Amendment 11 to the Atlantic Sea Scallop FMP

Appendix I

Scoping Comments received for Amendment 11

Scoping Comments for Scallop Amendment 11 - Received via mail, fax and email

Total of 58 comments, listed in order of date received

Commenter	Hometown
Michael Ball	South Thomaston, ME
Philip Michaud	Eastham, MA
Bob Baines	South Thomaston, ME
Terry Alexander	Harpswell, ME
Arthur Osche	Manasquam, NJ
James Gutowski	Barnegate Light, NJ
Eric Hansen	
Stanley Sargent	Milbridge, ME
Daniel Cohen	Cape May, NJ
Vincent Carillo	Montauk, NY
Joseph and Michelle Letts	Fairhaven, MA
David Nadeau	North Chatham, MA
Chris LaRocca	
Peter Spong	Southampton, NY
William Reed	
Chris Davis	Chatham, MA
Donald Carter	
Paul Vafides	Hull, MA
Josept T Wagner	Ocean View, MD
John P Ciliberto	Trainer, PA
Anthony Watson	Berlin, MD
James Fletcher	Manns Harbor, NC
Jo Lundvall	Little Egg Harbor, NJ
Joe Smith	
David Wallace (Mid-Atlantic General Category Scallop Alliance	Cambridge, MD
Ray Trout	Lewes, DE
Jimmy Hahn	Ocean City, MD
Andy Keese	Chatham Harbor, MA
Thomas Brown	
Jim Brindley	Gloucester, MA
William Albert Fooks	
John Borden	Kittery Point, ME
Dennis Williams	Kittery Point, ME
Richard Taylor	Gloucester, MA
Charles Wiscott	Cape May, NJ
Neal Kitson	Barnegate Light, NJ
James O'Malley	Narragansett, RI
Harriet Didriksen	
Eric L. Lundvall	Little Egg Harbor, NJ
Eric Kitson	Cape May, NJ
George Lapointe (Maine DMR)	Augusta, ME
Robert Maxwell	
David Frulla (Fisheries Survival Fund)	Washington, DC
Geoffrey Day (GC Scallopers' Coalition of New England	Cambridge, MA
Stephen Ouellette	Beverly, MA
Willaim Dicianni	Long Branch, NJ
Scott Bailey	
Craig O'Brien	
Don Myers	West Creek, NJ
Joey Daniels	Wancheese, NC
Maggie Raymond (Associated Fisheries of Maine)	South Berwick, ME
Dallas Huckins	Machiasport, ME
John Wood	Machiasport, ME
Willaim McIntyre	
Jean Frottier	Wellfleet, MA
Comments received after the March 6, 2006 Deadline	
James Fletcher (second comment)	Manns Harbor, NC
Charles Christopher	
Paul Boardman	Barnegate Light, NJ

New England Fishery Management Council
50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
Frank Blount, *Chairman* | Paul J. Howard, *Executive Director*

Scoping Comments For Amendment 11

to the

Atlantic Sea Scallop Fishery Management Plan

Written Comments Received via Mail, Fax and Email

Comments received between February 8 – March 6, 2006

February 3, 2006

Mr. Paul J. Howard
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

Dear Mr. Howard:

My name is Michael Ball, owner/operator of the F/V Lori Lee. I have been a commercial fisherman for 35 years and have never had a land job. I fished out of New Bedford for 16 years. I was captain of three different scallop boats during five of those years. I have seen many changes to the industry from the Hague line, meat count, and new gear restrictions. I have always wanted to own my own boat and now that I do the new amendment being discussed will push me out of the fisheries that I have a permit for.

I would like to see the control date pushed ahead one year. With only 38 more permits issued from 2004 to 2005, this is not a big increase and would allow my boat to fish. If you allocate days, I would like to see something like this:

- 150 days to 200 days for full time with history,
- 50 to 75 days part time with no history,
- allocation to be 15% of annual yield,
- no dual applications.

If you use hard TACS, I would like to see something like eight million pounds (8,000,000 lbs.) Total to be split into two sections, north and south, with a line to be somewhere off New York. Four million pounds (4,000,000 lbs.) to each section with splits between full and part time boats. I would like to see 60,000 full time boats and 20,000 part time boats. When TAC is filled, close the area. I would also like to see a fishing season from April 1st to October 31st and closed for five months to recoup and for safety reasons for the small boat fleet. I also think that random drug testing on operator permit holders should be mandatory!

Thank you for your time,

Michael M. Ball
6 Field Street
S. Thomaston, ME 04858
(207) 594-8199
Permit No: 241962

Michael M. Ball

cc: DBC2/8

February 6 2006

New England fisheries Management Council
50 Water st Mill 2
Newburyport MA 01950

Phillip Michaud Jr
Box 333
Eastham MA
Owner/Operator
508-776-8569

Comments - General Category
Amendment 11

Dear Mr Howard, I will be unable to attend Scallop committee meetings February 21st thru 23rd
We need to establish T.A.C. for general boats. I recommend the following

1) Stay with November 04 Control date
2) Reduce the present 279 vessels by .
Increasing the 40 pound baseline to several
3) thousand.
Provide to the non qualifying vessels at 200 lb license, today's price is double past years, its fair.

I request individual pound instead of number of trips. Otherwise the much larger vessels, will force us small boats out in bad weather and long distances to catch our share before the T.A.C. is gone. This allows us to continue to also access other fisheries to complete year.

Sincerely, Phillip Michaud

cc DB(2/10)

Phillip Michaud Jr
P.O. Box 333
Eastham MA 02642
F/V Susan C III

February 6 2006

Dear N.E.F.M.C Paul Howard
and scallop committe.

To restrict the General Category harvest and be fair to the boats that have been at this for many years, I suggest use part of the Groundfish plan. In our case use 1998 thru 2003, Must have landed certain poundage or number of trips. Those that don't qualify can obtain A 200 lb open Access permit.

Todays dallor value is double the price we received prior to this new effort. I believe this would be fair Please don't allow 400 lb possesion limit to be raised even in closed area's perhaps we need a reduced Amount to reduce effort.

Sincerely Phillip Michaud
Small boat/owner/Operator

cc: DBC(2)

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

Bob Baines
F/V THRASHER
89 Waterman Beach Rd.
South Thomaston, Me. 04858

2/9/06

GENERAL CATEGORY SCALLOP COMMENTS

Dear Mr. Howard,

I am a Maine lobsterman who has also participated in the scallop fishery for over 20 years. I have held a general category permit with landings history since 1993. It is extremely important for Maine fishermen who hold a general category scallop permit to retain the ability to harvest scallops in waters off the New England coast. Many of the fishermen who hold general category scallop permits fish on small boats in a directed fishery either on a seasonal or full time basis. The ability to continue in this fishery will allow the owner operator, small boat fleet to survive in an arena being dominated by big boat, corporate owned operations.

1. If it is the intent of Amendment 11 to control capacity in the general category fleet, then limited entry must be used. I would support the control date that has been established, although there is not much difference in the number of permits issued in '04 compared to '05. Qualifications for a limited access program should be based on hundreds of pounds of scallops landed while holding a general category permit during the last ten years.

2/3. An allocation between the limited and general category fleet should only be considered if the limited access fleet is prohibited from landing scallops under their general category permit (double dipping). A 20% quota would be a fair allocation to allow the small boat fleet to maintain economic stability. A north/south sector should be considered to evenly distribute effort.

4. A hard TAC should be used for the entire general category fleet, along with limited entry, but not on an individual basis. It would not be in the best interest of the fishing community to create individual ownership of harvesting rights. A fleet wide TAC with area and/or season limits would effectively control effort.

5. The use of sectors or harvesting co-ops should be a part of the plan as long as all qualifying general category permit holders can participate. Sector allocation has the potential to provide better stewardship of the resource, but many questions first need to be answered as far as who has the right to harvest under the general category permit.

CCDB(2/15)

6. If a limited access program is initiated in the general category fishery, there should be no bycatch of scallops allowed by vessels which do not have general category permits. The scallops can be returned with minimal discard mortality. Under a hard TAC, any incidental catch should be prohibited when the quota is reached.

7. If the general category fleet is managed under a hard TAC, the fishing year should not be changed. The general category, directed fishery scallop fleet, is predominantly a small boat fishery. A change in the fishing year to later in the year could put these boats at risk by fishing later into the fall and winter months fearing there would be no quota left by springtime. The current fishing year provides these boats with the best weather which affords the fishermen the safest time of year to be working in small boats.

I have two other comments that I feel are relevant to the General Category Scallop Fishery. There seems to be a problem in the inability to transfer general category permit history. I know of a number of fishermen who have lost their history after building new boats and not being able to transfer their old permits to the new boat because it is still an open access fishery. This problem needs to be rectified if Amendment 11 is going to make the general category scallop fishery a limited access fishery and where entry is based on the control date and history.

Also, and I understand that this has nothing to do with Amendment 11, general category fishermen must be allowed back into the traditional fishing grounds in the Great South Channel . The general category fleet is using the same gear as the limited access fleet, so there is absolutely no reason why they should be treated any differently than the limited access fleet. The general category fleet must be designated as an exempted fishery which would sustain the economic viability of the fleet and spread effort over a much larger area.

Sincerely

Bob Baines
rsbaines@adelphia.net

JORDAN LYNN INC.

TERRY ALEXANDER
F/V JOCKA
F/V RACHEL T
Jordan Lynn, Inc
67 GROVER LANE
HARPSWELL, MAINE
04079
Phone:2077291850
Fax:2077257009
Cell:207-729-2538

Council Members,

After attending an informal meeting that the State of Maine hosted on the upcoming rule changes in the scallop fishery, I decided to put my two cents in on the subject.

Here is a little history on our Scallop fishery here in Midcoast Maine. We saw a Scallop boom from the late 70s till the mid 80s in our area. The Scallops just showed up one day and the next thing you know they left as fast as they came. Since that time we have not landed many Scallops. Our fleet pretty much fished on Scallops for a 8 or10 year period and Groundfish we caught along with them. {We Scalloped with nets and at that time it was legal}

After amendment 13 rule I purchased 3 permits to lease to my 2 Groundfish vessels all of them had General Category Scallop permits also. That leaves me with a total of 5 General Category permits none of them unless you go back far enough { in the low 80s } have landings prior to the control date.

cc: DB(2/21)

In a perfect world we should all be treated the same and have the same amount of allocation. I know that's not the way it is. I know, I lost a lot of Groundfish DAS to latent effort and now the Scallop fleet is facing the same thing.

I think if we have to cut the boats that don't have landings we should give them a certain amount of days in the fishery at the 400 pound limit { we need 400 lbs a day in order to make it profitable, lets not take a booming stock and make it not economical for the boats to go and catch them } We already have the VMS aboard the boats that are in the 400 category anyway, so tracking DAS would be simple enough.

I also would like to see us be able to stack our permits in the General Category. Those of us who purchased permits since all the fish regulations would be able to get some value out of them. Lets face it, we are counting them against the effort anyway, so why not put them into the equation for real.

I think the General Category should have at least 25% of the TAC in the Scallop fishery. There are communities up and down the eastern seaboard that are depending on us getting a fair share of the TAC. That would spread the wealth throughout the smaller communities that really need it with all the cuts in the other fisheries going on.

Thank you for taking time to read and consider my comments.

Thank You

Terry Alexander

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910

THE DIRECTOR

MAY 18 2004

and delivered
At meeting
From:

Mr. Arthur A. Ochse
2 Muriel Place
Manasquan, New Jersey 08736

Dear Mr. Ochse:

Thank you for your letter to President Bush regarding your opposition to proposed possession restrictions on Limited Access scallop vessels contained in Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (Amendment 10).

On April 14, 2004, the National Marine Fisheries Service (NMFS), acting on behalf of the Secretary of Commerce, approved all measures in Amendment 10 with the exception of the following two proposed measures, which were disapproved: (1) Possession restriction on Limited Access scallop vessels fishing outside of scallop days at sea; and a (2) cooperative industry resource survey program. Please be assured that NMFS considered all comments received on the proposed Amendment 10 in arriving at its decision to disapprove these two measures. NMFS announced its decision in the Federal Register on April 30, 2004 (copy enclosed).

In light of the disapproved measure listed under item 1 above, you should no longer be concerned that you will be constrained by the proposed possession restriction of 40 pounds of scallops on Limited Access scallop vessels fishing outside of a Scallop days-at-sea (DAS). Instead, the possession restriction for Limited Access scallop vessels fishing outside a scallop DAS remains at 400 pounds of scallops. We anticipate that the final rule will be published in the near future.

I appreciate your interest in this matter.

Sincerely,

William T Hogarth

William T. Hogarth, Ph.D.

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES

Congress of the United States
House of Representatives
Washington, DC 20515

January 28,2004

Dr. William T. Hogarth
Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, Maryland 20910

Dear Dr. Hogarth:

We are writing to convey our deep concerns regarding the exclusion provision of the most recent Amendment 10 to the Sea Scallop Fisheries Management Plan submitted to the Secretary of Commerce by the New England Fisheries Management Council. If approved as written, the Amendment 10 will prevent certain scallop vessels (mostly New Jersey boats) with full-time Limited Access permits from participating in the General Category scallop fishery when they are not using a sea scallop day-at-sea.

Approximately two-dozen full-time New Jersey Limited Access vessels have participated in the General Category scallop fishery when not on a day at sea since the option became available. The 400-pound daily limit of shucked scallops available pursuant to the current FMP contributes to the economic viability of these vessels and allows them to maintain crew between regular scallop trips. New Jersey shore-side operators have developed a significant consumer market for fresh "day boat" scallops based on the product harvested under this option. To our knowledge this fishery is restricted to New Jersey vessels operating from New Jersey ports.

Ironically, the NEFMC placed no other permit restrictions on the General Category fishery and allows for increased scallop landings by combination permit groundfish vessels. Therefore, if the Amendment is implemented in its current form, it will allow a new class of unlimited non-scalloping participants to enter into this fishery while concurrently reducing New Jersey's level of participation.

Clearly, we cannot abide such an unfair proposal by the Council process. Our request that you reject the exclusion provision in Sea Scallop Amendment 10 is wholly consistent with the position of the Mid-Atlantic Fisheries Management Council (see attached letter from R. Savage, Chairman of the Mid-Atlantic Council to Secretary Donald Evans, dated December 24, 2003). The MAFMC cites several inconsistencies with respect to the National Standards and basic issues of regional fairness.

We hope you will heed the concerns of the MAFMC and disapprove the exclusion provision of Amendment 10 to the Scallop Fishery Management Plan. Thank you for your consideration of our request.

Sincerely,

Jim Saxton
Member of Congress

Frank A. LoBiondo
Member of Congress

Christopher H. Smith
Member of Congress

Frank Pallone, Jr.
Member of Congress

James Gutowski
PO Box 772
1809 Central Ave
Barnegat Light New Jersey 08006

I submit these comments on the range of issues that should be addressed in Amendment 11 to the Scallop FMP.

#1 Limited entry in the Gen Cat fishery
The Council should consider limited access to manage capacity in the Gen Cat fishery. In Amendment 4 the council created the Gen Cat as a trade off to allow boats that did not qualify for limited access, or chose not to accept a limited access scallop permit that would limit there precipitation in other fishers, and limited access vessels fishing off their days at sea. The Gen cat was intended for minimal impact on scallop mortality. Capacity needs to be limited so the qualifying vessels catch rates would not be reduced below what is needed to sustain a day boat scalloper.

If a limited access program is to be established the November 1,2004 control date must be used. Prior to that control date more specific criteria should be met so the amount of qualifying vessels is not so large that it cannot be supported by a reasonable and historic percentage of the overall TAC.

Vessels applying for limited access in the directed Gen Cat scallop fishery should be able to show historic participation from Amendment 4 (1994) thru the control date set in 2004. They should have significant landings in directed scallop catches in several different years during this period. This would account for historical effort during all ranges of scallop rebuilding and scallop abundance. There may be historic participants fishing in state waters that do not fall under the Amendment 11 regime.

#2 Allocation between limited and Gen Cat fleets
The council should consider resource allocation between the limited access fleet and the day boat fleet fishing in the General category. That allocation should be consistent with historical landings and percentages since the implementation Amendment 4.

The basis for choosing "fair and equitable" allocations for the Gen Cat and or limited access fleets should be historical data. **Only** landings from **before** the November 1,2004 control date should be considered in determining a reasonable allocation. The average Gen Gat landings between 1994 and 2004 were 2.93% of the overall TAC. The limited access fleet endured very difficult times during the implementation of Amendment 4; we have participated in cooperative research, at the peak of conservation and historical levels of scallop abundance the Gen Cat sector has exploded. Any allocation should be based on the scallop fishery Amendment 4 established; it stated if the General Category grew, the council should reduce General Category landings as opposed to re-doing the allocation of the fishery that it created.

#3 Dual applications for limited access vessels

Limited access should **not** be prohibited from targeting scallops under Gen Cat rules. Similar to any vessel applying for a limited access Gen Cat permit these vessels would need to meet the same historical criteria prior to Nov 1,2004.
This limited access sector participating in the Gen Cat since 1994 is not the problem. From 1994 thru 2004 their landings accounted for a yearly average only 0.53% of the overall TAC.
These vessels should not be segregated because they have a limited access scallop permit, in most cases they cannot target other species.

If the council continues to consider the exclusion of limited access vessels in the Gen Cat the Ad Hoc Gen Cat Advisory panel should include members who have operated limited access vessels under Gen Cat rules.

#4 Use of hard TACs in the General Category fishery
A hard TAC should be considered as an option. Along with limited access and other measures to ensure the TAC can be set at a reasonable level of the overall scallop catch.

#5 Use of Sectors and harvesting coops (Dedicated Access Privileges)
This new fishery created in Amendment 11 should insure a historical inshore day boat fishery consistent with Amendment 4. It should not consider sector-harvesting coops or access privileges enabling pounds to be stacked for longer trips further from shore.

#6 Landings of incidental Scallop catch
Any vessel that does not qualify for a new limited access scallop permit should be allowed a small level of incidental scallop catch, thus preventing discards of scallops while fishing for other species.

#7Change the fishing year
The council should not change the fishing year at this time. This will complicate an already time sensitive Amendment 11. Until R/V Albatross surveys are replaced and times are set the change if the fishing year is not warranted.

Eric Hansen F/V ENDEAVOR

Good Evening, I would like to start by pointing out that since Amendment four was implemented, the Limited access fleet has worked hand in hand with the NEFMC to help PROTECT the scallop resource. The industry has participated along with SMAST to provide the best available science needed to formulate workable fisheries management. Everyone involved should be congratulated.

With this in mind, the scallop industry has found itself a victim of its own success. The General Category, which was created by Amendment four to assist small vessels that historically landed scallops caught inshore, seasonally and in amounts too small to justify a limited access permit, has evolved into an overcapitalized industry.

The success of the scallop resource and unprecedented scallop prices have created an explosion of effort directed at this resource. We have witnessed the general category vessels legally catching over 5% of total scallop landings in 2004 and most likely double or triple that percentage in 2005. When the general category was created, the landings were not expected to be negligible. (Less than 2%)

We cannot turn back the clock to rewrite Amendment four but we have to do the next best thing. A control date has been established. We must use this control date to make this a truly limited access fishery. To qualify for this new sector of the fishery we should apply some of the same criteria that the current Limited access fleet had to provide under amendment four, such as proof of directed fishery scallop landings in at least two or three years previous to the control date. Incidental catches of scallops would be unaffected as long as the value of the landed scallops amounted to less than 10% of the total landed value.

The allocation provided to this new sector of the fishery should be in line with the intent of Amendment four. I realize that an allocation of less than two percent would create severe hardships if the number of qualifying vessels is large, but please keep in mind that the current limited access fleet has been restricted severely in days at sea allowed since 1994, while the general category has remained unchanged.

I also feel that the new General category sector of the fishery should be subject to the same rules and gear restrictions as the rest of the limited access fleet, such as no stacking of permits and or days. The council voted this past year not to allow full-time boats to land any more than 18,000 lbs on any one trip in the special access areas, even if they were allocated three trips or 44,000 lbs in that area for the year. This would translate to the general category sector in that no more than 400 lbs. be landed on any one trip, even if they are allocated 4000+ lbs per year. Single small dredges should be the only method of trawling allowed since nets have been known to target smaller scallops which are the future of the fishery.

I want to thank everyone for this opportunity to voice my concerns regarding this amendment, and I hope the correct decisions are made to keep the scallop resource healthy for years to come.

Boats had to take General Category because they could not afford a VMS System. $8000 in 1994 – now VMS is more affordable. General Category boats that could have qualified for Limited Access should have that right now.

LIMITED ENTRY IN THE GENERAL CATEGORY FISHERY.

1. A) Yes, limited entry.

1. B) The qualifying criteria should not be based on Nov. 1, 20004 control date. It should be the VMS Installation date of October 31, 2005.

1. C) Qualifications – All permits that have history or have been attached to another permit since 1994. Landings should not be considered as an individual quota. Why should a person be rewarded with the right to fish more when he helped in over fishing?

1. D) It will stop a lot of boats from fishing on the traditional bottom after the scallop season.

1. E) You will take the option away from people that do not fish outside of their homeports. Those that fish outside 3 miles along the Maine Coast the historical fishing practices would be left to only those who qualified and spent the money for the VMS.

ALLOCATION BETWEEN THE LIMITED AND GENERAL CATEGORY FLEETS.

2. A) We have an allocation of 400 pounds now. If the council needs to set an allocation it should be per boat, per year. 80,000 pounds per boat , per year.

2. B) Fair and equitable is 400 pounds per day. 1 month fishing for limited access boats equals 12 months fishing to general category boats.

DUAL APPLICATION FOR LIMITED ACCESS VESSELS.

3. A) No limited access vessel should have a general category permit. They should be prohibited from accessing both categories of this fishery.

3. B) Limited access vessels would have the same impacts put on them as general category vessels have had since the 400 pound limit was mandated. You meet your permit limits, then go home or do something else.

3. C) No incidental scallop catch or 40 pounds per trip.

USE OF HARD TAC'S IN THE GENERAL CATEGORY FISHERY (FLEETWIDE, BY AREA, SEASON, SECTOR OR ON AN INDIVIDUAL BASIS)

4. A) No hard TAC . We currently have one now at 400 pounds per day.

4. B) No

4. C) N/A

4. D) No further vessel categories. General category should be treated the same whether you have a 70 foot boat or a 35 foot boat. Size , horsepower, should make no difference. We are all grouped together and should stay equal. We already have two separate categories now.

4. E) TAC on an individual basis is fairer to each boat (within its category). Fleet wide it is not fair to the smaller boats.

4. F) No performance criteria used. The person has held a valid permit since 1994 or installed the required VMS by October 31, 2005.

USE OF SECTORS AND HARVESTING COOPS (DEDICATED ACCESS PRIVILEGES)

5. A) If a fisherman should be able to lease his poundage for the year to someone else.

5. B) Sector allocation would change the general category fishery . It would negatively affect fishing communities.

5. C) No consolidation. Only leasing of poundage for that year.

LANDINGS OF INCIDENTAL SCALLOP CATCH

6. A) Yes, 40 pounds per trip.

6. B) Yes, 40 pounds per trip.

6. C) No, we should fish with the same rules as the Limited Access boats.

CHANGE THE FISHING YEAR

7. A) Do not change the fishing year. (NO) We do not want to have an allocation that can be caught up in the fall and winter down south, before the northern boats have a chance to fish. It needs to be fair, boats from New York to Maine need a chance to fish. Status Quo is the way to go for now.

ANY OTHER COMMENTS:

The council should consider that general category permits be held by owner operator vessels only. (To be leased to other owner operator vessels only?)

1. Owner operator only
2. 10.6 ft Drag
3. 400 pounds per day or 80,000 pounds per year.
4. 4 men per boat.
5. Fishing under the same restrictions as limited access boats – twine top in drag, turtle exclusions, etc.
6. Access to the same fishing grounds as the limited access boats.

Stanley C Sargent

51 Kansas rd

Millbridge me 04681

207 - 546 - 7100

ATLANTIC CAPES FISHERIES, INC.

TEL. (609) 884-3000

P.O.BOX 555
985 OCEAN DRIVE
CAPE MAY, NEW JERSEY 08204

FAX (609) 884-3261

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

Via e-mail to: scallopscoping@noaa.gov

RE: Atlantic Sea Scallop Amendment # 11 Scoping Comments

February 23, 2006

Dear Sirs,

Please consider these comments for the Amendment # 11 Scoping Process and is submitted on behalf of the vessels and crews of over thirty limited access vessels who offload and sell to Atlantic Capes Fisheries, Inc.

I strongly support the implementation of this Amendment to control and limit the effort and the associated mortality on the scallop resource from the General Category fishery. By way of history it is illustrative to remind the Council that in 2003 (and earlier) I personally submitted written comments to the NEFMC concerning Amendment #10 encouraging the NEFMC to control the growing General Category effort, in my letter of July 15, 2003 to the NEFMC I stated:

> *General Category participation is exploding as shrimp vessels from the south and ground fish vessels from the north all are rigging up. This effort is overwhelming enforcement, which has no idea of how much effort there is or when landings occur. While it is politically impossible to ban the category we must adopt appropriate management restrictions, which should include…..There must be an overall TAC for General Category based on historical catches, which should be no more than 2% of the total estimated harvest, reports must be filed weekly and the overall fishery closed when 2% is harvested……There can be no rationale to increase the landing limit of General Category vessels above the current 400 pounds. We cannot be encouraging more vessels to join this effort…...*

If the NEFMC had heeded these warnings in 2003 and limited General Category effort in Amendment #10 much of the over investment in new vessels and conversions would not have occurred. At the time the NEFMC considered Amendment # 10 the PDT

unfortunately reported that they did not have evidence of this increase in effort, even though we were informing the Council. But the PDT was relying on NMFS landing data, . . which was only compiled for 2001 and part of 2002. This unfortunate decision to delay Gen Cat effort controls allowed the problem to get much worse and will make the actions necessary to control the General Category effort that much more difficult to implement.

Now we are faced with the fact that inshore areas are being over-fished, too many new entrants have engaged in a directed Gen Cat fishery moving the fishery from controlled planned harvest to a 'gold rush' and overfishing the stocks. While some of these General Category fishermen will make a case for allowing them to continue due to their recent investments, the Council must make the correct decision to limit Genereal Category effort so that the investment of limited access fishermen not only in money but years of curtailing their own harvests going from 240 Days at Sea to less than 100 Days at Sea is not destroyed but unregulated opportunistic entrants with no long term commitment to the fishery.

Specific comments concerning what should be implemented in Amendment #11.

Control Date: The NEFMC should base it management decisions upon the history of the fishery through the Control Date of November 1, 2004. Management decisions should not include landings and effort after the Control Date.

HARD TAC - The NEMFC should implement a HARD TAC for Gen Cat vessels averaging the history of General Category effort from 1994 through 2004. The Council staff should analyze the range of the lowest during this period (about 1%) and the maximum (about 5%) as the range of options. I would recommend in implementation as the average of the period 94 through 2004, which would be about 3% which is 50% larger than the HARD TAC of 2%, as recommended in 2003 before the explosion of effort.

Limited Entry – If the NEFMC makes the correct hard decision to limit the General Category to a HARD TAC of 2%- 3% of the catch, it should then allow the General Category fishermen to decide how to establish limited entry, but it seems to be most logical to use the Control Date to qualify fishermen. The NEFMC should evaluate various criteria, as suggested by General Category fishermen to qualify for a limited entry Gen Cat permit across a range from one pound, 1000 pounds, 2000 pounds,10000 pounds, etc. of landings in one year.

Limited Access Fishermen fishing as Gen Cat when not on a DAS – The same qualifying criteria that is used to implement limited entry in the Gen Cat fishery should be analyzed to allow those limited access fishermen who have fished for Gen Cat while not on their DAS to continue to fish as Gen Cat. Limited Access Fishermen are similar to other fishermen (i.e. Groundfish, squid, fluke, etc) in that they have few other options. Those Limited Access Fishermen who fished in a Gen Cat manner in the period of 1994 to 2004 and have landings sufficient to qualify (see above criteria) should be given a Gen Cat permit.

How to Allocate Effort – After a HARD TAC is determined and the number of the qualifying limited entry General Category Permits is determined the NEFMC must decide

what effort controls to use to manage the allowed General Category effort. One option to consider would be to allow a derby, which would have all Gen Cat vessels fish until the TAC is caught and then all vessels would stop. This should be analyzed (and I believe should be rejected.) The NEFMC should analyze options of dividing the annual HARD TAC equally between all qualifying Gen Cat vessels and allocating to each qualifying Gen Cat a fixed number of trips i.e. 10, 20, 30 trips (whatever the math works out to be annually). A third option would be allocate the number of trips quarterly and add or subtract trips quarterly based upon how many Gen Cat vessels actually go fishing each quarter. The NEFMC should consider options which will allocate to each limited access Gen Cat vessel a fixed number of trips per year, projected to stay within the fixed HARD TAC, that each vessel can decide when to harvest.

Incidental Catches – The NEFMC should allow for incidental bycatches in other fisheries and analyze various options from 40 pounds to no more than 400 pounds, provided the scallops are no more than 10% of the catch on board.

Sector Allocations and Cooperatives – This should be the focus of Amendment #12, not Amendment #11. With the cost of maintaining vessels and fuel both the Gen Cat and Limited Access Fleets will need to consider some methods of becoming more efficient after all effort is controlled. This should be done in Amendment # 12 to be started as soon as General Category effort is managed in and the scope of General Category participants is defined in Amendment #11.

Scallop Fishing Year – A change in the scallop fishing year should be considered in Amendment #12, not Amendment #11. Recently the NEFMC and NEFSC discussed the formation of a scallop survey committee to look at the design and timing of annual surveys. I think discussion of changing the fishing year should be determined in a future Amendment, after NMFS, NEFMC, and industry develop a long term annual survey and analysis plan.

I look forward to working with the NEFMC and other members of industry, including General Category fishermen to control the mortality of the General Category sector, stop localized overfishing, and continue to foster a sustainable and economically efficient scallop fishery, which can be a model of progressive fisheries management.

Thank you for considering our comments.

Sincerely yours,

Daniel Cohen, President

TENACIOUS FISHING CORP.

P.O. Box 1432 · Montauk, NY 11954

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

February 18, 2006

Dear Mr. Howard,

Thank you for letting me comment on the development of Amendment 11. My main concern is with issue #3 from the council draft proposal. I am the owner of a 60 foot scallop boat from Montauk, N.Y. I don't feel that ALL limited access vessels should be categorized together. I have a limited access- part time- small dredge permit with 27 days at sea and 1 access area trip in 2006. A part time boat, with these few days, needs to be able to harvest 400 pounds under general category, outside there allocated days at sea, to stay in business. A limited access- full time permitted vessel has over two and a half times the amount of days at sea(67) and one more access area trip. Therefore you cannot consider ALL limited Access scallop vessels in the same management proposal! We are very different economically and dependant on the access under general category rules.

There also seems to be a very small amount of limited access vessels targeting scallops under general category rules. The resource is only accessible to smaller boats, close to shore, during the summer months when the scallops are just right for harvesting. With fuel prices at 2.50 per gallon, and insurance premiums in excess of $40,000.00, the 400 lbs., per day helps round out the year. There is a very small percentage of landings from these boats. In table #1-general category landings by permit, from 1994-2005 only .54% of the total scallop landings are by limited access vessels fishing under general category rules. It also states that in 2005 alone, 13% of scallop landings are from these new entrants that want to form there own group.

Let's keep these traditional limited access vessels fishing under general category rules, even if it means subtracting the .54% from the limited access total allowable catch. Let's not eliminate a fishery (limited access) to form another (general category).

Thank you,
Sincerely,
Vincent Carillo, Jr.

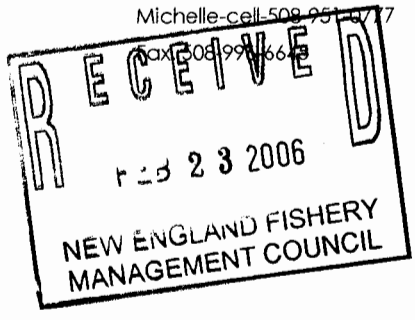
Vincent Carillo

cc: DB(2/27)

JOSEPH & MICHELLE LETTS

7 Andrew Ave.
Fairhaven, MA 02719

home- 508-996-6157
Joe-cell-443-614-2869
Michelle-cell-508-951-6717
fax-508-996-6629



February 20, 2006

New England Fisheries Management Council
Attn: Paul J. Howard
50 Water Street
Mill 2
Newburyport, MA 01950

To whom it may concern:

As owners of both a large 86' full-time single dredge scalloper, F/V Ocean Reign and also a small 50' general category scalloper, F/V Rock N Rye. We would like to give you our input as far as the general category regulations as well as limited access regulations.

We recently were forced to put on a $5,000.00 plus Boatracs box in order to continue fishing for the 400lbs. per day. Also a cut off date for issuance of General Category permits went into effect as of Nov. 2004. My understanding is that licenses still have been granted after the cut off date. If indeed the idea is to reduce the catch limits then I suggest that the government go back to the cut off date of Nov. 2004 and restrict any vessel which has not shown landings under the general category permit prior to the cut off date of Nov. 2004. This would reduce the general category fleet by approximately one third. I also believe that since Boatracs have been added to the 400 lb catch limit vessels, that the scallop catch rate should be monitored for 1 year prior to enforcing a "hard" total allowable catch. If after the one year of monitoring, the government feels the need to had additional restrictions, we suggest limiting the dredge size for all vessels fishing under the general category 400 lb. per day to one 10" dredge regardless of the size of the vessel. This would discourage some of the larger limited access vessels from fishing the 400lb. per day after their days have been used up.

Please keep in mind that some of these small general category permit vessels still have large mortgages on them. Our general category vessel is a refurbished steel 50' boat with state of the art safety and electronics. This is not a fly by night $25,000.00 vessel trying to rape the industry. Our general category vessel cost over $250,000.00 to put it to work. With all the demands already in place I would hope that our above suggestions would help reduce the catch and not harm the individuals that have history with their general category permits.

Thank you for your time and consideration.

Joseph & Michelle Letts

Joseph & Michelle Letts

cc: DB(2/27)

PO BOX 1138
N Chatham, MA 02651

DAVID NADEAU
F.V. BAD SEED
CHATHAM MASS.

I THINK THE CONTROL DATE IS SOMTHING THAT MUST HAPPEN. I THINK THAT THERE SHOULD BE OTHER FACTORS IN PLACE SUCH AS LANDING PRIOR TO THE NOV 04 CONTROL DATE. MY REASON BEING IT WILL CREATE LICENCES THAT WERE NEVER HAD LANDING ALL OF A SUDDEN THEY HAVE A LICENCE THAT WILL BECOME ACTIVE BECAUSE THERE ARE A LIMITED NUMBER OF THEM. PICK A NUMBER 5,000 - 10,000 20,000 SOMTHING TO SHOW THEY [redacted] NEED THIS TO MAKE A LIVING THEN IT SHOULD BRING IT DOWN TO A CONTROLABLE NUMBER. SO THE PEAPLE THAT NEED THIS WILL HAVE ENOUGH TO MAKE A LIVING.

AS FAR AS THE LIMITED ACCESS BOAT FISHING UNDER GENRAL CAT. THAT HAS TO STOPP IF WE HAVE [redacted] HAVE A TAC.

INCIDENTAL SCALLOP CATCH SHOULD BE BROUGHT TO 100 LBS. SO NOT TO ENCOURAGE TRYING TO CATCH THEM A BE IN A DIFFENNT CATAGORY

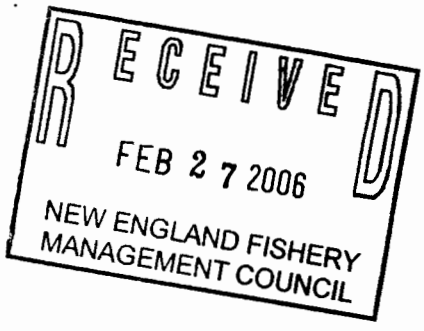
cc DB (2/28)

I THINK THAT we SHOULd Be ABIe
TO FISH in THe CHANeL 521.
BeCAUSe EVeryone incluDiny
myself From MAine TO MASS is
going TO THe Mid ATlANTic. THe yellow
TAiL BYCATCH is none eXSiTANT
in #521 THIS is going TO PUT
Me OUT OF BUSSNISe FAST
MAKe THE MAX Dredge
SIZe 8 FeeT For THe genrAL
BOATS TO THAT WOULd HeIP ALOT

CAPT DAVid NAdeau
P.O. BOX 1138
NORTH EAST HAM
MASS

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Monday, March 06, 2006 2:53 PM
To: Deirdre Boelke
Subject: [Fwd: gen cat]



-------- Original Message --------
Subject: gen cat
Date: Mon, 27 Feb 2006 07:27:58 -0500
From: chris la rocca <holkai@msn.com>
To: Scallopscoping@noaa.gov

I think the nov 1 control date should be used the criteria should be an avge from the period amend 4 to nov1 04.
if limited access permit holders can meet the criteria then they should get a gen cat ,also the alocated TAC should also be consistent with historical levels and there should definitly be a hard TAC. there should be no segregating of the resource by area or by time, and to change the fishing year now would be ridicilus. my name is chris la rocca i have been fishing for over 20 years i now run a full scalloper from barnegat light iwas at the meeting in cape may and wanted to send in written comments. thanx for considering my ideas

2.27.6

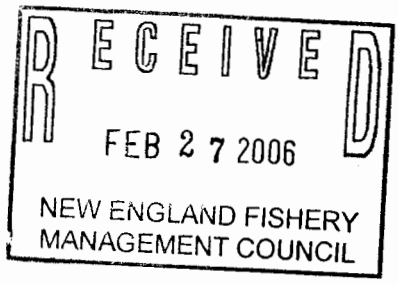
GENERAL CATEGORY COMMENTS,

Hello, my name is Peter Spong. I own the F/V BROOKE C, DOC# 660604, PERMIT #231025. My concern with the upcoming rule making is with the amount of history that could be required. I fish out of Montauk New York. The few scallop boats that do fish out of there were only given one year to scramble to put any type of history together beside gearing up the boat and learning how + where to caught the scallops. The area outside of Montauk was closed to us prior to the beginning of 2004. Not certain of the exact date but it was considered a yellowtail sanctuary. I feel the general permit allows local boats to supplement their income from other allowed fisheries. Thank you for taking my comments into consideration.

Peter Spong
631-287-6077
F/V Brooke
3 Highlands Dr
South Hampton NY 11968

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Monday, March 06, 2006 2:53 PM
To: Deirdre Boelke
Subject: [Fwd: Admendment 11]



-------- Original Message --------
Subject: Admendment 11
Date: Mon, 27 Feb 2006 12:24:31 -0500
From: william reed <rschreed@hotmail.com>
To: Scallopscoping@noaa.gov

February 27, 2006 NEFMC, Scallop Amendment 11

I, William Reed, owner of the F/V North Sea and F/V Providence, have been utilizing my general category permits on the both vessels.

After attending the Scoping Hearing in Cape May Courthouse and hearing some passionate pleas, I have changed my opinion on one important issue; that is, the November 1, 2004 deadline. I just do not want to be the one to push a man's livelihood away from him, to squash a life's dream and ambition.

It is my opinion that you do not consider the November 1, 2004 deadline based on the fact that NMFS was still handing out dreams when with hindsight; they should have withheld these permits. Pandora was let out of the box. However, I would like to suggest a higher qualifying standard for maintaining this permit. Say, 50 trips, which would translate, to 20,000 lb meat or 2,500 bushels of scallops; once again landed between 1994-2005 in any one year.

