

ADDITIONAL
CORRESPONDENCE



David E. Frulla

Kelley Drye & Warren LLP
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007

Tel: (202) 342-8648
Fax: (202) 342-8451
dfrulla@kelleydrye.com

December 1, 2021

Via Email

Eric Reid, Chairman
New England Fishery Management Council
50 Water Street, Mill #2
Newburyport, MA 01950

**Re: Fisheries Survival Fund's Comments on Scallop Framework Adjustment 34
(2022 Fishery Specifications)**

Dear Chairman Reid:

We represent the Fisheries Survival Fund, and submit this letter on FSF's behalf relating to the New England Fishery Management Council's consideration of the Scallop Framework 34, which sets annual specifications for the scallop fishery for 2022. As you know, FSF represents the significant majority of Full-Time Limited Access permit holders in the scallop fishery. The Council is set to take final action on Scallop Framework 34 at its December 9, 2021 meeting.

In summary, FSF supports Framework 34 Alternative 4.3.3.2: three access area trips at 15,000 pounds with the Hudson Canyon open and 26 DAS. Projected landings from this alternative are 36 million pounds, which would be a significant reduction from the 40 million pounds the fishery is expected to land this year. And, 2020 itself represented a reduction of around 5 million pounds from 2019 landings. Notably, overall fishery-wide F from Alternative 4.3.3.2 is $F = 0.24$. The F limit for the overall fishery is $F = 0.61$.

Stability is important in the scallop fishery to maintain markets and price. The Council has two tools that it can use to maintain stability – access area trips and DAS. DAS were reduced to 24 back in 2018, down from several years where DAS were 30-34. Open area DAS were not reduced because of issues with open area abundance, but because significantly more access area trips were coming on line. (Access area trips were increased to 6 in 2018, and then 7 in 2019.) The open area fishing mortality rate was in 2017 and has remained significantly below allowable levels. The Council thus made the decision to keep scallops in the open areas in reserve for a time such as now. This approach has balanced the long and short term interests of the fishery.

Eric Reid, Chairman
December 1, 2021

In 2022, under all alternatives, access area trips are being reduced in both number and poundage, to three trips at 15,000 pounds, from four trips at 18,000 pounds in 2021. These reductions are being made to extend the viability of the current access areas and to reduce the incidental catch of flatfish. Now that access area trips are being reduced, scallops in the open areas are able to absorb incrementally more effort – current open area DAS of 24 is the lowest on record.

Moreover, 26 DAS for 2022 does not in any way push the margins for open area effort under the fishery management plan. A DAS allocation of 26 represents an open area F rate of $F = 0.45$, well below the allowable open area limit of $F = 0.61$. As explained above, overall F in the fishery under Alternative 4.3.3.2 would be only $F = 0.24$. Moreover, all other things being equal, overall F in the fishery would be just 0.02 higher with DAS of 26 than with status quo DAS of 24. DAS at 24 yields at $F = 0.22$.

The Council should promote stability in the scallop fishery. The price of scallops saw a significant increase in 2021, and that increase buffered the impacts of 2021's reduction in landings. One of the reasons scallops can demand such high prices is because the fishery has been able to produce a steady supply of scallops, and that has sustained demand. Both demand and price will soften if allowable catches are reduced significantly.

Alternative 4.3.3.2 introduces a significant precautionary element. It includes a new closure in the Mid-Atlantic to protect young scallops with the hope of spurring another major recruitment event in the Mid-Atlantic. The closure contains areas in and around the critically important Hudson Canyon Access area. The Hudson Canyon area has long been a major contributor to scallop recruitment and abundance, both within the access area and to the south. Amendment 10's scallop rotational management standards, which have been successfully applied in the fishery for nearly two decades, do not support maintaining a full closure of Hudson Canyon. Of course, this important area is intensively surveyed and can and will be closed when small scallops are again detected. Given the 4-inch scallop rings, such a closure would occur before any material amount of small scallops would be retained by the scallop dredge.

