

# CORRESPONDENCE



## New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

April 20, 2020

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

Dear Mike:

On April 15, 2020, the Council passed the following motion:

*That the Council requests that NMFS implement the following measures through an emergency action due to the Covid-19 national emergency:*

- *All 2019 access area carryover pounds and unharvested RSA compensation pounds from FY 2019 will be available for harvest for 180 days in FY 2020.*
- *The NLS-West would remain an access area during FY 2020 for the extent of this emergency action.*
- *All LAGC IFQ vessels would be able to roll forward all FY 2019 unharvested quota for 180-days into FY2020.*

The motion ***carried*** on a roll call vote (15/2/0).

Consistent with the Council motion, I ask that an Emergency Action be adopted to allow Limited Access and Limited Access General Category IFQ vessels 180 days in FY 2020 to harvest their FY 2019 allocations. To facilitate this, I also ask that the NLS-West remain an access area during FY 2020 for the extent of this emergency action. Enclosure (1) provides additional rationale for this request.

Thank you for considering this request. Please feel free to call me with any questions.

Sincerely,

Thomas A. Nies  
Executive Director

**Enclosure (1)**  
**Emergency Action Request**  
**To**  
**Allow FY 2019 carryover of access area and IFQ allocations for 180 days in the**  
**FY 2020 Scallop Fishery**

The Council requests that all 2019 access area carryover pounds and unharvested RSA compensation pounds from FY 2019 will be available for harvest for an additional 180 days in FY 2020, consistent with the provisions of section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act. The Council also requests that the NLS-West remain an access area during FY 2020 for the extent of this emergency action and that all LAGC IFQ vessels would be able to roll forward all unharvested FY 2019 quota. The additional 180-days to fish FY 2019 allocations would start on the date that the emergency action is implemented by NMFS.

**Emergency Criteria**

National Marine Fisheries Service Procedure 01-101-07 identifies the criteria which must be met in order to justify an emergency action. The following discussion explains how this request meets the requirements of this instruction.

*1. Results from recent, unforeseen events or recently discovered circumstances.*

On January 30, 2020, the World Health Organization designated the 2019 novel Coronavirus outbreak as a public health emergency of international concern. On March 13, 2020 President Donald J. Trump declared a national emergency in response to the global spread of a novel coronavirus (SARS-CoV-2), and the outbreaks of the disease caused by this virus, COVID-19. Days earlier, state governors across the Greater Atlantic region had begun declaring states of emergency in recognition of the growing impacts and risks of COVID-19.

The Council believes these recent and unforeseen circumstances caused by the COVID-19 pandemic warrant emergency action by NMFS. The COVID-19 situation has evolved daily, and this uncertainty has hampered fishing businesses trying to harvest the remainder of their allocations. The pandemic has eroded demand globally, including the fresh market for scallops. If NMFS creates additional opportunity to harvest unutilized 2019 allocations, it will prevent significant economic loss and negative fishing community impacts. As noted at the April 2020 Council meeting, the scallop fishery has over 5 million pounds of its fishing year 2019 allocation to harvest.

*2. Presents serious conservation or management problems in the fishery.*

*3. Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance public notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process.*

The justification for meeting criteria 2 and 3 are related, and therefore presented together below. The Council believes that not taking immediate action (and bypassing the normal rulemaking) would lead to conservation and management problems in the fishery.

The Council's request involves allocations that were previously made through Framework Adjustment 30 to the FMP. The impacts of these allocations have been analyzed, and allowing fishermen an additional 180-days to harvest them is consistent with the principles of rotational management and generally speaking does not introduce new risks that have not been previously analyzed.

The scallop fishing year runs from April 1 to March 31—LA days-at-sea and LAGC IFQ quota allocations are available for harvest during this time period, and LA access area allocations are available an additional 60 days after the end of the fishing year. The start of the fishing year aligns closely with seasonal trends of increasing meat yield, which peak between the spring and mid-summer months depending on area. Fishing during this time of year is appealing to scallop fishermen because scallop meats are larger than in the fall and winter months. Focusing effort during this time of year reduces impacts to the scallop resource as overall fishing mortality is reduced. This is especially true for the Nantucket Lightship West area, an area that had roughly 3.2 million pounds of allocation remaining as of April 8, 2020. If the opportunity to harvest these allocations were extended through an Emergency Action, the scallop fishery could fish when meat yields are highest. This would mean that vessels would still have the opportunity to catch allocations while also having the lowest impact to the scallop resource.

As discussed by the Council on April 15, 2020, addressing this matter through a Council action would potentially make unfished FY 2019 access area allocations available to the fishery at some point in fall 2020. Fishing unharvested FY 2019 allocations during the fall months could have negative impacts on the scallop resource considering these months are known to have the lowest meat yields in comparison to the rest of the year. Fishing when meat yields are lower means catch rates will be reduced, translating to greater fishing mortality, greater area swept, and negative impacts to the scallop resource relative to if fishing occurred during the spring/summer months. This consideration is true for non-target stocks that the scallop fishery catches as bycatch as well.