Issue #2 Allocation: as much as possible for the general category fleet.
Realistically, I feel that a 7.5% allocation is fair or 5% with the limited access boats eliminated from the General Category Allocation; by area will just concentrate boats, gear type not in favor of, however Mid-Atlantic boats should be required to tow 6 ½" square cod ends with 6" twine in net.
This would be consistent with the SNE region. As for turtles, they are attracted by the shucking and scallop guts from the limited access boats going back and forth over the same tow, creating a huge chum slick attracting sea turtles, tunas and sea birds. Shucking 50 bushels is not enough of a chum slick to attract much marine life. Shell stocking must continue to be allowed. I supply important markets with live scallops for sushi and we would like to continue this. As I ramble on, I am strongly in favor of an individual quota that is only transferable on a yearly basis.

Issue #3: I feel strongly in favor of not allowing the limited access boats into this category, following the advice of Bill Hogarth and local congressional representative.

Issue #4: Hard TAC appears to be a necessary evil. Again, I am in favor of an individual quota.

Issue #5: I feel that individual quotas would just be simpler for all. If not community quotas would be the next best thing.

Issue #6: There needs to continue to be 40 lb or 5 bushels of individual catch- Must avoid regulatory discards.

Issue #7: Too bad January 1st does not start the year. However, leave the start date alone.

William Reed

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Monday, March 06, 2006 2:53 PM
To: Deirdre Boelke
Subject: [Fwd: atlantic sea scallop amendment11scoping comments]

-------- Original Message --------
Subject: atlantic sea scallop amendment11scoping comments
Date: Mon, 27 Feb 2006 15:17:20 -0500
From: chris davis <scrounge69@comcast.net>
To: Scallopscoping@noaa.gov

NMFS; I was at the meeting in hyannis on feb.23 I did not speak as I was in a wheelchair and the meeting room was overcrowded so I will make my comments here.

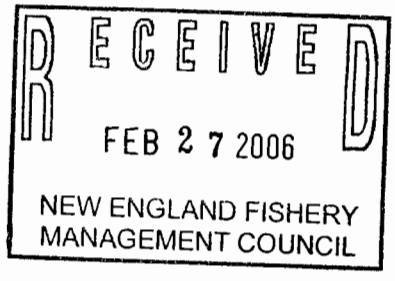
As I am sure you all know the increase in the size and catch of the GC was do to the Limited Entry vessels using up thier days early in the season causing an increase in the price which caused the GC boats to get 8,
9 ,10 dollars per pound! I spoke to a gentleman on the councel that told me of the shrimpers moving in on the mid atlantic all in the GC .This gentleman told me that they were responsable for the Limited Access boats being so upset about the GC , it seems these shrimpers were rigged both sides with large rakes and were staying out 30 or more hours and landing over 1000 lbs per trip!! My responce to this was,Why if everyone knows this,and the trip limit is 400lbs WHY NOT ENFORCE THE LAWS WE ALLREADY HAVE. and bust these vessels ,that would be the best way of cutting back on OVERFISHING.! I believe that these vessels and the Limited Entry vessels that hold and use GC permits caused the overfishing to which you refered to in your paper.This dual permit situation should be outlawed.

I believe that setting a hard tac will cause GC boats ,most being smaller vessels, to fish weather that they would under todays regulations stay or GO HOME but if they knew the quota was nearly caught they will stay out or go in weather that is too much for thier boats.

The question of limited entry for GC vessels is one that won't have much affect immediately but the small boat fleet has always changed fisheries when the need arises, the fishermans monument at Chatham Fish Pier has a Quote on it "EVER CHANGING TO REMAIN THE SAME"and I believe it is true of the Chatham fleet and all the small boat fleets in New England, so to tell a fisherman he can't throw on a scallop rake and go catch 400lbs when he is driven out of his present fishery by lost days at sea , or lack of fish he was working on ,would be the end of small boat fleets and I believe that would be a great loss to New England. Unless of course the majority of the small boat fleet has a GC permit then using the control date as a shut off could be justified as a protection from an overabundence of GC boats from elsewhere.n the case of seperate allocations for the GC and the limited entry vessels I think that we should give the GC boats a portion of the total catch and leave the TAC as it is, nonexistant.The DAP might be a way of dealing with the extra vessels from elsewhere but would be a difficult project.Lastly I think the incidental catch and the fishingyear should be left as they are.Thank you , Christopher Davis ,owner F/V Coming Home ,Chatham Ma.

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Monday, March 06, 2006 2:53 PM
To: Deirdre Boelke
Subject: [Fwd: Amendment 11]



-------- Original Message --------
Subject: Amendment 11
Date: Mon, 27 Feb 2006 17:26:22 -0500
From: Donald Carter <neindustrial@hotmail.com>
To: Scallopscoping@noaa.gov

Mr. Paul Howard, As a Day/General Category Scalloper, I had atended Both the Meeting in Boston 2005 and Also the Meeting at Cape May NJ Feb 2006, Both where Confusing on the Game Plan to see just what the Process is to Control the GC Quotas, I had sugested at the Meeting in Boston 2005 to Install Sky Mate / Boat Trax, of which Finaly Happed in Dec 2005. That alone cut the 400 pound Boat Fleet by 70%, and I had also Asked to Stop giving out the GC Permits that Meeting or ASAP, of which hasn't happed, I had Also asked for a 250 Day GC Fishing Year Pr. Permit, of which I fill would Cut another 30% of the Total Harvest in the GC Fisheries.

I'm also asking for you to Look at the GC fisheries now that the Boat Trax / Skymate System are in use, And now take a true Survey for ONE YEAR on the Pounds Taken by the GC Fisheries, I Also Fill that is Going to Make a Differance in the Total Catch By 400 Pound GC. Most of the Boats in the GC will have a Hard Time With the Weather to get in 250 Days. The New Control Date should be Moved to Dec.05 to Start a Catch history Per. Permit, Because of the Tracing Systems now in Place. Please No Catch Durby that would make it a Dangerus Fisheries. Make GC a Limited Entry Fisheries. Have a Single Dredge Size up to 15' Max. The LA Vessals have Landed Scallops in the GC Rules, That may be OK only if it Goes Agianst the LA Catch and not the GC Catch. No Hard TAC should be Considered That would Also Cause a Durby Type Fisheries. Keep the GC and LA Fisheries Opened to All that Have Boat-Trac System/Sky Mate, and a Dec 05 Dead Line for 1B Permits. Total Days 250 at Sea and/Or 400 Pr.
Day Total Wt. should be Set as to Trac Pr. Vessel. Thanks For Your Time.
Please Call me if there's Somthing I can Add to the Advisory Panel. Don Carter
1-609-884-1771

Comments In Response To Scallop Amendment 11
Seven Specific Scoping Issues

To: Deidre V. Boelke, Fishery Analyst, Lead Staff Member working on Amendment 11
From: Paul Vafides, Hull, MA. Full Time Commercial Fisherman since 1973/Boat Owner FV Salvatore from 1973-1989 (Lobstering, offshore gillnetting, scalloping downeast Maine and offshore), Crew on offshore groundfish trawler for 3 years, Captain of offshore groundfish trawler for 13 years, Purchased FV Donna Jean II March/2004 with General Category Scallop Permit, Multispecies C Days, Offshore lobstering permit.

Thank you for this opportunity to respond to the scoping issues in writing. Conservation of species for the ongoing purpose of sustaining food supplies is of vital importance. Having reliable unbiased data, reliable unbiased science, peer reviewed science, and integrity from hired lobbyists, hired lobbyist scientists and most importantly from the fishermen is also a vital part of this process. It is also the important job to understand that boats must be maintained and crewed by competent and responsible fishermen. Boats must be insured, maintained, and provide a living to insure this type of responsibility. It is the hope that the council also shares these goals. If not, lives will be lost, boats will be uninsured and continue to be crewed by noncitizens, and laws will continue to be broken.

Final Scoping Document

- Additional issues that should be included are to disallow shell stocking and netting scallops. Historically, shell stocking has been devastating to the scallop business and nets catch to many small scallops.
- No VMS=No GC Permit. Dealers should be equally responsible as the permit holder for buying scallops beyond the limit from boats. The proposed bag tagging program along with the VMS should solve this problem.

Issue # 1-Limited Entry

- The control date of Nov. 1, 2004 should be approved immediately. All boats gaining licenses after this date were properly warned.
- In addition, there should be a significant history attached to this control date along with compliance to VMS. A 5 year average would provide a fair judgment of boats actively fishing the GC permit. This would provide for boat owners who may have been ill for several years, had boat breakdowns, or any of the many possibilities that could have ill-fated a vessel or family.

Issue # 2-Allocation

- Boats with GC permits that have historically depended upon, have a proven history of active permit usage should be allocated 20%. Without this type of assurance then fishing boats would not be able to maintain there well being, pay their crew, and maintain appropriate insurance coverage for vessel and crew.
- There should be consideration of the approximate 54 days that LA boats fish unrestricted in open waters plus closed areas in addition to their other multispecies permits (which often times are not even used or leased because

they are considered full time scallop boats and do not need the additional income). Their corporations are able to maintain their vessels, insure their vessels, pay and maintain crews. The GC permit was also traditionally created for Chatham and Maine for small boats that fished for 5-6 months in other fisheries. They too need the same right to maintain their vessels, insure their vessels, pay and maintain crews. By increasing the number of GC permits, allowing overfishing, allowing LA boats to fish with a GC permits using and allowing nets to fish for scallops, the purpose of the GC permit has been lost. Many of the boats using the permit now have become full time scallop boats with no other target but scallops using the GC permit. The traditional GC permit holders depended upon 5-6 months of fishing with 70-100 trips. By looking at your statistics, it looks as though GC boats only used an average of 38 trips. The price of Scallops just three years ago was about $4/lb and was all I was hoping for. I was also dependent upon 5-6 months of fishing with an average of 15-20 trips/month out of Chatham. 38 trips would not sustain the insurance to cover my boat, one man crew, boat payment, and dockage for the 5-6 months of fishing. I think you will find this to be true of most of the Maine boats as well, that scallop in addition to lobster fish.

- To prevent a derby style of fishing created by fleet, area, or season, it would probably be in the best interest for boats to receive individual allocation.

Issue # 3-Dual Application for limited access vessels

- LA vessels should not be allowed to fish under GC permits. Some of these vessels reach 90-100 feet in length. No, this should be stopped immediately.
- No, incidental catch should be thrown back if it is still alive and most of the time it is. Why would there be incidental catch on a LA boat?

Issue # 4-Hard TACS

- Yes, a hard TAC would be effective in preventing overfishing so long as it does not create the derby style fishing created by fleet-wide, area, or season. Criteria should again be based on history and should probably be on an individual basis so that the vessel can choose the best and safest time to fish in coordination with other fishing efforts of the vessel.

Issue # 5-Sectors, DAPS

- A dedicated access privilege is certainly better than derby style fishing. It would of course be good for me since I am based out of Chatham. It provides for the sector to police itself.

Issue # 6-Incidental Scallop Catch

- Both the LA and GC fleets should not land small amounts of scallops. If the boat is targeting another species than throw them back.
- If you are going to provide for incidental catch then make it small so that you are not providing for effort to target scallops.

Issue # 7-Change of Fishing Year

- No

It is very difficult to observe the big boat fleet versus the small boat fleet. I have long term friends from both sides of the street. I have been in this business since the inception of the 200 mile limit and seen shell stocking, thousands of pounds of juvenile fish landed, boats repeatedly go into closed areas, foreign captains and foreign crews that couldn't read the laws let alone speak in English, illegal dumping of millions of gallons of toxins, hauled back barrels and barrels of toxins, seen deformed species near nuclear plants, wonder what all the chlorinated water from the outfalls will create. On the other hand, I have also seen honesty, hard work, sacrifice, respect for the fisheries, respect and concern for the crew and families, respect for the ongoing and preservation of the industry. You have a difficult task indeed. What I think of greatest importance is integrity and honesty from all parties. This is becoming an old man's trade and will remain so unless vessels are allowed to provide an adequate living to the families that are involved. This industry could easily become only a few corporations owning all the vessels which certainly would make your job much easier but would also become the breeding ground for green card holders crewing all the vessels for minimum wages. There would be only a few ports housing the fleet and it would be likely as well that the same corporations that owned the boats also were the fish dealers. Millions of dollars to many ports would now be diverted to trillions going to a few ports. I always question the ultimate goal of the National Marine Fisheries as we all should.

If an adequate living is guaranteed to the license holders in the entire fleet (whether scalloping or fishing) than you will in all likelihood find that the families that will continue the traditions of the fisheries will be educated to follow the laws, offer insights to your sciences (which really do need to have peer reviews, a more precise analysis of the scientific method being used to guide your explanations and predictions, what are additional variables to be considered, your statistical procedure), work in conjunction with all concerned parties, and maintain the fisheries industry for further generations.200 LA boats 60 million pounds there is plenty for all.

J W COMMERCIAL FISHING INC.
Joseph T. Wagner, Pres.
124 Woodbine Ocean View Rd.
Ocean View, NJ 08230
Phone (609) 624-0848

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

February 24, 2006

Re: Scallop Scoping

Dear Mr. Howard,

I attended a meeting held at the Cape May County Extension Center in Cape May Court House, New Jersey, the other night. As I listened to the presentation and public comments I have a few concerns.

First, I feel that if the November 1, 2004 control date is going to be used that anyone who held a permit before then whether or not they used them should be entitled to keep their permit. I feel the use it or lose approach is extremely unfair. Lets question that accuracy of reporting. It is common knowledge that people have fabricated receipts and lied on reporting. My question to you is why should someone be rewarded for falsifying reports and someone like me who has not reported landings be penalized for not doing the same?

Secondly, I feel that if the date is changed to allow more individuals in then all General Scallop permit holders who hold a permit in 2006 be allowed in. After all, I received my permit renewal application in the mail approximately 10 days ago. This permit is still open access and can still be obtained by people who apply even today. There are still people gearing up and spending large sums of money to fish the fishery to subsidize income lost elsewhere, myself included.

Finally, I feel that if the general scallop fishery is posing such a problem. Then I feel one way to rectify the situation rather than eliminate any permit holder would be to allow each permit so many days. This way it is a win win situation. It prevents those permit holders from going everyday and the permits not being used are not hurting anything but yet are there to allow flexibility if needed.

Sincerely,

Joseph T Wagner, President

F/V Melanie Lee
John P. Ciliberto
925 Sunset Street
Trainer, Pa. 19061-5221
February 25, 2006

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

Dear Mr. Howard and Council Members,

The GC Fishery is currently my only source of income. I am still in debt from buying and rerigging my boat for scallop fishery.

I had my permit before, November 2004, but was rerigging the boat until September 2005. This caused me, a huge financial burden.

I think ~~think~~ there should be a clause for this type of situation in your Fishery Management Plan. Because, if I lost my permit,

my crew and myself would be un-employed, and I would probably go bankrupt.

Perhaps other ways of reducing overfishing could be accomplished by dredge size restrictions.

I only pull a single 8' dredge.

Another idea I had is to take away the permits of the people caught in closed areas. Also people that go over the limit. The ones that cheat. This would help reduce some of the pressure in fishing and get rid of the people who cheat.

Also, there are a lot of people who have permits that are not active. They may have a VMS onboard for other fisheries, but do not rely on scalloping to make a living.

Maybe you could use a combination of qualifying things like a permit before November 2004 and an VMS

onboard with fishing activity.

The G C, has also been a big economic boost for the local economy. I hope you will take ~~####~~ my personal and professional concerns and ideas into your concideration.

Most sincerely, and thank you,

John P. Ciliberto

John Ciliberto

F/V Melanie Lee

SCALLOP SCOPING - DRAFT COMMENTS March 1, 2006

General Comments

The rationale and basis for the November 1, 2004 control date are not clear in relation to how this control date versus any other control date will control or affect effort and potential over fishing by general category permit holders, and, by extension, how a control date for general category permits will affect potential over fishing by limited access permit holders. Why is a control date not based on the seasons?

It appears that the estimated catch for 2006 will exceed the estimated overall TAC. The documentation and analyses should more clearly outline the TAC and catch for each area and sector and examine the potential and implications of over fishing in 2006 and 2007.

Over fishing cannot be determined for the entire resource or stock. Because of the sectors (limited access and general category) involved and rotational openings of the open and closed areas over fishing can only be determined on a "local" basis. It is not clear from how proposals to control the general category sector will affect overall over fishing or localized over fishing.

Consideration should be given to combining proposed Amendments 11 and 12. It is difficult to determine at this point how separate consideration of general category and limited access sectors can comprehensively address the overall issue of controlling effort in order to avoid over fishing, given the dominance of landings by limited access vessels.

Changes in the general category permits have the potential to have a substantial economic affect on small fishing communities. These impacts must be carefully examined.

Directed general category vessels should be limited to dredges only.

Issue #1 - Limited Entry

If it determined that control of the general category permits are necessary to prevent over fishing, limited access for general category permits should be a leading consideration based on a control date (justified in relation to effort control and over fishing), landings, and possession of VMS. A control date based on the end of the 2006 season should be included in the DSEIS and compared with the proposed November 2004 control date.

In the consideration of limited access for general category permits, consolidation and stacking of permits should be considered on two bases: (1) permanent

transfer or sale of permits to allow consolidation on fewer vessels, and (2) stacking of permits with an option of stacking to allow more days at sea , or, multiples of trip landings limits.

Issue #2 - Allocation

The basis for allocation should be to achieve the stated purpose of the amendment; to control fishing effort in relation to the potential to cause over fishing. It appears that the primary concern is future (continued) growth of general category permit holders that might contribute to over fishing, rather than a current determination that general category permit landings are causing over fishing. This should be analyzed with consideration to holding general category landings within a limit (e.g. 35% allocation) and the potential to affect over fishing. There is no justification at this time to reduce the catch by general category permit holders. There is probably a practical limit to the continued expansion of general category permits under open access. This should be examined.

If allocations are made to the general category permits the allocations should be equated to days at sea by limited access permits.

Issue #3 - Dual application for limited access vessels

Landings under general category permits held by limited access vessels is relatively small in relation to the direct landings by limited access vessels (less than 1% most years). Consideration should be given to having clear categories of either limited access or general category landings, particularly if limited entry is adopted for general category permits and allocations to general category permits are equated to days at sea. If the TAC is allocated to limited access and general category, the 1% share of the general category catch by limited access vessels can be considered for allocation to limited access.

Issue #4 - Hard TAC's

It is difficult to understand how a hard TAC can be considered for the general category fishery without having a hard TAC for the entire fishery. It seems elementary that a general category hard TAC must be derived from a total hard TAC in order to understand the relationship of effort and over fishing by the general category fishery to over fishing by the entire fleet.

No hard TAC should be allocated to the fishery above 43.00. That area should remain an open access fishery based on a 100 pound landing limit.

Issue #5 - Sectors, DAPs

If dedicated access is implemented for general category permits to prevent over fishing, allowance should be included to form cooperatives and associations to achieve the greatest benefit for the many different classes of general category vessels.

Issue #6 – Incidental scallop catch

A 100 pound scallop by catch allowances for either vessels targeting other species or for general category vessels in the event a hard TAC is reached should be evaluated. In general, it appears that a 100 pound by catch allowance would have negligible effect on effort or over fishing at the current and anticipated resource levels.

Issue # 7 – Change of Fishing Year

The fishing year should not be changed in this amendment.

Anthony W. Watson
F/V Kellie Ann
8041 Ironshire Station Rd.
Berlin, MD 21811
(H) 410-641-3295
(cell) 410-726-1317

New England Fishery Management Council
Scallop Management / General Scallop
50 Water Street
The Tannery Mill - 2
Newbury Port MA 01950

DRAFT

Dear Sir,

As a scallop advisor I request print out of VMS scallop tow tracts for limited access vessels on days at sea be made available. To aiding the general scallop category discussion; VMS Towing tracts for Vessels engaged in day scalloping (based on vessel trip reports.)
(IT IS REQUESTED THAT THE TOWED AREA BE TO SCALE) (i.e.. the lines on the map represent the actual area towed to scale.)

THE REASON: After viewing where the Limited Access scallop Vessels tow for scallops when on open area days. It will be possible to draw a line along the coast to allow General Scalloping West of the Line; Limited Access scalloping East of the line.

This line will have East & West quarter or half mile no scallop zones, from the delineated line. Every fifth year the quarter or half mile no scallop zone will be removed to allow harvest by both sectors to the actual line.

In theory this action will allow general scalloping in the resource area closest to shore which is not traditionally worked by limited access scallopers. (VTS data will show historic open area used days; area actually used by limited access scallopers.)

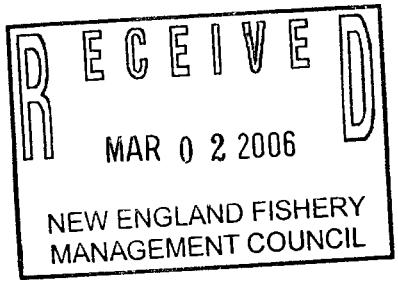
Management with this method would allow partial utilization of a portion of the thirty to forty million pounds of scallops currently dying of senescence & predators (old age or size to large to move from predators(starfish)) per year due to lack of harvest. (lack or resource utilization, WASTE OF THE RESOURCE! can be addressed through general scalloping.

Resource variation from cycles could be compensated by moving the line East or West through management frame work or amendment. General Category access to managed areas (closed to allow grow out) would be allowed on the western portion of the managed areas when opened by drawing the same type general category harvest line. Dredges Vs Nets should not be an issue as the 400# price will control size harvested. Shell stock general Category scallops have additional value of roe. (Roe on scallops should be addressed as an addition to the allowed 400# (vessel landing roe on scallops could land 500# per day (25%) Full time vessels from closed areas could land 18,000# plus (25% roe) from closed areas without PSP. (Issue for Elephant trunk area when open.) Control date for new vessels should be moved to 2006!
Number of general Category VMS vessels should be made available.

James Fletcher 123 Apple Rd Manns Harbor NC 27953 252 473 3287 cell 757-435 8475
02-13-06

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Monday, March 06, 2006 2:52 PM
To: Deirdre Boelke
Subject: [Fwd: comment on general cat.]

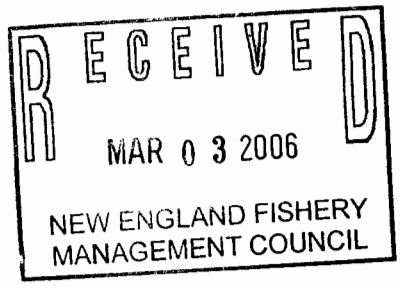


-------- Original Message --------
Subject: comment on general cat.
Date: Thu, 02 Mar 2006 23:28:37 -0500
From: Jo Lundvall <lundvall17@msn.com>
To: Scallopscoping@noaa.gov

Dear sirs: My name is Eric Lundvall , I own th e F/V Rayna & Kerstin .
I am a fishing industry vetern of 25 years from Barnegat Light , New Jersey. I am a current participent in the general category scallop fishery and have been well before the control date of November 1, 2004. I urge you to adhere to the control date for the gen. cat. fishery and adopt a limited acess permit for participants involved prior to the date. I belive qualifying criteria should include a solid landing history of at least 20,000 lbs. of shucked scallop meats prior to the control date. Please do not let the same mistakes be made in other recent limited access fishery qualifications(example monkfish) where vessels qualified through loop holes such as providing reciepts for equipment or retrofitting prior to the control date. I find
it unbelievable , the amount of vessels blatently rigging up to go scallop day fishing to this day just in Barnegat Light with out ever
landing a scallop prior to the control date. I believe limited access
vessel should also qualify to continue to participate in the general category fishery, as long as they participated in the gen.cat. fishery prior to the control date and had to provide the same qualifying
landing criteria. Thank you in advance for reviewing my opinion. Eric
L.Lundvall 400 Wood St. Little Egg Harbor NJ 08087 ph# 609-618-5360

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Monday, March 06, 2006 2:52 PM
To: Deirdre Boelke
Subject: [Fwd: scoping comments]



-------- Original Message --------
Subject: scoping comments
Date: Fri, 03 Mar 2006 05:35:41 -0800 (PST)
From: Joe Smith <cbass1246@yahoo.com>
To: Scallopscoping@noaa.gov

1 I would support limited entry as long as there are input controls in place to deter businesses from buying up all the permits.Boat size,dredge size,OWNER OPERATOR , will keep this fishery in the hands of
fisherman,and allow young guys a chance.
2 Two points to factor into the allocation formula.1 this all goes back to amendment 4 which took 3-4 years to be completed.Well the government scientists and regulators were telling us during that whole time that the resource was IN TROUBLE so anyone who listen or saw with their own eyes,and did something differ ant is not accounted for in your statistic ts.The government never said keep on fishing or you will be eliminated when the stocks recover.2 Check your survey results for 88-94 and you will see that the inshore resource was over fished first and hardest. A lot of day boats were squeezed out by the trip boat fleets irresponsible actions.They would stop there on the way out and come back in when the wind blew,towing all the time. WITH PROPER MANAGEMENT THE RECENT LANDING LEVELS
ARE WHAT WE SHOULD HAVE BEEN ENJOYING ALL ALONG.
3 A day
boat should be a day boat,eliminate the 80footers
4 Hard Ta cs will lead to derby fishing which has pr oven time and
time again to be DEADLY.
5 Individual quotas seem like the
safest and most easily enforced system.
6 keep it at 40
pounds
7 Go by the best available science.

Thank
you Capt. Joe Smith F/V ALISON LEE

Mid Atlantic General Category Scallop Alliance

1142 Hudson Road
Cambridge MD 21613
Phone 410 376 3200
Fax 410 376 2135

March 3, 2006

Re: General Comments on General Category Scallop Scoping

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Issue # 7 – Change of Fishing Year

The fishing year should not be changed in this amendment.

David H. Wallace
For
MAGCSA

March 5, 2006

Dear Sirs,
Please consider my views regarding the seven points for opinion within the scallop scoping document.

1. Limited entry should be considered to curtail the growing number of General Scallop Category participants. However, those who have made financial commitments should be considered. Would you consider allowing those who committed to VMS purchase? It is clear their intent was to continue scalloping. Any level of landing would show their participation and should suffice the issue. It would be contrary to repeated NEFMC and NMFS literature that strongly emphasizes the existing General Scallop Category was established for limited harvesting and consequently requires a high level of landings to qualify for the license. To require a high level of landings would reward those who abused the category for it's original purpose and punish those of us who occasionally use it to fill gaps and work part time in that respect as intended.
2. Allocation should be evenly distributed between qualified participants but should be transferable in 1000 lb. increments to assure the maximum harvestable levels.
3. General Category licenses should not be allowed to be possessed by those boats who already harvest scallops under another license.
4. TAC should be for individuals not for sectors or industry.
5. We should not use TAC for sectors since most vessels are small and impractical for port changing.
6. Incidental catch should be allowed an expected level.
7. Fishing year should begin August 1 when the weather has settled down, not in winter when the seas are rough.

Gear should be limited to dredges no bigger than 10.5 foot to standardize equipment and harvest methods.

Each state should have a minimum number of eligible participants to assure all states have some representation in the industry. Based on historical port landings, not on state of ownership as some boats are incorporated in one state but land in many others. Delaware fisherman should have at least 10 eligible participants to assure safety to those returning to the same port.

Under NO circumstances should a derby type atmosphere be encouraged as this will surely result in men lost at sea when fishing in rough water while they should be at the dock. They may be afraid they will miss allocation if they don't fish as often as possible before the TAC is reached. The fishermen should be able to fill their allocation at their own discretion not pressured by derby fishing.

Ray G. Trout Jr.
F/V Emily Jayne
Lewes, Delaware
302-745-1793
PO Box 637
Lewes, DE 19958

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Monday, March 06, 2006 2:57 PM
To: Deirdre Boelke
Subject: [Fwd: my comments to the council]

-------- Original Message --------
Subject: my comments to the council
Date: Sun, 05 Mar 2006 17:29:02 -0800 (PST)
From: jack stormy <stormyseasllc@yahoo.com>
To: Scallopscoping@noaa.gov

To:Paul Howard

My name is Jimmy Hahn, I am 34 years old. I'm not a millionaire. I did not have a permit handed down from my family, I could not afford a boat when permits most limited access permits were given out. I currently purchased a 43' day scalloper that sails out of Ocean City Maryland, I currently hold every open access permit available from the NMFS including the general category scallop permit which I received after November 2004. I started scalloping in June of 2004, after spending over $ 45,000.00 rigging my boat. Since June of 2004 I have made over 100 trips, In November of 2005 I purchased a Sky mate system per the NMFS to continue Scalloping. I have done everything to comply with the rules set by the NMFS. THIS IS MY LIVELY HOOD.

I believe the Council should use the controls that are in place now and not used the cont rol date of Nov 2004. The VMS have lower the numbers of permits from 2700 to just over 835 That's almost a 70% decrease in effort. Next I think in order to hold a VMS permit you must have at least 30 days or 5000 pounds landed in a year. This would get rid of all the permit holders who do not plan to scallop but are waiting to sell their permits for big money.

I believe the allocations should be a little fairer. General Category boat only land 12% for over 2700+ permits, Limited Access boat land 88% for 300+ permits. How is that fair. Even if you use the VMS permits that's still 835 to 300. I don't think it needs to be 50% - 50% just a little closer in numbers. Since Limited Access can fish in both fisheries.

I believe the boats should either be Limited Access or General Category. NOT BOTH. The Limited Access are allowed now to catch over 87% TAC that's enough. Boats fishing in the General Category should not be able to fish with nets or a dredge over 10' 6".

I believe a hard TAC should be put in place for the entire east coast since most boats travel to find the scallops, not state quotes.

I believe that the scallop industry should be the first to implement a drug testing for the captains and crews if either test positive, the boat lose it permits. This would clean up and fishery loaded with drugs.

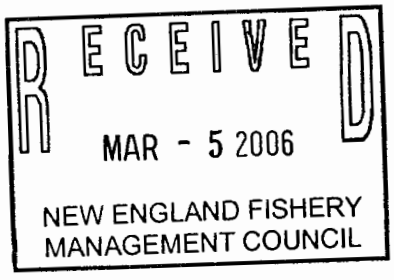
In closing by using the date of Nov 2004 for a cutoff date, you will make me spend an additional $40,000. to $100,000 for a permit to continue scalloping. I was not old enough to receive a Limited Access permit and do not have the money to purchase a permit. The General Category is my only way of scalloping. The scallops with the closed areas and proper regulations is a unlimited resource. I hope that you do not take my only way of making a living on the ocean.

Thanks
Jimmy Hahn
410 310 4296

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Monday, March 06, 2006 2:57 PM
To: Deirdre Boelke
Subject: [Fwd: Atlantic Sea Scallop Amendment 11 Scoping Comments]

-------- Original Message --------
Subject: Atlantic Sea Scallop Amendment 11 Scoping Comments
Date: Sun, 05 Mar 2006 22:14:44 -0500
From: missrockville@adelphia.net
To: Scallopscoping@noaa.gov



Andy Keese
F/V Miss Rockville
Chatham Harbor, MA

Dear Council Members,

My name is Andy Keese. I am the owner-operator of the F/V Miss Rockville. I have listed my comments below pertaining amendment 11.

1. Owner-operators can only obtain a general category permit. This will keep the fisherman owning the fishery.

2. A size limit on vessells. This would help to prevent over fishing. Larger vessels can fish many more inclement days than smaller vessels. Weather would be a natural restriction on fishing time.

3. An eight foot dredge size limit for general category participents. Smaller dredges would be benificial for the habitat and also slow down overfishing.

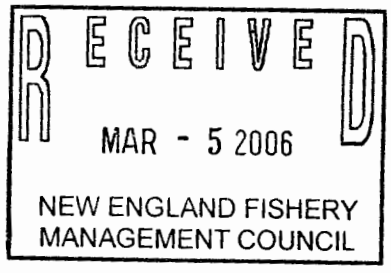
Thank-You.

Sincerely,

Andy Keese

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Monday, March 06, 2006 2:57 PM
To: Deirdre Boelke
Subject: [Fwd: Atlantic Sea Scallop Amendment 11]

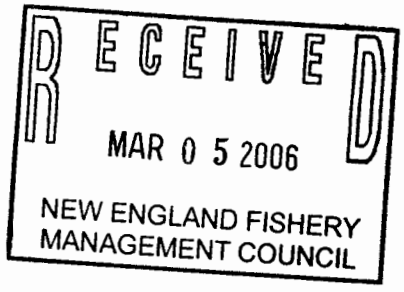


-------- Original Message --------
Subject: Atlantic Sea Scallop Amendment 11
Date: Sun, 05 Mar 2006 23:22:17 -0500
From: scallopt@bellsouth.net
To: Scallopscoping@noaa.gov

Dear Council members; Thank you for allowing me to voice my comments concerning the general scallop[fisheries.
#1; Limited Entry- I would like to see limited entry implemented. My reason being pure economics for the vessels that qualify. To many vessels and no one survives. I know the council has and will continue to protect the fisheries. That is your job and my job is to try and stay profitable and give the consumer a very safe and healthy product. I would like the qualifying criteria to be based on the beginning of the 2005 fishing year (April) and also with the VMS installed by the allotted time established by the council. In other words if you were issued a permit by or before April 2005 and you installed a VMS on your vessel then you would qualify for a limited general category permit.
I do not have enough info on the affects of the fishing communties. I do not know enough about the NE region,such as, the location of commerical docks that are left nor the location of the fishing grounds in respect to the docks. I do know that so far I haven't been
able to find a single dock north of Cape May, NJ that will allow my vessel to pack out. As for as fishing communities being impacted by anything the fishery councils do is a myth in todays world because there aren't any fishing communties south of Long Island left. They have been replaced by condo's. #
2-Allocation; I am in favor of specific limits fishery wide. This way a permitted vessel will have the option to either stay or move to a more profitable area.
#3-Dual Application; I would like to see the limited Access vessel not be allowed to hold both permits. I can not understand why a LA vessel owner would consider a GC permit in the first place. These vessel,as you know, make a lot of money in a short time thanks to the hard work of the council in their fishery management. They have very little expense in their operation either in fu
el or wear and tear of their equipment. The GC vessels on the other hand have an enormous amount of expense coming in and out everyday. In the mid-atlantic region we steam an average of 60 miles each way to the fishing grounds and dock. The wear and tear on our equipment is astronomical and the amount of fuel used is STAGGERING. I can not see any impact on the LA permit vessel if they are not allowed to hold both permits. Without the catch data on the LA vessels while they were fishing for other species I can not say what would be a fair landing of scallops.
#4-Use of Hard TAC's; I am in favor of a hard TAC if and only if a limited entry is established. I think if a hard TAC and limited entry together were established there would never be a hard TAC limit caught in the general category fishery. The general category fishery is basically a May thur August fishery. My vessel fished this fall and wi
nter in the mid-atlantic region and was only able to fish 58 day from Sept. thur Jan.2006. This was a mild fall and winter compared to other years otherwise I would not have fished that much.
#5-Use of DAP's; I do not understand anything about DAP's and how they work.
#6-Landings of incidental scallop catch; This is a very hard question for someone like myself to answer since I do not know what other fisheries would allow you to catch scallops as a by catch. #7-Fishing year; I think the only people that can answer this question is the data collector and processors of the info.
Once again thank you for your time. I hope some if not all
of the above makes sense. Thomas Brown owner F/V Jordan's

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Monday, March 06, 2006 2:56 PM
To: Deirdre Boelke
Subject: [Fwd: Re: Fwd: GC scallop comment]



-------- Original Message --------
Subject: Re: Fwd: GC scallop comment
Date: Sun, 05 Mar 2006 06:49:42 -0800 (PST)
From: Jim Brindley <brindley4@yahoo.com>
To: Scallopscoping@noaa.gov

don,COMMENT FOR GC SCALLOP SCOPING DOCUMENT

Issue #1- support control date.
Issue #2- support 5.8% for calculating GC share of projected landings.
-allocate DAS on individual basis.
(based on vessels best year (2000-2004) issue#3-allow dual application for LA vessels.

Jim Brindley

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Monday, March 06, 2006 2:56 PM
To: Deirdre Boelke
Subject: [Fwd: Atlantic Sea Scallop Amendment 11 Scoping Comments]

-------- Original Message --------
Subject: Atlantic Sea Scallop Amendment 11 Scoping Comments
Date: Sun, 05 Mar 2006 17:19:57 -0500 (EST)
From: Lfooks@aol.com
To: Scallopscoping@noaa.gov
CC: Lfooks@aol.com

Cuuncil Members;

I am writing to express my concern about the new regulations to general category permit holders.I have a gen-cat permit with vms.
My main concern is that the limited access permit holders are harvesting more scallops percentage wise than the gen-cat permit holders.
When I got my permit I was expecting to be able to work for myself and in so doing mortgaged everything to buy a boat and have it rigged for day scalloping. Should the council decide to severely limit or rescind my permit I will have to file bankruptcy and lose the home I grew up in.
I realize that management of the scallop harvest is necessary, therefore, I would suggest making scallop permits a closed entry .
Also, I would propose that permit holders not engaged in the harvesting of scallops be rescinded.
I disagree with the limited access permit holders who at the Cape May, NJ meeting wanted the Nov. 04 date to be utilized.
I was in the process of rigging my boat when the Nov 04 date was first mentioned.
I, of course, am only one voice but the economic impact of an average of
3 men per boat with families losing their only source of income will be devastating.
Also, as I mentioned at the meeting, the owners of limited access permits own more than one vessel, some as many as 15-20 with each boat stocking 2-3 million dollars per year.
I'm struggling just to pay for my boat and household bills, as are most of the gen- cat permit holders I know.
As for Danny Cohen's comment that the cutoff date should be sooner than later, he wants no competetion from the day scallopers when the elephant trunk opens.
If you subtract the permit holders not using them, and not allow vessels engaged in other fisheries {i.e. clamming, quahogging etc.} to catch 400 Lbs. a day, you would then have a better basis to pose a hard tac on the general category permit fleet.

Sincerely,

William Albert Fooks

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Monday, March 06, 2006 2:55 PM
To: Deirdre Boelke
Subject: [Fwd: Opinions on amendent 11]

-------- Original Message --------
Subject: Opinions on amendent 11
Date: Sun, 05 Mar 2006 22:49:13 +0000
From: johnmborden@comcast.net
To: Scallopscoping@noaa.gov (Fishery Management Counci)

To: The Scallop Scoping Committee

I am the owner of two general scallop permitted fishing vessels: one is exclusively a scallop dragger and other is a vessel with a ground fish and lobster permit. Currently, they are both actively engaged in the scallop fishery.

Over 30 years, I have been a successful commercial fisherman by being both flexible and diversified. I have owned and operated both large offshore vessels and smaller day boats.

My comments on the seven issues are as follows.

Issue #1: On limited entry, the use of the control date will be effective in halting expansion and reduce the pressure on the resource.
However, if this is coupled with landing history it will not be reasonable because some vessels have had to bounce around to make ends meet. Just having a permit prior to the control date should be sufficient to halt any expansion which appears to be your goal.

If landings are an issue, you should consider the vessels that have made the effort to be in compliance by purchasing/installing a VMS and not penalize them for the lack of landings prior to the control date.

Issue #2: Regarding separation of allocation, limited access vs.
general, this is primarily a small boat fishery in New England. Limited access boats, on the other hand, are larger and have ten times the capability than general boats. This is not a logical comparison. I believe they should be separate based on the percentage of general vs.
limited access participants.

Issue #3: I don't believe that limited access vessels need to consider utilizing the fishery under a general category permit after they have exhausted their days at sea allocation. They are successful enough without it and if the resource is over fished this would not help the situation. TAC is another way to complicate the process as well as eliminate the independent fisherman. The majority of general category boats are independent owner/operators.

