

CORRESPONDENCE



Mr. Chris Oliver
Assistant Administrator for Fisheries
NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

January 15, 2021

Dear Administrator Oliver:

We write to request that you prepare an amendment to the Atlantic Sea Scallop Fishery Management Plan (FMP) to authorize leasing in the limited access (LA) sea scallop fishery under the authority provided the Secretary in Sec. 304 (c)(1) of the Magnuson-Stevens Act (16 U.S.C. 1854). As the Secretary of Commerce’s designee under the Magnuson-Stevens Act (MSA), you may invoke this authority if the appropriate Council has failed to act after a reasonable period of time and the fishery is in need of conservation and management. In this letter, we will demonstrate these conditions are met.

The Atlantic sea scallop fishery operates from Maine to North Carolina and is managed by the New England Fishery Management Council. While the fishery is a success story in terms of stock rebuilding and biological sustainability, it has not been managed to its fullest potential. The current FMP includes measures that raise serious questions under MSA National Standard 5 (NS 5) by imposing unnecessary burdens that increase costs and limit operational flexibility. LA scallop permit holders (approximately 350 permits) have no ability to efficiently utilize their vessels, transfer scallop days at sea (DAS) or access area (AA) trips to another vessel, match fishing capacity with allocations, or generate income if a vessel is unable to fish its allocation.

The current management approach of *one boat-one permit-one allocation* prevents permit holders from efficiently operating their vessels, eliminating operational redundancies, or reducing overcapacity. This misalignment of economic inputs and scallop harvesting allocations has led to substantial excess fishing capacity and prevents the fleet from improving its economic resiliency. Today, a multi-million-dollar, full-time scallop vessel spends approximately 70 days at sea fishing and remains tied to the dock for the rest of the year. As a reminder, the agency’s guidelines for NS 5 state:

Efficiency. In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where “conservation” constitutes wise use of all resources involved in the fishery, not just fish stocks. (50 CFR 600.330(b)(2))

The FMP fails to consider economic efficiency, fails to conserve economic inputs in the management of the fishery—including labor capital, interest, fuel, etc.—and clearly does not meet NS 5. The NS 5 guidelines also encourage efforts to increase the use of cost-effective measures that conserve economic inputs. At 600.300(b)(2)(ii), the guidelines state:

Management regimes that allow a fishery to operate at the lowest possible cost (e.g., fishing effort, administration, and enforcement) for a particular level of catch and initial stock size are considered efficient. Restrictive measures that unnecessarily raise any of those costs move the regime toward inefficiency. Unless the use of inefficient techniques or the creation of redundant fishing capacity contributes to the attainment of other social or biological objectives, an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investment in private sector fishing capital and labor.

By restricting scallop vessels from harvesting more than the one allocation assigned to a permit, the current FMP prevents the cost-effective management of vessels and permits and mandates excessive investment and redundant economic inputs to harvest the allocation. By comparison, the General Category IFQ scallop fleet is managed much more efficiently, because that fleet is allowed to lease.

While the inefficiency mandated by the LA scallop FMP has adverse economic consequences, it also has negative implications for safety. MSA National Standard 10 (NS 10) – Safety of Life at Sea – requires:

Standard 10. Conservation and management measures shall, to the extent practicable, promote the safety of human life at sea.

A 2020 industry survey conducted by the Scallopers Campaign indicated that the average age of the respondents' oldest scallop vessel is nearly 40 years. Vessel age is an important safety factor, and the FMP's influence should be considered in light of NS 10. Because the allocation of fishing days is so limited, the current plan creates a disincentive for vessel replacement. The survey clearly indicated that if leasing were allowed, older vessels would be retired and replaced with new ones, providing safer platforms for crew. The lack of vessel continuity adds another risk for crews. Nearly 70 percent of respondents indicated that each of their crews operates two vessels per year. Both of these safety issues are direct consequences of the FMP, and could be resolved favorably through the development of a leasing program.

At its core, the regional management system established under the MSA is a public process. Regional fishery management councils (RFMCs) establish advisory bodies, oversight committees, and a robust suite of measures to accommodate public, industry, and expert input to advise them in the management of fisheries. In the case of the Sea Scallop FMP, the Council has established an oversight committee, an advisory panel (AP), a standing Plan Development Team (PDT), a Scientific and Statistical Committee (SSC), and dedicated staff to advise it.

