

CORRESPONDENCE



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
Eric Reid, *Chair* | Thomas A. Nies, *Executive Director*

March 16, 2022

Mr. Michael Pentony
Regional Administrator
Greater Atlantic Regional Fisheries Office
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Dear Mike:

RE: Sea Watch Surfclam Exempted Fishing Permit

On April 1 and October 12, 2021, I expressed concerns with the proposed Sea Watch Surfclam Exempted Fishing Permit (EFP).

The Federal Register notice dated March 2, 2022 refers to a single Closed Area II Scallop Access Area. After discussing the proposal with your staff, we now understand that Sea Watch is seeking access to what the Scallop FMP refers to as the Closed Area II-Southwest and Closed Area II-Extension areas. Reiterating a recommendation made in October, the Council strongly suggests that the fishing area in the EFP be modified to focus on areas in and around the surfclam strata inside the Closed Area II groundfish closure area and avoid areas where dense aggregations of scallops were observed during the 2021 surveys of scallop access areas (see Figures 1-4 in our October letter). Specifically, the Council recommends prohibiting exploratory fishing and paralytic shellfish poisoning (PSP) testing for surfclams in the blue hatched 'recommended avoidance area' shown below (Figure 1, Table 1). I recognize that this avoidance area covers the area that Sea Watch is proposing to fish. However, based on the recently updated surf clam survey strata, we think there is opportunity to allow for fishing inside Closed Area II where surf clams are known to occur without disturbing dense beds of scallops that the Council has managed on a fine scale for several years and are now ready for harvest. As these scallop access areas are fished down, concerns about disturbance and impacts to the resource will also subside.

The applicant's proposal to halt fishing operations during the seasonal bycatch closure may be beneficial for Georges Bank yellowtail flounder and other stocks, but it offers no conservation benefit to the scallop resource if exploratory fishing is allowed to occur within Closed Area II Southwest & Extension.

We also are concerned about the potential impacts of this research fishing on groundfish resources, and especially concerned about bycatch of three groundfish stocks: northern windowpane flounder, Georges Bank yellowtail flounder, and Georges Bank cod. Catches of windowpane flounder in other federal fisheries (a mix of non-groundfish /non-scallop fisheries) have been increasing recently. Georges Bank yellowtail flounder and Georges Bank cod are at

record low quotas. Seemingly small catches could still lead to overages of Annual Catch Limits for any of these stocks. Consequences from accountability measures in our fishery management plans, could be imposed on the groundfish and scallop fisheries under certain conditions if there are overages. Georges Bank cod and Georges Bank yellowtail flounder are subject to payback provisions with Canada if overages of Total Allowable Catches occur. Minimizing bycatch of these stocks is paramount to promoting stock rebuilding and reducing the risk of undermining the management of these stocks.

Given these concerns, we recommend that all finfish and scallop bycatch (numbers and weight) during all tows be recorded as a condition of the EFP and provided to NOAA Fisheries via the final report for the project. We are unclear as to the differences in sampling that might occur on trips with observers vs. unobserved trips, however we recommend fully accounting for all catch and bycatch during all tows, regardless of whether an observer is present. These data are important for accurate catch accounting during the upcoming fishing year and for future development of management measures.

We know that typically clam dredging is spatially concentrated, and it is unclear from the Federal Register notice if a specific sampling design is envisioned, or if captains will select tow locations based on areas where catch rates are expected to be highest. We also are concerned that it will be difficult to use data from the project for management without a more deliberate sampling design, since both clam catch rates and bycatch rates will be unknown in unsampled areas and seasons.

Even if this project confirms that the surf clams inside Closed Area II do not have PSP, I do not view the use of EFPs as an appropriate way to establish an ongoing directed surf clam fishery in this new area. The current distribution of scallops and poor status of our shared cod and yellowtail resources with Canada warrant an incremental approach that limits both effort and the spatial distribution of exploratory fishing inside Closed Area II. The Council would like to consider ways to ensure catch accounting for our vulnerable stocks while accommodating multiple fisheries in this area. I appreciate the opportunity to offer a way forward to provide access and conservation for multiple fisheries.

Thank you for considering our comments. Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Nies".

Thomas A. Nies
Executive Director

Adam Bielski
340 Huttleston Ave
Fairhaven, MA 02719

March 10, 2022



Tom Nies
Executive Director
New England Fishery Management Council
50 Water St. Mill #2
Newburyport, Massachusetts 01950

Atlantic Sea Scallop Limited Access Leasing Scoping Comments

Dear Sir:

I am writing in opposition to the Leasing of permit allocations between vessels.

The proposal in itself can lead to many negative issues affecting the industry and communities that now provide support for vessels, crews and families of fisherman.

The Bottom Line!

If the proposal passes as an amendment :

Consolidation of form will take place and only create larger corporations within the scallop industry that will have more control of the resource from ocean to table and economically injure the smaller entities in the industry.