Issue #4: As far as sectors, this is tough because there have been recent increases in both landings and effort in the southern areas, i.e.
New Jersey to Virginia. If you allow them more TAC you will be rewarding them for their effort and also stimulating the over fishing and "cheating" that is occurring in that area.

Issue #5: Time windows are also tough for us in a New England fleet because we fish primarily smaller boats and sometimes have to travel further than the southern fisherman. We can only take advantage of small windows of weather and those never coincide with anyone's schedule.

Issue #6: Incidental landings should be allowed. There is far too much waste in the

industry already. I wish the fishery managers or the public was a little more aware of this problem. It would be an insult not to let a fisherman take home a meal. He has earned it.

Issue #7: The fishing years should stay the same. Changing it would give the regulators more to do to get this situation resolved.

Sincerely,

John M. Borden

Owner/Operator, F/V Mary Baker

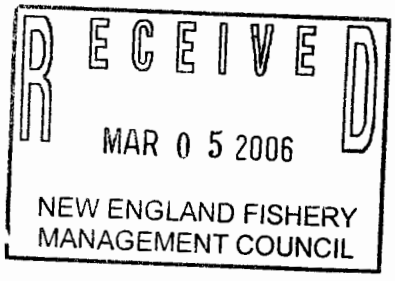
10 Charles Hill Road

Kittery Point ME 03905

207.439.6227

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Monday, March 06, 2006 2:55 PM
To: Deirdre Boelke
Subject: [Fwd: Opinons on amendent 11]



-------- Original Message --------
Subject: Opinons on amendent 11
Date: Sun, 05 Mar 2006 22:50:55 +0000
From: johnmborden@comcast.net
To: Scallopscoping@noaa.gov (Fishery Management Counci)

To Scallop Scoping Committee:

I grew up in the New Bedford area and spent most of my life, for over 40 years, in the scallop industry. Currently, I am the captain of a general category scallop permit boat, however, I have been on both sides, big boats and small boats. Enclosed are my personal opinions and comments on your plans to control the fishery which seems to eventually phase out the active general scallop fishery.

Issue #1

It is my understanding that anyone who received a general scallop permit after November 1, 2004 did so with the understanding that it may not be valid in the future. I can live with that.

I don't think that the amount of scallops landed is as important as the fact that they were in the fishery before the control date. The communities most affected would be, as always, the small boats that live from stock check to stock check.

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Issue #2

The allocations between general and limited access permits should be determined by the number of active permits in each category. For example, if there are 2500 general permits and 400 limited access permits, I would hope that at least 25% of the allocation would go to the general category, especially since limited access fishermen can become general access anytime they wish.

Issue #3

In the near future the limited access boats are due to receive an increase in their "days at sea". I would hope that they will no longer need to jump into the general category to survive.

Issue #4

At this time I believe that TACs would not be necessary due to the fact that boats who had to enter general category should be able to return to their fishery as their "days at sea" numbers return. These are both limited access boats as well as the "multi species" draggers. I believe we should all learn a valuable lesson about individual allocations from what happened to the Sea Clam fishery.

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Issue #5

The general scallop fishery is made up of mostly independent individuals who work [redacted] see fit. You would be hard pressed to find two of us who would agree on much of [redacted] at all. Forcing us into formal groups, I think, would be courting disaster.

Issue #6

It is my opinion that other fisheries should be allowed to bring home a 50 lb. "[redacted] to eat" bycatch.

Issue #7

March 1 seems as good as any time to start a fishery year. It would not make [redacted] start it later, when scallops to spawn.

When I look out at the boats in the general scallop fishery, I see many 60-90 ft. [redacted] that had to become general category scallop boats. It is my opinion that this is the reason for the increase in general scallop landings.

Hoping for a future,

Dennis Williams

Captain F/V Intrepid

10 Charles Hill Road, Apt 1

Kittery Point, ME 03905

207.475.5302

Date: 6 March 2006
To: Scallop Committee, New England Fishery Management Council, Newburyport, Mass

From: Richard Taylor, www.seascallop.com, Box 7002, Gloucester, Mass rtaylor@cove.com

Subject: Comments submitted for the Scoping Process of Scallop Amendment 11

Background comments -- Whose scallops are these anyway?
The Council staff has done a good job in refining the short list of seven issues during the beginning of this scoping process for Amendment 11 to the Scallop Fishery Management Plan, especially so given the restrictive guidelines imposed by the Executive Committee on the issues that may be considered. Realizing fully that we have continually postponed addressing many of these issues, and that timely action is needed at this point, the delay has served to allow the benefits of area management to be seen by all concerned, and to think about how we manage the participants in this fishery going forward. The best news is that integrated within the document are questions that give opportunity to address some of these larger issues confronting us after seeing the rapid rebound of scallop populations possible using a more enlightened management strategy in the Atlantic scallop fishery such as we have witnessed these past few years.

With more effective management landings have grown to double the previous 30 years landings average, this with approximately 50% of the dredge time on bottom, and with a significant fraction of the traditional scallop production areas currently unavailable to the scallop fleet due to groundfish concerns. This situation has occurred while we have been hobbled by partial adherence to the Days At Sea equilibration to pounds. I believe that if we are careful biomass can continue to grow. Built into Amendment 10 is the concept of monitoring biomass in areas and then restricting catch to a small fraction that not only let's the remaining biomass grow to its former level but beyond it in succeeding years. Additional benefits are gained by having large numbers of adult spawners in close proximity each and every year producing an increasing amount of seed.

The core of my concern is that this is a renewable resource and we are handling it as if it were a perpetual corporate asset, first for the ~300 vessels identified in the initial qualification period 1985-1990, and now again for the nearly 3000 participants in the general category sector, based entirely on the timing of the birth of each permit holder. While identification of qualifying participants, and limits on effort, along with other changes, were mandatory in order to begin rebuilding the fishery, I find it difficult believe that the New England Fishery Management Council has a stated objective to ensconce a limited number of citizens with perpetual rights to the entire future biomass of the scallop resource, especially so in light of the continuing necessity of significant annual federal expenditures for continued assessment and management of this public resource. In my opinion that we should not let this happen, any more than we should bequeath the current commercial charter recreational fishing operators with perpetual rights to the cod, haddock or tuna resource.

Almost without exception each and every permit holder in the Limited Access DAS fleet served his time on deck, worked his way up to the wheelhouse, and then to an ownership position. At this time I estimate 50 to 75% of the current owners are ashore with a new generation of skippers

running their vessels. Given their age most of the remaining owner/operators will, in perhaps in as little as 10 years, come ashore as well, and almost all DAS vessels will be run by skippers that have no direct stake in the fishery. My question is: is this what we had in mind when we signed on to the Law of the Sea and began the Fishery Management Council process? A fleet of sharecroppers with no chance, short of winning the lottery, of ever sharing in the larger bounty brought on by effective management.

Central to all but the last scoping item (related to timing of the fishing year) in Amendment 11 are the concepts of allocation and percentage of catch effectively earmarked for certain permit categories and sectors. None of us would tolerate the idea that the first 300, (or the first 3000 to extend the analogy to the current general category discussion), settlers on this land had perpetual rights to cut down all the oak trees because they happened to be the ones that over-harvested the existing trees enough that government had to step in and regulate the harvest of oak trees. Even more onerous is the idea so that the permits to harvest trees might be passed down through generations as a family or corporate asset. This is exactly why the colonial citizens sought to throw off the British. We should not forget that lesson. Permits should expire with the permit holder and return to a common pool, so that succeeding generations of fishermen from ports that have been here for almost 400 years have access to these renewable resources. Left to exchange based on access to money these permits will flow toward corporations without a continuing stake in the fisheries, or the communities these fisheries help support.

Point by point comments to specific issues in the scoping document

1) Limited entry in the general category fishery

In the near term identification of the participants in critical, in the longer run we need to address future generations (and lest we think this is far into the future, implementation of a control date effectively establishs a new generation, as was the original Limited Access permit control dates). If we look closely at the data generated to date in the Scallop Plan Development meetings less than 100 vessels are responsible for the 75% of the landings and that has primarily been in one area in the Mid Atlantic. This situation would not have arisen if this area had been effectively surveyed, the biomass estimated, and landings controlled by maintaining the Fishing mortality at levels the .2 to .3 level as in the other managed areas. The situation points up the necessity of obtaining timely data. In particular,r the General Category VTR data was withheld from the public for 5 years, while everyone on the docks in New Jersey watched them fill up with vessels.

2) Allocation between the limited and general category fleets

With the exception of the entirely arbitrary 2% TAC for the General Category from the Closed Areas this issue has been given little direct focus to date. I estimate the first 100 million pounds from these closed areas accrued soley to the Limited Access fleet. We must address this imbalance in this amendment. Dedicated inshore areas for General Category, managed under the rules established in Amendment 10, are one suggested method given the growth of the sector.

Tied directly to this issue is that there are different rules for vessels in different areas. I believe that local control is a primary goal, the implication is that then vessels are no longer free to move out of their local area.

A third issue within this item is that almost the entire Gulf of Maine is currently lost to the scallop fishery due to groundfish concerns. It is current (with the exception of the SMAST video survey on Stellwagen) a enormous wildcard in the biomass equation that must be addressed in this Amendment 11. This is a necessary item for future TAC Set Aside reseach funding.

3) Dual application for limited access vessels
Most Limited Access vessels have too far to steam to make it economically possible to participate in the General Category fishery even if they were interested in doing so. The result is that most are not in a position to use both permits. Additionally examination of the data provided to date reveals that this amount of scallops is not why we are having this Amendment. The only reason to go down this road is some perception of fairness of access, however solving this problem doesn't change the larger problem.

4) Use of hard TACs in the general category fishery (fleetwide, by area, season, sector or on an individual basis)
Fishery regulations should attempt to treat all participants with the same methods. As our assessment and landings tracking methods improve we will be in better shape to shift the entire fishery to TAC based on area, as we currently manage the Closed Area and Scallop Growout Areas fisheries. The remainder of the fleet fishing under DAS is not on a TAC, though this needs to be addressed as well.

5) Use of sectors and harvesting coops (Dedicated Access Privileges)
These are tremendously important long term issues as we move toward quota based fishery, the draggers will always have a bycatch of scallop, and we must begin here in this Amendment. I believe that adoption of community quota would help to preserve perpetual access to the scallop resource for historical fishing communities.

6) Landings of incidental scallop catch
This issue is rolled into the last (#5) and must be dealt with in this Amendment.

7) Change the fishing year
While on the surface of it the integration of survey data in the most timely manner is a critical issue, shifting the year forward to the fall starts off the vessels with the worst product in the worst weathers. Moving it back to January is less onerous but apparently not going to solve the data problem. I have yet to be convinced that changing the date will help us more than it hurts us.

Other items suggested for inclusion in Amendment 11
Nowhere have done the basic drill to have the General Category in what ever form or percentage operate under the provisions of our current management plan, Amendment 10, the plan that has essentially codified the use of closed rorational areas. This is central to long term success.
Also we have not integrated the General Category into helping to provide the research necessary for improving their own management. This item needs addressing this time around as well.

Richard Taylor
www.seascallop.com
rtaylor@cove.com

Monday, March 06, 2006

I am writing this email to state my position on the general category scallop fishery for the development of Amendment 11. As a participate in the limited access fishery I feel due to the drastic increases in the general category fishery has contributed to scallops being over fished.

1) Limited entry in the general category fishery

The first action the council needs to be considered is to use limited access to manage capacity in the general category fishery. I feel by using limited access to control GC you would be able to have a considerable amount of control on how many vessels and pounds to be landed and not just a wide open fishery as it is right now. The November 1, 2004 control date is a start on the qualifying criteria for limited access, but there is a enormous amount of vessels before that date and it will be a permit battle on the control date, when it should be on landings. I know that Limited Access fisherman were given the full-time, part-time and occasionally fishery standings due there participation in the fishery from 1985 to 1990. The council should take this approach and use a similar criteria based procedure of landings in pounds and trips landed from a date of 1994 to 1999. I pick this end date because that is when the Limited Access fisherman were seeing a abundance of scallops and GC fisherman weren't heavily participating in the fishery.

2) Allocation between the limited and general category fleets

The second action that the council is considering about the allocation between the limited and general category fleets is not fair or correct to the limited access fisherman. In the table on page 4 of the scoping document it dates back to 1994 when Limited Access were put upon DAS restrictions, which was a hard take then, but now know the fishery is substantially improved with record landings and minimum catch efforts due to the DAS, closed areas, and crew restrictions. The table states the efforts of each category, but the information that should be considered is that of the GC landings what else was landed with those scallop landings. Since the GC fishery was established to accommodate scallop by catch on fishing trips for other species, the council should consider using a criteria of what percent were targeting other species and what percent were targeting scallops in the GC fishery. By using this procedure you would be allocating of who and how many pounds were landed under each section of the general category. This would allocate a fair and equitable division of the fishery to find out who was directly fishing for scallops and who was using the general category for its original cause. I feel a major contribution to having a general category fishery now and for the past few years was due to the hardships the Limited Access Fisherman endured and not the general category direct fisherman of today.

3) Dual application for limited access vessels

The third action council should take into account is about whether a limited access should bear both a limited access and general category permits. Limited Access vessels should not be prohibited from targeting scallops under general category rules but should endure some guide lines in the fishery. Table 1 of the scoping document states that limited access vessels landed 0.70% in 2005 and an average of 0.54% since 1994 which is not a considerable amount of landings but those landing provide a positive economical impact for the vessels. One of the main reason I feel that Limited Access vessels should participate under general category rules is that many captains are getting older and by allowing to be a participate under general category rules it allows younger prospects of the scallop industry to operate the vessel and learn how to catch scallops so there can be a

new era of fisherman in the scallop fishery. Another reason I feel that limited access vessels should be able to participate is that with the opening of closed areas on Georges Bank and Nantucket in the recent years many vessels are steaming from the mid Atlantic states a day and a half to get to the ports to where they will be fishing while fishing these closed area trips, by allowing to harvest the allowable 400 lbs. of scallops it enables to put that towards the current price of fuel of 2.20 per gallon. By not allowing Limited Access vessels to participate at all is very detrimental, but I do feel there should be a certain percentage of allocation for this part of the fishery. I believe that limited access vessels should always be allowed to fish under general category rules and if not the impacts for not allowing participation are going to be substantially negative for the stated reasons.

4) Use of hard TACs in the general category fishery

In the forth action of using hard TACs in the general category fishery by fleetwide, by area, season, sector or on an individual basis will have many outcomes upon each action. A hard TAC of scallops in the general category fishery would be the best and most effective way of managing this Day Fishing. The council needs to consider on a individual bases of how many trips and many pounds of scallops were legally landed from a time line of 1994 to 1999. A key part of data that should be taken into account is what other types of species on how many pounds were reported in that time line on there Fishing Vessel Trip Report. This would allow to see who landed and what was landed to see who gets how many pounds in a TAC approach. Another approach would be to take the average of landings since 1994 and that can be the allocation of scallops to the general category including the limited access fisherman. I also feel an implementation of a harvest period should be looked into since day boats are fishing the winter months when scallop yields are about 64 bushels for 400 lbs, to where in the summer months it is around 44 bushels respectively. That is a considerable amount of more scallops that needs to be harvested to achieve the 400 lb. limit.

The comments that I have provided from the scoping document for Amendment 11, I would anticipate them to be taken in consideration for the best possible outcome in the scallop fishery. The short term effects of "Day Fishing" for scallops is going to be harsh to the long term outcome of having a renewable resource of scallops. At my age 22 I have participated in the Limited Access Scallop fishery since 1999 with my father who has been at for 27 years now, and I am next in line to take over operations and consider myself and others my age the next generation to the fishing industry. I know I have not been in the fishery as long as others but it is obvious to see the substantial improvement to the fishery that have made to bring it to this level of success.

Thank you for taking the time to listen my concerns. I can be reached by email at offshore5073@hotmail.com for future information or concerns and if there if a mailing list of information I would like to be on that list to receive future information.

Sincerely,

Charles Wiscott
Fishing Vessel Susan L
Cape May, NJ

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

Attn: Frank Blout, Deirdre Boelke

1.The council must use a the control date already set with the possible consideration for appeal process for vessels purchased or rigged ahead of the time of the control date. The people affected by this will be the owner/operator.

2. Finances must be considered in the allocation between General Category and Limited Access Vessels. Currently Limited Access Vessels Stock between 1.2-1.8 million dollars per year, many owners have multiple vessels which gives them the resources to buy permits for this and other fisheries. General Category Vessels are mostly owner/operated without the financial means to buy permits. This is their sole income.

3.Limited Access Vessels should not be allowed to fish in the General Category unless there on a day at sea. Limited Access Vessels will have a much greater impact on General Category Vessels already facing what seems to be a severly limited fishery. Why should the Limited Access Vessels be allowed to fish in the General Category when there days at sea have expired under the Limited Access Vessels.

4. I believe a hard TAC should be used only if it is used for limited access vessels. This has historically formed Derby Style Fishing.

Thank you in advance for you time,

Neal Kitson
Owner F/V Lori Megg
Barnegat Light, NJ 08006

East Coast Fisheries Federation, Inc.

Received via email on 3/6/06:

March 6, 2006

Mr. Thomas Hill, Chairman
Scallop Committee, NEFMC
50 Water Street. Mill 2
Newburyport MA 01950

Dear Tom:

First, my thanks for your skilled Chairmanship of the New Hampshire and Hyannis scoping hearings. They were very well run and distractions diplomatically avoided. My compliments to Dierdre as well for her clear presentation.

Following up on my remarks at the hearing, it is important for the Council to be aware of the unique situation which has been created for the full-time scallop fleet. As I noted, catching a few winter flounder off New Jersey in the groundfish qualifying period now enables a permit-holder to fish for haddock, graysole and pollock on Georges or in the Gulf of Maine. The same is true in several other FMPs crafted by both the NEFMC and MAFMC.

Exactly the opposite was done with the full-time scallop fleet. Despite substantial history in both the monkfish and yellowtail fisheries, they were effectively denied those opportunities. This is in spite of the fact that, in many cases, full-time scallop boats caught far more monkfish and yellowtail than those who were eventually given permits.

Prior Council actions have created a large group of people in the full-time scallop fleet who have been made utterly dependent on a single species. I point this out only to make the Council keenly aware that, having created that unique dependence, there is a special obligation with it. That obligation is to realize that Council actions must be consistent with the situation the Council itself created. This applies whether the issue is the General Category fishery, the Elephant Trunk fishery, or anything else.

I hope that realization will guide all the future scallop actions taken by the Council, and thank you for your consideration of this aspect of scallop management.

Sincerely,

via email
James D. O'Malley
Executive Director

P.O. Box 649 · Narragansett, RI 02882
Phone: (401) 782-3440 · Fax: (401) 782-4840

March 6th, 2006

New England ~~Fishery Management~~ Council
Fayed 978 465 3116
Re: Amendment 11 to Sea Scallop Fishery Management Plan
attention: Diedre

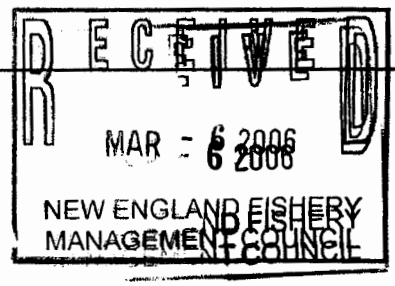
The right to catch 400 lb. pr day is part of the Limited Access Permit if that is taken from the Limited Access Permit it would be diminishing the value of the Limited Access Permits. The 400 lb. right is part of the Limited Access Permits it is folded in it is not a separate Permit, this has been the case since Amendment 4 to Sea Scallop F.M.P. I object to taking this Right Away - I spoke to you on the phone but I wanted to put it in writing to make it part of the Record as today is the final day. So it is my opinion that in taking away the 400 lb. would be that Amendment 11 is about more than General Permits

Sincerely,
Harris Ann Dickinson
~~Est~~

TOTAL P.01

Atlantic Sea Scallop Amendment 11 Scoping comments

ERIC Lundvall



From: "Jo Lundvall" <lundvall17@msn.com>
To: <Scallopscoping@noaa.gov>
Sent: Thursday, March 02, 2006 11:28 PM
Subject: comment on general cat.

Dear sirs: My name is Eric Lundvall , I own th e F/V Rayna & Kerstin . I am a fishing industry vetern of 25 years from Barnegat Light , New Jersey. I am a current participent in the general category scallop fishery and have been well before the control date of November 1, 2004. I urge you to adhere to the control date for the gen. cat. fishery and adopt a limited acess permit for participants involved prior to the date. I belive qualifying criteria should include a solid landing history of at least 20,000 lbs. of shucked scallop meats prior to the control date. Please do not let the same mistakes be made in other recent limited access fishery qualifications(example monkfish) where vessels qualified through loop holes such as providing reciepts for equipment or retrofitting prior to the control date. I find it unbellevable , the amount of vessels blatently rigging up to go scallop day fishing to this day just in Barnegat Light with out ever landing a scallop prior to the control date. I believe limited access vessel should also qualify to continue to participate in the general category fishery, as long as they participated in the gen.cat. fishery prior to the control date and had to provide the same qualifying landing criteria. Thank you in advance for reviewing my opinion. Eric L.Lundvall 400 Wood St. Little Egg Harbor NJ 08087 ph# 609-618-5360

Sincerely

Eric L. Lundvall

ERIC L. LUNDVALL

3/2/2006

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

Attn: Frank Blout, Deirdre Boelke

I attended the general category meeting in Cape May, NJ and was pleased to see the turn out and hear the discussion. I currently have two general category vessels day scalloping out of Lunds Docks, in Cape May, NJ. As a boat owner I agree with the council that their needs to be control established in the General Category Scallop Industry.

Since the VMS tracking device became mandatory for all vessels who day scallop under the General Catcgory, the number of active permits has greatly been reduced from roughly 2800-800 permits. If this isn't reduction of the industry what is? Installing the VMS was a financial burden and it took days away from sea, but I knew it was required to be installed on my boats to continue to day scallop. I spent roughly $10,000.00 to purchase the VMS tracking system and the cost of labor was over $1600.00. I lost days at sea and that equals lost income, but I took the money and time to install the VMS because day scalloping is my future and my income. I employee two full time crews who have worked for our corporation for over a year and this is their income, all of our lives will be affected by this proposed amendment by council. I don't have the money to buy a full-time permit, the General Category is my only source of income.

But I also feel there must be an appeal process for boat owners who didn't have any landings by the control date. This crucial to many of us in the General Category Industry who put all our money and resources into our boats before we could get any landings. Im my case I spent $35,000.00 to rebuild my engine after my engine blew up, which was unexpected. The boat was purchased in May of 2004, had a permit by August 2004, but because of the unexpected time and cost of the engine work. The boat didn't make its first trip until December 2004. The General Category Permit holders are not rich, we don't have the financial resources like the Limited Access Vessels, The Limited Access Vessels are much more well off financially, they have the resources to buy new boats and new permits. The 400lb limit has to stay in affect otherwise bigger boats who burn more fuel would not be able to make a living. Limited Access Vessels should **NOT** Be allowed t fish in the General Category unless there on a day at Sea. Limited Access Vessels will have much greater impact on General Category Vessels already facing a severly limited fishery. The Limited Access Vessels should not be allowed to go out and catch 400lbs when they have used all of their days at sea. Its not fair.

Although it wasn't intended to turn out that way, for many of us the General Category has turned into a Directed Fishery, we have no other income, we don't have other boats and permits, we don't have the 1.2-2 million dollars a year income off our boats a year like the Limited Access Boats have. I believe a TAC should only be used for

Limited access vessels. If a TAC is put in place, boats will be forced to go out to sea in conditions that are unsafe to catch the quota before it is officially caught. The boats going out to see will become a free for all.

The bottom line, is we agree with council we need control, but we feel an appeal process is necessary for the benefit of the people who have invested money and time in an industry that was full of promise, but because of a few, things have started to decline. The General Category guys will loose everything they have, look beyond boats, lets look at the big picture, billsnot being paid, mortgages, health insurance for our children. These two industries can't seem to work together, The Limited Access Boats and the General Category Boats, because the Rich stay Rich and the working men don't seem to be protected. As one of your council members told me, he would rather see me collect unemployment than send my boats to sea. That's really working together.

Thank you for your time,

Eric N. Kitson
Operations Manager
J&B Fisheries, Inc
Cape May, NJ

STATE OF MAINE
DEPARTMENT OF
MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

JOHN ELIAS BALDACCI
GOVERNOR

GEORGE D. LAPOINTE
COMMISSIONER

March 6, 2006

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

Dear Paul:

I am writing to comment on the scoping process for Amendment 11 to the Scallop FMP. DMR hosted several meetings of our own between Feb. 6 and Feb. 13 and collected feedback from the industry. Comments from interested parties who attended those meetings are incorporated into the letter. Comments specific to each meeting are attached.

The scoping document lists several issues and requests advice on those issues, so I'll structure this letter according to that format.

Issue 1: Limited Entry in the general category (GC) fishery:
The Council has already committed to limited entry in the GC fishery to control the increasing effort, especially given that for the past three years the fishing mortality rate for scallops has been higher then the target rate and thus the fishery has had overfishing occurring. I am very concerned however about shutting people out who are not having an impact on the fishery.

I'll describe Maine's active GC fleet: There are some Maine fishermen (less then 50) who choose to travel to Cape Cod or Southern New England for some portion of the year to supplement their income by day-boat scalloping in a directed fishery for a few weeks up to a couple months. There are also a very few fishermen in Maine who choose to day-boat scallop in a directed fishery from the Cape or Southern New England for their sole source of income.

By far the vast majority of our fishermen would go scalloping in federal waters if there were scallops in the Gulf of Maine (GOM), but there haven't been enough scallops to pursue since the late 1980s. I think it is very important for the people in coastal Maine to have access to the scallop resource in the GOM when the resource in this area returns. These are the people I do not want to exclude from the fishery – they are not fishing, they don't want to travel to where the scallops are, but if the resource returns in the GOM, they should have the opportunity to harvest that resource. With this in mind I suggest continuing an open fishery for the waters north of 43-00 north latitude with a maximum landing limit of 200 pounds per calendar day with the same input controls as the current small dredge exemption area in the GOM (a maximum dredge width

of 10.5 feet, four inch rings, 10 inch twine tops, no more then 5 persons allowed on board) and with the additional caveat that the vessel must be owner operated (with reasonable exceptions[1]).

I note that the scallop survey is not done in the GOM so we really have no idea what is out there. I respectfully request that the Science Center and SMAST include the GOM in their scallop surveys.

Control Date:
There is some controversy among the Maine industry regarding the control date. There are certainly some members of our industry who would prefer that Dec. 1, 2005 (VMS installation date) were the control date. However, I think the right thing is to honor the Control date set by the Council in 2004 and leave it at Nov. 1 2004.

Issue 2. Allocation between the Limited and General Category Fleet:
This is a tricky issue that has generated much discussion among the Maine industry. I recognize there is a lot of pressure to allocate landings to the GC fleet at their historic levels. However there are several reasons not to submit to this pressure, and allow the GC fleet the opportunity to catch a larger proportion of the TAC then they did in past.

First, we are already limiting the GC fishery by making it limited access and cutting more than 2000 permits out of the fishery.

Second, the increase in landings in the scallop fishery gives us enough scallops and economic benefit from the fishery to allow a higher percentage to the GC fleet while continuing increased economic benefits to the limited access fleet.

Third, the original intent of the GC fishery in Amendment 4 was to allow for a small directed fishery by day-boats and a bycatch fishery for those vessels targeting other stocks, which have some small incidental catch of scallops.

I strongly support increasing the allocation to the GC fleet above historic levels to a level that will allow a sustainable and economically viable day-boat fishery. I think we should allow a day-boat fishery to exist and craft the amendment accordingly.

Issue 3. Dual Application for Limited Access vessels:
Given the fact that the fishery has had overfishing occurring in each of the past three years, it suggests that the current management system is not working. Because we are closing the GC fishery to new entrants and new effort, then we should not allow Limited Access vessels to fish outside of their DAS. The Limited Access fleet has access to (and has landed) millions of pounds of

[1] Reasonable exceptions to be determined by the Council but to include immediate family members in the case of death or disability.

scallops through their DAS and Special Access Areas. In a fishery where overfishing is occurring, it does not make sense to allow the biggest, most effective harvesting platforms to fish outside the regulations designed to control their effort. The Limited Access vessels should not be allowed to fish in the day-boat fleet.

According to the table on page 4 of the scoping document, Limited access vessels fishing outside their DAS landed 0.70% of 5.6 million pounds – or 39,200 pounds in 2005 – a pretty insignificant number of pounds relative to their total projected landings of over 60 million pounds. In spite of this low landing, I feel very strongly that limited access boats (with DAS and access to Special Access Areas) should not be able to fish as part of the day-boat fleet. We should reserve that category for smaller vessels that can only fish the near shore.

However, if the Limited Access vessels are targeting other species and have bycatch of scallops, they should be allowed to keep a very small daily trip limit – I suggest something on the order of 200 pounds per calendar day, up to some reasonable maximum based on scientific evidence of bycatch rates.

Issue 4. Use of Hard TACs in the GC fishery (fleetwide, by area, season, sector or individually)
I do not think it is appropriate to limit the GC fleet with a Hard TAC if the Limited Access fleet will continue to operate without a Hard TAC. If the entire fleet will be required to operate under (limited access, day-boat, bycatch) were to shift to a Hard TAC, then perhaps it should be done such that 80% of the TAC is allocated to the Limited Access fleet, 19% to the GC fleet and 1% to the bycatch in all other fisheries.

If we have to go to individual TACs then for the Limited Access fleet, it should be done according to permit category and using historical activity (years and pounds landed) as qualifying criteria. For the GC fleet, an area based TAC may be preferable given that a line already exists at 73-00 west separating the Mid Atlantic from Southern New England.

I recognize that this is a controversial issue and there is no way to do any allocation fairly. It is true the limited access boats have made a commitment to this fishery but there is a historical and culturally important day-boat fleet in New England that is getting wiped out by the march towards economic efficiency. I strongly believe there should be room in this (and other FMPs) for a day-boat fishery to operate sustainably.

Issue 5. Use of Sectors and Harvesting Cooperatives (Dedicated Access Privileges):
If the Council decides to go along with Hard TACs then the development of sectors and co-ops should be allowed. That said, I think the first question to be answered has to be whether the Council will recommend Hard TACs for the entire scallop fishery. If the Council votes to recommend Hard TACs it should be for every segment of the fishery and special access area, not just for the GC fleet.

Issue 6. Landings of Incidental scallop catch:
As mentioned earlier, landing scallops caught incidentally in other fisheries should be allowed; I suggest a 100 pound landing limit as a place to start. It may be necessary to prevent over-harvest by assigning a bycatch cap to each fishery based on historic patterns.

Issue 7: Changing the Fishing Year:
I am opposed to changing the fishing year because if the year were to start in the fall, when the data was all collected, the day-boats, particularly in New England would be at a significant disadvantage due to weather. I think it would unnecessarily complicate the scallop plan if the limited access boats started at one time and the day-boat fleet started at another time. We should leave the start of the fishing year for scallops at March 1.
Other Issues:
I appreciate the Regional Administrator sending out the letter (February 17, 2006) addressing the concerns of vessel owners who may have sold their boat, bought another one without retaining their catch history. There are quite a few Maine fishermen who are in this situation and are concerned they will lose access to the fishery. I would be happy to discuss options of how to address this problem if you have any suggestions.

Please contact me if you have any questions about my comments.

Sincerely,

George D. Lapointe
Commissioner

cc: Tom Hill

W. William Anderson
702 Dixie Road
Moose River Cove
So. Trescott, Maine 04652
United States of America
207-733-2179

February 22, 2006

George D. Lapointe, Commissioner
Department of Marine Resources
21 State House Station
Augusta, Maine 04333-0021

Dear Commissioner Lapointe:

I received your notice of meetings to discuss General Category Scallop permits. I hold a 1B General Category Scallop permits. According to Commercial Fisheries News only 816 vessels have taken out 1B permits by early December. This alone significantly limits the number of boats with 400# permits. It is my opinion that anyone who went to the trouble of purchasing and installing a VMS by December 1, 200 should allowed to stay in the 400# category, weather they have landings or not.

From what I read there is concern about effort in the General Category. You now have 800 vessels to put in a Limited Access General Category with permission to land 400#. There were 2831 in the 400# General Category. This is a very significant reduction in potential effort. Everyone had months to decide whether having the ability to land 400# per day was important to their operation.

If you want to have a total allowable catch it should effect all limited access boats not just General Category Boats. When you reach the total allowable catch General Category boats should be able to continue to fish at the 40# per day level. Or at least those with VMS so all additional landings are recorded this way.

Those bigger boats have deeper pockets and many are large companies with multiple boats in many fisheries in come cases. Allowing 800 boats to continue to fish at the 40 pound per day level would allow a small operator to continue to have some cash flow to pay bills or buy groceries. I do not feel it would be fair to put a total allowable catch limit on the small boats while the big boats just keep on fishing. It appears to me that there has been some significant increased in effort in those limited access categories. There are always new boats being built old boats with permits purchased and upgraded.

I see where the New England General Category Scallopers Coalition was thinking about limiting drag size at 8 feet I could support that or 10 feet limitation similar to Maine Law. If drag size is seen as necessary for General Category Limited Access Boats. They are already limited by the amount they can land. It would be nice if you could work with The NEGCSC to come up with a proposal for limited access General Category Boats to be submitted to the New England Council so General Category Boats with 1B permits will speak with one voice and have a better chance of getting what they want or need.

Can a General Category Permitted boat go on a multiple day trips as long as they do not exceed the per day limit or do they have to come in to port every night? For example, Three days out can not land over 1200# or do I have to come in to port every night and land my scallops?

Sincerely,

Bill

W. William Anderson

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

Bob Baines
F/V THRASHER
89 Waterman Beach Rd.
South Thomaston, Me. 04858

2/9/06

GENERAL CATEGORY SCALLOP COMMENTS

Dear Mr. Howard,

I am a Maine lobsterman who has also participated in the scallop fishery for over 20 years. I have held a general category permit with landings history since 1993. It is extremely important for Maine fishermen who hold a general category scallop permit to retain the ability to harvest scallops in waters off the New England coast. Many of the fishermen who hold general category scallop permits fish on small boats in a directed fishery either on a seasonal or full time basis. The ability to continue in this fishery will allow the owner operator, small boat fleet to survive in an arena being dominated by big boat, corporate owned operations.

1. If it is the intent of Amendment 11 to control capacity in the general category fleet, then limited entry must be used. I would support the control date that has been established, although there is not much difference in the number of permits issued in '04 compared to '05. Qualifications for a limited access program should be based on hundreds of pounds of scallops landed while holding a general category permit during the last ten years.

2/3. An allocation between the limited and general category fleet should only be considered if the limited access fleet is prohibited from landing scallops under their general category permit (double dipping). A 20% quota would be a fair allocation to allow the small boat fleet to maintain economic stability. A north/south sector should be considered to evenly distribute effort.

4. A hard TAC should be used for the entire general category fleet, along with limited entry, but not on an individual basis. It would not be in the best interest of the fishing community to create individual ownership of harvesting rights. A fleet wide TAC with area and/or season limits would effectively control effort.

5. The use of sectors or harvesting co-ops should be a part of the plan as long as all qualifying general category permit holders can participate. Sector allocation has the potential to provide better stewardship of the resource, but many questions first need to be answered as far as who has the right to harvest under the general category permit.

6. If a limited access program is initiated in the general category fishery, there should be no bycatch of scallops allowed by vessels which do not have general category permits. The scallops can be returned with minimal discard mortality. Under a hard TAC, any incidental catch should be prohibited when the quota is reached.

7. If the general category fleet is managed under a hard TAC, the fishing year should not be changed. The general category, directed fishery scallop fleet, is predominantly a small boat fishery. A change in the fishing year to later in the year could put these boats at risk by fishing later into the fall and winter months fearing there would be no quota left by springtime. The current fishing year provides these boats with the best weather which affords the fishermen the safest time of year to be working in small boats.

I have two other comments that I feel are relevant to the General Category Scallop Fishery. There seems to be a problem in the inability to transfer general category permit history. I know of a number of fishermen who have lost their history after building new boats and not being able to transfer their old permits to the new boat because it is still an open access fishery. This problem needs to be rectified if Amendment 11 is going to make the general category scallop fishery a limited access fishery and where entry is based on the control date and history.

Also, and I understand that this has nothing to do with Amendment 11, general category fishermen must be allowed back into the traditional fishing grounds in the Great South Channel . The general category fleet is using the same gear as the limited access fleet, so there is absolutely no reason why they should be treated any differently than the limited access fleet. The general category fleet must be designated as an exempted fishery which would sustain the economic viability of the fleet and spread effort over a much larger area.

Sincerely,

Bob Baines
rsbaines@adelphia.net

DMR Scallop Meeting Summary
Portland, ME
Feb 6, 2006
Meeting Room at the Casco Bay Lines Ferry Terminal

In attendance: George Lapointe, Terry Stockwell, Cindy Smith, Barbara Stevenson, Maggie Raymond, Kurt Denholm, Terry Alexander, John Higgins, Phillip Chase, David Todd, Mark Roberts, Mike Stinchfield, David Horner

Points from Portland Meeting:

- The rules should be changed so the Limited Access (LA) vessels cannot fish outside of their DAS under General Category (GC) rules. Limited Access vessels should not be able to fish outside their DAS.
- There are two kinds of (federal waters) scallopers in Maine - a directed day boat fishery and a bycatch fishery. We must protect both.
- It is critical to allow bycatch of scallops in the groundfish (particularly the yellowtail founder) fishery.
- The bycatch catch limit should be more then 40 pounds per trip, 40 pounds is too low.
- Allocating 2-5% of the TTAC to the GC sector of the fishery is way too low. The GC sector should be allocated at least 20% of the TTAC.
- The Nov 1, 2004 control date should be changed – possibly to December 1, 2005 when VMS was required.
- There should be an open access permit in the small dredge exemption area in the GoM – with maybe a 200 pound landing limit.
- Suggest giving the guys with no recent landings history a limited number of DAS to fish at 400 pounds per DAS.

DMR Scallop Meeting Summary
Rockland, ME
Feb 7, 2006
Marine Patrol Meeting Room (Ferry Terminal)

In attendance: George Lapointe, Terry Stockwell, Cindy Smith, Alan Talbot, Dennis Young, Jr., Wallace Gray, John Higgins, James Wotten, Gordon Connell, Doug McLennon, Michael Ball, Jeremy Smally, William P. Waldren, Bob Baines, Jeremy Alley, Matt Ross, Ivan Chase, David Aho

Points from Rockland Meeting:

- GC sector of the federal scallop fishery should be allocated at least 15-20% of the TTAC
- ME fishermen need flexibility to fish in different fisheries throughout the year.
- Opposed to having the VMS requirement be part of the qualifying criteria.
- Maine fishermen need access to the GOM scallops when they come back
- Changing the fishing year would be bad for Maine boats. If the season starts in the fall, Maine guys generally have smaller boats and poor weather conditions so they will have less opportunity to catch scallops in the fall and winter (before the fishery gets fished out or closes for the year).
- Opposed to changing the fishing year.
- I was not able to keep the landings history when I sold my boat; I was told I couldn't transfer that history to my new boat. How am I going to be able to fish in this fishery?
- One guy suggested a weekly quota with a Hard TAC to spread out the landings. He explained that 400 pounds per day equals 2,800 pounds per week; he is willing to only catch 1,800 pounds in the week but he wants to be able to decide when to fish.
- One man asked how to let the guys in who qualified originally but didn't bother getting the limited access permits because scallops were scarce and the price was only $3 a pound.
- The Limited Access vessels should not be allowed to fish outside of their DAS on GC rules.
- There was a suggestion to split the fishery into a Northern and Southern zone with the dividing line being the 73-00 west longitude line.
- There was a suggestion to stick with the existing control date of Nov. 1, 2004, (not changing it).
- How can we change the rules so we can go scalloping under the GC rules in the Great South Channel? It's a groundfish rule, so it would have to be in a groundfish action.
- We should allow groundfish draggers some incidental bycatch.
- Another man disagrees: We should not allow a bycatch fishery.