Remarkably, the Council has repeatedly rebuffed the advice of the organizational advisory apparatus that it established. In advance of the Council's October 2020 meeting to consider 2021 priorities, the Scallop AP, Committee, and Council staff all recommended including listening sessions on leasing for 2021. Despite this powerful consensus, the Council scuttled the industry's request for listening sessions and rebuffed the very bodies it established to guide it. As a matter of both policy and process, the Council fell far short.

More than three years ago, the East Coast Scallop Harvesters Association asked the Council to address the need for flexibility within the LA scallop fishery by including it in its 2019 work program. The Scallop AP and Committee recommended that these issues be addressed, but the Council refused to act. Two years ago, more than half of vessel owners requested the Council include leasing in its 2020 work program. Even though a majority of industry supported a leasing priority and the AP recommended action, the Council once again refused to include it in its

work program. Industry was told there was not enough staff time for a leasing program due to ongoing work on Scallop Amendment 21 (A21). The Committee Chair and Council staff recommended vessel owners continue to build support and wait for the completion of A21.

Throughout 2020, as the Council completed its important work on A21, the Scallopers Campaign did what was suggested. We added supporters to where fully 70% of the fleet supported starting the conversation. We created a website and regularly communicated with industry, the Council, and the public. We conducted a fleet survey to gather operational information not previously available to the Council. Based on those results, we refined our recommendations for commonsense principles to inform the discussion. Lastly, we maintained open lines of communication with Committee and Council members and invited questions and suggestions at every stage.

Last September, the AP recommended listening sessions on leasing and once again that recommendation was included in the consensus recommendation of the Committee for 2021 priorities. Moreover, the Council's Executive Director recommended the Council include discussions on a leasing program in its 2021 work program and indicated there was adequate staff time to conduct listening sessions. The NMFS Regional Administrator also endorsed the recommendation. Regrettably, the Council again did not heed that advice and failed to include leasing in the work program for next year. ***Notably, leasing was the only issue recommended by the Scallop AP and Committee that was omitted from the 2021 priorities.***

In short, the Council has repeatedly bypassed and dismissed the informed, expert advice of the very groups it formed to advise it on one of the keystone fisheries of our nation and has turned a deaf ear to the scallop industry. Despite industry's repeated request to hold hearings on the leasing issue, the Council continues to stonewall public input, effectively leaving the industry without a voice in the management of their fishery.

As scallop quotas decrease and costs (including insurance) sharply increase, the need for operational flexibility in the scallop fishery is greater than ever. The Scallopers Campaign has been respectful of the Council process and has done everything it can to encourage the Council to take up the issue of leasing. On November 3, 2020, the Scallopers Campaign requested the Council reconsider its previous decision and include leasing in its 2021 work program. As of this date, the Council has not included leasing in its 2021 work priorities, leaving us with no choice but to petition your office to take action on this issue.

The LA scallop fleet is in great need of flexibility, which the pandemic has only exacerbated. As we have explained, the Council has sidelined its responsibility to be responsive to industry input. Further, the fishery is clearly out of compliance with MSA NS 5 – the bedrock of our nation's fishing policy. The Council has repeatedly failed to act and its leaders have closed and bolted the door, with scallopers locked out of the process. We are confident that, under your direction, the agency can develop a fair and transparent leasing amendment, and we urge you to initiate the process as soon as practicable. For more detail, we have included our last letter to the Council and a detailed timeline of Council inaction.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey R. Pike". The signature is written in a cursive, flowing style.

Jeffrey R. Pike



Timeline of Inaction

As of January 15, 2021

Over the last four years, scallop vessel owners have worked within the New England Fishery Management Council process to express the growing need for operational flexibility. Despite consistent support from the Scallop Advisory Panel and Scallop Committee to start consideration of a leasing initiative, Council leaders have refused to act. Read the timeline of the scallop industry's effort to engage the Council in order to appreciate how the council process has failed them.

2017

August 15, 2017 – Letter to Council

The East Coast Scallop Harvesters Association (ECSHA) requests the New England Fishery Management Council (NEFMC) prioritize the initiation of a Fishery Management Plan (FMP) amendment and requests scoping on alternatives to current management that would add flexibility, possibly through sectors.

October 26, 2017 – Scallop Committee Meeting

The ECSHA proposal is included in draft scallop priorities for 2018. Chairman Quinn offers Motion #6 to remove the ECSHA request for stakeholder scoping meetings on harvester associations. The Chairman subsequently withdraws his motion.

