

APPENDIX XI

Public Hearing Summary of Comments
On Draft Amendment 10 and the DSEIS



New England Fishery Management Council

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Scallop Fishery Management Plan

Amendment 10

Public hearing summary – Hyannis, MA

May 20, 2003

The meeting was chaired by Mr. Mark Amorello, chairman of the Council's Scallop Committee. Also attending were Council staff members Andrew Applegate and Deirdre Valentine, as well as Dr. Dvora Hart of the NMFS, Northeast Fisheries Science Center. The audience consisted of five vessel owners or operators with general category permits (John Wood, Phillip Michaud Jr., Phillip Michaud, Sr., Hal Roke, and Chris Davis), one with a limited access permit (Barbara Bradgon), a representative of Oceania (Gib Brogan) and of the Fisheries Survival Fund (Dr. Trevor Kenchington).

Mark Amorello, acting as public hearing officer, opened the meeting at 7:10 pm with a short summary of the agenda for the meeting. Mr. Applegate presented a summary of the alternatives and the estimated impacts, pausing for questions and specific comments on occasion. The first part was on area rotation and other ways to improve scallop yield, followed by area access alternatives, initial management measures, overfishing definitions, minimizing bycatch, minimizing habitat impacts, data collection and monitoring, and framework adjustments and other process modifications.

Main points made by people offering comments included:

1. Requiring VMS on general category vessels would need the Council to change the general category possession limit to account for these costs.
2. A TAC for the general category fishery is acceptable, but should be adapted for each area based on the historic percent of total landings for each area. If a TAC is approved, the Gulf of Maine should have a TAC that is separate from the rest of the resource areas and should not apply to state waters.
3. Area rotation could have significant costs for fishermen targeting scallops under general category rules, especially if area rotation caused closures of large, nearshore areas, like those off of Cape Cod.
4. Indirectly, area rotation could also have significant effects on small vessels with general category permits, if limited access vessels fished on inshore scallop beds in response to area rotation closures elsewhere.

5. The Council should adopt 4-inch rings across the board as soon as possible.
6. The proposed alternative with bycatch closures could have unintended consequences and implications, when combined with area rotation and other alternatives that propose closing areas.

Commenting on fixed area management boundaries, Mr. Michaud (Jr., who made additional comments below), said that general category boats on the cape were only able to access the western part of those proposed zones. Of all the blocks on Georges Bank, many general category boats wouldn't travel that far for 400 lbs. of scallops. The general category fishery is limited by the 400 lbs., but would be hurt by closures of inshore rotation areas and would not be able to access other areas that might be open offshore.

Mrs. Bragdon commented that she supported going to 4-inch rings for all areas and to do it now, while the fishery is healthy, [rather than at a later time when using larger rings would have more impacts on the fishery].

Mr. Wood, a fisherman with a general category permit from Machias, ME; said that he is concerned about the effect of nearshore closed areas. He said that the proposal to require a VMS system would be an enormous expense for small vessels, not worth the benefits that would come from being able to fish in other controlled access areas. Closure of inshore areas would require the vessels to steam for long areas and might not be profitable for the vessels to do so, he explained. He thought that using VMS equipment might be profitable for those vessels if there were higher possession limits.

Mr. Michaud added that fishing in the rotation area labeled "GB1" area is very critical for Provincetown. He suggested that if the area rotation plan needed to close GB1, the Council should consider using the 70° W longitude line as the westward boundary. He added that VMS would be expensive, but might be worthwhile if it allowed general category access to areas when they were closed to the limited access vessels for area rotation. To limit the scallop catches from general category boats while it was closed to limited access fishing, he suggested lowering the scallop possession limit to 300 lb. for example. Responding from a question about being able to fish inside of Massachusetts waters during an area rotation closure, he explained that areas inside of three miles are closed between May 1 to Oct 31, when they are overloaded with lobster trap gear. Most of the general category vessels from the cape fish for scallops in federal waters, except for rare instances during the winter months. He added that the amount of scallops inshore of three miles would be insufficient to support general category scallop vessels in the area for very long.

Dvora Hart asked what the effect be if at most one of the two areas were closed at any one part of time. Mr. Michaud answered that the current price below \$4/lb. makes it less profitable to fish GB2/Pollock Rip. He also indicated that access was constrained by draft in the shallow inlets near GB2. All the boats in one area might be too much for that area alone, he added.

After the presentation on the access options and effort allocations, Dr. Kenchington commented that the limited access fleet will have some bottom line positions on the Amendment 10 alternatives, including a sufficient number of days. 81 days will be insufficient. Mrs. Bradgon said that she doesn't understand why the full-time fleet would get 81 days when the resource is rebuilt. She asked why Amendment 10 would allow adding more general category permits when the full-time fleet would get only 81 days.

Mr. Michaud added that general category vessels would find it difficult to benefit from the proposed access program, due to cost and fuel capacity. Dockage in the summer in months prevents him from moving to closer ports. Increasing the general category possession limit would make it more feasible, but

he thought it would be a mistake to do so because the general category fishery is open access. Such an action would increase the amount and size of vessels targeting scallops, he feared. He doesn't want to see those changes, because they might also target scallops inshore and affect other vessels.

Mr. Davis, owning a general category vessel fishing from Chatham, commented that the proposed habitat closures would have a greater impact on small boats with less than 50 days-at-sea. Habitat alternative 7 would close large portions of Pollock Rip and would have drastic effects, he predicted. Mr. Michaud agreed with Mr. Davis' comment, but the alternative would not affect the Provincetown fleet. It would, however, have substantial effects on the vessels from Chatham, or force vessels into open areas near Provincetown, increasing fishing pressure there. Mr. Davis added that Amendment 10 appears that someone is aiming at the general category to wipe it out.

Dr. Kenchington, commenting on the seasonal closure area alternative in Amendment 10, pointed out that the previous emphasis for seasonal closures was to avoid opening areas when high bycatch were expected. Thus bycatch would be minimized by not allowing concentrated fishing activity associated with a re-opening to occur when bycatch levels were high. He claimed that during the development of Amendment 10, this strategy had morphed into an alternative to have seasonal closures in general, open areas. He thought that seasonal closures to avoid bycatch may have some complicated interactions with spawning activity and other regulations, such as potential summer closures to protect turtles.

Mr. Wood supported the idea of allowing general category vessels to access the controlled access areas with VMS, but this action would need the Council to set a higher possession limit to pay for the VMS cost. He was concerned about the 2200 general category permits and suggested that the Council consider closing the general category and possibly eliminating unused permits. Mr. Michaud, on the other hand, recommends keeping the possession limit at 400 lbs, but thought that the TAC for the general category fishery would be problematic for vessels that fish for other species. The TAC would create an opening day and a big race to fish. A scallop season, thus created, might close before the end of the seasons that he and others fish for other species. Mr. Davis supported the alternative to prevent limited access vessels from fishing under general category rules.

Mr. Michaud, commenting on the proposed fishing year change explained that the general category boats benefit because the price is much better during the winter because the limited access vessels held over days, giving general category vessels an opportunity to fish for near shore scallops. He noted that some limited access vessels last year held over some days to the end of the fishing year, so that they could get an early start on their first trip for the new fishing year, possibly providing them with an extra 25 to 50 cents per pound. A shift of the start of the fishing year to the summer months would cause the seasonal price to be lower during the winter months when the general category vessels fish in his area, because the limited access vessels wouldn't be holding back on their fishing effort at that time in anticipation of a new fishing year day-at-sea allocation, he predicted.

He commented that small boats lose when management doesn't differentiate between the small boats and large boats. For example, the groundfish rolling closures hurt the small boat fleet because they were forced to tie up when the large boats could fish offshore or in other areas during the closures. Coupled with the day-at-sea reductions based on recent history during the rolling closures, it has hurt the Provincetown groundfish fleet.

Offshore boats benefited from the limited access program, since small vessels cannot steam to distant scallop beds and they often participate in other seasonal fisheries. Rotation closures can have same effect on the small ports as the groundfish rolling closures do. As an example of the type of effect that large boat management can have on inshore, small vessels, he explained that three years ago as inshore stocks increased local boats caught their limit in a few hours and began making money. Even with about 30

general category vessels fishing in the area, the biomass continued to increase even with this fishing effort. Then during the spring of 2002, twenty full-time scallop boats worked the area and the local catch rates declined within six weeks. Then the full-time boats moved offshore, but the small inshore vessels did not have that option. Currently, off of Provincetown the catches are now very low. Fishing earlier this winter near Pollock Rip, it was quite risky in a 42' boat, but it was necessary to survive. He asked that the Council keep the small boats in mind when making decisions.

No more comments were offered and Mark Amorello wrapped up the hearing, announcing the remaining hearings and the opportunity to provide written comment through July 16.

Scallop Fishery Management Plan

Amendment 10

Public hearing summary – Gloucester, MA

May 21, 2003

The meeting was chaired by Mr. Bud Fernandes, a member of the Council's Scallop Committee. Also attending were Council staff members Andrew Applegate and Deirdre Valentine. The audience consisted two representatives of the Fisheries Survival Fund (Dr. Trevor Kenchington and Mr. Shaun Gehan), a scallop advisor (Richard Taylor), R.J. Learson, and Janice Plante (Commercial Fisheries News).

Mr. Fernandes open the meeting at 7:15 with a short introduction about the meeting agenda. He also summarized the schedule for future public hearings and explained the schedule for providing written comment. Many of the audience had been closely involved in the development of Amendment 10 and were therefore familiar with the documents. Everyone agreed that the planned presentation on the alternatives and their effects was not needed.

Main points made by people offering comments included:

1. The Council should approve the status quo overfishing definition for use in Amendment 10 with area rotation.
2. There must be sufficient access in Amendment 10 to the large scallop biomass in the groundfish closed areas.
3. There is support for the day-at-sea tradeoff alternative, but there must be a more favorable tradeoff to attract fishing effort into the controlled access program.
4. There is insufficient analysis and justification for adoptin g closed areas to protect sensitive habitat.
5. Vessels with general category permits should benefit from area rotation and be allowed to participate in controlled access programs.

Dr. Kenchington said the FSF planned to be at most of the public hearings, with main input to be given at Fairhaven. By being at this meeting, he had hoped to hear the concerns and issues from general category and groundfish fishermen from Gloucester. He said that the FSF recognizes that we need a management plan that works for everybody, under NEPA rules. There has been considerable work on the Amendment, to everyone's credit. He thought that more work would be needed however before the Council could choose a final alternative.

One of the FSF concerns, Dr. Kenchington explained, was that the original core purpose of Amendment 10 was to increase the productivity of the resource. At least one of the central objectives of the amendment should be increasing sustainable yields, but he thought that turtle and habitat issues has caused the Council to lose sight of the main objective. FSF encourages the Council to pay attention to the crises issues, but not loose sight of the core purpose of the amendment. He explained that the single,

most important thing in Amendment 10 is the amount of access to the groundfish closed areas, which now will be implemented through Framework 39 and there must be progress on those issues before the Council can make a rational choice among the Amendment 10 alternatives.

Dr. Kenchington added that one of the key issues for the full time industry is a large enough day-at-sea allocation to get by, which brings up the issue of whether fewer days with higher catches is or is not viable for the industry. Commenting on the day-at-sea allocations, he noted that the chair of the scallop committee promised that the Amendment 7 day-at-sea schedule would disappear with Amendment 10. His impression was that it is implicit that the Amendment 7 day-at-sea schedule would be removed with Amendment 10, but that he feared that the Amendment 7 schedule might continue and require annual frameworks to replace an obsolete day-at-sea allocation schedule.

He observed that people want to have an idea of how many days they would have in 2004. The FSFs position is that there should be no habitat closures in Amendment 10, but he will bring this up at a later meeting. On allocation of access to re-opened areas, the FSF position supports the trade-off option in the document, although it has some serious problems because it is the only thing left that isn't opposed by industry, such as use it or loose it alternative (with this the problem would be for vessels in the extreme north or south), or to allow trading of allocations. There are industry people that would like trading, Dr. Kenchington explained, but the FSF position opposes trading, for the same reasons as individual quotas. The only thing left with flexibility is the tradeoff system, but there are insufficient incentives to fish in the areas, by fixing the deficiencies in the old system.