DMR Scallop Meeting Summary
Machias, ME
Feb 9, 2006
U Maine Science Building, Room 102

In attendance: George Lapointe, Terry Stockwell, Cindy Smith, Ivory (Fuzzy) Preston, Mike Danforth, David Look, Ben Crocker, Edmund B, Lanny Wood, Leigh Feeney, Walter Jerome, Howard Robbins, Leo Murray, Fannee Beal, Bernard Beal, John D. Wood, Matt Fronczak, John Polk, Larry Wood

Points from Machias Meeting:

- A hard TAC is a bad idea unless there is a line so the southern boats can't come up north. The boats in the Mid Atlantic have the capability of catching the whole TAC.
- Maine boats should have access to scallops in the GOM when they come back.
- The General Category fishery should get at least 25% of the TAC.
- In 2005 the GC landings were lower then they would have been otherwise because the Hudson Canyon Area was terrible fishing.
- The Groundfish closures are what made the scallops come back, not the sacrifices of the limited access fleet.
- Maine boats used to sell their catch for cash, so they have little in the way of recorded landings history.
- Maine boats would lose in the derby fishery created by a Hard TAC.
- Last week off Rhode Island there were 19 boats over 75 feet fishing the GC scallop fishery, wasn't this GC originally supposed to be limited to 45 foot boats?
- There are people who sold their boats without retaining their federal waters scallop catch history, and therefore will probably not qualify for the new limited access GC fishery. How can we address that problem?
- Some people prefer to lower the daily landing limit to 200 pounds so it is not worth it for the bigger boats to participate.
- Requiring VMS to stay operational even when fishing in state waters is just a ploy to make us quit fishing.
- We need to allow incidental catch in the groundfish fishery.
- Catch increased dramatically after the year 2000 because in that year they made a rule that LA had to keep the VMS on all the time and couldn't duck inside to shuck, deliver and go back out again.
- We need to protect Downeast fishermen.
- Absolutely we should not lower the 400 pound daily limit.
- Many Maine fishermen want to be able to lobster for some months and scallop for some months.
- I want to support the Maine guys who go down to the Cape to fish. I want to be able to go scalloping again sometime.

DMR Scallop Meeting Summary
Ellsworth, ME
Feb 13, 2006
Ellsworth City Hall

In attendance: Terry Stockwell, Cindy Smith, Susan Jones, Stanley Sargent, Adam Stanwood, Russell Leach, David Leach

Points from Ellsworth Meeting:

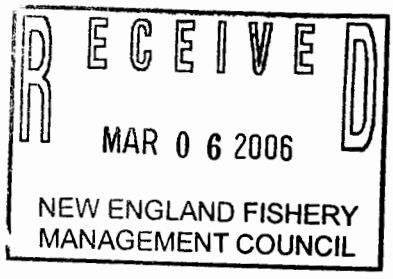
- You should get your VMS and go fishing or you will be done.
- I chose not to buy VMS back in 1994 when it cost $8,000 and $300 per month to operate, when scallops were selling for only $3 per pound. You should let the guys who qualified back then enter the Limited Access fishery now.
- I bought a new boat but didn't keep my old landings history when I sold my old boat. Now what am I supposed to do?
- Rebate money for VMS will just encourage everyone who hasn't bought one yet to go buy one.
- I can't transfer my federal landings from my old boat to my new boat, what am I supposed to do?
- The GC segment of the fishery should be allocated at least 25 or 30% of the TAC, not a Hard TAC of pounds.
- The 400 pounds per day is our hard TAC, there do not need to be any other limits on the GC fishery.
- I only want a specific allocation of pounds if it is transferable.
- There is no need for sectors in the GC fishery.
- We should not change the start of the fishing year – it would be a safety disadvantage for Maine boats.
- Opposed to permit stacking, it does not remove capacity; rather it allows big companies to operate more efficiently.
- We have to protect the Maine fishing communities. There must be a way to allow Maine fishermen to fish in federal waters for scallops for a few months per year.
- When scallops come back to federal waters in the GOM then Maine fishermen have to be allowed to go fish for them. It would be totally wrong to shut out Maine fishermen.
- People who don't qualify for this limited entry should still have some access to the fishery… maybe 200 pounds per day would be ok.
- How will my sons and nephews be able to go fishing for a living?

Additional Comments by phone or in writing:

- Limited access is an acceptable way of controlling capacity
- Support the current control data even though there is not much increase from 2004 to 2005.
- Qualification period should be 1994-2004; but only require a few hundred pounds of landings in any one year.
- Allocation between limited access and GC fleet only if the LA fleet is prohibited from landing outside their DAS.
- The GC fleet should get at least 20% of the TAC
- There should be North and South sectors to evenly distribute catch.
- Hard TAC for the whole fishery would be fine but only for the limited access and the general category fleets, but not for individuals.
- Sectors might be ok, as long as all GC permit-holders can participate.
- No bycatch or incidental catch fishery
- Do not change the fishing year.
- You have to fix the problem of historical landings not being transferred to a new boat in an open access fishery.
- You should let them go back to fishing in the Great South Channel because they use the same or smaller gear then the limited access fleet.
- We need a larger % of the TAC then 3-5%,at least 20%
- We should have a separate TAC for the GC
- Dec 1, 2005 should be the control date
- It would be ok to have an open access permit for the GOM with low landing limit
- Individuals should be able to consolidate their permits and history to the most advantageous position for the future.
- NO IFQs

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Tuesday, March 07, 2006 4:34 PM
To: Deirdre Boelke
Subject: [Fwd: Atlantic Sea Scallop Amendment 11 Scoping Comments]



-------- Original Message --------
Subject: Atlantic Sea Scallop Amendment 11 Scoping Comments
Date: Mon, 06 Mar 2006 22:14:17 -0500
From: Robert & Debra Maxwell <bdmaxwell@comcast.net>
To: Scallopscoping@noaa.gov
CC: Donmyers46@aol.com

The most practical way in all fairness to all parties within is to have individual days at sea because it is a program already in effect by
NMFS. This gives people who were in the fishery what they deserve.
For instance, by using the control date of November 1, 2004 and picking the highest days at sea from any one year from 1999 to 2004 allows for people to pick there best year prior to the control date that *were
active* in the fishery. If you do not have any landings from 1999 thru November 1, 2004 you end up with 40 pound by catch. There should absolutely not be any rig up clause what so ever, if you have no landings between the dates above then you do not qualify. By using this criteria it would make this general category limited access a more sustainable fishery by utilizing the 8.5 percent of total landings in 2004.

Thanks

Robert Maxwell

Collier Shannon Scott, PLLC
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007-5108
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Collier Shannon Scott

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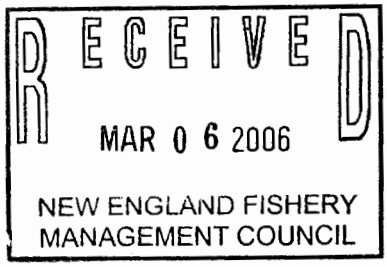
March 6, 2006



VIA ELECTRONIC MAIL
AND ORIGINAL BY FEDERAL EXPRESS

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

Re: Atlantic Sea Scallop Amendment 11 Scoping Comments

Dear Captain Howard:

As you know, we represent the Fisheries Survival Fund. FSF's participants include the bulk of the full-time, limited access scallop permit holders, homeported from Massachusetts to Virginia. We appreciate this opportunity to present these comments in connection with the Council's scoping process for Scallop Amendment 11.

Circumstances have conspired to convert a persistent and troubling issue regarding the need to control the growth of the General Category into a major problem. As you know, ever since the Council commenced development of Scallop Amendment 10, in 2000, FSF has been advocating for bringing General Category scallop effort under the management limitations that have so successfully been applied to the limited-access fleet since Amendments 4 and 7 – limitations which have seen the scallop resource rebuilt and the fishery transformed into one of the success stories of the post-Sustainable Fisheries Act era. However, the period from 2003 through 2005 saw General Category landings outside the Limited Access fleet increase from 3% to over 12%. A number of factors were at play – historically high scallop prices, good sets of scallops in near shore beds, and the Region's last remaining open access fishery available to those experiencing hard times in other fisheries from the Gulf Coast to Maine.

FSF and its participants have consistently and increasingly expressed concern over the unchecked growth in effort, landings, and capitalization in the open access General Category fishery occurring in New England and, particularly, the Mid-Atlantic. Almost 70% of the General Category scallop landings now come from the Mid-Atlantic. These trends threaten the resource, the prospects of the long-term dayboat scallopers whose livelihoods depend on local, inshore scallop beds, and the very concept of rational, conservative exploitation of New England's fisheries resources. FSF therefore thanks the Council for undertaking development of this important Amendment 11, and thanks it in advance for proceeding towards prompt and timely implementation.

The Council in Amendment 11 will, unfortunately, have to make some hard choices – choices that have been made harder because General Category growth was not addressed a few years ago when problems with the General Category were emerging. However, it would be bad resource management, horrible precedent, and not fair, for the Council to palliate the problem by fundamentally reallocating the scallop resource at a time when the pendulum has swung such that returns from the scallop fishery are (or more accurately, were in the 2005 fishing year) at a cyclical pinnacle and conservation sacrifices need to be made to rebuild other fisheries the way the scallop fishery has been rebuilt.

That said, the Fisheries Survival Fund has always recognized a discrete, historical in-shore, small vessel, dayboat scallop fishery mostly along the New England Coast. The dayboat fishery was prosecuted from existing vessels and generally seasonally. Under Amendment 4, which should control, the General Category was intended for these fishermen, not new participants, in new vessels, who have in recent years turned to directed scalloping as a full-time pursuit.

Independent of this small inshore directed dayboat fishery, the Fisheries Survival Fund recognizes that directed fishing operations for other species also catch incidental amounts of scallops. Amendment 11 should distinguish the incidental catches from directed dayboat operations and treat them separately. There appears to be no need to limit truly incidental scallop catches.

While the FSF recognizes the need for the dayboat fleet to develop an effective set of measures to achieve the Council's goals, FSF's resources and expertise are available to assist the Council and historic dayboat scallopers in developing viable solutions. FSF does believe, however, that Amendment 11 should be developed consistent with certain important decisions the Council has already made.

FSF will use these scoping comments to set forth a series of principles that should guide Amendment 11, and will then proceed to address the questions the Council has specifically raised in its scoping document.

FUNDAMENTAL PRINCIPLES FOR AMENDMENT 11

1. The Council should not use Amendment 11 to provide for a General Category sector that is larger than can be supported by the reasonable allocation of the scallop resource according to historical landing percentages. The Council's experience with groundfish shows that it is very difficult to implement effective conservation limits when an inordinate number of permit holders qualify for entry into a fishery. This point may be even more salient for the General Category scallop sector, which should reasonably be expected to have only a modest allocation of the fishery to begin with. As explained below, from the inception of Amendment 4 in 1994 until the year the General Category control date was implemented (November 1, 2004), the General Category effort (not including Limited Access permit holder landings off the DAS

program) did not account for more than approximately 5% of overall scallop landings, and averaged approximately 3% of these landings.

2. Amendment 11 should be based on the allocation of the scallop fishery that Amendment 4 established. It is important to recognize that the Council has already made what was supposed to represent a durable allocation of the fishery in Amendment 4. Amendment 11 should be consistent with the purposes for which Amendment 4 created the Limited Access fleet in the first place.

More specifically, Amendment 4's primary purpose was to include essentially the entire directed scallop fishery in the limited access regime so that it would be "easier to control fishing mortality." Amendment 4 accordingly established a series of limited access categories covering almost all those permit holders who chose to participate in limited access and could document virtually any participation. To qualify for limited access, a vessel need only have landed a total of 400 pounds of scallops during the qualifying period.

Amendment 4 did substantially rationalize the scallop fleet, with positive consequences for the fleet and the resource. This rationalization allowed the conservation measures implemented for the scallop fishery (for example, days-at-sea ("DAS") limits, ring-size limits, and crew limits), to take hold and rebuild the resource, while allowing participants to still obtain a return from the fishery. Further, the fleet has also been able to invest in research and constructive engagement with the Council and NMFS. And, in reliance on Amendment 4, the limited access fleet has created solid domestic and international markets for healthful, abundant, reasonably-priced Atlantic scallops. This is the promise of fishery rationalization.

However, Amendment 4 entailed a considerable sacrifice by those who chose to enter the Limited Access scallop fishery. Limited Access participants relinquished other New England permits and opportunities to concentrate on scallops under Amendment 4, and did so at a time when the scallop resource was at a very low level (when catches were less than 400 pounds per day). The fact that the Council required those opting for a Limited Access scallop permit to relinquish other New England permits adds strongly to the equities in not requiring any fundamental reallocation of the scallop fishery from what was achieved following the extensive Amendment 4 processes. The Limited Access fleet's days at sea have been curtailed since Amendment 4, and they continue to be curtailed to this day. By contrast, the General Category has seen no new limits since 1994, save for the VMS requirements recently imposed.

3. The Council should not use Amendment 11 to fundamentally alter the General Category fishery. The Council created the General Category in Amendment 4 as a compromise to allow some modest scallop landings for those vessels who could not meet Amendment 4's exceedingly limited qualification standards, did not or could not document their landings history, or otherwise decided not to accept the burdens of a scallop limited access permit, including limited opportunities to participate in other fisheries.

Significantly, the General Category was supposed to have only a minimal impact on scallop mortality. In fact, Amendment 4 specifically intended for General Category scallop mortality to be so insignificant that it was not planned to be counted in setting overall scallop mortality estimates. If the General Category grew, Amendment 4 specifically stated that the Council should reduce allowable General Category landings, as opposed to re-doing the allocation of the fishery that Amendment 4 created. The recent, explosive General Category growth should be constrained to maintain the General Category's historic purpose and share of the fishery. As explained above, the Council should not fundamentally revisit the decisions it made in Amendment 4.

4. Amendment 11 should not detract from the purposes of Amendment 10. Following the rebuilding of the scallop resource, the Limited Access fleet has invested in developing an area management amendment, Amendment 10, that has great prospects to improve long-term scallop yield. The Amendment 10 system of rotational area closures and controlled openings represents a dramatic management improvement, especially as compared to past races to new sets of scallops just as soon as they were large enough to be retained by the gear.

Consistent with these efforts to improve yield, any allocation regime should take into account the type of gear used by the various types of dayboat scallopers. For instance, the Council should consider options to ensure scallop yield, including but not necessarily limited to requiring any new dayboat category to use dredges only, with 4-inch rings. Extensive research, over many years, has demonstrated that a directed scallop trawl fishery is able to target smaller scallops, limiting the Council's ability to achieve optimum yield from the scallop resource under Amendment 10.

5. Amendment 11 must reflect the realities of the scallop resource. In 2004, according to Northeast Fisheries Science Center estimates, scallop fishing mortality was more than 50% above the target. In 2005, the Council decided against precipitate action to correct that problem because decisions made in Amendment 10 and Framework 16 were to reduce Limited Access scalloping in 2005. Moreover, it was understood that DAS would be further adjusted in 2006 and 2007 under Framework 18. Preliminary catch statistics in the Amendment 11 scoping document suggest that Amendment 10 and Framework 16 did function as intended. Limited Access catch in 2005 did indeed drop to under 40 million pounds, from the approximately 60 million in 2004. Although nominal Limited Access DAS allocations are going up in 2006 and again in 2007, many of these DAS (more than half) are to be tied to access area trips, meaning that it is not likely that all days allocated will be fished. The actual number of days spent at sea by each Limited Access vessel is being tightly constrained. In contrast, General Category effort and landings have increased quickly, and they, too, must be constrained.

There are also troubling signs that the problems seen in Hudson Canyon in 2004 and 2005 are now becoming general across the Mid-Atlantic (outside the Elephant Trunk access area) and in coastal waters of New England. While scientific projections for the Elephant Trunk Area are very encouraging, neither scientists nor industry have any experience with such dense scallops. As has been shown in the Hudson Canyon access area, and before that in the Virginia Beach access area, it is not a certainty that the dense concentrations of scallops in the Elephant

Trunk will survive and grow as projected. Nor has there been much sign of further major recruitment, following the year-classes protected by the rotational closure. All of this is to say that the Council should be conservative in allocating scallops as its "margin for error" (scallops at historic levels of abundance, at least in recorded times) may be shrinking.

6. Amendment 11 must account for the Council's legal mandate to maintain rebuilt fisheries over the long run. Suggestion has been made that there are more than enough scallops to satisfy the needs of both the Limited Access fleet and the new entrants to the dayboat fishery. Recent reports from the fishing grounds suggest that that is no longer true but, even when the ocean had many scallops, the claim was a mistaken one.

The Sustainable Fisheries Act of 1996 changed the basis of fisheries management, placing an increased emphasis on conservation, and insuring that fisheries resources be and remain rebuilt. The goal was to replace (or at least moderate) the "boom and bust" cycles that prevailed in many fisheries. The Atlantic sea scallop resource was rebuilt, and thus there are many scallops in the ocean. However, rebuilding was achieved by restricting the mortality rate. Modern fisheries management supposes (as the Act requires) that high biomasses must be maintained by keeping mortality rates low.

Thus, while there may be relatively many scallops to catch, there is only a limited amount of mortality permitted. The limits are so strict that "full-time" vessels are only working some 80 days per year, and it has already been suggested to the Council by the Capacity Committee that it may have to consider reducing the number of Limited Access vessels so as to increase their commercial viability. In that situation, there is no justification for transferring substantial portions of the allowable scalloping opportunities to new entrants.

RESPONSES TO THE COUNCIL'S SCOPING QUESTIONS

I. Limited entry in the general category fishery:

- **Should the Council consider and use limited entry to manage capacity in the general category fishery? Why or why not?**

The Council should consider creating a new limited access dayboat permit whose holders would be allowed 400 pounds per day for a reasonable number of days per year for an in-shore scallop fishery. This is separate from allowing continued incidental catches of scallops in directed fisheries for other species; accordingly, the Council should not consider a new limited entry program for vessels operating in other fisheries and landing only incidental catches of scallops.

More specifically, Amendment 11 should design this dayboat permit to provide a reasonable amount of access for a discrete, numerically-limited, well-understood set long-time, directed day-boat scallop fleet which opted out of limited access under Amendment 4. From 1994 until 2004, when the Council set a new General Category control date, these dayboat fishermen, along with fishermen in other fisheries with traditional incidental scallop catches,

landed about 3% of total landings on average. However, and significantly, as explained above, the Council should not use Amendment 11 to create a new fleet sector that is larger than can be supported by a reasonable allocation of the scallop resource according to historical landings percentages.

The Council may want to consider whether there are any discrete historic, dayboat scallop fisheries that are prosecuted in state waters, outside the NMFS Atlantic scallop assessment area (perhaps north of the 42° 20' line), that might present a rationale for exclusion from the Amendment 11 regime. Such an exclusion should not apply to vessels that opt to fish for scallops outside this narrow context and geographically limited area.

- **If a limited access program is established, should qualifying criteria be based on the November 1, 2004 control date?**

Any new limited access program for the General Category must be developed using the November 1, 2004, control date. Others who cannot demonstrate significant landings before the control date should not be able to continue to participate in a 400 pound per day dayboat scallop fishery.

It will not be enough, however, simply to admit every vessel that held a general Category permit as of the control date, nor even every vessel that had recorded a scallop landing before that date. Either approach would leave such a broad number of qualifying vessels that each participant's share of the remaining fishery would be reduced below what is needed to sustain an active dayboat scalloper.

- **What types of qualification criteria should the Council consider if it designs a limited access program for the general category fishery?**

To qualify for a limited access permit for directed dayboat scalloping (as opposed to being allowed a much more limited level of incidental landings in directed fisheries for other species) under Amendment 11, a General Category vessel should be required to demonstrate significant catches from directed scalloping (again, as opposed to incidental landings), in several different years prior to the November 1, 2004, control date, over the duration of Amendment 4, 1994-2004.

Further, vessels with incidental catches of scallops, but no history of participation in a directed dayboat scallop fishery before the control date, should not be included in any new directed dayboat permit category. Thus, to qualify for a limited access permit, a vessel should be required to demonstrate that its scallop landings on a certain number of trips, over a certain number of years, exceeded a level that would be considered incidental bycatch from directed effort in other fisheries.

Unrecorded landings, illegal landings, and other scallop landings inconsistent with the regulatory regime, should not be permitted to count towards qualifying.

II. Allocation between the limited and general category fleets

- **Should the Council consider allocating the scallop resource among defined fisheries and/or seasons, or individual basis; or should the Council set specific limits fishery wide for the general category fleet?**

The Council should establish a durable allocation of the scallop resource between the current Limited Access fleet and the dayboat fleet that has been fishing in the General Category. There is no indication that landings of incidental catches of scallops are increasing, and FSF sees no reason to impose a specific allocation on such landings at this time.

The Council should not allow Amendment 11 to create a set of qualifiers for any new day-boat fleet that is larger than is consistent with a reasonable allocation of the scallop resource according to historical landings percentages. While how this outcome is achieved is a matter of greatest import for the General Category vessels and their organizations, rather than the FSF, there are certain truisms that the Council will have to consider as it makes such decisions.

For instance, a hard cap limit of some percentage would involve issues of enforcement costs and enforceability more generally. The task of managing the General Category fleet would be made simpler if its size is consciously pegged at a number projected to fit comfortably within the sector's target share. That share, in turn, should be tied to the historical share of this sector.

On the other hand, the success of the scallop fishery to date has been built on individual allocations, specifically in DAS to Limited Access vessels. While a similar system may or may not meet the needs of the General Category, there may be solutions which are fairer and more effective than a categorical hard quota. Given its dispersion and the geographic and operational differences of the participants, for example, a possibility might include regional management solutions within the General Category as a whole.

- **What should the basis be for choosing "fair and equitable" allocations (or catch limits) for the general category and/or limited access fleets?**

Only landings from before the November 1, 2004, control date should be factored into determining a reasonable allocation. The control date is recent, well-publicized, and follows years of Council discussions about the need to limit fishing effort and capitalization in the General Category. Using the control date already provides for a broad (actually a way too broad) number of potential qualifiers, without adding speculative effort that cascaded into the fishery in 2005 and even 2006 when prices were high. Effort in 2005 has created conservation issues and is fundamentally changing the extent and even the nature of the General Category fishery.

Indeed, in recent years (up until the control date), overall scallop landings from the General Category (excluding Limited Access participants fishing off DAS) were 1.03% of overall landings in 1999, 3.80% in 2000, 4.33% in 2001, 2.35% in 2002, 3.04% in 2003, and 5.35% in 2004. Any allocation should be included in this range, perhaps as an average, because the time period encompasses periods of high and low scallop abundance, as well as different points in the abundance cycle for a range of other New England and Mid-Atlantic fisheries. The average of the annual percentages for 1994 to 2004 inclusive was 2.93%. And, of that approximately 3%, approximately one-third (1% of the overall scallop landings), came from incidental catches of scallops in directed fisheries for other species. In addition, the Scallop Committee and Council had begun developing General Category measures, using a 5% allocation, which represents the upper end of the pre-control date historic range.

As explained in detail in FSF's introductory remarks, a fair and equitable allocation should reflect the many forms of investment the Limited Access fleet has made in developing the scallop fishery into one of the Nation's post-Sustainable Fisheries Act success stories. The Limited Access fleet sacrificed the most for, has the most invested in, and is the most dependent upon, the long-term success of this fishery.

III. Dual application for limited access vessels

Certain Limited Access participants, particularly in New Jersey because of its unemployment laws, have fished under General Category rules to maintain their crews. This is perfectly legal and consistent with applicable regulations. In any event, no vessel should be considered for exclusion from the General Category unless the Council proceeds to implement a limited access fishery for the directed dayboat sector. Furthermore, separate and apart from any new limited access category, certain Limited Access scallopers have permits in other fisheries and they should be able to continue to land scallops caught incidentally in their permitted, directed fisheries for these other species.

If the Council does proceed to consider such an option, the Ad Hoc General Category Scallop Advisory Panel should include those members of the Council's Scallop Advisory Panel who have operated a Limited Access scallop vessel under General Category rules, in addition to those members who hold General Category permits, in order for the Council to gain a true understanding of the scope, scale, and rationale for the fishery.

IV. Use of hard TACs in the general category fishery

A hard TAC for the directed dayboat sector should be considered as an option if a hard TAC is required by the other management options selected. However, a hard TAC should be considered only in conjunction with other General Category measures, such as limited access for a directed dayboat fleet, which will ensure that any such TAC can be set and maintained at a fair and equitable level of the overall scallop catch. Specifically, the primary measure in Amendment 11 should be to limit access to, and hence capacity in, directed dayboat scalloping.

A hard TAC should be one alternative considered in conjunction with such new limits, albeit a hard TAC would be less necessary if access is limited to a sufficiently discrete number of qualifiers and if other input controls (such as DAS and the 400-pound trip limit) are applied to this limited number of qualifiers. The more vessels that qualify under Amendment 11, the more demands there will be for suboptions under any quota system to divide the catch by area, sectors, seasons, and the like. Finally, other alternatives that build on the Council's success with individual allocations in the Limited Access fleet should also be developed, such as individual limits on the number of trips for the qualifying members of the General Category fleet.

If hard TAC management is adopted as part of Amendment 11 for the General Category, it should not be required for the Limited Access fishery. The two fisheries are different and require different management. The existing Limited Access sector is already subject to a combination of input and output controls (open area DAS, access area TACs, crew size limits, ring size and twine top limits) to limit mortality.

V. Use of sectors and harvesting coops (Dedicated Access Privileges)

The Council should ensure that the fishery it creates in Amendment 11 is confined to dayboat scallop fishing on coastal scallop beds, in vessels that are consistent with this fishery's historical roots. Amendment 11 should not allow, through the creation of sectors or other forms of consolidation, for the grouping of poundage onto larger vessels capable of and planning to fish offshore.

More specifically, historic directed dayboat scalloping has been filling a demonstrable niche in the fishery by harvesting coastal scallop beds. This dayboat fishery has also provided an entry-level, owner-operator-based fishery that tends to have been located in small communities, often without the infrastructure to support an offshore fleet. This fishery is worth maintaining for these goals. These goals would not be met by allowing 10 dayboat permit holders to get together, essentially as passive investors, and add what amounts to another full-time, off-shore vessel by consolidating their allocations onto one large vessel.

Further, Amendment 11 is, and should be, on a fast track. As recent experience from herring has shown, the development of sectors and harvest coops can be complicated and potentially time-consuming, if the Council wants to understand their actual allocative impacts. Accordingly, the Council may ultimately need to allow for the development and consideration of these approaches once Amendment 11 is completed.

VI. Landings of incidental scallop catch

Vessels that do not qualify for a new limited access permit under Amendment 11 should be allowed a minimal level of incidental scallop catch, to accommodate historical fishing patterns and prevent discarding of scallops in directed fishing for other species.

As noted above, the incidental catch permit should remain open-access. There are currently no issues with this sector of the fishery, and thus no pressing reason to change the rules, other than to develop alternatives to insure that such catches truly remain "incidental" to other, primary fishing efforts. In that regard, perhaps a good definition of incidental might be is that proposed in Framework 17, of 40 pounds per day fished.

A true incidental catch limit, tied as it should be to vessels fishing under rules of other, directed fisheries and set at a number that would not be profitable to entice vessels to engage in directed scallop trips, is a historical use that should be protected under Amendment 11. Incidental scallop landings have accounted for only a fraction of the total scallop landings. It is simply a completely different fishery, and should be treated as so under Amendment 11, from the directed dayboat scallop fishery that is in part historical, but also in larger part a recent phenomenon created by the confluence of the Amendment 4 General Category rules, record scallop prices, and historically-high levels of abundance.

VII. Change the fishing year

The Council should not change the fishing year at this time. Such a change would represent an added complication, and one which the Council has already considered and rejected as part of Amendment 10.

Furthermore, consideration of changing the fishing year is premature until NMFS figures out how it will replace the *R/V Albatross* surveys. If the Council wants to ensure the fishing year corresponds with the survey over the long run, it should thus wait to know when and how the new surveys will operate.

Changing the fishing year should not be done casually or repeatedly, as it will cause severe disruptions to the established seasonal practices of the fishery and scallop markets. Thus, the Council should not change the fishing year, only to have to consider changing it again when its new survey approach is developed.

***

Thank you again for this opportunity to comment on the Amendment 11 scoping. Please do not hesitate to contact us if you have any questions or require additional information. FSF representatives will also be participating in the Amendment 11 process, and will provide additional comments and perspectives, as appropriate.

Sincerely,

David E. Frulla
Shaun M. Gehan

Counsel for the Fisheries Survival Fund

The General Category Scallopers' Coalition of New England supports the New England Fishery Management Council's desire to reduce overfishing and supports efforts to reduce by-catch, increase scientific understanding of the stocks, and reduce negative impacts on habitat critical to rebuilding groundfish stocks. We strongly support efforts to ensure the economic vitality of small fishing communities.

We also wish to build on the successes of the ideas put forward in the Amendment 10 process. It is very clear to us that leaving 80% of the stock behind on the fishing ground to enable the remaining scallops to continue to grow and spawn is the way to go. Rotational management, seasonal closures and areas closed to protect habitat and to allow the scallop biomass to increase are critical to the future for this fishery. Any changes in to the fishery brought about by Amendment 11 should be reflective and supportive of these key management methods.

We are committed to working with the Council on its shortened timeline, and we are pleased to present these comments.

Allocation

Allocation is the single most important issue facing the Council and once this issue is decided, we believe many of the other issues can be quickly resolved.

There should be a separate allocation for general category and limited access fleets and each should be managed following methods laid out in Amendment 10.

The Coalition requests a substantial amount of the total allocation of scallops located economically and safely within reach of directed day boat scallopers. We also request with proportional access to days or pounds in existing and future rotationally managed areas.

We request a fair and reasonable allocation substantially higher than the so-called historical norm of 2 – 5%. Today the scallop resource is larger than predicted and the DAS fleet has made record profits. We appreciate the past efforts of the DAS fleet to help rebuild the stock and understand their desire to capture as much of the resource as possible. However, we do not believe that a small class of boat owners should have exclusive ownership of a large public resource. We believe the resource is large enough so that all scallop fishermen can reasonably participate through an allocation that reflects today's realities.

The general category fishery has historically been retarded from growth because there weren't enough scallops close to home. Strong fishing pressures brought about through historic overcapacity, overcapitalization and aggressive targeting of inshore scallops by the DAS fleet reduced the local biomass. Amendment 10 changed all that.

As a result, the directed day boat fishery in New England is only now just evolving due to positive changes in the fishery which draw the DAS fleet to other, higher value areas.

This allows once heavily targeted areas within approximately 50 miles of shore to build biomass. If the directed boat fishery can responsibly participate in this fishery, it rightfully deserves substantial access to this resource.

Current and future management methods will continue to create significant scallop resources within safe economic reach of day boat scallopers. Fishermen like to return home to their families at night when they can. Some harbors are natural for smaller boat fisheries as frequent shoaling or shallow waters prevent access by deeper draft vessels. Small fishing communities ravaged by groundfish closures deserve to have a local fishery that works for them. The day-boat scalloper naturally lands a high quality product and consumers understand this additional quality and value. This can keep the bulk of monies earned by the day-boat scalloper in the immediate community.

We know that DAS captains and crew look forward to the day when they can "retire" and start fishing their own general category small vessels and know that the 2 different classes of access, while often in opposition to each other, each are part of the same fishery and that which benefits one benefit both.

Allocation issues when fully addressed in light of overfishing and overcapacity will allow a more full discussion of the allocation of TAC among regions, gear type and bycatch / incidental fisheries.

Manage Overfishing Regionally and Fairly

To fully address overcapacity and overfishing as the predominant concerns of Amendment 11, we need to understand in what regions and to what extent overfishing is occurring. FW 18 states that mortality is 2 times target in the Mid-Atlantic, and it is about 50% target in Georges Banks areas so we are firmly in support of reducing fishing mortality where it is occurring. Simply creating a limited access fishery and lowering effort or the number of vessels equally across the entire general category fishery will not likely fairly or fully address the issue.

It is clear that the general category catches only a fraction of scallops that the DAS fleet captures; subsequently if the general category fleet needs to take a reduction in effort it should be proportional to that, if any, which the DAS fleet will take. Otherwise, focusing on the general category fleet to address overfishing without regard to the DAS fleet is economically disproportional and simply unfair.

Anecdotal information indicates generally accepted deckloading practices wastefully kill approximately 10% of scallops landed. Better understanding and practices might allow some portion of these unnecessary losses of tens of millions of dollars to be allowed to live to grow and reproduce for harvest later.

One participant suggests another approach to reduce mortality might be to go to 4.5 inch rings across the entire scallop fishery. Others suggest only minimal cuts in capacity would be necessary if wasteful deckloading mortality is greatly reduced.

We understand that the biological stock is viewed as inseparable, yet wish to reinforce the fact that NEFMC recognizes 5 distinct fisheries:

The management unit for the Scallop FMP consists of the sea scallop resource throughout its range in waters under the jurisdiction of the U.S. The five resource areas generally recognized within the management unit are: (1) Delmarva; (2) New York Bight; (3) South Channel and southeast part of Georges Bank; (4) Northeast peak and the northern part of Georges Bank; and (5) the Gulf of Maine. The Delmarva area includes scallops as far south as North Carolina (NEFMC 2003). (quote taken from Scallop Framework 18, December 2005, Section 3)

Any discussion of methods to address overfishing must be couched in light of unique aspects of each of these 5 areas. What works well in one area may not work in others. Regional quotas, limited hard TACs, rotationally managed areas or other means to allow effective management are necessary.

The adoption of VMS may curb a substantial amount of the growth through the reduction of illegal catches; at the very least it will substantially increase our understanding of the fishery. A best approach would delay any changes to the fishery until several years of data have been acquired through this significantly improved system so that decisions are made on best available data. At the very least, groundwork needs to be laid in this Amendment to allow flexibility to more dynamically address regionally changing conditions as understood by ongoing improvements gained through increasing use of technology.

Creation of a Limited Access fishery out of the General Category

We absolutely support the transition of the general category fishery to a limited access fishery as we understand this will be a more easily managed fishery. This appears to be a good way to slow growth and excessive new entrance to the fishery. Yet since recent growth and new entrance appears to be heavily weighted to the southern states, where overfishing is happening at twice target with new entrants in the Mid-Atlantic landing 22% of general category scallops in 2004, it seems natural that key efforts to address overcapacity or overfishing should be regionally or geographically focused.

Regulated species bycatch TAC should be more easily managed with a limited access directed dayboat scallop fishery. Through the use of VMS and bycatch hard TAC's, the small mesh closures and exemptions should become a thing of the past, thus reducing enforcement efforts.

We support **uniform rules** for gear use; specifically we support a single 10.5 foot dredge (bearing the standard 4 inch rings / 10 inch twinetop) as the maximum sized dredge gear used by a directed day boat fishery to target scallops. We also support the Shinnecock line and wish to allow boats to cross this line only if they have intentionally declared in to one fishery and out of another for a minimum of time such as 30 – 60 days.

We also support some way to **allow controlled new entry** as an absolute control date disallowing any new ongoing entry will unnaturally constrain the evolution of the fishery. Suggestions to resolve this difficult issue include the creation and use of a sternman or apprentice program as used in Maine for lobster, or some form of new permit generation through a lottery, family participation or to reward unique contribution to the industry.

Generally, **we support the use of a control date** with history or other methods to lower overcapacity and limit effort to legal and traditional users of this resource. We also support any increase in enforcement activity to reduce illegal fishing or landing of scallops and wish to note that some landings history may be under or over-reported and may be the result of state and federal oversight. Of course, it is not known how much landings history is a result of mis-reporting. Not fully taking this into account may increase or discount future access to the fishery in a disproportionate way.

In our view, the "best use of science" should include a clear intention to increase understanding of methods to increase information and decrease illegality, especially in light of reduced enforcement workforces and increased workloads and base any adjustment on scientifically solid numbers. We'll bear the hardship, as illustrated by the over 800 vessels purchasing VMS even though they may be prevented by fishing through the implementation of the November 2004 control date.

Learning from DAS to answer questions about allocation, TACs and limited access

There are many good refinements that the DAS fleet has developed over time that the evolving directed day boat scallop fleet can benefit from such as the ability to trade days, the "tiering" of vessels into different type permits such as small dredge, part time, occasional and full time access, the use of hard TACs and other measures to limit bycatch, the use of closed and rotationally managed open access areas to improve recruitment and reduce mortality while landing the same or greater weight of scallops per unit of effort.

There should be a provision in the new directed day boat fishery for vessels in varying circumstances to be somewhat self-limiting by vessel size, power, range, weather and other reasonable limiting factors. Boats targeting over 100 days of fishing per year should be controlled for and allowed, with the bulk of permits targeting the more common 30 – 60 days per year, perhaps through the issuance of tiered permits much like the DAS fleet has developed. Ideally, the permit holder should be able to move in a controlled fashion from one type of permit to another without substantial penalty in the event of an increasing or decreasing biomass.

We also support the idea that no limited access vessel should hold more than 1 limited access permit for that species.

Dedicated Access Privileges

We also **strongly support the idea of dedicated access privileges** to more effectively manage access to the fishery and to lessen conflict and manage for critical habitat and lower the burden of management as necessary by the Council.

Ideally we would like to see an inshore area, approximately delineated as a "50 mile limit" that designates an inshore zone for the directed day boat fishery fleet, where larger DAS boats are limited in access to this zone.

Our Coalition has been working with the Cape Cod Commercial Hook Fishermen's Association to more formally address this issue. We feel that allying ourselves with organizations of this caliber will significantly advance our understanding and ability to manage and adapt to future changes.

We are beginning to work with the Hook and Gillnet Sectors and with members of the Habitat Council to work towards local control to eliminate gear conflict and to lessen impact on areas critical for groundfish spawning.

Other Considerations Not Mentioned in Scoping that should be included

We also would like to put on record our desire for the following measures to be considered now or in the future:

Increased use of Science and Management Methods

We also wish to support the additional increased use science and management methods, particularly the use of TAC Set-Asides to fund observers and research. This past summer many general category boats assisted voluntarily and informally, without any compensation to support an RSA project entitled "Increasing the Economic Value of the Atlantic Sea Scallop" and many have expressed interest in participating in additional research.

RSA funding, to date, has rarely been awarded to any efforts proposed by or to uniquely benefit the general category partially due to the economies of scale necessary to conceptualize, fund and conduct this type of research. Some method should be created to more fairly allow the general category to participate in research given that the scale is naturally tilted to the individuals and organizations better off economically due to 10 years of prolonged growth of biomass and increases in price in this industry. Furthermore, the dayboat fishery, because it tends to be an owner-operated fishery, tends to not have good on-shore representation so methods and money should be directed to this somewhat disadvantaged fishery so that they can become more sophisticated, much like the larger DAS fleet has done.

Demarcation Line

Please consider the implementation of a demarcation line outside of which any 1B permitted vessel fishing for scallops while shucking is not limited to possession of not more than 400 pound or 50 bushels. Standard practices where up to 90 bushels shuck out to 400 pounds of scallops cause most 1B vessels while fishing to be in violation of this rule at most times. By using a simple demarcation line (eg the VMS demarcation line), any 1B vessel found inside of this line with more than 400 pounds or 50 bushels would be in violation. This would substantially lessen enforcement efforts with minimal risk.

