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ATTORNEYS AT LAW

A LIMITED LIABILITY PARTNERSHIP

December 22, 2008

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

RE: EXCESS CAPACITY IN THE ATLANTIC SEA SCALLOP FISHERY

Dear Captain Howard;

I am writing on behalf of the Scallop Capacity Reduction Coalition to bring to your attention the important findings of a recent report entitled "Excess Harvesting Capacity in U.S. Fisheries: A Report to Congress" (dated April 28, 2008) and to encourage the Council to continue its good work in Amendment 15 to reduce fishing capacity in the Atlantic sea scallop fishery.

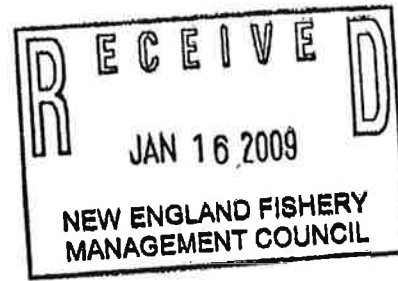
As you may recall, Section 312 (b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires the Secretary of Commerce to submit a report to the Congress that identifies the 20 fisheries in the United States with the most severe examples of excess harvesting capacity. Several months ago the National Marine Fisheries Service sent Congress its' most recent report and not surprisingly 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.

The findings of this Report reaffirm the importance of addressing capacity reduction in the limited access scallop fleet in Amendment 15. As you know, the Coalition has encouraged the Council to authorize permit stacking and leasing as the most effective way to more closely match harvesting capacity with resource availability. By identifying the Atlantic sea scallop fishery with the most severe overcapacity in the nation we believe the Report adds a sense of urgency to the need for the Council to approve effective capacity reduction measures in Amendment 15.

Sincerely,

Jeffrey R. Pike /for
Scallop Capacity Reduction Coalition

Paul Weckesser
1 Cape St
New Bedford MA 02740
508-993-9505



New England Fishery Management Council
50 Water Street
Mill 2
Newburyport MA 01950

January 14, 2009

RE: Supplementary Letter to NMFS Regarding Opposition to Capacity Reduction.

On November 14, 2008, I wrote a letter to the New England Fisheries Management Council regarding the scallop industry's opposition to capacity reduction along with copies of surveys of the vessel owners' position regarding this matter. I am writing this letter to inform the Council why many of the vessel owners are opposed to capacity reduction.

1. Introduction

Proponents of capacity reduction have asked the New England Fisheries Management Council (NEFMC) to pass regulations to allow vessels to stack more than one permit onto a vessel in an effort to reduce the excess capacity in the scallop fishery. The proponents state that since the limited access program was established in 1994 they have gone from 204 fishing days at sea to approximately 80 days for this fishing year and "this level of effort is insufficient to maintain vessels and crew throughout the year with increasing costs."¹

National Marine Fisheries Service (NMFS) has defined excess capacity as "capacity in excess of actual harvests."² NMFS further defines harvesting capacity as "the maximum amount of fish that the fishing fleets could have reasonably expected to catch or land during the year under the normal and realistic operating conditions of each vessel, fully utilizing the machinery and equipment in place, and given the technology, the availability and skill of skippers and crew, the abundance of the stocks of fish, some or all fishery regulations, and other relevant constraints."³

In defining harvesting capacity the NMFS intentionally and purposely included the phrase "some or all fishery regulations". If the NMFS imposes regulations limiting how many days a vessel can fish based on maintaining a scallop mortality rate of $F=0.20$, how

¹ Draft to Amendment 15 to the Scallop Fishery Management Plan, Section 3.3 Measures to Address Excess Capacity in the Limited Access Scallop Fishery, para. 1, p. 7.

² Excess Harvesting Capacity in U.S. Fisheries A Report to Congress, April 28, 2008, p. 4

³ Excess Harvesting Capacity in U.S. Fisheries A Report to Congress, April 28, 2008, p. 6

many closed area trips a vessel can take and how many pounds of scallops that can be caught in each closed area then the NMFS in essence determines what can be harvested. Therefore, excess capacity should be determined by the difference between what a vessel landed and what the NMFS allows the vessel to land. Excess capacity should not be based on the difference between what it landed and what it is capable of landing without regulations.

However, in the report titled the National Assessment of Excess Harvesting Capacity in Federally Managed Commercial Fisheries in 2008, the National Oceanic and Atmospheric Administration in conjunction with the National Marine Fisheries Service based the scallop fishery excess capacity not on how many days that were actually taken in 2004 (the last year complete data was available) but on how many days that were taken in 1999.

“The excess capacity and overcapacity rates were in part higher for the multispecies and the scallop fisheries, because, in those two fisheries, the harvesting capacity estimates were not based on the actual numbers of trips taken in 2004, but rather on a larger number of trips that reflected the number of days-at-sea per vessel before the restrictive days-at-sea limits were imposed.”⁴

While it is unarguable that there is excess capacity in the scallop fishery, it should not be the sole criteria in the determination of permit stacking. It is my belief the NEFMC should also consider other criteria such as the scallop biomass, the effects of the biomass under permit stacking and the economic effects on the vessel owners, crewmen and the communities that support the scallop industry.