One of the changes he recommended would be to make sure that the pounds per day are rich enough to entice fishing in the controlled access program. Increasing the pounds per day-at-sea, means that fewer days would be allocated, which may not be popular, but would have to be acceptable, he argued. The other thing that needs to be done is to charge 10 days no matter the length of the trip, even if it takes more days to take the controlled access possession limit.

Both of these suggestions may seem to be contrary to some people, Dr. Kenchington elaborated. The idea was that 120 days could be used in the open areas, but that fewer days would be used than allocated under the tradeoff system. An idea suggested a few years ago for Amendment 10 was to change the logic. Vessels would have so many days to fish in the open areas and a set number of pounds to be taken from the controlled access areas. It wouldn't matter how many days would be used in the open areas, since days would only be a currency of exchange. The alternatives to day-at-sea tradeoffs will be unacceptable to the industry, he re-iterated.

The FSF position is no habitat closures in Amendment 10. At present there are five reasons:

First, applying habitat closures doesn't make sense from a single species point of view. Scallops don't move [so the effects on fishery productivity are too high??].

Second, the DSEIS analysis fails to justify closures, Dr. Kenchington asserted. At a certain point about our knowledge, there is a gulf of information lacking about the changes that dredges cause on the cod habitat. It requires a big leap in assumptions to justify using closures to protect habitat using closures.

Third, Amendment 10 can only affect closures on scallop gear and the effects of single gear closures are not very effective for habitat conservation. Therefore, Dr. Kenchington thought that habitat closure alternatives are not a viable means to protect sensitive habitat, because it would continue to be affected by other types of mobile bottom tending gear.

Fourth, the Council is required to make a major decision about habitat closures in a Amendment 13, so in effect Amendment 10 would pre-judge what the analysis and public comment would be for Amendment 13. He added making these decisions in Amendment 10 would be a very awkward approach. He pointed out that Amendment 13 will have to consider closures to protect groundfish EFH from scallop gear, so it doesn't make sense to do in the scallop plan.

Lastly, one of the two preferred closure alternatives in Amendment 13, developed by the Joint Advisory Panel, is not even viable in Amendment 10 because it was not available for analysis in time.

Mr. Gehan, commenting on behalf of the FSF, said that the industry's intent is to have the members and the scallop fishermen comment on the issues themselves, primarily at the Fairhaven meeting but also in NJ and VA. He observed that there are certainly plenty of alternatives with closures to snatch defeat from the jaws of victory. At the end of the day, he said their comments will be supportive of adaptive management. He stated that the Council needs to show that we can manage a rebuilt resource – the success story of the northeast fisheries. The FSF recognizes that we want to manage so there won't be the boom and bust cycle as there had been before. On the other hand, he predicted that people won't understand 50 percent or greater reductions when the resource is rebuilt.

The regulations when talking about closures would identify special or unique areas of the ocean that closures is the only way to protect them. He thinks the analysis does not show this sufficiently to justify adopting closures as the main mechanism to protect EFH. To meet the obligations, the system needs to recognize the dramatic reductions in effort and existing closures and gear restrictions have already minimize the habitat effects. In the AOC case, Judge Kessler found that the plan had met the Magnuson Act responsibilities. What was wrong was under NEPA, was that there were insufficient range of alternatives that were required to be given a hard look. Considering the range with habitat closures and other alternatives, he thought Amendment 10 would meet all requirements of the settlement agreement, but it doesn't require the Council to close areas for habitat protection. Instead, he recommended that the Council rely on the existing and future scallop management actions that have already or will continue to minimize habitat impacts, through day-at-sea and gear regulation.

Mr. Taylor began his comment, expressing appreciation for the incredible amount of work that went into the development of Amendment 10. He thought that area rotation to gain growth and reproductive potential has been the main focus, but that the amendment has ballooned to address other options. A few years ago a decision was made to close no additional areas for scallop growth purpose, but all knew there were benefits to closing areas, but no guarantee that areas would re-open. He believed that Amendment 10 provides the roadmap to ensure that scallop closures would re-open and allow closures as part of a rational area rotation plan. The existing closures and future rotation areas do not have an identified measure of their value to habitat.

The controlled access day-at-sea tradeoffs need to be a positive choice, he recommended, taking effort off scallops off other areas. Lastly he recommended that access to the re-opened areas must be made available to the general category vessels, with whatever monitoring was required. Otherwise all the government for scallops is being done for a very small number of citizens, a policy that he said did not make sense. The habitat issue are already behind the 8-ball by keeping the HAPC closed for all this time, an area with considerable biomass. In a 1998 survey, it was estimated that 37.5 percent of the biomass in Closed Area II was within the HAPC boundaries. This amounted to about 10 to 15 million pounds of scallops, worth 10 to 20 million dollars per year, on par with the entire codfish fishery. He thought that the HAPC had been invoked because of a Valentine paper suggested that the codfish might benefit from the speckled gravel found there. Yet the highest centroid of Canadian fishery coincides with the centroid of the cod habitat in the Valentine paper. He thought it would be a legitimate transboundary issue to work on.

Scallop Fishery Management Plan

Amendment 10

Public hearing summary – Ellsworth, ME

May 27, 2003

The meeting was chaired by Mr. John Williamson, a member of the Council's Scallop Committee. Also attending were Council member Mr. Dana Rice and Council staff member Andrew Applegate. The audience consisted of several vessel owners or operators with general category permits (Gloria Britto, Ivory & Valerie Preston, Benjamin Crocker Sr. and Benjamin Crocker Jr., Russell & Daniel Leach, Adam Stanward, Stanley Sargeant, and Laurie Shreiber), one with a limited access permit (Gary Hatch, a scallop advisor), and a representative of the Conservation Law Foundation (Roger Fleming).

Mr. Williamson, acting as public hearing officer, opened the meeting at 7:00 pm with a short summary of the agenda for the meeting. Due to the composition and interests of people attending the hearing, Mr. Williamson asked that the presentation focus on issues that might affect owners and operators of general category vessels. Mr. Applegate began the presentation by saying that it was important to review some of the parts of the amendment that could have an indirect effect on the general category fishery, including area rotation. He said that it may have a direct effect by temporarily closing some areas that are traditional fishing areas for general category vessels and an indirect effect by causing limited access vessels to fish in those areas in response to a rotation closure. He also indicated that some of the habitat and bycatch alternatives could have a direct effect as well. Issues such as effort allocation and the overfishing definition might have less effect on the general category fishery, and he would shorten the presentation in those areas. Mr. Applegate presented a summary of the alternatives and the estimated impacts, pausing for questions and specific comments on occasion. The first part was on area rotation and other ways to improve scallop yield, followed by area access alternatives, initial management measures, overfishing definitions, minimizing bycatch, minimizing habitat impacts, data collection and monitoring, and framework adjustments and other process modifications.

Main points made by people offering comments included:

1. Requiring VMS on general category vessels is acceptable if the Council changed the general category possession limit to account for these costs.
2. A TAC for the general category fishery is acceptable, but should be adapted for each area based on the historic percent of total landings for each area. If a TAC is approved, the Gulf of Maine should have a TAC that is separate from the rest of the resource areas and should not apply to state waters.
3. Area rotation could have significant costs for fishermen targeting scallops under general category rules, especially if area rotation caused closures of large, nearshore areas, like those off of Cape Cod.
4. Indirectly, area rotation could also have significant effects on small vessels with general category permits, if limited access vessels fished on inshore scallop beds in response to area rotation closures elsewhere.

5. The rotation management alternative that takes into consideration the sensitivity and recovery potential of habitat is not well developed to be useful for managing area rotation.

Mr. Felming asked about why Alternative 13 was not further developed. Mr. Applegate replied that data were lacking to define specific criteria relative to habitat sensitivity and recovery potential. Also, first pass of the dredge.

Mr. Stanward, a fisherman with general category permit with a 52' eastern rig, was concerned about getting back and forth from port with a 400-pound limit. He asked if it would be possible to have a multi-day bag limit or 500 – 600 lbs. per day, if general category vessels were required to use VMS. His boat has a 7' draft, which presents problems using some of the Cape Cod inlets. He said that this change would him to access areas farther offshore, if he had a multi-day possession limit. His primary fishery is for scallops.

Mr. Hatch, a limited access permit holder and scallop advisor, asked if the new style VMS transponder could be used, with considerably less cost. Mr. Williamson said that Boatrac is proposing a new system and NMFS may be accepting other vendors. He was also concerned about the TAC, wonders if it might cause problems in the Gulf of Maine if the local boats begin scalloping after a good year class. As a proposal, he recommended looking at a TAC east of Cape Cod to meet the needs of the local fishermen, separate from the rest of the resource. He suggested using 1985 to 1990 trip reports for anyone that landed scallops in the Gulf of Maine, would provide a good number for boats still fishing in the fishery.

Many fishermen commented about large vessels coming to fish when a good year class occurs near shore, making large catches and depleting local scallop beds.

Mr. Sargent, commenting on general category permit, prefers option 1. He was concerned with the impacts of setting a TAC because it may be insufficient for good year classes at nearshore beds. Recommends a split for the general category TAC for different areas, because each area has unique characteristics. Areas within three miles of Maine should not be included in a TAC set aside, because it is not part of the scheme of what the Council is trying to do. The preferred alternative of the 400 lb. possession limit should be raised or allotted in an amount for each vessel for a season, especially if with more reporting requirements. Many fishermen choose the general category permit, because they could not justify the cost of fishing under the limited access rules, Mr. Sargent reported. He thought that there was enough triggers or mechanisms that we don't need what is being proposed.

In the preferred alternative, Mr. Sargent asked if the vessels that exceed 45 days of scallop fishing would fall into another permit category. Mr. Applegate explained that the difference is that vessels fishing less than 45 days could participate in a call in program, but vessels that fished more than 45 days would have to operate VMS equipment. Mr. Sargent opposed the preferred option to keep the possession limit at 400 lbs. and recommended increasing the possession limit to 1,500 lb. per day for general category vessels with VMS requirements. VMS should not be required if the 400 lb. possession limit is retained, he thought.

Mr. Hatch recommended that the VMS polling costs are high and there should be a way to declare clocked out to be able to shut the VMS off while in port, similar to the program used in the herring fishery.

Mr. Fleming, from CLF, observed that the Council is getting good at maximizing yield. In addition, he encouraged the Council to get better at minimize risks to ecosystems, especially those for juvenile cod, which need special habitats for shelter and food. The current status is that we are at an all time low in the number of cod reaching adulthood. More specifically to Amendment 10, Mr. Fleming was disappointed

that there is not a better developed alternative with habitat management incorporated into area rotation management. Also, he was somewhat disappointed that there is not a broader range of preferred alternatives, to solicit better public comment. In general, CLF supports rotation management that incorporates habitat concerns. They also support closed areas focused on hard bottom habitats in South Channel and northern edge of Georges Bank, like Alternative 3a.

Meeting adjourned at 9:30.

Scallop Fishery Management Plan

Amendment 10

Public hearing summary – Fairhaven, MA
May 29, 2003

The meeting was chaired by Mr. Mark Amorello, chairman of the Council's Scallop Committee. Also attending were Council staff members Andrew Applegate and Leslie-Ann McGee, Council member Jim Kendall, and PDT member Bill DuPaul (VIMS). Hearing attendees included vessel owners or operators with general category or limited access permits (Roy Enocksen, Edward Welch, James Welch, Wayne Frye, Hans & Rosemary Davidsen, Ronald Enoksen, Frank Weckessen, Herman Bruce, Russ Posia, Max & Gail Isakson, Ray Starvish, Bob Brevard, Gabriel Moranda, Bob Morris, and John Reardon), , a representative of Oceania (Chris Zeman) and of the Fisheries Survival Fund (Dr. Trevor Kenchington, David Frulla, Ronald Smolowitz, Shaun Gehan).