Since there is natural variation in size and weight of scallop meats over the course of the year, it is imperative to maintain consistent opportunity to harvest scallops when yields are at their highest in the spring and summer. Without quick action, the Council believes the viability of many individual fishing operations would be impacted and the normal rulemaking process would delay action on a response until the fall of 2020.

### *Emergency Justification*

There are four situations that may justify an emergency action. This action is needed to primarily address economic and public health impacts, though there are social and ecological benefits to taking emergency action as well.

Ensuring that outstanding FY 2019 scallop fishery allocations can be harvested when meat yields are high during the summer months will prevent negative impacts to the scallop resource and other non-target stocks relative to if they were harvested during the fall. Emergency action by NMFS will help prevent significant economic losses to industry participants, shore side businesses, and fishing communities. It would also directly address adverse effects to health of participants in the scallop fishery because vessels will be afforded flexibility and will not feel the need to inhabit close quarters on a fishing vessel when the risk of exposure to Covid-19 remains heightened.



Department of Fisheries Oceanography  
School for Marine Science & Technology  
University of Massachusetts Dartmouth  
836 S. Rodney French Blvd., New Bedford, MA 02744  
Tel: (508) 910-6386  
Fax: (508) 999-8197

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

April 1, 2020

Dear Mr. Nies,

I am writing to inform you that I will be resigning from the Scallop Plan Development Team (PDT) effective immediately. I am leaving the University of Massachusetts Dartmouth School of Marine Science (SMAST) on May 1<sup>st</sup> to become the executive director of the Commercial Fisheries Research Foundation. Over the next month, I must focus on ensuring my work at SMAST is left in a manner so that it can be completed with the excellence associated with the school. Once I leave SMAST, my duties as executive director will be too diverse to dedicate the time needed to be an effective PDT member.

Thank you for the opportunity to serve on the Scallop PDT. Serving on the Scallop PDT, since March of 2017, has allowed me to form lasting relationships with your staff, other scientists, fishermen and a variety of other stakeholders. Further, I gained significant experience in stock assessment and fisheries management while strengthening my professional reputation. I hope that I gave the Scallop PDT as much as it gave me.

I also want to complement and thank your staff Jonathon Peros and Sam Asci. They are both extremely professional, organized, and thoughtful. Jonathon has the ability to communicate and organize the copious amount of information that is often shared with him shortly before meetings and to keep the PDT focused on the tasks at hand. It has been rewarding to see Sam grow from a student at SMAST to the insightful professional he is today.

Since 2004, the Commercial Fisheries Research Foundation has successfully executed a variety of major research and education programs to improve the management and sustainability of fisheries. As the executive director of this organization, I hope to increase my collaborations with the New England Fisheries Management Council by aligning the research we conduct with the council's research priorities. Specifically, I plan to grow the organization's contributions to Atlantic sea scallop and Atlantic herring research, my species of focus while at SMAST. I would be happy to have a conversation about this subject.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. David Bethoney'.

N. David Bethoney, PhD  
Research Assistant Professor  
University of Massachusetts Dartmouth  
School for Marine Science and Technology



March 25, 2020

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

Dear Administrator Oliver:

I am contacting you on behalf of the members of the American Scallop Association (“ASA”) regarding the request for emergency action under the Magnuson-Stevens Fishery Conservation and Management Act made by the Fisheries Survival Fund (“FSF”).

The members of the ASA support the FSF’s request for emergency action that the Nantucket Lightship-West (“NLS-W”) access area trip be extended an additional 60 days, for a total of 120 days, beyond the March 31<sup>st</sup> deadline, which would result in closure of the NLS-W on July 31, 2020. The ASA also supports measures that do not put additional pressure on harvesters or jeopardize the safety of the crews and the economics of scalloping.

The emergency action being sought is justified under the authority of the Magnuson-Stevens Fishery Conservation and Management Act in direct response to the global COVID-19 pandemic. Further, NMFS guidelines specifically list the following situations as justification for emergency action: (i) Economic - to prevent significant direct economic loss or to preserve a significant economic opportunity that otherwise might be foregone; or (ii) Social - to prevent significant community impacts; or (iii) Public health - to prevent significant adverse effects to health of participants in a fishery. (62 Fed. Reg. 44422 (August 21, 1997)).

The ASA respectfully requests that the above requested emergency action be taken and announced immediately to provide all those affected sufficient time to plan accordingly.

The ASA appreciates the opportunity to provide these comments and your consideration of the gravity of the situation in the face of the current unprecedented global pandemic. Please contact us if we may be of assistance.

Respectfully submitted,

John F. Whiteside, Jr.  
General Counsel  
American Scallop Association

Cc: Michael Pentony, Regional Administrator of GARFO  
Thomas Nies, Executive Director of NEFMC  
John Quinn, Chair of NEFMC

**American Scallop Association, Inc.**  
678 State Road  
Dartmouth, MA 02747  
(508)991-3333