2. Past & current biomass

a. Amendments

Prior to the passage of Amendment 4 in 1994 the scallop industry was regulated by using a meat count system. The scallop fleet was allowed to fish as many days as they wished with the only restriction being a twelve hour offloading window before going out to sea again. This program was difficult to enforce and lead to an unacceptably high mortality rate in the range of “1.63-1.69”⁵

In order to replenish the scallop biomass Amendment 4 was passed in 1994. Amendment 4 drastically changed the scallop fishing industry by restricting the number of vessels that could participate in the scallop fishery, and by limiting the number of days a vessel could fish a year to 201 days in the first year with additional cuts in fishing days of 11% in year two and a 9.5% cut in years 4, 5 & 7. Other regulations imposed by Amendment 4 included a restriction of vessel upgrades to 10% of length and tonnage and a 20%

⁴ National Assessment of Excess Harvesting Capacity in Federally Managed Commercial Fisheries, May 2008, para. 4, p 30.

⁵ Amendment 4 and Supplemental Environmental Impact Statement to the Sea Scallop Fishery Management Plan, July 1993, para. 4, p. 5.

increase in horsepower, limiting the crew size, increasing the ring size to 3.5 inches, limiting the maximum width of two dredges to 30 feet, having a minimum twine top opening of 5.5 inches and required all vessels to have a vessel monitoring system.

In 1999 Amendment 7 was implemented to address the continued overfishing of the scallop biomass with the aim to reduce fishing mortality from $F=0.93$ in 1996 to the mortality rate of $F=0.20$ within ten years. To reduce the mortality rate to the required $F=0.20$ rate Amendment 7 cut the fishing days at sea to 120.

One reason, but certainly not the only reason, for the high mortality could be attributed to the emergency closure of three areas known as the Closed Area 1, Closed Area 2, and the Nantucket Lightship area to protect the groundfish stock in 1994. It was estimated that those three closed areas accounted for approximately 50% of the George's Bank scallop fishing grounds. The emergency closure decreased the area the scallop fleet could fish which resulted in overfishing for the fishing grounds that remained open. In the spring of 1998 two more areas were closed. One was the Hudson Canyon Area and the other was referred to as the Virginia Beach Closed Area. The reason for the closures was to allow small scallops to grow to maturity.

Amendment 10, which took effect in 2004, drastically changed the scallop industry. Instead of relying on a meat count or days at sea restrictions Amendment 10 focused on a rotational area management program. Under this program certain areas were established and the areas would be opened to fishing on a rotational basis and subject to how many pounds can be harvested, how many trips can be taken and how long each area may be open for fishing. An area will then be closed to fishing to allow the scallop biomass to rebuild and another area would open up for fishing. In addition to the closed areas, Amendment 10 also kept the days at sea regulations for all other areas not bound by the closed restrictions.

In order to determine the allocation of how many days-at-sea each vessel is allowed the Council determines how much can be harvested while not exceeding the established mortality rate of $F=0.20$. "Annual day-at-sea allocations will be set to achieve a fishing mortality target of $F=0.20$ or any other level that the Council determines will produce optimum yield and does not cause or risk overfishing. Day-at-Sea allocations and use will be made separately and monitored for open and controlled access areas. Vessels may not use controlled access area days to fish in open areas, and vice versa".⁶

Amendment 10 implemented other restrictions in order to ensure the viability of the scallop biomass. Such restrictions increased the ring size from 3.5 inches to four inches and increased the twine top to a ten inch minimum opening. Also two percent of the annual total allowable catch or days-at-sea allocation was set aside for scientific research.

b. Biomass/landings

⁶ Final Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan, December 19, 2003, 5.1.2.1 Annual Allocations, para. 2, p. 5-6.

Between 1987 and 1993 the scallop fishery landed between 13,666-17,587 mt of meats under the count method regulations which did not restrict how many days a vessel could fish. However, these landings had a very high mortality rate of around $F=1.6$ and put the scallop biomass at risk of collapse.

“Spawning stock biomass gradually increased from around 20,000 mt meats during 1982-1983 to a peak of 37,000 mt in 1990, and then declined to less than 17,000 mt meats by 1993.”⁷

In order to replenish the biomass Amendment 4 was passed in 1994 which restricted the number of days a scallop vessel could fish. Between 1994 and 1998 the landings were between 5,514 - 7,327 mt of meats; almost half of the landings that were recorded between 1987 and 1993.

In order to protect the groundfish three areas were closed in 1994. The closing of the areas referred to as the Closed Area 1, Closed Area 2, and the Nantucket Lightship Area prevented the scallop fleet to fish in very valuable fishing grounds and shifted the effort to other areas which increased pressure on the remaining scallop biomass.

Amendment 4 still could not address the unacceptable mortality rate that continued to plague the industry. With the mortality rate was about $F=0.93$ in 1996, Amendment 7 was passed in 1999. Amendment 7 required the scallop biomass to be rebuilt within ten years. In order to achieve that goal the mortality rate had to be lowered to $F=0.20$ and the days-at-sea drastically cut down to 120 days. Amendment 7 also started to experiment with rotational area closures by exempting two areas from being fished in order to allow the small scallop seedlings to mature and reproduce. These areas were known as the Hudson Canyon Area and the Virginia Beach Closed Area

In spite of the restrictive 120 days-at-sea requirements imposed by Amendment 7 the landings increased from 1999-2004. In 1999 the scallop fleet landed 9,822 mt of meat and landings continued to increase to 25,417 mt in 2003. A major reason for the increased landings can be attributed to the limited re-openings in the George’s Bank closed areas that were closed to protect the groundfish.