Mark Amorello, acting as public hearing officer, opened the meeting at 7:00 pm with a short summary of the agenda for the meeting. Mr. Applegate presented a summary of the alternatives and the estimated impacts, pausing for questions and specific comments on occasion. The first part was on area rotation and other ways to improve scallop yield, followed by area access alternatives, initial management measures, overfishing definitions, minimizing bycatch, minimizing habitat impacts.

Main points made by people offering comments included:

1. There is insufficient analysis of the negative impacts of the status quo on habitat and insufficient justification for using closed areas to protect sensitive habitat.
2. Requiring vessels to have two types of dredge gear and changing the fishing year will be very costly to the fishing industry, with insufficient benefits to justify the costs.
3. There was support for area rotation to improve scallop yield, but a system that closed areas very selectively. The habitat benefits of area rotation have not been adequately analyzed.

Mr. Zeman commented that the Amendment 10 document contained insufficient analysis of environmental impacts of area rotation and an inadequate discussion of the environmental effects of status quo.

Dr. Kenchington commented that the area rotational alternatives range from mechanical to adaptive, but it is the wrong way to look at the alternatives. The right way is to look at area rotation as an automatic rotation vs. something only to include closures only when and where needed. Therefore there are only two area rotation alternatives, he argued. Although the status quo (no rotation) is not formally classified as area rotation, but the real status quo is the Council closing areas when there is a real benefit to closures. Dr. Kenchington concluded that the only alternative with a real yield increase is adaptive rotation and flexible boundaries. The primary objection to the flexible boundaries is the complexity. The only reason it looks complicated on paper is in comparison to the status quo, which includes an ad hoc flexible boundary management approach.

The intent of the FSF strawman was to take the Council decisions in the status quo and formalize them into a systematic approach. Doing so would make them run comparatively smoothly, he contended, compared to doing things in a hurry with an emergency action. The industry is behind targeted rotation, but there is little support for a system that doesn't target the beds of small scallops for rotational closure.

Mr. Smolowitz, FSF, thought that the presentation might be misleading, but it makes several assumptions. In other words, the Council is not managing and that the overfishing definition is the only thing that controls mortality. He pointed out that the Council can make other decisions to achieve a lower target, which has happened in the recent past. We manage the scallops as one resource over the entire range, because the fleet is very mobile. The document refers to localized overfishing, but the fleet operates on an optimal mix of scallops, advised Mr. Smolowitz. The assumptions used to analyze area rotation do not accurately reflect what actually takes place in the fishery. The existing overfishing definition provides the Council the flexibility to take into account all the unknowns and uncertainties, while the proposed overfishing definition is too restrictive. He urged the Council to approve continuing the status quo overfishing definition.

Mr. Frulla asked about the comparison of the relative costs of the habitat alternatives, and that the difference in the costs between habitat alternative 3a and 8b of only 1 million lbs. different. Mr. Applegate replied that during the four year period for which the short term costs were calculated, the preferred alternative controlled access option would allow for fishing in Closed Area I and Nantucket Lightship Area during 2004, with a TAC of about 6 million lbs., which when divided by the four year period, only averages one million pounds per year.

Dr. Kenchington reported that at the Gloucester public hearing, comments were made that there should be no habitat closures in Amendment 10. He felt that there was insufficient demonstration of the effects of fishing on habitat and insufficient justification of using closures to protect sensitive habitat. He pointed out that there is no legal requirements to choose closed area alternatives or reduce habitat impacts. Under the law, some increases in habitat effects are permissible in the Magnuson Stevens Act. He commented that the alternatives to minimize habitat impacts should be subjected to one constraint – they have to be practicable.

Dr. Kenchington reported that the Gear Effects Workshop identified four methods to minimize habitat impacts: Closures, effort reduction, gear substitution, and gear modification.

Unlike other species, the practicality of using closures to protect sensitive habitat is affected by the sedentary nature of scallops – long term closure takes that much of the scallop resource out of production. A closure on prime scallop bottom has a large and known cost. If there is a habitat closure, there has to be a demonstrable benefit, which is not provided in the DSEIS. There is circumstantial justification, but the proposed closures do not pass the benefits test as they are presented to us at the present time. There are gaps in the logic. There is a case made that scallop fishing alters the seabed, but no indication that the alterations made effect the value of that seabed to the species.

A second approach is to reduce fishing effort, Dr. Kenchington offered, which has already been cut considerably more than 50 percent and will likely be cut further by the actions in Amendment 10. There will not be a case that further effort cuts to minimize habitat impacts is practicable, given the already low amounts of fishing effort that are anticipated by Amendment 10 to optimize yield.

Applying gear substitution to minimize habitat impacts, there are simply no alternatives that are practicable to harvest scallops offshore, Dr. Kenchington concluded. As far as gear modifications, the DSEIS suggests restrictions on rock chains, but there is no evidence that it would be beneficial to habitat, since the gear could be more damaging to habitat when the rocks are brought onboard, rather than being

deflected by the rock chains. It is not at all clear that the intent to modify the gear to keep fishermen away from hard bottom will counteract the damage caused by using inappropriate gear in these areas. Other gear modifications to address the issue have yet to be made and developed, and therefore cannot be applied.

He concluded that all practicable measures have already been taken or will be taken in Amendment 10, which may have little or no cost because they are intended to improve scallop yield. There is scope for adjusting the rotation system, taking habitat into account, but it does not appear as an analysis in the DSEIS. Dr. Kenchington suggested that everything that can practicably be done [to minimize habitat impacts] is being done, so there is no grounds for additional measures.

Mr. Smolowitz asked what is the time period for the landings data were used in the analysis of the habitat options. Mr. Applegate replied that data from 1994 to 2001 had been used because of the effects of the groundfish closed areas on the fishery and because it relied on VTR data, which began in 1994. Mr. Smolowitz wondered how that type of analysis could be done at all without accounting for the effect of various area closures and access programs during that time. Mr. Applegate replied that the retrospective results had to be taken in context of the management circumstances, but that all available data had been used including the effort distribution from VMS data since 1998. Mr. Smolowitz asked if a comparison of the habitat alternatives had been done looking at the historic value of landings, before the area closures began? Mr. Applegate replied that the comparative analysis of the habitat alternatives using long-term projections addresses that issue, because it relies on scallop productivity (i.e. recruitment) from 1982 to 2002 that were much less influenced by the distribution of closed areas and high fishing mortality.

Another important question, Mr. Smolowitz posed, is that the proposed access programs with possession limit and day-at-sea tradeoffs, in the current system vessels that choose not to fish in controlled access areas could use those days to fish in other areas. What would be the impacts from the habitat alternatives of the use it or lose it day-at-sea tradeoff approach? Mr. Applegate replied that the day-at-sea use might be a smaller proportion of the total if vessels did not use area-specific days to fish – the management response might be to liberalize the day-at-sea allocation to account for this response.

Mr. Zeman restated that he could not find the analysis of environmental impacts of the area rotation alternatives. What he saw was a completely inadequate discussion of certain alternatives, for example, the status quo and no action alternatives in which there is no discussion of negative impacts of the alternatives on EFH and the marine environment. All he can find is some discussion is that the status quo and no action may have some incidental benefits. The document does not describe the problem of status quo or no action, therefore the justification of using closures to protect habitat is unclear. The document, Mr. Zeman thought, takes a “glass half-full approach” rather than an objective analysis of what is going on in the water and what habitat is being effected.

There is very little tie to the recommendations of the Habitat Tech Team. The technical team advised that the distribution of effort has more of an effect on habitat than the amount of fishing effort that occurs. Even 10 days-at-sea in the most sensitive habitat will have a significant impact, he argued, but the document does not explain that. What really matters is where the effort is occurring and that is not being addressed. He pointed out that the Habitat Tech Team advice was that it was very unlikely that effort reductions would have much habitat benefits. Mr. Zeman added that the analysis points to reductions in bottom contact time when large scallops are available and dredges with larger rings are used, but if there are no large scallops available the fishery, using larger rings will generate longer tow times and cause greater habitat impacts.

Mr. Zeman said that Oceana has weight into the process for several years and introduced numerous alternatives but they have not been included in the document. During the scoping period, they requested

that considerations of HAPCs have been analyzed but were told that that would not be in the document. However, at the last minute the industry has come together, and this has been rapidly included in the document, which is more that he could say about previous Oceana alternatives that they recommended. Process is fundamentally flawed, because it does not provide a proper baseline of sensitive habitat or where we have data that describe what the negative effects of scallops dredging are. For some species, Mr. Zeman thought we have very good data, especially for juvenile cod. It may be mentioned as a cite to a scientific study, but it is not applied. EIS must be an applied environmental analysis and the document has not executive summary that describes what each alternative does. The document does not describe the major or minor benefits. The conclusions are very vague because there is no analysis beyond 2004 and as only a year of analysis, this is inadequate. The discussion is often completely qualitative and we can do much better than that, Mr. Zeman argued.

Mr. Kendal, New Bedford seafood consulting, complimented the staff on developing draft Amendment 10. He disagreed that there is no analysis given or presented in Amendment 10, comments which based on the amount of analysis in the document is totally inappropriate. Issues have been raised tonight about habitat effects, but they are not based on facts, Mr. Kendall replied. There is very little credit given to the proactive participation by industry in the success of the management plan. There is no executive summary of the habitat benefits, because they cannot be concretely described, he argued. Mr. Kendall rebutted the comment that Amendment 10 does not contain alternatives recommended by Oceana during scoping, but Alternative 7 in the closed area options and the rock chains have been included, in response to scoping comments by Oceana. There are alternatives in the document that were initially recommended by the environmental groups.

The composite biomass is slightly above the B_{MSY} target, but it is really considerably above the target. In contrast with the scientific advice and assumptions, Mr. Kendall thought that closed areas have been a boon to recruitment. With all the changes in the fishery, the open area biomass has rebounded to levels not seen before. He thought that there has to be some obvious link to the closed areas and the recruitment that they have provided. It points out that the resource in closed areas is not permanently locked in that area, which needs to be taken into account.

The habitat closure in Closed Area II, with the westward expansion would have a large impact on vessels that usually fish there, Mr. Kendall advised. He thought that the analysis does not show this cost. On the overfishing definition, there was much work completed in support of maintaining the current definition. The industry believes that scallops should be managed as one stock, perhaps with two management areas. Breaking up the resource into multiple areas would change the character of the fishery since its inception, Mr. Kendall predicted.

General comments after presentation:

Mr. Bruce, commenting on changing the fishing year, the start of the year in August to September would cause adverse economic effects, considering the changes in scallop yield and hurricane season. Many boats are not capable of fishing during the winter with a seven-man crew, Mr. Bruce advised. In March and April, the change in the fishing year would concentrate landings within a five-month period, which would cause prices to drop. He thought that the six month gain in using more recent data would not be worth the cost and burden on the fishing industry caused by changing the fishing year. Mr. Bruce recommended that the fishing year should start no later than May 1.

On the 4-inch rings, last year with a 30 count and under standard, his boat landed 77.60 scallops that were 30 count and under and 11.33 percent of the scallops that were over 30 count. The 3.5-inch rings are doing an adequate job, Mr. Bruce advised. With 4-inch rings, vessels would need to pay for two different types of gear with minimal benefits. The 4-inch rings when left on the dock for 10 months will be closer

to 5-inch rings when they are needed again. Loss of day-at-sea, more gear costs, and a change in the fishing year will have major economic consequences, Mr. Bruce predicted.

Mr. Davidson, a scallop fisherman since 1973, recommended not allowing more vessels to get general category permits. The general category vessels should all have VMS onboard, especially considering that the limited access vessels were only landing 500 lbs. per day. Not enough research has been conducted on the 4-inch rings, Mr. Davidson thought. He recommended continuing to use the current overfishing definition, because the new overfishing definition would have a drastic effect on days. More cuts in days are unnecessary, considering the rebuilding that has been achieved. He also agreed that changing the fishing year to August would be very costly, but thought that a one or two month change to accommodate area rotation would be workable.

