoid impacting non-consolidating vessels. The Scallop Oversight Committee then extended the possible range downward to 5%, indicating intent to spread the cost of consolidation to all limited access permit holders. It is unclear from the document whether this adjustment is intended to apply to leasing, but clearly the rationale extends to leasing, as well as stacking. Even the PDT fails to take into account that Georges Bank Access Area trips have, for the last two years been moved outside and given open area days. In short, the Amendment 15 document clearly indicates that leasing and stacking will result in an increase in overall effort, Amendment 15 document at page 317, and the proposals create an entire new level of management uncertainty, Amendment 15 document at page 63, including the effect of allowing this new type of upgrade, Amendment 15 document at pages 57-58, all of which will require a reduction in overall capacity by reducing open area days, Amendment 15 document at page 85, and associated reduction in ACLs, Amendment 15 document at page 33.

Under the leasing proposals, once a limited access scallop vessel has leased out its DAS, it would then be free to engage in any other fishery for which it holds a permit, such as mackerel, squid and herring, increasing effort in those fisheries, Amendment 15 document at page 384

The stacking proposal, currently limited to allowing one additional permit to be stacked on each vessel, does not result in the claimed capacity reduction. Rather it allows multiple permit owners to temporarily move permits to a smaller number of more efficient vessels, and then allows them to separate the permits and add other vessels to the fleet when it becomes advantageous to do so. Many of these multiple fleet owners have held latent permits for a number of years, and have recently placed them on vessels and have constructed newer, more efficient vessels, the effect of which is already seen through increases in LPUE. As incentives increase to further increase efficiency, in part by allowing these vessels to double their effort, it will require repeated effort reductions, forcing single vessel owners out of business completely.

Neither the leasing nor the stacking proposals provides capacity reduction. They merely allow owners of multiple vessels the flexibility of fishing fewer or more vessels as conditions change or transferring permits with ease - it also may preserve voting rights in the event of a referendum for quotas. One noticeable impact - while a fleet owner could conceivably consolidate and fish a permit from a 40 foot vessel on a 90 foot vessel, the owner of a single 40 foot permit would not be able to take advantage of this upgrade. The proposals create a further inequity between small fleet/single vessel and large fleet owners.

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### **The current proposals are intended to dramatically increase the profits of larger fleet owners.**

As noted during most discussions before the advisory panel and the Scallop Oversight Committee, the primary proponents of the move to consolidate are owners of larger fleets. Few, if any, single vessel or small fleet owners indicated any desire to consolidate, noting that after many years of turmoil, the fishery had significantly improved and profits were being realized across the fleet. Even the proponents of the consolidation plan downplayed their intent to consolidate, saying they intended to approach it slowly and need the ability to de-stack because of uncertainty. Most small fleet owners, particularly single vessel owners, probably would not have the resources to buy second permits or participate in leasing and are content to continue with the present rules. The potential for increase in profits is significant for a multi-vessel fleet owner. Under the AP analysis vessel owners are believed to be making a net share of \$238,243 per vessel, or \$476,486 for two vessels, Analysis at page 5. If consolidation occurs, the net share of an owner of a consolidated vessel would be as high as \$612,935, Analysis at page 6. For an owner of a sixteen vessel fleet, its net share would increase from \$3,811,888 to \$4,903,480, a 28% increase in profits. Since it is anticipated that the concentration of capital will further shift to larger operators, with increased efficiency, this will require re-allocation of resources away from smaller operators to larger ones, solely for the purpose of economic efficiency, which violates National Standard Five, which states:

Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

16 USC §1851 (a)(5).

Since the increase in profits is derived from the use of fewer vessels, there is also a predicted loss of jobs, ranging from 72 to 252, largely in fishing communities. Not considered are the filter down effects, as shore side infrastructures struggle to deal with the dual effects of declining numbers of vessels, and multi-fleet owners who strengthen their economic position by further vertical integration. The effects will ultimately be felt in other fisheries, as shoreside businesses respond to economies of scale, and have to increase prices in the face of falling demand for their business. The results of the Council's social and economic analysis show that consolidation should be avoided to protect fishing communities and maintain a vibrant and healthy fishing industry.

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### **The current proposals violate National Standards One and Four.**

The consolidation proposals will increase effort, not only in the scallop fishery, but in other fisheries as well. Both leasing and stacking will result in higher catch rates within the scallop fishery, having grave implications for associated ACLs and ACMs, placing the entire fleet at risk of negative impact as catches rise. Larger fleet owners who consolidate will reap the benefits, single vessel and small fleet owners will bear the burden, having to lease or consolidate to offset the open area days they lose as a result. As such, the flexibility to expand and decrease the fleet and potential increase in effort appears contrary to the scientific advice not to increase effort in this fishery which is currently healthy and profitable, and shifts the burden of measures to offset the increased efficiency of the consolidating vessels to the entire fleet, which is hardly fair and equitable. Vessels leasing out their days will increase effort in other fisheries, adversely impacting other fishery management plans.

### **Consolidation in this Fishery has serious negative implications for fishing families and communities.**

The consolidation in the scallop fishery has already had significant impacts on fishing communities and families. As a few owners have availed themselves of the opportunity to acquire as much as 5% of the limited access scallop permits, the number of owners has declined dramatically. It is believed that there are as many as 6 permit holders at or close to the maximum number of 17 permits. These businesses have become vertically integrated, concentrating profits from all levels of harvest and production, placing independent, single vessel or small fleet owners at a competitive disadvantage. It is unlikely that single vessels owners will have opportunity to lease from large fleet owners, and such leases will most likely be predicated on the leasing vessel owner selling product to the Lessor, binding small business to larger ones in an anti-competitive fashion. While independent owners have been arguing this for some time, the negative effects of this consolidation are clearly established in the Amendment documents, where it concludes, based on review of consolidation in other fisheries, that:

“The primary social impacts that have been documented in empirical cases involving consolidation (explained in greater detail below) range from employment loss, decreased income, decreased quality of life, changing relations of production, structural disadvantages to smaller vessels and firms, dependency and debt patronage, concentration of capital and market power, inequitable gains, regulatory stickiness, reduced stewardship, decreased community stability, loss of cultural values, and so on.”  
Amendment 15 document at Page 303.

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It is difficult to understand how, in a profitable fishery, those currently making the largest profits now seek to enhance those profits in a manner which has negative impacts for independent owners and fishing communities. The consolidation proposals will result in a complete restructuring of the fishery, away from community based owners, to a new management system which the analysis clearly shows disadvantages small business, for no reason other than to increase the bottom line for larger business. This appears contrary to National Standard Eight, which provides:

“Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirements of paragraph (2), in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.”

16 USC §1851 (a)(8).

It is impossible to reconcile the need for broad changes to the entire scallop fishery to make larger operations more efficient at the expense of smaller businesses, where the overall effect appears to run contrary to the basic considerations in the National Standards. The nation can hardly sustain additional job losses from a public resource, for the desire of a few to increase their profits.

### **Conclusion**

The proposed capacity reduction, while benefiting larger fleet owners, will increase capacity, concentrate excessive ownership of the resource in the hands of a very few, threaten the viability of many small independent owners, negatively impact employment for crews and shoreside businesses and further remove harvesters from ownership of capital, which runs contrary to the concept of stewardship of the resource. The negative impacts will be greatest on the single vessel owner, who will see no benefit from the proposed “capacity reduction,” will pay a significant price due to fleet wide restrictions caused by increased efficiency of larger fleets through consolidation, and will be put to a greater competitive disadvantage. The public has not been fully apprised of the dramatic effect that type of action will have on coastal communities, nor has it had opportunity to respond to the Amendment in this regard, as there are too many uncertainties in the document. In short, the Council must reject the proposal to completely overhaul a system that has been in place for over 15 years and has resulted in a successful and profitable fishery, for the financial betterment of a few owners who, by any standard, are currently seeing record profits from the fishery. For these reasons we believe that the fleet and the Nation will not be best served by the stacking and leasing proposals currently considered for

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Amendment 15, and that these issues should not have been selected as the preferred alternative, and would best be removed from the Amendment.

Very truly yours,

*/s/ Stephen M. Ouellette*  
Stephen M. Ouellette, Esq.

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Patricia Kurkul, Regional Administrator

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F/V FEARLESS, BETH ANNE  
F/V SEAFOX  
F/V KATHRYN MARIE  
F/V PREDATOR  
F/V ENDURANCE  
F/V KATHY MARIE  
F/V CHRISTIAN & ALEXA  
F/V CONTENDER  
F/V KAYLA ROSE  
F/V 'RAIDERS, PATRIOTS  
F/V SUSAN L  
F/V MAJESTIC  
F/V VENTURE, LIBERTY, JUSTICE, EDGARTOWN  
F/V ENDEAVOR  
F/V PAUL & MICHELLE, LUZITANO, INHERITANCE  
F/V QUINCY II  
F/V LINDA

THOR  
F/V 'INDEPENDENCE  
F/V SETTLER  
F/V BELLA ROSE  
F/V JENNA LEE  
F/V SANTA MARIA, SANTA ISABEL, QUEEN OF PEACE, LADY OF  
FATIMA  
F/V EBONY C  
F/V ABRACADABRA  
F/V J & M FISHING INC  
F/V SUZEE Q  
F/V CRYSTAL AND KATIE  
F/V COOL CHANGE  
F/V 'REGULUS, FURIOUS  
F/V 'ELIZABETH & NIKI  
F/V CHRISTOPHER JOY  
F/V 'SANDRA JANE, CONTENDER, CONCORDIA  
F/V GUIDANCE  
F/V KATHY & JACKIE, SOVEREIGN STAR  
F/V JACOB ALAN  
F/V RELENTLESS  
F/V 'MISS SHAUNA, MISS LESLIE, MIRAGE  
F/V DISCOVERY

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Allen W. Rencurrel  
Antonio Alvernaz  
Antonio M. Pacheco  
Armando Estudante  
Arnold DeMello  
Arthur A. Ochse  
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Cheryl Correia  
Daniel E. Tichon  
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E. Daniel Eilertsen  
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Mark Freedman  
Owen Smith  
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August 23, 2010

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F/V MISS TAYLOR  
F/V 'INDEPENDENCE  
F/V CHRISTOPHER JOY  
F/V WARRIOR, THE CHIEF, STARDUST, CHIEF & CLYDE  
F/V SEA RANGER  
F/V DICTATOR  
F/V MARY ANNE  
F/V RESILIENT  
F/V WILLIAM & LAUREN  
F/V CHIEF  
F/V CHRISTINE & JULIE, JANICE & JULIE  
F/V JULIE G

Richard D. Smithson  
Russell J. Paiva  
Samuel Christopher  
Sigurd Johannessen  
Terje Tonnessen  
Tim Harper  
Timothy E. Manley  
Todd Bragdon  
William & Gwen Wasilewski  
William H. Costigan  
William L. Gallant  
William R. Gallant

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John Pappalardo, Chairman  
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"Comments on Scallop Amendment 15"

My name is Sigurd W. Johannessen, I'm a retired merchant marine officer with 22 years of experience, also I'm a native to New Bedford, own 4 limit access scallop vessels and operate and own fuel company.

I made my first trip with my father when I was 11 years old and I will be 61 next month, so you might say that I've seen a lot of the ups and downs with the industry.

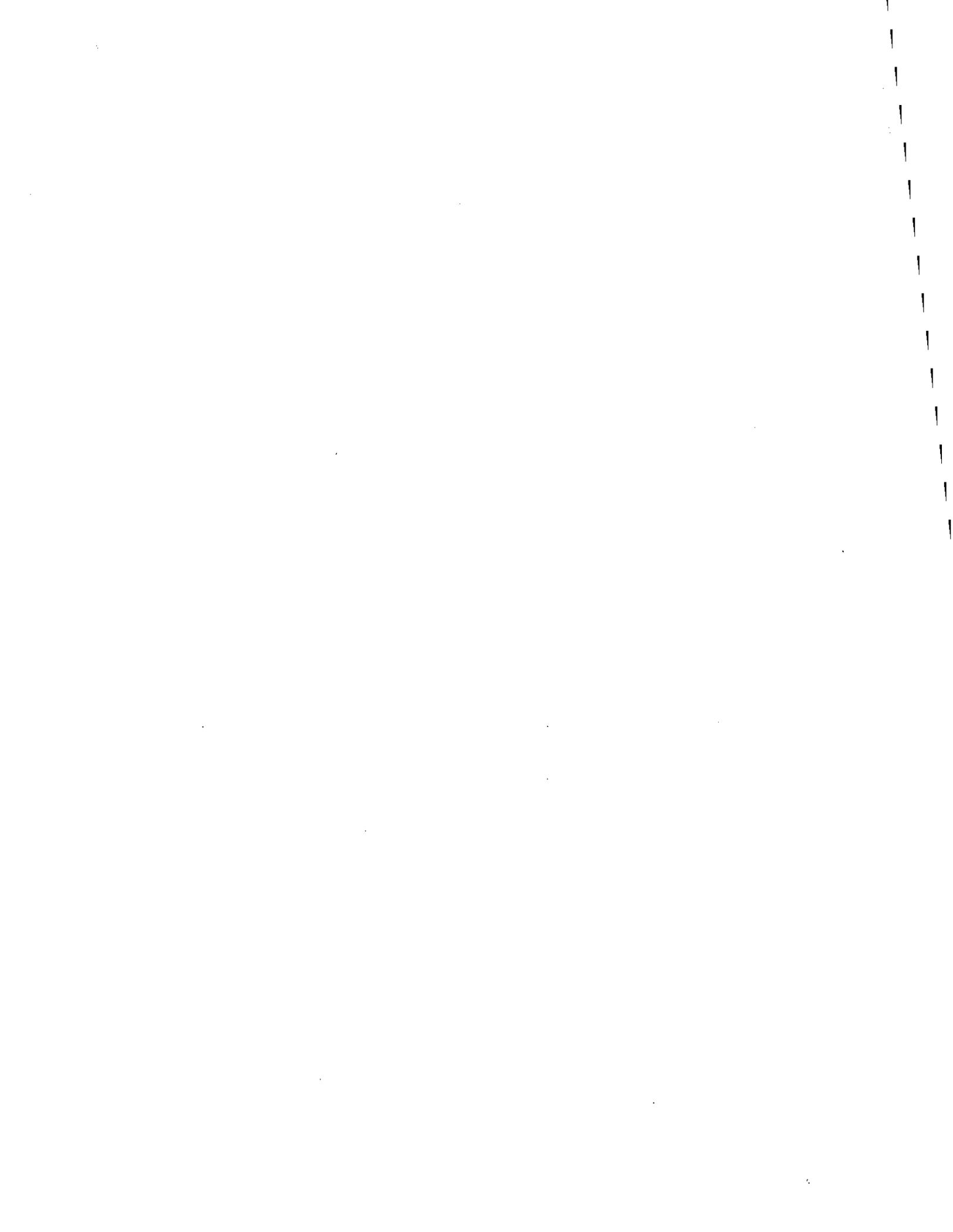
I have seen this proposal for stacking and leasing in the past but I have never seen as bad as this. The Olsen report clearly states the effects of if approved the damage this could do to our boats, local businesses and unemployment. The trips that are coming are great and plenty of scallops to go around for everybody. Like the old saying goes if it's not broken why fix it.

