

FINAL

FRAMEWORK ADJUSTMENT #7

to the

SEA SCALLOP FISHERY MANAGEMENT PLAN

AS AMENDED

December 13, 1995

Extension of Seven Member Crew Limit

Prepared by

New England Fishery Management Council

in consultation with

Mid-Atlantic Fishery Management Council

South Atlantic Fishery Management Council

National Marine Fisheries Service

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APPENDIX I, Public Comments: Danvers, MA - December 13, 1995
Danvers, MA - January 25, 1996
Written Public Comments

1.0 BACKGROUND

Amendment #4 to Fishery Management Plan for Atlantic Sea Scallops, Placopecten magellanicus (Gmelin) was approved on November 5, 1993 and implemented on March 1, 1994.

The objectives of the amendment are:

- 1) to restore adult stock abundance and age distribution;
- 2) to increase yield per recruit for each stock;
- 3) to evaluate plan research, development and enforcement costs; and
- 4) to minimize adverse environmental impacts on sea scallops.

Amendment #4 changed the management system from one using a meat count (size) control to one which uses both effort and size controls for all resource areas. In place of the meat count, the amendment controls total fishing effort through limited access and a schedule of reductions in allowable time at sea. Supplemental measures limit increases in vessel fishing power to control the amount of fishing pressure and to help control the size of scallops landed. These measures include gear restrictions, limits on the number of crew members and vessel restrictions. There are also catch limits for vessels not in the limited access fishery. The amendment includes a framework procedure for adjusting all the management measures in the plan.

2.0 PURPOSE AND NEED

2.1 Protection of small scallops

The Council and NMFS are concerned about the immediate protection of small sea scallops. This concern was reflected in the Regional Director's letter of approval which advised the Council that NMFS would carefully monitor the initial impact of the amendment on fishing mortality of small sea scallops. If fishing mortality increases beyond anticipated levels, the Council is expected to protect sea scallop stocks by immediately implementing adjustments under the framework procedures. Framework #1 was the Council's initial response and included a reduction in the maximum crew size, a full year reduction of days-at-sea, and several gear modifications. The framework was implemented on August 17, 1994.

In response to high levels of recruitment that had been documented in the Mid-Atlantic resource area (Regional Director's Status Report, January 1994) and concern over the effectiveness of the 3-1/4 inch ring size restriction in reducing fishing mortality on small scallops, the Council reduced the maximum crew limit from nine to seven. The reduction in crew size was scheduled to last only until December

31, 1994, however, because of concerns about safety aboard scallop vessels with seven men during the winter months. Nevertheless, the Scallop Advisory Committee has indicated that the seven man crew limit be continued indefinitely because 1) the safety issue is not a factor, many scallop vessels fished with seven or less crew the last two years (see Coast Guard statement 11/8/95), and 2) a seven man crew limit was looked on as a supplemental measure to the ring size of 3-1/2 inches, providing for the desired size selectivity in the commercial catch. The Council has determined to continue the seven man crew limit based on public comment during the two, required meetings under the framework adjustment process, as it did last year with Framework #4.

2.2 Publication of the action as a final rule

The Council considered the following factors and recommends that NMFS publish the adjustment as a final rule.

2.2.1 Timing of the Rule

Data availability or the need to have the measures in place for an entire harvesting season were not factors considered by the Council in its decision to recommend publishing the adjusted management measures as a final rule.

2.2.2 Opportunity for Public Comment

The Council has discussed and heard public comment on this issue for several years during the development of Amendment #4 to the Scallop FMP, as well as last year's framework adjustment (#4) which extended the 7-man crew limit until February 29, 1996. More recently, this problem has been discussed starting at the November meetings of the Scallop Industry Advisory and Oversight Committees. This information was forwarded to the Council on December 13, 1995, the first of the required public meetings under the framework process as published in 60 FR 239, pp. 64014-64015 on December 13, 1995. A draft document providing the rationale and analytical results of the proposed measure was published on January 5, 1996. This document was mailed to about 260 people on the Scallop Industry Advisory Committee and Interested Parties lists, as well as all of the limited access scallop permit holders (as many as 464 people). Copies were also provided to the NMFS Regional Office and the NMFS Northeast Fisheries Science Center. The second and final public meeting was the January 25-26, 1996 Council meeting. In addition to the Council's normal meeting announcements, public notice of this meeting was given in 61 FR , p. 2230 on January 25, 1996. Below is a list of recent meetings at which the issue has been or will be discussed:

Date	Meeting	Location
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Framework Adjustment #7 Atlantic Sea Scallop FMP		
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1/30/96

11/6/95	Scallop Oversight	E. Boston, MA
12/13/95	Council	Danvers, MA
1/24-25/96	Council	Danvers, MA

The Council informs the public of Committee meetings by a letter to all interested parties and advisors, including the press and industry associations. The Committee initiated this framework action at its meeting on November 6, 1995. The public is notified of all Council meetings by publication of a notice in the *Federal Register* and the agenda is mailed to approximately 1,500 interested parties including local and trade publications and industry associations.

2.4.3 Need for Immediate Resource Protection

The need for immediate protection of the resource by reducing the crew limit to seven is described in Section 3.1.1. Due to the current resource condition, it is critical that increased harvesting selectivity achieved by reducing the crew limit be continued as soon as possible. This timing consideration would also give fishermen as much time as possible to plan their fishing strategy during 1996. Most importantly, unnecessary delay in making this adjustment would significantly increase the danger to the new incoming year-class during early spring (February in the Mid-Atlantic area).

The Council strongly recommends that the proposed action be published as a final rule otherwise fishermen may hire additional crew for a month or so only to lay them off upon implementation. Not to implement the seven crew limit immediately may result in confusion and undue controversy, and would allow an unacceptable harvest of small scallops in the meantime.

2.4.4 Continuing Evaluation

The Council will continue to evaluate all of the proposed measures. The seven-man crew limit will automatically increase to nine with the implementation of Amendment #5, targeted for implementation on March 1, 1997, or unless the Council takes action to discontinue it through another framework. Additionally, the 3-1/2 inch ring size for scallop dredges will be implemented on January 1, 1996 with the purpose of shifting the size selectivity towards larger scallops.

Amendment #4 includes a pause in the mortality/effort reduction schedule during the third year (1996) to evaluate the FMP's progress in eliminating overfishing. Subsequently, the Council intends to recommend the necessary adjustments to achieve the FMP's objectives and eliminate overfishing by the seventh year. As part

of this process, the Council will consider the effectiveness of the seven-man crew limit and the 3-1/2 inch ring size with respect to size selectivity.

3.0 PROPOSED ACTION AND ALTERNATIVE

3.1 Proposed action - Maximum Crew Limit of Seven

All limited access vessels (dredge, trawl, and other) will be restricted to a maximum crew of seven including the captain while fishing for scallops until such time as the consolidation amendment, currently Amendment #5, is implemented or until the crew size is changed by another framework. In either case, the crew limit for limited access scallop vessels will revert to nine. The effectiveness and need for the proposed seven crew limit will be re-evaluated during the third-year review process to make future recommendations regarding crew size.

3.1.1 Rationale

Preliminary data from sea trials continue to indicate that the use of 3-1/4 inch rings in dredges rigged to comply with Amendment #4 management measures significantly reduces the efficiency of a scallop dredge in catching small scallops. These data also indicate, however, that the size selectivity may not be as great as anticipated. Brust, DuPaul and Kirkley (1995) found that, in the Mid-Atlantic area, it is reasonable to conclude that the 3-1/2 inch ring dredge would allow a greater percentage of scallops in a given year class to survive to five years of age and 100 mm (3.9 inches) in size (28-30 MPP) relative to the 3-1/4 inch ring dredge (pages 2-3). These measurements are not precise, however. The Scallop Committee reviewed these data and received a report by Dr. DuPaul on the effectiveness of 3-1/4 and 3-1/2 inch rings (Brust, DuPaul and Kirkley, June 1995). The risk of lower than expected size selectivity, the high recruitment levels in many Mid-Atlantic survey strata combined with low abundances of harvestable scallops elsewhere are of concern. Additionally, most of the scallop grounds in the Georges Bank area have been closed to scallop dredges through groundfish regulations, since December 1994. Therefore, crew size should continue to be limited to seven, rather than nine, to constrain shucking capacity and reduce fishing pressure on small scallops in the limited, remaining resource areas.

The expected impact of the proposed seven member crew limit was analyzed in Amendment #4 (p A-61). There are two possible ways for fishermen to respond to reduced crew limits, as explained in the Framework Adjustment #1 document. They can try to fish for larger scallops, and if catches are sufficient, land as much weight of scallop meats as with a crew of nine, or they can continue catching and processing fewer small scallops, or a combination of both. Either response effectively reduces the number of scallops harvested by a vessel per day at sea. In

order to shuck and land 1,000 pounds (meat weight) per day at sea, seven men need to process scallops that average 40 meats per pound or less. A crew of nine can process and land greater amounts with average counts as high as 70 meats per pound. Likewise, if a vessel caught and processed scallops that averaged 45 meats per pound, a crew of seven could only process about 900 pounds. A crew of nine, however, would be capable of shucking 1,500 pounds. Although there is some variation in these data, there is approximately a 40 percent reduction in the number of scallops processed and landed in either case. Under ideal conditions, this impact would translate into a 40 percent reduction in fishing mortality by that portion of the fleet using dredges and shucking at sea, during the time of year when they would have used nine crew.