Encouraged by the effect of area closures on the scallop biomass, landings and the mortality rate Amendment 10 was passed in 2004 which formalized the rotational area management program for the scallop fishery. Amendment 10 also allocated the days-at-sea system and based it on maintaining a mortality rate of $F=0.20$. Since the implementation of Amendment 10 yearly landings have been around 25,000 – 26,000 mt of meats per year despite further reductions in the allocation of the days-at-sea.⁸

After more than 20 years of regulations the scallop fishery appears to finally have found a successful formula in maintaining a healthy scallop biomass while increasing landings to

⁷ 45th Northeast Regional Stock Assessment Workshop, July 2007, para. 5, p.140

⁸ All landing data was derived from a table in the 45th SAW Assessment Report which is included in this report.

historic high levels. "Stock biomass was 166 thousand mt meats in 2006, which is the historic high during 1982-2006. Sea scallop biomass was almost equally distributed between George's Bank (81,000 mt meats) and the Mid-Atlantic Bight (85,000 mt meats). Considering uncertainties in survey and landing data, there is less than a 1% estimated probability that the sea scallop biomass was below the target biomass of 108.6 mt meats during 2006".⁹

3. Permit stacking vs. biomass

While there may be excess capacity in the limited access scallop fishery, permit stacking may not be the only way to reduce excess capacity. In fact the most logical way to reduce excess capacity would be to increase the scallop biomass. Current regulations are focusing on maintaining a mortality rate of $F=0.20$ which is believed what can safely be harvested from the biomass and still leave enough reproductive scallops to maintain or increase the biomass.

By careful monitoring of the scallop biomass and making minor regulatory changes to maintain a low mortality rate it is quite conceivable the biomass may continue to increase in size. If the biomass increases there will be more scallops to harvest, while maintaining the F rate, therefore reducing excess capacity.

However, if by choosing to reduce excess capacity by means of permit stacking then the scallop biomass will very likely decrease. As of this time NMFS has a very good understanding of the scallop fleet's capabilities. Currently, there are not that many limited access permits sold on an annual basis that would significantly affect current mortality and biomass predictions. Under the 10/10/20 rule any new vessel would be predictable and comparable to the older vessel that it replaced.

But if permit stacking would occur then it could be quite possible to have at least one quarter to one third of the fleet disappear overnight. Large limited access scallop permit fleet owners, the same group of people in favor of permit stacking, would be the first people to transfer permits from their least efficient vessel onto more efficient platforms. Once that happens it is very probable a power struggle could occur in the scallop industry with the more affluent owners trying to buy out as many of the smaller owners as possible in order to survive. It would probably take several years for the industry to stabilize and become predictable. If permit stacking were to happen then all the assumptions and predictions regarding the mortality rate and the biomass would become obsolete.

Such a rapid change could wreck havoc on the biomass and the industry itself. The more efficient vessels would harvest scallops on a greater scale. Instead of two vessels going out to fish for ten days, one vessel would have the option to fish for twenty days which would mean at least fifty percent fewer days steaming to and from the fishing grounds. One fishing vessel would have fifty percent fewer repairs than two vessels; safety at sea could be compromised because the one vessel would be required to go out to sea all year

⁹ 45th Northeast Regional Stock Assessment Workshop, July 2007, para. 6, p. 26.

long in order to fish its days-at-sea allocation. While longer trips may lead to crew fatigue and additional safety concerns, fewer boats will need fewer men to fish on them which would mean only the most efficient crewmen would have jobs.

The NEFMC would have to wait several years for the industry to regain stability before it could begin to calculate the new requirements to preserve the biomass. In the meantime the increased harvesting capacity would in turn increase the mortality rate. Because days-at-sea for the scallop industry is based on the mortality rate, an increase in the scallop harvest would reduce days-at-sea for all vessels the following year.

Any reduction of the days-at-sea or decrease in the access area trip allotments decreases the value of a boat's permit. Fewer fishing days would result in less income that can be generated making it that much more difficult for individual owners to meet their obligations and expenses. The larger fleet owners by proposing the permit stacking regulation are anticipating this reaction and are positioning themselves to buy out the weaker permit owners further consolidating the fleet into the hands of a few.

a. scallop meat size

During the meat count system a vessel was required to have an average of 30 – 40 meats per pound in order for its landings to be in compliance with regulations. Vessels also carried a much larger crew, stayed out to sea for longer periods of time and did not catch as many pounds per day at sea as today. "At that time, fishing was considered 'good' if the boat landed 1,000 to 1,200 pounds per day at sea, with an 11 to 13 man crew."¹⁰

The rotational area management of the scallop harvest has increased the meat size of the scallop as well as the scallop biomass in general. "A majority of landed meats from the mid-1980's through 1998 were in the smaller market categories (>30meats per pound). Landings in more recent years have trended to much larger sizes; the mean weight of a landed scallop meat in 2005 was about twice that of a meat in the 1990's."¹¹

Fish buyers have traditionally paid more for the larger scallop meats and the more of the larger scallop meats the vessels land the more valuable their catch is. Today's boats are landing more scallops than in anytime in the fleets history and are getting very high ex-vessel prices for the large scallop meats.

Under the rotational area management regulations certain closed areas are regulated by how many pounds a vessel may catch in one trip. Larger meat counts mean a vessel would make fewer tows in order to achieve its allotment and would take fewer scallops from the biomass. In other words, under today's regulations a scallop vessel is fishing fewer days, has a higher landing per unit of effort, has fewer crewmen and is landing larger scallops that have a higher monetary value.