Mr. Gehan, a representative of the FSF, commented that not enough is understood about the effect of fishing on scallop EFH. Mr. Applegate replied that scallop EFH was not excluded in the analysis, but the primary focus was on protecting finfish EFH which scientist believe is more vulnerable than scallop EFH. It's not clear that the actions considered in Amendment 10 are required by the Magnuson Stevens Act. There is a strong mandate to determine what is necessary for the various species. Closures are the ultimate weapon to achieve habitat conservation. A better practicality analysis of what is necessary for certain species is not adequately described in the document, Mr. Gehan argued. There are compelling reasons for protecting scallop EFH, he stated, but he is disturbed by the discussion of protecting habitat. This goal should not be the primary goal of the fishery plan. There is insufficient justification and analysis that the impacts of fishing are adverse and that closures are the best way to address that issue.

Mr. Welch, a commercial fisherman, agreed with the previous comments on the 4-inch rings. The 3.5 inch rings have worked and the larger rings need more research before imposing more industry costs. He feared that the plan would evolve into having closed areas everywhere. Once closed to protect habitat, those areas would be off limits for a long time. Why not change the year of the data collection, he asked? If the general category boats have a TAC, the action might make a directed fishery out of it. There more vessels fishing for the 400 lbs., with fewer limits than those that apply to limited access vessels. He recommended keeping the general category scallop possession limit at 400 lbs. and limit the crew size to three men, with mandatory reporting.

Mr. Moranda, Capt. on the Friendship, opposed all the alternatives. If ring size were increased, bigger rings would be required later, he predicted. Capt. Moranda wanted to know what habitat we are trying to protect, which the impacts have already been minimized with existing measures. The existing closed areas have forced vessels off of the soft bottom and to fish in harder habitat to the west of Closed Area I, he advised. The resource is not being overfished, but now that is proposed to change with a new overfishing definition, he thought.

Mr. Roy Enockson, a boat owner, commenting on rotational closures suggested that rotating for the sake of rotating makes no sense. The habitat issues, he agreed with previous comments, if there was real proof of the adverse, but he thought all of the analysis is smoke and mirrors. There is insufficient evidence to prove that the dredges are damaging habitat, he argued. There is even uncertainty over what is defined as cobble.

Dr. Pierce replied that the function of various substrates as habitat should be subject to a greater amount of evaluation, analysis, and debate. He agree that there was some confusion, but Amendment 10 makes some very important statements that should be a concern of everyone in the room. A clear statement is that the Amendment 10 has many alternatives that reduce bottom contact time and also contain closure alternatives including vulnerable and sensitive habitat and would benefit from closure to scallop fishing.

He was concerned with definitions of the charged words – what exactly the meaning of sensitive and vulnerable bottom habitat; and what is a negative impact?

Mr. Enockson agreed that there are an awful a lot of unknowns, but there are pretty server alternatives included in the amendment. On the change of the fishing year, Mr. Enockson, recommended that the fishing year should start in the spring, after vessels have tied up during the winter. A shift of the fishing year would be costly and perilous, with vessels fishing during the hurricane season and winter.

Mr. Dan Eleckson, a boat owner and fisherman, said that he has worked with SMAST on tagging and surveys. He reported that videos are taken after fishing had occurred. He was afraid of the results, but the video before/after shots showed little or no differences. He cannot accept that we know what will be gained through area closures to protect habitat. He recommended that the Council proceed with the rotation plan, but closures should not occur unless there are good reasons, with beds of seed. He said that he has observed strong new year classes. He recommended not changing the overfishing definition, because we need the flexibility in the old overfishing definition. He didn't want closed areas that are unrelated to the scallop fishery, which also changes the amount of effort that can be allocated. He thought that the higher standards in the amendment are unjustified. He also was concerned that the general category alternatives would create a whole new fishery, which is occurring under the current situation with no limits.

Mr. Smolowitz claimed that he had advocated concerns about habitat. One of the advantages of closed areas is allowing fish to exist undisturbed, but there is little hard evidence that this is beneficial. Many advisors believe the same thing, he reported. The analysis in the documents are highly flawed, Mr. Smolowitz thought. Mr. Smolowitz recommended that the Council should not implement habitat closures in Amendment 10 and Amendment 13 and continue the joint advisors effort in the omnibus amendment. One of the species identified as being affected by scallop gear is redfish, but there is no overlap of redfish and scallops. Redfish catches in scallop gear are almost non-existent. Mr. Smolowitz thought that these statements in the document serve as legal fodder for those that would sue the Council. More discussion is needed on why habitat closures would be needed to justify closures.

Mr. Kendall, New Bedford Seafood Consulting, thought that the general category process the status quo is not listed as an option. Mr. Applegate replied that the status quo alternative is described on page 28 of the public hearing document. Commenting on observer coverage alternatives, Mr. Kendall did not think that any other fisheries that bear the costs of the observers. One reason that the controlled access programs have not been attractive is the cost of the observer program, including the cost of handling the product to pay for the observer.

Closed areas will be cumulative, Mr. Kendall predicted, especially with regard to the groundfish closed areas, overlaying area rotation closures, and habitat closures. This will force the industry to fish in much smaller areas, causing greater habitat impacts. He wants the document to demonstrate that there is a damaging effect of fishing on habitat before these alternatives would be acceptable. A recent court case that the judge found for the industry, because National Standard 2 was not followed, Mr. Kendall reported. The management decision was driven by unsupported conjecture.

Mr. Weckessen., a boat owner with a general category, reported that many boats are not taking 400 lbs., most go with 2-3 men. All are little boats, fishing 2-3 miles in state waters, landing 1 percent of the total, which is a small sacrifice for the larger vessels. The fishery has a very little impact on the scallop resource, yet offers an opportunity for new people to participate in the fishery and for those that regulations have been cut out of other fisheries.

NO more comment, meeting adjourned at 10 pm.

Scallop Fishery Management Plan

Amendment 10

Public hearing summary – Absecon, NJ

June 3, 2003

The meeting was chaired by Ms. Michelle Peabody, a Mid-Atlantic Council member and also a member of the New England Council's Scallop Committee. Also attending New England Council staff member Andrew Applegate.

Hearing attendees consisted of limited access scallop boat owners, fishermen, and processors (David Wiscott, Benny Rose, John Gashen, Jr., Charles Wiscott, Brady Lybarger, Owen & Ashley Shick, Daniel Cohen, John Larson, Keith Larson, Kirk Larson, Ed Eckert, Michael Francis, William Wasilowski, James Gutowski, Ken & Kathy Roma), six representatives of environmental organizations [Chris Zeman (Oceana), Fred Akers and Julie Albus (Great Egg harbor Watershed Association), John Williamson (Audobon Society), Bill Phoel (Nickersen Research Foundation), and Capt. J. S. fogel (Waterwatch International)], and two representatives of fishermen's organizations (Nils Stolpe of the Garden State Seafood Association and Shaun Gehan of the Fisheries Survival Fund). Also attending were Aaron Shyents, Dave Knutson, Kendra Flynn, Andrew & Marilyn Applegate, Gef Flimin (Rutgers Cooperative Extension), John & Elizabeth Gross, Alexis Plotkin, Don & Louise Myers, plus three other unidentified people.

Ms. Peabody, acting as public hearing officer, opened the meeting at 7:15 pm with a short summary of the agenda for the meeting. Mr. Applegate presented a summary of the alternatives and the estimated impacts, pausing for questions and specific comments on occasion. The first part was on area rotation and other ways to improve scallop yield, followed by area access alternatives, initial management measures, overfishing definitions, minimizing bycatch, minimizing habitat impacts, data collection and monitoring, and framework adjustments and other process modifications. Several breaks in the agenda were taken to allow the attendees to ask questions and/or comment on specific portions of the amendment.

Main points made by people offering comments included:

1. It would be inequitable to allow other vessels with general category permits to target sea scallops when not on a day-at-sea and prohibit limited access vessels from doing so.
2. Vessels targeting sea scallops under general category rules should be required to use VMS equipment. The trip limit should remain the same, but the Council should set a TAC at the historic limit, about two percent of total landings.
3. There is insufficient analysis of the habitat effects of the status quo and the bycatch alternatives are not adequately developed.
4. Many of the habitat closure alternatives are simply variations of the status quo and are therefore unacceptable. Oceana favors selection of Alternative 3a over the other alternatives. On the other hand, many fishermen thought that the existing scallop management measures already have done

a good job minimizing habitat impacts and opposed additional closures.

5. Sensitive and valuable habitat would not benefit from area rotation closures because it could not recover to an undisturbed state in the time frame that areas would be closed for scallop area rotation.
6. Many fishermen supported the adaptive, flexible boundary area rotation system, but opposed new rotation closures without better access to existing areas that are practically closed to scallop fishing.
7. On the overfishing definition alternatives, many fishermen wanted to be sure that all areas would be counted in terms of determining stock status, which would be true for biomass under both overfishing definitions. On the other hand, only the mortality rate for scallops that would contribute to yield (i.e. not those within long-term closures) would be considered for determining whether overfishing were occurring for the proposed overfishing definition.

Mr. Zeman, Oceana, was disappointed with the discussion of the negative gear impacts of the status quo, only the benefits of the existing groundfish closed areas. He asked where is the discussion of the effects of the fishery on habitat in the ocean. Such as which habitats are affected and which are not? What are habitats of concern? He felt that the analysis was not applied to come up with the impacts statement of the existing fishery on the existing ocean.

Why are the habitat effects of area rotation not well analyzed, Mr. Zeman asked? He noted that there was an area rotation alternative that integrated habitat considerations, but it did not seem to be developed and asked why. Mr. Applegate replied that the description of the habitat and the gear effects evaluation was in Section 6.2 while the effects of area rotation on habitat are in Section 7.5. He indicated that the area rotation alternative that integrated habitat considerations into its management (as opposed to overlaying habitat closures on it) was not more fully developed because the information about the effect of various levels of scallop fishing was lacking and that information about the potential for habitat recovery was not well understood, therefore developing criteria and limits for the frequency and intensity of fishing activity could not be developed further than it was. The long-term effects on all the species that rely on various habitat were not well known or quantifiable. It requires more research that we don't have and coincidentally there is an Amendment 10 alternative that would promote just this kind of habitat research using scallop TAC set-aside funding.

Mr. Zeman review answers prepared by the Habitat Technical Team to the Scallop PDT. The responses identified that certain sensitive habitats, like gravel and hard bottom habitats with juvenile cod EFH are sensitive to dredging. Even one pass of the dredge could take years to decades of no fishing to recover, and he felt that there was usable information about various recovery rates.

On the total area swept alternatives, those numbers were much less than what the fishery is affecting presently, about 2,500 nm² for the area rotation alternatives vs. about 7,000 to 8,000 nm². Mr. Applegate replied that Mr. Zeman's estimate was actually incorrect and that the current fishery dredges about 4,000 to 4,500 nm², if the dredge paths were arranged end to end and side by side, which is not how the fishery actually operates. The amount of fishing time in each square nm² and summed up, indicated that the fishery swept about 12,000 nm² in the early 90s and due to day-at-sea reductions, gear restrictions and crew limits this has dropped to the current level. With the day-at-sea allocations and area rotation, this value could come down further. The area rotation estimates given include only the open scallop fishing areas only and excluded any addition from controlled access. Get this from tape ???

Oceana supports a primarily closed area rotation system to protect habitat areas as a primary goal as well as maximize yield which can clearly be done, Mr. Zeman replied. The disconcerting part of the adaptive, flexible boundary rotation system is that the document does not have any environmental analysis of the alternative. He believed that the document contained no environmental analyses of the area rotation alternatives beyond 2004. Because it is so flexible and adaptive, in terms of NEPA, how is this going to be analyzed – each and every year or to be included in the final amendment. Mr. Applegate replied that the analysis of area rotation results had been projected over a 30-year period with 400 simulations of potential outcomes, based on what we know about scallop yield and recruitment to determine the range of potential outcomes and where the fishery would potentially occur over that 30 year period.