The preferred alternative for a days at sea reduction schedule was analyzed with two possible gear restrictions: 1) 3" rings in the first two years, and 2) 3-1/4" rings in the first two years (the latter alternative was adopted). Following the second year, the minimum ring size increased automatically to 3-1/2 inches in both cases. The difference between the two fishing mortality schedules arose from the expected increase in size selectivity with the 3-1/4 inch ring dredge. Both cases assumed a crew limit of nine. Comparison of Tables 2 and 10 in Amendment #4 (pp 228 and 236) indicates that the expected size selectivity would allow fishing mortality to increase 0.13 (an increase of nine percent) if 3-1/4 inch rings, rather than 3 inch rings, were required. Preliminary data from sea trials show that the size selectivity of allowable dredge configurations under Amendment #4 is not significantly different from dredges with 3 inch rings. The Council therefore recommended a seven member crew limit to meet Amendment #4's original targets.

Other factors are of equal importance in achieving a sizable reduction in harvesting potential with a reduced crew limit. Discarding is an important source of mortality that is not accounted for in the expected 40 percent mortality reduction. There are three possible operational responses which affect discard mortality, as explained in Framework #1, to reduced crew limits and high concentrations of small scallops in the Mid-Atlantic regions. The most beneficial response that would minimize discard mortality is for fishermen to fish for larger scallops. Fortunately the developing scallop grades and price structure may increase the likelihood of this response. Some fishermen would continue to fish concentrations of small scallops using traditional fishing methods and tow durations. Crews in this case may incompletely process the first haul-back and discard the remainder when the scallops from a second haul-back are ready. Although these vessels would not retain many small scallops, more frequent dredging over the same grounds may increase mortality via repeated catch. Lastly, the most damaging response would be for fishermen to deck-load several haul-backs of small scallops, and anchor or begin drifting until the crew processes the scallops or product quality begins to deteriorate.

As a result, any remaining scallops would have been on deck for extended periods and would be discarded dead.

The current stock structure and distribution also calls for more than a nine percent reduction in fishing mortality. According to the Atlantic Sea Scallop Fishery Status Report (NMFS 1995), the abundance of harvestable size scallops on Georges Bank is at a record low. The index of pre-recruit scallops is likewise at a time series record low, with the exception of the southeastern part of Georges Bank. The Mid-Atlantic survey index values have recovered somewhat during 1993 and 1994. Low abundance of scallops on Georges Bank, and improving conditions in the Mid-Atlantic, resulted in a shift in effort from Georges Bank to the Mid-Atlantic in 1994. The closure of most scallop dredging grounds on Georges Bank during 1995 and indefinitely into the future have made this situation worse.

This heterogenous distribution of small scallops and the relative absence of large scallops is described in Framework #1. The current resource condition (few large scallops in alternative fishing areas and an area of high concentrations of small scallops) was one factor in the recommendation for a reduction in crew size. A 40 percent reduction in harvesting capability achieved by a crew limit of seven is warranted because the management measures may have fallen short of the first year's fishing mortality target by nine percent, because discard mortality of small scallops is not explicitly taken into account, and because of shortcomings in the unit stock model under this type of resource condition.

3.2 No Action.

No action would result in the crew size limit increasing to nine on March 1, 1996, with the subsequent increase in crew productivity and ability to land more small scallops.

4.0 Analysis of Impacts

4.1 Biologic response

To estimate the change in net benefits which would result from a seven member crew limit, the yields were forecast for a fifteen year period using the revised fishing mortality schedule and the updated pre-recruit abundance data in Framework #1. In summary, a seven member crew limit through December 31, 1994 was expected to increase yield per recruit which would be realized during 1995 and 1996 (Framework #1). Yields would increase 35 and 12 percent, respectively. Spawning stock biomass would be greatly enhanced, but only during 1994.

The proposed action would extend the seven member crew indefinitely into the future, however, the most realistic time-frame for analysis of this action is only until March 1, 1997. First, the Council is about to go to public hearings with Amendment #5 for the consolidation of DAS. The proposed action stipulates that the crew size will revert to nine automatically upon the implementation of Amendment #5, unless the seven member crew is continued on its own merits. The target implementation date for Amendment #5 is March 1, 1997. Second, the Council reserves the right, as with all Amendment #4 management measures, to change the crew size through a framework action. The 1996 fishing year is the third year of the mortality/effort reduction schedule under Amendment #4, during which a comprehensive review of the effectiveness of all of the management measures is required, including the crew size minimum. In either case, the continuation of the seven member crew beyond March 1, 1997 will be based on an evaluation of its effectiveness during the 1996 fishing year.

The wisdom of having the crew size remain at seven by default rather than continuing it through another framework next year is illustrated by the implementation of Framework #4. The framework was submitted in December 1994 as a proposed rule and was expected to be implemented by March 1995. The crew size has its greatest impact during the spring when new scallop year classes are coming into the commercial fishery. Framework #4, however, was not implemented until May of 1995 resulting in four month hiatus during which the crew size went up to nine and then reverted to seven. If the Council's evaluations during the analysis of Amendment #5 and the third year review indicate that the seven member crew should continue beyond March 1, 1997 then no such hiatus shall occur. If the evaluations, on the other hand, show that the crew size should revert to nine then there will be a smooth transition from seven for possibly a few months.

With an extension of the seven member crew limit until at least March 1997, similar results are expected as analyzed in Framework #1. Increased yield per recruit would occur during 1997 and 1998, but at the expense of some of the expected 35 percent increase (due to the seven-man crew in 1995) in 1996 landings. Spawning stock biomass would be incrementally enhanced during 1996 as well. If the crew limit reverts to nine and fishing mortality rises, the additional stock biomass will be harvested and spawning stock biomass will quickly fall to levels expected with no change in crew limits.

4.2 Economic response

As in Framework #1, the extension of the seven member crew limit is expected to reduce incrementally total landings of sea scallops, especially small sizes, and therefore increase in ex-vessel prices in 1996 compared to a crew limit of nine. This

dampens the first year decline in total fleet revenues. During 1997 and 1998, however, due to an expected increase in landings of sea scallops, ex-vessel revenues for a crew limit of seven will exceed the revenues compared to nine member crew option. After 1998, the projected difference in ex-vessel revenues are negligible.

The net national benefits of the proposed reduction in the crew limit are measured by the changes in the consumer and the producer surpluses compared to no action, and are again similar to those demonstrated in Framework #1. Over time, the net benefits accrue largely to the producers, although consumer surplus is also positive. Additionally, the increase in producer surplus contributes more to the increase in profits than to crew share.

4.3 Employment and safety

The proposed continuation of the crew limit reduces maximum potential employment in the fishery by as much as 928 people (2 people x 464 vessels, although only 254 vessels are full-time). The actual short-term impact, however, is likely to be much less. Due to poor resource conditions, vessels have begun using smaller crews because less shucking and onboard processing is needed (White 1994, see Appendix). Future employment demand, however, depends highly on the number of scallops caught per day fished and scallop prices. When there are high abundances of small scallops, vessels will use larger crews to shuck and process scallops if the price is sufficient to pay the larger crew.

Delaying mortality of small scallops by maintaining the crew limit (compared to taking no action) is expected to generate large increases in yield and revenue during 1995-97. In addition to the higher crew limit, these higher yields are expected to increase employment (at-sea, shore-side, and secondary) beyond levels which would have occurred during 1994-96 with a crew limit of nine.

The safety concerns about operating scallop dredge vessels with a crew of seven were brought to the Council's attention during the development of Framework #1. Most fishermen, some with large scallop vessels, stated that under most conditions a seven member crew was safe. They did say, however, that during more severe weather conditions they would prefer carrying a larger crew. The Council considered this information and limited the time when a seven member crew limit would be in effect to December 31, 1994, thereby allowing scallopers to use larger crews during the most hazardous part of the year. Since that time these advisors have indicated that continuing the seven member crew limit throughout 1995 was not problematic. Framework #4 extended the seven member crew limit throughout the winter of 1995-96. The primary purpose of receiving public comment during Framework #7 development is to determine if the seven member crew limit has been safe across the entire fleet.

Recognizing these concerns, the Council had sought additional information about the number of crew members aboard scallopers. Framework #1 indicated that the average casualty rates for the "low" (1-6), "medium" (7-9), and "high" (10+) categories was 1.8%, 1.5%, and 1.9%, respectively. Although these data could not be refined to include only casualties when crew was a factor, there is no indication in the aggregate rates that lower crew limits would result in higher casualty rates. The Coast Guard reported in writing to the Committee and the Council in November 1995 that there was no statistical relationship between the seven member crew limit and any increase in accidents aboard scallop vessels during 1994 and 1995 (see attached letter).

Enforcement of the crew limit has not been a problem because counting crew members is one of the normal boarding procedures for the U.S. Coast Guard.

5.0 APPLICABLE LAW

5.1 Magnuson Act - Consistency with National Standards

Section 301 of the FCMA requires that any regulation promulgated to implement any FMP or amendment shall be consistent with the seven national standards listed below. The measures and provisions of the Atlantic Sea Scallop Fishery Management Plan were deemed consistent with these standards when Amendment #4 was approved on November 5, 1993. The proposed adjustments are either regulatory corrections to reflect Council intent or are limited adjustments to preserve the FMPs size selectivity and fishing mortality schedule. As such, these adjustments fall within the scope of issues previously analyzed to determine consistency.

1. *Conservation and management measures shall prevent over-fishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.*

The proposed action is expected to lessen fishing mortality and improve size selectivity on the Georges Bank/Mid-Atlantic stocks.

2. *Conservation and management measures shall be based upon the best scientific information available.*

Information on the effect of crew size on shucking capacity may be found in Amendment #4. The number of vessels participating (Table 1) and the impacts expected are based on the most recent federal permit data (as of December 1995). Unfortunately, dealer reports and fisherman logbooks,

which would indicate the number of crew on each trip, are unavailable for 1994 and 1995. The Council is relying on its Scallop Advisory Committee and its public meeting process to receive expert input regarding the operational hazards and safety issues involved in the crew limit restriction.