¹⁰ Final Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan, Dec. 19, 2003, Sec. 3.1, P. 3-1, para. 4.

¹¹ Sea Scallop Assessment Update for 2005, Deborah R. Hart, Sept. 2006, p.2 para. 2.

4. Economics¹²

The Atlantic sea scallop fishery is a very lucrative industry particularly when comparing the amount of pounds landed versus the value of the pounds landed. The U.S Department of Commerce reports the scallop fishery landed \$386,621,000.00 for 2007 making it the second highest species of fish in terms of value even though the amount of pounds landed in 2007 did not rank in the top ten of all species landed.

In 1994 18,228 million pounds of scallop meat was landed with a value of over \$91 million dollars. Ex vessel price per pound was \$5.04. In 1995 the scallop industry landed 18,316 million pounds of meat with a value of over \$92 million dollars. The ex vessel price increased three cents a pound to \$5.07.

There were over 13 million pounds of scallops landed in 1998 with a value of over \$79 million. The ex vessel price for 1998 was \$6.09. In 1999 the ex vessel price for the sea scallops decreased to \$5.44 however, the landings increased to over 23 million pounds with a value of over a \$125 million.

While the ex vessel price dropped from \$5.44 a pound in 1999 to \$4.09 in 2003 the total landings continued to increase and with the increase in pounds landed there was an increase in the value of the scallops. 56 million pounds of scallops were landed in 2003 with a value of over \$229 million. 2004 saw an increase in total pounds landed, the value of the pounds landed and the ex vessel price. In 2004 the ex vessel price shot up to \$4.97 with landings of over 64 million pounds and a value of those pounds of almost \$322 million. 2004's landings were the highest ever recorded.

In 2006, 59 million pounds were landed and the 2007 landings continued to decrease to just over 58 million pounds. Both the ex vessel prices and the value of the landings remained constant between 2006 and 2007. The ex vessel price for scallops in 2006 was \$6.52 and \$6.59 in 2007 while the value of the scallops was \$384.8 million in 2006 to just over \$385 in 2007.

Since the passage of Amendment 4 in 1994 the landings of scallop meat has increased from 18 million pounds to over 58 million pounds in 2007 an increase of over 300% and the value of the scallops has increased from over \$91 million to \$385 million an increase of almost 400%.

a. vessel/permit devaluation

Upon implementation of capacity reduction owners of several permits will move a permit from the least efficient vessel to a more efficient vessel and sell the boat without a permit. If many owners attempt to sell their unused vessels it would create a glut in the market

¹² Economic information in this section of the report was taken from the U.S. Dept. of Commerce, Fisheries of the United States for the year(s) mentioned. The U.S. Dept. of Commerce sea scallop landings are generally higher than those reported by NMFS and other agencies.

and the price of all boats would be devalued. That would have a negative impact on the smaller boat owners who would lose a substantial amount of their equity it is possible that anyone who recently mortgaged their boat may then be upside down on their mortgage.

Eliminating the least efficient vessels in favor of the most efficient vessels would increase the capacity to harvest scallops thereby reducing the scallop biomass. A vessel with two permits would have twice as many fishing days as a one boat one permit platform but would be able to stay out to sea longer with fewer days at sea lost to transiting to and from port thereby increasing the capacity to harvest scallops.

Another way the scallop biomass would be reduced by capacity reduction would be because a vessel with two permits would be forced to fish during the winter months when the scallop meats yields are lower. Each boat would still be allocated a certain amount of pounds in a closed area and a certain amount of fishing days at sea. A vessel in the closed areas will still get their poundage but it would take more scallops to reach their allocation.

With the greater efficiencies in harvesting scallops will in turn lead to a reduction in the scallop biomass. In order to maintain sustainability the National Marine Fisheries Service will decrease the amount of fishing days a vessel will be able to fish until such a time until the biomass is able to re-grow and achieve equilibrium of the greater harvesting efficiency. The reduction in fishing days will result in lost revenue and cause financial hardships for the single permit holders. Furthermore, with a reduction in the fishing days the value of the permit will decrease causing a loss of equity for the permit owners. The owners of a single or a few permits may no longer have the borrowing capacity needed to weather the financial crisis until such a time when the scallop biomass achieves equilibrium to the greater harvest efficiency. If such a scenario were to happen the owner would then be forced to sell his permit to an owner who has a larger fleet of scallop vessels further consolidating the fleet into the hands of a few owners. Eventually it is quite conceivable the larger scallop permit owners will buy out the smaller permit owners consolidating the scallop fishery fleet to a minimum of twenty total owners (each owning the maximum allotment of five percent).

Another consequence of capacity reduction would be the loss of jobs among the crewmembers and the shore support facilities. As I mentioned earlier, a vessel that carries two permits would need only one crew to run the vessel which in turn could potentially eliminate half the current fishing jobs. While I do not know how many individuals are employed directly by the scallop fishing industry I would conservatively estimate there are over 1,000 crewmembers in the fleet. Capacity reduction has the potential to eliminate several hundred of the crewmen's jobs.

Crewmembers of the scallop fishery are very well paid. If half of the jobs were eliminated the state and federal governments would have to spend a good amount of money in unemployment benefits along with retraining the crewmen for other jobs. Eventually the crewmen will find other jobs but there is a very good chance they would

not be making the same income they had while they were employed in the scallop fishery industry.

