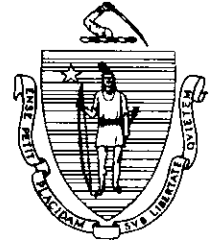




Paul J. Diodati  
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December 2, 2009

Ms. Patricia Kurkul  
Regional Administrator, Northeast Region  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930-2276

Dear Ms. Kurkul:

By now you are well aware of the furor created by the New England Fishery Management Council's recent decision to allocate far fewer days to the limited access sea scallop fishery for the next fishing year. Through Framework Adjustment 21 to the Atlantic Scallop Fishery Management Plan we now intend to reduce days-at-sea from 37 to 29 – a 22% decrease. After reflecting on Council discussions regarding the decrease in Days-At-Sea (DAS) and reviewing documents not discussed at the Council meeting, I conclude that important scientific advice was forgotten. I request you consider that advice during your review of Framework 21 in preparation for its implementation next year.

In July Council correspondence with the Science & Statistical Committee (SSC), Paul Howard indicated: *"Full implementation of ACLs is not required in the Scallop FMP until 2011 because overfishing is not occurring, but the Council is still required to include a specific ABC for 2010, based on SSC recommendations. Therefore, the PDT will present an estimate of ABC for 2010, based on the same quantitative approach the SSC is reviewing for Amendment 15."* Being said about four months ago, this very relevant description of what was to come regarding Plan Development Team (PDT) and SSC involvement in providing a 2010 Allowable Biological Catch (ABC) was omitted and, therefore, had no influence on the November Council decision to set the 2010 ABC at a fishing mortality of 0.20 (29 DAS).

After reviewing Framework 21 development with Council and my staff and referencing PDT and SSC documents, we conclude the Council did not refer to PDT/SSC findings; consequently, 2010 DAS are far too restrictive with unnecessary economic loss.

I refer you to a Council summary of the PDT August 12 meeting. On pages 7 & 8 ("Summary of SSC decisions from 8/11/09 meeting") it reads: *"Staff briefed the PDT on the SSC meeting held the previous day. In general the SSC supported using the 25% chance of overfishing as the ABC control rule and was very complimentary of the work done by the PDT. It was accepted that this be used to set ABC and noted that the 25% chance fell between the 10-40% guidelines given in draft guidance documents NMFS is working on for implementing ACLs. The PDT reviewed the results about management uncertainty and **support consideration of an ACT that is set at an F level with 25% chance of exceeding ABC. This happens to be an F of 0.24 for 2010.** (my underlined emphasis)..."*

Then in a September 23 memo to Paul Howard from SSC chairman Steve Cadrin, the Council learned that the SSC *"endorses the proposal by the Scallop PDT and other conventions of risk-based harvest rules that ABC be based on 25% probability of overfishing. Analyses of uncertainty indicate that a 25% risk of overfishing is associated with less than 1% loss in yield relative to  $F_{max}$ ."* Steve provided a table with alternative projections of fishing mortality and yield at alternative probabilities of overfishing. That table depicted a 25% chance of overfishing with a 2010 F of 0.29 with a 2010 yield of 29,500 mt. He ended with a SSC recommendation: *"The SSC recommends that Acceptable Biological Catch of scallops in 2010 should be 29,578 mt for the overall fishery."*

The SSC/PDT probability of overfishing with corresponding 2010 Fs and yield never was brought forward by the Scallop Committee at the November Council meeting. In fact, the Committee had nothing to offer on this critical issue. I believe this omission played a key role in the Council adopting an F of 0.20 with all its attendant consequences. For this reason, I request you take appropriate steps to account for PDT and SSC analyses of uncertainty and that the 2010 ABC be set at  $F = 0.24$ , providing an even lower probability of overfishing, i.e., less than 20%.

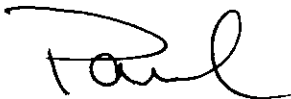
I realize your modifying the Council's decision will present some scheduling and framework implementation problems. Nevertheless, it is justified because the Council unintentionally failed to use PDT and SSC advice.

If those recommendations had called for an F lower than 0.20, I would still urge you to consider those recommendations developed with critical input from the Northeast Fisheries Science Center. I suspect you would feel compelled to do so. Perhaps, the Council can be requested to revisit this issue at its next meeting even though that meeting is in January.

Considering the success of sea scallop management and the tremendous support of the fishing industry for management and science, I feel your acting to correct an unfortunate situation caused by a Council misunderstanding about technical/scientific recommendations is warranted. I'm sure you will find yourself and the National Marine Fisheries Service congratulated by an appreciative, extremely valuable sea scallop fishing industry.

Pat, thanks for your attention to this matter.

Sincerely,



Paul J. Diodati  
Director

Cc: John Pappalardo, NEFMC  
Paul Howard, NEFMC  
Richard Robins, MAFMC  
Daniel Furlong, MAFMC  
Steve Cadrin, NEFMC SSC