3. *To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.*

The adjustment applies to the whole of the management unit.

4. *Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.*

The proposed crew limit applies to fishermen from all states and thus has no implications for the allocation of fishing privileges.

5. *Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.*

The proposed action is expected to increase the overall efficiency of the fleet as a whole by preventing overfishing.

6. *Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.*

The Council is making this adjustment to the regulations using the framework abbreviated rulemaking procedure established by Amendment #4 to the Atlantic sea scallop FMP. As such, the Council is acting in a manner which is fully consistent with the guidelines for this national standard as contained in Section 602 of 50 CFR.

7. *Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.*

The proposed action is expected to have no impact on the cost of fishing. Further, the seven member crew limit is a continuation of an existing management measure, and as such should not create any additional administrative costs.

Fishery Impact Statement

Section 303 (a) (9) of the Magnuson Act requires a fishery impact statement describing the likely effects of a plan or amendment on participants in the fishery and in other fisheries. Sections 4.2 and 5.3 of this document describe the impacts of the proposed action on the industry and the resource. The proposed action will have no direct impacts on other fisheries. To the extent that it enables the FMP to meet its objectives, it may decrease the dislocation of effort from the scallop fishery to other fisheries. For a discussion of the impacts of Amendment #4 on other fisheries, see Section VII.H (pp. 144-148) and other sections of the amendment document.

5.2 National Environmental Policy Act (NEPA)

The Council prepared an Environmental Assessment of Framework Adjustment #1 to the Atlantic sea scallop FMP (which included a maximum crew size of nine). For Amendment #4 implementing the scallop effort reduction program and other measures, the Council produced an Environmental Impact Statement which is contained in Volume I of the amendment document.

Amendment #4 thoroughly describes the environment that would be affected by scallop fishing. This adjustment will not significantly alter the natural or human environment and the environmental consequences of the proposed adjustment fall within the scope of those analyzed in Amendment #4.

The measure to continue the crew limit at seven will have positive impacts on the natural environment (Section 4.1) by reducing the ability of fishermen to land small scallops and therefore it will decrease fishing mortality. The impacts on the human environment are evaluated in Sections 4.2 and 4.3 and are not significant beyond the extent indicated in Amendment #4. The measure does not require vessel owners and operators to make additional expenditures to comply with the regulations.

5.2.1 Environmental Assessment

The purpose and need for the proposed action are discussed in Section 2.1. The proposed action and alternatives, including the no-action alternative, are discussed in Section 3.0. Further detail on the affected environment can be found in Section

VI of Amendment #4. The environmental consequences are discussed in Section 4.0 of this document. Based on this analysis, the Council finds that the proposed action will have no significant impact on the environment.

5.2.2 Finding of no significant environmental impact (FONSI)

NOAA Administrative Order 216-6 provides guidance for the determination of significance of the impacts of fishery management plans and amendments. The five criteria to be considered are addressed below:

- 1) *Can the proposed action be reasonably expected to jeopardize the long-term productive capability of any stocks that may be affected by the action?*

The proposed action is being taken to reduce fishing mortality during the first few years of the plan, and to assure that the size selectivity goals are met.

- 2) *Can the proposed action be reasonably expected to allow substantial damage to the ocean and coastal habitats?*

The proposed action is not expected to impact coastal or ocean habitat. The seven member crew limit helps to minimize the practice of "deckloading" with its subsequent increase in discard mortality.

- 3) *Can the proposed action be reasonably expected to have an adverse impact on public health or safety?*

The measure is not expected to have any impact on public health. The primary purpose of the public meeting and comment period required under framework adjustments is to solicit input regarding the safety of limited crew size. The proposed action is not expected to significantly affect safety aboard scallop vessels.

- 4) *Can the proposed action be reasonably expected to have an adverse effect on endangered, threatened species or a marine mammal population?*

The NMFS Biological Opinion for Amendment #4, issued under authority of Section 7 (a) (2) of the Endangered Species Act indicated that the "fishing operations conducted under the amended FMP are not likely to adversely impact threatened or endangered species under the jurisdiction of NMFS." The proposed measure does not change that finding.

- 5) *Can the proposed action be reasonably expected to result in the cumulative adverse effects that could have a substantial effect on the target resource species or any related stocks that may be affected?*

The proposed action is part of the overall sea scallop management program implemented through Amendment #4. As such the cumulative effect is expected to be consistent with that of the Atlantic sea scallop FMP. The proposed action is not expected to affect other stocks. The extension of the seven member crew limit will enhance the resource recovery of the Georges Bank/Mid-Atlantic stocks.

The guidelines on the determination of significance also identify two other factors to be considered: degree of controversy and socio-economic effects. Since the proposed action is an adjustment to an existing exemption program, the Council expects no significant socio-economic impacts. The Council also has determined that the proposal is not controversial since there has been no substantial dispute on the environmental effects of the proposed action. Based on this guidance and the evaluation of the preceding criteria, the Council proposes a finding of no significant impact.

FONSI statement: In view of the analysis presented in this document and in the DSEIS for Amendment #4 to the Atlantic sea scallop Fishery Management Plan, the proposed action will not significantly affect the quality of the human environment with specific reference to the criteria contained in NDM 02-10 implementing the National Environmental Policy Act. Accordingly, the preparation of a Supplemental Environmental Impact Statement for this proposed action is not necessary.

Assistant Administrator
for Fisheries, NOAA

Date

5.3 Regulatory Impact Review (Regulatory Flexibility Act and Executive Order 12866)

This section provides the information necessary for the Secretary of Commerce to address the requirements of Executive Order 12866 and the Regulatory Flexibility Act. The purpose and need for management (statement of the problem) are described in Section 2.0 of this document. The alternative management measures of the proposed regulatory action are described in Section 3.0. The economic impact analysis is in Section 4.2 and is summarized below under the discussion of how the

proposed action is characterized under Executive Order 12866 and the Regulatory Flexibility Act.

5.3.1 Executive Order 12866

The proposed action does not constitute a significant regulatory action under Executive Order 12866. (1) As stated in section 4.2, the management proposals will increase the net present value of consumer's and producer's surplus. However, the proposed action will not have an annual effect on the economy of more than \$100 million. (2) The proposed actions will not adversely affect in a material way the economy, productivity, competition and jobs. There may be a short term (1996) reduction in potential employment, but actual employment is unlikely to decline under current resource conditions. Any decline would be mitigated by the long term gains. (3) It will not affect competition, jobs, the environment, public health or safety, or state, local or tribal governments and communities. Public input and the analysis in the Framework #1 document have indicated that safety concerns are minimal. (4) The proposed action will not create an inconsistency or otherwise interfere with an action taken or planned by another agency. No other agency regulates fishing for sea scallops in the EEZ. (5) The proposed action will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of their recipients. (6) The proposed action does not raise novel legal or policy issues. Regulations regarding crew size limitations are part of Amendment #4.

5.3.2 Regulatory Flexibility Act

The Atlantic sea scallop fishing industry is composed primarily of small business entities operating in the New England and Mid-Atlantic areas as far south as North Carolina. The number of operating units (vessels), by permit category, is given in Table 1. There are also *four* full-time and *six* part-time permits issued under the small dredge exemption program (CFR §650.21(e)). Businesses that process and market sea scallops will not be affected by the proposed action. The Council has consulted its industry advisors and listened to public comment to ensure that no groups within the industry are unduly impacted.

The proposed action would have no measurable first-year impact on small business entities because it does not change prevailing crew sizes but instead re-implements the seven-person limit until the implementation of Amendment #5, expected March 1, 1997, or until further framework adjustment. The seven-person limit on crew size was in effect for more than four months from August 17 through December 31, 1994, and for almost ten months from May 1995 through February 1996. Prior to and during this limit, the Scallop Industry Advisory Committee informed the Council that almost all vessels were fishing with crews numbering less than seven persons because of the low abundance of scallops. This practice was documented by the U.S. Coast Guard as a result of its calls for assistance from scallop vessels during 1993 (Framework Adjustment #1 document pp. 11-12). There is no information to indicate that this situation will change before March 1997.

The analysis of the long-term impacts of the proposed action (see the Framework Adjustment #1 document) concluded that the proposed action is expected to increase gross revenues, industry profits, and overall revenues available for crew shares by the second year after implementation. There are no compliance costs associated with crew limits. The proposed action, therefore, will not increase total costs of production by more than five percent as a result of an increase in compliance costs. For the same reason it will not increase compliance costs as a percent of sales for any business operations. Finally, the proposed action is unlikely to force vessels to cease business operations because many vessels have carried smaller crews in the past.

The proposed action, therefore, will not have a significant economic impact on a substantial number of small business entities and a Regulatory Flexibility Analysis is not required.

5.4 Endangered Species Act

See section XI, Volume I of Amendment #4 to the Atlantic Sea Scallop FMP. The Council finds no cause to change its earlier findings with respect to the Endangered Species Act requirements.

5.5 Coastal Zone Management Act

Upon the submission of Amendment #4, the Council conducted a review of the FMP for its consistency with the coastal zone management plans of the affected states and all the concerned states concurred with the Council's consistency determination. See section X, Volume I of Amendment #4 to the Atlantic Sea Scallop FMP for the Council's consistency determination. The response letters from the states are on file at the Council office. The Council has determined that the proposed action is within the scope of measures already reviewed and that the consistency determination done for Amendment #4 is sufficient. The affected coastal states have been informed of this decision. The states' response letters to this determination concerning Framework #7 will be on file at the Council office.