I must express that when we attend these meetings my captains and crews from my boats want to give their views on the issue and never get a chance to voice our opinion when others get more than their fair share of time at the microphone.

In closing I would like to say that please vote no on stacking and leasing for no good can come of this. The effect that it will have on our local economy and employment would be devastating to us if it would pass. This industry employs and supports a lot of people up and the east coast primarily here in Massachusetts. Without this industry Massachusetts and other states and ports would be crippled. So please vote no on stacking and leasing and save industry and heritage.

Thank you for reading my comments

Sigurd W. Johannessen



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**VIA ELECTRONIC MAIL**

Ms. Patricia Kurkul, Regional Administrator  
National Marine Fisheries Service, Northeast Regional Office  
55 Great Republic Drive  
Gloucester, MA 01930  
E-mail: [amendment15@noaa.gov](mailto:amendment15@noaa.gov)

**Re: Fisheries Survival Fund's Comments on Sea Scallop Amendment 15 Draft Environmental Impact Statement ("DEIS")**

Dear Ms. Kurkul:

We are pleased to have this opportunity to comment on the Scallop Amendment 15 DEIS on behalf of the Fisheries Survival Fund ("FSF"). As you are aware, FSF is comprised of the bulk of full-time, limited access Atlantic sea scallop vessel owners and has been deeply involved in all aspects of Atlantic sea scallop management for more than a decade. We appreciate your consideration of the views of this important segment of the fishery.

FSF's comments follow the structure of the DEIS, as presented in the document. Those elements of Amendment 15 not discussed are issues on which FSF has no position.

**I. Annual Catch Limits/Accountability Measures ("ACL/AM") & Measures to Comply with New Provisions of the MSA Reauthorization Act, DEIS Sections 3.2.1-3.2.3:**

**A. Sections 3.2.1 & 3.2.2: ACL Structure (New terminology, ACLs, OFL, etc.)**

In general, FSF has no objection to the changes in terminology as they are consistent with current law and regulatory guidance. The references and discussion of so-called "ecosystem component species," however, is superfluous and unnecessary. This is a concept that, while introduced in the final National Standard 1 guidance, 74 Fed. Reg. 3178 (Jan. 16, 2009), finds no basis in the language of the Magnuson-Stevens Conservation and Management Act ("MSA"). With all the serious and time consuming issues facing the Scallop Plan Development Team ("PDT") and the Council, it is a waste of time and resources to focus on issues relating to super-abundant species like starfish. FSF strongly recommends dropping any further discussion of this discretionary component.

FSF also supports the decision to exclude protected resources from consideration as so-called “non-target species,” or ecosystem component species, should the latter concept be perpetuated. As the DEIS notes, protected resources, such as marine turtles, are subject to separate management and oversight through such laws as the Endangered Species Act and the Marine Mammal Protection Act. There is no reason in law or policy to create an overlapping regulatory program for these species under the MSA.

Finally, we are concerned that the DEIS appears to establish the overfishing level (“OFL”) and maximum fishing mortality threshold (“MFMT”) based on the assumption that the  $F_{MSY}$  proxy,  $F_{MAX}$ , is 0.29. See, e.g., DEIS at 35-36, & Table 3. These values, however, have all been updated by the 50<sup>th</sup> Stock Assessment Workshop, which now represents the best scientific information available. Currently,  $F_{MSY}$  has been directly estimated as 0.38, while  $F_{MAX}$  is now estimated as 0.48.<sup>1</sup> In order to be consistent with National Standard 2, 16 U.S.C. § 1851(a)(2), the Final Amendment 15 EIS must incorporate these updated reference points from the 50<sup>th</sup> SAW report. This is no small matter, as new assessment techniques alter estimations of annual fishing mortality, meaning that catch levels projected to meet a target  $\bar{F}$  under previous assessment techniques could end-up yielding a materially higher fishing mortality rate under the new assessment techniques and selectivity curves.

#### B. Section 3.2.3: Alternatives for Implementing ACLs

**Relationship Between the Various Thresholds (Sec. 3.2.3.6)** – Amendment 15 proposes to set OFL above Acceptable Biological Catch (“ABC”), which is set equal to the scallop ACL, which is itself higher than the Annual Catch Target (“ACT”), or  $OFL > ABC = ACL > ACT$ . FSF supports this approach. The same is true of the decision to account for other sources of scallop fishing mortality – the Northern Gulf of Maine total allowable catch, state water catch, incidental catch, and discard mortality – when setting the OFL; i.e., making these minor sources of mortality a sort of “top of the line” deduction.

**Division of the ACLs (Sec. 3.2.3.5)** – FSF is also supportive of the proposed intent to divide allocated scallop harvest into two sub-ACLs, one for the limited access sector and one for the limited access general category (“LAGC”) fleet. The proposal to allocate 5 percent of the scallop ACL to the LAGC sector is consistent with the Council’s intent in Amendment 11, and FSF agrees that it is sensible to establish separate ACTs for the two sectors.

**Buffer for Scientific Uncertainty (Sec. 3.2.3.6)** – Based on extensive analysis, the Scientific and Statistical Committee (“SSC”) and PDT have recommended establishment of an ABC with a twenty-five percent probability of exceeding the OFL. Importantly, this is a highly precautionary buffer for a fishery that has “a relatively data-rich assessment.” DEIS at 47. In fact, based on an extensive qualitative analysis, the PDT originally had recommended a ten

<sup>1</sup> See Northeast Fisheries Science Center, “50<sup>th</sup> SAW Assessment Summary Report” at 31 (August 2010), available at <http://www.nefsc.noaa.gov/publications/crd/crd1009/scallop.pdf>.

percent buffer. In light of all this—including the fact that uncertainty runs both ways, involving the risk of over-estimating the risk of overfishing as well—it must be recognized that even before additional reductions are taken to account for management uncertainty, the long-term health of this important fishery is well accounted for.

**Note on Issues of Management Uncertainty (Sec. 3.2.3.8)** – The DEIS justifiably points out that two major issues contributing to management uncertainty have been resolved: mortality from the open-access general category fleet and reactivation of latent effort in the limited access sector. DEIS at 58. Currently, with a large majority of limited access effort directed in hard-TAC controlled access areas, and days-at-sea (“DAS”) capacity relatively stable and largely consistent over time, management uncertainty is a relatively limited, and includes only the DAS component of the original limited access fleet.

FSF agrees strongly with the PDT’s assessment “that DAS management may account for risk associated with projected versus actual estimates [of scallop biomass] better than full output controls.” *Id.* at 60. Scallop catch rates correlate strongly with abundance – scallopers cannot catch what is not there. Thus, in instances where the model over-predicts scallop abundance, catch rates will decline and catches lag behind estimates. A full TAC, by contrast, would be fully harvested, albeit with much more effort necessarily being extended.

In recent years, however, the converse has been true. Landings per unit of effort (“LPUE”), specifically catch per DAS, has exceeded the PDT’s estimates and is likely to do so again this year. FSF submits that this is most likely the result either of a poor estimation of scallop abundance by the NMFS scallop survey or underestimation of scallop meat weights. Both are identified as sources of uncertainty in the DEIS. Because effort is largely fixed, and a high degree of precaution built into the reference points, these so-called overages should not be viewed as a failure of management, but as a reflection that the status of scallops in a given year is better than had been projected.

As we discuss below in more detail, so long as total catch does not exceed the OFL, and fishing mortality rates stay within the threshold, overages should not be cause for either concern or draconian reactive management responses.

**ACTs for the Limited Access Sector (Sec. 3.2.3.8.1)**– Amendment 15 proposes two alternatives for setting the ACT for the limited access sector. The first is to establish the ACT based on an F rate that presents a twenty-five percent chance of exceeding ABC/ACL. The second is to set a buffer based on yet to be completed analysis of either variability in LPUE estimates or projected LPUE compared to actual estimates of open area DAS. FSF supports the option for setting the ACT at a level that will result in a 25 percent exceeding the ACL/ABC probability.

**C. Accountability Measures**

**i. Section 3.2.3.9.1: AMs for Scallop ACLs**

**In-Season (“Proactive”) AMs for Scallops** – The Council is proposing to use the conservatively-set ACT as the primary AM for the limited access fleet. FSF supports this approach. These measures should help prevent triggering of so-called “reactive” accountability measures (discussed below).

**ii. Reactive AMs (“Payback”), In General**

Any reactive AM, *i.e.*, one triggered if an ACL is exceeded, whether for scallops or bycatch species (only yellowtail flounder (YTF)), should encompass the following FSF-supported principles:

- Any AM should avoid creating a derby.
- The industry needs time to react and plan for any AM-based adjustment.
- If an AM is triggered, it should impact DAS, not access area programs.
- Any discussion of AMs must be premised on scallopers having a fair historic baseline allocation of yellowtail flounder sub-ACL. The Joint Groundfish-Scallop AP has recommended 100% of scallopers’ projected use. Further, scallopers should not be “rewarded” with ever more reduced yellowtail sub-ACLs for the good deed of their continuing, successful efforts to reduce bycatch.
- Any AM should be fair to all regions. For instance, if any AM implements area-specific DAS (and FSF is not recommending this), vessels should be able to trade Georges Bank open area DAS allocations for DAS closer to their home port.
- Any AM should be adjustable by framework in response to experience or changing resource conditions.
- Most of all, AMs should not create allocation issues within the fleet, such as by providing for differential allocations within the limited access category.
- AMs for bycatch species should not reduce scallop yield:
  - The fishery needs to remain balanced geographically.
  - Seasonal closures are preferred to total area closures.
  - Any area-based measures should apply to the smallest area possible.
  - Timing of measures should account for seasonal scallop variability.
- Any AM should minimize need for inter-fishery groundfish allocation transfers.

Based on these criteria, FSF supports the following alternatives:

iii. **Scallop Reactive AMs for Scallop Fishery, Amendment 15 Proposals**

In general, FSF recognizes the need for some sort of a "payback" as outlined in the Amendment 15 public hearing document. This is an unfortunate consequence of changes to the MSA and NMFS interpretation of those changes. The existence of a reactive AM makes it all the more important that the PDT and NMFS improve the scallop survey and projections of both open area biomass and catch per DAS in the open areas.

The only proposal specified in the DEIS, however, is an overall DAS reduction for the subsequent year to account for poundage landed in excess of the ACL. For reasons explained above, however, FSF respectfully suggests that the Council consider further clarifications of such a policy. Specifically, while the scallop industry hopes never to face a situation in which the ACL is exceeded, there are times when daily catch rates in the open areas exceed the projections, occasionally by fairly substantial margins.

As the PDT recognizes, such higher than expected landings can be the result of an underestimation of scallop biomass in the lightly surveyed open areas (particularly relative to access areas) or of higher than anticipated meat yields per scallop. Because scallop harvest rates are so closely linked to abundance, it would be appropriate to consider, in addition to the one sub-option proposed and discussed below, further refinements. FSF suggests clarifying that if the scallop AM is triggered, that any DAS reduction be rounded down if the calculation results in fraction of a DAS less than 0.5 and that no DAS reduction is to be taken if the overage would result in less than one full DAS in the subsequent year. This refinement is meant to ensure that harvestable scallop optimum yield is not unnecessarily forgone, particularly for *de minimus* overages. This, of course, would not apply if the OFL is breached, which is a highly unlikely circumstance given the substantial buffer currently in place.

Scallop AM Suboption: No payback if threshold F not exceeded – FSF supports the intent of this suboption, but an AM should be triggered if and only if the overfishing level of F is exceeded. ACL is a poundage measure based on a projection. If subsequent analysis shows that F was not too high (there was no overfishing), no payback should be necessary. When the intent of the Magnuson-Stevens Reauthorization Act is to prevent overfishing from occurring and to rectify the results of overfishing, it is not clear why the fishery should be required to suffer a payback when overfishing did not occur. If an ACL is exceeded, but overfishing did not occur, it may be appropriate to adjust management measures to ensure the ACL is not exceeded the following year, but that is a different concept from a payback/deduction. At a minimum, this measure must be refined to set the F associated with the ACL as the threshold. There is simply no justification for AMs if F is anywhere below this precautionary level.

iv. **AMs for Yellowtail Flounder ("YTF") Sub-ACL (Sec. 3.2.3.11.2.1)**

For sound practical and policy reasons, the PDT has recommended that before establishing sub-ACL and AM mechanisms within the Scallop FMP for a non-scallop stock, the sub-ACL first be identified in the plan governing that fishery. To date, YTF, all three stocks, are the only species for which another management plan establishes a sub-ACL for the scallop fishery. FSF continues to work with the Council, NMFS, and the groundfish industry on identifying a fair and effective sub-ACL amount that helps assure achievement of optimum yield in both fisheries, something not addressed in Amendment 15.

In terms of the proposals for YTF AMs, which are to be addressed in Amendment 15, FSF supports the PDT's recommendation that any AM for overages in YTF catch should not impede access area trips. The basic principle is that no access area should be shut down if a YTF sub-ACL is reached. FSF has long advocated for this approach, as a way to prevent access area derbies and to promote optimum scallop yield. Likewise, FSF is strongly in favor of eliminating the ten percent YTF cap in the Georges Bank access areas at the earliest possible time. As the PDT as expressed, access area fishing should be encouraged because the high LPUE associated with fishing in these areas.

As to the specific proposals, and based on the principles outlined above, it appears that the best option is the seasonal closure of a portion of the stock area pre-identified as having high bycatch, effective in year 3 (Alternative 3.2.3.11.1.1, Option B), with the following caveats/changes:

- Rather than using broad statistical areas in Southern New England and Georges Bank as default closure areas, **more discrete areas with the highest concentrations of yellowtail should be subject to closure.** The areas should be surveyed, in the same way Georges Bank access areas are, to identify the appropriate, more narrow areas for closure.
- **Any closure should be for the shortest period of time projected to meet the need to reduce the YTF sub-ACL target.**
- To the extent practicable, **closures should occur when scallop meat weights are lowest (post-spawning).**
- **Closures should not impact ability to take access area trips.**

**FSF-Recommended AM, Establish an Inseason "Firewall"** – This would be a new alternative, or sub-option, intended to prevent a situation where unexpectedly excessive YTF bycatch in a particular year threatens access to a stock area in the "payback" year. In essence, this proposal recommends that if NMFS projects that sub-ACL for a particular YTF stock area is likely to exceed the ACL by a substantial margin (some fixed unexpectedly high percentage), then the relevant stock area should close to open area DAS scallop fishing for the period when

YTF concentrations are expected to be/remain high. FSF is willing to work with the PDT and the Scallop Oversight Committee to work out the details of this option.

**D. Sections 3.2.3.12 & 3.2.3.12: Processes of Establishing and Monitoring ACLs**

**Process for Establishing ACLs** – In general, FSF supports the process set forth in the DEIS. We question the provision allowing the PDT to “recommend an ACL lower than ABC if it is sufficiently justified.” DEIS at 80. Not only does this run counter to the overarching system that the Council is proposing establish in this amendment – specifically, that ABC and ACL be set equal – but it also would mean that the PDT was, in effect, second-guessing the SSC. It is difficult to imagine the circumstances under which the significant buffer called for by Amendment 15 would not provide sufficient guarantees against overfishing. FSF recommends removing this provision.

