



CITY OF NEW BEDFORD

SCOTT W. LANG, MAYOR

Via Certified Mail

December 31, 2009

Secretary Gary Locke
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Secretary Locke:

As you are aware, the New England Fisheries Management Council voted at its November 18, 2009 Council Meeting to reduce the days-at-sea from 37 to 29 for the Atlantic Scallopers. In addition, the Council voted to reduce the access area trips from 5 to 4.

This measure was taken despite correspondence as recently as July of 2009 wherein Paul Howard, a member of the Science and Statistical Committee (SSC) 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.”

Nonetheless, the Council chose to omit the SSC science from its November Council vote and instead the Council inexplicably voted to implement a fishing mortality of 29 days-at-sea and 4 access area trips. The Scallop Planning and Development Team (PDT) was briefed on the SSC recommendations at its August 12, 2009 meeting. Please refer to the decisions on Page 7 and 8 from the August 11, 2009 meeting, which read as follows:

“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 It was accepted that it be used to set ABC and noted that the 25% chance fell between the 10-40% guidelines given in draft guidance documents NMFS is working on

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.”

In a September 23, 2009 memo to Paul Howard, from SSC Chairman Steve Cadrin, the Council was advised 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.”

At the November Council meeting the SSC/PDT probability of overfishing was never even mentioned by the Scallop Committee chaired by Sally McGee. Perhaps this glaring omission is why the New England Fisheries Management Council proceeded in the fashion with the vote that it took.

The Magnuson Steven Act, 16 U.S.C. §1851 (a) (1) requires:

“Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.”

As stated earlier, the SSC advised the Council that there was no need for the NEFMC to put an Annual Catch Limit in place until 2011 because overfishing is not occurring. Thus, the factors upon which the NEFMC based their assessments were well below the maximum sustainable yield and not in compliance with the Magnuson Stevens Act, 16 U.S.C. §1851 (a) (1).

The Magnuson Steven Act, 16 U.S.C. §1851 (a) (1) requires:

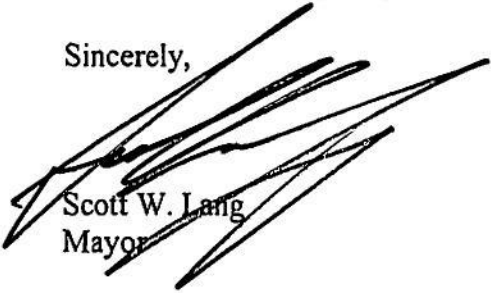
“Conservation and management measures shall be based upon the best scientific information available.”

The SSC provides the best scientific data available when implementing a fisheries management plan. The New England Fisheries Management Council chose to completely ignore the data submitted by the SSC. The economic impact on the fishing families and fishing industry in New Bedford will be devastating if these new reductions are implemented. I do not believe that the scientific data regarding the state of the scallop fishery was considered appropriately, nor do I believe that any appropriate economic impact was considered by the Council.

With all due respect, given the abrupt and irregular manner in which the Council conducted its work, I have enclosed a Freedom of Information Act Request seeking communications between NOAA and all of the Council Members and all third parties that may have played a role in this arbitrary and capricious decision.

Thank you for your prompt attention to this matter.

Sincerely,



Scott W. Lang
Mayor

cc: Sen. John F. Kerry, 304 Russell Senate Office Bldg., Washington, DC 20510
Sen. Paul G. Kirk, Jr., 317 Russell Senate Office Bldg., Washington, DC 20510
Congressman Barney Frank, 2252 Rayburn House Office Bldg., Washington, DC 20515
Governor Deval Patrick, Mass. State House, Office of the Governor, #280, Boston, MA 02133
Attorney General Martha Coakley, Office of the Attorney General, One Ashburton Place, Boston, MA 02108
City Solicitor Irene Schall, City Hall, 133 William Street, New Bedford, MA 02740



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FOIA REQUEST

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U.S. Department of Commerce
Secretary Gary Locke
1401 Constitution Avenue, NW
Washington, DC 20230
Certified Mail

Dear Secretary Locke:

Request is hereby made pursuant to 5 U.S.C. §552 for copies of all communications of any kind, formal or informal, regarding the regulation of scallop and yellowtail flounder, specifically from September 1, 2009 to December 24, 2009. The following individuals, staff and outside interest groups including lobbyists are to be covered by this request:

- Secretary of Commerce; Secretary Gary Locke
- Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator; Dr. Jane Lubchenco
- Acting Assistant Administrator of NOAA for Fisheries; Dr. James W. Balsigner
- Regional Administrator of the Northeast Regional Office of the National Marine Fisheries Service; Pat Kurkul
- Director and Deputy Director of the Northeast Fisheries Science Center; Dr. Nancy Thompson and Dr. Frank Almeida
- Chairman of the New England Fisheries Management Council; John Pappalardo
- Executive Committee of the New England Fisheries Management Council; John Pappalardo, Rip Cunningham, James Odlin, Dr. David Pierce, Terry Stockwell and Pat Kurkul
- Members of the New England Fisheries Management Council; George Lapointe, Dr. W. Michael Sullivan, Paul Diodati, David G. Simpson, Doug Grout, Patricia Kurkul, Terry Stockwell, Mark Gibson, David E. Pierce, Mark Alexander, Cheri Patterson, George Darcy, Frank Blount, Rip Cunningham, James F. Fair, Jr., Michael P. Leary, Glen A. Libby, John W. Pappalardo, Mary Beth Nickell-Tooley, Rodney Avila, Dave Goethel, Sally McGee, James Dolin, Dave Preble, John Vince O'Shea, Joe

Mimic, Dr. Marvin Moriarty, Ms. Deirdre Warner-Kramer, Bob Beal, Capt. Peter Decoma, Dr. James Geiger, Mr. Langdon Baronet.

- Science and Statistical Committee of the New England Fisheries Management Council; Dr. John Annals, Dr. Steven Cardin, Dr. Victor Cresco, Dr. John Gates, Dr. Daniel Georgiana, Dr. John Hoenig, Dr. Les Kaufman, Dr. Jacob Kritzer, Mr. Jean-Jacques Maguire, Mr. Robert O'Boyle, Dr. Robert Robertson, Dr. Andrew Rosenberg, Dr. Michael Sissenwine and Dr. Patrick Sullivan
- Plan Development Team(s) of the New England Fisheries Management Council; Groundfish PDT, Scallop PDT
- Any persons affiliated with the Environment Defense Fund
- Any persons affiliated with the Pew Environmental Group and related projects
- Any persons affiliated with the Cape Cod Commercial Hook Fisherman's Association

Communications shall be considered to include all e-mails, all telephone records, written correspondence and all internal correspondence. I am specifically interested in all communications prior to, and after, the meetings of the "Scallop Committee" on November 3, 2009 and the New England Fisheries Management Council meeting on November 18, 2009.

Thank you for your prompt attention to this request.

Sincerely,



Scott W. Lang
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 Sen. Paul G. Kirk, Jr., 317 Russell Senate Office Bldg., Washington, DC 20510
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