Mr. Zeman contended that that was only about scallop yield and didn't provide information about where the fishery would dredge in 2006 or where it will not dredge in 2008. Mr. Applegate replied that the analysis goes well beyond that period and the various rotation areas have been characterized as to what types of habitat and bottom substrates (cobble, gravel, sand, etc.) could be affected within the rotation areas. In most of those cases, the amount of area protected would be about five percent compared to status quo, Mr. Zeman asked? Mr. Applegate replied that the difference would be similar to the effects caused by a reduction in swept area, i.e. the ground covered by the total amount of fishing time with gear on the bottom. Mr. Applegate added that many of the habitat closure alternatives also provided benefits to close areas covering about 5 to 10 percent of the EFH designations for species that rely on bottom habitats that are vulnerable to scallop fishing.

Mr. Zeman said that the document repeatedly said that the analysis did not go beyond 2004-2007 because we really didn't know where the small scallops will be, and that it would all be based on future surveys. Mr. Applegate replied that the projections for area rotation had been run out for 30 years to provide stochastic projections, and that statements were made by the habitat technical team members that these were too uncertain to be used to estimate the effect on specific habitats.

Mr. Cohen spoke in favor of the preferred alternative, adaptive areas and boundaries with cooperative surveys. He thought that area rotation offers the best opportunity to maximize yield by focusing effort in beds of large, mature scallops, reducing impacts on the environment. Clearly, intuitively, the cumulative impacts have been to significantly reduce impacts of gear on habitat, Mr. Cohen argued. Effort has been reduced by 50%, with greater reductions in total fishing time and area swept. Even today with greater concentrations of scallops, vessels are laying to (not fishing) while shucking. The cumulative impact has been to reduce impacts on the environment, he concluded. Although not clearly stated in the document, we have to look at the issue on a five-year term to reduce the effects of wild swings in yield. Stability should be a management goal as well, Mr. Cohen recommended.

Mr. Zeman commented that the focus was on day-at-sea reductions in the past, which must provide some level of habitat benefits. The key concern is where the fishery is dredging. But the problem is that most of the impacts are done with the first pass of the dredge and recovery of the most sensitive habitats can take decades, he claimed. He said that scientists have concluded that in these habitats the first pass of the dredge results in the most impacts. While there may have been a reduction of days, the reduce intensity of fishing in sensitive habitat may not really have a significant impact. Quoting from the habitat technical team reply, "At a minimum, some subset of all habitat types should be protected from all fishing impacts at all times. However, there are habitats that are considered important to some managed species that require years and maybe decades to recover from the disturbance from bottom-tending fishing gear. Because the recovery period is so long for some of these habitats and because they are considered to be the most important in an undisturbed state it is not practical to manage them using a rotational area scheme, so they should be protected from fishing with scallop dredges and trawls."

Mr. Kirk Larson, speaking as chairman of industry advisory panel, was frustrated by not having support from SMAST at the meeting. The camera studies provide good data on scallops, and habitat, etc. What is habitat? Has it been defined? Everything is habitat. He said that he was disgusted by the vagueness of Oceana's description of habitat. No one understands what habitat is. We think habitat is where scallops grow, which is where we want to be allowed to fish, especially on Georges Bank. The industry has bent over backwards to reduce their impacts on the environment, he argued. He said that the industry had spent four meeting days, working with Ron Smolowitz and habitat advisors, didn't understand what is the habitat that they want us to stay out of.

Capt Joel Fogel, Executive Director of Waterwatch. International, commented that his concern is simple, placing restrictions and requirements on our fishermen, what good does it do to restrict these gentlemen unless there is a coalition made with other countries to also look at these same restrictions to provide habitat conservation for the entire ocean? Restricting local fishermen only does no good when foreign fishing factories come into our waters and fish without restrictions. International vessels should not be allowed to fish in our waters, he stated.

Mr. Gehan, FSF, commented that the fishery needs places to fish. If the industry does not have access, the management plan will be a failure, he predicted. With regard to habitat and habitat closures, he supported the statements of the Habitat Technical Team provided by Mr. Zeman. In response, the joint advisors undertook the task of looking at hard bottoms and important areas to close, he reported. This alternative has been presented along with Amendment 10 that could be included in groundfish Amendment 13 to protect juvenile cod habitat. Most of what has been included as closure alternatives in Amendment 10 would lead the industry to bankrupt the fishery, especially when coupled with the proposed overfishing definition. Mr. Gehan reported that the FSF helped develop and supports the adaptive rotation system, but opposes habitat closures in Amendment 10, and recommends that the JAR proposals go forward in Amendment 13.

Mr. Gehan stated that the habitat alternatives are required in a FMP, but also requires that each FMP include a fisheries impact statement, the impacts on the industry of all the alternatives. These impacts are underestimated compared to status quo or the adaptive management system, he claimed. Mr. Gehan commented that this Council and committee have bent over backwards to take a hard look at habitat conservation alternatives.

Mr. Wasilowski said that he has reservations about Amendment 10 and was concerned about the implications in respect to lower recruitment on Georges Bank and higher recruitment in the highly-fished areas of the Mid-Atlantic.

Ken Roma spoke in opposition to any more closed areas. He said that area rotation is a great idea in real time, but it takes too long to get things done. The ones we have now are not working that great, because the access program is dangerous at best, with vessels losing trips or days. The way it is being managed does not warrant more closures, he argued.

Mrs. Akers, student environmental association, said that she found the meetings discussion to be interesting. She commented that the habitat protections should benefit a lot of species, including rare and endangered species and including other species that are not caught for consumption. Why not cut the harvest in half and get a better price with much fewer environmental impacts, she asked rhetorically? The plan should address the sea turtle fishery and habitat that supports the cod fishery, she recommended. A winning situation would be to close important habitat areas and scale back, with a minimum of cost to the industry. She believes in the research that has been done, but says that she didn't know enough about what is in the document to comment. What impact will have on other species if the habitat is lost? She emphasized that the resources belong to everybody, not just the fishing industry.

Mr. Cohen acknowledged that these concerns are appropriate, but the scallop fishery is not endangering the marine habitat. He felt that the scallop fishing impacts are not threatening biodiversity or endangering other species. He stated that the environmentalists at the meeting are only seeing one part of a much larger public process, associated with the development of Amendment 10, including the consideration of impacts on turtles, which is of great concern to the industry. He commented that it is not possible to go into many specific details in a short presentation, that some of the information require people to read deeper into the document to understand the ramifications and what has been considered. He added that there has to be some balance between the amount and type of fishing and the amount and quality of impacts on the environment. The industry will only survive with a healthy marine environment. Some envision a pristine environment, but a different position is a balanced environment with people making a meaningful living while there is a healthy environment, he explained. On the other hand, the balance also requires the Council to look at the practicality of various conservation alternatives to manage the scallop resource.

Mr. Larson thought that everyone wants to buy into the area rotation, but the problem is getting back into the areas or what kind of stringent regulations will apply to be able to fish there again. He wanted to be able to see all the area closures being proposed, especially with statements that the first pass of the dredge damages habitat for thousands of years. He feared that the Hudson Canyon Area may never be fully open again.

Mr. Zeman thought that the rotational areas, labeled in blue were reported to provide protection to some hard bottom, gravel habitat. Mr. Applegate replied that that was not what was stated about the controlled access alternatives, which was that the areas within the groundfish closed areas that would remain closed include important habitat for groundfish. Mr. Zeman replied that most of the cobble habitats occur outside the existing groundfish closures, and only a small part of the cobble bottom is in the northern part of Closed Area II. From the Habitat Tech Teams comments to the Scallop PDT, Mr. Zeman restated that, "Even if a gravel or hard bottom habitat is in a three-year rotation area it won't have much of a benefit. The recovery period varies according to habitat type. For example, a reduction in fishing effort on gravel habitat with attached epifauna will not be beneficial because the gravel habitat might require a recovery period of greater than five years and possibly a decade or more to recover to its undisturbed state. In this case, even reduced fishing effort will prevent recovery, thus it can be argued that some habitats should not be disturbed at all because the habitat would not recover at all to its most undisturbed state."

Mr. Cohen said that the proposed controlled access alternative is to be given trips in closed areas. He supported the preferred alternative, but we have not perfected the ability of vessels to go into the areas without losing the trips. Concerning the discussions of area management, all harvest from management areas should include the ability for vessels to leave for any reasons and return to finish their trips, with some mechanism to recover part of the days automatically charged. In general, Mr. Zeman concerns are valid Mr. Cohen acknowledged, but the real issue is that there must be a balance to identify the most important habitat and discuss

Mr. Williamson, Conservation Committee of the Audubon Society, said that their interest is in biodiversity of multiple, sustainable populations. The primary intent of Amendment 10 is on the other hand to improve yield, and minimize adverse impacts. So far, he heard a lot about the spatial aspect of the amendment, but not about the impact on other fisheries on the marine environment. The title Amendment 10, public hearing document is not what one would expect given what has been presented, he believed. The title should be scallop fishermen public hearing document, given the presentation at the meeting.

Given the desire of the hearing attendees to focus on habitat impacts, Mr. Applegate re-organized the presentation to take up habitat alternatives and summary of impacts next.

Mr. Zeman commented that while reviewing the alternatives and the analyses, the no action or status quo alternative, he tried to find the full environmental analysis but was unable to locate the analysis he sought. The habitat effects in the document are described in terms of incidental benefits, but not in terms of their adverse impacts, he claimed. Mr. Zeman argued that it is highly unlikely that the past effort have fortuitously reduced and minimized habitat impacts.

The majority of alternatives are slight variations of the status quo, he thought. For example Alternative 2 is a variation of alternative 1. Alternatives 3 and 4 are variations of the status quo. Mr. Zeman reported that Oceania supports alternative 3a, although it is a narrow alternative, because the Habitat Technical Team was given a narrow focus by the Council. Thus other areas away from the groundfish areas were overlooked. Mr. Zeman commented in opposition to the other habitat alternatives. Oceania does not believe alternative 5a and 5b were developed in a sound, scientific process. Alternative 6 is a weakening of the groundfish closed areas. Alternative 7 tried to include some of the concepts that they originally submitted during the process, it achieved that, but he cannot find the methodology to develop the alternative described in the document. Alternative 8a is to maintain only the HAPC. Alternative 9 is simply a slight nuance to the status quo, by designating the groundfish areas as habitat closures.

Mr. Zeman reported that during the development of the JARs, he walked out of the third day of the meeting, because there was no balance at the meeting. He had hoped to work out situation to have industry and environmental groups find a compromise, but he felt that his ideas were stonewalled. He saw it as clear that there is virtually no fishing in the proposed areas outside the groundfish closed areas.

Mr. Akers, a river administrator to the Great Egg Harbor River, provided general comments in support of habitat, supporting strong measures to minimize all known takes of endangered and threatened sea turtles and to protect from destructive overall environmental effects on species other than scallops, including sensitive sponge and coral habitats. A proactive effort to evaluate the overall effects of the industry on species other than scallops is needed, he said. Any balance between habitat and preservations of species and need to harvest them, should only be based on sound science he said, which is a burden of proof.

Mr. Gehan thought that part of what is being said is a misunderstanding of the law, and explained that the focus of the Magnuson Stevens Act is on achieving maximum sustainable yield and preventing overfishing. He was happy to point out that the FSF is doing some of the things that others are recommending - to collect sound scientific data – supporting gear research to minimize turtle interactions and reduce habitat impacts. He added that FSF is actively supporting video surveys and habitat mapping, using the information to measure impacts of dredges in light and heavily fished areas.

He said that there is no EFH definition for benthos, bryozoans, etc. The legal requirement is to identify EFH for managed species, Mr. Gehan argued. All the science with respect to juvenile cod and cobble, was based on a fish tank study, and it showed no statistical differences between complex and non-complex habitats.

Mr. Cohen asked about area access and the use of 2003 survey data in Amendment 10 closures. He recommended that Amendment 10 should have no permanent closures, deferring the decision to Amendment 13, which will be completed in nearly the same time frame.

Mr. Owen Smith, a scallop fisherman, strongly opposed any additional closures. The economics (associated with the day-at-sea tradeoff system) prevent people from fishing where small scallops occur, and more closures are unnecessary. It isn't necessary with current resource conditions, he contended.