Closed Area II

We wish to remind the council that the general category has been awarded 2% of TAC in closed areas. Due to the 400 pound possession limit and the size of our vessels, we have not been able to take full advantage of this lucrative fishery and wish to renegotiate, roll-over or trade this uncaptured resource for access to other areas much like the DAS fleet is able to do.

New Forms of Product

Please plan for the future that roe-on, live or other approaches to add value to the scallop catch need to be considered with this or any future Council actions. For instance, a boat may conceivably be landing considerably more than 400 pounds of roe-on scallops, based on the exact same mortality from 400 pounds of adductor muscles, yet there is no provision in the laws for this.

Permit Transfer

We need a clear and well understood legally acceptable method to transfer permits and permit history between qualified scallop fishermen that fairly reflect past history and the ability to use that history toward resolving future allocation issues.

More Clearly Address Overfishing as Management Tool for Scallops

Overfishing as a scallop resource management tool should be more fully examined. Scallop stocks are sedentary and closed area rotational management does not work optimally under the traditional definitions of overfishing. Provisions need to be made to more fully address the difference of the scallop stock.

Respectfully Submitted by

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March 6, 2006

Frank Blount, Chairman
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

Re: Comments on Scoping Document for the General Category Issues

Dear Mr. Blount:

I have been asked to submit comments on the scoping document for the proposed amendment to develop new rules for the general category scallop fishery for a number of general category vessels fishing from the Barnegat Light area. We offer the following comments and suggestions:

It is apparent that the general category has evolved into a different fishery than that initially envisioned under Amendment Four to the Atlantic Sea Scallop Fishery Management Plan (the "FMP"). In response to a number of changing elements, including the increase in scallop availability, declines in other stocks, harvesting restriction in other stocks to meet rebuilding deadlines and the increase in prices, a number of vessels have transitioned into the general category scallop fishery. As a result of this, general category landings have risen dramatically as a percentage of the overall TAC. Participating vessels have also become economically reliant on the fishery, and the daily landings of fresh scallops have developed into an important element of the market. While it seems appropriate to take steps to limit the growth in this fishery, my clients believe that the new measures should preserve the newly developed fishery, at the 2004 levels.

The primary impetus for the proposed amendment is from the limited access vessels, concerned that increasing landings may erode their access and negatively impact the successful rebuilding to date. There is no question that limited access participants have borne a significant burden of the recovery, or that it is through their efforts great strides have been made in returning this fishery to a healthy condition. Nonetheless, the recovery of the stock and increase in market price have created a scenario of success that few could have imagined when Amendment 4 was implemented. With TACs expected to rise, the imbalance between the scallop fishery and others will increase. The traditional fishery would see a shift in effort to the scallop fishery by many more vessels, but this tradition is now prevented by the limited access program in place. My

clients would like to see the general category fishery maintained; at least as it had developed through the 2004 control date, with establishment of a new limited access permit.

The initial question is how the fishery should be allocated. This is largely a judgment call to be made by the Council. Reportedly, general category landings had increased to about 5.8% of total TAC in the year leading up to the November 2004 control date, including limited access vessels outside of their DAS. Since some vessel may have had higher landings in prior years, a larger percentage may be necessary to effectively anticipate the total percentage necessary to sustain the general category. My clients suggest that the council consider an allocation around 5.8% of the total scallop allocation, for the new limited access category. This percentage might have to be increased slightly if some vessels had higher landings in prior years, as not all vessels had their peak landings in 2004. This would also include limited access vessels fishing outside of their scallop DAS. Since DAS and associated trip limits will be set based on maximum fishing effort in 2004, this will effectively establish a quota system that has the same effect as a hard TAC.

My clients strongly support the 2004 control date, and believe that vessels' participation in the years prior to 2004, should be used to qualify vessels for the new limited access permits. The new limited access permit should be based on individual days at sea, either the total pounds landed in a vessel's highest year from 2000-2005, divided by 400 pounds or actual days fished. Annual allocation will be established by increasing or decreasing either the available number of days, or possibly trip limits.

My clients oppose extending qualification periods for vessels that claim they were in the process of switching over to scalloping. This clearly creates a danger of being overly inclusive and would require either a reduction in effort for vessels that were actively engaged in the fishery prior to the control date, or would require a greater allocation to the new permit category. My clients contend that the public was given adequate notice of the control date and all should be bound by it.

Landings in the new limited access category should still be controlled through the same 400 pound landing limit and would still be a small boat fishery. Vessels should be permitted to consolidate their DAS and or to lease them. Since the proposed limits on the new limited access permits will be based on DAS and trip limits, few other controls are necessary. Vessels in the southern areas should be allowed to fish up the current maximum dredge size. Even limitations on vessel size and horsepower appear unnecessary, as trip limits/vessel allocations remain the primary control. Leasing and consolidation should not be limited by vessel size or horsepower.

Because of the changing conditions of scallop stocks, particularly in inshore regions, some of which are not even included in the stock assessment, it may be desirable to continue a very limited open access category, perhaps 1% of the total TAC, in addition to the 5.8% set forth above. This would be subject to DAS limitations, possibly as low as 10-20 days per year to start, a low daily trip limit of 200-300 pounds per day, et., in turn limited by hard TACs, possibly by region or season.

We look forward to working with the advisors, other industry groups, the Scallop Committee, Council Staff, and the Council in developing a fair and equitable allocation for the current general category participants and limited access vessels and development of appropriate management measures for the general category.

Very truly yours,

/s/ Stephen M. Ouellette
Stephen M. Ouellette

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Tuesday, March 07, 2006 4:34 PM
To: Deirdre Boelke
Subject: [Fwd: Atlantic Sea Scallop Amendment 11 Scoping Comments]

-------- Original Message --------
Subject: Atlantic Sea Scallop Amendment 11 Scoping Comments
Date: Mon, 06 Mar 2006 22:55:03 -0500 (EST)
From: Marlinblackxxx@aol.com
To: Scallopscoping@noaa.gov

Paul J. Howard-

Mr. Howard I could not let the March 6 deadline for comments pass without voicing some observations that I have made. I was in attendance at the Feb. 21st meeting in Cape May Courthouse and have pondered many of the questions raised and have spoke with many general category guys in the Point Pleasant NJ area.

In order for proper disclosure I should state that I am not presently in the fishery but am in the process of buying a general category vessel with a catch history prior to the control. I think it is only fair to inform you of that fact.

During the meeting in Cape May the first few speakers were limited access vessel owners and consultants and captains and it seemed that they would all like to participate in the general category fishery, place a hard tac on the general access fleet, and did not want to allow the general fleet very much in the way of a percentage of the total catch. They raised concerns about the health of the scallop biomass but would not like a hard tac placed on themselves. This being the first commercial fisheries meeting of any sort that I have attended I found it interesting. Towards the end of the meeting a general access vessel owner spoke and brought up a very valid point. He said that the limited access was doing just fine a few years back when the total catch was 20-30 million pounds and now their catch is in the range of 53 million pounds and they do want others to participate. Now I don't care who does the math even at $7/lb, each boat in the limited access fleet grosses around 1.5 million a year. With 25% of the permits owned by 9 companies I find their genuine concern for the health of the biomass a bit less than sincere. As I understand it they will soon be allowed to stack permits which will cut overhead and reduce more jobs in the future and continue to concentrate more wealth to a few at the cost of the many. From what I have heard a similar situation took place in the clamming industry.

My points are these-it seems very clear to me-let's not over manage

1st-Do not let new applicants into the general access fishery 2nd-Do not allow limited access vessels to participate in general access fishery 3rd-See what happens to the price-if it drops the fishing pressure will subside with no more management needed-if not- 4th-Use the Nov.1, 2004 control date-discover how many boats are left in the fleet-still to much pressure- 5th-Limit days allowed to fish-5dys/week-no sat/sun 6th-Cut days further 7th-Institute hard TAC on total fishery not just one part

I think by that time you will see the cyclical effects of the fishery and it will be a price issue rather than a pressure issue.

It seems hard to see how a TAC could be placed only a part of the fishery if the true motive of a TAC is concern for the biomass especially if it only applies to 10-15% of the total catch. How would it work-okay 850 boats are allowed 6.5 million pnds and you other 250 go
ahead and catch 50,60,70 million pounds. That would not appear to be
concern for the biomass,or concern for the couple of thousand of fisherman who would be

affected. I would move slowly-there does not seem to be a need to take multiple steps at once.

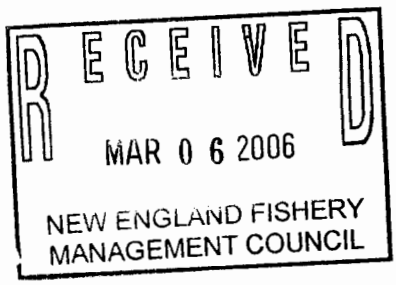
I am not educated enough on the idea of sectors and harvesting coops to know if they are a good idea. I would like to say as a newcomer to the entire fisheries management world there seems that there should be some information given to an applicant for a permit. If someone applies for a general access permit today nobody at nmfs makes them aware that a control date has been set and what that means. At least send them the info when they send out the application.

Regards,

William DiCianni
Long Branch, NJ
732-222-0296

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Tuesday, March 07, 2006 4:34 PM
To: Deirdre Boelke
Subject: [Fwd: Amendment 11]



-------- Original Message --------
Subject: Amendment 11
Date: Mon, 06 Mar 2006 15:13:28 -0500 (EST)
From: BaileysOystersCo@aol.com
To: Scallopscoping@noaa.gov

March 6, 2006

Dear Mr. Howard,

As a Day/General Category Scallop license holder, I had the pleasure of attending both the meeting in Boston in 2005 and also the meeting in Cape May in February of this year. I walked away from both meetings not sure how the control of the GC Quotas was going to be handled. A suggestion was made at the Boston meeting to install Sky Mate/Boat Trax, which was put into place in December of 2005. This cost me approximately $10,000.00 for each of my vessels to install & maintain these systems. However, this has cut the 400 pound boat fleet by 70%. I feel now that this system is in place the control date should be reset to December 2005 for a true study of the fleet catch rates and size of operating vessels.

In reference to the issue of eliminating GC category boats, I am suggesting a maximum of 200 working days per year, with a maximum dredge size of 16 foot , which will further reduce catch amounts by GC Boats and possibly making it limited entry as of December 2005. These are compromises I feel are necessary because it would be extremely unfair to eliminate GC category boats after making all boats install Sky mate systems at approximately $10,000.00 in order to keep their existing permits.

I also do not feel this is a stock issue because the stock is there. I feel it is an issue of a few people wanting to monopolize this viable fishery. This fishery is helping a few small operators earn a living and maintain their businesses. I myself, have three General Category vessels which employ crews and captains, and this would be a serious economic hardship to the crew, captains and their families.

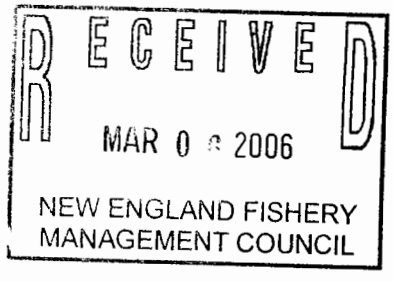
Thank you for your considerations. If you have any questions or concerns, please do not hesitate to call me.

Sincerely yours,

Scott R. Bailey
Bailey's Oysters, Crabs & Soft Crabs, LLC
(856) 207-2239

Deirdre Boelke

From: Scallopscoping [Scallopscoping@noaa.gov]
Sent: Tuesday, March 07, 2006 4:34 PM
To: Deirdre Boelke
Subject: [Fwd: Att: Mr. Paul J. Howard]



-------- Original Message --------
Subject: Att: Mr. Paul J. Howard
Date: Mon, 06 Mar 2006 20:24:39 -0500 (EST)
From: Cjob96@aol.com
To: Scallopscoping@noaa.gov

Dear Mr. Howard,

I attended the Scallop meeting on February 21, 2006 in Cape May County, NJ. I own and operate a commercial fishing vessel, and hold a Category B, General Scallop Permit. I would like to see the Control Date of November 1, 2004 go into effect. I have been fishing for the last twenty years, and in January of 2004 was finally able to afford to purchase my own fishing vessel. I have invested much time, labor and money on pursuing my life's dream. I purchased and had the VMS installed almost immediately upon receiving information that this was a new NMFS requirement. All of my fishing logs to date are completed and turned in to NMFS as well. I feel that, while fishing over the past twenty years, attending Tuna & Monkfish Meetings, working deck and also running other people's boats as Captain, that I never could see a "light at the end of the tunnel", as whichever working fishery at the time was going through amendments and regulations, some better than others. Perhaps a consideration would be to recognize a percentage of income that GC applicants that have abided by all regulations thus far and have the control date pertain to income made from Scalloping and other Fisheries from vessels other than their own, being that in this business, most people have to work their way in more than one fishery and be versatile to be able to finally afford a fishing vessel of their own. Thank you for your time and consideration.

Sincerely,
Capt. Craig O'Brien
FV Julianne

DON MYERS

F/V CASSIAR
F/V SNOOPY II
[redacted]

P.O. BOX 146
WEST CREEK, NJ 08092

HOME - 609-296-9343
CELL - 709-9765
FAX - 296-8043

3/6/06

TO - NEFMC

RE - SCALLOP AMEND. 11 SCOPING COMMENT.

I SUPPORT -

1 - NEW LIMITED ACCESS G.C. PERMIT
2 - THE CONTROL DATE FOR QUALIFYING
3 - INDIVIDUAL DAS
4 - THE G.C. SHOULD BE ALLOCATED 5.8% OF THE TOTAL.

TO QUALIFY -

1 - PICK YOUR BEST YEAR (REGARDING DAYS FISHED) IN THE 5 YEARS PRECEEDING THE CONTROL DATE (2000 - 2004)
2 - EACH DAY YOU FISHED WOULD BE COUNTED AS 1 "SNARE" (THIS WOULD BE A PERFECT 'GAUGE' FOR PAST PARTICIPATION) EACH SNARE MIGHT BE WORTH 1 DAS OR $\frac{1}{2}$ DAS OR HOWEVER IT WORKS OUT AS A PERCENTAGE OF THE TAC. THIS WOULD MAKE IT EASY FOR NMFS TO REGULATE DAS UP OR DOWN AS NEEDED (DAS x 400 = TAC)

I ALSO SUPPORT -

1 - 400 LB. PER DAY TRIP LIMIT
2 - DUAL APPLICATION FOR L.A. VESSELS (THEY WERE PART OF THE 5.8% IN 2004)
3 - HARD TAC FOR EVERY SEGMENT OF THE FISHERY (WE WOULD NEVER GO OVER WITH DAS & DAILY LIMIT)
4 - PERMIT STACKING & DAS LEASING REGARDLESS OF BASELINE SPECS.

I DO NOT SUPPORT DEDICATED ACCESS PRIVILEGES (TOO COMPLICATED, SEEMS LIKE SIMPLE IS ALWAYS BEST)

THANKS
DON MYERS

New England Fishery Management
Scallop Management
General Scallop Comments
50 Water Street
The Tannery Mill 2
Newbery port MA 10950

WANCHESE

Dear Sir,

Wanchese Fish Company has vessels with Limited Access Scallop permits. General Scalloping is a traditional part of the scallop industry, Management of scallops and the related price increase has created is the problem with general category.
The moratorium date should be moved to 2006
A line should be drawn from Maine to Carolina allowing general scalloping to the West & limited access vessels scalloping to the East. Closed areas could have a similar line.
Vessel tracking lines from years back should be used to help establish where the North South line be drawn.
Currently scallops die of old age (not thick enough to use open area limited access days at sea.)
General Scallopers harvest from areas closest to shore; this should be allowed to continue.
The line will make management simple.

Thank You,

Joey Daniels Wanchese Fish Co.
03-02-06

PO
BOX 369

WANCHESE
NORTH
CAROLINA
27981

919
473•5001

919
473•5004
FAX

fishery in three distinct ways: 1) [illegible] seasonal directed fishery as an adjunct to other limited access fisheries, and 3) bycatch in the limited access groundfish fishery.

Regarding Amendment 11 to the Scallop Fishery Management Plan AFM endorses:

- Adherence to the November 2004 control date for determining eligibility for a new "limited access" permit in the general category scallop fishery.
- Qualification criteria (landings history) for the new "limited access" permit that reflects a significant level of dependence on the fishery.
- A "tiered" permit system that would assign differing levels of future participation. One "tier" for qualifiers (described above) and a separate "tier" for non-qualifiers that also have a history of general category scallop participation within the existing small dredge exemption area in the Gulf of Maine. Future participation for this tier would be at a reduced number of opportunities (trips, not trip limits), compared to the new limited access tier, and would also be limited to the existing small dredge exemption area in the Gulf of Maine.
- Hard TACs only if they are applied to the entire fishery, and only if they can be structured to prevent derbies (e.g. seasonal distribution of the TAC and/or individual allocations).
- Sector allocations that are based on history of participation by sector members, not on set-asides (e.g. "community allocations").
- Bycatch allowance for other fisheries that reflects recent actual bycatch numbers. For the groundfish closed area II special access program, a different bycatch allowance may be prudent if data from the special access program supports an increased bycatch allowance as compared to average bycatch levels in other fisheries.

AFM looks forward to working collaboratively with the Council to ensure to the extent possible that the needs of our members are met while simultaneously crafting a biologically sustainable management regime for the general category scallop fishery.

As always, we appreciate your consideration of our views.

Sincerely,

Maggie Raymond
Associated Fisheries of Maine

Dallas W. Huckins
PO Box 371
Machiasport, ME 04655
(207) 255-0725
March 1, 2006

Paul Howard -

I am writing in regards to the general sea scallop regulations you are trying to put into effect.

I received a letter in September 2005 stating that in order to keep my 400lb limit license I needed to install a VMS on my fishing vessel.

So to keep my license I then had to install a generator to run the computer I also had to purchase to go with this VMS. I then had to buy rigging for scalloping so I would not loose my license. This combined has cost me approximately $70,000.

When I put all of this money and work into my boat I was never informed of any possible date of Nov 2004 having to have previous scallop landings.

Therefore I feel you should not be able to use a cut off date for any fisherman who went ahead and installed the VMS.

If any restrictions at all are to go into effect, which I am against, the people who purchased the VMS instrument should be able to keep their 400lb licenses.

Please feel free to contact me in any way regarding this matter.

Sincerely,
Dallas Huckins

John D. Wood, F/V Mistress II
P.O. Box 173
Machiasport, Me 04655
Home: 207-255-36850
Fax: 207-255-5841

January 28, 2006

New England Fisheries Management Council
RE: Atlantic Sea Scallop Amendment 11 Scoping Comments
Seven specific scoping issues

Issue #1 – Limited Entry

Control Date: The November 1, 2004 control date must be adhered to. In addition to the control date three to five year prior landings, or 3-5 consecutive years of landings, should also be considered to protect the historical participants that have been using the GC as a directed fishery for years and this would reflect a significant level of dependence on the fishery.

Impacts: With the November 1, 2004 control date the number of participants would drop to between 407 and 425. And with the three to five years of prior landings also being part of the qualifying criteria, it would lower the participants to between 300- 352, which is where it has historically been.

Issue #2 – Allocation

The allocation for GC should be set at 15 % to 20 % based on the qualification criteria and the amount of GC vessels in the fleet as a result of limited entry, if this is used. The council may also want to consider allocation on an individual basis. Example "IFQ" based on past historical landings. The main goal for allocation should be determined by the size of the GC fleet should limited entry be used.

Issue #3 – Dual application for limited access vessels

The Amendment should include an alternative to prevent LA vessels from fishing under a GC permit. In the past the Council has included alternatives that prevented DAS groundfish vessels from possessing an open access hand gear permit. The same alternatives should be considered for LA scallop vessels fishing under a GC permit. The Council should include an alternative to allow an incidental scallop catch of 100 pounds for the vessels

that may not fall under the control date or additional criteria of this Amendment.

Impacts: The LA vessels would catch 75 % of the allocation, the GC vessels would catch 20 % of the allocation, and that would leave 5 % of the allocation for incidental, observer coverage, and research set aside.

Issue #4 – Hard TACs

Only if they are applied to the entire fishery, and only if they can be structured to prevent a derby style of fishing (IFQ)

Issue #5 – Sectors, DAPs

Sector allocations that are based on history of participation by sector members, not on set-asides (e.g. "community allocations")

Issue #6 – Incidental scallop catch

If limited entry is adopted for the GC fleet, vessels that do not qualify should be allowed to land 40- 100 pounds of scallops. If a hard TAC is reached and the GC fisheries closes, there should be a incidental catch limit for GC vessels based on actual bycatch numbers from historical participants when targeting other species. (E.g. groundfish boats)

Issue #7 – Change of fishing year

The fishing year should not be changed because if hard TACs were considered in the GC fishery the GC vessels in the Mid-Atlantic would have a better opportunity to land the GC TAC before the New England GC vessels due primarily because of the weather.

Sincerely,

John D. Wood

TO: PAUL J. HOWARD

REGARDS: "ATLANTIC SEA SCALLOP AMENDMENT 11 SCOPING COMMENTS"

FROM: WILLIAM MCINTYRE - F/V - SHADY LADY

AS A FISHERMEN WHO IS JUST CONVERTING OVER TO THIS FISHERY FROM BLACK LONGLINING I AM FOR LIMITED ENTRY USING THE VMS (OPERATING CURRENTLY) TO DETERMINE WHO SHOULD BE ALLOWED INTO THE GENERAL CATEGORY. WITH 800+ VMS CURRENTLY OPERATING THAT WOULD LIMIT THE NUMBER OF GENERAL CATEGORY PERMITS TO ROUGHLY 35% OF TOTAL GENERAL CATEGORY PERMITS - GREATLY REDUCING THE FLEET.

ALLOCATION SHOULD BE DETERMINED ON AN INDIVIDUAL BASIS, NOT DETERMINED BY PREVIOUS CATCH RECORDS. FOR EXAMPLE IF YOU ALLOCATE 6,000,000. POUNDS TO THE GC, SIMPLY DIVIDE THAT POUNDAGE BY 800+ BOATS CURRENTLY USING THE VMS. (6,000,000 / 800 = 7500 LBS PER BOAT)

IF EACH BOAT KNEW HOW MANY POUNDS THEY COULD CATCH THEY COULD GET THE MAXIMUM DOLLAR FOR THERE LOAD AND THIS WOULD BE MUCH SAFER FOR ALL CONCERNED BOATS PREVENTING THEM FROM HAVING TO GO OUT IN ADVERSE WEATHER CONDITIONS TO CATCH A PIECE OF A GENERAL CATEGORY QUOTA DETERMINED BY AN OPENING DATE.

I FEEL THE LA SHOULD NOT BE ABLE TO LAND PRODUCT UNDER G.C. RULES.

I DO NOT KNOW ENOUGH ABOUT THIS FISHERY TO COMMENT ON CHANGING THE FISHING YEAR.

(2)

THE NMFS BY NOT HAVING A SPECIFIC DATE UPON WHICH PERMITS WOULD OR WOULD NOT BE ISSUED HAS OBVIOUSLY HELPED IN MAKING A DIFFICULT DECISION EVEN HARDER.

FOR THOSE BOATS JUST GETTING INTO THIS FISHERY (LIKE MYSELF) YOU ARE TALKING ABOUT CAPITAL OUTLAYS OF BETWEEN $45,000.00 - $240,000.00 DETERMINED BY YOUR SPECIFIC NEEDS. YOU, MEANING THE NMFS, CAN NOT SIMPLY DISREGARD THE FISHING VESSELS WHICH FALL INTO THIS CATEGORY AND HAVE MET ALL YOUR CURRENT PRE-EXISTING REQUIREMENTS.!!

THANKS

BILL MCINTYRE

F/V - SHADY LADY

DOC # 908223

Paul J. Howard, Executive Director
New England Fishery Management Council
50 Water Street, Mill #2
Newburyport, MA 01950
Phone: (978) 465-0492

RE: Amended copy of Atlantic Sea Scallop Amendment 11 Scoping Comments.

Dear Mr. Howard;

Please find enclosed a copy of my comments that has been amended to correct for my brain cramp which made me keep referring to the Scallop Framework 18 as "amendment 18", and to reflect some of what was said at the Hyannis hearing.

The reason for my extended filing, and such attention to formality, has to do with the harm that the Council has done to me, and also many others like me, with actions that are contrary to the Council's stated policy and express provisions of the MSFA. The way that things are going this ugly mess will eventually end up in court. For my part, I want the record to show precisely what I said to the Council and when.

The day that Council dealings become honest will be the day that we can begin to solve our never-ending fishing crisis. As I write you this cover letter, NMFS is proposing yet another emergency action because you folks screwed-up again.

Please review what I am sending you, and have the record show what was sent.

Thank you,

Jean F. Frottier
249 Gross Hill Road
Wellfleet, MA 02667

AMENDED COPY - 03/03/06
Please File This Copy

Atlantic Sea Scallop Amendment 11 Scoping Comments

My name is Jean Frottier, I am now 62 years old, I have been a commercial fisherman for 35 years, and I have fished full-time since 1990. I am also a commercial diver who has logged fully 11,000 hours underwater in Massachusetts state waters. Throughout the past 35 years I have fished out of Provincetown for lobsters by diving and pots, I then fished for tuna until that season would be closed, and then I would jig for cod in the Gulf of Maine and Georges Bank. This mode of fishing was clean, and it worked, until the NEFMC began their regime of mismanagement that has resulted in changing the entire environmental order of the area under their control. Much like the asteroid that rapidly changed the environmental order that once favored the dinosaurs, NEFMC policies have very rapidly reordered the New England marine environment that once favored the cod and yellowtail flounder that are today in such dire condition. As USGS/NMFS studies say, glaciers and their aftermath "resulted in habitats favorable to commercial species", but now we have a much different environment to which we must all adapt. Where we once had the underwater equivalent of a forest we today have the underwater equivalent of a plain. We must all now fish on what is left available.

The NEFMC has scheduled meetings because the council now says "there is an alarming problem with the general category landings". True to form, the council chose to form and scope a debate without any input from long-time general category stakeholders. Recognizing that trouble was coming, the NEFMC puts together an *ad hoc* committee of general category representatives, but none of what we are considering here has any input from this group. The scoping document prepared by the NEFMC also ignores one of the major causal factors driving the increase in general category effort, namely, the mismanagement of the multispecies fishery. The Director of the Mass. DMF says it well: "successful management of cod has continued to elude the New England region". This is not rocket science. When the NEFMC closed large tracts of offshore fishing grounds to bottom fishing, all that offshore effort would perforce be diverted to the remaining bottom. Like a balloon, you push in one place and it bulges in another place. With no regulations put in place to control the size and power of the boats moving their operations into inshore waters, and with no serious effort made to regulate the gear employed by such boats, the destruction of the fish stocks and the inshore bottom habitat was just a matter of time. That inevitability is today manifest. We now look to what is left.

In order to have empirical evidence of the big picture, the record of these hearings should properly contain copies of a document entitled "Relative Distribution and Abundance of Cod in the Northwestern Atlantic 1979-2005" -- derived from NEFSC Spring Bottom Trawl Surveys, and also a copy of a USGS report and map, dated July, 2001 (see Exhibit II, print copies of cumulative summer cod surveys, and copy of two page USGS paper). Looking at the surveys in chronological order, along with the excellent USGS map, one is confronted with stark and shocking evidence of the consequences of misguided NEFMC/NMFS policies. Using these maps, one can readily see that fully 11 years of groundfish "closures" have only resulted in much less cod distributed in the NCLA and CAI, little change in CAII, and a virtual disappearance of cod distribution in the open areas extending northward to Nauset Light. Why is this?

Well, much of the answer lies in the fact that under NEFMC "management" these are not closed areas, but are being administered like private fishing preserves for special interests favored by the Council. These include the limited access scallop fleet comprised of about 320 large boats, the "midwater" small pelagic trawler fleet of about 17 very large boats, and an unknown number of boats at least claiming to be charter boats. Viewed from this perspective, the groundfish boats are the ones who have, in fact, been paying for the prosperity of a few by the great decade long sacrifices of the groundfish fleet as a whole. How can you have progress with leaches living off the bottom, and cheats freely crossing the line along the "fence" (CA I, west side) because they were successful in preventing a requirement for VMS in Amendment 13 and before? All you can say here is "good job Brownie" – like in hurricane Katrina fame.

Tragically, the truth is that we are ruled by a council that has been cited by others across the nation as the poster-boy for everything that is wrong with the council system. We also have U.S. District Court Judge Kessler ruling that NMFS was "frustrating the will of the Congress" – essentially because NMFS had been rubber-stamping actions of the NEFMC which were contrary to explicit mandates of Magnuson-Stevens. This is a council that has also demonstrated contempt and prejudice towards clean fishing and towards fishermen using historical and sustainable fishing methods. For me personally, and for all other jig, hook, or drop gillnet fishermen, NEFMC prejudice translated into a continuation of the unenforceable gillnet rules which even the U.S. Coast Guard and NOAA Law Enforcement had long and often reported to the NEFMC as having "little probability of enforcement". The result – prime bottom monopolized by illegal gillnets.

For the past nine years, every time I would go to my primary fishing grounds on the backshore of Cape Cod I would find some combination of legal and illegal gillnets parked on the bottom, and preventing me from fishing the prime bottom. These nets would remain day after day, untended for a week or more, then they would be hauled, and the totally rotten and half eaten fish discarded. Sometimes this would happen while I was trying to jig next to an unmarked net, and a State licensed boat, with absolutely no right whatsoever to fish in Federal waters, would come up and haul the net. When he tried to reset his illegal net I would yell at him, cut the end, and we would get into a big fight. However, when I would return to the fishing grounds the illegal nets would be back, and both the U.S. Coast Guard and NOAA Law Enforcement said that there was nothing the could do about it. Unless the fishing conditions had changed, these nets would be set again and again on the prime bottom, and the cycle would repeat itself.

When I tried to fish in open areas outside the carpet of legal/illegal gillnets, I would often have to confront hard bottom draggers ripping up the wrecks and rock piles upon which my mode of fishing depended. It is quite a sight to see a large dragger next to you with his gear all ripped-up and a piece of one of the treasured wrecks entwined in his gear. Or, to watch a hard bottom dragger belching black smoke as they rapidly power-up to mow-down a piece of bottom structure. Today, the productive bottom is gone and the fish are gone. Game over! I have here provided an exhibit comprised of eight (8) items, beginning with the NEFMC scoping letter for Amendment 13, dated April 7, 2000, showing what I was trying to do to stop; (a) the lawlessness, (b) the habitat

destruction, (c) the gross waste of cod and other species, and (d) to have the NEFMC itself comply with the law (see attached Exhibit I). For the record, this illegal and grossly wasteful gillnet fishing ongoing. Today it is no longer possible to continue fishing like I have for the past 35 years, and I must now adapt my fishing to the realities of the new environmental order that is in place. I intend to get a General Category B permit on May 1, 2006, and I will fight in court, if necessary, to be able to fish on the only thing left.

Now, many disenfranchised members of the groundfish fleet, myself included, need to move into the general category scallop fishery as a matter of survival. The NEFMC scallop committee, dominated by limited access stakeholders and their allies, falsely tries to paint groundfish boats left with no other options as opportunists and profiteers; "The number of permits explodes as soon as there's any scallops close to the beach. ..." (Tom Hill, Scallop Committee Chairman). In truth, it is the limited access big boat fleet that shows up as soon as there are scallops "close to the beach", and soon wipes them out. Notwithstanding, it is also true that the whole spectrum (good, bad, and ugly) of groundfish boats are looking to move into the general category fishery. Without any input from long-time general category stakeholders, the NEFMC has already proposed a November 2004 cut-off date based on a mere 40 pounds of scallop landings. That led to the spectacle at the NEFMC meeting of June 22-23, 2005, where a representative of the big-boat dragger fleet tried to pass-off some of that gang as "long-timers" because they caught, or claimed to have caught, this mere 40 pounds of scallops. Not a good start!

I. Number One Consideration for NEFMC – Define the General Category.

Without a doubt, the first thing that the NEFMC must do is to clearly define the general category as to what it is, and what it is not. From day one, the general category has been defined as an open category with a 400 pound limit which was set when scallops were selling for their historical average price of about $5.00 per pound. It was also very common to see the term "day boat" attached to those working under a general category license. It is my position that the general category should never be allowed to become subverted into a sub-set of the industrial type of scallop fishing conducted by the limited access fleet. Notwithstanding, some are today trying to do exactly that. If one looks, one sees that limited access stakeholders and their allies are buying general category permits, and some industrial grade groundfish boat owners are doing the same. This will be the core battle that will have to be settled first. Look at what the NEFMC has already said in their Framework 18 -- concerning **6.1.1.4 National Standard 4: Fairness and equity** – "The proposed action maintains equity by allowing fishermen, vessel owners, and fishing communities to benefit from the scallop biomass that has built up in the Georges Bank closed areas and projected to increase in the Mid-Atlantic controlled access areas. Vessels with general category scallop permits as well as vessels with limited access scallop permits will be able to fish in the proposed access areas. Some vessels with general category permits may have targeted scallops in these areas before they were closed and many more have been affected by the severe restrictions in other fisheries that are under rebuilding programs. Access therefore allows these vessels that may have been disadvantaged by the closures or are under severe restrictions in other fisheries to benefit from the surplus scallop biomass in the access areas".

First of all, there is no "surplus scallop biomass". If we are to believe the NEFMC scoping document, the situation is as follows:

"Overfishing is occurring on the scallop resource and growth in fishing effort and landings by the general category sector is one of the contributing factors".

What we see is the NEFMC saying different things at different times in order to accommodate the agenda at hand. Furthermore, what all this shows is that the big fish are, again, trying to feed off of the little fish. The very same large heavy metal boats that have caused the greatest harm to the fish stocks and bottom habitat are now scrambling to monopolize whatever is left. And, the NEFMC is already showing favoritism for this.

If the general category is to remain in the traditional mold of open and small scale, as I believe, some of the tools available to the NEFMC to keep it that way are:

(1) Owner operator requirement for participation in open general category – at least 51% ownership by operator.
(2) Establish a line of demarcation between inshore and offshore waters (long overdue) and separate big boat fishing from small boat fishing. The inshore scallop resource will be destroyed just as inevitably as the inshore groundfish stocks and the inshore cod bottom unless industrial grade fishing is moved out from the beach.
(3) Limiting the time that the fishing gear can be used within a given time period. Using VMS, it is already possible to make valid assumptions concerning fishing behavior, (e.g., <1 knot = laying-to, and >5 knots=steaming).
(4) Regulate the fishing power of boats in the inshore general category. Heavy weather high horsepower fishing platforms grinding on the bottom hour on end should not be allowed inshore.

II. Next Consideration – Restore the Fleet Wide Historical Balance.

At this point, the NEFMC should recognize that after fully eleven (11) years, one can reasonably assume that the trend shown by that loop of the spring cod surveys means that the cod will never return in mass to the closed bottom as long as it is being used as it is. Logically, and fairly, why should only one of the historical user groups have all the resources that are today on that bottom? With these "closed" areas now shown to contain up to 80% of the total scallop biomass, it seems only right and proper that the TAC for these areas should be split between the two historical user groups of that bottom. The only other option would be to close the areas completely, to everybody, in the hopes that the cod might eventually return, but that makes absolutely no sense. What we have today is not the end of the world, just the end of the world we used to have. That said:

(1) The NEFMC should now admit that the Georges Bank closed areas have been a failure with respect to its intended purpose, and that upon a record of 11 years it is not likely that the cod will come back into the these areas, and that a new environmental balance has developed.
(2) The NEFMC no longer has any good reason for not opening more of these areas to limited scallop fishing.

(3) The NEFMC should split the general category and form a large-boat limited access category.
(4) The NEFMC should determine which boats historically fished the waters within these closed areas and set forth the criteria for a switch-over to scalloping in these areas.
(5) The NEFMC should split the scallop TAC for these "closed" areas between the former groundfish users and the scallop boats – which are today being given everything.

III. Next Consideration – Protect the Bottom Habitat and Impacted Stocks.

The ocean equivalent of the forest is gone – from Race Point to the Great South Channel - and it will never be restored until after the next glacier. Notwithstanding, we still need to protect what is left - along with the valuable fisheries that the remaining habitat will still support. The NEFMC has clearly learned the value of managing the bottom to maximize the production of scallops. The other very important species now thriving in this new environmental order is lobster. However, when the lobsters migrating across the scallop grounds run into scallop gear it is not a pretty picture. At times the result is a deck full of mostly crushed and broken lobsters, many of those new eggers, ripped from the population trying to migrate back to their winter grounds in the Georges canyons. Here is what the NEFMC has represented in their Framework 18:
"(3) Can the proposed action reasonably be expected to cause substantial damage to the ocean and coastal habitats and/or essential fish habitat (EFH) as defined under the Magnuson-StevensAct and identified in FMPs?

Response: No, the proposed action is not reasonably expected to cause substantial damage to the ocean and coastal habitats and/or EFH. The conclusion in the EFH Assessment (Section 0) is that this action will have minimal impact on EFH. . This action will not change the measures put in place under Amendment 10 to reduce impacts on EFH. Specifically, this action does not allow access into the Habitat Closed Areas, and it maintains the requirement for scallop vessels to use 4-inch rings, which are believed to reduce impacts on benthic environments.".

But, here is what the USGS Fact Sheet on Geology and Fishery of Georges Bank says:
"USGS/NMFS sidescan sonar surveys of fishing grounds shows extensive scarring of the bottom by groundfish trawls and scallop dredges"
Some possible steps to take:

(1) Control the size and weight of the gear allowed in all open areas.
(2) Control the time the gear is allowed to be on the bottom in any given day.
(3) Close migration areas to scallop gear and roller gear during times of peak lobster migration over the fishing grounds.

IV. Next Consideration – Use the Scallop Resource to Help Communities.

The NEFMC has a responsibility to the many small communities along the coast that have already lost so much as a consequence of NEFMC mismanagement and the manifest prejudice towards the small boat fleet. The NEFMC has hurt a great many small fishing communities with policies devastating to the small-boat groundfish fleet that operated out of these ports. Now, the cod are at the lowest level yet measured and we

have empirical evidence that much of the remaining bottom habitat may never again support large populations of cod. We are seeing a repeat of the Canadian experience. A properly structured general category fishery is today more important than ever.

V. Other Valid Considerations for NEFMC General Category Policies.

(a) The NEFMC needs to set a realistic landing weight for determining the true "long-term" participants in the general category fishery. Any boat that has not fished at least 20 to 25 days in a year and/or landed 8,000 to 10,000 lbs of scallop meats is not a real "long-time" participant.

(b) The NEFMC should properly follow the lead of other Councils and make a distinction between inshore and offshore waters. The Pacific Council defines inshore waters as out to 40 miles.

(c) The NEFMC must finally enact measures that recognize the differences between the resource and habitat impacts of big boats verses small boats. The NEFMC should then start using the extensive data that it has been collecting and charting about the length, weight, horsepower, and age of federally licensed boats. Simply, big boats do more harm to the bottom with the heavier gear that they need to use.

(d) Enforcement concerns – big boats and small boats are here, again, not equal. Big boats have much greater per hour costs of operation, and therefore have greater incentive to make-up for this by taking more than the legal limit. Big boats also have many more places to successfully hide contraband. Solution – limit the length of a fishing trip for all general category boats. Remember the term day boat?

