

PART 4: MANAGEMENT JURISDICTIONS, LAWS AND POLICIES

§410 Relationship to International Fisheries Programs

Prior to enactment of the Magnuson Act, fisheries for sea scallops were managed, along with other fisheries, under the auspices of the International Commission for the Northwest Atlantic Fisheries (ICNAF). That organization established management policies and allocated allowable harvests among member nations, but implementation and enforcement was left to the individual member nations.

Management of the sea scallop fishery never fully developed under ICNAF, because the fishery was dominated almost exclusively by the U.S. and Canada. There has never been a total allowable catch (TAC) on sea scallops, nor has there ever been any allocation of the resource between the U.S. and Canada.

In 1976, ICNAF recommended a regulation for the Georges Bank fishery designed to increase the meat yield by prohibiting the harvest of scallops less than 95 mm shell size and meats of more than 40 units per pound. Both the U.S. and Canada adopted these measures. For the U.S., the regulations went into effect on August 31, 1976 but were never implemented prior to U.S. withdrawal from ICNAF on December 31, 1976.

A significant fishery for sea scallops is pursued by Canadian fishermen under regulation by that country. Much of this fishery is conducted on the same resource being fished by United States fishermen. There is currently no bilateral fisheries agreement in effect between the United States and Canada.

The Canadian offshore sea scallop fishery, however, is managed in part based upon the ICNAF recommendation. In addition to the 40 meats/pound landing limit, a limited entry scheme allows 77 licensed vessels in the fishery. (In recent years, participating vessels have numbered fewer than 77.) Each licensed vessel's landings is limited to 30,000 pounds of meat per trip and 180,000 pounds per four month period. There is a maximum 12-day trip, dock to dock, and vessels are required to maintain logbooks. A shell size restriction was adopted at one time but is not now in effect. Total annual catches are effectively limited to about 19,000 metric tons.

§420 Relationship to Other Federal Fishery Management Plans

Fisheries in the areas covered by this Plan, which are currently under regulation by other fishery management plans include groundfish (cod, haddock, and yellowtail flounder), Atlantic herring, surf clams and ocean quahogs, squid, mackerel, and butterfish. The Council has completed drafting major portions of the plan for lobsters.

Fishermen fishing for sea scallops are subject to these other plans if their activities are likely to result in the harvest of any of these other species. Similarly, fishing for any of these other species may subject a

fisherman to the provisions of this Plan if his activities are likely to result in the harvest of sea scallops.

§430 Relationship to State Fisheries Programs

Atlantic sea scallops occur within most of the New England and Mid-Atlantic States' territorial waters as well as within the FCZ. The management unit is considered to include the resource wherever it occurs; and the management policies, measures and objectives contained in this Plan are appropriate for application in State waters. Therefore, the coordination of the states' policies and regulations for sea scallops with those of this Plan is very important for the effective implementation of this regional management program. The following summarizes current state laws concerning sea scallops, and §443 of this Part describes the relationship between this Plan and State coastal zone management programs.

The State of Maine requires a license for commercial harvesting of sea scallops from its waters. License eligibility is limited to Maine residents. No quota is imposed on the commercial fishery, but only sea scallops with a shell height of 3 or more inches (7.6 cm) may be landed or possessed. Regulations specify areas where harvesting by dredge and by otter trawl is authorized, and the sea scallop season is limited to November 1 through April 15 in coastal waters. Recreational sea scallop fishing in Maine does not require a license, but individual fishermen are limited to two bushels of scallops in the shell or four quarts of shucked scallops per day. Scallops retained by recreational fishermen must meet the 3 inch minimum shell height. The state law permits a 10% tolerance under the minimum size.

Massachusetts and New Hampshire also have sea scallop landing laws setting a 3 inch minimum shell size. In mid-1980, North Carolina fisheries authorities and advisors were considering restrictions on shell size and meat count. No state regulations currently exist for sea scallops in New Jersey, New York, Rhode Island, Connecticut, Virginia, or North Carolina.

§440 Other Special Management Programs

§441 OCS Leasing

During the summer of 1981, exploratory drilling for oil and gas began on Georges Bank. Other sections of Georges Bank are currently proposed to be leased under the Outer Continental Shelf Lands Act. A discussion of the potential adverse effects of these activities on sea scallop resources and habitat is presented in section 230. The Council, through its representation on the Biological Task Force, and NMFS monitor these activities and advise the Bureau of Land Management and the United States Geological Survey concerning ways of minimizing impacts on fishery resources and interference with fishing vessel operations.