The shore support industry would also suffer under the capacity reduction program. If half of the fleet is eliminated it would go to reason that there would be half the need for the shore support. If the industry eliminates the least efficient vessels in favor of the more efficient vessels it would stand to reason there will be less breakdowns, repairs and equipment upgrades needed. There are many types of businesses that are directly tied to the health and welfare of the scallop fishery industry. Some of the affected businesses would be the stores that sell and supply food and fishing gear, there are also electricians, electronic technicians, boat carpenters, welders, mechanics, machinists and settlement houses. There are also companies that sell marine engines, generators and hydraulic components to the scallop fishery industry. Dozens of businesses and hundreds of their employees could feel a direct economic impact due to capacity reduction.

After several years of financial hardships the scallop fishery industry has become a sustainable resource. Under the current regulations set forth by the National Marine Fisheries Service, the scallop fishery is enjoying economic prosperity and is the envy of most of the other fishery sectors. Currently there are hundreds of families that own scallop vessels and like any other small business they take pride in ownership and the jobs they do. But as small business owners they are afraid of what the future holds for them. They are afraid they will lose everything they have worked so hard for to larger corporations that have the ability to eventually force them out of business.

5. Magnuson-Stevens Act

The Magnuson-Stevens Act allows for a voluntary fishing capacity reduction program. Under sec. 312 (b) (1) the Secretary of a Council may implement a capacity reduction program if the majority of the permit holders request such a program if the Secretary determines the program "is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery".¹³

The Secretary must also determine if the Fishing capacity reduction "will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, practicable restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet".¹⁴

Furthermore, proponents of capacity reduction have the responsibility to consult with members of the industry, affected communities and other governmental and environmental organizations. "The harvester proponents of each program and the Secretary shall consult, as appropriate and practicable, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery,

¹³ Magnuson-Stevens Fishery Conservation and Management Act, Jan. 12,2007,Sec. 312 (b)(1)(A), p.130

¹⁴ Magnuson-Stevens Fishery Conservation and Management Act, Jan. 12,2007, Sec. 312 (b),(1),(B),(i), p.130.

conservation organizations, and other interested parties throughout the development and implementation of any program under this section.”¹⁵

It is the opinion of many in the scallop industry that proponents of permit stacking have attempted to pass the program without consulting members of the industry and the communities. Recently opponents of permit stacking have started to attend NEFMC meetings in order to express their opinion, however many people feel they are not being allowed to speak, are ignored and the Council has already made up its mind.

6. Summary

Proponents of permit stacking claim 80 fishing days are insufficient to maintain their vessels and crewmen as compared to the 204 fishing days in 1994. However since 2001 the scallop fishery has seen record landings, the highest ex-vessel price, higher meat yield and the largest scallop biomass in recorded history while fishing fewer days and with fewer crewmen.

In 1994 with 204 fishing days the scallop fleet landed less than 8,000 mt of scallops with a value of \$91 million with an ex-vessel price of \$5.04. It also had an unacceptably high mortality rate that was crippling the industry and almost brought the scallop biomass to collapse.

Today, in spite of having only 80 fishing days the fleet is landing over 25,000 mt of scallops worth \$385 million with an ex-vessel price of \$6.59. Today's fleet is landing more scallops worth more money with a higher yield while maintaining the largest biomass ever recorded.

Considering the health of the scallop industry today as compared to what it was in 1994 it seems hard to justify how anyone could have a hard time “maintaining vessels and crew throughout the year with increasing costs” especially when one considers the fact that the proponents of permit stacking are the people who have a tendency to own a large fleets and have the ability to transfer the crew from vessel to vessel as each vessel consumes its days. The sole purpose of permit stacking is to increase the profits of the large fleet owners while slowly squeezing out the smaller owners until such a time when the industry is controlled by a powerful few who would then have an oligopoly and control the U.S. supply of sea scallops.

Under Magnuson-Stevens the capacity reduction program is a voluntary program if it is necessary to prevent or end overfishing, rebuild stocks and if it prevents the replacement of fishing capacity that is removed from the fishery. The scallop biomass is at its highest recorded level and is not subject to overfishing. Permit stacking will not reduce harvesting capacity from the fishery but will in fact increase harvesting capacity as the least efficient vessel is replaced by more efficient vessels.

¹⁵ Magnuson-Stevens Fishery Conservation and Management Act, Jan. 12, 2007, Sec. 312 (b),(4), p.130.

Furthermore, under the fishing capacity reduction program the harvester proponents are responsible for consulting with the appropriate Councils, Federal, State and regional agencies and the local fishing communities that will be affected. By requesting the NEFMC to consider capacity reduction and having public meetings about it may be enough to satisfy the Federal and State agencies, however, it appears the harvester proponents have not notified or consulted with the regional authorities or the affected fishing communities. The Magnuson-Stevens Act clearly requires economic information on how any new regulation will affect not only the industry in question but also the communities that serve the fishery. To date I have yet to read any report concerning the economics of this proposal and how it will affect the fishing communities. It is the opponents' perception that those who are in favor of permit stacking have quietly asked the NEFMC to pass the capacity reduction program hoping the rest of the industry and communities do not hear about it and/or are too disorganized to stop the program from going forward.