If it does not become an amendment:

The owners, crew, business entities, and the communities that support the Sea Scallop Industry will continue to thrive with the continued resiliency of the Sea Scallop Resource.

Sincerely,

A handwritten signature in cursive script that reads 'Adam Bielski'.

Adam Bielski
Askinut2004@yahoo.com
(774) 305-3350



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
Eric Reid, *Chair* | Thomas A. Nies, *Executive Director*

March 10, 2022

Mr. Michael Pentony
Regional Administrator
National Marine Fisheries Service
Greater Atlantic Regional Fisheries Office
55 Great Republic Drive
Gloucester, MA 01930

Dear Mike:

Today, my staff electronically sent the final submission of Framework 34 to the Scallop Fishery Management Plan (FMP), including the Environmental Assessment (EA) and associated appendices. A preliminary submission draft was sent to your staff on February 15, 2022.

We received your letter dated March 9, 2022 with several issues identified for us to address to ensure the document is consistent with applicable laws. My staff completed analyses for this action consistent with previous guidance and prior scallop actions. We have adjusted this final submission document to reflect the requested revisions.

The measures proposed in Framework 34 adjust fishing year 2022 and 2023 (default) scallop fishery specifications and adjust Northern Gulf of Maine management measures to be consistent with Amendment 21.

Please contact me if you have any questions. Since the 2022 scallop fishing year is scheduled to begin on April 1, 2022, the Council requests the measures proposed in this framework adjustment be implemented as soon as possible.

Sincerely,

Thomas A. Nies
Executive Director



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930

March 9, 2022

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

Dear Tom:

The Council submitted a preliminary draft of Framework 34 on February 15, 2022. We completed a review of the draft document. There are some issues that must be addressed to ensure the document is consistent with applicable law, which we have outlined below:

1. In Section 5.4.2.1.3, please delete the text and Table 23 that references outdated turtle interaction work and insert updated references provided by Protected Resources Division (PRD) staff by Murray on sea turtle interactions with dredge gear.
2. In Section 5.4.2.1.3, please add the table and supporting text provided by PRD staff on estimated sea turtle takes attributed to scallop trawls.
3. In Section 6.4.2.2, please revise the impact determination of Alternative 2 to be slightly to moderately negative relative to Alternative 1.
4. In Section 6.5.2, please adjust the text to reflect that expected impacts to habitat from Alternative 2 are negative, but relative to Alternative 1, there may be positive impacts. The text should clearly indicate that this is a comparison between alternatives' impacts. This should be corrected in any other location it is referenced (i.e., Table 85), where the range of impacts to habitat is written as "Negligible to Low +."
5. In Section 6.6.1.3.6, please provide a bullet that summarizes the conclusion for the expected impacts of the preferred alternative relative to other alternatives in Framework 34.
6. Section 6.7.2.1.4, use term "interaction" instead of "take".
7. In Section 6.7.5.4, we suggest deleting the duplicative text on sea turtles and Atlantic sturgeon that is already provided in the Affected Environment section.
8. In Section 7.4, please update this section with updated text provided by PRD staff.
9. For Tables 84, 85, and 86, please ensure that impact determinations are consistent between sections.

My staff will be discussing these revisions with your staff this week. If you have questions on the comments provided, or on the review of Framework 34, please contact Travis Ford at (978) 281-9233. We appreciate your quick turnaround of this document so we can implement these measures as soon as possible.

Sincerely,

A handwritten signature in blue ink that reads "Michael Pentony".

Michael Pentony
Regional Administrator





New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116

Eric Reid, *Chair* | Thomas A. Nies, *Executive Director*

February 28, 2022

Mr. Jeffrey Pike
The Scallopers Campaign
203 Maryland Ave., NE
Washington, DC 20002

Dear Jeff,

Thank you for your recent letter. I appreciate your continued interest in management of the scallop fishery, but I would like to clarify the Council process as we scope for a possible Limited Access vessel leasing program.

The Council invites members of the public to send correspondence to Chairman Reid and me prior to most of our meetings, and welcome letters at any time. To be clear, these letters are addressed to the Council and not any subsidiary body, such as a Committee or Plan Development Team (PDT). Any correspondence submitted to the Council is routed by me to a Committee and/or the Council for further consideration. The Scallop PDT takes direction from the Scallop Committee. If the Committee would like the PDT to address issues that are related to agreed-upon work priorities, the Committee will task the PDT to do so. Correspondence is not routed directly to the PDT, nor will the PDT act absent direction from its Committee chair.

Your letter of February 17, 2022 suggests that the PDT should discuss power adjustments at their upcoming meeting on March 1, 2022. It is premature for the PDT to talk about leasing program specifics before the Council has committed to initiating an amendment. Over the spring and summer, my staff and the PDT will be focused on the development of the scoping document, planning of scoping meetings, and summarizing the comments we receive so that the Council will have the information it need to assess: 1) the need for a leasing program, and 2) what elements the leasing program should consider. Any comments you have that speak to these two questions should be communicated at scoping meetings and/or submitted to the Council in written form. The details of a leasing program, should the Council elect to develop one, would be responsive to the Council's goals and objectives for the action.