**Process for Monitoring ACLs** – The DEIS notes that the fishery will largely rely on existing monitoring measures to implement Amendment 15’s provisions. However, it also suggests that additional measures may be necessary for monitoring of YTF sub-ACLs in particular. FSF agrees that additional reporting requirements may be necessary, particularly if the Council adopts its recommendation for an in-season “firewall.” Any new monitoring or reporting requirements should be the least burdensome and most administratively feasible means of obtaining the necessary information.

**2. Change in Overfishing Definition (“OFD”), DEIS Section 3.4.1:**

FSF is inclined to oppose any change to the OFD in this action. The main reason offered for changing the OFD is that the scallop fishery is not geographically balanced. See DEIS at 96-97. Not only are the actual impacts of the new “hybrid” OFD unclear (and never explained), the Habitat Committee and Council are in the final stages of developing a new set of alternatives for habitat closures. One result of that process may be to make access to much more of the scallop biomass available to the scallop fishery, either through new access areas or by increasing generally open areas. Such a rebalancing of the scallop fishery would solve the problem for which the new OFD is designed to compensate. That process should be completed prior to consideration of any changes to the scallop OFD.

In addition, FSF is concerned about the precision of the NMFS surveys in certain areas, such as inshore in the Mid-Atlantic. Both the proposed new OFDs depend on many precise local estimates of abundance.

FSF strongly opposes any OFD that would exclude scallops that are in closed areas from the overfishing calculation. These scallops exist and scallops should be managed throughout their range under Magnuson-Stevens Act National Standard 3, 16 U.S.C. § 1851(a)(3).

On the other hand, as also noted in the DEIS, the current OFD has been vetted and found to be consistent with MSA and the National Standard 1 guidelines. DEIS at 96. Furthermore, it “has been effective at keeping the scallop fishery above the overfished level and preventing overfishing overall . . .” *Id.* That is an understatement. This fishery has flourished under the

current management regime. In light of this success, we cannot support a change to the OFD at this time based on the information presented in the DEIS.

**3. Minor Adjustments to the Limited Access General Category Management Program, DEIS Section 3.4.2:**

FSF does not have a position on most of the specific proposals in Amendment 15 with respect to the management and operation of the general category sector. The one exception relates to some of the alternatives under Option 3.4.2.3 relating to adjustments in possession limits.

FSF's long held position, explained in connection with Amendment 11, is that the ITQ program should not change the essential in-shore, small-boat nature of the General Category fleet. Consistent with that position, which was supported by the Council in Amendment 11 when it maintained the 400 pound possession limit, FSF would oppose any measure to abolish a daily possession limit. Adjustments, if any, to the daily limit, as proposed in sub-option 3.3.2.3.2, should be made only if and to the extent that such change will not affect the historic in-shore character of this fleet or otherwise harm the fishing communities it serves.

**4. Measures to Address Essential Fish Habitat ("EFH") Closed Areas if EFH Omnibus Amendment 2 is Delayed, DEIS Section 3.4.3:**

This provision will rectify the inconsistency between the EFH closed areas implemented in Amendment 13 to the Multispecies FMP and Scallop Amendment 10. FSF strongly supports this option, which is also the Council's preferred alternative. This option is consistent with the Council's long expressed intent, which was frustrated when a court overturned a similar fix attempted in Scallop Framework Action 16. Rectifying this inconsistency in Amendment 15 will allow the PDT and Council to know what areas will potentially be available as rotational areas in time for Framework 22.

**5. Measures to Improve the Research Set-Aside Program, DEIS Section 3.4.4:**

FSF has long supported the research set-aside program, and its participants have been some of the most active in taking part in projects funded by the program to improve the operation of the fishery and our scientific understanding of the fishery and related issues of vital importance. This support continues and, as a general matter, FSF supports any measures to make the program even more effective.

In terms of the specific proposals, FSF has no position on many, leaving their resolution to the Council based on input by researchers, NMFS, and others who apply for or administer the program. The only option FSF opposes is that to increase the overall research set-aside TAC (Option 3.4.4.7). As to the remaining alternatives, the FSF offers the following comments:

**A. Option 3.4.4.5: Modify entire RSA allocation to a fixed poundage rather than a percent** – This option would eliminate the two percent access area TAC/DAS set-aside in favor of a fixed poundage of scallops. The rationale for this approach is that it should help the proposal and award process proceed more quickly. One concern, however, is that depending on the overall scallop ACL in a given year, a fixed amount of scallops may over- or under-allocate scallops available for the set-aside program. Therefore, FSF supports an RSA allocation in pounds, but recommends that the amount of the set-aside should be able to be changed by framework.

**B. Option 3.4.4.6: Separate RSA TAC into 2 subsets (survey and other)** – This would provide a consistent source of funding for the survey, which has been the Council's highest priority for the past couple of years. In this respect, this option is somewhat *status quo*, except that it would provide a steady funding source for the survey. In general, this is a concept that FSF would not oppose.

**C. Option 3.4.4.8: Rollover of RSA TAC** – The Council proposes five sub-options, these include rolling over the TAC to the next year; holding a second solicitation in the same fishing year; rolling over TAC to funded researchers to conduct related work; rolling over the TAC to the scallop industry-funded observer program; and using the excess RSA TAC to compensate awarded programs. In general, rollovers appear to be unobjectionable, unless (as seems unlikely) they could impact DAS allocations. FSF supports roll-overs in general.

**D. Option 3.4.4.9: Extension for harvesting compensation TAC** – this would allow a grace period for taking compensation trips beyond the end of the fishing year. This is a sensible measure that allows such trips to be taken when it is most safe and profitable. FSF supports an extension through the first quarter of the next fishing year, the maximum length under consideration, because it provides additional flexibility.

**E. Option 3.4.4.10: Increase public input of RSA review process** – This includes two suggestions: One, that the Scallop Advisory Panel could recommend research priorities directly to the Scallop Committee to consider; and two, more advisory panel members could participate in the management review panel of research proposals. FSF supports greater Advisory Panel input into funded research projects.

**F. Option 3.4.4.11: Regulations from which RSA projects are exempt** – FSF supports.

**6. Change in the Fishing Year, DEIS Section 3.4.5:**

FSF strongly opposes a fishing year change to May 1 and supports the *status quo*. Option 3.4.5.1. The market for scallops has evolved around the March 1 opening. This measure has been raised time-and-time again, and the Council has consistently rejected it. While FSF recognizes that there are some valid policy reasons for changing the year, the fact is that the current system has proven to be administratively feasible.

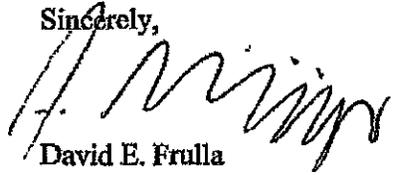
7. Additions to the List of Measures that Can be Changed by Framework, DEIS  
Section 3.5:

As a general matter, FSF supports flexible management through frameworks. Therefore, FSF supports these changes, particularly the ability to adjust AMs through frameworks.

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Thank you for considering these comments and please do not hesitate to contact us if we can answer any questions or require additional information.

Sincerely,



David E. Frulla  
Shaun M. Gehan  
Andrew E. Minkiewicz

*Counsel for the Fisheries Survival Fund*

cc: Capt. Paul Howard, Executive Director, NEFMC  
Members of the NEFMC Scallop Oversight Committee

#56

**Deirdre Boelke**

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**From:** Amendment15 [Amendment15@noaa.gov]  
**Sent:** Tuesday, August 24, 2010 8:46 AM  
**To:** Deirdre Boelke; Jessica H. Melgey  
**Subject:** [Fwd: Comments on Amendment 15]

----- Original Message -----  
**Subject:** Comments on Amendment 15  
**Date:** Mon, 23 Aug 2010 16:23:02 -0400  
**From:** silvermindy@aol.com  
**To:** Amendment15@noaa.gov

August 23, 2010

Ms. Patricia Kurkul, Regional Administrator Northeast Regional Office, National Marine Fisheries Service National Oceanic and Atmospheric Administration  
55 Great Republic Drive  
Gloucester, MA 01930

RE: Comments on Scallop Amendment 15

Transmitted via e-mail

Dear Ms. Kurkul

F/V Michelle, Inc. owns one vessel the f/v Lady Lorraine, a full time scallop vessel.  
\* \*

\_We support the Fisheries Survival Fund positions concerning ACLs, AM, overfishing definitions, and EFH. We especially want to emphasize the need to adjust the EFH boundaries in the NE Closed Areas to correspond to the NE Groundfish EFH. This will provide additional access to scallops currently 'bottled' up in areas which are not essential fish habitat. With additional access to these areas we can reduce fishing pressure in the Mid-Atlantic.\_ \_ \_ \_The balance of these comments address issues of consolidation.\_

/Question 7. Do you agree that there is a need to address excess capacity in the Limited Access scallop fleet? /

A. Yes, currently overcapacity exists in the scallop fishery. Our full time vessel can only fish about 70 to 80 days per year depending on the allocation of Closed Area Trips and Days at Sea (DAS). It makes no sense to maintain a vessel to be utilized so little. Keeping the vessel tied up is a major effort. An unintended consequence is the vessel when tied up continues to consume non-renewable natural resources. Our vessel is symptomatic of the entire fleet, which clearly has more capacity to harvest than the resource can sustain. The NEFMC should allow all vessel owners to flexibly address this issue by leasing Days at Sea and Trips.

/Question 8. Do you support stacking and leasing as a way to address excess capacity and provide more flexibility for efficient utilization of the resource? Why? /

A. The Stacking option has less options for an individual boat owner. We think the Council should adopt the leasing alternative by itself, without stacking. We believe leasing will provide the most flexibility to fishermen who opt to take part in the program but can't afford or don't want to double their effort. Stacking would not give us this flexibility. We believe we should have the flexibility to lease our scallops to another boat in the case of a catastrophic event such as a blown engine or fire on the vessel. This would prevent us from losing days at sea (DAS) or Trips in the future. We

believe leasing offers the most flexibility for individual boat owners, such as F/V Michelle, Inc.

/Question 9. If stacking and/or leasing is adopted should the Council also adopt a fishing power adjustment? Are the fishing power adjustment alternatives reasonable and do you believe they will minimize increases in mortality from stacking/leasing? /

A. We agree that when leasing Days at Sea a fishing power adjustment should be applied, but only when vessels are in different replacement categories. Vessels that lease to each other and are within the current definition of replacement vessels should not have a fishing power adjustment. The 10/10/20 replacement rule provides the flexibility needed while preventing people from taking advantage of the program. If a small vessel is leasing to a larger vessel outside the replacement criteria, i.e. if a vessel with less than 500/hp leases to a vessel with a 1,000/hp then a fishing power adjustment should be applied, using the formulas within the public hearing document.

/Question 10. Whether you support stacking and/or leasing do you believe both adjustments are necessary? Is the 5-11% range appropriate for the second adjustment? Too low? Too high? /

A. The second adjustment, the mortality tax, does not make sense - the projections of increased effort are not credible. There does not seem to be much logic that harvests will increase by letting one boat work the days of two boats through leasing. The catch is still limited by the number of days, the size of the dredge, and the ability of the crew to cut scallops. Some people have claimed that the fishery will go to longer trips, but the opposite has been the case. Most of the scallop buyers are encouraging boats to make shorter trips to improve quality. The calculation of a mortality tax proposal is based, we believe, on faulty assumptions and predictions of future behavior to make trips 20 days long, which we don't see as practical. We cannot see the logic of the scientists who calculated this prediction. Many vessels already share crew so there will be no loss of jobs. The same number of days will be fished and the same number of people will have to work each day at sea. The only difference will be crews will go from two platforms to a safer more economical platform from which to fish. Our crew currently does not get enough time at sea on our vessel and therefore currently works also on another vessel. If we could lease more DAS, they would not need to work on another vessel. As such I don't think there should be imposed a second mortality adjustment. Why isn't this mortality adjustment frameworkable? We do not believe the actual landings per day at sea will increase on lease vessels versus vessels not leasing and therefore we believe the mortality tax should be set at zero to begin with until such changes in effective daily harvest by vessels leasing DAS, if any, are documented. // // /Question 11. If stacking is approved, do you support that the 10 days at sea carryover provision stay the same or be increased? /

A. We believe leasing should be the approved alternative, not stacking. If leasing is allowed we support increasing the carryover to 20 days.

/Question 12. If stacking is approved, do you support that de-stacking should be allowed or prohibited? /

A. If stacking is permitted in Amendment 15 the Council should allow de-stacking but only to another scallop vessel (or its replacement) or to CPH (Confirmation Permit History).

/Question 13. If stacking is approved do you believe there should be any restrictions on vessel upgrades? /

A. The same upgrade restrictions should apply to all vessels whether or not they lease or stack.

/Question 14. Should there be any restrictions on leasing? Question 15. If leasing is approved, should a vessel be permitted to lease from Confirmation of Permit History (CPH)? /

A. There should not be restrictions on leasing.

B. You should be able to lease to vessels of different size and use the horsepower adjustment if the vessels do not meet the replacement criteria.

C. You should be able to lease between full time and part time vessels as long as the harvest vessel does not exceed the crew or gear restrictions.

D. A vessel should be allowed to lease from CPH. This is an effective way to reduce capacity and reduce costs.

E. Until the NEFMC sees the impact of the leasing provisions no one owner should be able to fish on their own vessels more than 5% of the allocation of effort of permits, between owned and leased permits.

F. But it is our understanding that Amendment 15 will allow (and should allow) an owner with 5% of the permits to lease some of their permits to others - i.e. to an individual vessel owner so the individual vessel owner could have more effort.

/Question 16. If leasing is approved, do you support sub or re-leasing? /

A. Yes, a vessel should be able to sub-lease, especially if that vessel has a catastrophic event and is unable to fish its days at sea and access area trips.

/Question 17. Under leasing, should DAS and landings history accrue to the Lessor or the Lessee/?

A. We believe the landing history should accrue to both Lessor for its permit and to the Lessee for its permit. If NMFS cannot track them separately (which we believe NMFS should be able to track separately) then NMFS should split the harvest prorata between each permit to maintain the history associated with both permits. Ideally, each permit should get its proportionate share of the catch, with NMFS employing whatever record keeping mechanism is needed to maintain the individual permit catch history. NMFS could have the harvest vessel identify which permit is being harvested by keeping separate vessel log sheets (similar to how vessel log sheets are different for different harvest areas) and the NMFS records would reflect each permit's harvest, even if from one vessel or more vessels.

/Are there any other issues that should be taken into account in the economic and social impact analyses of the stacking/leasing alternatives? /

Yes - leasing will:

- Increase crew safety
- Older vessels will be retired
- Greater satisfaction from crew not having to work on two vessels
- No loss of employment / man days at sea - since the same amount of time and crew will be worked, just on fewer vessels
- Reduced overhead for maintenance
- Less congestion at the dock
- Reduced use of nonrenewable resources such as fuel, oil, paint, engines, electronics, etc.
- No impact on scallop prices, since prices are determined primarily by the New Bedford Auction

Thank you for your consideration of the above comments concerning Amendment 15 to the scallop management plan.

