



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

May 4, 2011

Ms. Patricia Kurkul
Regional Administrator
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930

Dear Pat:

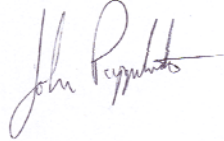
The Council met on April 26-28, 2011 in Mystic, CT and a motion passed requesting that NMFS take emergency action to prevent 2011 Nantucket Lightship closed area trips. Included in the motion was the primary rationale for this request --- to reduce the risk that the limited access scallop sub-ACL and Southern New England/Mid-Atlantic yellowtail flounder sub-ACL would be exceeded triggering accountability measures --- see enclosure with additional Council discussion and rationale for this request.

Under 'Other Business' on the third day of the meeting the Council discussed this issue at length and agreed that action is warranted. The Chair of the Scallop Committee explained that Framework 22 (FW22) was a carefully thought out action and measures were selected to help the fishery stay under ACLs in their first year of implementation. Staff summarized that there are three major risks associated with vessels deciding to fish in Nantucket Lightship before FW22 is implemented, which will close the area. Fishing activity in Nantucket Lightship in 2011 could lead to an overage of the limited access scallop sub-ACL. Second, there is an increased risk of exceeding the SNE/MA yellowtail flounder sub-ACL triggering accountability measures. Finally, the success of the entire scallop area rotation program depends on timely openings and closing of access areas. Nantucket Lightship was not scheduled to be accessible in 2011, and if vessels fish in there under an administrative loophole caused by late implementation of FW22, the overall yield from that area will be reduced compromising the overall success of the area rotation program.

Overall, a several month delay beyond March 1 was anticipated but the fleet impacts were not. The ability of the delay to potentially cause the LA sub-ACL to be exceeded were not fully appreciated or addressed in Framework 22. In addition, the new estimates of 2010 yellowtail flounder bycatch in SNE/MA suggest that yellowtail bycatch is higher than expected in open areas and there is greater risk of exceeding both the 2011 and 2012 yellowtail sub-ACL if action is not taken to prevent trips in Nantucket Lightship in 2011. At the Council meeting several speakers from the audience pleaded that the Council and NMFS help the industry to do the right thing. This request was described as a proactive measure that will help maintain the successful management of this fishery that is the result of strong partnerships between managers and the industry.

If the agency does not agree that emergency action is warranted, the Council respectfully requests that at a minimum the closure of Nantucket Lightship be effective as soon as FW22 is implemented. There have been requests by the industry in the past to delay effectiveness of access area measures so that vessel operations are not interrupted waiting for implementation. But in this case, Nantucket Lightship should be closed as soon as FW22 is effective, if not sooner, by emergency action on June 15, 2011.

Sincerely,

A handwritten signature in black ink, appearing to read "John Pappalardo". The signature is written in a cursive style with a horizontal line extending to the right.

John Pappalardo
Chairman

Enclosure - Summary of Council discussion and Rationale

Summary of Council Discussion and Rationale

Under the open period for public comment on Day 1 of the Council meeting a representative from the scallop fishing industry raised this request and explained the potential negative consequences on the fleet if action is not taken. Since Framework 22 (FW22) is not scheduled to be in place before June 15, 2011 vessels will be authorized to take trips into the Nantucket Lightship access area under allocations that rollover from FY2010. This area is not scheduled to be open in 2011 under Framework 22 because there is not sufficient biomass in that area to support a full trip allocation, and long-term yield from that area will be maximized if effort is delayed until 2012 and beyond.

The Council met on April 26-28, 2011 in Mystic, CT and a motion passed requesting that NMFS take emergency action to prevent 2011 Nantucket Lightship closed area trips. Included in the motion was the primary rationale for this request: to reduce the risk that the limited access scallop sub-ACL and Southern New England/Mid-Atlantic yellowtail flounder sub-ACL would be exceeded triggering accountability measures.

