ADDITIONAL CORRESPONDENCE
September 20, 2022

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

Re: 2023 Scallop Specifications and Priority Setting

Dear Chairman Reid:

We submit this letter on behalf of the Fisheries Survival Fund regarding the Tuesday, September 28, 2022, Council scallop agenda item as it relates to the progress report for 2023 fishery specifications and the Thursday, September 29, 2022, agenda item relating to 2023 Council priorities. As you know, FSF represents the significant majority of the scallop Full-Time Limited Access Fleet.

In summary, the scallop fishery is in the midst of a series of challenging years, but there is an end in sight. This summer’s surveys are showing strong recruitment on Georges Bank and solid recruitment in the Mid-Atlantic. Accordingly, FSF is submitting this letter early in the framework development process to let the Council know in advance that it should take advantage of all available management tools to ensure scallop landings in 2023 remain at least at 2022 levels. This would allow the fishery to maintain markets and ongoing business operations.

Precedent exists for the Council to manage the scallop fishery in a manner that builds a bridge over the very leanest years to ensure long-term fishery stability. Year-in, year-out, the Council husband the scallop resource conservatively, thus leaving itself flexibility for a year like 2023 may very well be shaping up to be. This bridge to the future should also include prioritizing a scallop access program targeting fully-recruited scallops on the Northern Edge, now that the Habitat PDT-recommended additional research and monitoring has occurred. Finally, as we will discuss, small scallops in areas closed for grow-out should be protected from premature and preferential General Category access.

Regarding the 2023 scallop specifications, two items are of note. First, allocations for 2022 and, we expect, 2023, are well below average annual fishery catches. This year, the fleet has been allocated 24 DAS and three 15,000 pound access areas trips. Next year, open area abundance is remaining stable, but only one, or maybe two, access area trips are on the horizon. Thus, allowable catch levels for 2023 could end up being lower than 2022, thus threatening market stability and ongoing business operations.
However, as explained above, the fishery is experiencing robust recruitment, including within a large Mid-Atlantic Bight grow-out area that will be closed for a second year in 2023.

The scallop fishery has confronted such a predicament before, in Framework 25, for fishing year 2014. In that year, projections were very similar to what we expect 2023 to be. For 2014, projections showed two 12,000 pound trips and 23 DAS; however, abundant areas were set to open in 2015 and strong recruitment was present.

For 2014, the Council built a “bridge” between fishing years 2013 and 2015 by passing a “motion to allow open area F to exceed F threshold for open areas . . . .” Framework 25 Final Submission, at 40. As a result, Framework 25 allocated 31 DAS to the fleet, and potentially another 5 DAS if a permit holder decided to forego a 12,000 pound Delmarva access area trip. As a result of the Council motion, while the open area F threshold was 0.38, open area F was allowed to be set at 0.52 for that one year. This did not amount to overfishing, however, because overall F of 0.21 remained below the resource-wide F threshold of 0.28. Framework 25 Final Submission, at 40.1

Second, regarding the 2023 annual specifications, the Council should make sure to manage access areas to promote attainment of optimum yield over the long term. Widespread scallop recruitment has been detected on Georges Bank in this summer’s surveys. Among other areas, Closed Area I is experiencing significant recruitment, and it is likely the scallop PDT will recommend that it be closed as a grow-out area. Currently, the General Category is preferentially allocated trips into Closed Area I, as the Full-Time fleet can only take research set-aside (“RSA”) compensation trips there. If Closed Area I is, indeed, suitable for a grow-out closure, all scallop fishing in that area should be prohibited. FSF strongly disagrees with creating special access areas for the General Category fleet, especially when such an access area would come at the expense of compromising recruitment that should be managed to benefit all scallop permit holders, regardless of permit category.

The Council, moreover, should not be in the business of creating private fishing preserves for a small segment of the scallop fleet. “[A]ssignment of ocean areas to different gear users . . .” represents a specific form of allocation addressed under the National Standards Guidelines for National Standard 4. 50 C.F.R. § 600.324(c)(1). Under that national standard, any such allocation must promote conservation. Id., § 600.324(c)(3)(ii). For its part, Framework 34 for fishing year 2022 explains within its National Standard 4 analysis that “the measures are intended to apply equally to scallop permit holders of the same category.” Framework 34 Final Submission, at 216. The framework does not recognize, not to mention address under National Standard 4 as a conservation matter, the inter-category allocations that reserving an access area for the General Category creates. In Groundfish Forum v. Ross, 375 F. Supp.3d 72, 89-92 (D.D.C. 2019), and Sustainable Fisheries Coalition v. Raimondo, --- F. Supp.3d ---, 2022 WL 1 Scallops are still managed essentially the same way, although the target and threshold reference points have changed since 2014.
795456 *8 (D.D.C. 2022), the federal court in D.C. invalidated FMP amendments under National Standard 4 for failing to promote conservation.