Respectfully yours,

M. Silver, President





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August 23, 2010

Patricia Kurkul,  
Regional Administrator  
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*Comments submitted via e-mail to: [amendment15@noaa.gov](mailto:amendment15@noaa.gov)*

**Re: Comments on Scallop Draft Amendment 15**

Dear Ms. Kurkul:

Oceana submits these comments in response to the draft amendment 15 document which was put out for public comment on June 25, 2010 (75 FR 36360, June 25, 2010) and hopes that these comments will be carefully considered by the New England Fishery Management Council during its review and possible modification or approval of Amendment 15 in the coming weeks.

Amendment 15 is intended to accomplish multiple goals for the scallop Fishery Management Plan and includes management alternatives ostensibly intended to bring the fishery into compliance with the requirements of the Magnuson-Stevens Reauthorization Act (MSRA), address potential overcapacity in the fishery, consider changes to the Essential Fish Habitat closures for the scallop fishery and consider changes to the administration of the fishery.

Oceana submits the following comments on each of these subjects.

**Annual Catch Limits for all Stocks in the Fishery-**

A central principle in the agency's guidance on National Standard One concerning Annual Catch Limit (ACL) management across the country is the concept of 'Stocks in the Fishery,' which includes target stocks by default and may include non-target stocks and "Ecosystem Component" species. Agency guidance<sup>1</sup> directs the Councils to identify stocks in the fishery and then establish ACLs with corresponding Accountability Measures (AMs) for each such stock. The agency guidance does not require ACLs for stocks that are not 'in the fishery'.

The agency's NS1 guidance leaves the determination of which stocks to include in each fishery to the Council responsible for the fishery. This approach places on the Council the responsibility to rationally consider which species and stocks to include in each FMP in compliance with the Administrative Procedure Act (APA), to consider feasible and reasonable alternatives to these choices pursuant to the

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<sup>1</sup> National Standard One Guidelines. 74 Fed. Reg 3178. January 16, 2009

National Environmental Policy Act (NEPA) and to analyze the environmental impacts of these choices pursuant to NEPA.

Despite these requirements to rationally consider bycatch species as possible 'stocks in the fishery' under each FMP and a clear trend of non-target catch in the fisheries of the region that is demonstrated in the 2008 and 2009 Standardized Bycatch Reporting Methodology Annual Reports, the Council has acted in a series of management actions<sup>2</sup> to include only the default minimum number of stocks as 'stocks in the fishery.'

Amendment 15's proposal to include just two species and 5 stocks as stocks in the fishery is a continuation of the shortsighted trend by the New England Council's to attempt to satisfy the requirements for ACLs and AMs by including only minimal bycatch species as stocks in the fishery. This decision by the Council is apparently based on an incomplete analysis of the ample data set that describes the catch trends of this fishery and a flawed discussion of the effects of bycatch of the scallop fishery. These two important elements of Amendment 15 must be improved before the document is approved if it is to satisfy the provisions of the laws and regulations referenced previously.

### **A Catch Analysis as the Basis of Annual Catch Limits**

In its scoping comments for Amendment 15 and supplemental comments during the development of the Amendment Oceana suggested to the Council that it complete a full analysis of catch and bycatch in the scallop fishery to investigate and illustrate the overall catch of this fishery. Expressed in real poundage, these catch estimates could be discussed openly and communicated between fishery managers in other regions and the public. These repeated attempts to have the Council make a fully-informed decision which would report the true catch bycatch of the fishery have generated no clear and direct response.

The Council had the opportunity to complete a thorough analysis of the catch in the scallop fishery and received advice from the Northeast Fisheries Science Center that this is a practical request<sup>3</sup>. However, instead of honestly estimating and reporting bycatch for Council consideration, Amendment 15 attempts to rationalize the catches of these stocks as not being 'appreciable' (section 3.2.3.11.1) through percentage comparison based on 2005 observer data (table 16). This approach is likely to mask the true effect of this bycatch in a statistical manipulation or improper percentage comparison which is not clearly articulated in the EIS.

Using outdated information without a full presentation of context or a discussion of the effects of these catches on the management of these stocks is bad policy. The Council's selection of which stocks to include in the scallop fishery should be based on real estimates of recent overall bycatch in the scallop fishery as well as the results of consultations with the Councils and species committees with primary

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<sup>2</sup> See Amendment 16, 4 and 5 documents

<sup>3</sup> See testimony of Dr. Wendy Gabriel to the New England Fishery Management Council, April, 2010.

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responsibility for management of these stocks and a full discussion of the effects of this bycatch on the management of these stocks.

It is time for the Council to get these real estimates of recent bycatch and make decisions based on this and similar sound data. At a minimum the Amendment 15 document must, in order to be in compliance with the letter and spirit of law and regulations, include a *full* discussion and assessment of the catch of skates, monkfish, summer flounder and winter flounder species. All of those species have notably large observed catches in the scallop fishery as reported in the 2008 and 2009 Standardized Bycatch Reporting Methodology Annual Reports.

Oceana believes that estimates based on recent data represent the best available science and once again we respectfully request that updated estimates and analyses be completed to be included in Amendment 15.

#### **Threshold for Inclusion-**

Amendment 15 includes a limited discussion of the possibility of adding other stocks to the scallop FMP and makes vague reference to using a 5% threshold for consideration of additional stocks. Oceana agrees that in any fishery there will be *de minimis* catches of a range of species and that the Council should establish a clear and understandable threshold for inclusion of new stocks as stocks in the fishery.

This is a significant policy decision for the Council and should not be, as here, buried in the discussion section of an amendment.

Oceana encourages the Council to discuss this threshold and use Amendment 15 to develop a policy for the scallop FMP to consider the appropriate level for the threshold and how it should be calculated. Included in this discussion should be a consideration of the magnitude of the catch and its effect on the management program for the examined stock with provisions for consultations with the Council or species committee that is responsible for management of the affected stock. While bycatch of an overfished flounder may seem inconsequential for the large volume scallop fishery, the catch may have significant effects on the rebuilding plan for the flounder stock and the management of the directed fishery for that flounders.

Amendment 15 makes note of the ability of the Council to develop ACLs for non-target stocks if and when the other FMP for these stocks identify a need for action to limit catches in the scallop fishery. While Oceana encourages the Council to consult with the primary FMPs to assess the impacts of the scallop fishery on these stocks, it is the obligation of the scallop FMP to identify and describe interactions of the scallop fishery with other fisheries, include these stocks as a non-target 'stock in the fishery' under the scallop FMP and use ACLs for this stock to minimize the bycatch of these species as required by National Standard 9.

Amendment 15 as currently drafted constitutes a failure to complete the necessary rational exploration of catch in the fishery and to include a discussion of which stocks

in the fishery require ACLs in the FMP, which do not, and reasons for such inclusion or exclusion from the MSRA requirements.

It must be amended before being approved.

**Sea Turtles-** Magnuson-Stevens Act defines *fish* to include all species with the exception of marine mammals and sea birds. Under this language and for the purposes of Magnuson-Stevens Act actions, sea turtles are included as *fish* and must be managed in affected FMPs including consideration as non-target stocks requiring ACLs.

There have been five Biological Opinion Documents prepared for this fishery that clearly document the interaction of the scallop fishery and loggerhead turtles. Despite this well established catch history and the requirements of the Endangered Species Act and Magnuson-Stevens Reauthorization Act to reduce bycatch, Amendment 15 includes only a brief discussion of considering sea turtles as Ecosystem Component Species, with no action proposed.

The Loggerhead turtles that are caught in the scallop fishery have recently been proposed for 'uplisting' from threatened to endangered based on the increased likelihood of extinction<sup>4</sup>. Considering the impacts of fishery takes on this species, the limited discussion of including sea turtles as Ecosystem Component Species is insufficient for this purpose. The final A15 should include an exploration and consideration of the inclusion of sea turtles in the list of non-target stocks in this fishery that require ACLs and AMs.

Oceana feels strongly that limits on bycatch are an appropriate measure to minimize catch of ESA species. ACLs with AMs must be included in this amendment to the scallop following a similar authority as was used in the West Pacific Pelagic Longline fishery to minimize the impacts of that fishery and reduce bycatch in the fishery in 2004.

#### **Ecosystem Component Species-**

The scallop fishery uses a gear which has considerable adverse impacts on the seafloor. Among these known effects are the removal, damage and relocation of benthic organisms such as sea stars and sponges. Supporting the inclusion of this particular effect on the ecosystem is the reports of bycatch of these species in the 2009 Standardized Bycatch Reporting Methodology Annual Report which show 1.7 million pounds of *observed* sponges and 460,000 *observed* pounds of sea stars being caught in scallop dredges.

It is troubling that with this clear evidence of ecosystem impacts of the fishery there is no analysis in the Environmental Impact Statement to support the Council's decision

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<sup>4</sup> 'Therefore, we believe that the Northwest Atlantic Ocean DPS is in danger of extinction throughout all of its range, and propose to list this DPS as endangered' (Loggerhead Turtle Proposed Rule. 75 Fed. Reg. 12651, March 16, 2010).

to exclude species such as sponge or sea stars from a list of Ecosystem Component species that are caught by the scallop fishery. The Environmental Impact Statement simply states that, '(t)he PDT discussed several potential species (sponges, turtles and starfish), but none are recommended at this time<sup>5</sup>.'

Considering the magnitude of the catches of these species the Amendment 15 EIS must include a discussion of the effects of these catches and a more persuasive basis for not including these stocks for management in the fishery.

### **Accountability Measures-**

**Scallop Accountability Measures-** Oceana supports the use of in-season hard TAC AMs for the scallop fishery and believes that the more stringent oversight and management of the fishery that will come with this approach will yield far better results than the ACT approach developed in Amendment 15.

Since this approach was not considered in the very narrow range of alternatives for this measure in the amendment, Oceana requests the Council to take clear steps to ensure that the buffers used when setting the ACT for scallops are statistically sound. The scallop fishery has experienced a high degree of variability in its catches versus its target catch levels in recent years and Oceana encourages the Council to approve a set of buffers that are based on the recent performance of the fishery and are expected to have a very high probability of keeping the scallop fishery under its target ACL.

### **Non-Target Stock Accountability Measures-**

Oceana continues to support the use of in-season AMs that will monitor the catch of non-target stocks and take appropriate management action to prevent the catch which has been allocated to the scallop fishery from being exceeded. This approach, which is included as alternative 3.2.3.11.2.1.2 'In-season closure of entire YT stock area' has proven effective in managing the catch of yellowtail flounder in recent years and has provided incentives for the industry to develop dynamic self management program to identify and avoid areas with high densities of yellowtail. We believe that this is consistent with the advice of the agency that 'Whenever possible, FMPs should include inseason monitoring and management measures to prevent catch from exceeding ACLs<sup>6</sup>.'

Oceana encourages the Council and the scallop PDT to develop a higher resolution mapping and management program that will come closer to the alternative described in section 3.2.3.11.2.1.1 'Seasonal closure of a portion of the stock area pre-identified as having high bycatch', since at this time the data is not available to implement this approach.

<sup>5</sup> Amendment 15 Environmental Impact Statement 3.2.1.1

<sup>6</sup> National Standard One Final Rule section 2(g)(2)

Additionally, Oceana is strongly opposed to Option B 'AM effective in year three' and believes that this is directly contrary to agency guidance on the development and use of AMs in the event of a delay in data availability<sup>7</sup>. If the Council should select the overall AM that will close discrete portions of the affected yellowtail stock areas, it must be accompanied by in-season management program that will adjust management measures as soon as possible. Delaying action for more than a year is unacceptable and contrary to clear agency guidance.

### **Monitoring Accountability Measures-**

Oceana is concerned by the extremely brief description of the way that the AMs for the scallop fishery will be monitored. The full extent of this discussion is included below:

#### **3.2.3.13 Monitoring ACLs**

Current monitoring techniques already used in the sea scallop fishery will be used to monitor ACLs. These include daily monitoring of catch in the access areas and yearly estimates of catch in the open areas. This could also include the quarterly monitoring that is currently ongoing in the general category fishery while they convert to the limited access general category IFQ fishery. Monitoring the YT sub-ACLs may necessitate new monitoring requirements. See Section 3.2.3.11.2 for a discussion on monitoring and the yellowtail flounder sub-ACLs.

Considering the implications of ACL management and the impacts of the scallop fishery on overfished stocks of yellowtail flounders and other species discussed above, it is important that Amendment 15 include a full discussion of the fishery, its data needs, and how the data collection, reporting, and monitoring program for the fishery will satisfy these needs. The SBRM included the scallop fishery in its analysis and assessment of observer coverage needs but it is important to note that the SBRM was very clear that the program described in its analysis is not to be used for quota monitoring:

The SBRM established through this amendment is intended to adequately and efficiently provide sufficient information collection and monitoring to comply with the existing requirements and management systems. The notion that this amendment should predict various possible future fisheries management systems and measures (e.g., species specific hard TACs in the groundfish fishery or ITQs in the sea scallop fishery, etc.) and establish an SBRM that can reliably provide information and monitoring under these changed circumstances is neither realistic nor practicable.<sup>7</sup>

(Standardized Bycatch Reporting Methodology EA at 223)

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<sup>7</sup> 'If final data or data components of catch are delayed, Councils should make appropriate use of preliminary data, such as landed catch, in implementing inseason AMs.' (National Standard One Final Rule section (g) (2))

'When the discard data are used for different purposes in certain specific fisheries (e.g., for real-time area-based quota monitoring), the generally derived performance standard may need to be supplemented to more appropriately reflect the needs of the specific application.'  
(Standardized Bycatch Reporting Methodology at E-12)

'In this way, should a Council determine that a higher level of precision is needed in certain circumstances (for example, for adequate real-time monitoring of a quota in some fisheries), the performance standard could be changed to accommodate these situations with relative ease (see section 6.5').  
(Standardized Bycatch Reporting Methodology at E-19)

Relying on the status quo monitoring program is not acceptable for this fishery and Amendment 15 must include specific changes to this program to account for the management needs of the fishery under a full suite of ACLs and AMs.

#### **Changes to EFH Closures Should Be done through the Omnibus EFH Management Process-**

The Amendment 15 document includes an exploration of options for the Council to change the Essential Fish Habitat regulations for the scallop fishery due to the extended development and approval of the required five-year review of EFH measures in the region. While Oceana shares the concerns of the industry over the delays in the mandated EFH review, we note that the Omnibus EFH amendment is steadily making progress and is scheduled to develop and approve EFH management measures in 2010-11.

Oceana insists that, in order to comply with the clear intent of the MSRA ,any changes to EFH measures must be coordinated by the Habitat/ MPA/Ecosystem Committee and analyzed using the tools developed as part of the omnibus amendment.

The ongoing habitat amendment process and its findings about the effects of scallop gears on EFH will likely have significant impacts on the management of the scallop fishery. Rushing this change in EFH management through the Council process at this time is premature and is likely to complicate future changes to habitat management areas.

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Oceana appreciates the opportunity to review and comment on Amendment 15. We believe that the amendment as currently drafted has some significant deficiencies and look forward to working with the Council during its upcoming discussions to develop the necessary changes to the document to bring this fishery into full compliance the MSRA and the other laws governing this important fishery.