The NEFMC tries to ignore the reality that the groundfish collapse orchestrated by shortsighted and disastrous NEFMC policies is directly linked to the growth of general category effort. The NEFMC conceals facts, misrepresents facts, and then prepares a scoping document without any input from general category stakeholders. Born of the foregoing, the NEFMC scoping document first tries to limit all discussion to "seven specific issues" and states; *"Comments on other aspects of scallop management are not invited at this time, and will not be considered during the development of Amendment 11."*. At the end, the NEFMC changes course, and states; *"The Council needs your input both to identify management issues and develop alternatives that meet the Scallop FMP objectives."*. Which one is it?

The staff of the NEFMC readily admits that this general category issue is going to be ugly, but here is what the NEFMC has already represented in their Framework 18:

8) Are the effects on the quality of the human environment likely to be highly controversial?

Response: No, the effects on the quality of the human environment are not likely to be highly controversial. The proposed action will modify the rotational area management program, overall improving flexibility and performance of the program, which will have positive impacts on the long-term success of the program, thus positive impacts on the human environment. Sections 5.2 and 5.3 assess both the economic and social impacts of the proposed action, and Section 5.4.4.5

describes the potential cumulative effects of this action on the human environment. Overall, the proposed action is expected to have positive impacts on landings and revenues, thus beneficial for the human environment and is not likely to be highly controversial". Please!!

Finally, if any member of the NEFMC finds my comments to be hostile and/or offensive, please take time to review the documents that I have provided in Exhibit I. You must expect to be judged and treated according to your actions and their results. How many of your failures do you expect us to endure? Additionally, please review the record of hearings on the four (4) alternatives presented for the public in the Amendment 13 process. Then, look at the alternative 5 that came into the back door to became the law that has been re-written ever since. Now look to what is going on in the NEFMC Framework 42, and compare that to the public record for amendment 13. It was all said years before your Framework 42 now in play. The NEFMC, for no legitimate reason, chose to ignore all the good advice that was presented by the public. I see the dishonesty of that Amendment 13 process repeating itself on this general category issue. For the small coastal communities, this is the most important turning point since the 1976 act that created the eight Regional Councils. The failure to control industrial grade fishing was the primary mistake made then and since. So far, we can see history repeating itself. This time around the NEFMC/NMFS must get it right and play it straight – period.

Jean Frottier
Wellfleet, MA
E-Mail: woofy1@comcast.net

ADDENDUM – Post Hearing on February 23, 2006, Hyannis Airport

Worthwhile considerations from points raised at the hearing:

(1) One owner of two limited access boats suggested putting all general category boats into a limited DAS program. I would suggest that from there the NEFMC could split the general category into "full time" and "part time" sectors. The NEFMC should be at all times mindful that scallop dredges have negative impacts on the bottom and can cause permanent damage to certain hard bottom habitats.
(2) One speaker owning limited access scallop boats pointed out that many boats now fishing in the limited access scallop category gave-up their groundfish history in order to be able to participate in the program. The NEFMC could consider giving a number of active groundfish boats, with a history of fishing in the scallop access areas, the option of giving-up their groundfish permits in exchange for a limited access scallop permit. The idea would be to move strong boats out of a very weak fishery into a much stronger fishery being conducted on the once shared bottom.
(3) One speaker owning two limited access scallop boats, and having his primary business in the surf clam fishery, pointed out that everybody should be thinking about compromise if all this is to turn out well.
(4) The Scallop Committee Chairman called the limited access fishery (and the part that the NEFMC played) a "great success". The truth is that this fishery is only a "great success" if one ignores the huge cost to the other fishers, fish stocks, and EFH caused by the fleet displacement from "closed" areas upon which it operates.

Exhibit I.

Copies of:

(1) NEFMC Letter to Groundfish Permit Holders, RE: Amendment 13, dated April 7, 2000.

(2) Frottier letter to Massachusetts Director of DMF and to NEFMC, dated November 26, 2001.

(3) Frottier letter to NEFMC Chairmen Barbara Stevenson.

(4) Frottier letter/comment sent to Patricia Kurkul, RE: Amended Interim Rule for Groundfish, dated May 25, 2002.

(5) Copy of the first six (6) pages of the NEFMC Public Hearing Summary, Hyannis, MA, for hearing held on September 14, 2003. Frottier comments highlighted on pages 5-6.

(6) Frottier letter to NEFMC Council Members – entitled Lawlessness and Consequences, dated October 14, 2003

(7) Frottier letter/comment sent to CFN, dated December 8, 2003.

(8) Frottier Comments on the Proposed Rule for Amendment 13, sent via FAX on February 26, 2004.

New England Fishery Management Council
50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
Thomas R. Hill, *Chairman* | Paul J. Howard, *Executive Director*

April 7, 2000

To: Groundfish Permit Holders

Subject: Industry Participation in the Development of Amendment 13 to the Northeast Multispecies Plan

The Council is developing Amendment 13 to the Northeast Multispecies Plan. One of the major goals of this amendment will be to develop stock rebuilding plans for stocks that are overfished. There is also an opportunity to address other groundfish management issues that were identified through the Council's scoping process.

The best way to become involved in the amendment development process is to attend the Groundfish Committee meetings and participate in the discussions. If you are unable to attend, please send us your ideas by letter or fax – the sooner the better. We are interested in your thoughts and ideas on groundfish management. We look forward to your suggestions on management measures that will improve recovery of fishery resources and that will improve our management program. Our plan is to develop the broad outlines of the management alternatives by June 2000, approve a public hearing document in September 2000, conduct public hearings throughout the region in October and November, and approve the final management measures in January 2001. This ambitious schedule means you must act now to provide your input.

The management measures we choose for Amendment 13 must comply with the ten National Standards for fisheries management contained in the Magnuson-Stevens Act (Act). Some of the criteria the Council will use when evaluating management measures include the following:

- *Do the measures achieve our biological goals?* The management program must achieve optimum yield. In the case of overfished stocks, the measures must achieve rebuilding in the time period mandated by the Act. This criteria is the most important consideration in the development of this Amendment.

- *Are the measures fair and equitable?* We recognize that "fairness" is often in the eyes of the beholder. Nevertheless, the management measures in Amendment 13 must be fair and equitable to fishermen in all states, in different permit categories, using different gear types, etc.

- *Do the measures take into account the needs of fishing communities?* Consistent with the conservation requirements of the M-S Act, management measures should consider the needs of fishing communities, provide for the sustained participation of those communities and to the extent possible, minimize adverse impacts. This does not mean the management measures

cannot have adverse economic impacts if that is the result of meeting the biological goals mandated by the Act. It means that, if possible, measures should be chosen that minimize any adverse impacts.

- *Do the measures address bycatch concerns?* To the extent practical, management measures should minimize bycatch and, to the extent bycatch cannot be avoided, management measures should reduce the mortality of bycatch. Bycatch includes all fish that are harvested but are not kept for commercial or personal use.

- *Do the management measures promote the safety of life at sea?* Management measures should not encourage unsafe fishing practices.

- *Can the measures be administered?* The National Marine Fisheries Service may not be able to implement extremely complex measures. Complex measures are difficult to understand. Limits on personnel and agency funding must be considered when developing any management program.

- *Are the measures enforceable?* It makes little sense to adopt regulations that cannot be enforced. There are a number of factors that must be considered when determining enforceability. Regulations that have the support of most fishermen impose less of a burden on enforcement agencies. Clear cut rules with few exceptions are more easily understood by fishermen and boarding officers alike.

- *Are the measures flexible?* The management program we implement will be in place for some time. Can the measures be readily adapted to new scientific information or changes in the industry?

As you prepare your input, please evaluate your proposals in light of the National Standard guidelines and the above broad concepts. We look forward to your participation in the development of this critical amendment. Please check our web page (www.nefmc.org) frequently for updates on the meeting schedule and progress in developing the amendment. If you are not currently receiving meeting notices, please contact us and we will add you to our mailing list. If you have any questions about the timing of the amendment, schedule of the meetings, or how to participate in the process, do not hesitate to contact the Council staff Tom Nies at (978) 465-0492.

(2)

November 26, 2001 Sent by U.S. Mail and email.

NEFMC Council Member
Paul Diodati, Director
Division of Marine Fisheries
251 Causeway Street
Boston, MA 02114

RE: Ongoing problem of illegal sink gillnets set on Cape Cod backshore, and the obvious inability to enforce rules pertaining to the use of sink gillnets.

Dear Mr. Diodati;

This letter is being sent to you for consideration as both a member of the New England Fishery Management Council and as the Director of the Massachusetts Division of Marine Fisheries. By reason of such offices, I believe you are already aware that both the State of Massachusetts and the New England Fishery Management Council have promulgated various rules pertaining to the use of sink gillnets which cannot possibly be enforced. This absurdity comes about because neither the State, NOAA, or the U.S. Coast Guard had/has any vessel equipped to haul gillnets, and/or to then handle that gear and any fish contained therein. In essence, such a situation means that this one user group in the multispecies fishery is being issued what is tantamount to a license to steal.

Predictably, illegal gillnet fishing activity will be the result. The hallmark of such illegal fishing activity is the use of anonymous gillnet gear. No one disputes that existing rules require that fixed gear, including gillnet gear, must be marked – at least in a manner sufficient to identify the owner. Notwithstanding, I can tell you from personal observation over some years now that the area around 42° 00.00N and 70°00.00W is regularly plastered with numerous sink gillnets which bear no markings to identify the boats which are setting them. Some boats are trying to conceal the fact that they are illegally fishing in Federal waters on a State permit, and others seek to conceal the fact that they are fishing more gear then allowed under their Federal permit, and/or the fact that they are fishing in the GOM. This lawlessness is having a particularly devastating effect on other fisherman who are in all respects legal and who also wish to fish the area.

As I am sure you are aware, when a sink gillnet is set on a particular piece of bottom all other fisherman are prevented from fishing that bottom. Furthermore, a sink gillnet will often impede fish movement in such a way as to have a detrimental effect on fishing that extends far beyond the point where a given net is set. The foregoing are just two of many good reasons why the use of sink gillnets should be carefully controlled, but they rise to paramount concerns when we are speaking to the matter of illegal gillnets. Periodically, those of us who are fishing in that 42°00.00N and 70°00.00W area have been challenged and/or boarded by the U.S. Coast Guard while on fisheries patrol. On these occasions the Coast Guard patrol goes from boat to boat and goes through their checklist. The Coast Guard then motors over to some of the anonymous gear in the area, notes its location, and then goes home. That is all that they can do!

From personal observation while tuna fishing, I can also say that I have come across completely anonymous fixed gear from the Jeffreys Ledge to the B Buoy. Where it has long been known that the Coast Guard cannot even determine if anonymous fixed gear is gillnet or lobster gear -- all rules pertaining to tagging of gillnets or number of nets allowed are rendered into farce. Worst of all, there can be no real doubt that the New England Fishery Management Council knew this would be the case prior to promulgating such unenforceable rules and passing them off as "effort controls" for gillnetters. The resulting situation is bad, and the integrity of our fisheries management now rendered suspect. Surely, this is a betrayal of the public trust!

Unlike mobile gear fisherman, hook fisherman cannot take effective extra-legal action to free ourselves from the abuse of rogue gillnets. The last thing anyone needs, especially we hook fisherman, is a bunch of ghosting gillnet gear on our fishing grounds. Additionally, few, if any, fisherman would advocate the establishment of the massive law enforcement apparatus that would be required to effectively police gillnetters traveling over a range that sometimes extends some fifty miles from port. The only effective, fair, and reasonable solution is, as it has always been, to require that the gear stay with the boat. The practice of long-term "soaking" of gillnets has always been abhorrent to conscientious/responsible fishermen, and represents an insult to reason -- as well as to legitimate objectives of fisheries management. The market even had to coin the euphemistic term "scaler" for the half-rotten product that actually gets to market.

Finally, the gillnet regulation fiasco, such as that which has so long been evident in the 42°00.00N and 70°00.00W area, also represents an insult to certain key requirements set forth in the Sustainable Fisheries Act – including the following most relevant portions:

Preventing overfishing, and ending overfishing of currently depressed stocks;

Rebuilding depleted stocks;

Reducing bycatch and minimizing the mortality of unavoidable bycatch.

With so much clearly weighing against the practice of unattended "soaking" of sink gillnets -- why is it being allowed? The bottom line: fishing with gillnets only becomes dirty, wasteful, and totally uncontrollable when these nets are allowed to be fished away from the boat.

In closing, I would like to say that I believe that the Division of Marine Fisheries has been doing a far better job of fisheries management under its jurisdiction than the New England Council has been doing under theirs. This letter is also being carbon copied to Patricia Kurkul, for her consideration as the Regional Administrator of NOAA and as a member of the Council.

Thank you for your consideration and for any help you can provide to solve this mess.

Sincerely yours,

J.F. Frottier
249 Gross Hill Road
Wellfleet, MA 02667
Telephone (508) 349-7291
Email: woofy1@mediaone.net

(3)

To: Barbara Stevenson
NEFMC Member, and
Owner of 3 Groundfish Trawlers

Reading your March 6, 2002 commentary, and the Sen. Collins statement, I am struck by the fact that people who know better, or at least should know better, continue to ignore the reality of extreme bycatch discards and destructive fishing practices of the trawler fleet and the gillnetters who "soak" their gear for extended periods. You folks seek to blame the environmentalists for the present crisis and the spate of recent litigation, but you should properly be blaming yourselves. The environmentalists are merely taking advantage of your manifest and continuing failings, and now they have become the tail that wags the dog.

Tragically, commercial fisherman who fish responsibly - in a manner that results in practically no discards whatsoever and no measurable damage to the bottom - currently have, and never had, any support or recognition from the New England Council and/or NMFS. In point of truth, if discards were not treated as mere abstraction, most draggers and gillnetters would (each season) be off the water in very short order. As one who now fishes single-handed with: (1) jigs, (2) either four or five hooks on each of two active rods (electrically driven), (3) in daylight hours, and (4) in an environment long degraded and/or monopolized by draggers and soaking gillnets, I average more than 400 pounds of cod per fishing trip - in the bad years. Obviously, a high horsepower dragger fishing 24/7 while pulling a net with a sweep extending to the better part of the length of a football field, or a gillnetter "soaking" miles of gillnets for days on end, will be catching (killing) many multiples of what I am catching when operating on "cod bottom". All this is wasted -- day in and day out, year after year. The New England Council and NMFS has never structured any penalty for those who generate substantial bycatch and dead discards, nor any reward for those who fish without waste. For instance, the rod and reel fisherman brings in his catch one line at a time, and is therefore the only gear type that cannot accidentally exceed the daily catch limit by much, but that reality is not recognized nor rewarded. When one looks objectively at our present system one sees that all fishermen, and fishing communities, are being made to suffer greatly, and for undue length, so that the most wasteful and destructive fishers can keep conducting business as usual. To avoid sinking, best to first try plugging the hole in the boat!

The Council and NMFS pretend that cod discards amount to only 1000 m.t. per year total, but from what I have seen it is certainly more than this already unacceptable number. In point of fact, they have in place no reliable measure with which to truly gauge the waste problem. The Council and NMFS also admit to knowledge that the requisite catch reports are regularly being (illegally) falsified with respect to discards. Unfortunately, observers can only provide a partial answer because: (1) neither the Council or NMFS has any idea how many gillnets are out there under that carpet of (illegally) unmarked buoys, (2) no gillnetter is ever going to take an observer out to his pirate gear and/or to his dirty (long soaking) gear, and (3) an observer can only monitor part of the operation of a dragger fishing 24 hours a day. The record shows that both the New England Council and NMFS long knew that there was/is a problem of bycatch

waste, and they pay lip service to the problem, but year after year nothing was/is done to reign-in the most wasteful. Clearly, if it were not for the environmentalists prevailing in their lawsuit - wherein Judge Kessler expressly references the Defendant's "duty to assess and report bycatch", and their failure to do so - the Council and NMFS would have continued to unlawfully ignore the problem. Strangely, NMFS now proposes to indirectly address the bycatch waste problem by limiting the amount of time all fishers can spend "on the pile" during peak periods, and you folks start to howl and complain. So, what do you folks propose (instead) to put a stop to the ongoing bycatch waste that is truly at the heart of the seemingly endless cod problem? Why do I never hear any of you talk about the portion of Judge Kessler's decision relating to bycatch?

To Senator Collins, and to other legislators who may also chose to become involved, I would ask that you do not fail to understand that the health of our fish stocks, as well as the success of any management scheme, is perforce based upon fish mortality, and not on landings. We cannot continue to ignore one of the most fundamental rules of nature (see the story of the American Buffalo) and here achieve any measure of true success. As I write this, the example(s) of partial success which you folks now call to attention have come about by great and prolonged sacrifice by all fishermen, and much of that sacrifice has been negated by the wasteful fishing practices of many draggermen and all "soaking" gillnetters. These wasters do not fish responsibly, and it heaps insult upon injury for anyone to represent that they do. Please take the time to do the math, and take, for example, the (understated) 1000 m.t. per year cod discard figure and calculate how many non-wasteful fishermen such discards would today support -- or could have supported over the years since Magnuson was enacted. Reasonably, the consequences of waste should befall those causing the waste -- otherwise, our fisheries management will continue to be dishonest and unlawful.

Finally, I would call attention to the problem of the continuing degradation/destruction of what the fisheries laws refer to as essential fish habitat (EFH). Being 58 years old, I remember the "hard" (rocky) bottom as it was before it was essentially bulldozed flat, and when it was capable of "holding" large amounts of fish. Today, the "hard" bottom most closely resembles a roadway -- it still goes up and down, but without any distinctive structure. In the past, we could go to the various defined wrecks and rockpiles to catch fish, but today the wrecks and rockpiles are gone - and so are the fish. Our prime fishing areas are now almost completely flat and denuded. As a consequence, the cod are always moving - the bottom can no longer "hold" many fish, and that sad fact should reasonably be a consideration in any process used to determine the current biomass. For its part, the New England Council has complied with the law to the extent that it has identified EFH (including all the bottom on which I fish), but has failed to comply with that portion of the law which speaks to protecting and restoring such areas. Significantly, much of what has been destroyed by the draggers and scallopers had been put in place by catastrophic acts of nature, and can now exist only in memory. And, the traces that remain today have yet to be protected in any way. Imagine, for instance, what your neighborhood would look like if a group of bulldozers ran through it on a regular basis!

Bottom line – these environmentalists won their case because you folks betrayed both the fisherman and the fish with endless schemes seeking to perpetuate the wasteful and destructive status quo. If you feel that is not the case, I would appreciate hearing from you about how you folks propose to actually end substantial bycatch discards and ongoing bottom destruction.

Sincerely,
J.F. Frottier
Wellfleet, MA

(4)

May 25, 2002

Patricia Kurkul,
Regional Administrator
National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930

RE: Comments on the Amended Interim Rule for Groundfish - total inability to enforce any gillnet regulation.

Dear Ms. Kurkul;

The Amended Interim Rule for Groundfish (again) improperly favors the gillnet gear sector with a regulatory scheme that the National Marine Fisheries Service knows cannot be enforced. As a result, all other gear sectors will continue to be abused by illegal gillnets. What part of what law allows this? NMFS must here recognize that any piece of bottom on which a gillnet is set represents a piece of bottom denied to all other fishermen.

Both the U.S. Coast Guard and NOAA Law Enforcement are on record as coming before the Enforcement Committee of the NEFMC to make it known that they are unable to enforce existing gillnet regulations. Consequently, for the years prior to the Amended Interim Rule for Groundfish, NMFS is shown as having no actual knowledge of the following information:

(1) how many gillnets were out on the fishing grounds,
(2) how long gillnets were being allowed to "soak",
(3) how any set gillnets were actually configured,
(4) how many fish the legal and/or illegal gillnets were actually killing/wasting.

There can be no good purpose served by more of the same. Furthermore, where gillnetters were/are being issued what is tantamount a license to steal, NMFS should recognize that they will do just that. The Coast Guard is clearly aware of the problem, and NOAA law enforcement is clearly aware of the problem, but there is nothing that they can do about it. They are neither equipped to haul nor handle gillnets - which can legally be up to one mile long. There is also no protocol for monitoring set gear. The situation of gillnets has always been a bad joke played on all other fishermen!

For many years now, I have been prevented from fishing on prime bottom because these areas are covered, for many months at a time, by unmarked/illegal gillnet gear. Some boats are trying to conceal the fact that they are illegally fishing in Federal waters on a State permit, and others seek to conceal the fact that they are fishing more gear then allowed under their Federal permit and/or the fact that they are fishing in the GOM. This lawlessness is having a particularly devastating effect on other fisherman who are in all respects legal and who also wish to fish the area. We are prevented from making the landings that will possibly determine our future in the multispecies fishery.

Some gillnet boats range 40-50 miles from their homeport, and can/do set gear along that entire range. Also, NMFS must certainly be aware that a long-soaking gillnet is a wasting gillnet. The only possible remedy to this regulatory fiasco is to treat the gillnet gear sector like every other; i.e., require that the nets stay/return with the boat. Such an action would reduce the current riot of lawlessness to the dull roar that is commonplace in the other sectors.

The problems associated with enforcing rules pertaining to the use of fixed gear must be confronted in any legitimate regulatory scheme. As it now stands, the Amended Interim Rule for Groundfish is just another chapter in a long-standing betrayal of the public trust. Promulgating more rules that NMFS knows to be unenforceable, and misrepresenting such rules as "effort controls", is not contemplated by Magnuson-Stevens or the Sustainable Fisheries Act.

Sincerely yours,

J.F. Frottier
249 Gross Hill Road
Wellfleet, MA 02667
Telephone (508) 349-7291
Email: woofy1@attbi.com

NOAA Law Enforcement – (508) 992-7711 --- Kevin Flanigan

§ 648.84 Gear-marking requirements and gear restrictions.

(a) Bottom-tending fixed gear, including, but not limited to, gillnets and longlines designed for, capable of, or fishing for NE multispecies or monkfish, must have the name of the owner or vessel or the official number of that vessel permanently affixed to any buoys, gillnets, longlines, or other appropriate gear so that the name of the owner or vessel or the official number of the vessel is visible on the surface of the water.

(b) Bottom-tending fixed gear, including, but not limited to gillnets or longline gear, must be marked so that the westernmost end (measuring the half compass circle from magnetic south through west to, and including, north) of the gear displays a standard 12-inch (30.5-cm) tetrahedral corner radar reflector and a pennant positioned on a staff at least 6 ft (1.8 m) above the buoy. The easternmost end (meaning the half compass circle from magnetic north through east to, and including, south) of the gear need display only the standard 12-inch (30.5-cm) tetrahedral radar reflector positioned in the same way.

(c) Continuous gillnets must not exceed 6,600 ft (2,011.7 m) between the end buoys.

(d) In the GOM/GB regulated mesh area specified in § 648.80(a), gillnet gear set in an irregular pattern or in any way that deviates more than 30 from the original course of the set must be marked at the extremity of the deviation with an additional marker, which must display two or more visible streamers and may either be attached to or independent of the gear.

See Frothier Comments p. 5-6

Pages 1-6 of 26 pages

5

New England Fishery Management Council
Amendment 13 to the Northeast Multispecies FMP
Public Hearing Summary
Hyannis, MA
September 14, 2003

A public hearing was held to receive comments on the draft Amendment 13 to the Northeast Multispecies Fishery Management Plan and the accompanying Draft Supplemental Environmental Impact Statement (DSEIS). The meeting was chaired by Groundfish Oversight Committee Chair Mr. Frank Blount, assisted by Council staff Tom Nies. This meeting was held in two parts, with commercial measures discussed in the afternoon and recreational fishing measures discussed in the evening. Council members Mr. Eric Smith, Dr. David Pierce, and Mr. John Pappalardo were present in the afternoon, and Mr. Smith was also present in the evening. Approximately sixty-five to seventy people attended the afternoon session for commercial regulations, and about twenty to twenty-five attended the evening session on recreational regulations. Seventy-two people signed the attendance sheet.

Both sessions followed the same procedure. After introductions, Council staff provided an overview of the amendment documents (including the public hearing document and the measures matrix) and described the comment process and future actions. The public then asked questions to clarify the issues before providing comments.

Afternoon Session (Commercial Measures)

Mr. Keith Burkman, Town Manager, Provincetown MA: I have a question on the process, in order to gauge the impacts and decide what we need to do. It would be helpful to understand the process by which this group makes a recommendation to the Secretary, and what type of review and editing may take place at that level. How much opportunity will state, local, and federal officials have to express their concerns. Usually it is cut and dried at local hearings - you comment directly to the decision maker. This process is more complicated. *Mr. Blount: Congressional staffs have already been briefed by NMFS. There are five more public hearings, and the comment period ends in mid-October. The Groundfish Committee will meet in late October, and develop a recommendation for the full Council. The Committee may pick a recommended alternative. The full Council meets the first week of November, will consider the recommendations of the Committee, and decide on a proposed action at that time. The final document must be submitted to NMFS by mid-December. NMFS will review the document, and either accept or reject the Council's proposal. They could reject it outright, or they could reject parts of it. Once NMFS completes its review, it is given to the Secretary of Commerce to review, and the new regulations are put in place by May 1, 2004.*

Mr. Nies: NMFS does not believe this action is subject to judicial review under the Framework 33 lawsuit, but not all parties to that lawsuit agree.

Mr. Ted Leguinza, fishermen, Chatham MA: In Alternative 1, is hook gear required to sign in and use the GB cod seasonal trip limit, or can a fishermen choose to abide by the other trip limit? *Mr. Blount: A fishermen could choose to use either one.*

Mr. Ron Smolowitz: Fisheries Survival Fund: With respect to the hard TAC options, is there any discussion or analysis of how this will affect other fisheries? *Mr. Nies: Similar comments have been made at other public hearings. The document is not clear, in some places saying that if the TAC is caught all groundfishing with gear that catches the species is subject to some type of*

additional restrictions, in other places implying it is all gear capable of catching groundfish. It was intended to be affect only groundfishing.

Mr. Steve Scannel, fisherman, MA: Could I have more detail on the formula used for the US/CA resource sharing understanding? *Mr. Nies: The details of the formula are in one of the appendices. The shares are based on a calculation that uses both survey distribution and historic catches in the agreement area. Over time, the historic catch becomes less important until eventually the survey distribution becomes the only factor considered. Dr. Pierce: Another aspect is what biomass targets will be used. It is not clear the Canadians will accept the NMFS proposed biomass targets.*

Mr. Paul Parker, Executive Director, Cape Cod Commercial Hook Fishermen's Assn., Chatham, MA: With respect to the US/CA agreement, will it be a hard TAC? *Mr. Nies: There are two options, one where it would be a hard TAC and another where it would not be.*

Mr. Parker: If it is not a hard TAC, and the U.S. allocation is exceeded, where do those fish come from? *Mr. Blount: Just those areas on Georges Bank.*

Mr. Parker: Is there any downside if they overfish the eastern Georges Bank? I don't think many people even know this agreement exists. What about bycatch TACs? Can you only access haddock until you start overfishing cod? *Dr. Pierce: Your concerns are valid. When the Committee talks about this agreement, we will have to have in front of us all the specific in order to avoid confusion. With respect to bycatch quotas, I expect NMFS will push for a strategy– that whatever bycatch occurs in other fisheries, that would be tallied up and come off the TAC for the next year, and we could wind up spiraling downward.*

Mr. Parker: Is this agreement tied to the Amendment 13 process?

Mr. Shawn Fortier, fisherman, Provincetown, MA: Back in April of 2000, the Council made a statement concerning enforceability of regulations. Has there been any consideration of whether these measures are enforceable? We cannot expect an increase in enforcement resources. *Mr. Nies: Volume I of the full amendment includes an evaluation of whether the measures are enforceable. This was prepared with the assistance of NMFS and the Coast Guard. Some measures may not be enforceable.*

Mr. William Henchy, counsel for the Provincetown Fishery Association and CCHFA: What process if being followed for the US/CA Resource Sharing Understanding? Is it a treaty? Who runs the meetings? Are they open to the public? *Mr. Nies: the discussions have been held between NFMS and Canada's Department of Fisheries and Oceans. NMFS asked the Council to suggest industry participants, all of who have been Council members. I do not believe NMFS has publicly announced the meetings, but I am not sure if they are open to the public or not. It is not a treaty. The NERO Office of Sustainable Fisheries was involved, but I believe it is being run as a special project under the Regional Administrator.*

After a short break, public comment was received. In addition to oral statements, a written statement was provided for the record from Mr. Luis Ribas (attached). In addition, six commenters provided copies of prepared statements that they read into the record.

Mr. Tom Luce, longliner, Chatham, MA: I want to address the worst case scenario under Alternative 2. Hook gear restrictions are down to 1,000 hooks per day. Once the cod TAC is

reached, no one can fish for cod. I should get back my 3,600 hooks to fish for haddock or some other species. Other gear types have that ability.

Mr. Robert O'Leary, Massachusetts State Senator for the Cape and Islands: I am struck by how complex this whole business is. It is difficult to understand all that is going on – I don't envy you your task of trying to protect both industry and the species. Having said that, it is important to look at the communities that are dependent on this industry. It is not just about fish species, it is about a way of life in communities across New England. One of the proposals but forward, a subset of the four main alternatives, is the principal of sector allocation. This proposal has been advocated by fishermen on the Cape. I speak in favor of that option. It seeks to give fishermen in the community a stake in managing the resource in a way that give them flexibility yet requires them to be accountable. In all of the complexity in this plan, flexibility will be lost. Sector allocation should be approved, at least on an experimental basis. If you set up a system that allows a community to help manage the stock, you will accomplish a great deal.

Dr. Pierce: It would be helpful if those interested in sector allocation got more ins9ight into the specific proposals. Will those individuals who want to pursue that strategy have to do more than what is in the amendment? Staff: yes. They will have to develop a plan that identifies the participants, describes how they will monitor the fishery to remain within the allocation, and may have to prepare an environmental assessment.

Dr. Sheryl Andrews, Acting Chair, Provincetown Board of Selectmen: I ma here with two other Provincetown selectmen. Provincetown has spent the last ten years working to revitalize our waterfront. From the outset of the reconstruction of our pier, we have been committed to maintaining a vital commercial fishing fleet. We now have a state of the art pie, and independent agency to run it, and a newly energized fishing organization to use it. We are here because the Council is considering alternatives that may devastate our small fleet. Give special attention to the concerns raised by our fishermen. Every year we have fewer and fewer fishermen left in Provincetown. They are becoming their own endangered species. Don't' let that happen.

Mr. Keith Burkman, Town Manager, Provincetown: At some point we will say "ditto" to whatever the Provincetown Fishermen's Association says, whether at this meeting or later. The need of Provincetown are unique. I was touched by Senator O'Leary's comment – the fabric of the community is what this is all about. We have a seasonal, tourism based economy. For year round employment, there are two choices – government or commercial fishing. There seems to be no process here that will ensure our fishing fleet can continue to earn a living. The solution that may help Provincetown may not help another port. We would hate to see our community with its year round economy hanging by a thread go to the wayside because of a solution – a cookie cutter approach – leads to a solution that helps another port but doesn't help our small fishing fleet. We urge you to listen carefully to what our Provincetown fishermen say. If there is any way a unique solution can be crafted for our port, that is vital. We ask for your support.

Mr. Bill Boucheau (spelling uncertain), commercial fishermen, Provincetown, MA: The area around Provincetown is part of the Gulf of Maine regulated Mesh Area. Provincetown small boats have long harvested fish in this area – at one time, the dayboat fleet numbered 80 boats. Due to overfishing many management tools have been used. The Western Gulf of Maine closed area is one, with its southern end only ten miles off Provincetown. That area has been off limits to us for ten years. With days-at-sea (DAS) – at one time we could fish 365 days, now we are reduced down to some individual DAS number for each boat, based on past use. Our cod limit per DAS has low as 30 pounds at the same time that anyone south of the Gulf of Maine could land 2,000 pounds per DAS. While six months of rolling closures may represent only 50 percent

of the fishing time, it represents the period when 80 percent of our landings were caught. And an unexpected outcome of rolling closures is the surge of fish harvested in great numbers by offshore boats with massive gear and horsepower fishing twenty-four hours a day when the closure opens – dumping all that fish on the market and depressing prices, fish that could support the dayboat fleet for a long time. The DAS baseline ordered by Judge Kessler is unfair. The inshore fleet has made the greatest sacrifice for these stocks. Someone fishing elsewhere is now rewarded with more DAS than fellow fishermen. Surely as stocks rebound they will enter the inshore area and use their DAS. Before any more cuts come to impact coastal communities, the playing field has to be level for all. If the goal is to reduce DAS to 28,400 DAS, divide that number by all the permit holders, and have a way for fishermen who desire more DAS to transfer DAS. I'm in favor of improving stewardship as in Alternative 3 or as supported by the CCHFA. Perhaps in blocks 124 and 125, there could no night fishing, trip limits on yellowtail flounder, gear used to reduce bycatch such as cod. These approaches would manage the impacts on coastal communities. The recovery of stocks looks promising. We now have an $18 million fish pier. I see a bright future – except NMFS has seen fit to increase target levels to levels never seen before. These would manage without impacts coastal communities. Recovery of stocks looks promising. If these targets must be raised, let's do it in steps.

Mr. Steve Scannel, scallop fisherman, Nantucket: I am also a student at Cape Cod Community College. I look at a document like this, the talk of TACs, and think that is what an accountant would do. All the stocks that we fish on are well down and under historic levels. Habitat is still in state of destruction. Whatever TAC we have now, just cut it in half. In the late 1970s and early 1980's we just put a huge band-aid on the problem. We grandfathered in the people in the fisheries and the gear they used. What I propose to NMFS and the Council and Congress: take all the old deals and put them in the wastebasket. We need to replace the regulations with a market based quota system, as opposed to our current monopoly rights based system. Those fishermen with license s have a monopoly club with ownership in the aggregate. To be a high school kid and told you can't get a license to be an independent fisherman – that type of thinking belongs in the trash barrel. We are wrecking habitat when we don't have to. We have gear that is ridiculously destructive. There is no call to do that in 2003. I know you have done a lot of hard work, but it is based on huge band-aids that were put on ins the later '70s and '80s. You have a document called the market based quota system - this system is designed for public resources. It is fair. It doesn't leave anyone out. It is based on equal opportunity. Our current program is very inefficient in that we do not internalize all the destruction taking place with bad gear. We need a system that charges people to wreck the bottom or discard fish. If we are going to put limits on fishermen, they should be dollar limits, not these systems that are poundage limits that give high grading and discarding the edge. That is a wasteful way to fish.

Mr. William Henchy, counsel for the Provincetown Fishermen's Association and the CCHFA, Orleans, MA: I will limit these comment to represent PROFISH. You have already heard a little from the Provincetown fleet. That fleet is limited in terms of mobility and the weather that it can fish. It is primarily a small, dayboat dragger fleet. There used to be some tub trawls, but they were eliminated with the GOM cod trip limit. Provincetown has been very heavily impacts by rolling closures that have made the commercial viability of the fleet a problem. Rolling closures do their job, but due to the geographic location, they keep Provincetown boats off fish when they are available to the fleet. Our recent pier reconstruction is a good thing – the fleet now has a first class facility to build its future. PROFISH has been energized the last several years. If not for the measures under consideration, the future looks quite bright for the Provincetown fleet. Commercial fishing provides 87 percent of the year round jobs in Provincetown, the largest year round employer. With certain exceptions, fish stocks are recovering in the Gulf of Maine and recovering at a reasonable clip. The Northeast Fisheries Science Center has adjusted the

rebuilding targets for important species in GOM. Coupled with time limits in the SFA, this puts the Council in the position of attempting to create a plan amendment to meet MSA requirements. The situation has become nonsensical. In order to achieve rebuilding levels, fishermen have to take cuts in the short term to achieve gains in the long term. As a matte of public policy, it doesn't make much sense to commercial fishermen. I have some specific comments to make. Area management and sector allocation and special access programs are good and should be encouraged. It has as become clear that the one size fits all approach in Alternatives 1, 2, and 4 don't go far enough in recognizing legitimate needs or limitations of gear types within the fleet. PROFISH supports the GB cod and hook gillnet sector allocation. We suggest the approval process should be tightened to impose some requirements on the regional Administrator. By way of example, the process to get the raised footrope trawl approved was onerous and unnecessarily long. We will submit comments on proposals for other sectors to be included. PROFISH supports either the phased or adaptive rebuilding strategy, with our preference the adaptive strategy. PROFISH supports the Council's proposed policy on cooperative research and its impact on DAS baseline calculations. I represent a fisherman who lost DAS under the settlement agreement because he participated in research. PROFISH opposed the rolling closures in Alternative 1, the DAS reduction in Alternative 1, the hard TAC options in Alternative 4. the hard TAC backstop option in Alternative 2. Hard TACs will result in a race to fish, which works against the inshore fleet. They will also exacerbate bycatch mortality in violation of the law and the court order. Particularly relevant, we think hard TAC will create safety at sea issues as vessels choose to fish in adverse weather to compete for the TAC. We request further analysis of a couple of things: there is no analysis of the Council's option under National Standard 1 to permit mixed stock overfishing, which may be important for Cape Cod/Gulf of Maine yellowtail flounder in particular. In addition, we ask the Council to analyze to analyze the status quo with additional measures necessary to rebuild most stocks by 2014. Additional analysis might provide the Council with additional tools to bring to bear. We will submit detailed written comments at a later date. (A summary of these comments is attached).

Mr. Mark Leach, fisherman, F/V Sea Holly, Harwichport, MA: Basically this next group of regulations is consolidating DSA by tremendous amounts, using trip limits, etc. the staff pointed out that under rebuilding scenarios we will need about ten years before we see net benefits. For Amendment 7, hearings were held in a large room and it was loaded – look at the size of this room. Has the cost of management been cut? I don't mean that in a negative fashion. We are going to have a large economic hit here. I have been promoting a permit buyback or DAS buyback of some sort. Certainly in these times when we are sending $87 billion to Iraq it will be tough to convince Congress to subsidize fishing. Maybe some of the money used for management should be used for a buyback.

Shawn Fortier, commercial fisherman, Provincetown, MA: I am a director of PROFISH, but I am speaking for myself. When I was following the CLF vs. Evans lawsuit, I noted the following affidavit from Paul Diodati. In his statement to Judge Kessler, he said that currently discards are responsible for half of all fishing mortality on GOM cod. One of the primary reasons we cannot reach mortality targets must be because of these discards. We are shoveling sand against the tide. When we have all these options put forward, there has again been no effort to make those responsible for discards suffer the consequences of discards. In present management time, a jig fisherman - a guy who fishes commercially, full bore fishing with jig – is not even recognized. I asked about enforceability – unfortunately these issues are not identified. To use the words of Council, it makes little sense to put forward measures that cannot be enforced. As I travel around the Cape, I see broken nets set on every broken piece of bottom. I'm speaking now for the last seven years 7 years. I get upset when I see gillnet regulations that can't be enforced because none of the enforcement units have a net hauler. You don't even know how many illegal gillnets are in

the water. They are in the closed areas with no surface markers, they are in other places with no radar reflectors. State licensed boats are putting nets in federal waters. All of this creates mortality, and I can't even get to the bottom. It affects me I am being penalized by a gear that causes much harm – there is a great deal of bycatch by both gillnets and trawls. There are those who avoid bycatch with short tows or by staying off the bottom. I've seen guys throw a whole net full of bycatch over and not move one inch before they reset. Management now concentrates on landings and not mortality. The fish are dead, that is what counts. When I try to comment on these things – what seems to make a lot more sense is status quo with a directed effort at the high level of discards. That will get you there on the codfish in and of itself. Go up to the bank on Stellwagen on the December 1 opening. There is a problem with current management – literally a gang rape of the bottom. Those large boats get their multiples of their 400 pound limit on the first tow, but they keep towing on for other species. There is no mechanism to get the ones who are causing waste to be responsible for it. If they got off the water when they exceeded the limit, they wouldn't keep doing it. When I keep looking at these measures – I see more restrictive gillnet measures – but I know for a fact- they don't have a way to tell if it is gillnet of lobster gear. The gear just sits there, and after a while they don't even come out any more. As long as we continue down this path, all I see is a lot of pain and the good guys don't gain anything here. If you try to identify the jig fishermen – the one thing I can do with my hooks – it is like stopgap. If you are going to a hard TAC - RI has tried to do this – people should be allowed some access to the fish. If the guys are doing it by accident, how many times are we going to allow this to happen? All of those fish going over are going to hurt me. I am astounded that there are elements that cannot be enforced and they have not been identified. I hope something good comes out of this but I don't see it.