I would ask the Council to consider these arguments and the industry's wishes as expressed in the surveys I have already submitted to the Council and remove the entire capacity reduction proposal for further discussion. The scallops are a national resource to be harvested by as many people as possible and spreading the wealth throughout the entire eastern coast of the U.S. whereas initiating capacity reduction in a healthy fishery serves only a select few at the expense of the many.

So the only question that remains is where does the Council stand on this issue?

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Weckesser', with a long horizontal flourish extending to the right.

Paul Weckesser

ATLANTIC SEA SCALLOP TABLES

Table B4-1. US sea scallop landings (mt meats) 1964-2006.

| Year | Gulf of Maine | | | Georges Bank | | | S. New England | | | Mid Atlantic Bight | | | Total | | | | | | | | |
|------|---------------|-------|-------|--------------|-------|-------|----------------|--------|-------|--------------------|-------|-------|--------|-------|--------|--|--|-------|--|--|--------|
| | dredge | trawl | other | dredge | trawl | other | dredge | trawl | other | dredge | trawl | other | dredge | trawl | other | | | | | | |
| 1964 | | | 208 | | | 6,241 | | | 52 | | 3 | | | | 137 | | | 52 | | | 6,642 |
| 1965 | | 0 | 117 | | 0 | 1,478 | | 3 | 24 | | 26 | | | | 3,974 | | | 5 | | | 5,598 |
| 1966 | | 0 | 102 | | 0 | 883 | | 0 | 8 | | 8 | | | | 4,061 | | | 1 | | | 5,055 |
| 1967 | | 0 | 80 | | 0 | 1,217 | | 0 | 8 | | 8 | | | | 1,873 | | | 4 | | | 3,178 |
| 1968 | | 0 | 113 | | 0 | 993 | | 0 | 56 | | 56 | | | | 2,437 | | | 0 | | | 3,599 |
| 1968 | | 1 | 122 | | 8 | 1,316 | | 8 | 18 | | 19 | | | | 848 | | | 5 | | | 2,317 |
| 1970 | | 0 | 132 | | 5 | 1,410 | | 5 | 6 | | 6 | | | | 459 | | | 14 | | | 2,302 |
| 1971 | | 4 | 358 | | 18 | 1,311 | | 18 | 7 | | 7 | | | | 274 | | | 22 | | | 1,949 |
| 1972 | | 1 | 524 | | 5 | 818 | | 5 | 2 | | 2 | | | | 663 | | | 5 | | | 2,008 |
| 1973 | | 0 | 460 | | 15 | 1,065 | | 15 | 0 | | 0 | | | | 245 | | | 4 | | | 2,006 |
| 1974 | | 0 | 223 | | 15 | 911 | | 15 | 4 | | 5 | | | | 937 | | | 0 | | | 1,773 |
| 1975 | | 6 | 741 | | 13 | 844 | | 13 | 8 | | 42 | | | | 1,506 | | | 52 | | | 2,078 |
| 1976 | | 3 | 384 | | 38 | 1,723 | | 38 | 4 | | 3 | | | | 2,972 | | | 819 | | | 3,132 |
| 1977 | | 4 | 254 | | 27 | 4,709 | | 27 | 1 | | 10 | | | | 2,564 | | | 255 | | | 5,081 |
| 1978 | | 1 | 0 | | 243 | 0 | | 37 | 0 | | 0 | | | | 0 | | | 207 | | | 7,595 |
| 1979 | | 401 | 0 | | 407 | 7 | | 25 | 0 | | 0 | | | | 4,435 | | | 207 | | | 10,481 |
| 1980 | | 1,489 | 122 | | 3 | 1,614 | | 25 | 7 | | 66 | | | | 2,857 | | | 28 | | | 9,645 |
| 1981 | | 1,225 | 73 | | 7 | 1,305 | | 34 | 2 | | 133 | | | | 2,202 | | | 85 | | | 9,532 |
| 1982 | | 631 | 28 | | 5 | 654 | | 7,787 | 56 | | 69 | | | | 772 | | | 14 | | | 10,005 |
| 1983 | | 815 | 72 | | 7 | 895 | | 6,204 | 119 | | 126 | | | | 8,582 | | | 8 | | | 8,723 |
| 1984 | | 651 | 18 | | 10 | 678 | | 4,247 | 32 | | 243 | | | | 3,092 | | | 19 | | | 8,542 |
| 1985 | | 408 | 3 | | 10 | 421 | | 3,011 | 29 | | 164 | | | | 3,695 | | | 53 | | | 7,635 |
| 1986 | | 308 | 2 | | 6 | 316 | | 2,860 | 34 | | 82 | | | | 3,230 | | | 49 | | | 6,677 |
| 1987 | | 373 | 0 | | 9 | 382 | | 4,428 | 10 | | 78 | | | | 3,407 | | | 386 | | | 8,631 |
| 1988 | | 506 | 7 | | 13 | 526 | | 4,821 | 30 | | 68 | | | | 7,639 | | | 1,168 | | | 14,109 |
| 1989 | | 600 | 0 | | 44 | 644 | | 6,036 | 18 | | 68 | | | | 6,071 | | | 838 | | | 13,866 |
| 1990 | | 545 | 0 | | 28 | 574 | | 5,837 | 25 | | 138 | | | | 7,894 | | | 534 | | | 17,587 |
| 1991 | | 527 | 3 | | 75 | 605 | | 9,972 | 10 | | 116 | | | | 6,384 | | | 541 | | | 14,878 |
| 1992 | | 676 | 2 | | 45 | 722 | | 8,230 | 7 | | 71 | | | | 6,408 | | | 878 | | | 17,288 |
| 1993 | | 375 | 17 | | 32 | 797 | | 3,637 | 18 | | 66 | | | | 4,682 | | | 570 | | | 14,221 |
| 1994 | | 446 | 3 | | 6 | 455 | | 1,191 | 13 | | 35 | | | | 2,412 | | | 393 | | | 7,327 |
| 1995 | | 634 | 9 | | 3 | 646 | | 1,175 | 17 | | 48 | | | | 5,190 | | | 792 | | | 7,702 |
| 1996 | | 601 | 9 | | 12 | 622 | | 1,982 | 68 | | 82 | | | | 4,158 | | | 317 | | | 7,706 |
| 1998 | | 474 | 7 | | 2 | 483 | | 2,030 | 23 | | 87 | | | | 2,391 | | | 337 | | | 5,489 |
| 1999 | | 239 | 2 | | 2 | 243 | | 5,079 | 6 | | 100 | | | | 3,516 | | | 890 | | | 9,822 |
| 2000 | | 139 | 5 | | 1 | 144 | | 5,016 | 20 | | 80 | | | | 7,652 | | | 1,200 | | | 14,110 |
| 2001 | | 251 | 8 | | 1 | 260 | | 4,563 | 35 | | 29 | | | | 13,989 | | | 1,621 | | | 20,487 |
| 2002 | | 492 | 6 | | 1 | 499 | | 5,478 | 63 | | 103 | | | | 15,435 | | | 1,618 | | | 23,117 |
| 2003 | | 394 | 8 | | 1 | 403 | | 4,789 | 23 | | 103 | | | | 18,796 | | | 1,292 | | | 25,417 |
| 2004 | | 125 | 9 | | 0 | 134 | | 4,343 | 14 | | 120 | | | | 23,082 | | | 1,402 | | | 28,109 |
| 2005 | | 134 | 8 | | 0 | 143 | | 9,381 | 118 | | 403 | | | | 14,588 | | | 1,040 | | | 25,682 |
| 2006 | | 227 | 1 | | 1 | 229 | | 17,239 | 47 | | 370 | | | | 8,232 | | | 584 | | | 26,704 |

