

## APPENDIX A

### Procedure for In-Season Adjustments in the Sea Scallop Meat Count and Management Measures Minimum Size

#### I. Introduction

The use of flexibility within a management program must be constrained so that changes do not exceed the range of actions that have been presented to the public and analyzed in the management plan. Changes in the management measures can only respond to circumstances which affect the attainment of the management objective. They must enhance the probability that the management objective will be achieved in the short or the long term.

The magnitude and frequency of changes in the management measure specification are critical. Frequent modifications of fishing gear or practice are costly for fishermen, making it difficult for them to plan and execute their fishing strategies. Such changes would discourage stability in the resource, the fishery and industry. Changes of great magnitude could significantly alter the ability of fishermen to operate and could alter supplies and markets. The program must ensure that the frequency and magnitude of changes are controlled within bounds which will allow fishermen the opportunity to plan and adjust to changes without incurring significant hardship. Significant changes in management philosophy or application must be addressed through amendment of the fishery management plan rather than through use of discretion within the plan.

Any program which allows for flexibility must ensure that the exercise of that flexibility occurs only after the public has had an opportunity for review and comment. The program must be responsive, but the response must be thoroughly considered, thoroughly discussed and clearly presented.

#### II. Procedure

The flexibility provision here proposed is sensitive to the constraints discussed above. Use of the provision is limited within bounds and to address conditions which are clearly defined. The procedure is efficient and responsive while allowing for careful consideration and full public review.

##### A. Frequency and Magnitude of Adjustments

The management measure specification is the meat count, or corresponding shell size, which may be harvested. The specification can range from 40 meat count, or the corresponding 3 1/4 inch shell size, to 25 meat count, or the corresponding 3 3/4 inch shell size. The specification may not be altered by more than 5 meat count, or the equivalent shell size differential, in any adjustment cycle.

##### B. Information Considered

Any decision to alter the management measure specification must reflect careful consideration of all available resource survey and assessment

information, with special emphasis given to the most recently completed survey and assessment. Reports and records maintained by fishermen and made available as a part of the fishery statistics program must also be considered. Other fishery statistics, and any other information which increases understanding of current conditions of the stock, the fishery and the industry should also be used as available.

#### C. Judgement Criteria

The decision to alter the management measure specification rests on a determination that the objective of the fishery management plan would be achieved more readily, or would be better served through an adjustment to the current meat count or minimum size. The specification may not be altered unless at least one of the following conditions exists in the resource, fishery or industry, subject to the condition that in no case would such an alteration result in a reduction in expected catch over the following year by more than 5% from that which would have been expected under the existing management measure specification.

1. International inconsistencies exist in the management measures applied to sea scallop stocks in areas harvested by both domestic and foreign fishermen, and such inconsistencies provide foreign fishermen with an advantage over domestic fishermen that can be demonstrated to adversely affect the domestic fishermen.
2. Analysis of the size distribution of sea scallops shows that more than 50% of the harvestable sea scallop biomass is at sizes smaller than those consistent with the prevailing management measure specification and that a temporary relaxation of the specification would not jeopardize future recruitment to the fishery.

#### D. Operation of Procedure

The Regional Director will review the status of the resource, the fishery and the industry on a continuing basis. If, upon reviewing any of the information specified in (B) above, the Regional Director determines that any of the criteria in (C) above have been met, he may prepare a recommendation for action. The Regional Director shall, in any event, prepare an annual report describing the status of the fishery and offering prudent projections of any possible changes in the resource, fishery or industry which might require adjustment or amendment of the management program. The Council may, at any time, by majority vote, request a review and recommendation from the Regional Director.

The Regional Director will advise the Council of his completion of a report and recommendation. The Council may, at its option, request an opportunity to review and comment on the report or recommendation prior to any notice of a public hearing.

A public hearing on the recommendation will be held in conjunction with the Council Meeting at which it will be discussed. The Regional Director will assure that adequate notice of the public hearing is given to all interested parties. The Regional Director may modify his recommendation as a result of the public hearing.

The Secretary will publish notice in the Federal Register of any finding by the Regional Director to alter the minimum size limit, along with a date for implementation.

The Regional Director will provide notice of the adjustment by mail to every holder of a sea scallop permit.