I would also caution against describing an earlier alternative's rationale as a "PDT view," as you do in your recent letter. The rationale for an alternative in a draft document is often developed by the Council, not the PDT. In this instance, this alternative was developed by a Committee member, and the rationale should not be characterized as a "PDT view." Indeed, attributing the rationale as a PDT view can lead to conflicting statements. For example, in the same document

an alternative for a fishing power adjustment is justified to keep the program conservation neutral: "Whether permits are within the same vessel replacement criteria or not, a fishing power adjustment would be applied to ensure that capacity does not increase as a result of stacking permits."

Thank you for considering these suggestions. Please contact me if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Nies".

Thomas A. Nies
Executive Director



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

February 17, 2022

Dear Tom,

The Scallop PDT is planning to discuss the issue of leasing in the Limited Access (LA) scallop fishery during its March 1 meeting. We wanted to provide the following material in advance, which we believe will contribute to a productive conversation.

One of the major pillars of the [Scallopers Campaign Principles](#) is that a leasing program should be “conservation neutral,” so that no company or owner could increase their harvesting capability as a result of leasing. Because we do not want a leasing program to change the basic fishing behavior of the fleet, one of our other major principles is maintaining the individual identity of each permit. By not allowing the mixing of leased DAS between permits and by requiring that vessel allocations be fished separately (maintaining the individual identity and allocation of each permit) from any leased allocation, we believe a conservation-neutral program is achievable.

The issue of conservation neutrality arose during the development of A15 when stacking was also being considered. To maintain conservation neutrality, the PDT developed a series of “power adjustments” that would be applied to DAS stacking should a smaller boat stack a permit onto a larger boat. Under A15, it was also envisioned that vessel operators could combine stacked DAS from two permits regardless of vessel size. Doing so would increase efficiency and provide those vessels significant operational advantages over non-stacked permits. The power adjustment was intended to reduce DAS to maintain conservation neutrality for stacked permits.

The A15 DEIS from June 2010 discusses permit stacking and how DAS stacking could be accomplished without necessitating a “power adjustment.”

3.3.2.2 Permits can only be stacked which meet replacement criteria

Permits could be stacked with no power adjustment if the baseline specifications of the permits involved meet the current vessel replacement criteria.

Rationale: *Current replacement criteria of 20/10/10/10 (HP/GT/NT/LOA) were designed to prevent vessel replacements from increasing fishing capability; therefore, if stacking were limited to vessels within the*

same specifications, then the risk of increasing fishing capability is reduced. This alternative is being considered if the Council does not want to consider a fishing power adjustment.

From experience, we know that the key to a successful leasing program is to “keep it simple,” which is why the Scallopers Campaign does not support the use of “power adjustments.” We believe a conservation-neutral leasing program is possible if DAS leasing is limited to vessels of the same or smaller baseline specifications. While this would limit some leasing options, it would still provide a great deal of flexibility to operators and keep the program simple.

The Scallopers Campaign is interested in whether the current PDT will take the same view as its predecessor. Would limiting DAS leasing to vessels of the same or smaller/lower baseline specification be an effective way of ensuring conservation neutrality and avoiding the need for power adjustments?

Thank you for considering this matter. We look forward to following the PDT’s deliberations on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Pike". The signature is written in a cursive, flowing style with some loops and flourishes.

Jeffrey Pike



New England Fishery Management Council

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February 15, 2022

Mr. Michael Pentony
Regional Administrator
Greater Atlantic Regional Fisheries Office
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Dear Mike:

Today, my staff electronically sent a preliminary submission draft of Framework 34 to the Scallop Fishery Management Plan (FMP), including the Environmental Assessment (EA) and associated appendices.

The measures proposed in Framework 34 adjust 2022 and 2023 (default) scallop fishery specifications and rotational management. Framework 34 also sets a total allowable landings limit for the Northern Gulf of Maine Management Area (NGOM) and incorporates other adjustments to the NGOM that have been approved through Amendment 21. This action includes measures that are designed reduce fishery impacts.

Upon review of the Framework 34 pre-submission document, please communicate any comments and/or need for further revisions directly to me in writing. To help expedite the review process, my staff would appreciate if requested changes could be listed and categorized as 'required' or 'suggested.' Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Nies". The signature is written in black ink and is positioned above the printed name.

Thomas A. Nies
Executive Director



January 11, 2021

Attention: Tom Nies or Eric Reid

I am writing to request a change in the allowable limit of live scallops Shoreward of the Demarc.

We have built a niche market for live, in shell scallops. This is a high end market that helps everyone in the community.