Dr. Pierce moved and Mr. Preble seconded:

to request that the Regional Administrator take emergency action to prevent 2011 Nantucket Lightship Closed Area trips thereby reducing the risk that:

- (a) the scallop ACL will be exceeded triggering an accountability measure (AM) in 2012, and*
- (b) the Southern New England/Mid-Atlantic yellowtail flounder sub-ACL will be exceeded triggering an AM in 2012 (open area time/area closure starting March 2012).*

*The motion **carried** on a show of hands (14/2/0).*

The Council recognizes that the primary reason Framework 22 is delayed is because the Council decided to take final action on Amendment 15 (A15) later than planned, pushing back implementation of Framework 22 since FW22 is contingent on approval of Amendment 15. Because the Council anticipated some delay in Framework 22, which could even extend beyond June 15, specific measures were included to address catch in excess of ultimate 2011 allocations under FW22. Specifically, if vessels fished in Nantucket Lightship in 2011 before implementation of FW22, that effort would be removed from 2012 allocations to account for “additional” catch in 2011 that was fished under 2010 rollover allocations. These corrective measures address additional catch on an individual basis, but did not account for the impact of additional catch on the fleet overall.

It was pointed out at the Council meeting that neither the PDT, Committee nor the Council were cognizant of the potential fleet effects, and the document only addressed measures that would reduce catch on an individual basis. But if the limited access scallop sub-ACL or yellowtail flounder sub-ACL were exceeded in 2011 as a result of this delay, there were no measures contemplated to address those potential impacts. It was discussed that in recent years a delay of scallop specifications has almost become standard practice, and the documents now include specific measures to address these delays. But this is the first action that is under ACLs, and measures were not developed to address fleet effects of exceeding ACLs as a result of delayed specifications.

Staff summarized that there are three major risks associated with vessels deciding to fish in Nantucket Lightship before FW22 is implemented, which will close the area. First, fishing activity in NL in 2011 could lead to an overage of the LA sub-ACL the first year the FMP is under ACL management. The Council set the fishing target for the LA fishery at a fishing mortality rate estimated to have only a 25% chance of exceeding the fishing mortality rate for overall ABC/ACL. This target fishing mortality rate for

the LA fishery is estimated to generate about 49 million pounds in 2011, approximately 6 million pounds lower than the LA portion of the total ACL (LA sub-ACL = 55 million pounds in 2011). Coincidentally, a full access area trip harvests just under 6 million pounds if all vessels land their full allocated trip (327 full time equivalent vessels at 18,000 pounds per trip = 5.9 million pounds).

If the majority of the fleet decides to fish in NL before FW22 is implemented it is very possible that all 6 million pounds of the buffer developed to reduce the chance of the LA fishery exceeding their sub-ACL and prevent overfishing from all sources of management uncertainty will be used for this reason alone. When FW22 was developed the primary source of management uncertainty identified for the LA fishery catch associated with open area DAS, not late implementation of management measures. The Scallop PDT estimates that average catch per DAS will be about 2,400 pounds in 2011, and if that estimate is low again, as it has been in recent years, the fleet will need much of the 6 million pound buffer to account for higher catches in open areas. If that buffer is already used up from catch in NL, there is an increased chance the fishery will exceed the sub-ACL potentially triggering AMs that affect all vessels, whether they fished in NL or not.

The impact of this potential fishing opportunity in NL on the fleet overall was not discussed or anticipated during development of FW22. This is the first specification package under ACLs, and no measures were developed to address that the actions of some as the result of a delay of FW22, could have an impact on the entire LA fleet if AMs are triggered. For example, if one-third of the fleet decides to take a trip in NL and 2 million pounds are harvested, and that catch causes the sub-ACL to be exceeded and the updated estimate of F is not lower than expected, AMs would be triggered and all vessels would have about a 2.5 DAS reduction in 2012 (2 million pound overage divided by 327 vessels using a 2,441 pound per DAS estimate).

The second risk the Council discussed related to fishing activity in NL is that it could lead to an overage of the 2011 YT sub-ACL. The 2011 YT allocation for the scallop fishery is based on projected catch of FW22 allocations, which do not include a trip in NL. Nantucket Lightship is a relatively high YT bycatch area so if vessels fish in that area in 2011 there is an increased chance that the fishery overall will exceed the 2011 SNE/MA YT sub-ACL. In FW22 the scallop fishery is projected to catch 58 mt of YT under FW22 allocations for the entire SNE/MA area. The Council allocated the scallop fishery 82 mt based on earlier projections used in Framework 44 to the Groundfish FMP, and the Council decided not to reduce those allocations Framework 45 to the Groundfish FMP. The automatic 10% bycatch TAC for NL would be 64 mt., 10% of the overall YT ACL. If the scallop fleet catches all 64 mt in the NL after June 15 but before FW22 is implemented, there will be very little YT left, 18 mt for all open areas in SNE/MA (82-64 = 18 mt.). Even if the vessels that fish in NL successfully avoid YT, more YT will be caught because no effort was projected to occur in that area at all in 2011.