Recent scallop price increases make it difficult to do an accurate economic analysis, but a decrease in landings in excess of 5 million pounds, at \$20 a pound, would lead to an economic impact over the \$100 million federal threshold for regulatory significance under Executive Order 12866. It is very rare that any fishery management measure comes close to EO 12866's significance standards. As explained above, the scallop fishery can be managed with reasonable precaution with less than a 5 million pound reduction in annual catch limits, that is, pursuant to Alternative 4.3.3.2. As was learned from last year's reductions, an EO 12866 significance finding adds additional layers of review, delay and complication into these specifications' implementation by the start of the fishing year on April 1.

Fishing year 2021 will yield another layer of precaution for the scallop fishery as well. The fleet will be fishing with modified dredges to reduce its flatfish bycatch rate as part of its northern

Eric Reid, Chairman
December 1, 2021

windowpane flounder accountability measure. This step will assist in reducing the potential for both windowpane and yellowtail flounder bycatch on Georges Bank.

Such an additional step is reasonable because the Scallop PDT's bycatch projections of some flatfish species are based on only 3 observed fishing trips. The Scallop PDT has provided bycatch projections based on this incomplete dataset, but the PDT specifically noted that it was concerned that these projections were artificially high due to a lack of data from 2020 and 2021. Also, the data used in the projections is not fully audited, and there is a concern that there may have been confusion in labeling sand dollars and sand dabs, something that has happened in the past. Lowering allowable access area poundage from 18,000 to 15,000 pounds will also reduce the potential for flatfish bycatch between 2021 and 2022.

As always, please do not hesitate to contact us if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Frulla', with a long horizontal flourish extending to the right.

David E. Frulla
Andrew E. Minkiewicz
Counsel for Fisheries Survival Fund

1991 - 2021

30
YEARS

CAPE COD COMMERCIAL
**FISHERMEN'S
ALLIANCE**

Small Boats. Big Ideas.

November 30, 2021

Tom Nies
Executive Director, NEFMC
50 Water Street, Mill 2
Newburyport, MA 01950

Re: LAGC IFQ access area fishing in Closed Area I

Dear Mr. Nies,

The Cape Cod Commercial Fishermen's Alliance is a member-based nonprofit organization representing small-boat commercial fishermen. Cape Cod's general category fleet is comprised of about 25 boats employing approximately 100 local captains and crewmembers. The Cape Cod fleet also is in regular communication with scallopers from other parts of New England and the Northeast.

We strongly support the New England Fishery Management Council retaining Closed Area I for LAGC IFQ access area and RSA compensation fishing. Although this area does not have enough biomass to sustain full access area trips for the Limited Access fleet, it continues to be a viable option for the LAGC IFQ fleet. Closed Area II remains an attractive location for the Limited Access fleet. However, our small boats rarely, if ever, go farther offshore to Closed Area II due to both the economics of trip limits and the inherent safety risks of traveling far offshore in small boats for extended periods of time.

We hope that the Council follows the management precedent set in 2016 (FW27 Nantucket Lightship) and the Closed Area current 2021 fishing year (FW33 I) by allowing LAGC IFQ access area fishing in Closed Area I and reallocating any Closed Area II LAGC IFQ access area trips to Closed Area I. Allowing general category access to this area is a prudent management decision that both protects a limited resource, and allows small-boat commercial effort to continue in a safe and reasonable way.

Thank you for your consideration.

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 Jessica Beth

Celebrating 30 years. Navigating 30 more.

BOARD OF DIRECTORS Andrew Baler • Richard Banks • Charles Borkoski • Greg Connors • Beau Gribbin
Eric Hesse • Gwen Holden Kelly • Barry LaBar • Tim Linnell • Kurt Martin • Brian Sherin

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

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

Scott Rorro
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

Mark Smith
F/V Godzilla

James Gray
F/V Bada Bing

Pat Fehily
F/V Major Expense
F/V Market Price

Andrew Spalt
F/V Miss Emma

Max Nolan
F/V Independence

Damian Parkington
F/V Roen Keil

High Pressure Fisheries
F/V Kahuna; F/V Glutton

Bob Keese
F/V Sandra Anne

Dumitru Babes-Deel
F/V The Count

Andy Keese
F/V Miss Rockville

Phil Michaud
F/V Charger

Len Michaud
F/V Southpaw

Chris King; Willis King
F/V Donna Marie

Stephanie Sykes
Cape Cod Commercial
Fishermen's Alliance

Shelley Edmundson
Martha's Vineyard Fishermen's
Preservation Trust