Thank you,

A handwritten signature in black ink, appearing to read "Gilbert A. Brogan". The signature is fluid and cursive, with a long horizontal stroke at the end.

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August 23, 2010

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RE: Comments on Scallop Amendment 15

**Comments submitted electronically via e-mail**

Dear Administrator Kurkul:

Thank you for allowing us the opportunity to submit written comments regarding Amendment 15. Atlantic Capes Fisheries, Inc. (ACF) purchases scallops from vessel owners in North Carolina, Virginia, New Jersey, Rhode Island, and Massachusetts. We work with vessel owners who own docks and multiple vessels (5 and more vessels) as well as vessel owners who own as few as only one vessel. On behalf of ACF I actively participate in attending NEFMC meetings as well as being a Sea Scallop Advisor. These comments are a synthesis of the input that I have received from vessel owners working with ACF as well as ACF insight into the issues being considered by the NEFMC in Amendment 15.

First I would like to acknowledge the hard work of the NEFMC and NMFS working collaboratively with industry to husband and foster the scallop resource. Clearly the scallop fleet has the capacity to over harvest and deplete the resource. Most of us remember the peaks and valleys of the scallop fishery from the 70's to 90's when we fished more time and targeted 40 count and smaller scallops. While not initially supporting federal management, most scallop fishermen recognize that science based management has significantly improved the fishery. ACF believes that additional improvements to the fishery can be realized by the NEFMC, NMFS, and industry working together while continuing to reduce the scallop fishery's impact on other resources.

While previous Amendments focused primarily on rebuilding the scallop fishery, it is our opinion that Amendment 15 is focused on maintaining the sustainable harvests the NEFMC has fostered, while reducing the scallop fishery's collateral impacts on other fisheries and the environment. The NEFMC is charged with looking at the entire fishery and clearly the public has come to value not only sustainable directed

fisheries, but also the reduction of impacts on other species – hence concerns being addressed in Amendment 15 with bycatch management (ACLs and AMs).

Similarly we see that the public has come to value reduction of the use of non-renewable resources in all facets of our society. Look at the public concern for new light bulbs, electric vehicles, and alternative energy. The public correctly values conservation of non-renewable fossil fuels and other limited resources (metals, paints, etc). ACF views a major societal benefit of the Council's option of leasing of DAS and Trips will be to provide opportunity for the removal of vessels from the fishery, reducing the amount of wasted resources on maintaining non productive assets for 280 to 300 days per year.

With this spirit ACF provides our comments to questions posed in the public hearing document for Amendment 15 as they appear on page 44 and 45.

1. We agree with the structure of and the new definitions (figure 2) of the Annual Catch Limit (ACL) flow chart as they are consistent with the current law. We also agree there should be two sub-ACL's; one for the full time limited access fleet and one for the limited access general category fleet.
2. In order to be consistent with the OFL (Overfishing Level) the best scientific information available should be used and we believe the updated reference points from the June 2010 SAW are the most current and the best available scientific information.
3. We support the current approach using the 2010 estimated biomass as an example (figure 1) regarding scientific uncertainty for properly setting the Annual Catch Target (ACT) which puts the OFL above the Acceptable Biological Catch (ABC) which is equal to the Annual Catch Limit (ACL) which is higher than the Annual Catch Target (ACT).
4. ACF supports the option of setting the ACT 25% below the ACL/ABC to help prevent triggering Accountability Measures (AM's).
5. In regards to Accountability Measures (AM's), the scallop industry is going to need time to react and plan when it comes up against an AM. If an ACL is reached but the OFL is not exceeded and over fishing did not occur then no reactive payback should occur. It would be more appropriate to adjust management measures to ensure the ACL is not exceeded the following year. If an AM is triggered and some kind of payback is required appropriate steps need to be taken to avoid creating a derby situation. Accountability Measures should not reduce scallop yield. AM's should account for seasonal scallop variability. AM's should impact Days at Sea (DAS), **not** Access Area Trips. The AM should allow vessels to remain balanced geographically. If the implementation of a AM is unavoidable and becomes area specific vessels should be able to trade DAS to avoid the undue burden of having to steam 2 or 3 days from their home port to utilize their DAS. Any area subject to a closure should be as diminutive as possible but also be identified as having a high concentration of Yellow Tail Flounder. Any implementation of an AM should not create allocation issues among the fleet and all AM's should be adjustable through a framework in response to changing conditions.
6. The existence of Accountability Measures points out how important continued ongoing surveys are in both understanding better the biomass of the resource

throughout the year and the ability of the survey to identify areas of high seasonal concentrations of Yellow Tail Flounder. Surveys should take place year round whether they are NMFS funded, industry funded, or done through a study fleet. Surveys of 'closed' or 'managed' areas should be on a year round basis to compile a resource database available to industry and the managers to time openings and closings to avoid possible seasonal concentrations of non-target species, e.g. yellowtail by-catch.

7. A) We agree there is a need to address capacity and that currently overcapacity exists in the scallop fishery. Scallop vessels only fish about 70 to 80 days per year depending on the allocation of Access Area Trips and Days at Sea (DAS). Keeping the vessels tied up at ACF docks for 280 to 300 days a year is a major effort, a waste of valuable resources, and provides no benefit (only costs) to the fishery. A boat is better maintained working then sitting. An unintended consequence of vessels being dockside is they continue to consume our non-renewable natural resources such as maintenance, fuel, and electricity. Having vessels tied up from Virginia to Massachusetts for 80% of the year is indicative that the entire fleet has much more capacity to harvest than the scallop resource than the scallop fishery can sustain. Moreover it is clear the waste of resources and losses associated with maintaining assets which are used less than 20% of the year.  
  
B) We believe all vessel should be afforded the flexibly to lease their DAS and trips. The NEFMC should select leasing as the preferred alternative and implement a leasing program of DAS and Trips.
8. ACF supports Leasing as the preferred alternative. We encourage the Council to adopt leasing as the preferred alternative by itself, without stacking. We believe leasing will provide the most flexibility to fishermen who opt to take part in the program but don't necessarily want, need, or can afford a whole years worth of additional allocation on their vessel. Flexibility to lease scallops to another boat in the case of a catastrophic event such as a blown engine or a vessel fire is essential and will hopefully prevent vessels from losing DAS or access area trips in the future. In fact leasing we see as most beneficial for both multiple vessel owners and individual vessel owners. ACF works with both types of vessel owners and both individual boat owners and multiple boat owners see the advantages of leasing. Independent owners will have options they do not have now and would not have if stacking were the preferred alternative.
9. ACF agrees that when leasing DAS a fishing power adjustment should be applied, but only when vessels are in different replacement categories. Vessels that lease to each other and are within the current definition of replacement vessels should not have a fishing power adjustment. The 10/10/20 replacement rule currently provides a rule which caps effort to prevent people from taking advantage of the replacement program. If a small vessel is leasing to a larger vessel outside the replacement criteria, i.e. if a vessel with less than 400/hp leases to a vessel with 800/hp then the fishing power adjustment should be applied.
- 10.A) The mortality tax or second adjustment, itself is based on *predictions* of how much more efficient the receiving DAS vessel could become. The claim that some have made that harvests will increase, we do not agree with. Vessels fishing for ACF only stay as sea and fish 10 days or less. We avoid trips longer than 10 days to maintain quality. Some have asserted that when DAS are

leased fishermen will extend trips to as long as 20 days to decrease steaming time and therefore increase harvest. This does not seem credible that boats will deliver scallops of high quality and stay at sea for 20 days. I am aware of many captains and crews who are currently working - one crew on two vessels. It is not credible to me that these captains can increase their harvest, by eliminating one vessel and fishing all their days on the other vessel. It is the same crew with the same gear, just different boats. But it is credible that the costs of maintenance, fuel consumption, and electric consumption will all go down and safety will go up. Since an incremental scallop harvest increase is **just a prediction** we believe the percentage should be set at zero or the lowest possible percentage in Amendment 15. We believe Amendment 15 should allow the mortality tax to be changed in the future by framework so if in the future there is a proven increase in efficiency due to leasing DAS, the NEFMC can make the necessary adjustments during their annual Framework fishery specification setting process. The NEMFC should be encouraging consolidation through leasing, to obtain the benefits of conservation of other resources. Instituting a high mortality tax based on a prediction of increased harvests (which we believe is unfounded) may only discourage people from leasing, losing the benefits of the Amendment. Moreover putting more days on one vessel may actually reduce overall harvests, since it may push some harvests later in the year when the CPUE is less and therefore overall harvest may decrease. For these reasons we recommend that the NEFMC begin at 0% for a mortality tax and then adjust in future years if NMFS statistics document a problem in the fishery caused by leasing.

B) Many vessels in the scallop fishery already share crew, (I.E. 2 crews per 3 boats or 1 crew per 2 boats). This appears to be the norm not only in Cape May, but also in Massachusetts and Virginia. Therefore, crew employment will not be impacted by leasing. The number of man days will stay the same in the entire fishery. Since all scallops are opened by hand the amount of work will not change. But, by selecting leasing as the preferred alternative for those vessels that lease days, crews will not have to go from vessel to vessel and likely the vessel retained in the fishery will be a safer more economical platform from which to fish.

C) In consideration of our earlier comments, we do not believe the actual landing per day at sea will increase and therefore we believe the mortality tax should be set initially at zero to begin with adjustments made by framework in the future if warranted by documented experience.

11. We believe leasing should be the preferred alternative, not stacking. We also believe the carryover provision should be increased to 20 days at sea to account for the larger allocation of days at sea assigned to one vessel.
12. If stacking were chosen as permitted in Amendment 15, the Council should allow de-stacking but only to another scallop vessel, its replacement, or to CPH. If my business partner and I each own one boat, sell one boat and stack permits on the other boat, what happens if we dissolve our partnership? Someone's going to want their permit back. Partnerships fail all the time, why should the parties be penalized by not being allowed to de-stack due to a failed business relationship. This example is why we think for individual boat owners leasing is the preferred alternative since it is more flexible than stacking.

13. We think the same upgrade restrictions should apply to all vessels whether or not they lease or stack.

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14. We support the current 5% cap on ownership in Amendment 15, which should be maintained while the NEFMC observes the implementation of the leasing program over a number of years. In regards to section 3.3.3.4 Ownership cap provisions, it is our understanding that the intent of the draft and its implementation by NMFS is as follows, which we support. If an individual owner is at the 5% ownership cap they cannot fish on their owned vessels (through leasing either "in" or "out") more than the 5% ownership cap. It is our understanding Amendment 15 will allow an owner at the 5% cap to lease some of their permits "out" to independent vessel owners, which would not be a violation of the 5% ownership cap. The 5% cap applies to accumulating on a multiple vessel owner's owned vessels more than 5% of the effort.

15. A vessel should be allowed to lease from CPH. This is an effective way to reduce capacity.

16. We support re-leasing, a vessel should be able to sub-lease, especially if that vessel has a catastrophic event and is unable to fish the balance of its allocation

17. We believe the landing history should accrue proportionately to the originating permit. The identity of each permit should be maintained and the harvest of each permit's DAS and Trips should accrue to the individual permit. This could be accomplished through vessel log book reporting, VTR's and dealers reporting through the SAFIS system. Sea Scallops are federally mandated to be reported by dealers through the SAFIS system which is a permit oriented system thereby ensuring vessels receive their proportionate share of the catch. A vessel would identify on its trip report, which permit its harvest was associated with.

18. Other positives that should be taken into account when leasing are:

- Safety- leasing will improve overall safety as the older, less safe boats are eliminated and the more recent, better maintained vessels are kept
- Currently most crews are working on two boats. Therefore we don't see a loss of jobs, just more convenience for the crews, who will not have to move from vessel to vessel.
- Crew wages should be stable or increase as overall trip expenses for operating one boat (as compared to two) should decrease.
- Crew won't have to move gear and equipment from vessel to vessel.
- Crew familiarity with one vessel should help avoid accidents.
- Docks will be less crowded, since vessels will be retired.
- Electricity, paint, and many other non-renewable resources will be saved. We will contribute to some reduction of our 'carbon footprint' by eliminating the maintenance of two complete vessels.

19. At this time we oppose a change in the Over Fishing Definition (OFD). The Habitat Committee and the Council are in the final stages of developing a new set of alternatives for habitat closures. One result of that process may be to make access to much more of the scallop biomass available to the scallop fleet, either through new access areas or by increasing the size of the open areas.

20. We support the idea of a 15% rollover of IFQ from one year to the next in the General Category fishery. Since the council has created a limited access General Category scallop fishery we believe they should be allowed to become economically efficient, similar to allowing the limited access fleet to lease DAS. But any changes should be to maintain within the General Category its small day boat nature and to make sure that the fishery is limited to 5% of the scallop harvest. To that end we can support reasonable increase in the trip limit – i.e. 600 pounds. We support a maximum quota of 2.5% one vessel can fish and we also support the ability to lease IFQ to other vessels.
21. At this time we would prefer the “No Action” alternative as the preferred alternative. Community Fishing Associations (CFA’s) could be considered in future Amendments after the impacts of the current ITQ system have been fully evaluated after a few years of fishing under the new ITQ regulations.
22. We strongly support and recommend as the “Preferred Alternative” modifying the existing EFH boundaries (figure 4) to mirror the areas closed for EFH under the Multispecies Amendment 13. This is of primary importance to open areas with high concentrations of scallop which do not have EFH benefit. This action will allow NEFMC to redirect some harvest from the Mid-Atlantic to New England which will have long term benefits to the overall scallop resource.
23. We believe the research set-aside (RSA) program would be much improved if it could include multiyear projects and if allocations were given as pounds instead of DAS. We support the rollover of RSA TAC from one year to the next and the inclusion of an extension through the first quarter of the next fishing year as an acceptable allowance for a fishing vessel to harvest its compensation TAC. We agree the RSA review process should be expanded to include the scallop advisory panel and also to allow the AP members to participate in the review of research proposals. We also agree with the list of measures developed in which RSA projects are exempt such as: crew restrictions, seasonal closure of access areas and the requirement of having to return to port if you are fishing in more than one area.
24. We do not support changing the fishing year, we strongly support the status quo start of the fishing year, March 1. This is primarily due to maximizing harvest yield when the yield of the scallop resource is the best.

Thank you for the opportunity to submit written comments in regards to Amendment 15.

*Peter Hughes*

Peter Hughes  
Scallop Advisor  
Atlantic Capes Fisheries, Inc.  
985 Ocean Drive  
Cape May, New Jersey  
08204  
609.884.3000 Office

#59

Deirdre Boelke

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**From:** Amendment15 [Amendment15@noaa.gov]  
**Sent:** Tuesday, August 24, 2010 8:47 AM  
**To:** Deirdre Boelke; Jessica H. Melgey  
**Subject:** [Fwd: comments on Scallop Draft Amendment 15]

----- Original Message -----

**Subject:** comments on Scallop Draft Amendment 15  
**Date:** Mon, 23 Aug 2010 16:36:31 -0400  
**From:** Jack Morris <jackm@marlees.com>  
**To:** amendment15@noaa.gov <Amendment15@noaa.gov>

Regional Administrator Patricia Kurkul

Greeting from Jack Morris. I have 5 limited access scallops vessels working out of the port of New London, Ct. I am a member of the capacity reduction coalition. I fished scallops for 20 years and have seen all of the changes from 1975 to 1995. I have been active in the boatowner side since 2005 with my partner John Lees, founder of Marlees Seafood in New Bedford.