November 21, 2017 – Executive Director (ED) Memo on Priorities

The NEFMC Executive Committee (EXCOM) meets to rank priorities for 2018. ECSHA proposal *not* supported by EXCOM.

December 5, 2017 – NEFMC Meeting

The NEFMC does not include ECSHA request in its 2018 priorities.

2018

January 2018 – Port Meetings

The ECSHA engages with Consensus Building Institute (CBI) to conduct port meetings. Six port meetings are held to explore ways to provide needed flexibility and address the management problems in the limited access (LA) scallop fishery.

June 22, 2018 – CBI Report

CBI issues summary report, which identifies a number of challenges in current management system, including lack of flexibility.

September 17, 2018 – ECSHA Letter

Based on challenges identified in CBI report, the ECSHA requests the NEFMC prioritize initiation of an amendment in 2019 to secure flexibility through sectors and other means.

October 23, 2018 – Advisory Panel (AP) Meeting

The Scallop AP includes the request by the ECSHA to address problems and challenges in the LA scallop fishery as priority #4 in 2019 priority list.

October 24, 2018 – Scallop Committee Meeting

Committee approves 2019 work priorities and includes the ECSHA request to address problems and challenges in the LA scallop fishery.

November 27, 2018 – EXCOM Meeting

EXCOM meets and, contrary to AP and Scallop Committee recommendations, does *not* include the ECSHA request for addressing problems and challenges in the LA scallop fishery in its priority recommendations.

November 28, 2018 – ECSHA Letter

The ECSHA writes to the NEFMC requesting the EXCOM reconsider its recommendations by including two scoping sessions to further explore problems and challenges in the LA scallop fishery.

December 5, 2018 – NEFMC Meeting

The NEFMC adopts priorities for 2019 and excludes the ECSHA request for two scoping sessions.

2019

June 2019 – Plan Development Team (PDT) Meeting

The PDT recommends removing “evaluation of rotational management program” from priorities, as it can be combined with performance report on LA component of scallop fishery.

August 2019 – ECSHA

The ECSHA expands its number of supporters and brings in additional assets to represent varied interests in the LA scallop fleet from Maine to North Carolina. Launches development of a leasing pilot project for days at sea (DAS) and access area (AA) trips to demonstrate effectiveness of leasing within the LA fleet.

September 12, 2019 – Pike Associates Letter

Letter is sent on behalf of the ECSHA to the NEFMC requesting inclusion of leasing pilot project in 2020 Council work priorities, emphasizing that scallop owners are not looking to pre-empt or displace ongoing work on Amendment 21.

September 2019 – Executive Director

Initial list of priorities for 2020 includes “Develop limited access vessel DAS leasing pilot project suggested by East Coast Scallop Harvesters Association.”

October 23, 2019 – AP meeting

The AP votes on 2020 priorities and includes the ECSHA proposal as the #3 scallop priority.

October 24, 2019 – Scallop Committee Meeting

Motion is put before the Committee to accept the AP rankings for 2020 priorities. Chairman Quinn offers motion to amend by demoting “LA DAS & AA leasing pilot project” from third to seventh on the priority list. Motion passes. Final Committee ranking was #6, below the line.

November 4, 2019 – Pike Associates Letter

Letter is sent to the NEFMC noting that the Scallop Committee rejected the AP’s recommendations and subordinated the AP’s recommended priorities by a 4-3 vote, demoting the leasing project to sixth and below the line. This letter clarifies that scallop owners request the Council begin the initial scoping work in 2020 only as time and resources allow, without displacing the important work needed on the 2021 Specifications Framework or A21.

November 12, 2019 – EXCOM Meeting

The EXCOM meets and does *not* recommend the ECSHA proposal as a 2020 priority.

November 19, 2019 – AP Meeting

The AP meets and reaffirms support for LA DAS and AA leasing pilot project as a priority for 2020.

November 20, 2019 – Scallop Committee Meeting

The Scallop Committee does not consider the LA DAS and AA leasing pilot project.

December 5, 2019 – NEFMC Meeting

The Council meets and votes on 2020 priorities. Leasing pilot project not included in scallop priorities; a motion is made to include leasing project in 2020 priorities. In support of motion, the ECSHA presents list of 227 LA scallop vessels in support of the NEFMC moving forward with consideration of a leasing program that provides operational flexibility. The Council rejects industry’s request to work on a leasing project in 2020.