Mr. Zeman, commenting on bycatch alternatives, pointed out that no observer coverage was allocated to scallop trips in most of the open areas. He was concerned about the analysis of bycatch patterns based on the few discards reported by VTR. He added that there was little development of bycatch reduction alternatives, except to say actions to minimize bycatch will be done by framework. On the other hand, the Council has historically taken little action to reduce bycatch and habitat impacts in a framework action. As such, relying on the framework process is insufficient as a viable means for addressing bycatch and habitat alternatives. More direct action and alternatives should have been included in the amendment.

Mr. Cohen felt it is politically untenable to disallow general category fishing, but he supports the same reporting requirements as any vessel targeting scallops. An incidental cap on total harvest by the general category should apply and he recommended that it be no more than the historical one to two percent of total scallop landings. To the extent there are general category landings by limited access vessels not on a day-at-sea, he thought that there were no differences between a groundfish vessel and a scallop vessel fishing for scallops off the day-at-sea clock. A limited access should be allowed the same limit, subject to the TAC, Mr. Cohen recommended. He thought that all vessels fishing under general category rules should use 10.5 dredge and must have VMS for the entire time, as opposed to the 45-day exemption. The possession limit should not be raised, because it would attract more vessels or cause a derby fishery when combined with a TAC, he said.

Mr. Roma also agreed with requiring VMS and recommended that the Council should not raise the possession limit. He thought a TAC between one to five percent is acceptable and recommended that the Council allow limited access vessels to fish under general category rules, mainly to keep some income for their crew. He believes the resource conditions will worsen, despite management efforts. During the drops, the part-time day fish category, kept him from going bankrupt. It would be unjust to exclude limited access vessels from the general category rules.

Mr. Wescott, agreed with Mr. Cohen, recommending approval of a 2 percent TAC for the general category fishery. Mr. Catagowski, agreed with the above points, also.

Mr. Cohen recommended that the Council should require occasional vessel to use VMS, especially if general category permit vessels are also required to have them. He supports bag tags and standard bags in Amendment 10, to enforce TACs and trip limits, reducing the potential for unintended violations. The concept of broader observer coverage, cannot be supported unless implemented in a way that is economically viable, Mr. Cohen added. The current amount of compensation is insufficient to pay for the observer costs. He suggested that the compensation be set at \$900/d in extra scallop landings to pay for the \$700 observer cost, with no compensation for the crew to process the scallops. The compensation needs to be at least twice the amount of the observer cost, he said.

David Wescott thought that anyone accessing the controlled access areas should contribute to paying for the observer. Mr. Roma added that he thought the observer should be paid for whatever scallops the observer can process.

Mr. Larson stated that he could operate satisfactorily with a fishing year starting in July and August. But the process worked before with the current fishing year, even when the survey data were delayed.

Mr. Cohen added that the biggest problem with closed area management is the observer program. But the observer coverage with a one percent set aside, the tradeoff is insufficient to induce the crew to process the scallops. He explained that some vessels cannot carry observers because of insufficient accommodations, increasing the burden on vessels that can. If every boat were required to pay one percent of their gross for observers, the costs would be shared fairly by everyone. Under the current

system, one vessel would pay \$6,500 for an observer on a \$65,000 trip, which the burden only falls on the vessel carrying the observer, which only includes only about 10 percent of trips.

General comments after presentation:

Mr. Gehan stated that the FSF supports the status quo overfishing definition.

Mr. Roma urged the Council not to reduce the day-at-sea allocations – there is no need to reduce days at this time, given the resource conditions which has allowed recovery while the limited access scallop fishery was allocated 120 days. With fewer days on the upcycle, then the days allocation will be even less when the resource conditions are worse. 120 days will never kill the fishery, he believed. He said that once the catch levels declined to 200 or 300 pounds per day, fishing would become unprofitable and there would be no more harm to the resource and the stocks will recover by themselves on the next good recruitment. He felt that there is no reason to reduce the day-at-sea allocations.

Mr. Cohen commented that the allocation would harvest about 20,000 days, according to the projections. Mr. Applegate replied that this is the projection estimates of allowable days used, which is equivalent to about 25,000 days allocated. Added to this would be some additional days to account for the effect of a day-at-sea tradeoff under a controlled access system, Mr. Applegate concluded. Mr. Applegate said that with the status quo overfishing definition the total would be about 110 days with the status quo overfishing definition and 81 days with the proposed overfishing definition, but this may be revised because the proposed overfishing definition would allow the mortality target to become closer to the threshold depending on how much spawning biomass is in closed areas. He added that the PDT was also working to revise the controlled access TAC estimates using more data than were available for the draft report. He thought that the effort allocations could be a bit higher when revised for the final draft.

There was some uncertainty whether the public needed to send in written comments before the committee met on June 13, to discuss the public hearing comments. Mr. Applegate assured everyone that the committee was only meeting to hear the public hearing comments and any written comments received to date. No decisions would be made at that meeting, he added, and that comments received after that meeting during the public comment period would be just as valid as earlier comments.

No additional comments were offered beyond those given during the presentation and Ms. Peabody adjourned the meeting at 10:45 pm.

Scallop Fishery Management Plan

Amendment 10

Public hearing summary – Newport News, VA
June 4, 2003

The meeting was chaired by Ms. Michelle Peabody, a Mid-Atlantic Council member and also a member of the New England Council's Scallop Committee. Also attending New England Council staff member Andrew Applegate, Scallop PDT member Dr. Willaim DuPaul, and scientists Winnie Ryan and David Weathers.

Hearing attendees consisted of several people with limited access permits (Greg Fulcher, William Mullis, William Pedie, Frank W. Peabody, Randy Owens, Michael Ireland, Frank McLaughlin, Lynn Bollock, Earl Mullis, Mark Shackelford, Johnnie Mercer, Debbie Peabody, Kathleen O'Neal, Denny O'Neal, Vernon Peabody, and Frank Peabody) and a representative of the Fisheries Survival Fund (David Frulla). Also attending were Lynn Bollock (Atlantic East Seafood, Inc.), Chank Ngoc Huhn, and Chris Brauen

Ms. Peabody, acting as public hearing officer, opened the meeting at 7:00 pm with a short summary of the agenda for the meeting. Mr. Applegate presented a summary of the alternatives and the estimated impacts, pausing for questions and specific comments on occasion. The first part was on area rotation and other ways to improve scallop yield, followed by area access alternatives, initial management measures, overfishing definitions, minimizing bycatch, minimizing habitat impacts, data collection and monitoring, and framework adjustments and other process modifications. Several breaks in the agenda were taken to allow the attendees to ask questions and/or comment on specific portions of the amendment.

Main points made by people offering comments included:

1. Landings for the general category fishing effort should be capped and vessels should be required to operate with VMS equipment.
2. Limited access permit holders recommended capping landings with a TAC equal to two percent of the total TAC and also recommended not changing the scallop possession limit. They supported allowing limited access vessels to continue targeting scallops under general category rules, because other types of day-at-sea vessels would be allowed to do so in the Amendment 10 alternatives.
3. General category permit holders supported a more liberal TAC and a modest increase in the possession limit (~600 lbs.) to allow smaller vessels flexibility to work in several fisheries, adjusting to regulations and resource conditions.
4. Fishermen supported the concept of area rotation, but opposed any more closures unless equivalent size areas open at the same time. Controlled access under current tradeoffs and administration were not understood as being 'open' to fishing.
5. There was strong support for habitat alternative 2, since all felt that the current and proposed scallop management measures were sufficient to minimize impacts on essential fish habitat.

6. All were opposed to the proposed overfishing definition, because it allowed for lower day-at-sea allocations and TAC for the resource. All opposed changing the fishing year to accommodate area rotation and more complicated management.
7. Many supported the day-at-sea tradeoff system, but acknowledged that the current system is not working, due to insufficient tradeoffs and higher risks caused by the treatment of broken trips.

Lynn Bollock, Atlantic east seafood, said that at this point in the presentation (initial measures in 2004), she did not understand the long-term strategy, that is what areas would close and for how long. What would be the landings when these areas re-opened? What would be the plan for fishing while the proposed areas are closed? Mr. Applegate replied that the details will vary according to the rotation alternative selected by the Council, but depending on the option chosen, the rotational closures would exist for about 3 to 4 years and during this time the Council proposes controlled access to portions of the Georges Bank closed areas.

Bill Mueller, a fisherman with a limited access scallop boat, didn't understand why the biomass target keeps changing and doesn't trust the math. Mr. Applegate explained that the formulas and reference points were not being changed and that the value of B_{max} was being re-estimated by including more recent information since they were last estimated in 1997.

Bill Wells, a limited access vessel owner and processor, explained that everyone is here because there is a vested interest in the fishery. That, he thought was one of the main reasons why the scallop fishery is successful today. Personally, he supports the preferred alternative, but he cannot explain why the closed rotation areas have been beneficial. On the other hand, it appears that they have been effective and have led to the recent success of the management plan. He therefore supports the preferred alternative for area rotation, which is also the Fishery Survival Fund (FSF) position.

Mr. Frank Peabody said that he understands closing the three areas, but what is missing is other areas that are still and will remain closed. Closing prime scallop grounds and the Georges Bank closures, if permanent, would reduce the yield from the fishery with the proposed overfishing definition. He thought there was enough scallops in the Georges Bank closed areas to sustain the scallop fishery, access to which would be needed to justify area rotation that closes other areas, but many of these areas are slated for indefinite closures. Mr. McLaughlin was opposed to any more areas without access to Georges Bank closed areas.

Mr. Wells explained that no one would be for closed areas, unless there is access to the areas that are now closed. He emphasized that there has to be a simultaneous opening of another area when another area closes for rotation, providing the industry an opportunity to do at least as well as the area being closed. For area rotation to be acceptable, there has to be access to now closed areas with equal or greater landings potential to the areas to be closed for rotation.

Mr. Mullis asked if biomass targets are different in the proposed overfishing definition. He said that his personal belief is that not fishing in the closed areas, would lead to lower recruitment, like has been observed on Georges Bank. Can the low recruitment be blamed on no fishing activity, he asked? Recruitment or yield per shell cut, has improved in open areas to 20 – 22 count scallops. What is the natural mortality in the closed areas, he asked? Mr. Applegate replied that the same formulas and reference points were being recommended for both overfishing definitions, but that in the proposed overfishing definition, the allowable amount of effort would reflect the productivity of scallops only in areas that are or will be open to fishing. Mr. Applegate added that natural mortality does vary and it is

possible to have mass mortality from environmental factors, but the amount of clappers in closed areas has not been alarmingly high.

Mr. Frulla stated that the initial PDT analysis identified rotation areas for closure that were too big and had too many short term costs to the fishing industry. He asked whether the areas could be smaller to reflect the distribution of the smallest scallops within the areas proposed for closure. He also asked whether there were provisions to allow closed rotation areas to re-open faster if other events come in. Mr. Applegate replied that the Council sent the initial area recommendations back to the PDT for more work and analysis, and that the areas in the Amendment 10 document were the revisions that the PDT recommended after that further analysis. He also replied that several of the rotation alternatives with adaptive closure duration could allow the proposed areas to re-open in less than 3-4 years, depending on the measured. Mr. Frulla asked if the rotational closures could be re-opened if there were no access to other areas for external reasons like finfish bycatch, habitat closures, or sea turtle interactions, thereby mitigating the downside risk. Mr. Applegate replied that these considerations can come into play during the framework adjustment process, choosing whether or not to close or to re-open closed rotation areas, considering these issues and the available resource area to the fishery in a given year.

Mr. Frulla also said that a major concern about the proposed access program is the gamble and risk of fishing in the areas with a day-at-sea tradeoff, because of the possibility that the trip has to be aborted and there is no relieve of the automatic day-at-sea charge. He added that the combined effect of the large rotation closures and the problems with the controlled access program would make the proposals unacceptable to industry. He asked if the proposed rotation closure boundaries be modified at this point, to which Mr. Applegate replied that they could be based on the public comment. Mr. Applegate described the recent changes in the discretionary policy that the Council granted to the Regional Administrator to grant exemptions to the day-at-sea tradeoff on a case by case basis. He said that the Regional Office indicated a willingness to expand the consideration to trips that landed a small amount of sea scallops. In response to the Mr. Frulla's question about the treatment of this in Amendment 10, Mr. Applegate indicated that this discretionary policy would continue under Amendment 10 with the day-at-sea tradeoff system.