In fact, allocating trips to an access area slated for protection under the scallop plan thwarts conservation, in violation of National Standard 4. Access areas are created explicitly to promote optimum yield in the scallop fishery. Allowing certain scallop vessels to chip away at a scallop bed closed for grow-out reduces yield, as these scallops are not being permitted to grow to a more optimum harvest size. The National Standards Guidelines for National Standard 4 also require under that standard’s “fairness and equity” prong, that “[a]n allocation of fishing privileges should be rationally connected to the achievement of OY or with the furtherance of a legitimate FMP objective.” 50 C.F.R. § 600.325(c)(3)(i)(A). Promoting OY through rotation is a central Scallop FMP objective.

Regarding the agenda item relating to Council priorities for 2023, the Council should prioritize as a work item allowing scallop vessel access to the Northern Edge via framework action. The Scallop and Habitat PDTs are having a joint meeting on October 13, 2022, to consider Dr. Scott Gallagher’s before-after-control-impact (“BACI”) study investigating the effects of scallop dredging on benthic habits at three study sites on the Northern Edge. This is the second time Habcam has been used to study the impacts of experimental scallop dredging at those sites.

More specifically, soon after NMFS disapproved Omnibus Habitat Amendment 2’s (“OHA2”) provisions for Georges Bank, RSA funded a two-year Woods Hole Oceanographic Institute project to perform the original BACI study of experimental scallop dredging on the Northern Edge. WHOI presented the findings in 2021, showing recovery and no significant impacts. The Habitat PDT analyzed the results in 2021-22 and produced a white paper that concluded the study was not long enough. During the annual scallop survey this spring, NMFS went back to the study area and took Habcam pictures to document an additional two years of recovery in this highly dynamic area. As explained above, Dr. Scott Gallagher of WHOI is presenting his analysis of the area based on the recent Habcam footage on October 13, 2022.

If, as we expect, the new Habcam data shows recovery, it is time for the Council to make it a priority to re-open that portion of the Northern Edge that OHA2 slated for re-opening. OHA2 did not intend for habitat closed areas to be static but designed them to be informed by future targeted scientific research. The WHOI BACI study is precisely the kind of scientific study OHA2 envisioned, as it relates directly to habitat resiliency to fishing impacts.

Finally, as explained above, this year’s surveys show that the Northern Edge scallop survey stratum contained the second most fully-recruited scallops of all survey strata surveyed in 2022. The Northern Edge should be part of the Council’s bridge strategy for the upcoming 2023 framework. Such an approach is consistent with the type of periodic access the Council in OHA2 envisioned for the scallop fishery on the Northern Edge.
Thank you very much for your attention to these important issues. FSF representatives will be present at the Gloucester Council meeting to discuss these and other issues of importance to the scallop fishery. As always, please do not hesitate to contact us if you have any questions or require additional information in the meantime.

Respectfully submitted,

David E. Frulla
Andrew E. Minkiewicz

Counsel for Fisheries Survival Fund

DEF:paw
“Like “Old Soldiers”

Like “Old Soldiers,” “Old Fishermen” never die, they just sail away...

I was a commercial fisherman for over 32 years, of which most of those years were as a New Bedford scalloper. About seventeen of those years were as Captain of several ‘High-Liner’ scallop vessels, until which time an injury put me ashore, unceremoniously.

Luckily, since then, for 30 years or so, I have been able to remain involved with the commercial fisheries in a variety of ways including as; President or Executive Director of several fishing organizations, as a fishery consultant, seafood inspector, safety instructor, including serving on various committees or government panels, such as a NAFO consultant, & as a member of the NEFMC, for two terms. During those years I served on numerous committees of various species & interests, including the Atlantic Sea Scallop Committee!

I point this out simply because I want to show where my life’s interests have lain for nearly all my life, that which revolves around the commercial fishing industry. I currently have no involvement in any particular fishery, other than as the first Offshore Wind Fisheries Representative who was hired to represent the fishing industry’s interests to the first Offshore Wind developer, Vineyard Wind.

