

ADDITIONAL 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 stylized with a large, looped "J" and a cursive "Pike".

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.

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