5.6 Paperwork Reduction Act

Copies of the PRA for Amendment #4 to the Atlantic Sea Scallop FMP are available from the NMFS Regional Office. The burden-hour estimates are detailed in the Classification section of the Federal Register notice of the final rule implementing the amendment (Federal Register, vol. 59, no. 12, pp. 2762-2763, January 19, 1994).

The proposed action does not include any additional paperwork or reporting requirements.

5.7 Marine Mammal Protection Act

See section XII, Volume I of Amendment #4 to the Atlantic Sea Scallop FMP. The Council finds no cause to change its earlier findings with respect to the Marine Mammal Protection Act requirements.

6.0 REFERENCES CITED

NMFS. 1995. Status of the Fishery Resources off the Northeastern United States for 1994. Woods Hole, MA.

Brust, DuPaul and Kirkley. 1995. Comparative Efficiency and Selectivity of 3.25" and 3.50" Ring Scallop Dredges. VIMS Resource Report No. 95-6.

First District Comments on Scallop Crew Size Regulations. U. S. Coast Guard, November 8, 1995.

7.0 TABLES

Table 1. Potential (qualified vessels) and actual (permits issued) number of small entities within the Atlantic sea scallop fishery by permit category.				
	General Access	Limited Access		
		Full-time	Part-time	Occasional
Qualified vessels		249	120	95
Permits issued(10/94)	1837	240(245)	48(53)	30
Permits issued(12/95)	1777	206(210)	40(46)	22

8.0 Amendatory Language

The paragraph on crew limits in §821 is amended as follows:

Crew size: All limited access vessels (dredge, trawl, and other) will be restricted to a maximum crew of *seven until the implementation of Amendment #5 for the consolidation of DAS, or further framework adjustment, when it will rise to nine.* Qualifying vessels that are permitted under the 10.5 feet dredge exception will be restricted to a maximum crew size of five. This limitation includes the captain and all personnel aboard the vessel while fishing, except persons authorized by the Regional Director. Limited access vessels do not have restrictions on crew size while fishing for other species and possessing less than 400 pounds (50 U.S. bushels) of scallops. This measure is intended to help limit increases in fishing power which would tend to mitigate fishing effort reductions.

9.0 Response to Public Comments

1. Seven men is unsafe. NMFS should be held accountable for injuries and collisions that result due to this restriction.

Most of the Council's industry advisors have repeatedly supported the seven person crew. The purpose of the seven person crew limit is to reduce productivity, particularly of small scallops. It is the captains responsibility to operate his vessel safely. Captains of crews of nine or more persons have been known to overwork their crews to increase productivity. This an unsafe practice is not due to the crew limit *per se*. Furthermore, all limited access vessels are under a days-at-sea reduction program which should minimize the incentive to be at sea during poor, winter weather. The First Coast Guard District reported (November 8, 1995) that there is no statistical evidence that the number of personnel casualties in the First Coast Guard District has increased due to the crew size limit. Many scallop vessels continue to operate with less than seven men.

2. The seven man crew limit discriminates against those who have larger more expensive vessels. Crew size limits, if required, should be based on horse power, vessel length, tonnage, size of gear fished and so on.

The Council's policy is to treat all vessels, within the full-time, part-time and occasional categories, equally in terms of days-at-sea. The seven person crew is based on the typical full-time vessel which includes the largest, most expensive vessels. Vessels participating in the small dredge exemption, which are limited to one-10.5 foot dredge, are restricted to a five (5) person crew at all times.

3. Wheelhouses are unmanned during haulbacks, because of the seven man crew limit.

Advisors have reported that unmanned wheelhouses are a practice found regardless of crew size, in both dredges and groundfish trawls. The First Coast Guard District reported (November 8, 1995) that this is a common practice among many fishing vessel operators and not unique to the scallop fishery

APPENDIX I

Public Comments on Framework #7

Atlantic Sea Scallop FMP

10.1 Public Comments, Danvers, MA - December 13, 1995

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

MINUTES

Kings Grant Inn, Danvers, MA
December 13, 1995

DRAFT

Wednesday, December 13, 1995

Scallop Committee Report

Mr. Brancaleone: The way I have decided to deal with scallops is in the same way I dealt with it when I was Chairman of the Groundfish Committee. Lou Goodreau is going to give the Scallop Committee report and any motions that have to be made, I will make them on behalf of the Committee, if it is necessary, to let you know where we are at with scallops.

Mr. Goodreau: Scallops are under Tab 4 and if you look on the agenda for the Council meeting under the Sea Scallop Report, you will see that the first thing we need to do is an initial action on a framework adjustment to extend the 7-man crew size which ends on March 1, 1996. It would go up to a 9-man crew on that date. The second thing is the possible approval of Draft Amendment 6 which is the Westport Scallop proposal to establish temporary experimental use 10 miles south of Martha's Vineyard. Approval of a draft amendment would mean that we would set up a public hearing for that purpose. Finally, just some reporting on where we are in the discussions in the four or five meetings we have had on Amendment 5, the consolidation amendment.

To start off I will review what we have under the extension of the 7-man crew and you should all have a copy of last year's extension. Originally the 7-man crew came out of Framework 1 and it is all laid out in this document and in that document. I didn't have time to redo it so I had copies of the extension that we did last December, which got it to this coming February. Largely the rationale and the analysis of it are very similar, one difference would be that the last two times we instituted the 7-man crew, it was for a finite period of about one year. For instance, this extension wasn't implemented until May so it is really from May to February and when we were analyzing it a year ago, you were looking at it as a one year extension. If you look at the motion for this item, which is found on the November 6 motions sheet, you will see that Number 5 states that the committee's recommendation is "to re-implement the 7-man crew maximum until such time as a consolidation amendment is implemented or the Council takes other action under a framework provision." That's different from these two actions on the 7-man crew. In the last two years they have sort of been sunsetted, they ended at a year unless the Council did what it is doing now which is to extend it. In this case it would go on until there was another amendment or the Council takes further action. So there

would be some difference in an analysis, but not really too much. This will be the first public meeting to receive comment, so after I run through this document, what it said and why we did it, we will want to open the floor to public comments and then finish that off. Then the next meeting in January, we will have our second meeting where we can submit it to NMFS.

On that Framework 4, this one will be Framework 7, it will be the same thing "to extend the 7-man crew limit." Background, purpose and need is pretty much the same as it is described there. The reasons that are given for this 7-man crew really start in Section 3.1.1. which is on page 4. Under Section 3.1.1. there are about two or three pages of rationale and basically there are three major reasons given. One is that at that time we had 3-1/4" rings, going to 3-1/2", and it wasn't so much the difference from 3-1/4" to 3-1/2" that we were trying to make up for with a 7-man crew as much as at this point last year, December, 1994, we had some preliminary information from Kirkley and DuPaul that the 3-1/4" ring configuration that was being used in the industry wasn't doing as much as it was expected to do. When they did their experiments with it they came up with some certain measures of what that meant to size selectivity and in practice that wasn't really happening. So I would say that this time around, although when this action would be implemented, we would be at 3-1/2" rings and we would have the same situation, the same argument that the 3-1/2" rings and all the other gear configurations probably aren't going to do right up to what they are scientifically expected to do. So this is sort of an insurance policy to do the same thing, to preserve small scallops.

The second major item is discarding, and it is argued that with larger crews there will be more incentive to go for smaller scallops and there will be more discarding. That argument would still hold.

Finally, the argument is made that in the situation we started with, Amendment 4, we had been in a very good situation for five or six years with very good recruitment coming in to almost all the resource areas and then as we began Amendment 4, we had poor recruitment everywhere other than a few areas. This describes the situation at the end of 1994 and it is pretty much the same this year. There is basically poor recruitment everywhere, particularly on Georges Bank, but there is good recruitment in a couple of the areas. So as it is described in here, what that means is that people will focus on those areas and there will be more incentive to use as much crew as possible because that is the majority of the resource that you are looking at and tends to hold this activity back. So the three major reasons why we wanted to extend the 7-man crew still exists.

Other than that, a lot of the other stuff is simply going through the EIS material, looking at the other laws and so on, and that pretty much will remain the same. In here it said that what we were looking for at these public meetings was information on the safety factor. Last year we received mostly positive comments on the fact that there were no

safety problems and that we should continue it. In here, today and next month, I think that the primary thing we are looking for from the public are comments on the safety issue involved with the 7-man crew.

Mr. Brancaleone: Has this been published in the *Federal Register*?

Mr. Goodreau: No, this is last years. This is just a draft, it isn't Framework 7, this is just what Framework 7 looks like. We just basically changed the dates.

Mr. Brancaleone: So we need a motion to initiate a framework?

Mr. Goodreau: Right.

Mr. Brancaleone moved and Mr. Nelson seconded:

that the Council initiate a framework to re-implement the 7-man crew maximum until such time as the consolidation amendment is implemented or until the crew size is changed by another framework.

Mr. Brancaleone: Discussion?

Dr. Rosenberg: I have two concerns about this, one of which Lou addressed and that is that we would like to see you address the issue of safety in the framework document as thoroughly as you can. We have received some correspondence on that point so I hope the final framework document will look into that in more detail to address if there are safety concerns with the reduction in crew size.

The second concern is a timing, once again. I think that it is very unlikely that this will be implementable by the end of the current 7-man crew (March 1, 1996), and there probably will be a period when it will go back to nine and then be reduced back down to seven again to everyone's confusion because this is coming at a late date. I am almost sure that that is the case and the Council should be aware of that. I think we would have about three weeks to process this assuming we get it almost immediately after the next Council meeting. Given the other things that you are giving us and the requirement to notify people that it is going to be in effect, then that means that there probably will be a hiatus in implementation.