However, I still do have a strong interest in the future of the Atlantic Sea Scallop fishery, as I was involved with the scallop fishery & management in its early development into, what is now one of the most successful fisheries, not only here on the East Coast, but among all the US fisheries! While that is a truly successful story, we need to be cognizant of changes that may be required to maintain that lofty position!

It is truly a story of successful fishery management, & the painful sacrifices on the part of the scallop fishery. It has not been an easy road to get to this designation, with many sacrifices on industry’s part. Many changes were needed & adopted by management & the industry to reach this point, some were good management, & some were good luck, but there is still room & time for improvement.

As a participant in the early management process, “I was adamantly opposed to the consolidation of this fishery!” I didn’t want to see other fishermen abruptly displaced from the fishery if consolidation was approved at that point in time. It was sure to happen, that if the fleet were to be reduced in size at that time, the crews of the consolidated vessels would be abruptly displaced with little likelihood of remaining in the fishery. “As I stated previously, I know what that was like!”

Just as the management mandate, which led to the reduction in crew sizes to seven men, was painful to many fishermen, further reduction if consolidation had been adopted at that time, would have been catastrophic to those remaining. Some of you might recall that earlier as many as thirteen (13), eleven (11) or even nine (9) men were the general crew sizes, & I for one never expected that seven (7) men could do the work necessary & do it safely.

However, time & the fishery has moved on beyond anyone’s wildest dreams. Both in terms of resource abundance & profit to vessel & crew. So now we have another problem, that beyond an overabundance of crewmen, we now have an overabundance of scallop vessels. Some of the Captains & crew of multi-vessel fleets transfer from one vessel to another, & at times even three. We have now reached a point where it sometimes becomes a problem for some vessels to find enough crewmen to make a trip! Generally, this might only be a problem for some of the older, smaller & less efficient vessels, but the problem does exist. We have come full circle!
I too, have come full circle, & "I am no longer opposed to the idea of Leasing within the LA scallop fishery."

Well-developed options could & would benefit most if not all, of the current participants, the owners & crews, by virtue of moving the quota from the older, less efficient, & less safe vessels. When the 'Western Rigged' scallopers first came on the scene & started to replace the older 'Eastern Rigged' scallopers, most fishermen wanted a site on the newer, safer, & more comfortable vessels.

That concept hasn't & isn't likely to change, as most all the scallopers that I ever knew always wanted to find a better, more profitable site. More comfort, & better living conditions were offered on these newer vessels, & that made it all the better.

Trying to upkeep a vessel is always an expensive proposition & at times it was damn near impossible. Why would an owner want to, have to, continue throwing money into "a hole in the water, that is surrounded by wood or steel" rather than using those funds on a more efficient, eco-friendly, safer & more profitable vessel?

I recently learned of one vessel that has not made a trip in a year and a half! What value is there in having to maintain a vessel for a similar amount of time while awaiting the opportunity to have it fish again? That vessel & many others who have laid-up & tied-up along-side the docks most likely have had to remove all its fishing gear, E.g., main wires, dredges, & other expendables. Not to mention much of the other provisions like electronics, that are likely to suffer or deteriorate from an extended tie-up period.

Also keep in mind that the laid-up vessel must be maintained & looked after, less that some unforeseen event should occur & possibly lead to an environmental issue; be it leaking fuel oil, taking on water, sinking, discharging bilge water, or even having a fire occur. All these issues can & are likely to possibly occur to any vessel, new or old, but ...

Let me address some of the arguments that I have heard from some of those who are opposed to leasing. Some of the smaller vessels &/or companies seem to feel that leasing would place another burden upon them if a vessel were to be allowed to lease quota & they are not able or willing to do so. Their quota or allocation is not likely to change whether it is one vessel or two that harvests that combined quota. If leasing was to be adopted by the Councils, there would be sufficient time to address any fears of inequality or deficiency before the plan is adopted.

Another argument that needs to be seriously considered, when developing the leasing plan, is addressing the fear that costs &/or burdens associated with leasing might or will be passed on to the crews. The worries that this might occur is that, just as many other costs are now borne by the crews, the leasing costs might also!

Several political figures have spoken out (I believe) in what they might believe would be an inequity or an unfairness to the active fishermen & shore-side infrastructure. I believe that since we have the time & will to draft another scallop management amendment, without having a crisis at hand, that it could be done with little or no harm to any of the scallop participants & interested parties & yet provide a safer, more self-sufficient & efficient fleet while doing so!

Regarding the loss of revenue to shoreside businesses, I believe that the vessels that remain active will require more services, repairs & upkeep which should supplant any loss of services that once was afforded to vessels that sat dockside for a major portion of each year.