2020

January 2020 – The Scallopers Campaign

As support for securing needed flexibility and resiliency grows within the industry, vessel owners form the Scallopers Campaign. Campaign establishes [website](#).

April 2020 – The Scallopers Campaign

The Scallopers Campaign launches online industry survey to collect operational information from vessel owners.

May 27, 2020 – Pike Email to ED

Via email, Jeff Pike and Rick Robins advise the Council on impacts of COVID-19 and greater need for flexibility as discussed at the AP meeting the day before. The message reaffirms Scallopers Campaign support for the Council process (as opposed to the then-recent Presidential EO Promoting Seafood) and support for the Council identifying an LA scallop leasing program as a prioritized action for 2021.

May 28, 2020 – Scallopers Campaign Letter

In a letter to the NEFMC, the Scallopers Campaign updates Council on activities, development of website, and the ongoing industry survey; pledges to share results with Council.

July 24, 2020 – Scallopers Campaign Letter

The Scallopers Campaign formally requests the NEFMC include the development of an amendment on a leasing program that provides operational flexibility and resiliency as a 2021 priority. Letter includes detailed statement of purpose, need and opportunity for proposed leasing program.

September 9, 2020 – Survey Results

The Scallopers Campaign releases results of owner survey and shares with the NEFMC. Survey demonstrates an overwhelming majority of vessel owners would participate; the wide range of benefits including improved safety (as oldest boats are most likely to leave fishery); and vessel owners would continue to employ the same number of captains and crew.

September 23, 2020 – AP Meeting

The AP votes on 2021 NEFMC work priorities and recommends prioritizing “Conduct outreach to assess perspectives on scallop LA DAS and AA leasing.”

September 25, 2020 – Scallop Committee Meeting

The Committee meets and votes on 2021 work priorities. By consensus and a unanimous vote (10-0; NEFMC Chairman Quinn and Scallop Committee Chairman Balzano not voting) includes “conduct scoping on LA DAS and AA trip leasing program to assess whether to move forward with an amendment” as a 2021 priority.

October 1, 2020 – NEFMC Meeting

Executive Director Nies presents initial work priorities for 2021, which includes the Scallopers Campaign request from its July 24th letter recommending work on a leasing program as a 2021 priority.

October 6, 2020 – Scallopers Campaign Letter

In a letter to all Council members, the campaign requests they support, “Conduct scoping and/or listening sessions on a LA DAS and AA trips leasing program to assess the need for a leasing program and whether to move forward with developing an amendment” as a priority for 2021.

October 22, 2020 – EXCOM Meeting

The EXCOM meets to make recommendations on 2021 priorities. The ED recommends including work recommended by both the Scallop AP and Committee to conduct scoping/listening sessions on an LA DAS and AA trips leasing program to assess the need for a leasing program and to evaluate whether to move forward with developing an amendment. The Chair and Vice Chair quickly oppose including listening sessions on leasing; the EXCOM overrides the unanimous recommendation of the Scallop Committee and fails to recommend leasing issue to the Council.

October 27, 2020 – NEFMC Meeting

The Council meets to vote on 2021 Priorities. Motion to include scoping/listening sessions on leasing is overcome by an unrelated substitute motion from the Vice Chair to include an evaluation of the rotational management program as priority, even though the substitute was not presented, discussed, considered or recommended by the AP, the Committee and the ED. It was also not recommended by the EXCOM.

Note: During the previous year, the Scallop PDT recommended dropping evaluation of rotational management from Council priorities and combining it with the “LA performance review report” priority, as there would likely be significant overlap between the two.

November 3, 2020 – Scallopers Campaign Letter

The campaign sends letter to the Council requesting a reconsideration of the 2021 scallop work priorities to include scoping/listening sessions on leasing, based on the broad support from the Scallop AP, Scallop Committee, the NMFS Regional Administrator and the Council’s Executive Director. The letter notes that staff had previously stated that there was adequate staff time to start the listening process in early summer 2021.

December 1, 2020 – NEFMC Meeting

The Scallopers Campaign request for reconsideration of the 2021 priorities is brought up during public comment period. In discussing the request, the Chairman suggests that it might not be able to be brought up again because “there is provision in Robert’s Rules

that once an item is defeated it can't be brought back up again." The Scallopers Campaign letter, however, was previously sent to the Scallop Committee. The Council Chairman announces it is up to the Scallop Committee and the Committee Chairman (who has not supported leasing) to decide if the request will be on a future Committee agenda and what, if any, action might be taken.