The quota managers use an 8.33 ratio to calculate live scallops to meat weight.

Using this math, we should be able to possess 4,998 lbs of live scallops for a 600 lb meat limit.

We are asking that the possession limit of live scallops be changed to 8.33 times the possession limit of meats at all times during a trip.

Thank you very much,

Jared Auerbach



Industry Funded Scallop Transplanting Update:

In 2020, research funded through donations from the fishing industry evaluated the use of bottom trawls for moving large volumes of sea scallops. We found that a two-panel box net was the most effective design for transplanting sea scallops. This net design transplanted 76% of the 550,338 sea scallops. These sea scallops were transplanted from the Nantucket Lightship South-Deep (NLS-Deep) to an area very low ambient sea scallop densities and closed to fishing (**Figure 1 and 2**). Within two weeks of the transplanting trips, a detailed HabCam survey was conducted at the site where the sea scallops were transplanted. In the images, we observed significantly higher densities of sea scallops nearest the transplant site (**Figure 3**). We surveyed the transplant site again in 2021 and found that the density in the transplant site had decreased (**Figure 4**).

While no sea scallops were tagged during the 2020 project, an analysis of the HabCam images provides confidence that the sea scallops observed in 2021 were the sea scallops transplanted in 2020. Intuitively, the 2020 post-transplanting density should increase with decreasing proximity to the drop locations. Between HabCam surveys, the transplanted sea scallops will have dispersed from the drop locations and the net density nearest the drop locations will decrease and increase further away from the drop locations. This pattern is observed when sea scallop densities in the 2020 images are compared to densities in nearest 2021 images (**Figures 5 and 6**). Confident that we were observing the transplanted sea scallops in the 2020 and 2021 images, we evaluated the shell height data to investigate growth. Relative to the sea scallops within the NLS-Deep, the sea scallops within the transplant site were larger (**Table 1 and Figure 7**). Based on the observed changes in shell height, the yield of the transplanted sea scallops has almost doubled and suggests that transplanting sea scallops from the NLS-Deep to shallower regions may improve the yield of these sea scallops (**Table 2**).

Additional sea scallop transplanting and tagging was planned before the 2021 HabCam survey but, we were not able to obtain an Exempted Fishing Permit (EFP) in time. Once we obtained the EFP in October 2021, a trip using the two-panel box net was conducted in November to deploy 3,000 of 10,000 tags that were purchased while waiting for the permit. During this trip, a single tow was made in the transplant site to collect shell height data and tag 1,500 sea scallops from the site. We then tagged 1,500 sea scallops from the NLS-Deep and transplanted an additional 350 bushels onto the site. More tags will be deployed in the upcoming months to improve the certainty about observed changes in sea scallop growth and density within the transplant site.