You and I have not been formally introduced, but I have attended many meetings where you have spoken and work with many of your employees at the NMFS office on any issues that arise. I want to present my stance on permit stacking from what I think is a well rounded perspective of coming from deckhand, to mate, to captain and finally to an owner. I have my most of my adult life invested in the scallop business. There is no one more than me who wants to see the scallop resource be conserved, regulated and prosper through science and correct decisions.

I have seen some blistering letters sent to you and the council about the evils of stacking and accusing the council of not doing their job and ultimately telling you that considering stacking is wrong. No one will deny that of there are too many limited access vessels in the fishery because of the past structure continuing.

No one in favor of consolidation wants to put the single boat owner out of business. There is no vendetta as suggested by the same speakers at every meeting. I have 3 captains skippering my 5 vessels with the same crews. No crew jobs will be lost by me taking one vessel out of service.

With the boats doing double time, the repairs will be more extensive to keep upgrading the vessels fishing twice as much before. Then there will be the horsepower adjustment to put all vessels on a level playing field.

To me: no crew job loss, no repair or goods used loss, no unloading jobs lost, fuel /oil sales will increase because of the larger boats using more in all supply areas. Plus, more dock space, less fossil fuels burned by the boats sitiing with gen sets running 300 days per year, insurance premiums will increase with the time at sea on the stacked vessels: another side of the supply business that will benefit from stacking. Also, older vessels will be able to get out of the fishery which will have a positive impact on safety.

There is consolidation in many other fisheries today and none have been unsuccessful. The old saying "don't fix it if it's not broken" does not apply here. I don't want to see a few people with personal agendas effect what needs to be done in our fishery to continue to prosper.

sincerely,

Jack Morris



#60

**Deirdre Boelke**

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**From:** Peter Christopher [Peter.Christopher@noaa.gov]  
**Sent:** Tuesday, August 24, 2010 8:49 AM  
**To:** Deirdre Boelke; Jessica H. Melgey  
**Subject:** [Fwd: Re: Scallop Amendment 15]

**Attachments:** Peter\_Christopher.vcf



Peter\_Christoph  
er.vcf (552 B)

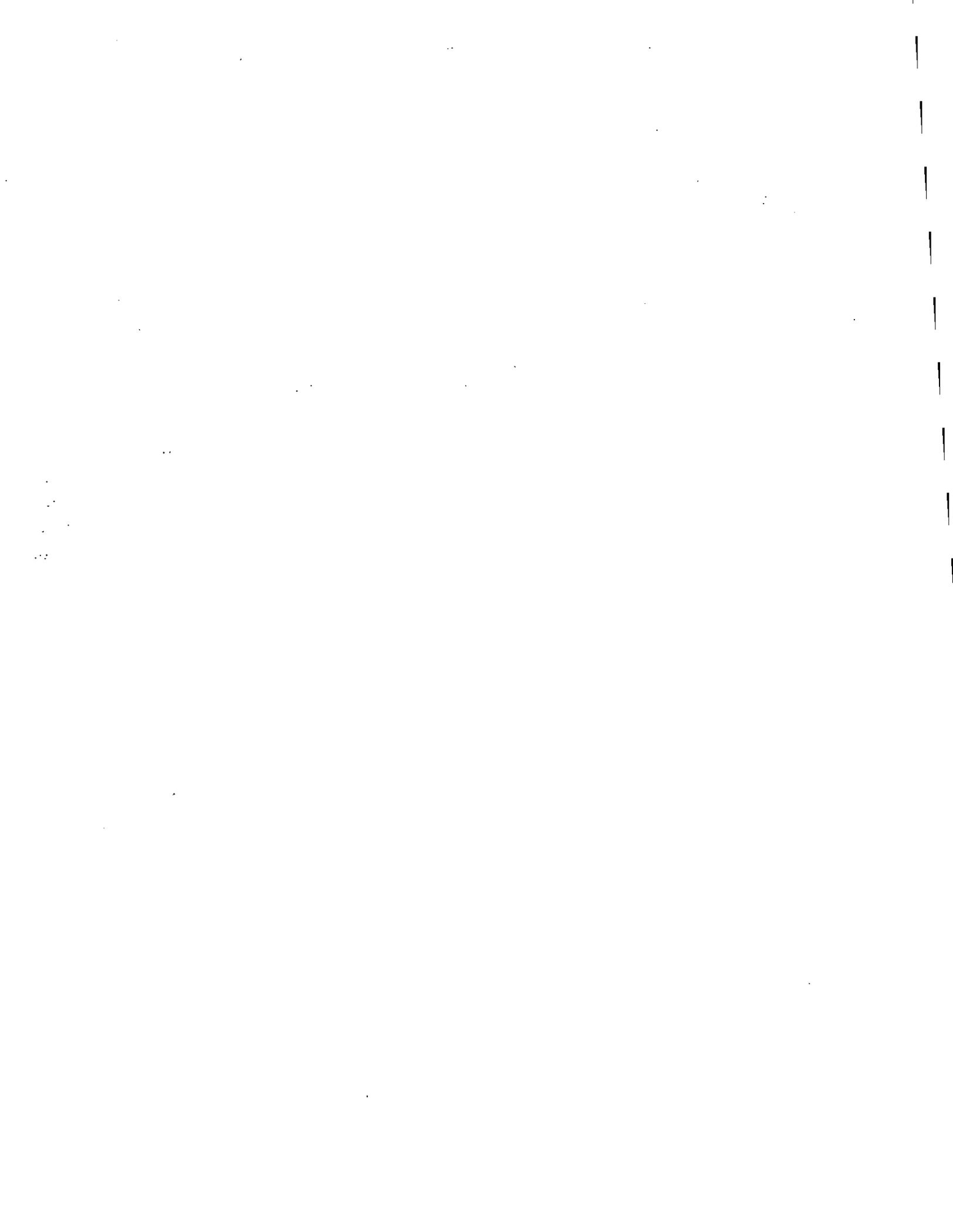
----- Original Message -----

**Subject:** Re: Scallop Amendment 15  
**Date:** Tue, 24 Aug 2010 06:18:03 -0400  
**From:** Webmaster Northeast <Webmaster.Northeastro@noaa.gov>  
**To:** rstarvish@gmail.com  
**CC:** Suzan Oliver <Suzan.Oliver@Noaa.Gov>, Peter Christopher  
<Peter.Christopher@noaa.gov>  
**References:** <13176848.91282597470118.JavaMail.SYSTEM@mail.nems.noaa.gov>

Your message has been forwarded to the NOAA Fisheries NE Sustainable Fisheries Division. You can reach them directly at Peter.Christopher@noaa.gov or 978-281-9288.

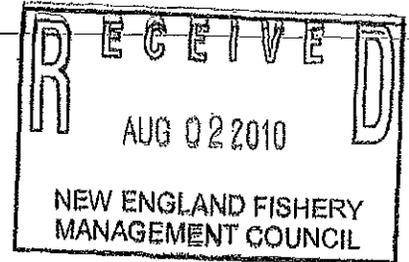
On 8/23/2010 5:04 PM, rstarvish@gmail.com wrote:

> Patrica Kurkul  
> Regional Administrator - NMFS  
>  
> I support allowing the stacking/leasing of like kind scallop permits onto a single vessel.  
>  
> Sincerely,  
> Raymond W. Starvish, Jr.  
>



#61

David E. Wiscott  
10 Rabbit Run  
Cape May, NJ 08204



July 28, 2010

New England Fishery Management Council  
Attn: John W. Pappalardo, Chairman  
Paul Howard, Executive Director  
50 Water Street, Mill 2  
Newburyport, MA 01950

Re: Scallop Amendment 15

Dear Mr. Pappalardo and Mr. Howard:

I am writing to express my concerns about three of the Council's considerations within Amendment 15 to the Scallop Fishery Management Plan. I am a captain in the full time scallop fleet and have been working the fishery for 33 years.

First, I am against the stacking and / or leasing of permits. This measure will do nothing to help the fishery. By allowing permit stacking / leasing, fishing capacity of the fleet will increase. The permits will always go to newer, more efficient vessels. These vessels will land more scallops per DAS causing future cutbacks for the fleet. So, even if a boat owner decides not to participate in stacking, they could be adversely affected by the actions of others. Also, a "horsepower adjustment" and a "mortality adjustment" to alleviate the fishing capacity increase will fall short of controlling the increased production caused by permit stacking. Based on my 33 year of experience in the fishery, I believe the mortality adjustment should be in the 15% - 20% range. Last, the stacking / leasing proposal would likely reduce the total amount of fishermen, fishing crews, vessels and shore side businesses that are now operating under the current permit system. Boat owner's will most likely pass on the stacking / leasing costs to the crews that work their vessels. In the end, the stacking and / or leasing of permits will only benefit the large fleet owner's bottom line and do nothing to improve the scallop fishery.

Second, I am for modifying the existing EFH closed areas to be consistent with EFH areas closed under Multispecies Amendment 13. I feel this measure will benefit the scallop fishery in a positive way.

Third, I am against changing the scallop fishing year to May 1. The current scallop fishing year start of March 1 coincides perfectly with increasing yield, enhanced scallop concentrations, and improving weather. I feel that moving the scallop fishing year to May 1 will adversely affect fishing production.

cc: DB 8/2



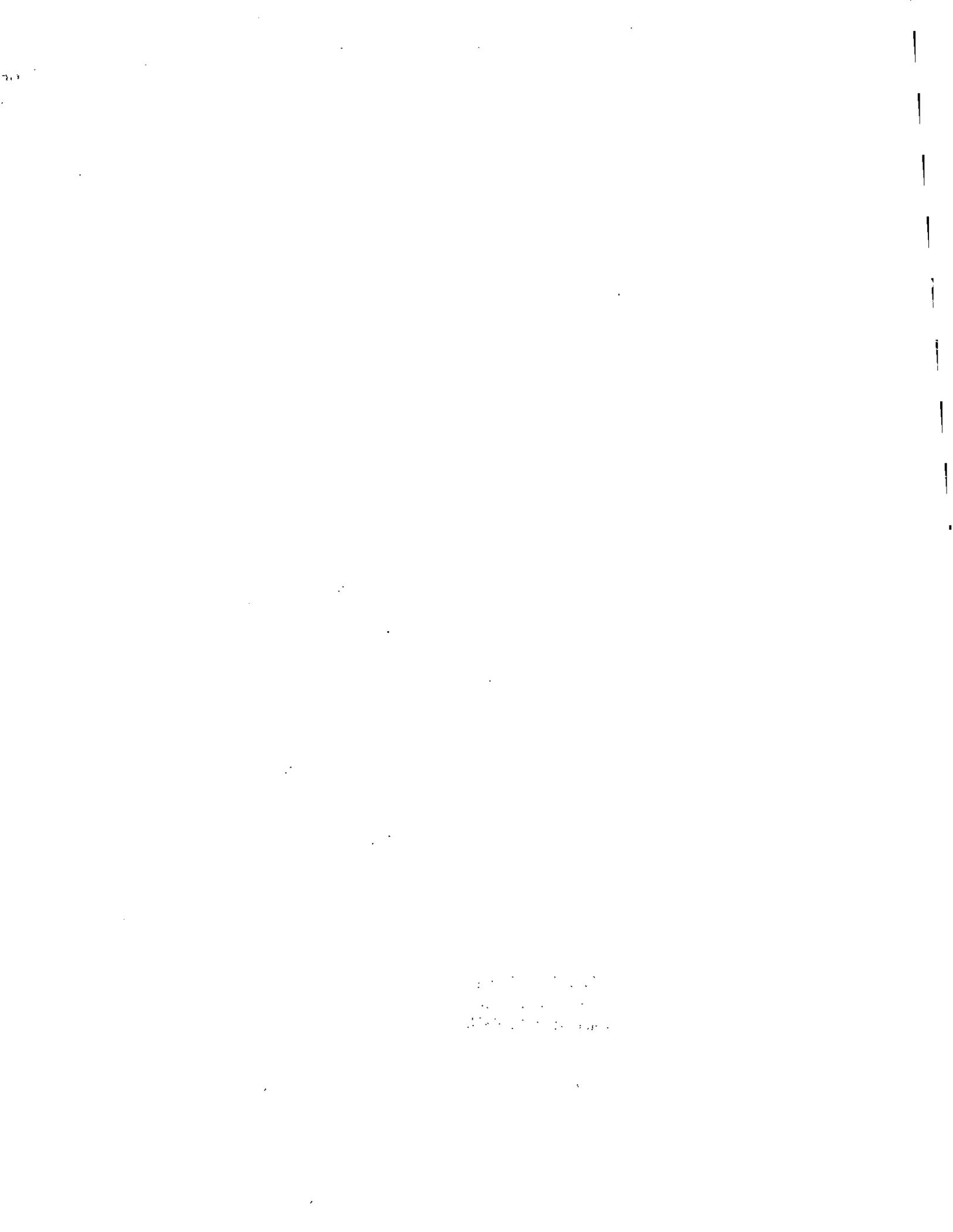
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If you have any questions with regard to my concerns about Amendment 15, please feel free contact me. I can be reached at the above address, by phone at 609-425-4287, or by email at [dwcapt@aol.com](mailto:dwcapt@aol.com). Thank you in advance for your help improving and protecting the scallop fishery.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Wiscott", with a long horizontal flourish extending to the right.

David E. Wiscott

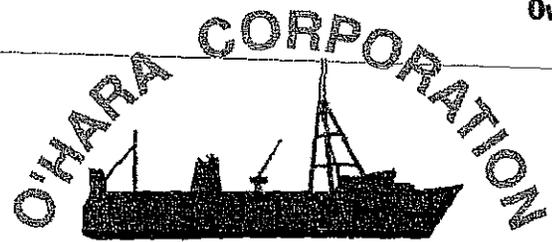


#62

Owners and Managers of Factory Trawlers & Fishing Vessels

Producers & Distributors of  
Frozen at Sea Products

120 Tillson Avenue, Rockland, ME 04841  
Telephone 207-594-4444 Fax 207-594-0407



August 20, 2010

Patricia Kurkul, Regional Administrator  
Northeast Regional Office, National Marine Fisheries Service  
National Oceanic and Atmospheric Administration  
55 Great Republic Drive  
Gloucester, MA 01930

RE: Comments on Scallop Amendment 15

VIA FACSIMILE: (978) 281-9135

Dear Ms. Kurkul:

I am writing on behalf of the O'Hara Corporation, a family held company that owns and operates 11 vessels active in the Atlantic scallop fishery. We support action by the New England Fishery Management Council ("Council") and the National Marine Fisheries Service ("Agency") to address the significant overcapacity in the scallop fishery through Amendment 15 to the Scallop Fishery Management Plan (FMP).