####

From: Ray Hilshey <rayhilshey@gmail.com>
Sent: Tuesday, January 19, 2021 5:55 AM
To: comments <comments@nefmc.org>
Subject: Fwd: Carry over general cat scallop

Sent from my iPad

Begin forwarded message:

From: Ray Hilshey <rayhilshey@gmail.com>
Date: January 19, 2021 at 5:31:24 AM EST
Subject: Fwd: Carry over general cat scallop

Sent from my iPad

Begin forwarded message:

From: Jonathon Peros <jperos@nefmc.org>
Date: January 18, 2021 at 8:28:48 AM EST
To: Ray Hilshey <rayhilshey@gmail.com>
Subject: RE: Carry over general cat scallop

Hi Ray,

There has not been any discussion about allowing general category IFQ permit holders to carry over all of their quota from 2020 to 2021. If you'd like to raise this point, I would send a note to the Council's Executive Director Mr. Tom Nies (tnies@nefmc.org) or the Chairman Dr. John Quinn (jquinnfish@gmail.com).

Jonathon

-----Original Message-----

From: Ray Hilshey <rayhilshey@gmail.com>
Sent: Thursday, January 14, 2021 10:40 AM
To: Jonathon Peros <jperos@nefmc.org>
Subject: Carry over general cat scallop

Just Wondering if there has been any talk of allowing general category to carry over all the quota again this. For me when covert 19 hit I lost 2 crew members. My skipper fished alone occasionally finding a man for a day here and there. It wasn't till July when we found a full-time guy to finish out the summer. Then he went back to school. Since early September it has been a one-man boat again. In mid December we found an occasional guy again. He's been coming pretty steady but not always. There's no way we will finish our remaining qouta and we will be over the 15%. I'm hoping that somewhere along the line the advisers and counsel will recognize this year is more a burden on the general category fleet than last

year.I am hoping they will allow 100% carryover again this year seeing that the quota has already been voted on and it should be no skin off anybody's nose. To lose it will be a lot of skin off my nose. thank you for your time and all you do. I'm a former general category advisor and I know that this process is far from easy.

Sent from my iPad



Mr. Eric Reid
Vice Chairman
New England Fishery Management Council
50 Water St., Mill 2
Newburyport, MA 01950

December 14, 2020

Dear Vice Chairman Reid;

We have known and worked with each other for a number of years, and I write this as someone who shares your commitment to the long-term health of the scallop fishery and the men and women who rely on it for their economic well-being. I wanted to directly address some comments you made during the Council's October 27, 2020 meeting on priorities for 2021, especially when describing the Scallopers Campaign's work to advance public conversations on a voluntary leasing option.

During the debate of the Sissenwine motion to add listening sessions on a possible leasing program to the Council's 2021 priorities, you stated, "Mr. Hughes brought up the issue of excess fishing effort going into other fisheries and he is right, which is why all industry will be involved." You went on to suggest that listening sessions couldn't possibly be conducted during the summer window of opportunity because "the entire industry, including non-scallop permit holders" will need to be involved, and it will require more than a couple of listening sessions.

As a matter of record, the Scallopers Campaign shares your concerns about impacts on other fisheries, which is why this was one of the first issues we addressed earlier this year. As you will recall, the Scallopers Campaign's July 30 letter to the Council included a set of principles developed to inform the Council, industry, and other stakeholders about our approach. One of the most important principles was that any leasing program developed by the Council should "*Include a commitment and measures (e.g. sideboards) to protect other fisheries from negative impacts of any approved program.*" We intentionally posted these principles on the Scallopers Campaign website to further inform Council members, the industry and the public.

Scallopers are sensitive to these issues and have been discussing potential options. For example, some in the Campaign suggested that only limited access permits put into Confirmation of Permit History (CPH) would be eligible to lease, similar to the scallop IFQ program. As you know, if an LA scallop permit were placed into CPH, and leasing DAS and AA trips from that permit were allowed, then all of the other permits associated with the LA scallop permit would be inactive because of the prohibition against splitting permits. Another suggestion was that if DAS or AA trips are leased from a LA scallop permit, then all the other permits associated with that LA scallop permit become inactive or un-useable. Others have suggested the development of sideboards (restrictions on amount of catch) to ensure leasing vessels do not exceed their historical participation in other fisheries. These are just a couple of the suggestions that have come forward, but they clearly demonstrate the commitment of the Scallopers Campaign to prevent negative impacts on

other fisheries. In fact, the Scallopers Campaign went even further to ensure fairness among fellow scallopers by including a principle that a leasing program should *“Include a commitment and measures to ensure ‘No Harm’ to non-participating scallop vessels.”* The purpose here was to provide protections for those LA scallop vessels that choose not to lease. We believe that listening sessions as the Scallop Committee recommended would provide the platform for more ideas to be brought forward.