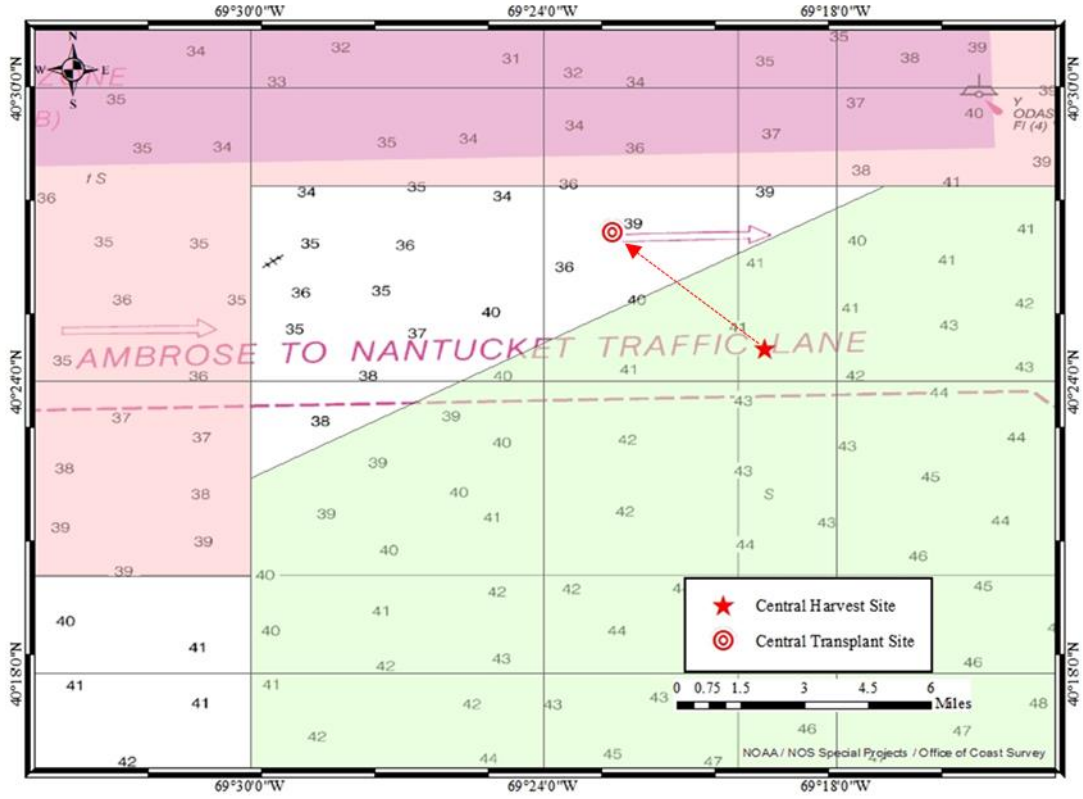


Figure 1: Map of the Harvest and Transplant Sites

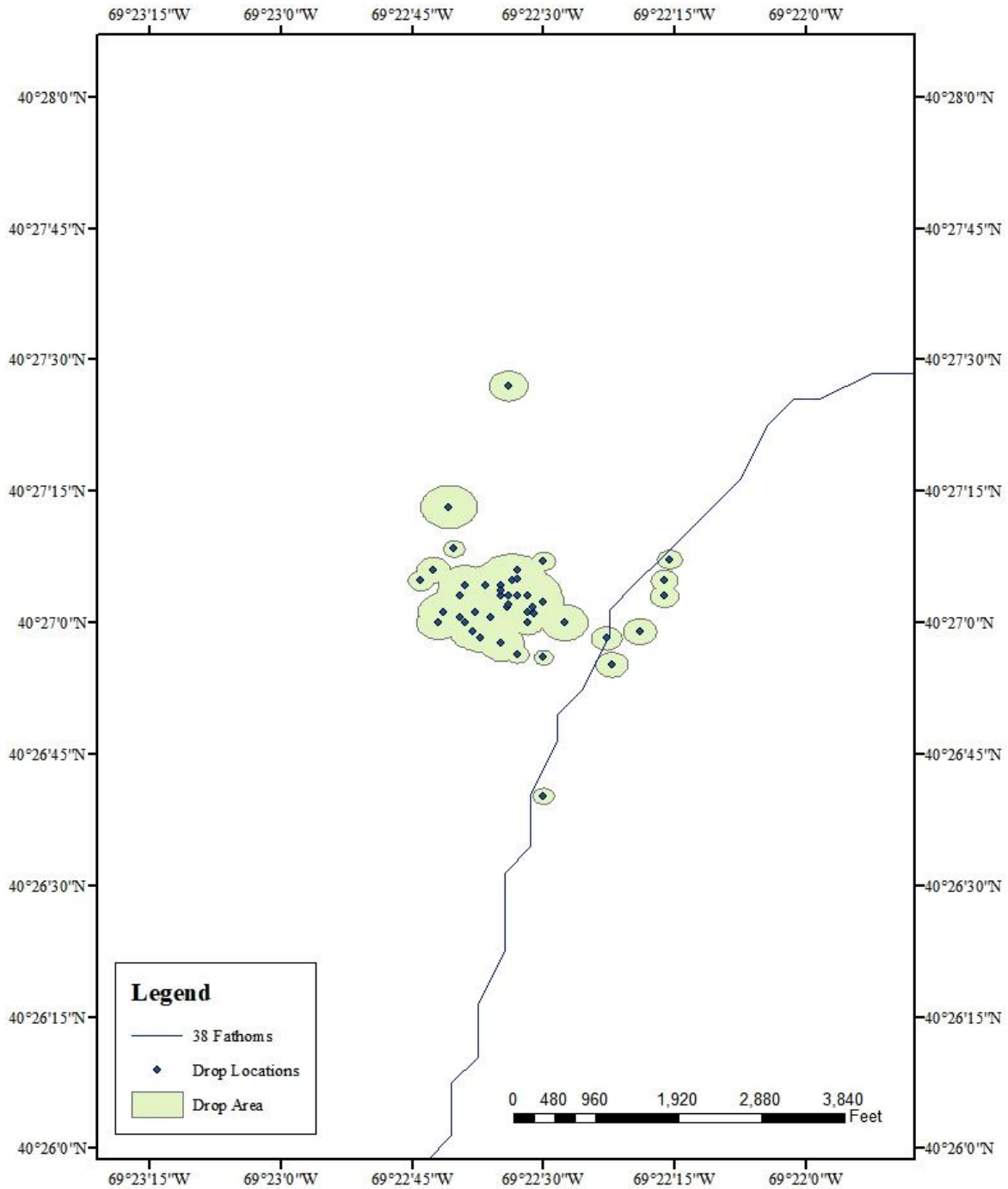


Figure 2: Location and approximate area occupied by the transplanted sea scallops.