Mr. Brancaleone: On the issue of safety, it is fortunate that we have LCDR Bruzinski here because he was at the last scallop meeting and on behalf of the Coast Guard, they have investigated it and found that there wasn't a safety issue.

Dr. Rosenberg: I think that that's important to include in the write-up because, as I say, we have received a number of letters pointing out a safety concern that people have had

on this point.

Mr. Martin: Just on the question of timing, was the public given notice that this is the first meeting of a framework or is this the first? Did the committee initiate the framework so that there was public notice that this was the first framework meeting?

Dr. Rosenberg: It was in the *Federal Register* notice as the first meeting.

Mr. Martin: Then theoretically if you have the document completed and you vote to go forward with this at the next meeting in January, it could be published as a final rule although that is an extremely tight time frame and there is still a chance for a hiatus there.

Mr. Brancaleone: Further discussion on the motion?

Public Comments

Mr. Cohen: I think it is appropriate for the public to make comment for the public record because it is a framework measure that you want to have comment on the record in favor or against the framework measure and I would make comment on behalf of myself that we are definitely in favor of the framework plan. It was also discussed by the industry advisors and the majority of them are in favor of it and obviously the committee was also. Concerning the two issues that were raised, one having to deal with safety, besides the Coast Guard, I can anecdotally report that boats that I own right now are fishing with only four men, we feel it is a safe practice and our insurance company is aware of it and we are able to do so. I don't think this is a safety issue, and if it would help you we could put that in writing for the Council.

Concerning the issue that Dr. Rosenberg raised which is the potential hiatus, I would like to see, if possible, the document predrafted by the staff of the Council and try to work with NMFS to make certain that there is not a hiatus even if it published as a rule because I guess the time frame is March 1st, is that correct? The reason for this is that March 1st is the new fishing year and it is also the time when the youngest scallops are their most plentiful. So it is the time of the year when the fishery is its most effective. One of the reasons for having a 7-man crew is to try to keep the harvest down on juvenile scallops, especially when you look at the potential of "do we have some net scallopers in the fleet that are allowed to fish who can fish more aggressively on juvenile scallops." If there is a hiatus for the few months of time when the fishery just begins, they will have the most decimating effect on the resource and since the whole purpose of this is to stop that, clearly if it is implemented later in the season, as late as now, most boats are fishing right now with less than seven men anyway. It is only in March, April, May and June where you are going to get the most effective results in this current year. Therefore, I would strongly recommend that NMFS try to make a commitment and the

Council staff try to make a commitment that that not happen.

I don't know if that is enough for the record or if I can answer any questions or offer any more information in favor of it, I would be happy to.

Mr. Starvish: I too would like on public record to vote strongly in favor of the 7-man crew and Danny said everything I would like to say. You've got to have it in March and if we don't have it by March 1st, you are missing the whole idea of the 7-men.

Mr. Nickerson: The Offshore Mariner's Association supports the 7-man crew or less because most of our boats are operating that way. We've got good agreements with the insurance company and the safety record has been good as substantiated by Captain Paul Howard (USCG). Even though I don't like to see the boat going along without anybody in the pilot house, I must say that we have been very successful and as Danny says we have some boats going out there with as little as four men, which I think is crazy, and very much more dangerous than the 7-man crew. We support it in its entirety and we hope that somehow you can get it arranged so there is no higher test between the groups for time to implement it.

Dr. Rosenberg: Let me make clear, it is not because the National Marine Fisheries Service desires to have a hiatus, it is that just given that late date as opposed to having submitted this a few months ago, I think it is almost impossible to have it in place by March 1. So I am giving you that guidance so that you realize that it is unlikely. It is not because we don't feel like it or that the people on my staff or the Washington staff will not try to move it as quickly as they can, I am not even sure it can be published as a final rule at that point, so there may have to be a proposed rule period anyway. If you do this thing on this short a time frame, just like with the harbor porpoise framework I talked about earlier, there is a high likelihood that it will not be possible to have it in place by March 1st. That is not necessarily within my control; it is not necessarily within the National Marine Fisheries Service headquarters control because it has to go up through the Department of Commerce. So we will do what we can but don't expect that it will happen as of March 1st.

Mr. Anderson: I am not real familiar with the process on what happens once it gets turned over to the Service, but last fall when there was a time/area closure in reference to the gillnet fishery in the Z-band, wasn't that an accelerated process with very limited public comment after the conclusion of the second public hearing?

Dr. Rosenberg: Yes, there was but it had been discussed for a longer period. You can well imagine that if I asked them to accelerate every action they have, the response I would get. So I can do that once but I can't do it for every action. We have just talked about doing it for another framework on harbor porpoise and now this one, which has been pending for a year and everybody knew was coming on scallops, so I just can't ask

people to accelerate every action because the Department of Commerce and NOAA will tell me to get lost. They won't accelerate every action. All the other regions are doing the same thing, they all want their stuff done yesterday but it just won't happen. I am not trying to put up road blocks, but that's the way that it actually works.

Mr. Brancaleone: Not to be disrespectful, but I have heard two people within the Service begging us for Amendment 7 to be in place by March 1st.

Mr. Coates: I just note that this issue has been discussed, it has been discussed for six years now and it is a previous action that was taken so I don't think that it needs as substantive comment as some people might perceive and I would urge the Service to move as timely as possible to get this thing into place.

Mr. Kendall: If there is going to be a lapse between this framework and the next one that will specify the 7-man maximum, I think that maybe you ought to be specific as to what it is going to revert to, to the 9-man crew and not any higher like some boats tried to confuse the issue with last year.

Mr. Brancaleone: Gene says that it reverts to 9-men. Further discussion on this motion?

The motion carried on a voice vote with Ms. Stevenson voting no.

End of Public Comments

10.2 Public Comments, Danvers, MA - January 25, 1996

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

MINUTES

Kings Grant Inn, Danvers, MA
January 25, 1996

DRAFT

Thursday, January 25, 1996

Scallop Committee Report

Mr. Brancaleone: We have not had a scallop meeting. We have scheduled a framework meeting today, the third meeting, for adjustment number 7 which basically deals with the 7-man crew. Again, this is the third meeting so I am looking for comments. If we don't do it, it just lapses March 1st.

Mr. Goodreau: The document that is in the binder is the same one you looked at last time. The major differences in the extension is that it would go on until Amendment 5 came in or until the Council took other action. So that's one change. We took comments at the last Council meeting and this is the last of the two required public meetings. So we will take public comment again and then the Council can discuss it and decide if they want to submit it.

The other important difference here is the fact that it would be submitted as a Final Rule as it is written here. Last year when we did the 7-man crew extension for a year, we did that in December as a proposed rule. The reason was that we wanted to get it in fast before March 1st, and we wanted to get more public comment than what we thought we would get at a Council meeting, but it wasn't implemented until May. The real impact from the 7-man crew is going to be from March to May when the incoming year class is there. As it stands right here, it says a Final Rule which doesn't necessarily have a time limit on how long it could take to become a Final Rule but it should be faster than the Proposed Rule because it wouldn't have as extensive a comment period after this meeting.

Mr. Brancaleone: Gene? You better ask the question again.

Mr. Goodreau: We are proposing it as a Final Rule rather than a Proposed Rule. Last year we did it as a Proposed Rule and that was to get more comment period, but it wasn't implemented until May. So to try to get it by March 1st we could submit it next week given that we get similar comments today as we did last time and in the past two years. We would submit it as a Final Rule and that should, potentially, implement it quicker.

Mr. Martin: That's right, the sooner you get it to us, it is going to be a tight squeeze to get this done in one months' time. I don't know if Andy wants to speak to this or not, but theoretically it is possible and I am sure the Service will do everything they can to get it in place which means virtually no delay from the time you take action here to the time you submit the package.

Dr. Rosenberg: I believe at a previous meeting, I mentioned that we would try, but I can't guarantee that this will be in place by March 1st because of how long it has taken. Obviously if we are furloughed tomorrow, then it will not be in place by March 1st. Assuming that we are working, we will try, but there may be a hiatus because it is submitted very late in terms of working it through by implementation by the first of March.

Mr. Brancaleone: Are there any comments from the audience on the 7-man crew adjustment?

Mr. Nickerson: I think we can support it. The insurance companies can support it. It has good results so far and as Captain Howard has said before, nobody has been hurt. In some way maybe you ought to be thinking about if the scallops ever come back, we don't want a hard and fast rule that we can't change or increase the crew.

Mr. Spalt: We recently have been HACCP certified and the 7-man rule will make it very difficult for us to achieve our goal of producing a higher quality product for the HACCP program. There are many more tasks that have to be done on board to attain this and I would like to request a possibility of where we could get an extra man for each watch to produce this product for the HACCP.

Mr. Brancaleone: Are you talking about freezing scallops?

Mr. Spalt: Correct.

Mr. Brancaleone: You are asking for more than the 7-man crew?

Mr. Spalt: Correct.

Mr. Brancaleone: Well the framework calls for a 7-man crew so unless someone wants to change that I will take that as a comment. Does anyone else have a comment to that, Jim?

Mr. McCauley: I know exactly what you are trying to do, but how many more men do you need to do it? Did you just say how many, if you did I didn't hear you.

Mr. Spalt: What would probably be adequate is one man for each watch which would

be for two shifts. I brought a lot of the different procedures that we do here and a couple of different notes and letters from both sides of Cape Spray and the working part of the crew on what is expected. There are all kinds of day codes and sanitary procedures.

Mr. McCauley: Yes, I am familiar with that, I am doing the same thing. And Peter is right, if you are going to do that kind of thing, you have got to have more people. That's basically what it is, it is a people thing. I don't know whether you could have an exception to the rule under the circumstances, because he basically becomes a processor at that point. It is an at-sea processor, so whether that is another category that could be looked at separately.

