



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

June 22, 2011

John Pappalardo, Chair  
New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01950



Dear John:

Amendment 15 to the Atlantic Sea Scallop Fishery Management Plan (Amendment 15) was partially approved by NOAA's National Marine Fisheries Service (NMFS) on June 21, 2011. I commend the New England Fishery Management Council (Council) and Council staff for the work on the numerous issues in Amendment 15, some of which were very complicated and contentious.

All of the measures proposed by the Council have been approved, with the exception of the measure that would have allocated additional catch to the limited access general category (LAGC) individual fishing quota (IFQ) fleet if the limited access (LA) fleet's accountability measure (AM) exception is implemented.

The LAGC IFQ portion of the LA fleet's AM exception was disapproved because it does not take into account the impact of allocating additional catch. As you know, the Council adopted an LA fleet AM exception that would exempt the LA fleet from its AM even if the LA fleet exceeds its sub-ACL in a given fishing year. The Council adopted a related measure that would have allocated additional catch to the LAGC IFQ fleet if the LA fleet's AM exception was enacted after the LA sub-ACL was exceeded, in a manner proportional to the LA fleet's overage.

With the proposed LA fleet AM exception measure, the LA fleet could exceed its prescribed ACL, and have unaccounted catch, but there is a process for evaluating the overage relative to the F related to the total ACL (which is equal to the acceptable biological catch (ABC)). However, the proposed measure that would have allocated additional catch to the LAGC IFQ fleet if the AM exception was triggered would not evaluate the impacts of this additional allocation relative to ABC, ACL, sub-ACLs, or the associated Fs, and therefore would risk exceeding the ABC/ACL. Because the AM exception would have been automatic, additional catch would have been allocated in the following year, without consideration of whether the additional catch would cause the overall ACL, or F associated with that ACL, to be exceeded when combined with total catch in that year. This is contrary to the Council's intent to build precaution into establishing ACLs and sub-ACLs in the fishery. As a result, this measure could risk overfishing. Because there is no assurance that allocating additional catch to the LAGC IFQ fleet would prevent overfishing, NMFS determined that the measure is inconsistent with National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). The measure is also inconsistent with the MSA requirement that FMPs "...establish a mechanism for specifying ACLs in the plan...at a level such that overfishing does not occur in the fishery, including measures to ensure

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accountability.” (16 U.S.C. 1853, § 303(a)(15)). In addition, this substantive measure was added at the last Council meeting before adoption of Amendment 15 and, as such, is inconsistent with MSA and National Environmental Policy Act procedures by not providing sufficient opportunity for full open public and Council consideration of the impacts of the measure and its implications on ACL management of the scallop fishery.

Two issues were raised during public comment that the Council should consider in future development of measures under the Scallop and Northeast Multispecies FMPs. First, the Fisheries Survival Fund (FSF) raised concerns about the measure that exempts LAGC IFQ vessels from the YTF AM closures. The AMs for the YTF sub-ACL exempt LAGC vessels from the closure, but count all YTF catch by LAGC vessels toward the applicable YTF sub-ACL. Part of the rationale for this measure is that the LAGC fleet’s catch of YTF has been estimated to be very low, thus justifying the scallop dredge exemption areas in Southern New England and Gulf of Maine, and Georges Bank South Channel waters. In our recent evaluation of YTF catch in the scallop fishery, it appears that LAGC IFQ vessels have a fairly high catch of yellowtail relative to YTF in the whole scallop fishery. As a result, FSF commented that NMFS should disapprove the provision that exempts LAGC IFQ vessels from the YTF closure AMs, since the LAGC IFQ fleet has been shown to have a high level of YTF. I did not disapprove this exemption because the provision does not violate any provisions of the MSA or applicable law, but the Council should continue to investigate YTF catch by LAGC IFQ vessels relative to the exemptions under the NE Multispecies FMP and the exemption from the YTF AM under Amendment 15.

Second, FSF commented that implementation of the LA fleet’s AMs in the first year after the fleet’s sub-ACL was exceeded will be problematic because vessels may have fished all allocated days-at-sea (DAS) prior to the DAS adjustment required by the AM. If that occurs, vessels would be subject to a DAS reduction in the following year. FSF commented that the DAS adjustments through the AM should be made in the second year after the sub-ACL is exceeded to avoid multiple DAS adjustments. However, I do not have the discretion to change the timing of the implementation of AMs in the final rule. The Council, through its letter deeming the proposed Amendment 15 regulations as complete and appropriate, specifically stated that the LA fleet’s AMs must take effect in the first year following the overage of the sub-ACL. I suggest that the Council consider revisiting this in a future action (it could be adjusted through a framework adjustment).

A final rule implementing the approved measures of Amendment 15 will be published shortly. This will enable NMFS to also publish the final rule for Framework 22, which, if approved, will establish management measures for the 2011 fishing year.

I appreciate the Council’s ongoing efforts to effectively manage this highly successful fishery.

Sincerely,

  
Patricia A. Kurkul  
Regional Administrator

Cc: Paul J. Howard