Mr. Ron Smolowitz, Coonamesset Farm, Fisheries Survival Fund. My comments are more on the surrounding issues, not on the direct options. Sometimes the details are very important. On page 22 of the public hearing document, there is talk of a ten inch twine top in five of the thirty minute squares for scallop dredges, but in Amendment 10 it looks like we are going to ten inch twine top throughout the range. We should try not to use the groundfish plan to manage other fisheries. Just think of the consequences if the scallop plan set a sweep length requirement on groundfish gear. It is very important for the Council to set policy that bycatch and habitat issues of fishery will be addressed in that management plan. PHD page 40 – my concern is that doc says to all gear capable of catching species. This is an issue between sectors. We should also be cautious about hard TACs for that reason. On page 47 there is a discussion of bycatch in the exempted fisheries. I would put forward that scallop gear catches less than five per cent bycatch – I would think that the Council should consider scallop dredge gear should be exempted in the multispecies plan and that way bycatch and habitat could be addressed in the scallop plan. This would be a benefit to the groundfish fishery in the long term. On page 49, the rationale for closed areas and access to closed areas relates to the whole exempted fishery issue. Vessel Monitoring Systems should be considered for all vessels, it would benefit all fishermen; we would not have to close large areas of the ocean for particular reasons. My biggest concerns about are the habitat closures. I chair the habitat Advisory Panel. We started a process to come up with areas, to consider them habitat control areas or management areas. All areas need to be managed for habitat. The biggest flaw in Amendment 10 and Amendment 13 is really they just point out how insufficient the data we have are; new data is pouring in that gives a better picture of the seafloor – not just substrate, but epifauna. These documents divide the ocean into areas, but consider nothing about depth, temperature, epifauna, etc. In analysis we look at species, leading to conclusions like that scallop fishing adversely impacts redfish. One of the things that bothers me is the technical advice we received. In this document, it gives no credit for rolling closures, possession limits, or hard TACs, even though the NRC said reducing fishing effort or frequency has significant benefits. n tech advice we received. I suggest to the Council that the habitat issue should be addressed in the

(6)

October 14, 2003

RE: Lawlessness and Consequences.

Dear NEFMC Council Members:

My Name is Jean Frottier, I am 60 years old, and I have been a commercial fisherman for 32 years (full time for the past 13 years), and I am the sole source of support for my wife and nine year old child. My boat is the 36 foot F/V ANNALISE, and I fish: (1) for lobsters by diving (I have logged over 10,000 hours underwater) and pots, (2) by rod and reel for tuna, and (3) by jig for cod with electrically driven reels. From day one, I have made a deliberate effort to fish in ways that do not cause bycatch and/or damage the bottom. My fishing methodology is as far removed from "industrial fishing" as one can get, but on anything approaching a level playing field it is a system that works. Most importantly, it is a system that is completely sustainable.

That said, I wish to inform the members of the NEFMC that I, and others who fish responsibly, have long been disadvantaged and abused by unfair/unlawful measures enacted by this council. Recognizing the constraints of space, for the purposes of this commentary, I will concentrate on the problems the NEFMC has caused by improperly/unlawfully favoring the gillnet sector with: (1) rules which cannot be enforced, and (2) preferential access to prime fishing bottom.

RULES WHICH CANNOT BE ENFORCED

Nothing so clearly exposes the dishonesty of the management process as the unenforceable gillnet rules - which time and again are incorporated into measures adopted by the NEFMC. Tragically, these NEFMC actions are today shown to be deliberate and purposeful. For example, by letter dated April 7, 2000, on NEFMC letterhead, to all Groundfish permit holders, the NEFMC explicitly set forth the following:
"... The management measures we choose for Amendment 13 must comply with the ten National standards for fisheries management contained in the Magnuson-Stevens Act (Act). Some of the criteria the Council will use in evaluating management measures include the following:

- *Are the measures enforceable?* It makes little sense to adopt regulations that cannot be enforced. ...".

Looking at each of the four proposed alternatives for Amendment 13 put forth for public comment by the NEFMC - we see that they all, again, contain gillnet regulations which the NEFMC knows full well cannot be enforced. At the Amendment 13 meeting in Hyannis, Mass., I specifically asked the Council representatives about what NOAA law enforcement and/or the U.S. Coast Guard had said about enforcement of the any of the provisions put forth by the NEFMC for public comment. The response was, at first, an uncomfortable silence, and then an admission from Tom Nies that the U.S. Coast Guard had stated that some of the proposed measures were said to be unenforceable. Mr. Nies did not elaborate or identify which measures were considered by the Coast Guard to be unenforceable and/or when the Council was informed of such fact. By reason of the fact that the NEFMC itself states that "*It makes little sense to adopt regulations that cannot be enforced.*", the NEFMC is today shown abusing the SFA process by secreting vital information from the public when their proposed measures are put up for "public commentary". My question here to each Council member is: "Why are you doing this?

FAIRNESS -

" * *Are the measures fair and equitable?* We recognize that 'fairness' is often in the eyes of the beholder. Nevertheless, the management measures in Amendment 13 must be fair and equitable to fisherman in all states, in different permit categories, using different types of gear, etc."

All members of the NEFMC are certainly aware that any piece of bottom upon which a gillnet sits is a piece of bottom denied to all other fishermen for the duration of the time that the net is left on that piece of bottom. By favoring the gillnet sector with: (1) laws that the NEFMC knows cannot be enforced, and (2) by the NEFMC permitting gillnets to remain set on a chosen piece of bottom for as long as the gillnetter wishes, the NEFMC is unlawfully favoring the gillnet sector. The measures the NEFMC currently has in place, and each of the four proposed Amendment 13 management schemes, improperly favor the gillnet sector with measures that are tantamount to granting the gillnet sector the best fishing bottom for as long as the gillnetter wants. This is certainly not a question of fairness that is "in the eyes of the beholder" - because no one else can possibly fish that particular piece of bottom until the net is removed - period!

All of the foregoing is bad enough in-of-itself, but when one adds in the problems of the illegal nets, and bycatch waste caused by soaking nets, the sordid perversion of the Magnuson-Stevens/Sustainable Fisheries Act by the NEFMC cannot be denied. Clearly, by reason of the fact that there is no set protocol for hauling and inspecting a set gillnet, it is amply clear the NEFMC never had any intention of enforcing their gillnet regulations. As a direct consequence of adopting gillnet regulations which cannot be enforced, the prime fishing bottom is literally carpeted with illegal gillnets of all manner. As a direct consequence of granting gillnetters preferred access to the prime bottom, long term soaking of gillnets has become standard gillnet fishing practice. The gillnets, both legal and illegal, remain on the prime bottom 24/7. In turn, the foregoing causes extreme levels of wasteful bycatch, and also damage to EFH - as the gillnet's lead line sweeps back and forth over the bottom with the change of tide. The waste and damage gets worse still when some dragger or scalloper decides to take matters into his own hands - and clears out some of these parked gillnets - and then dumps the junk in a heap - a ghosting, killing, and entangling heap.

Tragically, all this could be made to end almost overnight by simply requiring gillnetters to fish their nets within sight of their boats, and requiring gillnet boats to return from each fishing trip with their nets. In other words, by simply treating the gillnet sector like every other gear sector! Furthermore, until such time as the gillnets are made to return with their boat, all DAS regulations placed upon the other gear sectors will remain manifestly unfair. A set gillnet keeps fishing/killing/wasting as the owners boat sits tied at the dock, and that cannot be said about any boat in any other groundfish sector! Consequently, the NEFMC cannot put a legitimate face on any of their present or proposed gillnet regulation measures.

The many years of NEFMC fisheries mismanagement, so well exemplified by NEFMC "regulations" adopted for the gillnet sector, has turned deadly serious today in the form of Amendment 13. The NEFMC has already framed the issue into a choice of one of four "alternatives", but by the inclusion therein of gillnet regulations that the NEFMC knows are unenforceable, the sordid and underhanded nature of NEFMC "management" becomes an issue which trumps all others. At the Hyannis meeting on Amendment 13, I tried to make the point that the consequences of bycatch waste and habitat destruction should be made to fall primarily upon those who are the cause of the problem. Unfortunately, the actions of the NEFMC make it clear the NEFMC has yet to see it that way. Given the hand that the NEFMC

has dealt us with their four alternatives, the only thing that could possibly conform to SFA law, the NEFMC guidelines articulated by the April 7, 2000 letter, and the apparent wishes of most of all others who have come forth to comment, is to adopt some form of the status quo - with certain critical provisos as follows:

(1) Change the system that allows gillnetters to set illegal nets and encourages the long-term soaking of gillnets.
(2) Recognize the difference between a dragger pulling a 50-60 foot sweep with a 300-400 horsepower engine from a dragger pulling a 200-250 foot sweep with a 500-1500 horsepower engine. All draggers do not waste/damage/discard the same!
(3) Reward all responsible fishing practices which cause little bycatch and/or EFH damage, and adopt regulations which discourage and punish wasteful and destructive fishing practices.

The "SECOND AFFIDAVIT OF PAUL J. DIODATI", filed in the CLF v. Evans case, shows us why this would work. In his filed affidavit, the Director of the Massachusetts Division of Marine fisheries raises many valid points, backed-up by Massachusetts sea sampling data, including the following:

(1) "20. ... SAW 33 determined that GOM cod discards in 1999 were 2,500 metric tons (mt) more than commercial landings (emphasis added). ... Furthermore, without first addressing the bycatch and discard problem other management measures adopted to achieve SFA targets will be frustrated."

(2) "22. The Commonwealth proposes a much more effective, timely, resourceful and restrictive short-term remedy to reduce bycatch and discards. Its proposed remedy is based on the most recent conclusion of the Council's Scientific and Statistical Committee (SSC) that in 1999 and 2000 50% of GOM cod fishing mortality was due to discards. Thus, this Court must assure that any short-term remedy focus on measures that will dramatically reduce mortality caused by discarding. Such a remedy must include an irrefutable and substantial by-catch and discard mortality-reducing measure(s)."

(2) "23. Dragging and gillnetting can cause large amounts of discards, especially when trip limits, such as the current 400 pounds, are low and cod abundance from a recovering stock is high. The Commonwealth would propose a shift in how GOM groundfish fisheries are prosecuted in the "inshore" portion of the GOM."

Reasonably, the NEFMC should devise measures that will get the needed mortality reductions from what is today being wasted - rather than from the livelihood of those who are not causing the waste. Additionally, that 50% GOM waste estimate mentioned by Mr. Diodati is certainly low because: (a) no one has any idea whatsoever about how many illegal gillnets are out there, (b) it is impossible to calculate how many fish a long soaking gillnet has killed before it is even hauled, and (c) no one can accurately determine the extent to which draggermen and gillnetters are lying about their discards on their VTRs. In reality, it is very likely that year after year the discards of GOM cod equal or exceed the landed catch. The NEFMC council members must understand that people who fish responsibly, and cause little or no discards, see the issue of discards as a matter of "fairness" when their ability to make a living is constantly being sacrificed by the NEFMC to essentially "keep the pigs feeding at the trough".
Finally, on a personal level, for a period that now extends to seven (7) years, my ability to jig for cod on the backshore of Cape Cod, (the "broken bottom" in the vicinity of the 42N and 70W intersection), has been greatly impaired, even prevented, by parked gillnets. Most of the gillnets set in this area are illegal nets with no identifying markings on the buoys, and no tetrahedral

reflectors. Here, we have a group of Massachusetts State licensed boats illegally setting nets in Federal waters on a regular basis, and other gillnetters who come from afar to set nets in excess of their legal allotment, and/or to set nets above the 42N line. Because these are illegal nets, they are poorly tended, and are allowed to soak (read - kill/waste), for very long periods - and they all sit on the prime cod bottom. At various times over these past seven years, elements of the U.S. Coast Guard, NOAA law enforcement, and the Massachusetts Environmental Police, have tried to put a stop to this flagrant lawlessness - to no avail. They are all unable to haul a gillnet, and none of these agencies has a protocol in place for hauling/handling a set gillnet - which can legally be up to one mile long. So it all falls back on the NEFMC for enacting gillnet "regulations" which they fully know are unenforceable. This situation must end, and Amendment 13 provides the NEFMC the opportunity to redress this long-standing wrong. The NEFMC must now abide by the mandate of the SFA and their own articulated guidelines, and that, in turn, will provide the fishing mortality reductions to which Amendment 13 is directed.

Sincerely yours,

Jean F. Frottier
249 Gross Hill Road
Wellfleet, MA 20667
E-mail woofy1@comcast.net

(7)

December 8, 2003

Commercial Fisheries News
PO Box 37
Stonington, ME 04681

To the Editor;

A 10/28/03 article in the Boston Globe quoted "a high-ranking National Marine Fisheries Service employee who asked not to be identified": "In New England fishing, it's all about end runs for the special interests. If you don't get what you want locally, you go up a notch. You go to the national head of the service, ...".

Bingo! Now, Amendment 13, and the lead in CFN's December issue: "New England council adopts Northeast Seafood Coalition plan". At the public hearings on Amendment 13, many came with that excellent CFN breakdown of the four "preferred alternatives". After the fact, CFN publishes the full-page ad: "We at the Northeast Seafood Coalition want to share our review of Alternative 5. Filed papers for the Northeast Seafood Coalition, Inc. show this entity for what it is – a politically well-connected group of draggermen and gillnetters. ". CFN also published a letter speaking to how Dr. Hogarth became involved. But, Alternative 5 serves the interests of this one group by misusing the SFA process to prevent timely challenge by others.

Commenting after the fact, I can only point out that the problem of massive dead discards of regulated species caused by draggermen and gillnetters is, of course, (again) completely ignored. Where the level of dead cod discards in the GOM is shown equal to, or exceeding, the landed catch, we see the Council and the head of NMFS again willing to countenance the appalling waste that has frustrated all prior initiatives. We see (again) the inclusion of gillnet regulations that all know are impossible to enforce - by reason of the fact that enforcement has no means to haul/handle a gillnet, or its catch. We see continued use of different regulations on either side of the 42N line with no ability to enforce violations.

Why do I care? I am now 60 years old, and I have been a commercial fisherman for a long time. In the winter I jig for cod on a limited access hook license. Jigging is as clean as it gets, but NMFS does not even recognize it as a distinct category. Instead, the Council and NMFS allow gillnetters to soak their nets (about as dirty as it gets) on whatever piece of bottom they chose for as long as they wish. That, in combination with gillnet regulations which cannot be enforced, leaves the prime bottom carpeted with unmarked (illegal) nets, and no good place for people like me to fish. Alternative 5 insures that this abuse will continue.

Jean Frottier
Wellfleet, MA

(8)

February 26, 2004

Sent by FAX
(978) 281-9135
Sent using 281-9207

Patricia A. Kurkul, Regional Administrator,
National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930

RE: Comments on the Proposed Rule for Groundfish Amendment 13.

Dear NOAA Regional Administrator;

Any comment on Amendment 13 must be considered in light of what a "high-ranking National Marine Fisheries Service employee" is represented to have said to a Boston Globe reporter prior to the adoption of the "Alternative 5" that now constitutes the current NEFMC proposal up for review:

> "In New England fishing, it's all about end runs" for the special interests, says a high-ranking National Marine Fisheries Service employee who asked not to be identified. "If you don't get what you want locally, you go up a notch. You go to the [national head] of the service, then you go to the head of the Department of Commerce, then you go political and threaten the budget allocations. It's endemic."

It is hard to imagine a more perfect example to the truth of the foregoing quotation than the Amendment 13 proposal put forth by the NEFMC. At the public hearings on Amendment 13, **"Alternative 5"** was never set forth for public discussion or comment, yet it now sits before NMFS for final review. Having attended the public hearing held in Hyannis, Massachusetts, I can say first hand that the attendees were asked by Mr. Tom Nies to limit their comments to the four alternatives that had been set forth in a "measures matrix" provided by the NEFMC for discussion purposes. Attendees were also discouraged from cross-mixing parts of the four alternatives in their comments. We were left with the clear impression that it was to be a choice of one of the four. Obviously, the Northeast Seafood Coalition was given a key to the backdoor and allowed to cobble together the self-serving insult to due process and honest dealings that the NEFMC has placed before NMFS for "review". The record will clearly show that this NMFS review is the only opportunity given to the public to offer any challenge to the Northeast Seafood Coalition's **"Alternative 5"** that now sits before NMFS as the NEFMC proposed rule.

Enforcement:

The most striking deficiency of this proposal put forth by a group of draggermen and gillnetters relates to enforcement. As a commercial jig fisherman who has suffered greatly as a consequence of years of unlawful conduct by certain draggermen and especially gillnetters, I am one of those who is demanding an end to regulations which are known to be **unenforceable** prior to passage. In a certain NEFMC letter dated April 7, 2000 letter addressed to "Groundfish Permit Holders" they state:

"Some of the criteria the Council will use when evaluating management measures include the following:

- *"Are the measures enforceable?* It makes little sense to adopt regulations that cannot be enforced. … …"

Looking to the NEFMC "Public Hearing Summary" for the September 14, 2003 meeting in Hyannis, Massachusetts NMFS will find me asking the NEFMC representatives about enforcement of the measures set forth in their "measures matrix":

> "Mr. Shawn Fortier (**sic**), fisherman, Provincetown, MA: Back in April of 2000, the Council made a statement concerning enforceability of regulations. Has there been any consideration of whether these measures are enforceable? We cannot expect an increase in enforcement resources. *Mr. Nies: Volume I of the full amendment includes an evaluation of whether the measures are enforceable. This was prepared with the assistance of NMFS and the Coast Guard. Some measures may not be enforceable.*

NMFS is asked to take express notice of the fact that Mr. Nies does not identify the suspect measures for the public, and he misrepresents what was actually said to the Council about some of the NEFMC proposals by using the phrase "*may not be enforceable*". In truth, it is a matter of record that, for many years, NOAA Law Enforcement and the U.S. Coast Guard has told the NEFMC Enforcement Committee that the regulations pertaining to the number of gillnets, the configuration of gillnets, and the size of gillnets have little possibility of enforcement.

The fishermen proponents of the underlying "Alternative 5" are draggermen and gillnetters who fish at night (hook fishermen do not), and they ended their Amendment 13 proposal with the following: "There is no VMS requirement automatically implemented by this alternative". . NOAA should remain mindful of the fact that at sea approximately 90% of fisheries violations occur at night – while approximately 90% of enforcement activity occurs during daylight hours. The proposal put forth for approval by the NEFMC continues to ignore the documented failures to enforce present fisheries regulations in any meaningful manner. The NEFMC's Amendment 13 proposal continues to ignore the longstanding concerns of Law Enforcement which have time and again been brought to the attention of the "Enforcement Committee" of the NEFMC. Now they ad yet more questionable measures with no VMS. VMS represents the only possibility for any nighttime enforcement given the inherent dangers of nighttime boarding and the extreme demands on Coast Guard resources for Homeland Security. NMFS should not approve a complicated management scheme that has no reasonable possibility of being enforced.

Fairness:

The NEFMC's April 7, 2000 letter also had something to say about "fairness":

- "*Are the measures fair and equitable?* We recognize that "fairness" is often in the eyes of the beholder. Nevertheless, the management measures in Amendment 13 must be fair and equitable to all fishermen in all states, in different permit categories, using different gear types, etc."

With NMFS now as the "beholder", I ask; *What is the least bit fair about continuing to allow gillnetters to set all the illegal nets they want on any piece of bottom they want for as long as they want*? That is exactly what the NEFMC is doing by (again) adopting gillnet regulations they know full well are unenforceable. Gillnetter lawlessness has gotten to the point where we have Massachusetts State licensed gillnetters setting hundreds of nets as much as 2½ miles into Federal waters. This has been going on in our area for the past six years! The Coast Guard has witnessed the problem of illegal nets during their regular boarding operations off Cape Cod. We have also made complaints to the Coast Guard, NOAA Law Enforcement, and the Massachusetts Environmental Police. Nothing is being done about it because there is nothing that they can do about it! Law enforcement has told this to the NEFMC on many occasions.

On a personal level, the draggermen and gillnetter lawlessness has resulted in a substantial loss of my income and has damaged the value of my permit. The same is probably true for most hook fishermen. NMFS is certainly aware that any piece of bottom upon which gillnets are set represents bottom denied to all other fishermen. Reasonably, if NMFS has no means to remove illegal/killing/wasting gillnets, then they should be banned until such time as NMFS does, or NMFS should insist that the NEFMC adopt regulations which at least controls the problem – such as requiring the nets to return with the boat.

Fairness issues also arise in other aspects of enforcement. How is it fair to allow those who fish day and night to be exposed to little more than 50% possible enforcement, while those (like hook fishermen) who fish only in daylight hours are 100% exposed to enforcement activity? Illegal fishing activity by draggers and gillnetters clearly has the potential to cause great harm to the resource. However, we see the greatest exposure to law enforcement falls upon the sectors known to cause the least harm. This underhanded draggermen/gillnetter proposal seeks to protect the ongoing nighttime lawlessness!

Bycatch and fairness. What is fair about regulations that allow some draggermen and gillnetters to discard huge amounts of regulated species at the expense of all those fishermen who do not fish dirty?

No Effective Bycatch Reduction:

This draggermen/gillnetter Alternative 5/Amendment 13 proposal contains no effective bycatch reduction measures. What I can relate to NMFS first hand is that while tuna fishing off the BB Buoy when there was a 2000 pound daily limit for codfish, I personally witnessed draggers discarding huge amounts of cod on a tow by tow basis – during daylight hours. How can raising the GOM limit to 800 pounds and dropping the GB limit to 1000 pounds possibly reduce the overall cod bycatch problem caused by draggers? How can yet more gillnet regulations which cannot be enforced possibly mitigate the huge bycatch problem caused by any gillnet that is allowed to soak more than one tide? NMFS certainly knows by this time that controlling bycatch is absolutely critical, and this "alternative 5" does nothing to help.

Using the year 2001– Possible Fraud – Increase in DAS:

Using the 2001 in this Amendment 13 proposal is problematical. One of the glaring problems stems from the way the State of Massachusetts distributed their portion of the $10,000,000.00 received in 2002/2003 to compensate Federal multispecies permit holders for their lost days at sea. For whatever reason, Massachusetts decided to use the year 2001 in their calculations. That resulted in the largest payments often going to the fishermen who had little participation in the fishery prior to 2001. The State's use of 2001 makes no sense, but now we see a proposal put forth by a group consisting of mostly of Massachusetts draggermen, gillnetters, and politicians which employs the year 2001 for DAS calculations. If this proposal goes through as presented, these "year 2001 fishermen" will get back the "lost" DAS for which they have already accepted compensation checks. Cute! Under the circumstances, NMFS should secure the fishing history of all the proponents of "Alternative 5" and the fishing history of the Council members who voted for this thing. Something is wrong here! Because the Northeast Seafood Coalition proposal was a back door deal there was no prior opportunity to offer any challenge to this scam.

Using the 2001 DAS data also increases the overall number of days, and swells the number with an unknown quantity of completely "paper days". Fishermen who actually fished the DAS called in should not have to see their right to fish in any way diminished by those who did nothing more than call in and leave their boat sitting at the dock. Each day that is counted in the total must at least be a day that was actually fished. Furthermore, NMFS signed a consent decree in year 2000, and the entire situation remains far more equitable and far less problematical if Amendment 13 also stays within the same timeframe.

That October 28, 2003 *Boston Globe* article also says: "William Hogarth, the current director of the National Marine Fisheries Service, pledges that he won't let political pressures affect his decision making". However, fishermen like myself who are very much troubled by this Amendment 13 proposal and how it came about have good cause to question such a representation after having read Dr. Hogarth's gushing endorsement of "Alternative 5" (printed in the December issue of *Commercial Fisheries News*). As NMFS can see from the points that I have raised, and the from the manifest deficiencies which I do not have enough space to set forth, neither the process nor the proposal is worthy of Dr. Hogarth's premature enthusiasm. At the barest minimum, NMFS must reject any element of this proposal that NMFS knows cannot be enforced, and strip the proposal of the fraud involving taxpayer dollars for "lost" DAS.

Finally, if NMFS is at all serious about substantial reductions in DAS, bycatch waste, and habitat destruction – it is as simple as putting an end to fishing at night, and requiring gillnetters to bring their nets home with their boat. Such measures are certainly fair to all fishermen -- and Homeland Security would have a much easier job. NMFS should also be mindful of the fact that the cod are already gone. GONE! Each year after 2001 the fishing has been getting worse – in an area extending from the Stellwagen Bank to the BA Buoy. There is already a serious problem with the cod stocks, and this Amendment 13 proposal seeks to prevent anyone from doing anything about it for another two years. Is NMFS going for that too?

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EXHIBIT II.

Part I.

Relative Distribution and Abundance of Cod in the Northwestern Atlantic 1979-2005
Derived from the NEFSC Spring Bottom Trawl Surveys

This animation loop shows relative cod stock weight and location 1979 - 2005. Each frame represents 3 years of survey data for cod and frames advance every 3 seconds after the file has completed downloading. (yellow circles indicate cod are present, larger circles indicate more cod, plus sign (+) indicates sampled area where no cod were found)

The information displayed here represents 27 years of data, part of a larger 40 year timeseries collected consistently since 1963.

The Northeast's resource survey constitutes the world's longest and most comprehensive standardized measure of distribution and abundance trends in commercially harvested finfish.

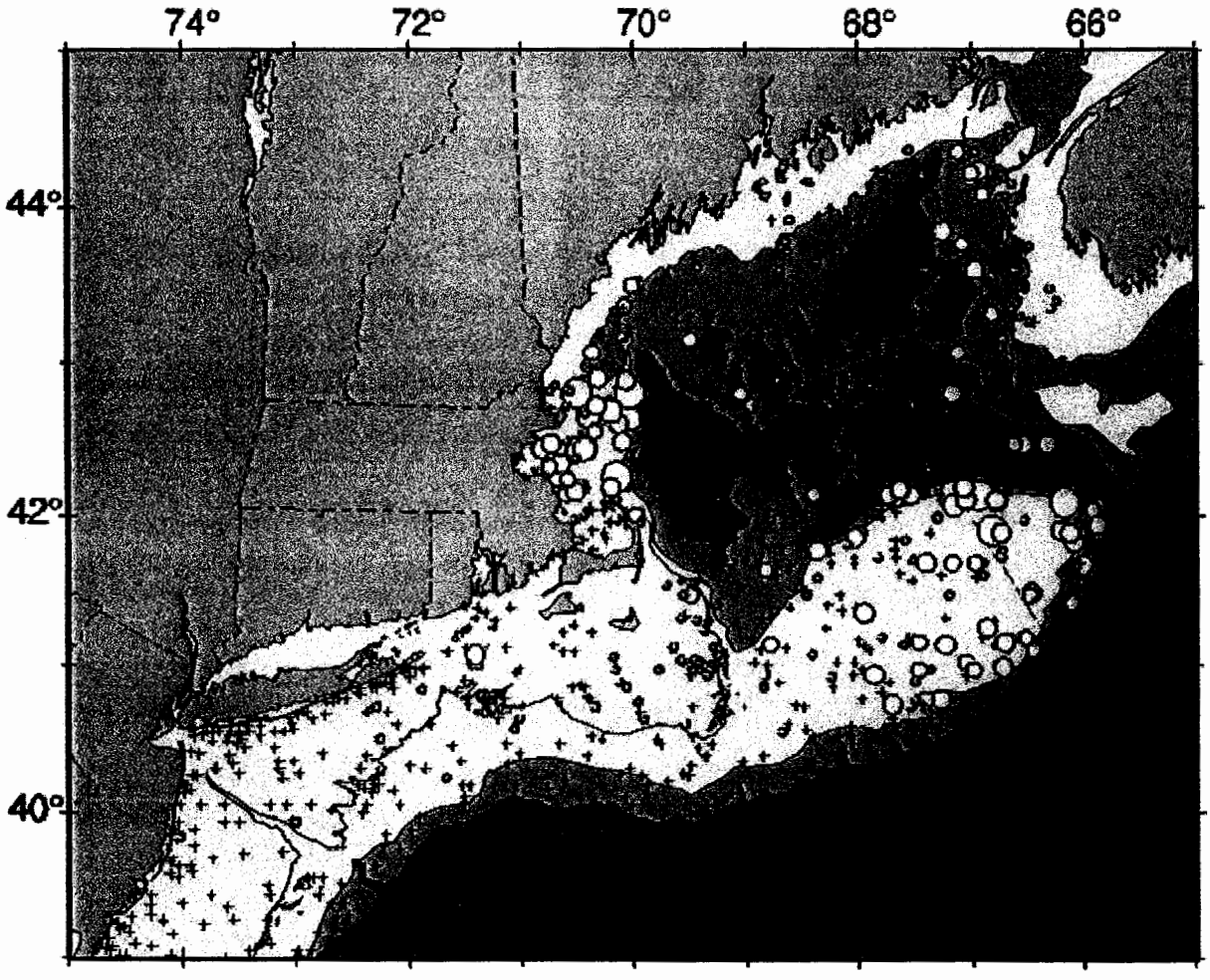
It is not a measure of actual abundance.

It is not a stock assessment.

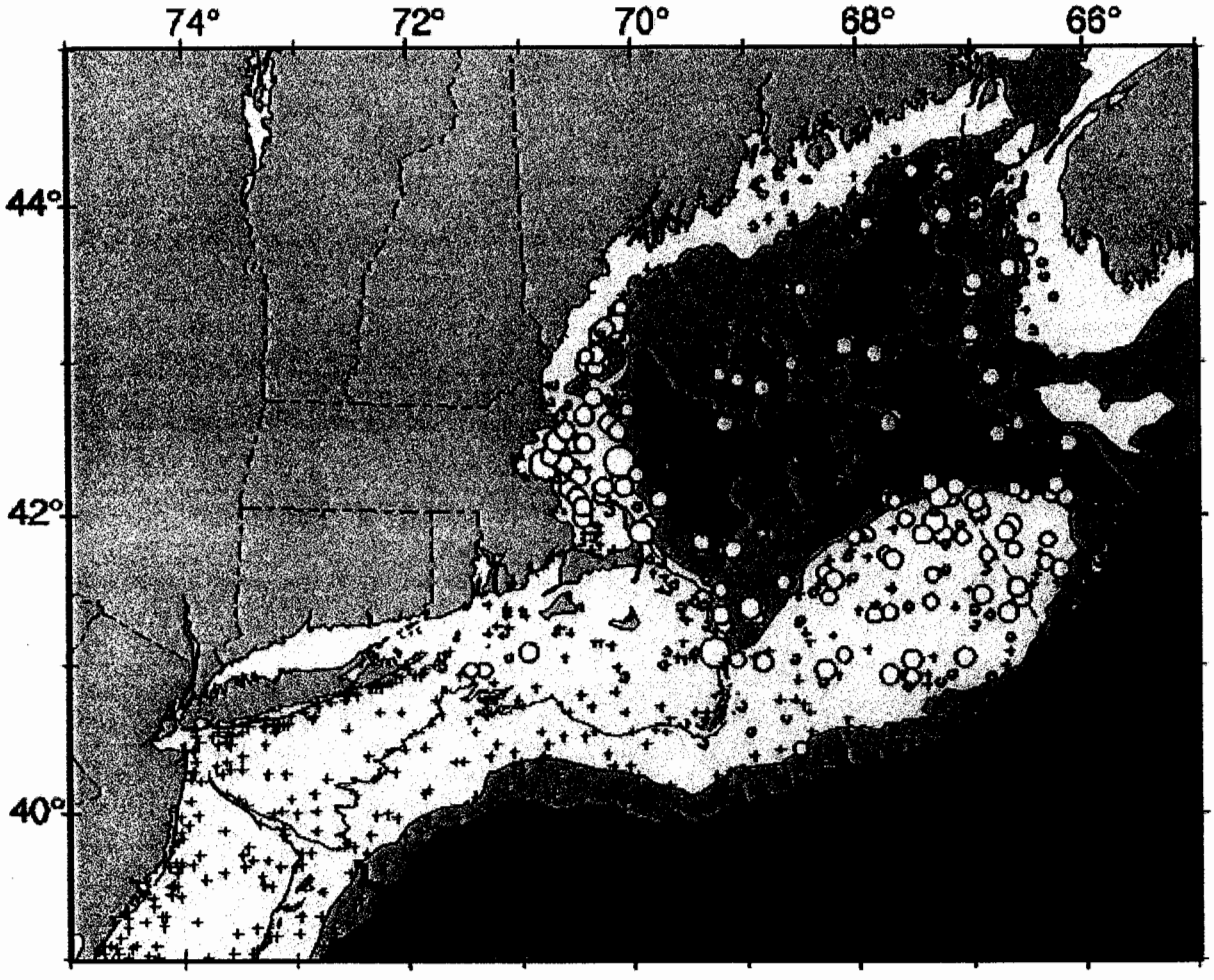
These pictures are animated on this page, but each frame of the animation may also be viewed and downloaded:

- 79to81.gif
- 82-84.gif
- 85-87.gif
- 88-90.gif
- 91-93.gif
- 94-96.gif
- 97-99.gif
- 00-02.gif
- 03-05.gif

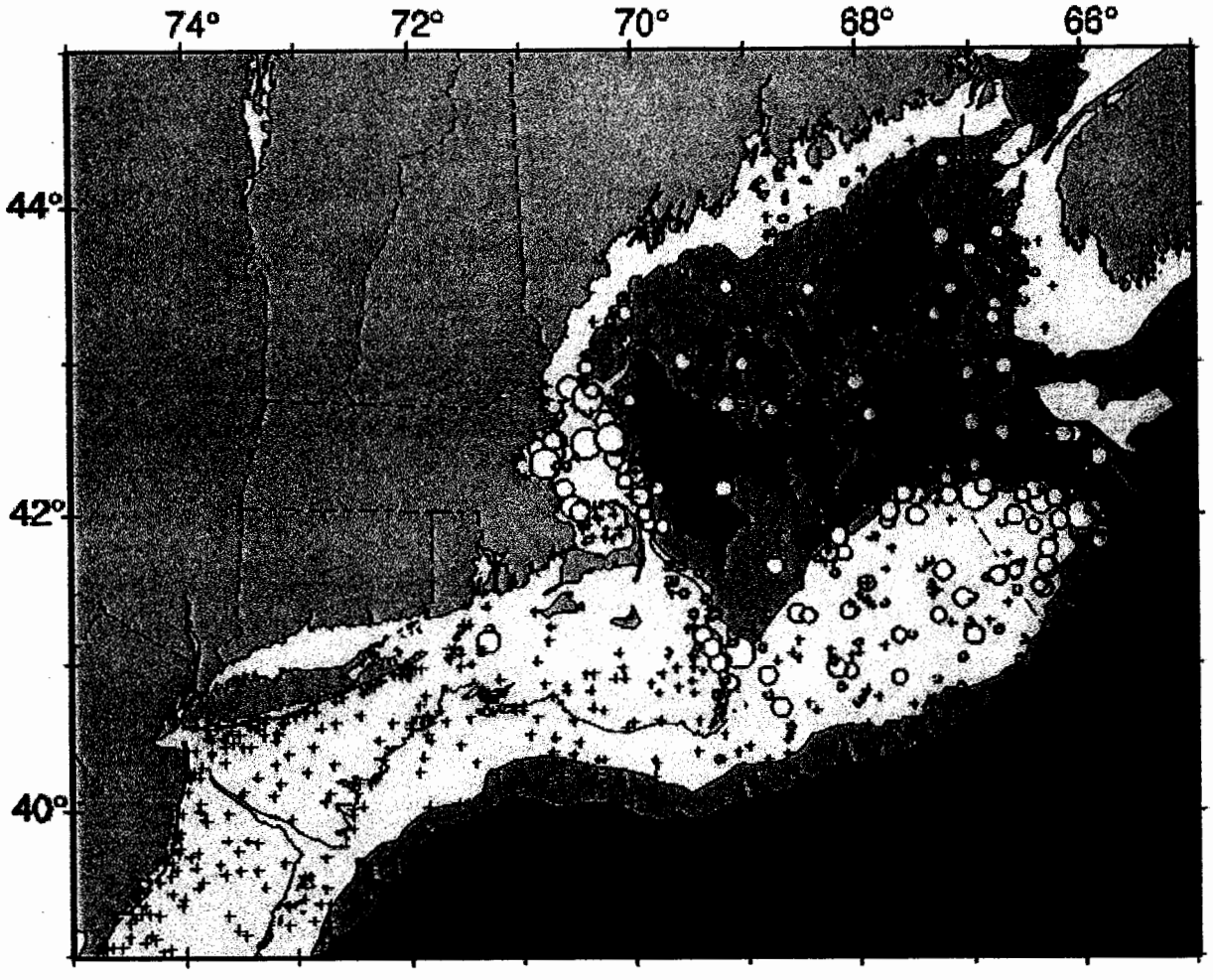
For general information on cod stocks: Click Here