Overcapacity in the scallop fleet is easily ascertained in the crowded New Bedford harbor as scallop vessels, double and triple berthed, are tied to the dock for 285 days a year. We currently have 6 captains and crew to operate 11 vessels. When allocated days and access area trips are completed for 1 vessel all gear, supplies and crew transfer to a 2<sup>nd</sup> vessel for the remainder of the year. The current management regime that requires us to operate in this manner is inefficient, wasteful of resources and does not allow us to achieve the highest economic return for our vessels or our crew.

We support the Council's preferred alternatives, Section 3.3.2 and Section 3.3.3, that would allow stacking and leasing in the scallop fishery. The flexibility that these alternatives provide would allow us to reduce our operating costs, retire older vessels and reduce congestion at the dock.

We encourage the Council to recommend alternatives that create a reasonable plan that does not create impediments which would discourage vessel owners from reducing the excessive number of vessels operating in this fishery. In Groundfish Amendment 16 the Council eliminated the 20% conservation tax on DAS transfers because it was too restrictive and very few permit holders had taken advantage of the program. It is our hope that the Council will bear this example in mind as you debate the merits of alternatives to meet the goals and objectives of Amendment 15 to address over capacity in the scallop fishery.

## **PERMIT STACKING**

### **3.3.2.1 Restrict Stacking to Two Permits Only**

We support this alternative that would restrict the number of permits that may be stacked on one vessel to two permits. This measure would minimize concerns about job loss in the industry. Our approach to stacking will be with caution and we expect it to be a slow transition as we weigh the costs (flexibility of managing bycatch and turtle measures, and mortality adjustments) and benefits. However, if we at O’Hara’s were to stack all or most of our permits we would realize no job loss in crew under this measure as we currently maintain 1 crew for 2 vessels.

It is important that the program allow each stacked permit to retain its individual identity. The plan should not require a permit to relinquish other limited access permits or original baselines in the process of stacking. We do not see additional administrative burden or increased activity in other fisheries resulting from this alternative. In fact, if all permits on 2 vessels are maintained on 1 vessel, that vessel would have fewer opportunities to engage in other fisheries than it did in the past. If a restriction is found to be necessary, we would support placing the additional non-scallop permits into CPH if the stacked vessels have incompatible baselines. The License Limitation Program found in the North Pacific region provides an example of a successful US permit stacking program.

### **3.3.2.2 – 3.3.2.2.1 Fishing Power Adjustment (FPA) for Stacking Permits**

We support a fishing power adjustment for DAS allocations for vessels with differing baselines as it addresses concerns that have been expressed by other industry members that stacking smaller permits onto larger vessels could provide an opportunity to increase landings. This rationale does not extend to stacking permits within the same replacement criteria as this would deter the industry from utilizing the program. Therefore, we support Alternative 3.3.2.2.3, permits in the same replacement criteria have no FPA applied to them when stacking.

### **Mortality Adjustment**

In general, we do not support applying a second adjustment to all stacked/leased DAS transactions. The PDT analysis that concludes that LPUE increases when DAS increase is flawed in our opinion. We do not feel it is possible for the model to take into account all the impacts of the fleet operating under different regulations, LPUE, DAS and access area trips in the past to project future catch to increase with increased days on fewer

vessels. The second mortality adjustment suggested by the PDT for other factors that could increase LPUE such as the skill of the captain and the crew, the age of the vessel, reduction gear ratio, etc. is simply speculative. Should we choose to stack or lease, we intend to keep the same crew we have today; and our captains strongly feel the greatest correlation of effort to landings is not the vessel but rather the density of scallops and the number of crew available to shuck.

If the Council decides to impose a mortality adjustment it should insure that this adjustment can be changed through a framework action. This would allow setting any needed adjustments based on actual performance and allow review of this measure which may result in Amendment 15 not meeting its goals to achieve capacity reduction in the fishery.

#### **3.3.2.4 Status of Stacked Permits**

We support the requirement that would limit two permits to be stacked on a vessel at any one time, and Option 1 that allows de-stacking. We also support a requirement that a de-stacked permit may only be assigned to another limited access scallop vessel or moved to CPH for leasing purposes to prevent vessel capacity from returning to the fishery.

These alternatives address the concerns of excessive contraction in the number of vessels in the fishery and job loss that may occur should vessels stack more than 2 cumulative permits. As previously stated, the O’Hara Corporation does not anticipate any loss in the number of crew currently working on our vessels from this action.

It is also important to allow de-stacking. The current value of permits in this fishery is high while the changing regulatory regime for measures to address habitat, mortality, bycatch and turtles are in constant flux. If we are not allowed to de-stack, it is very likely we would not utilize this option which could devalue the permit in the short and long run.

We support an even split of catch history between 2 stacked vessels to minimize record keeping and administrative burden.

#### **3.3.2.5 Restrictions on Vessel Upgrades for Vessels That Participate in Stacking**

There is no reason to deviate from upgrade restrictions that are consistent across all limited access fisheries in the northeast in this amendment. We support Option A that maintains upgrades on vessels to the 10/10/20 rule.

### **LEASING DAYS AT SEA (DAS)**

#### **3.3.3.1 Leasing Open Area DAS**

We support leasing as a management tool that would provide benefits to all permit holders in the scallop fishery while still allowing for fleet reduction. Leasing is an opportunity for single vessel owners to supplement their DAS and for multi-vessel owners to utilize days on fewer platforms. Measures that allow leasing also would allow a vessel owner to recoup some compensation in the event of partial or full loss of a

vessel. Additionally, we support alternatives that would limit leasing to double the initial DAS to prevent excess consolidation and prevent job loss in the fishery.

#### **3.3.3.1.1 FPA for Leasing Open Area DAS**

To address concerns related to increased mortality, we support *Option C*, which would apply a fishing power adjustment if a vessel is leasing from a vessel with lower fishing power; and no adjustment applied if vessels are within the same vessel replacement criteria baseline.

To apply a FPA to all leased effort, Option A, would result in a costly program that I cannot envision us ever using. The financial loss we would experience does not make sense and it would simply be a poor business decision. This is an option that would make leasing totally unworkable for the entire fleet. We do not find justification for this option in this amendment.

#### **3.3.3.2 Leasing of Access Area Trips**

We support this alternative that would allow us to lease one or more access area trips on an annual basis. The rationale is the same as stated above, it provides an opportunity to lease smaller increments for those that cannot purchase an entire permit, allows vessel owners the options to consolidate AA trips to fewer vessels, and would allow a vessel owner to recoup some of their losses in the case of a partial or total loss of a vessel. There is no impact on the resource as trip limits control the total removals in access areas.

#### **3.3.3.3 Maximum DAS and Access Area Trips That Can Be Leased**

We support limiting the amount a vessel can lease to up to twice the amount of the annual allocations of DAS and access area trips, exclusive of carryover DAS.

#### **3.3.3.4 Ownership Cap Provision**

We support measures to insure that the intent of 5% ownership cap is not compromised by measures for leasing in the fishery. However, it does appear there is a need to clarify that while vessel owners may not lease in excess of the 5% cap, they may lease out any of their allocations to those eligible to acquire the leased allocation

#### **3.3.3.5 Leasing Restrictions Options**

The two alternatives proposed in this section are unnecessary and will only act to deter an effective program to reduce excess capacity in this fishery. Restricting leasing to the same permit category only is not needed as the fishing power adjustment is designed to address issues associated with different classes of vessels. Other measures in the document are sufficient in addressing mortality concerns and we do not support adding these additional complications to the program.

#### **3.3.3.7 Leasing from Vessels in CPH**

The ability of vessel owners to place a permit in CPH and lease the allocation is a very important component of this plan. It provides a bridge for vessel owners toward achieving some permanent capacity reductions. If stacking is approved it will take place

slowly over time. Allowing vessel owners to place a permit in CPH and lease will allow a period of assessment of increased benefits as compared to concerns about reduced flexibility to manage bycatch limits, turtle measures and other seasonal aspects of the fishery.

In Amendment 16 to the groundfish FMP the Council removed the prohibition on leasing from CPH and permits no longer have to be placed on a vessel to either lease DAS or join a sector. We strongly urge the Council to be consistent from plan to plan and allow this alternative to be incorporated into this program.

#### **3.3.3.8 Sub-Leasing**

We support this alternative that would allow sub-leasing in this program. We strongly believe that allowing sub-leasing will minimize some of the administrative burden for the industry and the Agency. If permit holders know they can sub-lease as needed they will be more likely to lease in larger blocks (if not whole units) at the beginning of the year to reduce paperwork.

The value of a DAS or access area trip is quite significant in the scallop fishery. If sub-leasing is not allowed, vessel owners are much more likely to lease a smaller number of days or single access area trips to reduce the risk of losing the value of these allocations. Not allowing sub-leasing will simply increase the number of applications the industry will file that the Agency must process.

#### **3.3.3.9 Other Provisions for Vessels that Lease**

We encourage the Council to recommend that the Agency reduce the processing time for lease applications. The remaining options under this alternative seem redundant to other sections in the document and should be eliminated.

### **3.5 Items to be Added to the List of Frameworkable Items in the FMP**

#### **3.5.3 Fishing Power and Mortality Adjustments**

In general, we question the need for these adjustments in this plan and strongly feel that the ability of the crew to shuck scallops is the strongest corollary to LPUE in the fishery. If these measures are recommended by the Council, we request that future adjustments be made frameworkable in the plan as we would like to see adjustments based on performance not modeling and speculation. All scallop permits should retain their original baselines associated with that permit to allow future adjustments as needed.

### **SUMMARY**

There are many benefits that can be achieved from an effective program to reduce capacity in this fishery. We can reduce aging vessels in the fleet and the associated safety problems, reduce redundant costs of operating numerous idle vessels such as insurance and dockage fees and reduce overcrowding in our harbors. Our crews will have a more comfortable working environment - no longer rotating vessel to vessel and lugging their gear.

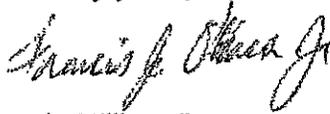
Amendment 14 -- O'Hara  
August 20 2010  
Page 6 of 6

We have heard many concerns expressed that this action will allow for excess consolidation in the scallop fishery that will negatively impact single vessel owners. What is proposed here is a **voluntary program** that does not drive consolidation in the fishery. Consolidation in the industry is controlled by the 5% cap on ownership of permits, which will not change through this amendment. What can change under this action is to allow permit holders to reduce the number of vessels needed to operate these permits. It is not rational for a plan to continue to allocate a resource that requires vessels to remain idle for 285 days a year.

We thank the Council and your staff for their diligent work in development of this amendment and encourage consideration of a program that will promote meaningful reduction in this fleet. What is needed is a flexible plan that allows the fleet to adjust to changes in biomass, management measures, the cost of fishing and market conditions.

Thank you for the opportunity to comment on this action.

Sincerely yours,

A handwritten signature in cursive script that reads "Frank O'Hara, Jr." The signature is written in dark ink and is positioned above the printed name.

Frank O'Hara, Jr.  
Vice President

Comment received by James Fletcher, August 11, 2010

From: unfa fletcher <unfa@ncisp.net>  
Sent: Wednesday, August 11, 2010 12:54 PM  
To: Deirdre Boelke <DBoelke@NEFMC.ORG>  
Subject: Fraim work 22 2010 to scallop committee

FRAIM WORK 22 TO THE ATLANTIC SEA SCALLOP FMP

1. opposed to Changing over fishing definition.
2. opposed to changing start of fishing year .
3. favor changing VMS to once per day inside demarcation line; once per hour while scalloping beyond demarcation line.
4. Favor using Declared out of fishery to stop VMS monitoring .
5. Mid Atlantic Access should open to all vessels at same time due to turtles.
6. Favor no action on possession of in shell scallops seaward of the demarcation.
7. Opposed to stacking unless done for five or more years and all permits both Federal and state must be stacked.
8. Opposed to allowing vessels that changed ownership after 1994 from stacking.
9. opposed to any management that would lessen the usage of trawls for scallop harvest.
10. Opposed to changing 400# day scalloping limit above Maryland; Would favor 1000# for Virginia and Carolina landings due to travel distance to Grounds
11. PDT should review impact of all scallop vessels utilized trawls. Would habitat closures be necessary if all vessels used trawls? Would yellowtails be shifted from by-catch to landings if all scallop vessels utilized trawls?

One must ask if scallop management is achieving Maximum Sustainable Yield in that present management allows 50% of the protein in the scallop shell to be discarded without utilization. Do Annual Catch Limits require utilization of protein harvested? Should annual catch limits be altered to allow 24,000 pounds of roe on product from closed ? Provided PSP is not in the area? {Does acceptable biological catch allow the discard of 50% of the protein? This discard in controlled access areas concentrate sea turtles attracted to food; thus creating problems with endangered species act for scallop fishermen. Reasonable Prudent Measures for Scallop management to save sea turtles could be utilization and landing of viscera. Reasonable prudent Measures to regulating the method of hauling dredges in order to prevent yellow tail flounder by - catch will further decrease the food supply attracting turtles while reducing yellowtail interaction.

The PDT has not said management is the reason for turtle interaction. Turtles are attracted to food and concentrating turtles with food is occurring).

The Council and PDT has not addressed the need for the market to have smaller scallops; market demand, or scallops production areas that do not grow large scallops due to food or other natural area problems. The PDT, NMFS and Council have created a market share for imported scallops by ring size and rotational management of the scallop resource. While leaving genetically slower growing scallops un harvested. (Area rotation should have areas for the harvest of small (30 to 50 count) scallops that do not grow or increase in size with nets or 3 1/2. rings).

PDT and Council have NOT ADDRESSED scallop aquaculture from a management discussion thus NOAA NMFS Council & PDT is preventing scallop aquaculture by omission just as they have curtailed scallops landing by not managing predators. {starfish}. Congressional legislation places Aquaculture under Agriculture, why is NOAA & NMFS preventing aquaculture by not having aquaculture in the scallop management Plan? Will Framework 22 address scallop Aquaculture if scallop permits are necessary for Aquaculture? What management actions have been taken to increase scallop landings? Rotational scallop management began in Japan in 1987, why did the PDT not mention rotation in 1990 or 1994 and amendment 4?

Are scallops moved to alter spawn settlement due to current movement? (no)

Are starfish managed to increase scallop production? (no) Are enhancement projects being conducted? (no)

Submitted by

Signed for email

James Fletcher 123 Apple Rd. Manns Harbor NC 27953

08-05 2010

#64

July 17, 2010

Paul Howard, Executive Director  
New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01950

Re: Scallop Amendment 15

Dear Mr. Howard

I'm writing to express my opposition to consolidation of the limited access scallop fleet through vessel permit stacking.

I started scalloping with a small boat in Maine during the 1970s. I built my business through hard work, moving up into larger vessels and weathering the crash of the offshore scallop fishery. Along the way, I raised four kids. Only one of them makes his living from the sea and none of them are scalloping. The laws have changed so much that it's not cost effective to fish from here (Maine) anymore and most of the shore based, fishing business infrastructure has been lost. To start as a deckhand with the goal of becoming a boat owner is no longer a realistic opportunity. You now need millions of dollars to buy a boat and a license. The regulations that have been implemented destroy small businesses and take away opportunity from young people starting out in commercial fishing.