Finally, you have previously asked, “where does the steel go” from scallopers that lease out all of their allocations? Because the Council has chosen not to allow public conversations in 2021, we cannot say with any certainty. However, we can provide you with views from the Scallopers Campaign. First, for vessels that lease out all of their scallop allocation because the vessel will be scrapped or sold, those vessels will have no permits assigned to them due to the rule against permit splitting. Those vessels would need to secure existing permits in order to fish in any other LA fisheries. From the Campaign’s industry survey that we shared with you earlier this year, we know that the oldest boats in the fleet will be the first to leave as industry moves to more efficiently harvest the resource and reduce fleet size. As for LA scallop vessels that only lease out a portion of their allocation and remain in the scallop fishery, we have already discussed a few ways to ensure against negative impacts on other fisheries like the squid fishery.

We hope this information is helpful to you. The Scallopers Campaign shares your concerns and has worked hard to address them. We have also been transparent about our efforts every step of the way. We were disappointed that you inaccurately described the Scallopers Campaign proposal. We continue to hold that the Council has adequate time to conduct listening sessions this summer, as acknowledged by Council staff. Again, the purpose of the listening sessions is to discuss the issues you raise. They will provide a wealth of information for the Council, so that when this issue is reconsidered as a priority, Council members will have a much clearer idea of how best to proceed. In light of all this information, we ask that you introduce and support a motion to conduct the proposed listening sessions next year.

Regards,

A handwritten signature in black ink, appearing to read "Jeffrey Pike". The signature is stylized and cursive.

Jeffrey Pike

CAPE COD COMMERCIAL
**FISHERMEN'S
ALLIANCE**

Small Boats. Big Ideas.

7 December 2020

Tom Nies
Executive Director
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

Re: Access to Closed Area I for LAGC IFQ Fleet

Dear Mr. Nies,

The Cape Cod Commercial Fishermen's Alliance is a member-based nonprofit organization representing commercial fishermen. Cape Cod's general category fleet is comprised of approximately 20 boats employing approximately 100 local captains and crewmembers. The fleet lands nearly 500,000 pounds of scallops annually, valued at more than five million dollars. The Cape Cod fleet also is in regular communication with scallopers from other parts of New England and the Northeast.

We strongly support the Scallop Committee's unanimous motion tasking the PDT "to consider a range of options to capture the impacts of retaining Closed Area I for LAGC IFQ access area fishing only." Our hope and expectation is that when all options are considered, it will become clear that allowing general category access to this area is a prudent management decision that both protects a limited resource, and allows appropriate commercial effort to continue in a safe and reasonable way.

With this area only having a couple million pounds of exploitable biomass, we understand that it cannot support full trips for the Limited Access fleet. However, the biology and location of Closed Area I present a very viable option for the LAGC IFQ fleet. Our smaller boats and much smaller trips would not rapidly deplete stocks. In addition, our LAGC IFQ boats rarely if ever go farther offshore to Closed Area II due to both the economics of small trip limits and the safety risks involved. Closed Area II remains an attractive alternative and location for the Limited Access fleet. Nearshore accessibility in Closed Area I for LAGC IFQ boats would eliminate pressure for our fleet to go to other areas requiring far longer steaming times, creating much safer fishing conditions with no negative effects on the resource.

We also note that there is precedent for this kind of careful management that acknowledges the lesser intensity of effort and impact of the LAGC fleet in closed areas. A similar strategy was implemented in an area of the Nantucket Lightship in 2016 (FW27), along with a careful study of the activity of the fleet and related issues like bycatch and habitat impact. By all accounts the strategy worked, allowing the LAGC fleet to continue to work while also protecting the area for future recruitment and harvest.

We therefore hope that after a full deliberation, the Council will retain Closed Area I for LAGC IFQ access fishing only.

Thank you for your consideration.