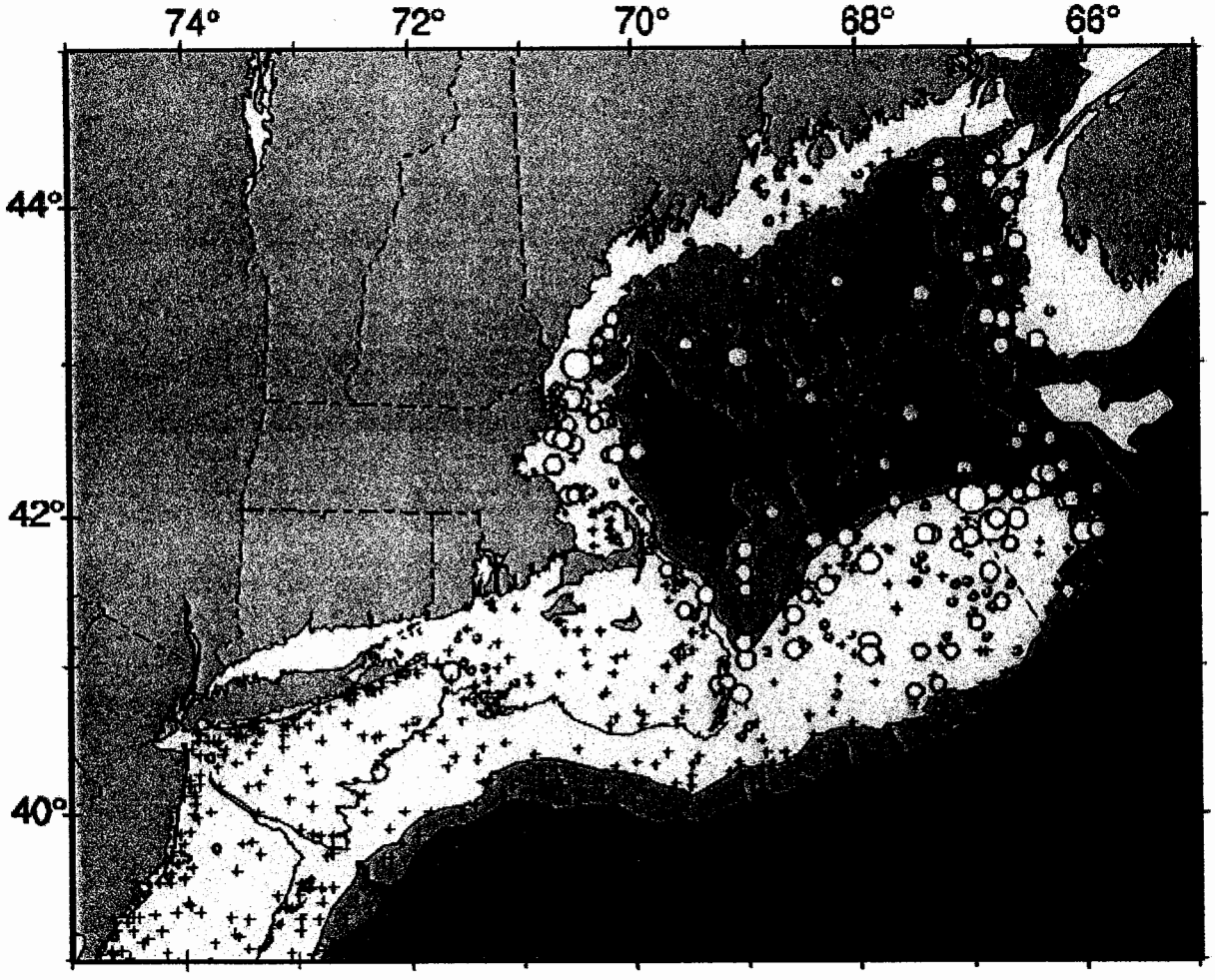
Spring 2003-2005



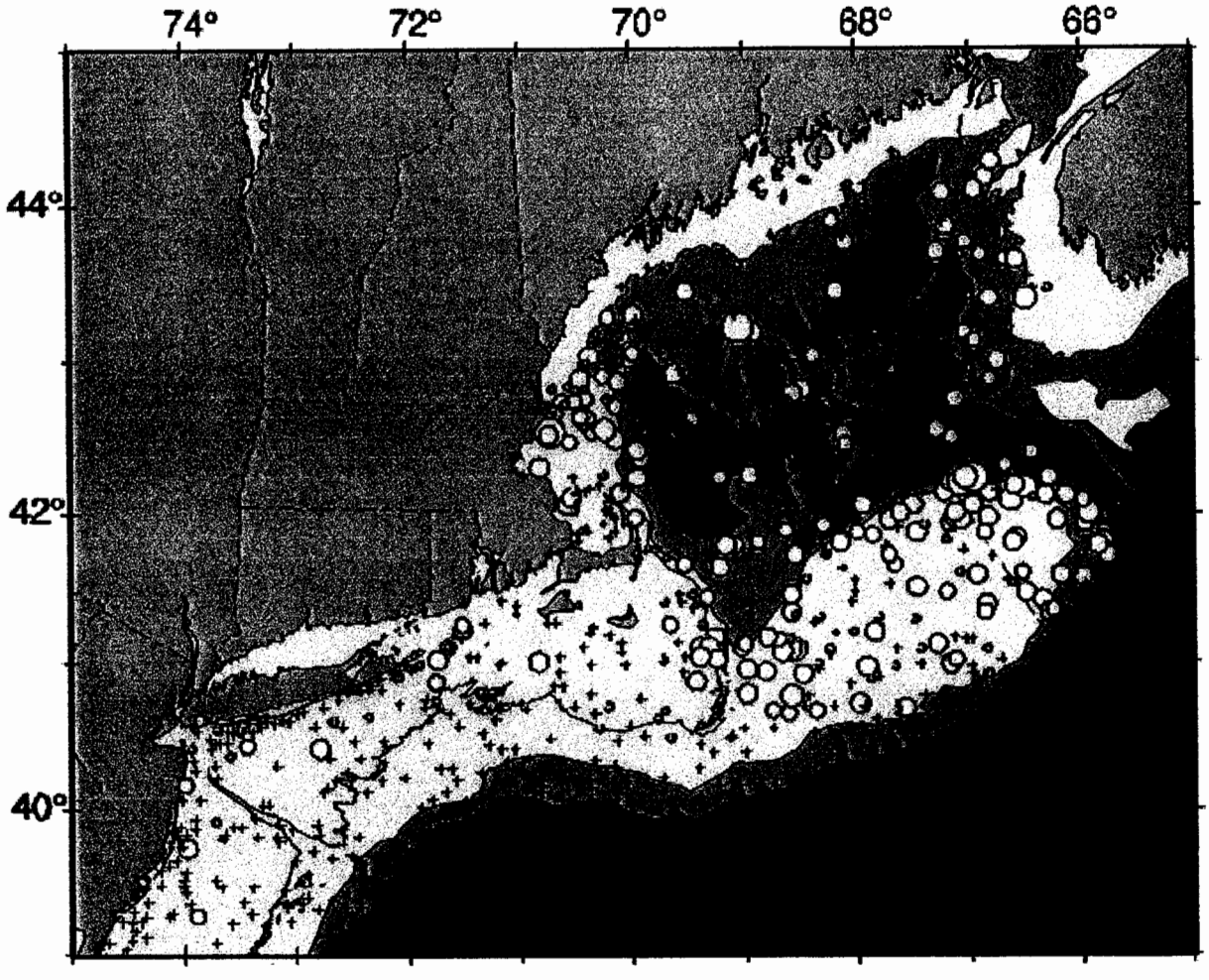
Spring 2000-2002



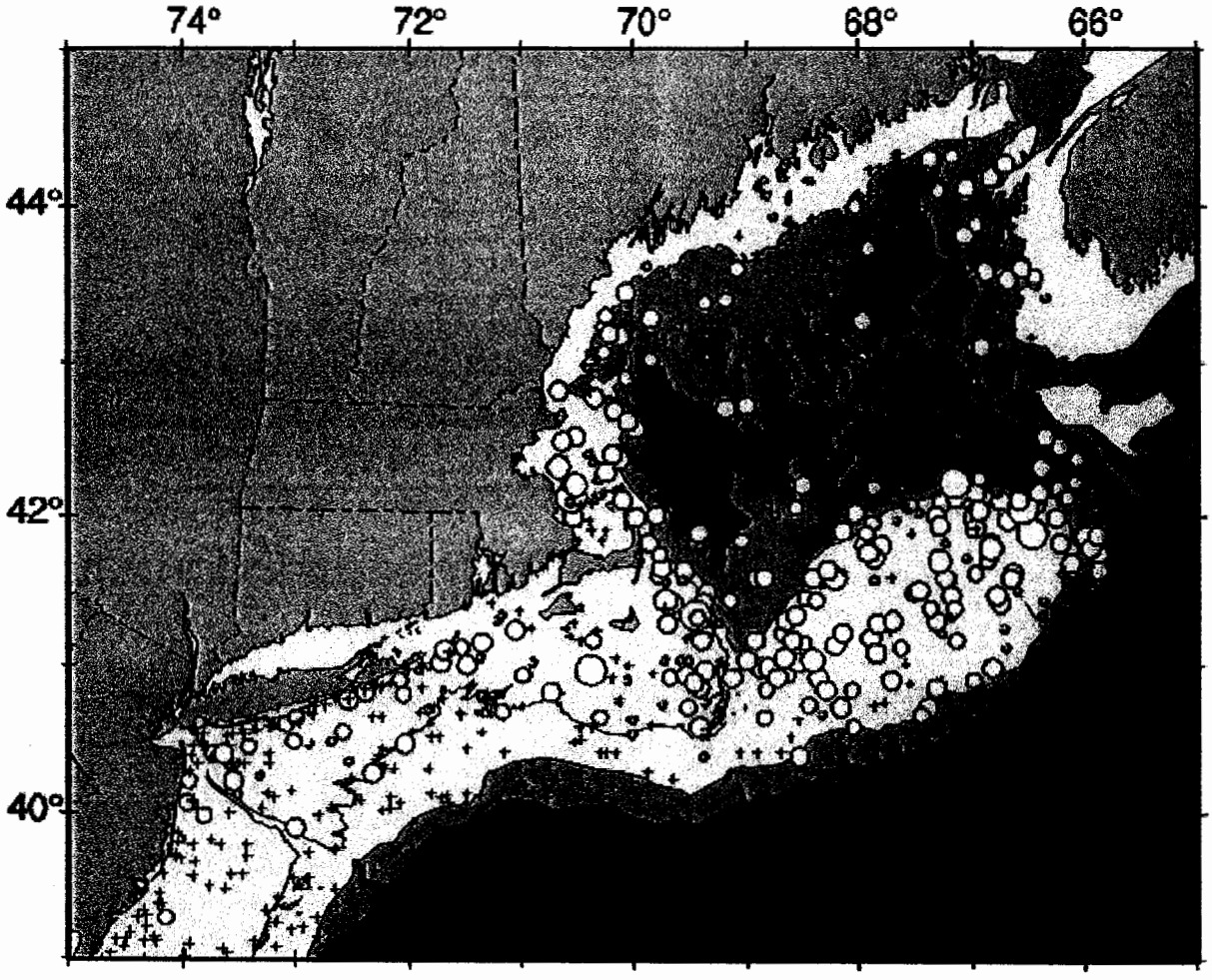
Spring 1997-1999



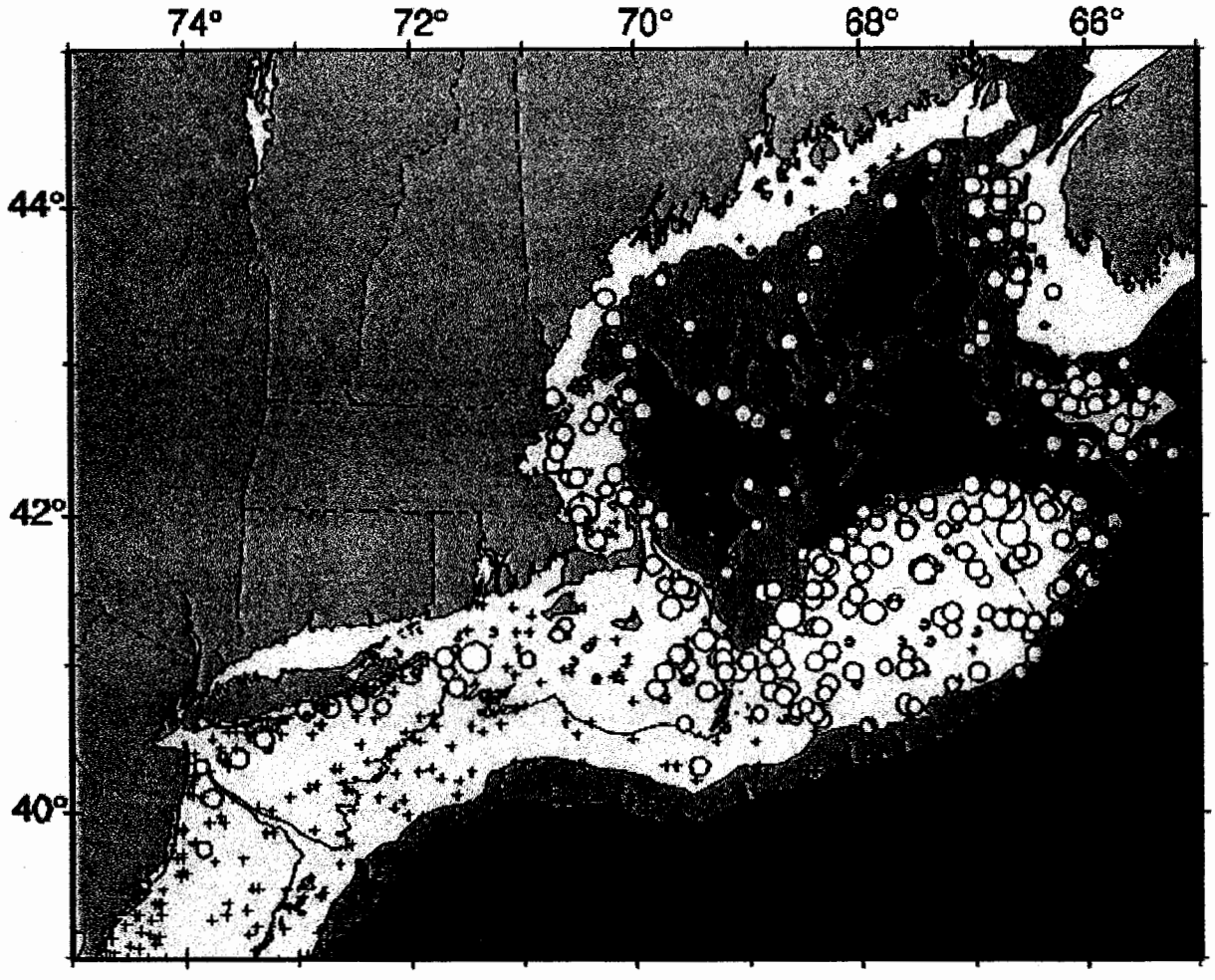
Spring 1994-1996



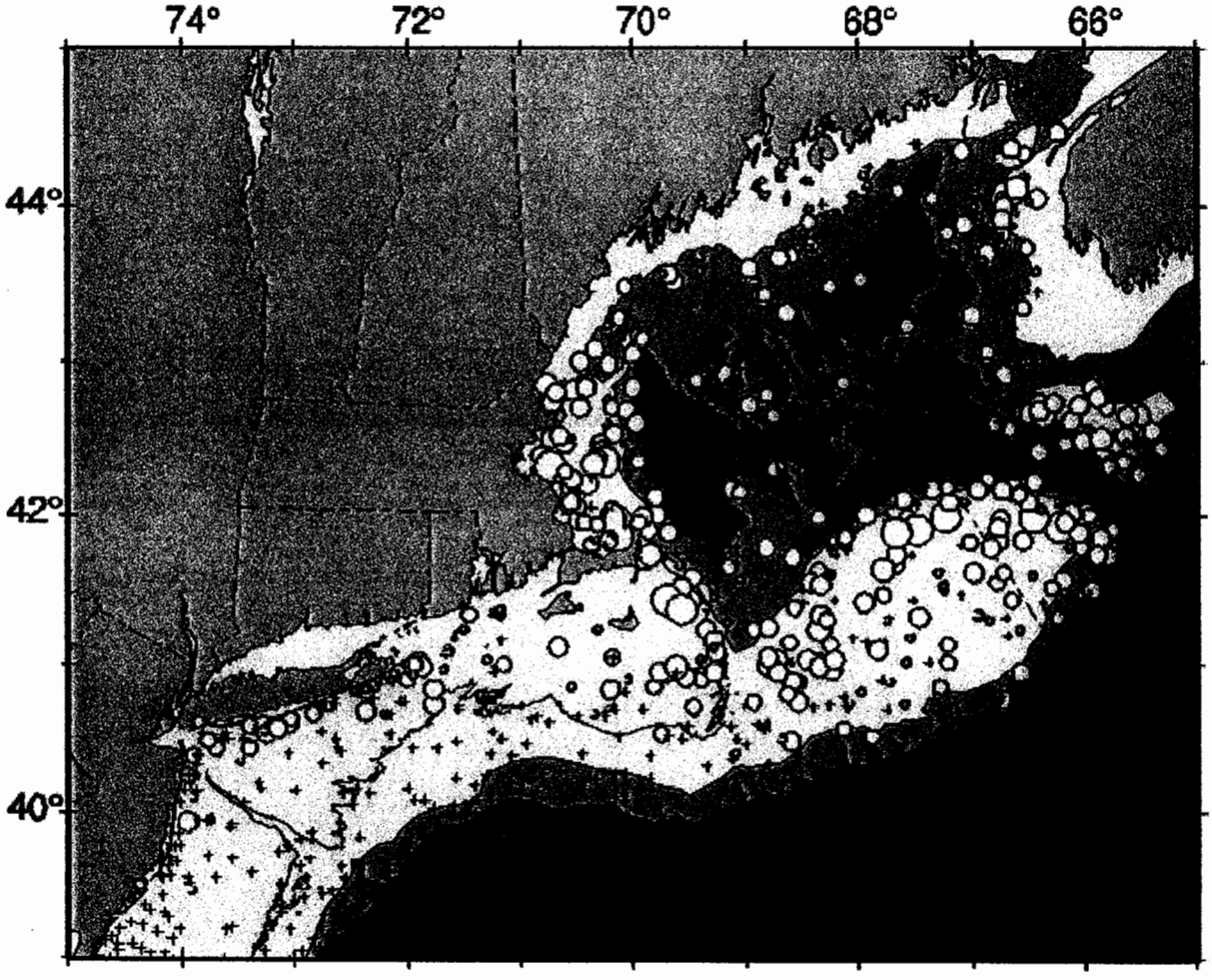
Spring 1991-1993



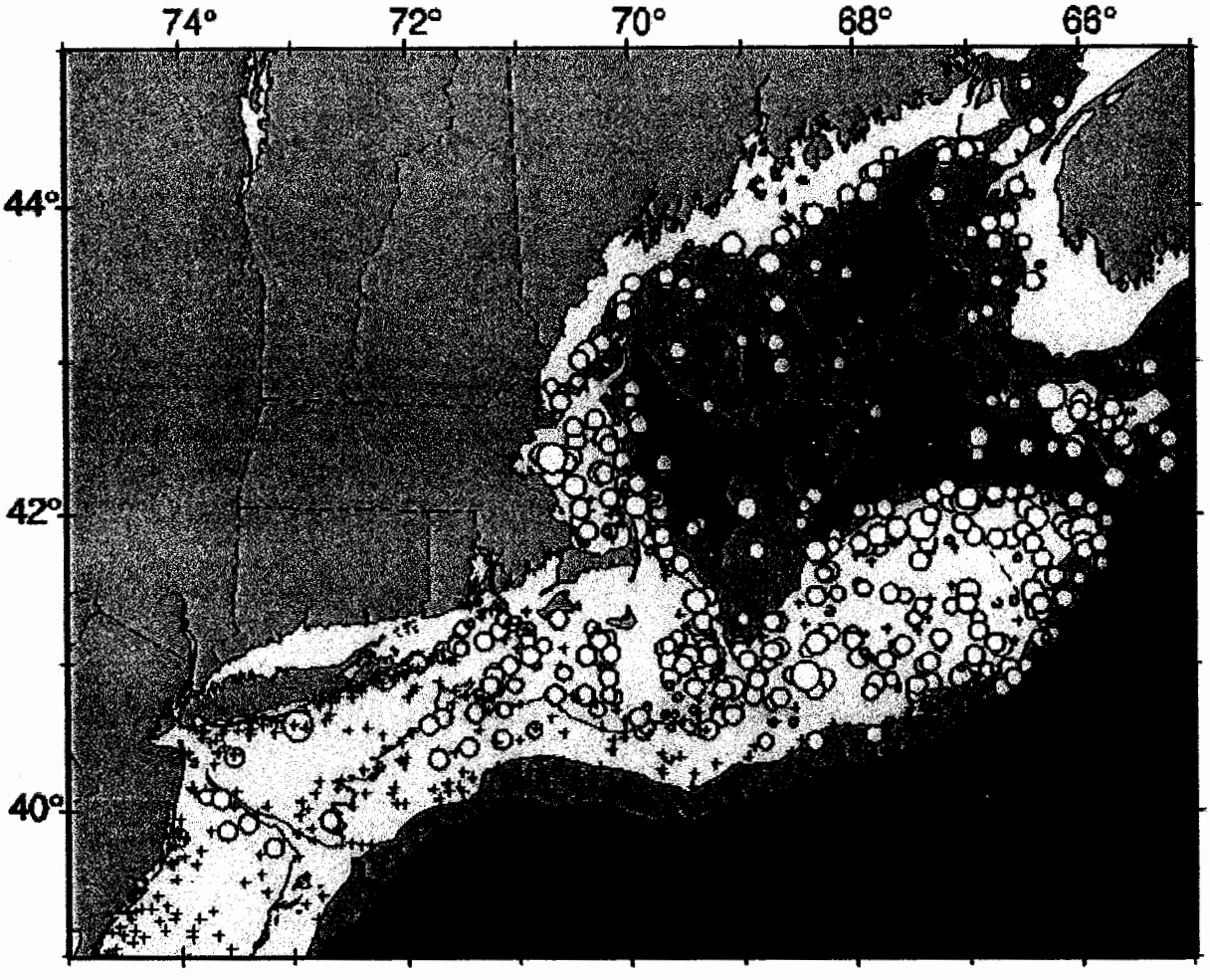
Spring 1988-1990



Spring 1985-1987



Spring 1982-1984



Spring 1979-1981

Exhibit II

Part 2.

Copy of USGS Fact Sheet:

Habitat Geology Studies on and near Georges Bank, off New England

USGS
science for a changing world

Habitat Geology Studies on and near Georges Bank, off New England

Introduction

Georges Bank was once the premier East Coast fishing ground for groundfish and scallops. The decline of groundfish species due to overfishing contributed to the increasingly restrictive management of fish stocks and a need to identify and protect essential fish habitat (EFH).

Marine habitat geology is the study of the distribution of geologic materials that form the seabed, the geologic processes (such as sediment movement and deposition) that affect the seabed, and the interplay of geologic factors and species behavior that gives rise to biological habitats in general and to specific habitats deemed essential to the success of a particular species (EFH's).

Management Needs

In response to the growing need to manage fish stocks and to protect seabed environments and habitats, there is an increasing demand to know (1) the distribution of geologic materials and processes that are the framework of habitats (fig. 1), (2) the location and character of EFH's, (3) the impact of habitat disturbance by fishing gear, and (4) the processes and time periods required for the recovery of disturbed habitats.

Large areas on and near Georges Bank have been closed to fishing since December 1994 to conserve groundfish stocks (fig. 2). Sea scallops had been depleted in these areas, but they have recovered locally since 1994. Parts of the closed areas recently have been opened for a limited time to allow scallop dredging, thus raising questions regarding the disturbance of EFH's and the bycatch of protected groundfish species.

USGS Research Results

Geologists and biologists of the U.S. Geological Survey (USGS), the National Marine Fisheries Service (NMFS) and National Marine Sanctuaries System (NMSS) of the National Oceanic and Atmospheric Administration (NOAA), the University of Rhode Island, and the University of Connecticut have been conducting joint studies of the seabed geology and biological habitats of Georges Bank for several years. These studies have shown that—

- Herring spawning sites are located on gravel bottom only where currents are strongest
- Juvenile cod survive best on gravel habitat, especially where sponges, tube worms, and other attached species (known as epifauna) increase the complexity of the seabed (fig. 1*A*)
- Attached species are not able to colonize gravel habitat that is buried occasionally by moving sand
- Dredging and trawling on gravel habitat remove epifauna and decrease habitat complexity, but fishing gear apparently has less long-term impact on sand habitat, especially where sand is moved by bottom currents
- Scallops prefer habitats of gravel and nonmoving sand (weak bottom currents)
- Closure of large areas to fishing allowed depleted sea scallop populations to increase markedly in 4–6 years
- Some sand-dwelling flounder species possibly prefer moving sand (strong bottom currents), but others prefer nonmoving sand habitats

These results are being used by the New England Fishery Management Council (NEFMC) and the NMFS in deciding where fishing may occur and where the seabed must be closed to fishing to protect fish stocks and habitats.

Seabed Mapping

The absence of maps showing the geology and habitat character of the seabed is the greatest single obstacle to the gathering of information required for the informed and successful management of the region's seabed habitats. The USGS has used multibeam sonar technology to map part of Closed Area I in the Great South Channel region (figs. 2, 3). The habitat information provided by these multibeam sonar images of the seabed has been used by the NEFMC to make management decisions that opened some parts of Closed Area I to scallop dredging and protected other parts that are valued as groundfish habitat.

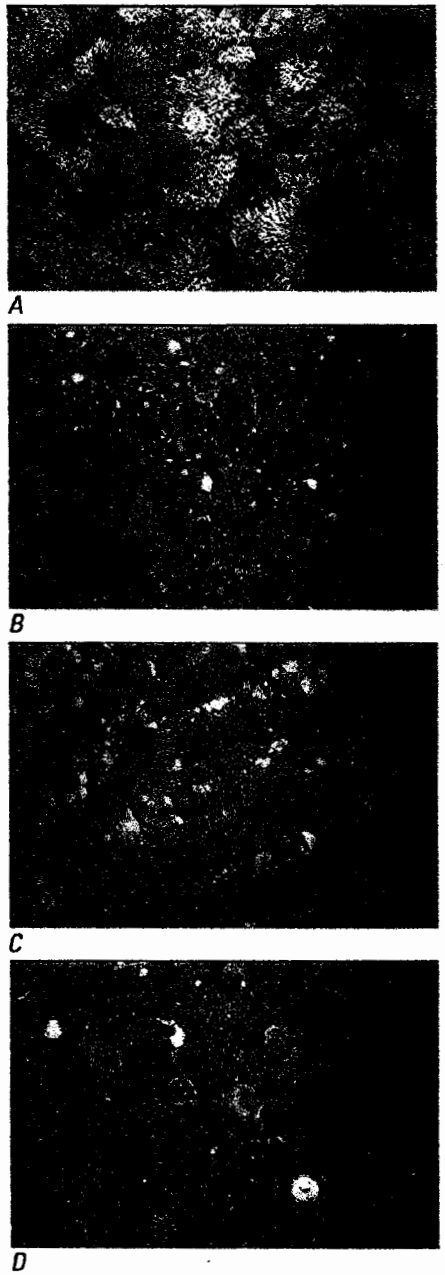


Figure 1. Photographs of the seabed showing some typical Georges Bank habitats. See figure 2 for locations. *A*, Undisturbed gravel habitat with epifauna of tube worms and other attached species. *B*, Gravel habitat disturbed by scallop dredges and lacking epifauna. *C*, Moving sand habitat (strong bottom currents) with sand dollars in ripple troughs. *D*, Nonmoving sand habitat (weak currents) with sea scallops.

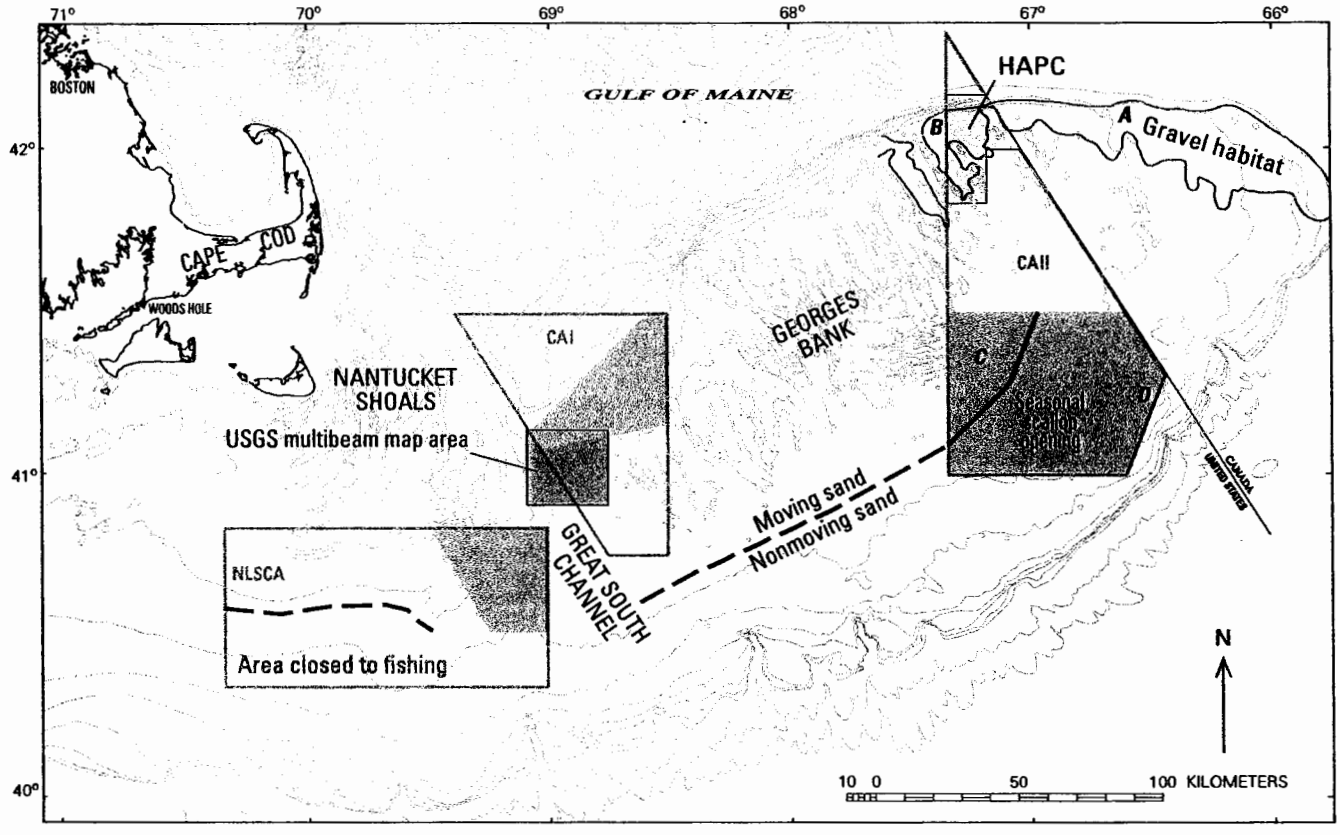


Figure 2. Map of Georges Bank and nearby regions showing areas closed to fishing since December 1994 (CAI, CAII, NLSCA), parts of closed areas that were opened seasonally to scallop dredging (pink), part of Great South Channel mapped by USGS multibeam sonar (orange; see fig. 3), gravel habitat on the northern edge of the bank (red outlines), a habitat area of particular concern (HAPC, yellow) recognized for juvenile cod, boundary (green line, dashed where inferred) between moving sand habitat (strong bottom currents) and nonmoving sand habitat (weak currents), and locations of habitats shown in figure 1 (*A, B, C,* and *D*). Base map from NOAA's National Ocean Survey Chart 13200.

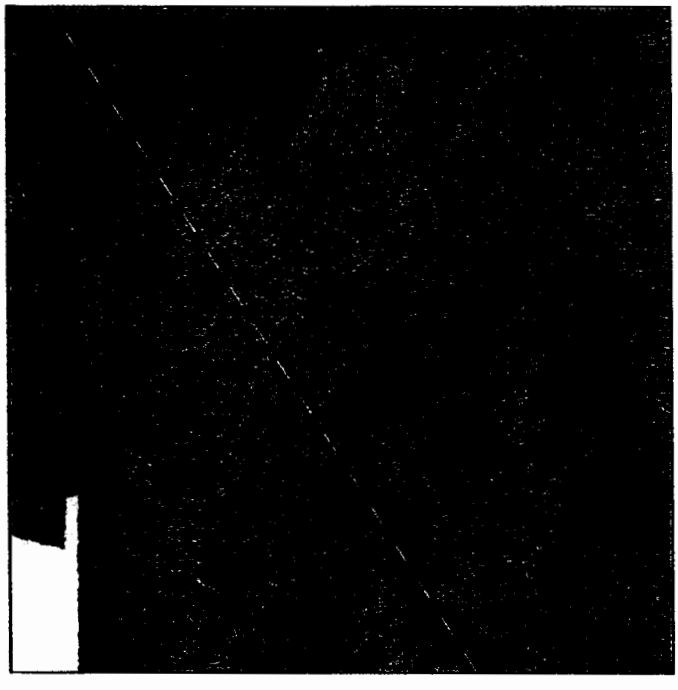


Figure 3. Part of Great South Channel (fig. 2) showing backscatter intensity draped over shaded-relief imagery of the seabed. Colors of backscatter data derived from multibeam sonar mapping indicate the wide variety of habitats in this important fishing ground: orange indicates high-backscatter material (coarse sand and gravel); green indicates moderate-backscatter material (sand); and blue indicates low-backscatter material (fine sand). Closed Area I (CAI) boundary is white dashed line. Area shown is 26 x 26 kilometers.

For more information, please contact:

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Telephone: (508) 457–2239
E-mail: pvalentine@usgs.gov

New England Fishery Management Council
50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
Frank Blount, *Chairman* | Paul J. Howard, *Executive Director*

Scoping Comments For Amendment 11

to the

Atlantic Sea Scallop Fishery Management Plan

Written Comments Received via Mail, Fax and Email

Comments received after the March 6, 2006 deadline

New England Fishery
Management Council
Scallop Scoping Comments
The Tannery Mill 2
Newbury Port MA 01950
Fx 978-465-3116

WE ARE PROUD OF
FISHERMEN
UNITED NATIONAL FISHERMEN'S ASSOC.
123 ATTLE RD. MANNS HARBOR, N.C. 27953
252 473-3287

GENERAL
CATEGORY
SCOPING

Dear Sir,

BUY BOAT! The Plan development should consider allowing buy boats to purchase scallops at sea. Purchase of scallops is not covered in the prohibition of transferring scallops at. The purchase of scallops by a dealer at sea on a buy boat would have all the necessary reporting by the vessel & the dealer on the buy boat.
Advantages of allowing buy boats!

Saving of fuel, (vessels could stay on the grounds and not burn fuel steaming back & forth to port each day, vessels would not need as much dock space in Northern ports where recreational vessels utilize most available dock space. Trips to the ports would be staggered or to central located ports where dock space was available for fuel & repair. Vessels could work area around buy vessel, not areas closest to port, general scallop vessels could scallop in areas with scallops that are large but not in sufficient amounts to justify utilizing days at sea by limited access vessels.

If the north South line is adopted then areas to the east of the line could be harvested by general scallop permitted vessels, areas that the vessel tracking system show currently limited access vessels do not scallop.
Currently thirty million pounds plus are not utilized due to management. These scallops die of old age or predators because they become to large to move. By allowing buy boats for general category scallopers a portion of the regulatory wasted scallops could be harvested.

Currently areas of low abundance but large scallops are being allowed to die. the buy boat with general scallop vessels could economically & efficiently harvest these areas. Example: areas off Virginia Beach Va. have marginal scallop populations, the limited access fleet does not work the area. the area is to far off shore to allow economic harvest by the general category. thus a buy boat / dealer & general scallops could harvest the area, Scallops that will currently die of old age would be utilized for economic return.

Law Enforcement could put a agent on the vessel,, calculate the purchases and visits by General scallop vessels and know what the dealer/ buy boat had on board. With the fines for non compliance the buy boat/ dealer would have no incentive to break the law.

BUY BOAT MUST BE CONSIDER FOR ECONOMIC REASONS, FOR UTILIZATION OF THE RESOURCE.

Sincerely

James Fletcher
03-08-06

RECEIVED
MAR 0 8 2006
NEW ENGLAND FISHERY
MANAGEMENT COUNCIL

March 6, 2006

Paul J. Howard, Executive Director
New England Fishery Management Council
50 Water Street, Mill #2
Newburyport, Ma 01950

Dear Mr. Howard:

My name is Charles Christopher Jr and I am a 5th generation fisherman. My family has been fishing the waters off the coast of the United States since the early 1800's.

My father and family has been scallop fishing since 1979. We were there when the trips were 21 plus days long and the price was a little more than $2. It was very hard to make a living and support a family, however we hung in there. Several years later we purchased our own boat, the F/V Christopher Pride and the road ahead proved nothing but finical hardship. Over time things did get better, until September 2003. Our vessel, Christopher Pride, caught fire and sank at the Lobster House in Cape May NJ again giving us huge finical burdens. We had no insurance on the vessel and therefore had to come out of pocket. All of our finical resources had been drained. Know one would touch us finically with a ten foot poll. Finally, two years ago we were able to get financing and my father and uncle (50/50 partners) now own the F/V Christopher's Joy.

The problem that I am faced with is, now that I am finally able to purchase a vessel and use it for day scalloping, the council wishes not to allow me to do so. I am in the process of buying a 60' shrimp boat to use for scalloping. I have sunk a lot of money and time into this project. I am not a new comer to this industry whatsoever, I was just not finically able to do it on my own until now. I hope that the council will take into account that I personally think that HISTORY of your fishing in the industry should play a role to who gets in and who is out.

Something that I don't clearly understand is that in 1994 when Amendment 4 was set forth, those that were in, were in, and those that were out, were out. We as industry has allowed those that have not scalloped a day in there life (up until 2 plus years ago) to enter our fisheries, (that's not fair to me!). I guess what I am trying to say is that if someone like me and my family along with the history that we have in this industry can't get a day fishing scallop permit, no one should. We should simply go back to the control date of Oct 1994 and honor Amendment 4. We should let no one pass that 1994 date enter the industry. It's simply not fair for so many new comers to think that they can't just come into the scallop industry. Years ago, they choose to shrimp, fish or what ever they did, we choose to scallop!

My views are very mixed, I agree with some of the things that the council proposes and than again, I agree with some of the things that the fisherman says. One of the things that I will comment on is something that a gentleman brought up at the meeting, (I will not say his name but it is on record). He mentioned the word "GREED". I think that some of us in the scallop industry feel that there is a type of monopoly going on. The

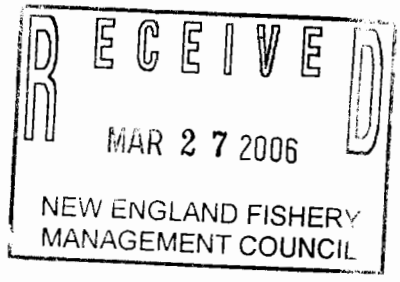
companies with the fleets (3 or more vessels) seems to want all of the rules and regulation to go according to their needs and not want the smaller guys (like myself) to succeed or build and expand our small businesses. These guys seem to have more of a say so and controls what happens because they have more money/power.

I do apologize to the council for not addressing each of the questions that was listed in the draft giving to us at the meeting. However, I do strongly think that much time, thought and many more meetings should be conducted so that this matter will be fair and just. Also, I really think that the 1994 control date, including myself should be a major factor in the decision making for the council.

Sincerely,

Charles Christopher

From: boardman [mailto:board.man@comcast.net]
Sent: Monday, March 27, 2006 9:23 PM
To: Deirdre Boelke
Cc: scallopscoping@noaa.gov
Subject: Sea Scallop Amendment 11 Scoping Comments



Attention: Paul J. Howard, Executive Director
New England Fishery Management Council

Dear Sir,

My name is Paul Boardman and I am a General Category Scalloper. I own and operate the F/V Heckler and live and fish out of Barnegat Light, N.J.

I originally submitted comments on March 5, 2006 to the designated email address "scallopscoping@noaa.gov", however, for whatever reason they were not included with the other public comments so I thank you for the opportunity to submit the following comments for your consideration:

1) Limited Entry.

Council should use limited entry to reign in the fleet.

November 1, 2004 control date should be used.

However, there must be a "re-rigging clause" to protect the interests of those few individuals that were genuinely re-rigging for scallops prior to the control date.

In order to qualify under a re-rigging clause may I suggest the following criteria:

Vessel owner must posses legitimate receipts dated prior to November 1, 2004 for a considerable sum, ie: at least $5000- must have been spent.
Receipts must be for dedicated scallop gear, ie: dredges, deck whinches, towing cable, construction of gallows, A-frame etc.
Vessel must have commenced Gen Cat scalloping within 6 months of the control date.
Vessel must have possessed a general category scallop permit prior to the control date.
Vessel must also posses at least 1 other limited access federal permit, ie : multi species, monk fish, lobster, longlining etc.

Any re-rigging vessel should be allowed a full 12 months from the date of their first scallop trip to achieve any additional qualifying criteria.

I believe a strict criteria as I have outlined above would result in very few additional vessels qualifying for any Gen Cat permit.

Yours sincerely,

Paul Boardman