



Paul J. Diodati
Director

Commonwealth of Massachusetts
Division of Marine Fisheries

251 Causeway Street • Suite 400
Boston, MA 02114
(617) 626-1520
fax (617) 626-1509



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%.

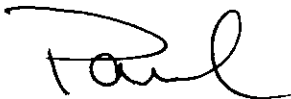
I realize your modifying the Council’s decision will present some scheduling and framework implementation problems. Nevertheless, it is justified because the Council unintentionally failed to use PDT and SSC advice.

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,



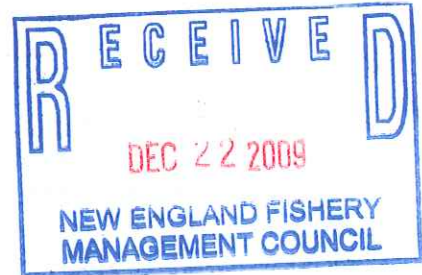
Paul J. Diodati
Director

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



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

DEC 21



Paul J. Diodati
Division of Marine Fisheries
251 Causeway Street, Suite 400
Boston, MA 02114

Dear Paul,

Thank you for your recent letter regarding the final decisions made by the New England Fishery Management Council (Council) regarding Framework 21 to the Atlantic Sea Scallop Fishery Management Plan (FMP) which, among other management measures, will set the quota allocation for the 2010 fishing year (FY).

The Council submitted Framework 21 for review on December 21, 2010. The Council's recommendation will be reviewed to determine whether it achieves the objective specified in the FMP, to achieve optimum yield and prevent overfishing on a continuing basis. You have expressed concern that, in your view, the Council made its recommendation without properly considering the advice of the Science and Statistical Committee (SSC) regarding the appropriate level of acceptable biological catch (ABC) for the overall fishery. However, the SSC presented its recommendation to set an ABC of 29,578 mt for the scallop fishery for 2010 to the Council on September 23, 2009. The Council considered this advice, and other information, in making its Framework 21 recommendations, which includes an ABC of 29,578 mt.

The Council also considered additional analyses and management advice prepared by the Plan Development Team (PDT). The PDT is authorized under the FMP to recommend precautionary measures, such as a lower overall fishing mortality target, to ensure that optimum yield is achieved and that overfishing is prevented. The PDT's analysis of the fishery for Framework 21 indicated that the fishing mortality in 2009 exceeded the fishing mortality threshold of $F=0.29$, despite having a target set at a precautionary level of $F=0.20$ in 2009. This was primarily due to an underestimate of fishing mortality and landings-per-unit effort in the action that set the 2009 measures. Thus, an overall reduction in catch is necessary to curb the elevated mortality in the upcoming fishing year. The Framework 21 document predicts that this reduction in catch would need to be in place for 2010, but not for 2011 and beyond.

The Council considered adopting only two of the four scenarios for Framework 21: One with a low fishing mortality target of $F=0.20$; and another with a higher fishing mortality target of $F=0.24$. At the $F=0.20$ target, 29 days-at-sea (DAS) would be allocated, as opposed to 38 DAS that would be allocated at the $F=0.24$ target. Both options allocated

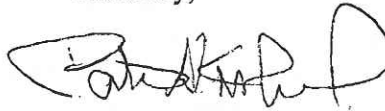


four access area trips. This represents a 22 percent decrease in DAS compared to FY 2009 allocations. The lower fishing mortality target alternative adopted by the Council performed better than the other alternative in terms of bycatch and essential fish habitat considerations, as well as long-term exploitable biomass projections.

The economic analysis of the various allocation scenarios used by the Council to assist in its decision was typical of the scallop fishery economic analyses presented to the Council in past actions. It provided details of predicted differences in landings, price, costs, revenue, and economic benefits between the various alternatives. With lower DAS allocations, compared to the higher DAS option, the analysis shows a loss of total revenues in 2010 of approximately \$40 million. However, the analysis also shows that the higher DAS alternative (F=0.24) considered by the Council would result in revenue losses ranging from \$10 to \$19 million each year from 2011 through 2014 compared to the lower DAS alternative. Under all options, the management measures were equal for 2011 and beyond.

The Council's rationale for the alternatives it selected in Framework 21 are articulated in the document submitted to NMFS. We are currently reviewing the document for compliance with the Magnuson-Stevens Act, the FMP, and other applicable law.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patricia Kurkul', written in a cursive style.

Patricia Kurkul
Regional Administrator

Cc: John Pappalardo, NEFMC
Paul Howard, NEFMC
Richard Robins, MAFMC
Richard Seagraves, MAFMC
Steve Cadrin, NEFSC SSC