Mr. Brancaleone: But wouldn't that mean a separate framework?

Mr. McCauley: Possibly.

Mr. Brancaleone: Gene says that we don't want to delay this one either.

Mr. McCauley: You are on a short term situation here now, you are trying to get something through and I understand that you probably can't do that. But I can understand what he is asking for and I can support that. It may be that timing wise, you can't work it in at the same time. But going forward, it may be something to look at as a special framework and get some comments on it. It is a practical request.

Mr. Goodreau: We discussed the freezing issue last time with the extension of the 7-man crew and the Council determined that all vessels should have the same size. The difference here though, and there is a letter from Cape Oceanic attached to your document, describes the whole thing. It is the HACCP, the Hazard Analysis Critical Control Point requirement, in other words it is the government requirements that make them have one-man standing there watching the freezing procedure. So in the traditional freezing operation, someone would take care of the freezing but be available to do other jobs as well, shucking, whatever, but in this case it is a government requirement that they have that one person standing there watching the freezing at all times.

Mr. Brancaleone: Do we have something in writing that states that there has to be an additional person to do this?

Mr. Martin: We have the letter from them stating that that's the requirement that they have to meet.

Mr. Goodreau: I don't know if anyone here is familiar with HACCP requirements or if that is in fact true.

Mr. McCauley: It is all quality controlled. You are putting something in the package that has to be the right weight, done a certain way and has to have certain quality standards because you are basically a processor at that point. You are doing it all on board and the sanitation standards are different, there are a lot of different things required, plus you have to document everything you do. So I can see one man being very busy doing all those things on a watch. That's why I say that you are not going to be shucking much. He has got a lot of work to do if they are catching anything at all. So as I say again, it is a practical request.

Dr. Rosenberg: The issue is that to have the same productivity because you have to have additional personnel involved in the HACCP process, then you would need additional personnel to maintain the same productivity. The alternative, of course, is that that man isn't shucking but that he is producing HACCP quality scallops for freezing and that may reduce the product of the vessel, which is part of the cost of implementing a HACCP program, and if that is economically viable, in terms of freezing of scallops. Clearly they would like to have higher productivity, the same as I would imagine there are other vessels that will operate with a 7-man crew who would like to have higher productivity, whether they are freezing scallops or doing anything else with scallops. So it is really related to whether the Council feels that they should be allowed to maintain that higher productivity level because they are going into this HACCP program. The requirement is not that they have to do it but that if they are producing these scallops under this inspection criteria, or certification criteria, that they have to do it with more personnel. But this is a productivity issue, not anything else, really.

Mr. Amaru: I see you point, Andy, but at the same time if a person is making an effort to try to do something better with this resource, and I think that's what the effort here is to do, shouldn't we look at it viewed under that rather than just viewed as another boat in an overall fleet. This is sort of a new area to me and if we end up with it down the road, it should be looked at specifically unto itself.

Dr. Rosenberg: I don't disagree you Bill that in terms of the Council we may want to encourage the HACCP production, but the 7-man crew is a conservation measure. It is not designed to do anything else. You are not restricted to a 7-man crew for any other reason other than for a conservation measure. So that complicates the issue. Suppose all of the fleet went HACCP? Would that mean that you would want the productivity of the whole fleet to potentially increase. I am not saying that you wouldn't and I am not taking a position against this proposal, but is not just simply a straight forward issue of "okay, a couple of boats are certified so therefore they should get additional crew members." In addition to that, I don't actually know how you would administer that. The Coast Guard is going to go on board and say "how big is your crew?" Because you have a HACCP letter on board doesn't mean you are producing scallops under that procedure. Does that mean that if you are actively freezing scallops the moment they get on board, then you can have an 8-man crew? I am just trying to figure out how it

would work and I think it is a little more complicated than is certainly provided for in the existing framework. It may be something the Council may want to consider in terms of modifying this down the road because you wouldn't discourage them from producing a higher quality or a higher value product, if that is possible.

Mr. Amaru: Then I would ask the Council to consider addressing the issue of vessels that equip their vessels with freezer equipment. In this particular case, we have a specific one to address, and then come up with a recommendation to framework it into the next series of frameworks.

Mr. O'Malley: I agree with what Bill just said. We have got a Scallop Committee meeting on the 5th of March and for a guy in business it is not good to hear "yes, we will get to that as quick as we can but go away now." I am not prepared to offer a motion yet, but I think at that meeting I would offer something along the lines of "a HACCP certified vessel that freezes 100% of its product should have that entitlement." I don't think it is so much a question of an increase in productivity as it is a level playing field. The extra man is for extra economic return rather than greater productivity in terms of pounds of meat.

Mr. Brancalone: Other Council members on this issue?

Mr. Rathbun: The people who are working as inspectors, do they have to pass a certification test or can they just grab any guy off the street? What is said about what you have to do to become an inspector?

Mr. Spalt: We have inspectors come in, government people, who come aboard...

Mr. Rathbun: No, I'm talking about the guy who is watching the process on the boat. Is he "Joe bag-of-donuts?"

Mr. Spalt: No, he is trained. We have a training program and we are constantly going through what they are doing. There are check points and control points and we constantly sit down with these two people for each boat.

Mr. Rathbun: Is that going to be their only job?

Mr. Spalt: It will be one of their jobs. They will probably do other things at times, but their main job is to be in charge of the process.

Mr. Rathbun: That's a crucial point as I see it. If that is their only job, that's one issue, but if it is only a part-time job, it is a second issue as far as deciding whether to increase the crew size. For instance, if the guy is not doing that but he is steering or shucking or something, it would make a difference as to how you would look at the issue. That's

why I am asking.

Mr. Spalt: Between the grating, day-coding of the product and the freezers and the working procedures, having an extra man on each watch would probably offset the other extra work that other men are doing to add to the program. It isn't just these two guys. Everybody has to pitch in to make it work. There wouldn't be any more productivity of scallops or monkfish being harvested, it is just increasing the quality and increasing the dollar amount when you sell it.

Mr. Brancaleone: The point is that you can still do that with 7-men but you are going to have less productivity. There is a willingness on the Council to allow you to do that, but not at this time. Am I reading the Council right? Jim is even willing to bring it up at the next Scallop Committee meeting, but they are not willing to hold up the 7-man crew. So we hear your comments, Peter, and I need to take more comments from the audience.

Mr. Kendall: The last time we ran into this same type of problem where we were running out of time on the framework for the 7-man, it was allowed to lapse. I suggest this time here we do everything we can to get this up and implemented. The overall majority, at least in New Bedford, was the feeling that the 7-man conservation, if it was working, most of the New Bedford folks that I know of were in favor of it.

Mr. Starvish: I am in favor of the 7-man rule extension indefinitely until the next Amendment comes out. I am opposed to allowing HACCP approved vessels to carry more men for the reason that Andy mentioned, excess productivity. People that bag scallops up, are you going to let us carry an extra man to bag them up? Mr. Spalt became HACCP approved at his own will, nobody forced him to do it. So he must believe that he can gain extra value for his product so the extra value that he gets offsets the productivity. He did this on his own accord. The rest of the scallop industry shouldn't have to look at it as him wanting to carry 9-men and the rest of us only have to carry 7, otherwise we have to become freezer processors too. If that's where you want this industry to head, then take that into account.

Ms. Didriksen: Traditionally, depending on how far back we are going to go, we had 13-men. So as we worked through Amendment 4, we have looked at the numbers and the production and the poundage and built Amendment 4, and we are working on new Amendments. I would hope that if you decide on the 7-men that this is considered as a real conservation measure. When we look at scalloping for the future and the plans for the future of DAS allowed and all that, if that is what the Council comes down to, the 7-men, I hope that they realize that it is really a cutback for people and that we really get it on the record that it is a conservation.

When Amendment 4 started, most people understood that we could be at 9-men. Truly,

a lot of the boats in New Bedford had cut back when the count was on because they just couldn't catch enough scallops to make a paycheck for the men. So they cut back, not because they wanted to, but because they wanted to try to stay in business and try to support some fishermen. So this is a real conservation measure. I also think that freezing at sea is something that I would hope boats would look to for the future and that there have been valid points brought up here by both Ray and Peter and I think it is something that we have to take seriously. Let's remember, 7-men is a real cutback and let's get it on paper and let's consider it when we look at what we are catching and what we are going to catch and not just take it for granted and not figure it into our new figures.

Mr. Smith moved and Mr. Coates seconded:

that the Council approve the Framework Adjustment 7 document as distributed under the memo of January 5, 1996 and submit the document to NMFS as a final rule.

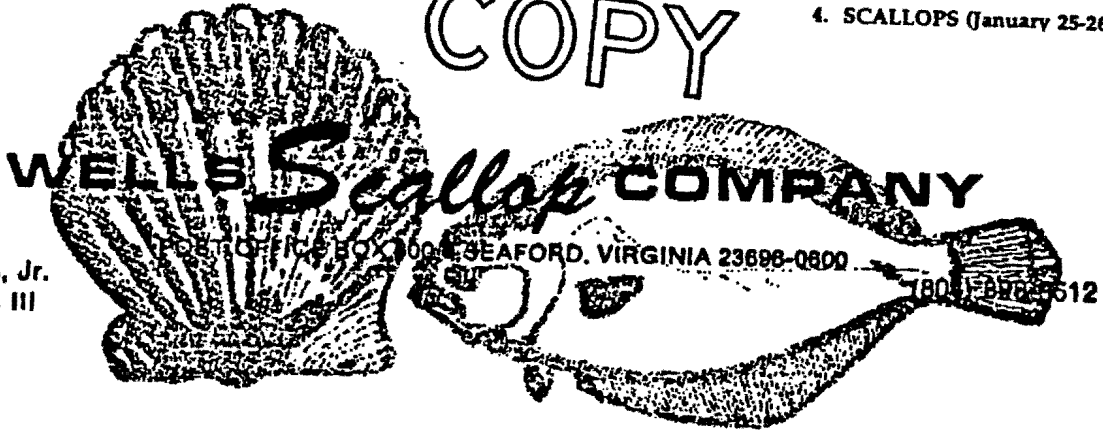
Mr. Brancaleone: Discussion?