BOARD OF DIRECTORS Nick Muto, *Chairman* • Gwen Holden Kelly, *Treasurer* • Greg Connors, *Vice-Chairman* • Brian Sherin, *Clerk*
Richard Banks • Gregory Bilezikian • Charles Borkoski • Beau Gribbin • Eric Hesse • Barry LaBar • Tim Linnell

1566 Main Street, Chatham, MA 02633 (508) 945-2432 info@capecodfishermen.org www.capecodfishermen.org

Sincerely,

Jesse Rose
F/V Midnight Our

Zachary Bennett
F/V Helltown

Cameron Smith
F/V Three Sons

Jason Amaru
F/V Joanne A III

Jared Bennett
F/V White Cap

William Ligenza
F/V Getaway

Matt Linnell
F/V Fleet King

Sean Leach
F/V Sea Holly

Wes Brighton
F/V Menemsha Rose
F/V Martha Rose

Scott Rorro
F/V Sea Hunter
F/V Ernest & Michael

Glen Legeyt
F/V Tricia Lynn

Paul Vafides
F/V Donna Jean II

Bob Dutra
F/V Rolex

Aidan's Pride Inc.
F/V Isabel and Lilee

A.P. Fisheries Inc.
F/V Aidan's Pride

Mark Smith
F/V Godzilla

Pat Fehily
F/V Major Expense

Stephanie Sykes
Cape Cod Commercial Fishermen's Alliance

Shelley Edmundson
Martha's Vineyard Fishermen's Preservation Trust





Mr. Thomas A. Nies
Executive Director
New England Fishery Management Council
50 Water St., Mill 2
Newburyport, MA 01950

November 3, 2020

Dear Mr. Nies,

In light of the deeply disappointing results of the Council's meeting on October 27, 2020, we write to request the Council reconsider its 2021 scallop work priorities at the earliest opportunity. By declining to include scoping/listening sessions for a potential LA scallop leasing program in its 2021 priorities, the Council subordinated the recommendations and expertise of the Scallop Advisory Panel, the Scallop Committee, the Regional Administrator, and its own staff.

The Council's enabling statute creates a public process that is designed to promote the public interest in the management of U.S. fisheries, and includes important provisions for public input. We are not aware of any fishery that has come before the Council with 70 percent of the fleet in support of discussing a request within the Council process, only to be denied an opportunity for a fair hearing. The Council's actions on October 27 subverted the public interest within the sea scallop fishery, and we urge the Council to take action at its December 2020 meeting to remedy the situation.

How we got to this point matters. More than three years ago, the East Coast Scallop Harvesters Association (ECSHA) asked the Council to address the need for flexibility and versatility within the LA scallop fishery as a 2019 work priority. On October 23, 2018, the Scallop Advisory Panel (AP) made a priority recommendation to pursue this issue, and a day later the Scallop Committee agreed and recommended to the Council that it "address problems and challenges in the scallop fishery as discussed by the AP." ***The Executive Committee (Ex Comm) did not recommend this work item to the Council, nor did it propose any other option to the scallop fishery to address its concerns.***

Last year the ECSHA, frustrated by the lack of responsiveness from the Council, brought us in to assist the owners in requesting the Council include in its 2020 priorities a leasing project for the LA scallop fleet. Our position was clear: leasing DAS and AA trips would provide vessel owners with the flexibility they needed. This was also an approach with Council precedent, as the Council had previously authorized leasing in both the groundfish fishery and the LA general category scallop fishery.

At that time, over 50% of LA scallop vessels supported the Council taking up this issue. The Scallop AP again recognized the need for flexibility a leasing program would provide and voted in October *and* November 2019 to recommend bringing the leasing discussion into the Council process as a priority. Ultimately, the

Scallop Committee and Council did not recommend the project as a 2020 priority, due in large part to the fact that Amendment 21 and specifications were expected to fill the Council's scallop work schedule.

Again, the Ex Comm offered no other options to the scallop fishery to address its concerns. Several Council members remarked on the significant industry support for the Council taking up leasing at the December 5, 2019 Council meeting. The Campaign and its supporters were advised to continue to build support and wait for the completion of Amendment 21 before adding leasing to the queue.