Mr. Fletcher asked what would be the mortality rate if the entire fleet were using 4-inch rings. He recommended that the Council consider applying 4-inch rings in areas when they re-open and stay at 4 inches after that. Mr. Applegate replied that the higher selectivity of a larger ring could help increase the value of F_{max} , which defines the mortality target, by reducing discard and non-catch mortality. He thought that this increase could be as much as 50 percent. Mr. Fletcher thought that with the area-specific day-at-sea allocations with tradeoffs, the plan needed to allow changes in limited access vessel characteristics to make them the same or very close to it.

Mike Ireland, owner of the full-time scallop vessel FV Fortune Hunter, commented that the plan in effect now is working, and the vessels are catching much more than they used to. We have good recruitment, limited amount of boats, but the conditions have been ideal, he explained. He thought that recruitment could fall quite a bit and wondered what kind of day-at-sea reductions would be needed if that were to occur. He commented in favor of area rotation, provided there is access to some of the areas on Georges Bank. But he was against area rotation if the only areas left for fishing are no tow zones (i.e. unproductive areas). Is there a backup plan if the areas close and there were poor recruitment, would the Council then lower the day-at-sea allocations in response to the worsening conditions, he asked? The mortality on unfished scallops had mass mortalities in other areas, which he feared could occur here. If the industry supported more closed areas, what would be the worse case for the industry?

Mr. Wells pointed out that federal mandates requires consideration of the effects of EFH measures on the fishery and requires consideration of a broad range of alternatives. He added that habitat alternative 1, the

status quo, is a defensible choice. Mr. Wells commented in favor of habitat alternative 2, the rationale being is that what is currently been done or will be done will suffice to mitigate the scallop fishery impacts on habitat.

The JAR recommendations were developed in the context of an overlay of what fishermen needed to have access to, Mr. Wells added. All the fisheries needed access to the same areas, but they could identify areas when and where juvenile cod and juveniles of other species occurred. Industry was acting responsibly in doing this, meeting with different types of fishermen and there were at least five environmentalists in the room. He felt that this approach was the most promising approach and the right way to develop management strategies. He concluded that he supports habitat alternative 2 at this time, but in the future he thought that the JAR was a preferable approach.

Jim O'Malley reported that the hearing at the previous night in Cape May had representatives of five environmental organizations. These political forces have a clear agenda, in his opinion. At first, they were trying to stop overfishing to achieve sustainable fishery, then attack bycatch, then attack habitat effects, all in an effort to keep the industry off Georges Bank. He urged the industry to have the habitat issues work for the fishery, for example the Nantucket Lightship Area peanut beds serve as a generator for the scallop resource further south in the Mid-Atlantic. The Council is being nudged into doing something not required by the law and not being very sensible. They are trying to stave off the desire to create MPAs, by doing it through the Magnuson Stevens Act. The phrase minimize the impact on habitat is not a stated goal, he argued, the laws says minimize adverse effects of fishing on essential fish habitat, which is a different goal. Mr. O'Malley argued that a different goal of minimizing habitat impacts is acknowledging that there needs to be pristine marine parks, in the name of minimize adverse impacts of fishing. We must know what they are habitat impacts and that the adverse habitat impacts are adverse on EFH, he maintained. Not just that the fishing effects reduces biodiversity.

ICES research on the effects of fishing gear has shown that there are a varied type of impacts of fishing on the environment, some of them beneficial. What is going to happen when the Council learns, that scallop fishing has an adverse impact on cod and haddock, but has a beneficial impact on flatfish, scallops and the potentially endangered barndoor skate, Mr. O'Malley asked. He warned that the Council in evaluating management alternatives that address adverse impacts on EFH will have to make a choice among the differential effects on EFH for various species, some of which benefit from the effects of fishing. The issue is more complicated than closing areas because it is a good place as a marine park? He didn't see any help from the current administration. The one executive order that President Bush left in place was for a commission to examine the use of marine parks in the ocean. He urged the Council and industry to put in the time and energy, similar to the approach used for the JARs, to make these potential areas work to the benefit of the fishing industry, as much as possible. Mr. O'Malley recommended that the Council's job is to not minimize effects on habitat, but to minimize adverse impacts on EFH.

Mr. Peabody opposed changing the overfishing definition. He also commented against using closures to protect habitat.

Mr. McLaughlin, Chesapeake Bay Packing Co. form Newport News and an owner of some limited access scallop vessels, understood that the new overfishing definition wouldn't be credited for the biomass in the controlled access programs for determining days (81 days with the proposed overfishing definition and 110 days with the status quo overfishing definition), and commented in favor of the status quo. He also opposed closing more rotation areas without access equivalent access to the Georges Bank closed areas. He was also opposed to more rotation closures unless there were a guarantee (a definite date) that the areas would reopen to fishing at some future time.

Mr. Fultcher, a manager of five limited access vessels and speaking on behalf of six limited access vessels owned by his uncle, also commented against changing the overfishing definition, and supports Mr. O'Malley's points on adverse effects on EFH. Is there not a seasonal time to close for protecting habitat, he asked? Mr. Applegate replied that it has been the position of the scientists on the Habitat Technical Team that seasonal or even short-term closures to conserve habitat would be ineffective because of the slow recovery rates of benthic habitat. Mr. Fultcher said that he doesn't see the potential to affect habitat, with the very short tow times that exist in the fishery today. It doesn't make sense to protect groundfish habitat and let millions of pounds of scallops go to waste, he claimed. As with the previous speakers, he didn't support new scallop closures without equal Georges Bank groundfish access.

Mr. Frank W. Peabody, manages eight scallop boats, also commented in support of the status quo overfishing definition. Mr. Johnny Mercer, a limited access scallop trawler, thought that the calculations were based on all the permits being used to calculate the TAC. He therefore didn't understand that the allocations therefore had to be cut because more permits had come into the fishery or more days were being used by vessels with permits. Mr. Applegate replied that the day-at-sea allocation adjustments and those in Amendment 7 were based on total days used, figuring the amount of active permits and the proportion of allocated days that had been used in the prior year. Mr. Peabody added that he opposes any change in the overfishing definition and opposes closing any additional areas to protect habitat. He believed that the Magnuson Act requires that the resource be managed as a unit and that the spawning activity in the closed areas justifies fishing harder in open areas than would be allowed by the proposed overfishing definition. He claimed that there was no conclusive evidence in a west coast study that fisheries had any damage to habitat. Mr. Wells also supported maintaining the current overfishing definition.

Mr. O'Malley urged the Council to not be inadvertently being "back-doored" into reducing optimum yield without the proper discussion of that choice. The criteria used to be that MSY as modified by economic and social considerations, he argued, now the standard is "as reduced" by economic and social conditions. He related the subject that in the summer flounder, that a huge portion of the resource were allocated to discards. He urged the Council to debate optimum yield, before deciding whether to change the overfishing definition.

Mr. Mullis also spoke favorably about keeping the status quo overfishing definition and in support of habit alternative 2. He was not in favor of any closed areas until the broken trip issue is adequately addressed. NMFS has showed zero leniency for these broken trips, he explained. He emphatically said that there should be nothing more closed until there is guaranteed access to the areas that are currently closed. The Council needs to make the system equitable and fair. People don't deserve the treatment from a document like this, he believed. He said that it contains broken promises and he doesn't trust the Council system.

Mr. O'Neal, owner of six full time vessels, asked about the 310 active permits in the day-at-sea allocation calculations. He said that there was a moratorium on permits in the early 90s, when there was about 150 full time permits. He wanted to know the breakdown of the number of permits by category, which was identified during the meeting from the tables.

Area rotation in theory would not be a bad thing, Mr. O'Neal felt, but the way that the alternatives have been developed has not been well thought out. He was against closing more bottoms, unless there is a specific criteria to open areas with as much biomass as the areas that would be closed. He spoke in support of the status quo overfishing definition and habitat alternative 2.

Mr. Fultcher said he is not against the general category fishery, but supports a 2 percent TAC and limited access vessels should not be prohibited from scallop fishing under the general category rules. Mr. Vernon

Peabody also commented that general category vessels should be subject to a VMS requirement and no more than a 2 percent TAC. Bill Mullis also agreed with this. Mr. Peabody also supported the 2 percent TAC, but all general category permits should be required to use VMS to reduce cheating. He opposed raising the possession limit above 400 lbs. Mr. Mercer thought that all vessels participating in the scallop fishery should have a VMS to track and monitor effort and landings.

General comments after presentation:

Mr. Frulla, FSF, reported that his organization participated at five of the six hearings and intends to submit additional technical comments on the overfishing definition and habitat alternatives. Their views are the views of the industry active in the meetings. As an organization, we hope at the end the amendment will be simple and workable to everyone's benefit.

Mr. Wells commented against changing the fishing year, explaining that the benefits to the scientific community do not outweigh the costs and safety issue to the industry, forcing the industry to fish in the fall and winter. Breakdowns has been an issue many times that has not been properly addressed in Amendment 10, he felt. Mr. Wells explained that no one wants to be an area that they can't leave without substantial costs for leaving early. The only alternative that solves the problem is the one with the direct allocation of days, but some boats would never be equal unless they enter a closed area as currently managed with the day-at-sea tradeoff. In a direct day-at-sea allocation, the vessels with older crew cannot be as successful as other vessels with younger crew, he added.

Mr. Wells said that there is a small part about increasing the carry-over days and explained that most people are working on multiple boats to work more day-at-sea. When there are unpredictable events, it forces them to do things that might be unsafe, because they have to burn the days at the end of the year. Supports an increase any increase to more than 10 days to carry over between years. It would hurt no one and would benefit the fleet, crew, and boat owners, he reported. Mr. Wells thought that the public hearing document was well done and complimented Andy on it.

Mr. O'Neil added that the 30 day-at-sea carry over would improve safety as well and supported an increase of the number of crew allowed on vessels. Mr. Peabody opposed changing the fishing year, supported increasing the carry over and supported habitat alternative 2.

Mr. O'Malley expressed appreciation for the work that went into the documents. He asked, Is the Council imprisoned in the thinking that the fishing year and the day-at-sea allocation year couldn't be different, to allow the current fishing year and the resource/fishery data availability to work appropriately in the management process? He suggested that the regulatory changes could occur in August or September, but yet the annual allocation of days would still occur on March 1 .

Mr. Dan Bollock said he cannot support any reduction of days-at-sea, and recommended that TAC should be based on the total biomass, not excluding closed areas. If areas close later on, it would further reduce the amount of days.

No more comments were offered and Ms. Peabody adjourned the meeting at 11 pm.

Scallop Fishery Management Plan

Amendment 10

Public hearing summary – Washington, NC

June 5, 2003

The meeting was chaired by Mr. Dennis Spitsbergen, a Mid-Atlantic Council member and also a member of the New England Council's Scallop Committee. Also attending was Mrs. Michelle Peabody from the Mid-Atlantic Council, New England Council staff member Andrew Applegate, Robert Hines from NC Sea Grant, and NC Marine Fisheries Division Chief Jim Johnson.

Hearing attendees consisted of vessel owners or operators with general category permits or limited access scallop permits (with full-time allocations): Mike Ireland, Johnny Mercer, Robert Mercer, Walter Tate, George T. Ormond, Chris Falcher, Ed Cross, Don Cross, Birdie Potter, Rodney Hopkins, and Helena Mayo.

Mr. Spitsbergen, acting as public hearing officer, opened the meeting at 7:05 pm with a short summary of the agenda for the meeting. Mr. Applegate presented a summary of the alternatives and the estimated impacts, pausing for questions and specific comments on occasion. The first part was on area rotation and other ways to improve scallop yield, followed by area access alternatives, initial management measures, overfishing definitions, minimizing bycatch, minimizing habitat impacts, data collection and monitoring, and framework adjustments and other process modifications. Several breaks in the agenda were taken to allow the attendees to ask questions and/or comment on specific portions of the amendment.