If and when leasing is adopted, there are many ways to assure that it does not become a liability to owners, crews, & their supporting infrastructure. Issues regarding the dispensation of the remaining
permits held by the leasing vessels, can & should be considered in order to rectify any inequities within the plan.

Possibly, at some later date, the ability to remove the allocation & permits from a vessel which leases its quota & allow it to be sold or removed from the fishery, might allow someone else to possibly purchase it & upgrade their current vessel. This also at the same time might provide relief to some of the problems which ports like New Bedford suffer from. That of over congestion & leading to the lack of sufficient dockage.

There are likely to be arguments to, or beyond my thoughts on the idea of leasing, but I truly believe that they are likely to be less than the value which might be gained by allowing a leasing program to proceed while the resource is in a relatively healthy state. This is one of the few opportunities that the Council has had to be able to address both the future & success of not only the resource, but the future of the scallop fishing industry without a pending disaster.

It's time to move the scallop fishery out of the 1990s into the 2020s & beyond!

Thank you.

Jim Kendall
New Bedford Seafood Consulting
(508) 997-0013
June 6, 2022
September 7, 2022

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

Re: LAGC IFQ access area fishing

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 30 boats employing approximately 120 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 continue to strongly support the New England Fishery Management Council retaining Closed Area I for LAGC IFQ access area and RSA compensation fishing. We hope that the Council follows the management precedent set in 2021 (FW33) and 2022 (FW34) by allowing LAGC IFQ access area fishing in Closed Area I, and reallocating Closed Area II LAGC IFQ access area trips to Closed Area I. While Closed Area II is accessible to Limited Access vessels, it remains an inviable option for our small-boat fleet due to economics and safety risks. Allowing general category access to Closed Area I is a practical management measure that both has a minimal impact on the available biomass, and allows small-boat commercial effort to continue in a safe and reasonable way.

As the Council progresses with evaluation of the rotational management program, we hope that LAGC use of access areas becomes a permanent consideration in the decision-making process.

Thank you for your consideration.

Sincerely,

Stephanie Sykes
Cape Cod Commercial Fishermen’s Alliance

Bob Keese               Zachary Bennett               Cameron Smith               Jason Amaru
F/V Sandra Anne        F/V Helltown                  F/V Three Sons             F/V Joanne A III

Jared Bennett          William Ligenza               Bradley Louw                Sean Leach
F/V White Cap           F/V Small Stuff              F/V Three Graces            F/V Jessica Beth

Celebrating 30 years. Navigating 30 more.
<table>
<thead>
<tr>
<th>Name</th>
<th>Boat Name</th>
<th>Name</th>
<th>Boat Name</th>
<th>Name</th>
<th>Boat Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scott Rorro</td>
<td>F/V Ernest &amp; Michael</td>
<td>Glen Legeyt</td>
<td>F/V Tricia Lynn</td>
<td>Max Nolan</td>
<td>F/V Donna Jean II</td>
</tr>
<tr>
<td>Bob Dutra</td>
<td>F/V Rolex</td>
<td>Aidan’s Pride Inc.</td>
<td>F/V Isabel and Lilee</td>
<td>Mark Smith</td>
<td>James Gray</td>
</tr>
<tr>
<td>Phil Michaud</td>
<td>F/V Charger</td>
<td>Leonard Michaud</td>
<td>F/V Southpaw</td>
<td>Andrew Spalt</td>
<td>Derrick Hoy</td>
</tr>
<tr>
<td>Dumitru Babes-Deel</td>
<td>F/V The Count</td>
<td>Andy Keese</td>
<td>F/V Miss Rockville</td>
<td>Chris Viprino</td>
<td>F/V Second to None</td>
</tr>
<tr>
<td>Wes Brighton</td>
<td>F/V Menemsha Rose</td>
<td>Chris King; Willis King</td>
<td>F/V Donna Marie</td>
<td>Jesse Rose</td>
<td></td>
</tr>
<tr>
<td></td>
<td>F/V Martha Rose</td>
<td></td>
<td></td>
<td></td>
<td>F/V Midnight Our</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>F/V Nemesis</td>
</tr>
<tr>
<td>High Pressure Fisheries</td>
<td>F/V Kahuna; F/V Glutton</td>
<td>Shelley Edmundson</td>
<td></td>
<td></td>
<td>Martha’s Vineyard Fishermen’s Preservation Trust</td>
</tr>
</tbody>
</table>