During this past year, the Scallopers Campaign did exactly what the Council suggested. We added supporters to a level where fully 70% of the LA fleet supported the Council taking up the issue and starting the conversation. We created a website and regularly emailed newsletters to better communicate with industry, the Council, and the public. We conducted an LA vessel owners' survey to gather operational information not previously available to the Council. Based on those survey results, we refined our recommendations for commonsense principles to inform the Council discussion. Through all these actions, we maintained open and transparent lines of communication with Scallop Committee and Council members, inviting questions, concerns, or suggestions at every stage. When the AP considered the issue of 2021 priorities, scoping for a possible plan amendment on leasing was recommended to the Committee. The Scallop Committee unanimously recommended including scoping on a LA leasing program in the Council's 2021 priorities.

At the September 2021 Council meeting, the Council amended the Committee's recommendation to reflect "scoping and/or listening sessions" to ensure clear understanding that the Council would not be obligated to initiate an action; that decision would come after hearing from the public through the listening sessions. The purpose of the scoping/listening sessions was to better inform the Council on the level of support and potential concerns or issues related to leasing.

When the Executive Committee met to review proposed 2021 priorities and make recommendations to the Council, Council staff recommended including scoping/listening sessions in the 2021 priorities, and indicated they had the capacity to conduct such sessions in their work plan. Some members of the Executive Committee moved to scuttle the informed recommendations of the Advisory Panel, the Scallop Committee, the Regional Administrator, and the Council staff, resulting in a lack of consensus on the scoping/listening session priority. ***Once again, the Ex Comm offered no other option to the scallop fishery.*** Furthermore, listening sessions/scoping was the only Scallop Committee priority left off the Ex Comm's recommended agenda. The importance of the Ex Comm failing to recommend listening sessions cannot be overstated; to get back on the priority list for 2021 required an amendment at the Council level.

The Council finalized 2021 priorities at its October 27 meeting, and the issue of listening sessions/scoping was again discussed. A motion to amend was made to add the action back into the 2021 priorities. That motion was supported by the majority of industry members who participated in the webinar. A substitute motion was then made to supersede the motion to amend by replacing scoping/listening sessions with a proposal to "evaluate rotational management program," a project not recommended by the AP, the Scallop Committee, the Regional Administrator, the Council Staff, or the scallop industry.

This was clearly offered as a "red herring," intended to stonewall the industry's repeated request for listening sessions. Staff time to undertake the rotational management agenda item was estimated to be

twice as much as the listening/scoping sessions. The rationale given for the substitute motion was that (1) “the Executive Director had a problem with math,” speculating that the listening sessions would take much more time than estimated, (2) there was a “substantial” number of permit holders against leasing, even though 246 out of 350 LA permits support the Council initiating leasing discussions, and (3) rotational management was important to the Ex Comm, even though it did not recommend it to the Council. Notably, it was also not an item recommended by the Scallop Committee. On a vote of 11-6-0 the substitute passed; evaluation of the rotational management program became a 2021 priority, and the Council will not devote any resources to conducting listening/scoping sessions on a LA leasing program in 2021.

The Council bypassed and dismissed the informed, expert advice of the very groups it had formed and tasked with advising it on the management of one of the keystone fisheries of our nation, and it also turned a deaf ear to the scallop fleet’s public input in the process, as well as a supporting letter from the Mid-Atlantic Fishery Management Council.

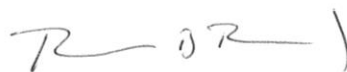
We request the Council reconsider the results of its scallop priorities from the October 27, 2020 webinar at the upcoming December Council meeting and add LA scallop leasing listening sessions to its 2021 schedule to provide the industry with a fair hearing.

As quotas decrease and costs—including insurance—sharply increase, the need for flexibility is greater than ever. The Scallopers Campaign has always been a supporter of the Council process, and has done everything the Council and staff have asked. In fairness to the industry, we believe a reconsideration of the 2021 scallop priorities to add listening sessions is in order. If the Council continues to deny this reasonable request as endorsed by the industry, the Scallop AP, the Scallop Committee, Council Staff, and the Regional Administrator, it would challenge our firm belief that the Council process is the proper avenue to serve the needs of the scallop fishery.

Sincerely,



Jeff Pike



Rick Robins

CC:

Secretary of Commerce Wilbur Ross

White House Director Office of Trade and Manufacturing Peter Navarro

NOAA Assistant Administrator for Fisheries Chris Oliver

NMFS Regional Administrator Michael Pentony

Congressman Jared Huffman, Chairman, Water, Oceans, Wildlife Subcommittee