Main points made by people offering comments included:

8. Landings for the general category fishing effort should be capped and vessels should be required to operate with VMS equipment.
9. Limited access permit holders recommended capping landings with a TAC equal to two percent of the total TAC and also recommended not changing the scallop possession limit.
10. General category permit holders supported a more liberal TAC and a modest increase in the possession limit (~600 lbs.) to allow smaller vessels flexibility to work in several fisheries, adjusting to regulations and resource conditions.
11. It was apparent during the meeting that some vessels have begun targeting sea scallops with nets under general category rules, and it wasn't certain that the current rules allowed vessels to do so. If the general category rules in the Mid-Atlantic changes to reduce the allowable dredge size to 10½-feet, some suggested that a proportionate change in the maximum net size should also be considered.
12. Both types of fishermen supported the concept of area rotation, but opposed any more closures unless equivalent size areas open at the same time. Controlled access under current tradeoffs and administration were not understood as being 'open' to fishing.

13. All were opposed to the proposed overfishing definition, because it permitted lower day-at-sea allocations and TAC for the resource. All opposed changing the fishing year to accommodate area rotation and more complicated management.
14. Many supported the day-at-sea tradeoff system, but acknowledged that the current system is not working, due to insufficient tradeoffs and higher risks caused by the treatment of broken trips.

Mr. Ireland, a fisherman with a limited access scallop boat, said he was concerned about the effects of area rotation and asked how many areas would be opened closed within one region at one time. Mr. Applegate replied that most of the Amendment 10 area rotation alternatives would have a cap or limit on the total amount of exploitable biomass in closed rotation areas and that a 25% cap was applied in many of the analyses. This would mean that areas larger than 25 percent of the scallop grounds may be closed, since the closed areas would be closed because of an abundance of young scallops and an absence of large scallops, he explained. At the same time, the intent of the alternatives would be to close areas distributed more widely, rather than all in one area to minimize community effects, but this would need closer examination each time decisions were made on what areas to close under the rotation system. Mr. Ireland added that the area rotation system proposes to close an area that is producing more scallops than any other area on the coast. He was concerned that the economic results did not take into account the lower prices caused by higher landings.

Commenting on mechanical rotation, Mr. Ireland was concerned about the effect on recruitment because in the closed area on Georges Bank recent recruitment is at a low point since 1994, yet scallop recruitment has been highest in areas that had been fished. Also, he expressed uncertainty about the results because as production goes up, and when supply exceeds demand, the price declines. Mr. Applegate explained that the SAW examined the effects of closed areas on year class strength in the Georges Bank closed areas and found little difference in recruitment inside and outside the closed areas. He reported that there have been some opinions by scallop scientists and others that the spawning biomass in closed areas may have been contributing to the above average recruitment in the Mid-Atlantic, however.

Mr. Ireland, said that at present his vessel is catching 3,400 lbs. per day and asked how can it be more profitable to fish in the controlled access areas. Also there are few scallops left in areas that are in remaining open fishing areas, he explained, offering much less opportunity to fish. He thought that the current controlled access areas are not working very well because it is not profitable to fish in them, rather than where he can make more by fishing elsewhere. He thought that the proposed area rotation closures would leave insufficient areas to fish in where the scallop catch rates are much lower. Mr. Ireland urged the Council to make adjustments after the survey comes in if it is then necessary. Mr. Applegate said that the next survey may indicate that the proposed areas are not the right ones to close if it shows strong year classes of young scallops elsewhere, but that waiting for this information would delay Amendment 10 well beyond the start of the 2004 fishing year. One response might be to initiate a framework adjustment later this year if the 2003 survey is very different from the 2002 survey results. Mr. Ireland urged the Council to consider making adjustments on area rotation after the survey data comes in, if it shows that if indeed such action is necessary. Mr. Applegate pointed out that classically, where strong year classes occur, it is in areas that have the highest catch rates, but they are of small scallops. So in many cases, the areas slated for closure under area rotation might be coincidentally the most profitable areas to fish, unless at the time there are also re-opened areas that had large scallops from a period of previous closure.

Robert Mercer explained that the scallops that are caught with the area that Amendment 10 identifies as a rotation area closure currently produce 18-30 ct scallops, an ideal size for the scallop market. He didn't understand why this area needed to be closed given the large size of scallops coming from it. Replying to Mr. Mercer's question, Mr. Applegate said that the optimum size that scallops would be at under area

rotation would be about 15 to 20 count. Mr. Mercer claimed that all the scallops that are now coming from the proposed closure areas are 19 to 21 count. He feared that a closure would get the scallops to a U10 size, which is not the size that the market desires.

Mr. Ireland recommended that the Council continue using the status quo overfishing definition. Mr. Johnny Mercer, also supported continuing the status quo overfishing definition due to the extensive movement of scallop larvae from closed areas to settle out in other areas (something that is not accounted for in the proposed overfishing definition). Landings and biomass are increasing every year and the current overfishing definition is too conservative, he added.

Mr. Robert Mercer, commenting on the effort allocation results and the day-at-sea increase from 23,000 to 30,000 days, pointed out that part of the increase in days has been due to vessels using less productive small dredges, and asked if that had been accounted for in the analysis. Mr. Applegate replied that the day-at-sea use had increased from three sources: increasing number of permits using days, increases in days used by active permits that had used fewer days in previous years, and category upgrades for vessels switching to small dredges. He said that the total number of allowable days was accounted for in the projections, based on average catch rates by all vessels.

Mr. Johnny Mercer said he was against the closure of areas for habitat protection, since there has already been a 2/3rd reduction in area swept through existing management measures and day-at-sea reductions. There is no scientific evidence in the document of permanent damage to habitat from fishing, he explained, and no discussion of human effects on essential fish habitat. Even though the resource has rebuilt, Amendment 10 proposes more reductions in days-at-sea, which he failed to understand why this is necessary given the rebuilt condition of the resource. Mr. Mercer added that there must be revenue and certainty about what will happen in the future, which is currently preventing investment to maintain and replace vessels that become obsolete. He recommended keeping the plan as simple and consistent as possible.

Mr. Ireland, commenting on the habitat alternatives, said that there are several conservation groups that would like to see the fishing industry not make another tow. He recommended selecting preferred alternative 2, because it has been successful in minimizing habitat impacts.

Robert Mercer, and owner of two full-time scallop boats, just a question about the effects of the general category proposals, if it would affect the full-time scallop fishermen. Mr. Applegate replied that with a TAC, increasing the general category possession limit would not affect the full-time day-at-sea allocations, but that the general category fishery might close by reaching a TAC earlier in the year. Without a TAC, Mr. Applegate warned that a higher general category possession limit could attract more fishing activity and cut the limited access day-at-sea allocations because of the higher fishing effort and mortality of scallops from the general category fishery.

Mr. Johnny Mercer recommended that the TAC for the general category permit sector should be limited to 2 percent and the vessels should be required to operate VMS, on all trips. Someone asked if there was a comparable net size limits for vessels using nets to target sea scallops under the 400 lb. limit and said that shrimp vessels have begun using nets to target sea scallops. Mr. Applegate replied that only the mesh size was limited. Mr. Ireland said that he is in favor of the general category retaining open access, but with mandatory VMS, with a 10½-foot dredge with or comparable net size, and with a 2 percent TAC cap on general category landings.

Mr. Tate, operator of a net vessel targeting scallops with nets, explained that many vessels that are now fishing that way because of the problems with shrimp availability. He added that it is not feasible to fish far north in the Mid-Atlantic on only a 400 lb. possession limit if large parts of the resource were closed

for area rotation. Replying to a question from Mr. Spitsbergen, he said he uses a 55-foot net with 6" mesh. He recommended that the Council increase the general category possession limit, up to 600 lbs. He explained that there are quite a few boats from as far south as Georgia fishing from Md. He thought that the scallop fishery ought to offer and accommodate the needs of small vessels and new fishermen, by making the appropriate adjustments and allowances.

Mr. Johnny Mercer said that his boat does not have a shrimp or lobster permit. Since he cannot fish in other fisheries, he didn't think it is fair to increase the general category TAC to accommodate more vessels, allowing vessels from other fisheries to begin targeting sea scallops.

George T. Ormond, from NC, commented that being young he did not have the opportunity to qualify for a full-time limited access permit. There should be an opportunity for a young fisherman to get a full-time permit, he believed. He recommended increasing the 400 lb. possession limit to give young fishermen with small vessels an opportunity to enter the fishery.

General comments after presentation:

Ms. Peabody, commenting on the general category issues as an owner of scallop vessels and as a scallop processor, thought that the FMP should have a hard TAC of no more than 2 percent with the same reporting requirement as limited access vessels. She opposed changing the overfishing definition and cuts in day-at-sea allocations. She added that even though the catches are estimated to increase; sometimes higher pounds is not enough to sustain the fishery. Habitat should be protected to the extent practical and she therefore supports habitat alternative 2. Other actions should be taken up in Amendment 13, she recommended, because the action would pertain to all fisheries to protect groundfish habitat. Ms. Peabody was in favor of using rock chains to reduce finfish bycatch, turtle bycatch, and address safety issues.

Mr. Ireland recommended maintaining the present management process instead of changing the fishing year, because the meat yield declines in Sept and Oct and because of bad weather during that time of year. Normal start up costs are around \$7,500 and so stopping the vessels from fishing (to conserved day-at-sea allocations for more favorable seasons) is not an option. He recommended changing the survey timing, especially since the fishery has already operated before the current survey takes place, which he saw as a poor indicator of the biomass before the fishery occurs. Mr. Ireland was in favor of supporting the survey research with funds through a TAC set aside for the cost of the trip and the crew.

Mr. Robert Mercer was opposed to any closures and any day-at-sea reductions. Drawing a comparison, he commented that no other business functions on only 120 days per year. The industry couldn't stand more reductions, he claimed. Mr. Johnny Mercer believed that the science supports the current level of fishing effort and thought that further day-at-sea reductions were unnecessary. He was also opposed to area rotation unless there is a guarantee of access to areas that are now closed. Mr. Johnny Mercer added that the science supports the current allocations or even an increase. He was opposed to any new area rotation closures without equivalent access to the areas that are presently closed.

Mr. Falcher, owner of six scallop full time boats, was also opposed to reductions in day-at-sea allocations. He recommended that the general category catches should be limited to 2 percent or less, but that VMS should be required on the vessels. He also opposed any more closed areas, unless there is access to areas that are now closed.

Mr. Cross, Pamlico Packing Company owning three part time vessels, said that the smaller boats are trying to survive and there has to be a place for these vessels to work. He recommended that something more than 2 percent is needed. Trying to get all the landings up to a U10 count is similar to what

happened in the summer flounder fishery (where he explained that the larger flounders drew less money than medium flounders), and predicted that the management measures would raise the average scallop size to unmarketable sizes. He claimed that the import market supplied the small flounder market, and would do the same for scallops if only large domestic scallops are landed.

Mrs. Mayo, owner of a full-time and part-time scallop boat, was also opposed to changing the overfishing definition and opposed to reducing days less than 120 days per year. She also opposed to having more closed rotation areas unless access to areas now closed is guaranteed. There is a big revenue impact from the scallop fishery, which would have larger economic implications if the industry declines. She doesn't want to see small areas being opened and large areas being closed. The current rules and 120 days are working adequately, she added.

Mr. Robbie Mercer explained that the fleet is not working on 40 ct scallops because of the crew limits. He was against any type of rotation because there has been no tradeoffs to replace the proposed closures. Mr. Tate thought that opening Georges Bank areas and closing Mid-Atlantic areas does not offer them an opportunity to fish because the smaller southern vessels cannot run that far.

Mr. Johnny Mercer explained that the biggest problem of fishing in the controlled access areas is that the vessels can catch greater amounts of scallops per day-at-sea elsewhere. Also the boat is at risk for losing days because of breakdowns or other events, he said. Mr. Mercer recommended that the controlled access possession limit should increase to 3,000 to 3,500 lbs. per day-at-sea charged and a method for vessels to be exempted from the day-at-sea tradeoff for aborted trips should be explored.

No further comments were offered and Mr. Spitsbergen adjourned the meeting at 10:00 pm.