#5C

OUELLETTE & SMITH
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November 20, 2008

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

Re: Proposals for Capacity Reduction in the Limited Access Scallop Fishery

Dear Chairman Pappalardo:

I have been asked to present comments on behalf of a number of limited access scallop vessel owners¹ who disagree with the development of proposals for capacity reduction in the Limited Access Scallop fishery.² Generally, these are owners of one to four vessels who consider their businesses viable under current regulations. The proposed capacity reduction, while benefiting larger fleet owners, will both increase capacity, concentrate excessive ownership of the resource in the hands of a very few, and in turn threatens the viability of many small businesses and the loss of employment for many crew and shoreside businesses. The negative impacts will be greatest on the single vessel owner, who will see no benefit from the proposed "capacity reduction," but has much to lose by being put at a competitive disadvantage. In short, the Council should carefully consider whether to pursue a complete overhaul of the present ownership system, for the financial betterment of a few owners who, by any standard, are currently seeing record profits from the fishery.

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, small vessel fleet employing many individuals and sustaining the social fabric of the fishery, modeled on smaller businesses. To some extent, inefficiency which retains more, smaller vessels employs more individuals, while also slowing harvest rates,

¹ Including Frontier Fishing Corp., Warrior Fishing Corp., Trawler Diane and Maureen, Inc. and others.

² A recent survey by Paul Weckesser of Mass Fabricating & Welding, Inc. sent to all limited access scallop permit holders, as of November 4, 2008, returned responses from owners of 94 vessels opposed to the capacity reduction proposals which will result in either permit stacking or leasing of DAS.

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John Pappalardo, Chairman

November 20, 2008

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to the benefit of the resource. Economic efficiency is often laudable, 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 no positive conservation benefit. 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 document entirely.

We note initially that the scallop resource is healthy. The stock is not overfished, and overfishing is not occurring. The current mortality rate (F) is .20, well below the overfishing threshold of .29, and the future of this portion of the industry appears to be the one bright spot in a decade of unproductive fishery management schemes in the Northeast region. Current TACs appear sustainable and potential exists to increase landings in the future according the recent NMFS reports.

The impacts of the stock improvements and positive effects of the current management regime are clear. There are currently approximately 325 limited access vessels in the fishery, and Council figures show that, with an ex-vessel price of \$7.50 per pound, the owner's profit after fixed costs is around \$300,000, and crews' wages on average \$450,000 per vessel, or approximately \$65,000 per man.

A small group of vessel owners, comprised primarily of owners who hold five or more vessels, and in some cases, the maximum per owner limit of 17 vessels, are seeking to streamline their fleets by calling for "capacity reduction," and seeking either permit stacking or leasing of scallop days at sea and access area trips. They claim this will result in a "reduction in fishing capacity," when in reality it will shift fishing effort to more efficient and profitable vessels, actually increasing capacity. This will ultimately require fleetwide effort reduction to reduce overall effort and have significant and disparate impact on owners of single vessels or lesser permits whose owners choose not to stack. In effect, this will require a reallocation of the resource based entirely on economic efficiency.