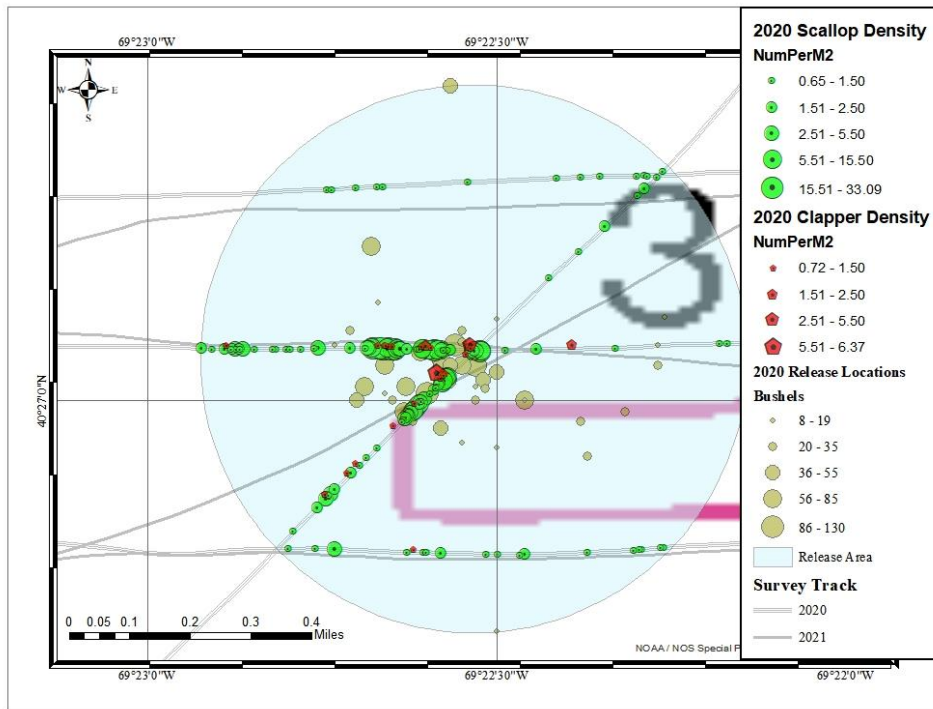


Figure 3: Sea scallop density within the transplant site observed in the 2020 HabCam images.

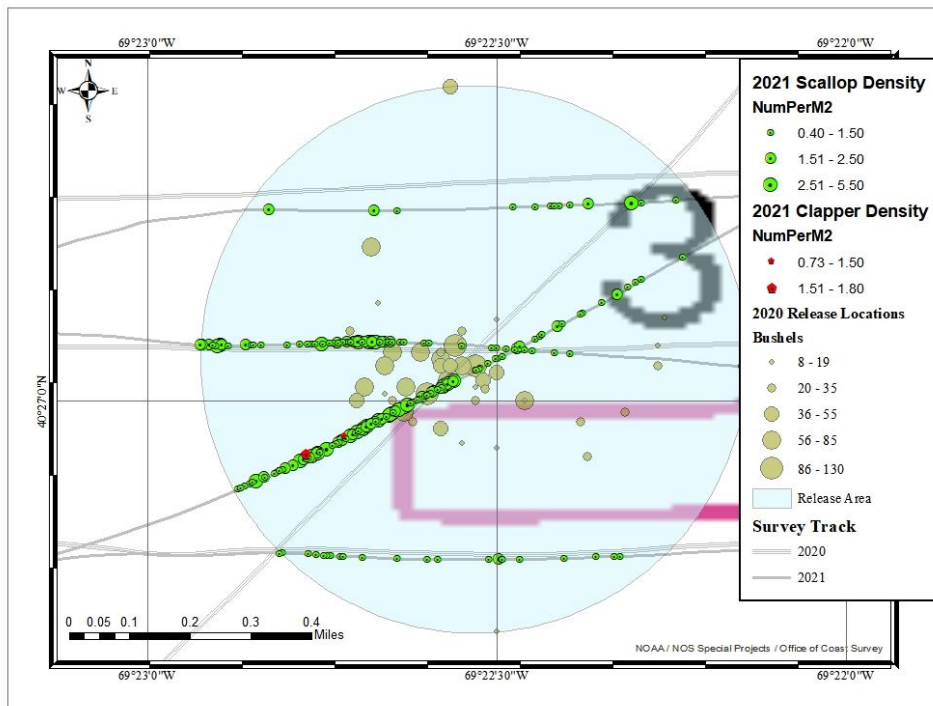


Figure 4: Sea scallop density within the transplant site observed in the 2021 HabCam images.