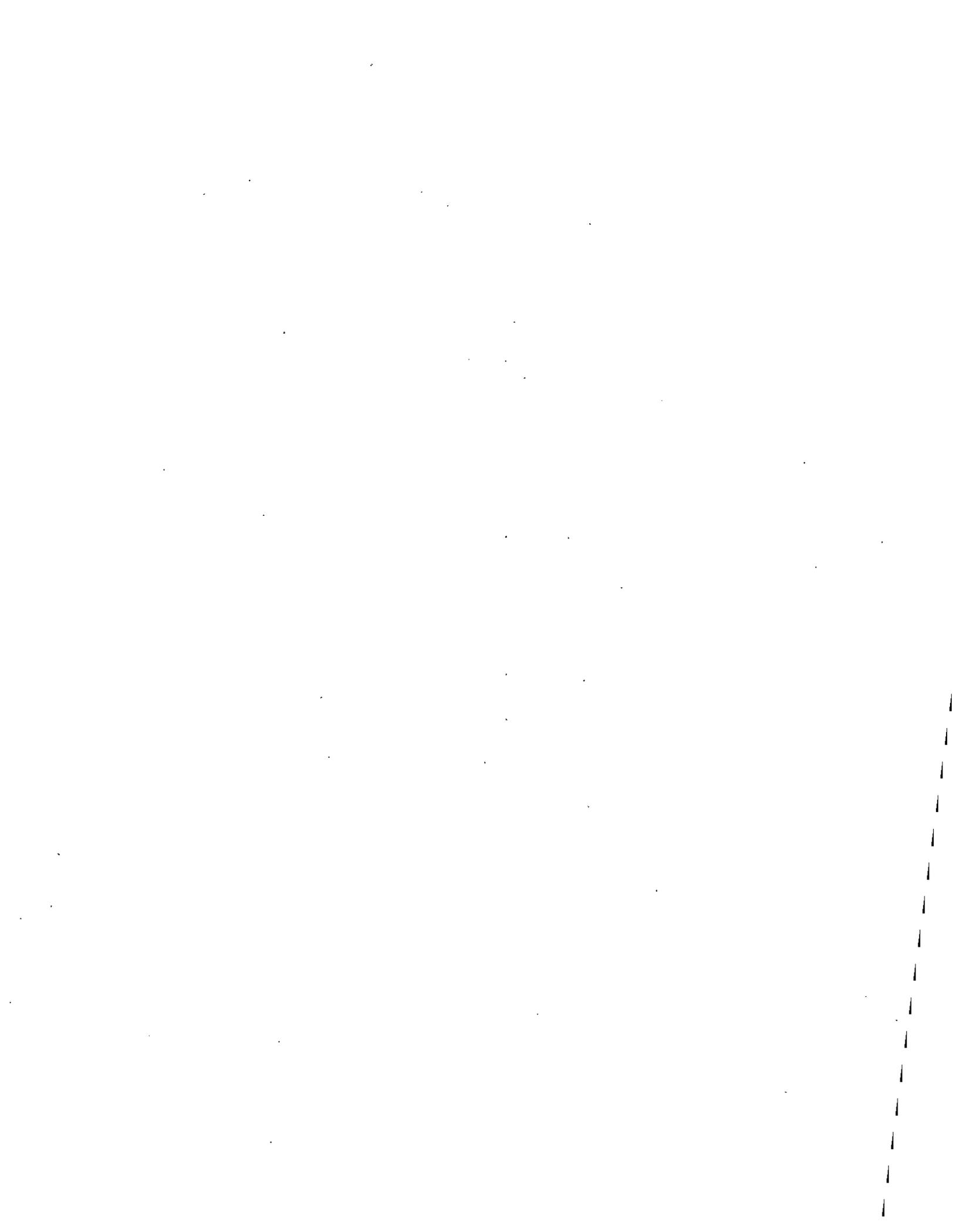
The scallop resource is not overfished and overfishing is not occurring. There is no reason to consolidate, other than to allocate the future of the scallop resource into the hands of a few and make it easier for them to be further regulated in the future. These new rules would reduce the number of vessel owners, crews and the supporting businesses that serve the scallop fleet. Under the present management practices, the scallop resource is robust and comfortably supports many fishing families and related businesses. If consolidation occurs, many of those jobs will be eliminated as the resource will be awarded to individuals and corporations that eventually don't fish but only lease their permits.

We need to keep the same course, to preserve the commercial fishing jobs we currently have and the communities and businesses that those jobs support.

Sincerely,



Tim Harper  
Owner, F/V Dictator  
Southwest Harbor, Maine



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## Late Comments

Received After Comment Deadline  
August 23, 2010



#65

July 12, 2010 Portland Maine - --  
Amendment 15 to the Scallop Management Plan Comments of Edgar Seafood Products, Inc.

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Hello,

My name is Steve Zevitas and I am here representing Edgar Seafood Products, Inc. a company owning two scallop vessels, the F/V Captain Bob, a full time two dredge scallop vessel and the F/V Atlantic Girl a part time small dredge scallop vessel. Edgar Seafood Products, Inc. is involved in New York Inshore clamming as well as offshore scallop fishing. There are no public hearings scheduled for New York and I am in Maine on a shellfish sales trip. We wanted to take the opportunity to provide comment on the A-15 public hearing document concerning excess capacity in the scallop fishery.

To simplify our comments we are responding to questions posed in the public hearing document for the A 15 public hearings as they appear on page 44 of the Public Hearing Document.

*Question 7. Do you agree that there is a need to address excess capacity in the Limited Access scallop fleet?*

A. Yes, currently overcapacity exists in the scallop fishery. Our full time vessel, the Captain Bob can only fish about 70 to 80 days per year depending on the allocation of Closed Area Trips and Days at Sea (DAS). The part time vessel the Atlantic Girl currently only scallops less than 30 days per year. It makes no sense to maintain two vessels and for each to be so unutilized. Keeping the vessels tied up is a major effort. A boat is better maintained working then sitting. An unintended consequence is the vessels when tied up continue consume our non-renewable natural resources such as fuel and electricity. Clearly our two vessels are symptomatic of the entire fleet, which clearly have more capacity to harvest than the resource can sustain. We should allow all vessel owners to flexibly address this issue by leasing Days at Sea and trips. I believe and hope Amendment 15 will address this issue.

*Question 8. Do you support stacking and leasing as a way to address excess capacity and provide more flexibility for efficient utilization of the resource? Why?*

A. We, Edgar Seafood Products, Inc., support Leasing as the preferred alternative. We are confused by the rigidity of the Stacking option and think the Council should simply adopt the leasing alternative by itself, without stacking as the preferred alternative. We believe leasing will provide the most flexibility to fishermen who opt to take part in the program but don't necessarily want or need a whole years worth of allocation on their vessel like you would get through stacking. It also has the built in flexibility to lease our scallops to another boat in the case of a catastrophic event such as a blown engine or fire on the vessel. This in and of itself will hopefully prevent us from losing days at sea (DAS) or access area trips in the future. We believe leasing offers the most flexibility for individual vessel owners and a boat owner such as Edgar Seafood Products.

*Question 9. If stacking and/or leasing is adopted should the Council also adopt a fishing power adjustment? Are the fishing power adjustment alternatives reasonable and do you believe they will minimize increases in mortality from stacking/leasing?*

A. We agree that when leasing Days at Sea a fishing power adjustment should be applied, but only when vessels are in different replacement categories. Vessels that lease to each other and are within the current definition of replacement vessels should not have a fishing power

adjustment. The 10/10/20 replacement rule provide the flexibility needed while preventing people from taking advantage of the program. If a small vessel is leasing to a larger vessel outside the replacement criteria, i.e. if a vessel with less than 500/hp leases to a vessel with a 1,000/hp then a fishing power adjustment should be applied.

*Question 10. Whether you support stacking and/or leasing do you believe both adjustments are necessary? Is the 5-11% range appropriate for the second adjustment? Too low? Too high?*

A. As I stated in answer to the above question , the fishing power adjustment makes sense only when leasing occurs between unlike vessels which do not meet the replacement criteria. The second adjustment, the mortality tax is not based on, just predictions of how much more efficient in a Days at Sea fishery the receiving vessel would become. We have discussed this at length with our captains and we cannot see the logic of the scientists. We see no reason they are projecting such efficiencies. The fishery will still be limited by the number of Days at Sea and the number of crew. Our vessels already share crew so there will be no loss of jobs or choosing of better crew. We will just be going to a safer more economical platform to fish from. As such I don't think there should be imposed a second adjustment. Why isn't this adjustment frame workable? We would recommend that a placeholder be set at either zero percentage or the lowest percentage possible and then adjust the percentage by future frameworks if the actual landings from vessels that lease DAS actually show an improvement in catch. We do not believe the actual landing per day at sea will increase and therefore we believe the number should be set at zero to begin with.

*Question 11. If stacking is approved, do you support that the 10 days at sea carryover provision stay the same or be increased?*

A. We believe leasing should be the approved alternative, not stacking. We also believe the carryover provision should be increased to 20 days at sea to account for the larger allocation of days at sea assigned to one vessel.

*Question 12. If stacking is approved, do you support that de-stacking should be allowed or prohibited?*

A. If stacking is permitted in Amendment 15, which we do not support, the Council should allow de-stacking but only to another scallop vessel (or its replacement) or to CPH (Confirmation Permit History). If two individual independent owners, each with one boat form a partnership, and stack permits on one boat, what happens if they have a falling out? Clearly they should be allowed to destack. This example is also why we think for individual boat owners leasing is the preferred alternative. Partnerships fail all the time, why should the parties be penalized by not being allowed to de-stack and get their permits back due to a failed business relationship.

*Question 13. If stacking is approved do you believe there should be any restrictions on vessel upgrades?*

A. I think that the same upgrade restrictions should apply to all vessels whether or not they lease or stack.

*Question 14. Should there be any restrictions on leasing?*

A. I really don't understand why the Council is limiting the number of leased Days at Sea and Trips to double one permit. I don't know why a boat owner couldn't make a deal with more than one owner and lease more than double. We would support the Amendment, though, without a cap and if the Council believes a cap is necessary we would support it with a cap of twice or even three times

*Question 15. If leasing is approved, should a vessel be permitted to lease from Confirmation of Permit History (CPH)?*

A. We agree, a vessel should be allowed to lease from CPH. This is an effective way to reduce capacity.

*Question 16. If leasing is approved, do you support sub or re-leasing?*

A. Yes, a vessel should be able to sub-lease, especially if that vessel has a catastrophic event and is unable to fish its days at sea and access area trips.

*Question 17. Under leasing, should DAS and landings history accrue to the Lessor or the Lessee?*

A. I believe the landing history should accrue to both vessels equally to maintain the history associated with both permits and to not inadvertently create a jumbo scallop permit hopefully eliminating a possible unintended consequence. Each permit should get its proportionate share of the catch, with NMFS employing whatever record keeping mechanism is needed to maintain the individual permit catch history.

*Are there any other issues that should be taken into account in the economic and social impact analyses of the stacking/leasing alternatives?*

Yes

- Safety- leasing will improve overall safety as the older, less safe boats are eliminated and the more recent, better maintained vessels are kept
- Currently most crews are working on two boats. Therefore we don't see a loss of jobs, just more convenience for the crews, who will not have to move from vessel to vessel.
- Crew wages should be stable or increase as overall trip expenses for operating one boat (as compared to two) should decrease.
- Crew won't have to move gear and equipment from vessel to vessel.
- Crew familiarity with one vessel should help avoid accidents.
- Docks will be less crowded, since vessels will be retired.
- Electricity, paint, and many other non-renewable resources will be saved. We will contribute to some reduction of our 'carbon footprint' by eliminating the maintenance of two complete vessels.

Thank you for your consideration and inclusion of the above comments.

Respectfully yours,

Steve Zevitas for Edgar Seafood Products, Inc.

If you like we will also provide via e-mail a copy of our comments in writing to be part of the record.

Sigurd W. Johannessen  
New Bedford, MA 02740

A 66

August 25, 2010

Patricia Kurkul  
Regional Administrator NMFS Northeast Regional Office  
1 Blackburn Drive  
Gloucester, MA 01930  
[Amendment15@noaa.gov](mailto:Amendment15@noaa.gov)

Dear Ms. Kurkul:

My name is Sigurd W. Johannessen, retired merchant marine officer 22 years, New Bedford native owner of 4 limit access scallop vessels, operate and owner of Warrior Fuels.

I have been attending meetings since after my retirement in 1992. Made 1<sup>st</sup> trip with my dad he had a scallop boat at age 11 years old and next month I'll will be 61. So you might say I've seen a lot of the scallop ups and downs.

I have seen this proposal for stacking and leasing consolidation in the past, but I have never seen this deaf ear and closed eye to the facts. The Dr. Olsen report never spoken about or on display at meetings. Scallop stocks and trips are great but still this rush to judgment which cannot be reviewed or reversed. Statements that captains are cutting now, my dad was cutting fifty years ago. This is why effort is up please; the scallops are there in large quantities.

Captains and crews from my boats have come to subcommittee meetings and wasted all day to stand in a room without enough chairs and proper acoustics and then to be told by Sally McGee scallop chair you can't speak come to the full council. I myself with 4 boats and 50 years since I made my first trip, was also stopped from speaking by Sally McGee, said she had to adjourn because her mentor Mr. Robbins was leaving, the meeting, but yet at another meeting she took the vote on stacking and leasing now a preferred alternative while Mr. Prebble had left. This constant manipulation by Sally McGee has been so blanton to all of us at the meetings.

I question that there has been a public process at all. Congressman Barney Frank, Rep William Strauss and Mayor Scott Lang of New Bedford have expressed the same concern.

I've called Council staff and asked what is driving this "capacity reduction." I was told Mr. Pike's letter in Newport RI 2007 and it is economically driven. This is in direct violation of National Standard 5 (Mr. Pike has never revealed who he represents.)

At the Fairhaven public hearing on July 13, 2010 the public spoke as they did when J. O'Malley was the chair in 1998. We the industry wasn't doing then what we are now, but We knew stacking and leasing would ruin us then and we know it now.

In closing I'd like to say EDF lawyer and NEFMC member Sally McGee has pushed both her daytime agenda (catch shares) and has manipulated the meetings and cut time on public process and now to have public comment finished and then refine it later cutting public process shows to all concerned the document was not properly prepared and/or was not ready.



Sigurd W. Johannessen  
New Bedford, MA 02740

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August 25, 2010

Patricia Kurkul  
Regional Administrator NMFS Northeast Regional Office  
1 Blackburn Drive  
Gloucester, MA 01930  
[Amendment15@noaa.gov](mailto:Amendment15@noaa.gov)

Dear Ms. Kurkul:

I also question how some current members can vote unbiasedly, (i.e.) Mr. James Odlin has stated publicly consolidation /stacking and leasing is the only way to go. Mr. Robbins, a Scallop Subcommittee member works for Chesapeake Bay Packing his company will have a monetary gain.

Mary Beth Nickell- Toole works for Eastern Fisheries/O'Hara /Enoksen a monetary gain.

- Please keep (over fishing definition) as is
- Please Keep start of fishing year at March 1<sup>st</sup>
- Please Keep RSA as is at 2%
- Please Move boundary lines in Access Area I to match multispecies boundaries

Thank you for the opportunity to comment.

  
Date: 8/23/10