Many single vessel owners and small fleet owners are opposed to any leasing of scallop days at sea or access area trips, beyond the current access area trip exchanges currently allowed. DAS leasing in the Multispecies Fishery was implemented as an emergency measure, over the objections of significant portions of the industry, to assist a number of vessels facing crippling cutbacks in DAS. Cutbacks produced by Amendment 13 essentially reduced most vessels' fishing opportunity below the break even point. The effect of leasing has been to realize the fears of many, that DAS leasing would eliminate many vessels and move effort to larger, more efficient vessels. Those concerns are much greater in the scallop fishery, given a number of

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John Pappalardo, Chairman
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years of significant profitability which have allowed many owners to improve old vessels or build new ones, while increasing harvesting capacity.

Similarly, a DAS leasing program will also have a serious negative impact on other fisheries, as vessel owners who, for example, may hold squid or mackerel permits on one vessel, now shift that vessel's scallop DAS to another scallop vessel, and increase their non-scallop fishing activity.

Permit stacking creates a similar problem. If permits are consolidated between vessels, effort will shift to recently constructed, more sophisticated vessels. Even the 10/10/20 restrictions do not prevent "upgrading" of harvesting capacity with improvements in technology, and vessels that appear similar may have grossly disproportionate harvesting ability. This will also result in fleetwide reductions in landings to offset the greater capacity of these multi-permit platforms, the impact of which will be to place a disparate burden on the single vessel or small fleet owner.³ While conservation effects are claimed, these consolidated vessels will still burn the same amounts of fuel and ice, etc. that two vessels did. Only fixed owner costs will be foregone, while shoreside businesses see a loss of revenue and crews are reduced. An extension of the cost efficiency justification would be to shift all scallop effort onto one or two catcher processor vessels, which would most likely be the most efficient for one or two owners, but probably not return much benefit to the nation.

Consolidation of fishing effort on one vessel also threatens to significantly change the socio-economic structure of the fishery in the Northeast. The Northeast fisheries have generally consisted of owner operated or small business models, with owners actively involved in the day to day operation of vessels. Crews are generally small, and are limited by the current regulations to lower efficiency, with crewmembers being paid on a lay-share basis. The consolidation of permits and concentration of fishing power in the hands of a very few is already modifying this entire structure of the fishery, including significant vertical integration, and interrelations among the many large fleet owners.⁴ As experience in the scallop fishery has already shown, scallop vessel ownership has shifted from small, essentially family owned fleets, to parts of vertically integrated mega-fishing corporations. Consolidation of multiple permits onto one vessel will only strengthen this business model, to the detriment of traditional small business ownership.

³ There has been some discussion of open area trip limits, which are opposed by most of the industry. Council members and staff have often stated that open area limits were proposed by the "industry", when in fact the proposal has not been endorsed by any industry groups but was a suggestion of one individual consultant speaking for himself, and not for any industry group or owner.

⁴ Magnuson makes clear that all antitrust provisions remain fully applicable to the fishery, 16 USC § 1853a (c)(9). Recent revisions to the Act also require that new LAPP programs contain revocation provisions for owners who violate antitrust laws, 16 USC §1853a(c)(1)(K).

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John Pappalardo, Chairman
November 20, 2008

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These businesses are already working to eliminate the lay-share system and shift more of each vessel's earnings to owner profit. Eventually, vessel owners who can consolidate permits will force a restructuring of the fishing industry to eliminate lay-shares and dramatically increase profits while making it impossible for single vessel owners to compete.

The effect of consolidation will virtually assure that all permits ultimately end up in the hands of larger fishing corporations, and a portion of the American dream will be lost. Permits and vessel combinations are selling for as much as \$3-4,000,000, making it impossible for a young captain to move up and become an owner. This will be even more difficult as vessels are forced to consolidate to be competitive with other vessels that have consolidated. As the possibility of moving up is lost to young captains, the entire structure of the fleet shifts from owner/operator and small business to a corporate climate, at which point consolidation will increase. As more and more permits fall subject to the economic force of larger fishing corporations, the small business will cease to exist, and ultimately a factory trawler or catcher processor fleet is borne, with snowballing losses of jobs, infrastructure and the valuable socio-economic culture that has developed around traditional commercial fishing.

The issues raised by the consolidation and leasing proposals are really an attempt to rationalize the fishery. In their present form, they seek to accomplish a reallocation of the fishery, purely for an economic purpose, in a manner that essentially makes it an individual fishing quota, without holding the statutorily required referendum. Consolidation before a referendum eliminates from the fishery most of the constituency that Congress expects to vote on the referendum, frustrating the intent of the statute.

In short, my clients are concerned that the proposals for capacity reduction have nothing to do with capacity reduction, but are an attempt to eliminate well thought out, existing restrictions, put in place to preserve the nature of the fishery and protect the resource. The proposals will further consolidate ownership and control over the fishery in the hands of a very few, dramatically increasing their profits with no more return to the nation as a whole. To the contrary, the increase in these owners' profits will come from the reductions in number of vessels, and in turn many jobs. For these reasons we believe that the fleet and the nation will not be best served by the proposals currently considered for Amendment 15, and that these issues should be removed from consideration in the document.

Very truly yours,

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

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12-26-08

#7E

Dear Pat, I believe too comply with the intent of the 5% ownership ruled in the Scallop F.M.P. The 5% rule should read:

"No one person or entity may own or control more than 5% of the total allocated fishing days in any one fishing year."

The rule now reads:
5% of the limited access permits.

Sincerely,
Raymond Staruch

Sally brought to Ck wty 12/109