The Council discussed that the risk of exceeding the 2011 SNE/MA YT sub-ACL is a major concern in light of a new report that was released by NMFS right before the April 2011 Council meeting. NMFS sent a letter to the Council on Thursday, April 21 that the scallop fishery is estimated to have caught 139% of their 2010 allocation of YT flounder sub-ACL. The Council discussed this letter at the meeting and argued that new information is very indicative that YT bycatch rates are higher than anticipated in open areas. In 2010 there was an access area trip in NL and a substantial portion of the scallop fleet participated in a voluntary bycatch reporting system that likely reduced overall YT bycatch from that access area, 15 mt out of a possible 47 mt. Despite the fact that the fishery caught only 30% of the YT TAC in NL, YT bycatch in open areas was much higher than expected, causing a total YT catch of 187 mt compared to a total allocation of 135 mt, which was based on what the fishery was expected to catch.

If bycatch rates are higher than expected in open areas or if the fishery is fishing more heavily in areas with higher bycatch than expected, there is a much higher risk that the 2011 SNE/MA YT flounder sub-ACL could be exceeded as well, especially if effort is taken in NL since that was not anticipated in the original estimate of YT catch. In addition, there is greater risk that the 2012 SNE/MA YT sub-ACL will be exceeded as well because scallop catch rates in NL will be lower than expected if vessels fish in that area in 2011 instead of 2012; lower scallop catch rates cause higher YT bycatch.

The third issue the Council discussed as a risk if emergency action is not taken to close NL is that the success of the entire scallop area rotation program depends on timely openings and closing of access areas. This area was not scheduled to be accessible in 2011, and if vessels fish in there under an administrative loophole caused by late implementation of FW22, the overall yield from that area will be reduced compromising the overall success of the area rotation program. If effort is very high in that area in 2011 it is possible that a full access area trip may not be available for the fishery in 2013 as scheduled.

In addition to the risks highlighted by staff and the Council, several members of the industry explained that there is very high incentive and personal gain for vessels to increase catch at this particular time. The price of scallop meats are at record levels, and have been consistently above \$10 a pound for several months. These prices were not anticipated, and with the price of fuel expected to increase vessels will be interested in taking advantage of these high scallop prices now. In addition, Nantucket Lightship is relatively close to shore for many vessels homeported in southern New England, so with high fuel prices vessels will want to steam as little as possible.

In addition, several speakers commented that while the industry overall knows that there are longer term risks and costs associated with fishing in Nantucket Lightship this year, not fishing in that area will a very difficult and costly decision. It was explained that even if only a few vessels go in that area, it will not be long before more vessels will follow because that is human nature. Vessels could voluntarily decide not to fish in that area, but self-policing is not a very realistic option, and the Council does not believe this fishery currently has the tools to self-police. It was pointed out that these are very lucrative trips, about \$180,000 for a trip under a week long, and that will be a major driving force affective fishing behavior. A vessel has the decision to not fish in NL and potentially pay later if AMs are triggered and all vessel lose DAS by the action of some vessels, or the decision to fish in NL now to at least make up some of the loss from DAS reductions if AMs are triggered. Several speakers from the audience pleaded that the Council and NMFS help the industry to do the right thing. This request was described as a proactive measure that will help maintain the successful management of this fishery that is the result of strong partnerships between managers and the industry.

Luckily this situation should not be a problem in the future if NMFS approves the measure the Council developed and approved in Amendment 15 that will set scallop specifications for three years instead of two. If approved, in the future specifications will be set for a third year, and replaced with updated specifications in a future action. This strategy is superior to fishing specifications automatically rolling over if there is a delay and will prevent situations like this when we knew NL should not be open in 2011, but it is simply because allocations rollover.