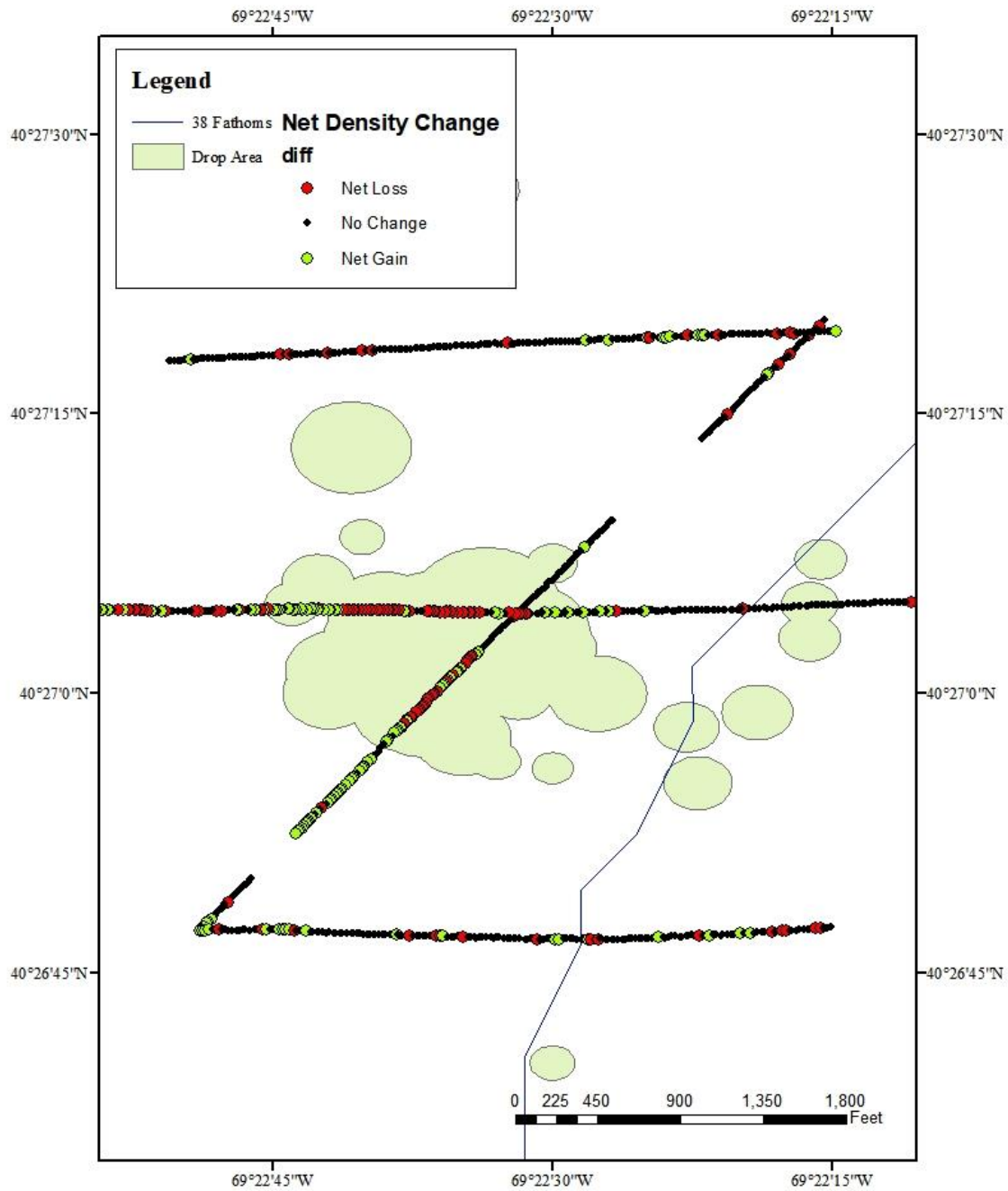


Figure 5: Relative change in density from 2020 to 2021 within the transplant site.