The motion carried unanimously on a voice vote.

End of Public Comment

10.3 Written Public Comments

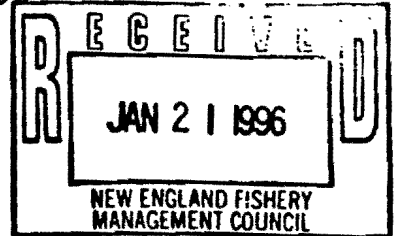
COPY



Bill Wells, Jr.
Bill Wells III

January 18, 1996

New England Fish Management Council
Five Broadway
Saugus, Mass. 01906-1097



Dear Sir:

I support the extension of the seven member crew limit. I believe it aids in protecting small scallops, and I believe resource protection must be the number one priority in scallop management. The rationale is both enumerated in experimental work by Kirkley & Dupaul, and obvious; seven men crews must target larger scallops when it is possible.

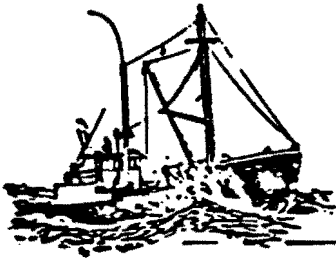
Further, I reject the contention that a seven member crew is adding an element of danger. The evidence does not support such a conclusion, and in the words of Ray Enoksen, "A safe boat is safe no matter whether you have seven or nine men, and a careless or unsafe boat is that way regardless of crew size." Our injuries for 1995 were down from previous years.

Thank you for the opportunity to comment.

Sincerely,

William S. Wells
William S. Wells

WS/tm



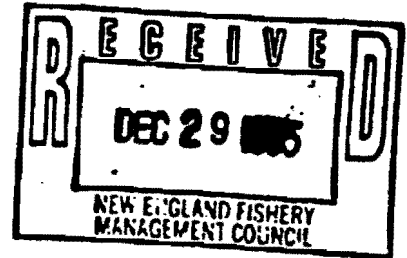
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Cape Oceanic Corp.

41 Rosary Lane, Hyannis, MA 02601

Tel 508-775-8693 • Fax 508-775-2318

December 26, 1995



BY HAND

Mr. Andrew Rosenberg, Regional Director
National Marine Fisheries Service
One Blackburn Drive
Gloucester, Massachusetts 01930

Re: HACCP Certification - Request for Exemption Under 50 CFR §650.29

Dear Andy:

We have been fortunate in the last several days to have three of our scallop vessels certified by the United States Department of Agriculture under the HACCP program for the processing and freezing of scallops at sea. We expect similar approvals for other vessels in our fleet in the very near future.

This designation ushers in a new and important development in the Atlantic sea scallop fishery. Scallops can now be harvested, shucked and individually frozen at sea within hours of their harvest under strict government controls and guidelines, creating a product with enhanced quality and marketability here and overseas.

In developing our on-board procedures and obtaining the approvals from USDA, we have learned that the present requirements of 50 CFR §650.21(c) (crew restrictions) have what we believe was an unforeseen and, and what we hope was an unintended, adverse effect on the competitive delivery of this highest-quality seafood. Specifically, to conform to HACCP requirements, we must have at all times a person manning the freezing and packing line. The sea scallop fishery regulation crew restrictions, intended to limit a vessel's ability to shuck scallops, have the unfortunate side effect of limiting our ability to freeze and pack within the same crew numbers. Essentially, in delivering the best product the U.S. industry can get to the dock, we are forced to put ourselves two men down at the rail.

We don't think the Council or NMFS envisioned this development when the

cc: Council }
RSG } 12/26
[unclear]

Mr. Andrew Rosenberg
December 26, 1995
Page 2

plan was adopted; or that they intended to make vessels using the best seafood preparation and delivery techniques available suffer a competitive disadvantage in volume of product landed with available days at sea; to the contrary, we expect a specific allowance would have been made in the plan if this could have been foreseen.

We believe a reasonable way of treating this situation would be to provide an exemption from the crew size restrictions for the extra crew needed to conform to our processing standards. We also believe this could be accomplished readily through the authority you have been granted under 50 CFR §650.29.

We do not seek to have this exemption limited to ourselves, but believe it would be prudent and proper for any HACCP-certified 100% at-sea freezing vessel similarly situated and handicapped by the regulations as they affect freezing and packing at sea, which we believe to be the future of this and most other fisheries.

We believe that higher quality products are beneficial to management and promotion efforts for our domestic seafood; that the relief we request would be consistent with the objectives of the FMP, Magnuson Act and other applicable law; that the relief would have a beneficial effect on the resource and fishery; and that the relief would pose no enforcement problems.

We are prepared to invite you or a designee aboard to see the operation at sea or at the dock, and to make whatever reasonable certifications and assurances you believe to be necessary to ensure that the spirit and letter of the sea scallop FMP and regulations are upheld under this exemption.

We look forward to your prompt and positive determination on this request.

Very truly yours,

CAPE OCEANIC CORP.


James Spalt

cc: New England Fishery Management Council

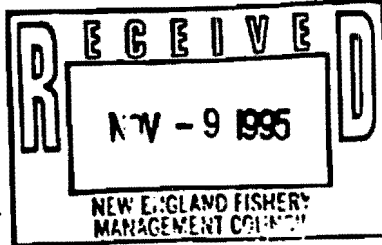
U.S. Department
of Transportation

United States
Coast Guard



Commander
First Coast Guard District

408 Atlantic Avenue
Boston MA 02110-3350
Staff Symbol: ole
Phone: 617-223-8420



5740

NOV 8 1995

Mr. Douglas G. Marshall
Executive Director
New England Fishery Management Council
Suntaug Office Park, 5 Broadway
Saugus, MA 01906

Dear Mr. Marshall:

Enclosed are the First Coast Guard District's comments concerning crew size restrictions contained in the Atlantic Sea Scallop Fishery Management Plan. The comments were presented to the Sea Scallop Advisors/Plan Development Team on November 2nd and to the Sea Scallop Oversight Committee on November 6th by Lieutenant Commander Don Bruzdinski of my Fisheries Law Enforcement staff.

Sincerely,

A handwritten signature in cursive script, appearing to read "P. J. Howard".

P. J. HOWARD
Captain, U. S. Coast Guard
Chief, Law Enforcement Branch
By direction of the District Commander

Encl: (1) First District Comments on Crew Size Regulations

Copy: (1) Commander, Coast Guard Atlantic Area (Aoo-2)
(2) Commander, Fifth Coast Guard District (ole)

cc: Council }
✓ Sect 1 Staff } 11/14

FIRST DISTRICT COMMENTS ON SCALLOP CREW SIZE REGULATIONS

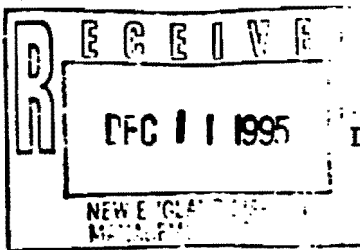
When scallop regulations concerning crew size restrictions were originally developed, the First Coast Guard District believed there would be no noticeable impact on fishing vessel safety. This assessment was based with the understanding that commercial fishing operations would not change. Contributing to this belief was the fact that, because of economic reasons, most boats were already fishing with less than seven crew members. Recent information that substantiates our position includes:

- Random checks of boarding data indicates over half of the scallop boats are continuing to fish with less than seven people on board. In fact, during two recent catch seizures for Closed Area II violations, one boat (MICHIGAN) had five persons on board and the other (NELSON) had six persons on board.

- There is no statistical evidence that the number of personnel casualties in the First Coast Guard District has increased due to the crew limit restrictions.

We recognize that the Fifth Coast Guard District Law Enforcement Branch sent a letter to the National Marine Fisheries Service Regional Director on May 15, 1995, which commented on the impact of the crew size limitations with regard to the safe navigation of boats operating off the Virginia/Maryland coast. That letter addressed concern about unmanned wheelhouses during haulbacks. We recognize that this is a common practice among many fishing vessel operators and not unique to the scallop fishery.

The First District's original comments concerning the impact of the crew size restrictions remain valid today. We are concerned about the safety of fishermen and the operation of commercial fishing vessels. So far our data does not suggest that crew limits have resulted in an increase in scallop boat accidents. We will continue to monitor and analyze safety statistics and immediately advise the Council if any safety problems are detected as a result of rules imposed as part of any fishery management plan.



December 9, 1995

Dear Council Members,

I am responding to two topics of discussion coming before the scallop committee on December 13, 1995.

First, I oppose transferring days at sea among scallop vessels. I as an owner operator can not come to all of the meetings, as is true for many other owner operated vessels. Support for transferring days is not as strong as it seems. Transferring days would ultimately put all of the days in the hands of a few fleet operators. The small family businesses would be squeezed out for lack of financial resources to buy days. There should be a place for us in fishing also. Other more equitable options exist for increasing our days at sea such as various buy out plans, or if the resource becomes strong because of the conservation practices and or natural recovery. If you are going to consider consolidation please be fair to all of us.