§442 Marine Mammals and Endangered Species Acts

Numerous species of marine mammals occur in the Northwest Atlantic,

although the definitive species composition is unknown. The most numerous species in the area are the common (saddleback) dolphin (Delphinus delphis), harbor porpoise (Phocoena phocoena), and harbor seal (Phoca vitulina). Data on population abundance for various species are sketchy at best, and non-existent for some species, although current studies are gradually improving the information base. Marine mammal feeding behavior and food preferences are not well understood. These factors make it extremely difficult to assess, even qualitatively, the potential impact of the sea scallop management program on marine mammal populations.

Whenever fishing and marine mammals occur in the same area, there exists a potential for an incidental take of marine mammals. However, the number of animals killed is relatively small in comparison to the total population size. Incidental mortalities of harbor seals and harbor porpoises are known to take place in the Gulf of Maine fixed gear finfish fisheries; preliminary estimates place this mortality at about 100 animals per year.

Of the numerous marine mammal species which frequent the Gulf of Maine, Georges Bank, and southern New England waters, six have been classified as endangered. These are the finback whale (Balaenoptera physalus), the humpback whale (Megaptera novaeangliae), the right whale (Eubalaena glacialis), the blue whale (Balaenoptera musculus), the sei whale (Balaenoptera borealis), and the sperm whale (Physeter catodon). The finback, humpback, and right whales sometimes frequent nearshore waters. All whales inhabit the area only on a seasonal basis and "critical habitats" have not been designated in the Northwest Atlantic. Data on population abundance and occurrence is sparse, typically gathered through "sightings."

In addition to certain marine mammals, the only other threatened or endangered species occurring in the Northwest Atlantic are shortnosed sturgeon (Acipenser brevirostrum) and several species of sea turtles. There has been no documented mortality of shortnosed sturgeon as a result of fishing operations for sea scallops. Because data on occurrences of shortnose sturgeon are vital to understanding its current status, the Council urges fishermen to report any incidental catch of this species to the Sturgeon Recovery Project of the National Marine Fisheries Service.

Available data appear to indicate that several species of sea turtles are regularly found in New England waters. These turtles are the Kemp's Ridley, (Lepidochelys kempii), the leather back (Dermochelys coriacea), and the loggerhead (Caretta mydas). In addition, hawksbill turtles (Eretmochelys imbricata) occasionally stray into the area. The Kemp's Ridley turtle, while probably the most endangered reptile on earth (total population estimated at several thousand adults), is also the most frequently observed sea turtle in New England waters, especially in Cape Cod Bay.

Although Kemp's Ridley turtles have in past years been found stranded or dead along the beaches of Cape Cod Bay, there is no solid evidence to indicate that fishing operations were responsible. Based on inquiries to fishermen conducted by the National Marine Fisheries Service and the Massachusetts

Division of Marine Fisheries, the general conclusion can be drawn that the occasionally numerous deaths of Kemp's Ridley turtles in Cape Cod Bay do not occur as a result of normal commercial fishing operations. Yet, because of the extremely tenuous status of the population of the Kemp's Ridley turtle, NOAA and the New England Fishery Management Council remain concerned about the mortalities in Cape Cod Bay. The Council and NMFS believe that monitoring of turtles in New England is necessary.

No habitat areas where fishing for sea scallops is conducted have been identified as critical areas for any endangered species.

Implementation of this plan will have no effect upon populations of marine mammals and endangered species in the area. As additional understanding of the status and dynamics of marine mammals and sea turtle populations become available, the Council will integrate this information into its examination of potential impacts upon the environment as a result of fishery management programs.

§443 Coastal Zone Management

Most of the states in the areas affected by this Plan have approved Coastal Zone Management programs. These programs have been reviewed, and no major inconsistencies between them and the measures, policies, and provisions of this Plan have been found. Those states whose fishery management regulations are part of their coastal management programs may require amendments to their programs to conform with measures specified in this Plan.

The Coastal Zone Management Act requires direct federal actions affecting state coastal zones to be consistent "to the maximum extent practicable" with state programs. Section 303 (b)(5) of the Magnuson Act authorizes the incorporation of fishery conservation and management measures of the coastal states nearest to the fishery into FMPs, if these measures are consistent with the National Standards of the Act and other applicable law. The Council has determined that consistency with the National Standards and the Plan's management objectives (see Part 9) requires that the scallop resource be managed uniformly throughout its range and that measures do not discriminate against segments of the industry on the basis of residency. Therefore, incorporation of individual state sea scallop landing laws is rejected as an option for regional management. The Council determines that this Plan is consistent "to the maximum extent practicable" with the approved state programs.