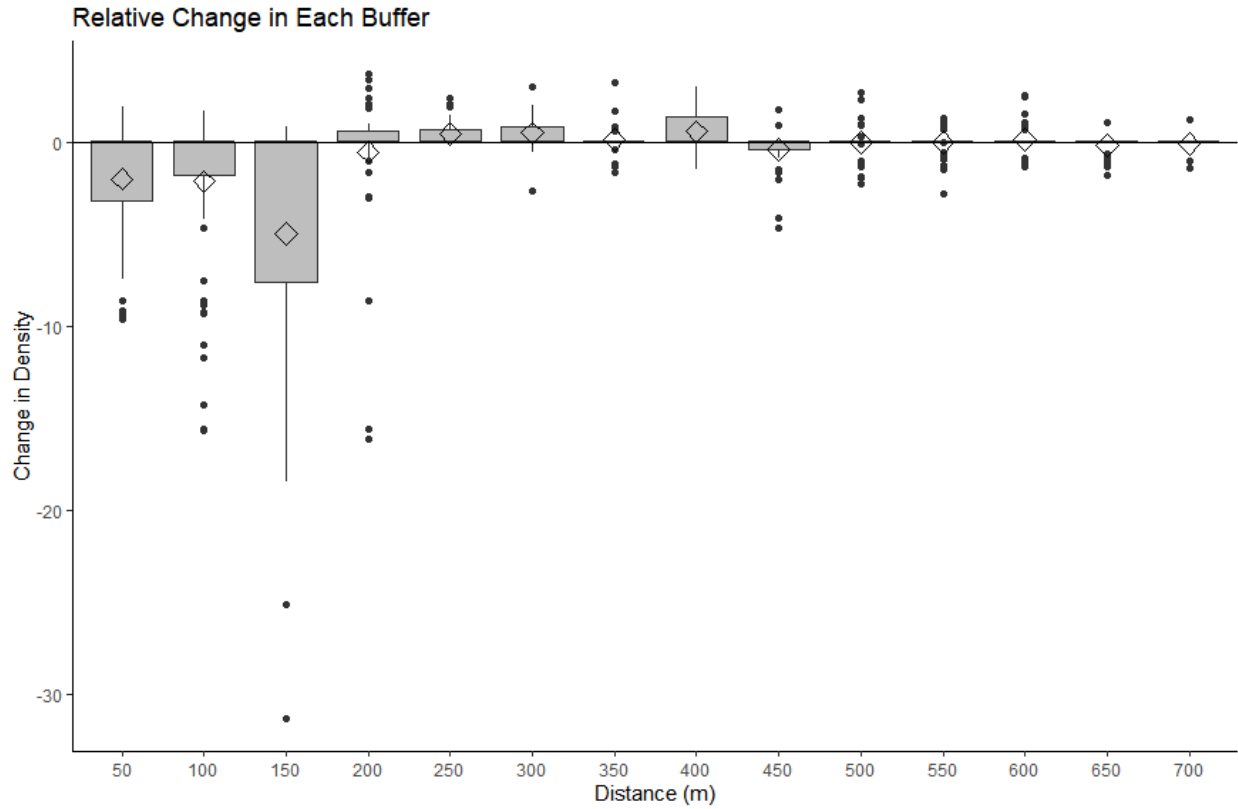


Figure 6: Relative in change in density by 50 meters intervals from the center of the transplant site.

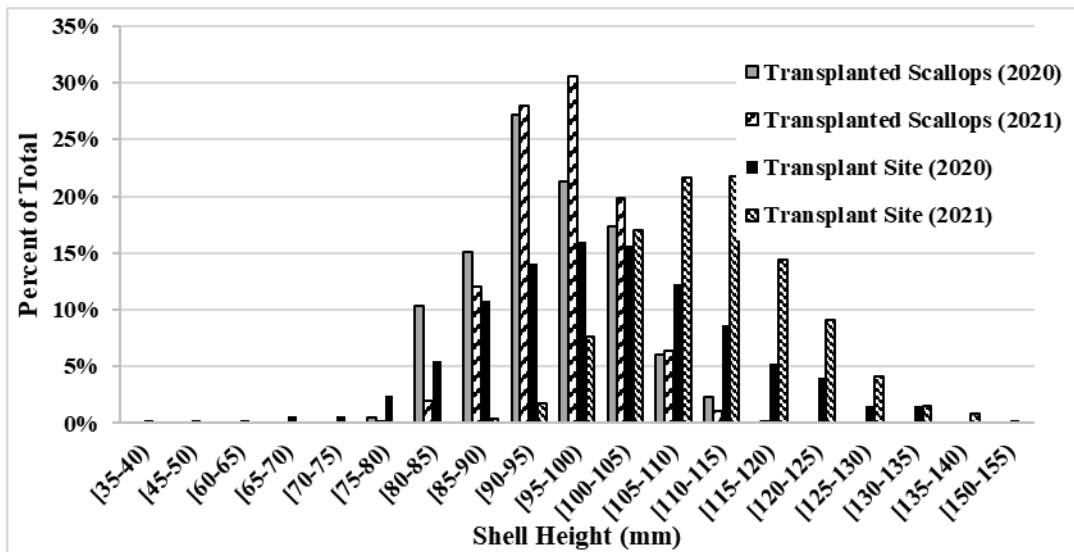


Figure 7: Sea scallop shell height distribution from the HabCam surveys and transplanting trips.



Table 1: Mean shell height observed in the transplant site and change in size between years.

	Avg. Shell Height (mm)	Date	Days After Release	% change
<i>2020 Release</i>	94.12	6/9/2020	0	
<i>2021 HabCam</i>	100.09	7/13/2021	400	6%
<i>2021 Transplant Site</i>	110.39	11/17/2021	515	10%

Table 2: Estimated change in meat yield based on observed growth within the transplant site.

	Harvest Site Shell Height (mm)	Harvest Site Meat Count	Transplant Site Shell Height (mm)	Transplant Site Meat Count
<i>2020</i>	94.12	~36	94.12	~36
<i>2021</i>	95.96	~33	110.39	~17
<i>% change</i>	2%		17%	