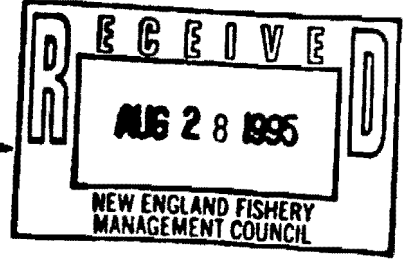
As to keeping the crew size at seven men, it would be more fair to limit crew according to boat size. It is very hard to run a larger boat with seven men and still be profitable. Competition between a smaller boat with seven men versus a larger boat is definitely on the side of the smaller vessel. I am totally in favor of crew size limits but to allow a 70 ft. boat with 350 horsepower the same size crew as a 100 ft. boat with 1100 to 1300 horsepower is definitely unfair competition.

The new gear size will be a big help. Before we change the plan around let's see how it works. So far the plan seems to be working very well, since the scallop stocks are rebounding, and the rules have been equitable.

Sincerely,

Arthur A. Ochse
Owner & Captain, Scalloper
Christian & Alexa

NEW ENGLAND FISHERY
MANAGEMENT COUNCIL
5 BROADWAY
SAUGAS MASSACHUSETTS
Fax 617/565/8937 01906



DEAR SIR,

IT IS THE BELIEF THAT THE PRESENT SCALLOP MANAGEMENT PLAN IS DISCRIMINATING AGAINST CERTAIN PARTICIPANCES IN THE SCALLOP FISHERY, AND THAT ALTERNATIVE MANAGEMENT PLANS HAVE NOT RECEIVED PROPER CONSIDERATION AND REVIEW. THEREFORE; THIS IS A REQUEST THAT A FULL HEARING ON THE SEA SCALLOP MANAGEMENT PLAN BE HELD BY THE NEW ENGLAND FISHERY MANAGEMENT COUNCIL AND THE ADVISORY PANEL. TO CONSIDERED:

1. 7 MAN CREW SIZE WITH REGARD TO SAFETY OF CREW AND VESSELS. GENERAL HARDSHIP AND LIVING CONDITIONS ON CREW AS A RESULT OF THE CREW SIZE.
2. REQUIREMENT THAT IF VESSELS HAD PULL DREDGES THEN THE VESSEL MUST USE DREDGES, INSTEAD OF NETS, FOR SAFETY; IF THE 7 MAN CREW IS THE LIMITING FACTOR THEN THE METHOD OF HARVEST SHOULD BE IMMATERIAL. FULL DISCUSSION OF EFFECTS OF DREDGES VS NETS ON THE BOTTOM, ALONG WITH HISTORICAL USE OF NETS BY THE ORIGINAL NEW ENGLAND FLEET TO HARVEST SCALLOPS.
- 2 (A) WHAT CONSIDERATION IN MANAGEMENT POLICY ACCOUNTED FOR THE JOBS OF THE SHORE SIDE EMPLOYEES OF THE SHELL STOCK FLEET, AND PLEASE EXPLAIN WHY SHELL STOCKING HAS BEEN ELIMINATED.
3. AN INQUIRY INTO WHETHER ANY MEMBER OF THE COUNCIL, ADVISORY PANEL, THE INDUSTRY ADVISORY PANEL, HAS ENGAGED IN UNETHICAL OR ILLEGAL CONDUCT IN THE PURCHASE OF DAYS AT SEA, PERMITS WITHOUT VESSELS ETC. PRIOR TO APPROVAL OF THE MANAGEMENT COUNCIL. I REQUEST THAT NATIONAL MARINE FISHERIES PERMIT EXCHANGES BE CHECKED FOR INDIVIDUALS CORPORATIONS AND OR PARTNERS OR FAMILY OF THOSE IN THE MANAGEMENT PROCESS FOR EXCHANGES OF RIGHTS OR PURCHASE OF DAYS AT SEA.
4. REVIEW OF ALTERNATIVE FORMS OF SCALLOP MANAGEMENT PRACTICE IN OTHER COUNTRIES THAT MAY OFFER MORE ECONOMIC RETURNS TO THE NATION.

SINCERELY,

James Fletcher
JAMES FLETCHER, DIRECTOR
8/25/1995
CC SENATOR JESSIE HELMS
SENATOR LAUCH FAIRCLOTH

Filed
CC: JRB, —
No 97 GC —
Staff Dem - CIC - LJS
Council



41

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1335 East-West Highway
Silver Spring, MD 20910
THE DIRECTOR

AUG 17 1985

Mr. Waverley L. Berkley, III
McGuire, Woods, Battle & Boothe
World Trade Center
101 West Main Street
Norfolk, Virginia 23510-1655

Dear Mr. Berkley:

Thank you for your letter regarding vessel safety and for bringing the comments of Captain Losea, Fifth Coast Guard District, to my attention.

Although the process by which the regulations for the Atlantic sea scallop fishery are implemented involves a high degree of public input and were developed in conjunction with the First Coast Guard District Office, occasionally an important comment will come to light after regulations have gone into effect. In this case, there is either a difference of opinion among the Coast Guard district offices or new information from field observations has caused the Coast Guard to become concerned.

Because the crew size regulation is part of a New England Council Fishery Management Plan, and because of the confusion from the different Coast Guard Districts' positions, I will request the Council staff to convene a meeting involving the Coast Guard and National Marine Fisheries Service staff to identify safety concerns that may need to be addressed by the Council.

I appreciate your bringing this matter to my attention.

Sincerely,

Rolland A. Schmitt

cc: GCF, F/CU(2), F/CM, F/CM2(2), NEFMC, NER, MAFMC,
Control No. 7984

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THE ASSISTANT ADMINISTRATOR
FOR FISHERIES



**MCGUIRE WOODS
BATTLE & BOOTHE LLP**

World Trade Center
Suite 9000
101 West Main Street
Norfolk, Virginia 23510-1655
Telephone/IDD (804) 640-3700 • Fax (804) 640-3701

Wesley L. Bartley, III
Direct Dial: (804) 640-3757

June 12, 1995

VIA FACSIMILE

Rolland A. Schmitten
Assistant Administrator
National Marine Fisheries Service
14555 S.S. M. C-3
1315 East West Highway
Silver Spring, Maryland 20910

Dear Mr. Schmitten:

One of the great expenses in the operation of vessels today is insurance, the cost of which is nearly prohibitive. Owners spend much time and money in trying to promote safety to reduce personal injuries and other casualties.

The regulation presently limiting the size of crews on scallop vessels to seven seamen nullifies the efforts of vessel owners and insurers with respect to safety and creates conditions conducive to injuries, collisions and other casualties. The U.S. Coast Guard notes that the decrease in safety is not balanced by any noticeable decrease in fishing effort or catches, the supposed intent of the regulation. The truth is that there is no justification for a regulation which increases the risk of life to America's commercial fishermen.

Please advise the writer whether the attached correspondence from the Coast Guard has prompted any action by NMFS to change the regulation. In the absence of such, we have clients who have asked us to institute legal action to challenge this regulation and who have asked that we consider involving NMFS as a party defendant in any suit instituted against them for casualties which may be attributed to undermanning.

June 12, 1995
Page 2

Thank you for a prompt reply.

Very truly yours,

A handwritten signature in black ink, appearing to read "W. L. Berkley, III". The signature is written in a cursive style with a large, prominent initial "W".

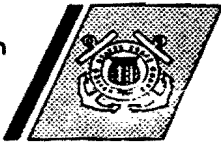
W. L. Berkley, III

WLB:rap

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U.S. Department
of Transportation

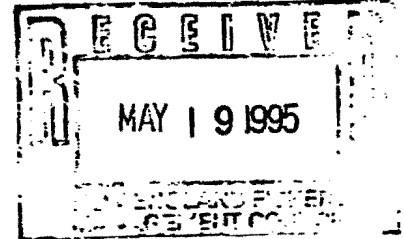
United States
Coast Guard



Commander
Fifth Coast Guard District

Federal Building
431 Crawford Street
Portsmouth, VA 23704-5004
Staff Symbol: (ole)
Phone: (804) 398-6268

16214
15 May 1995



Mr. Jon Rittgers
Regional Director
National Marine Fisheries Service
1 Blackburn Drive
Gloucester, MA 01930

Dear Mr. Rittgers;

I wanted to pass along to you some feedback on the new crew size requirements for scallop vessels from a recently completed law enforcement patrol in our district. As you know, the maximum crew size for scallop vessels decreased to seven persons on May 4, 1995. Prior to and after this date, we had been conducting a fisheries enforcement operation within the Fifth District, which includes several large offshore scallop grounds. Our cutters were proactive in advising the fishing vessels of the change in regulations. After completion of the operation, the cutters who had conducted 176 boardings during the operation, indicated they had observed no decrease in the amount of scallops onboard after the new regulation became effective. Some of the vessels who were not able to shuck all scallops were icing down unshucked product.

Additionally, the cutters noted during their boardings some disturbing observations. Since there was no decrease in effort by the fishing vessels, crews seemed more fatigued than previously, making them more susceptible to accidents. Even more disconcerting though was the fact that the master had to exit the wheelhouse during the haulback to tend the gear, leaving the helm unattended for periods of time. One of our ship's captains noted that his vessel had to take positive action to steer clear of three to four "unmanned" fishing vessels during this time period.

I am concerned that the current regulations are having a detrimental effect on the safe operation of scallop vessels. At the same time, the crew size limitation does not appear to be having any effect on decreasing individual vessel's ability or capacity to fish. We will keep you advised if this trend continues. If I can answer any questions, please do not hesitate to call me or my fisheries officer, LCDR Bryant at (804) 398-6266.

Sincerely,

R. J. LOSEA
Captain, U.S. Coast Guard
Chief, Law Enforcement Branch
By direction of the District Commander

Copy: Comdt (G-OLE-2), CCGDONE (ole)