



New England Fishery Management Council

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John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

**MEMORANDUM**

**DATE:** April 3, 2020  
**TO:** Council Members  
**FROM:** Tom Nies, Executive Director  
**SUBJECT:** **COVID-19 Emergency Action Request for the Scallop Fishery**

The Scallop Committee developed an emergency action request at its March 27, 2020 meeting in response to the COVID-19 national emergency after considering input from the Scallop Advisory Panel. The Scallop Committee's rationale highlights the economic and public health impacts the unforeseen COVID-19 pandemic is having on the scallop fishery and market for scallops (see motion and rationale below). The Council will consider this motion at its April 14-15, 2020 meeting.

In addition to the Council's motion, NOAA Fisheries has received a request for emergency action from the Fisheries Survival Fund, which is supported by the American Scallop Association. This final request is narrower than the Committee's and is included in scallop related correspondence for your meeting.

The Scallop Advisory Panel passed three emergency action motions at its meeting on March 26, 2020. The Committee adopted two of the Advisory Panel requests in a combined motion, but did not request an increase in the amount of LA DAS that can be carried over from 10 to 15. Details of the Advisory Panel and Committee discussions can be found in the March meeting summaries under the Scallop tab.

The Scallop Committee's motion focuses on affording LA and LAGC vessels additional time to harvest uncaught quota, access area allocations, and RSA compensation pounds. Existing regulations allow uncaught LA access area allocations, and RSA compensation pounds from the previous fishing year to be harvested during the first 60 days of the subsequent fishing year. LAGC IFQ vessels can carryover up to 15% of their quota from one fishing year to the next. The motion asks that all uncaught LA access area allocations, LAGC IFQ quota, and RSA compensation pounds be available for harvest during FY 2020. In addition, it asks that the NLS-West Access Area as defined in Framework 30 would remain an access area during FY 2020. The NLS-West Access Area is part of this request because that area is scheduled to revert to open bottom on June 1, 2020. For reference, the Scallop Committee's March 27, 2020 motion is included below:

**Motion 12:** Committee asks the Council to request to NOAA Fisheries, that the following emergency action due to the Covid-19 national emergency allow for:

- All 2019 access area carryover pounds and unharvested RSA compensation pounds from FY 2019 will be available for harvest during FY 2020. The NLS-West would remain an access area during FY 2020.
- All LAGC IFQ vessels would be able to roll forward all FY 2019 unharvested quota into FY2020.

*Rationale:* Recent escalation of COVID-19 infections may make the health and safety of trained fishermen at risk. Current regulations require vessels to start any access area carryover trips by May 30, it is unknown if it will be safe or economically feasible to do this. (Some west coast tuna vessels have found their markets non-existent upon return). All vessels have had the option to utilize carryover pounds. Many have, to avoid harsh penalties for landing excess pounds. This action should have little to no impact on future fishing year allocations. This action allows flexibility and does not restrict anyone from fishing. RSA pounds that will be forced to land in the near future will likely get a price lower than otherwise would have. COVID-19 is having an impact on the ability of LAGC IFQ vessel to catch their quota. Vessels can carry over up to 15% of their quota. This action allows flexibility and does not restrict anyone from fishing.

*The motion was approved by unanimous consent.*

My staff is working to gather information on how much of the FY 2019 access area allocations and LAGC quota remains unharvested. We plan to have this information assembled for your discussion. You can also access general landings information on the [Atlantic Sea Scallop Quota Monitoring page](#) for scallop fishing year 2019. The Council has also received correspondence that may be relevant to your discussion.

The NMFS' Policy Guidelines for the Use of Emergency Rule ([1997](#)) outline the criteria and justifications for an emergency action.

Emergency Criteria: An emergency action may be justified as a situation that 1) results from recent, unforeseen even events or recently discovered circumstances; and 2) presents serious conservation or management problems in the fishery; and 3) can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.

Emergency Justification: If the time it would take to complete notice-and-comment rulemaking or complete a fishery management plan or amendment would result in substantial damage or loss to a living marine resource, habitat, fishery, industry participants or communities, or substantial adverse impacts to the public health, emergency action might be justified under one or more of the following situations:

1. Ecological- (A) to prevent overfishing as defined in a Fishery Management Plan (FMP), or as defined by the Secretary in the absence of an FMP, or (B) to prevent other serious damage to the fishery resource or habitat; or
2. Economic- to prevent significant direct economic loss or preserve a significant economic opportunity that otherwise might be foregone; or
3. Social- to prevent significant community impacts or conflict between user groups; or
4. Public Health- to prevent significant adverse effects to health of participants in a fishery or to the consumers of seafood products.