



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

MEETING SUMMARY

Scallop Advisory Panel Meeting

Crowne Plaza – Warwick, RI

March 22, 2016

The Scallop Advisory Panel (AP) met on March 22, 2016 in Warwick, RI to make recommendations for the Scallop Committee to consider on four issues: 1) provide preliminary input on potential modifications to the ACL structure used in the Scallop FMP and associated measures; 2) recommendations for overall five-year research priorities as required under MSA; 3) review outcomes from the recent inshore scallop workshop and discuss potential next steps; and 4) review a draft work plan and outline for the five-year LAGC IFQ program review required under the MSA. In addition, the AP reviewed recent changes to the scallop observer program protocols to improve data collection related to scallop discards due to poor meat quality and highgrading. Finally, under other business the AP discussed recent scallop fishing in the Northern Gulf of Maine management area (NGOM).

MEETING ATTENDANCE: Peter Hughes (Chairman); James Gutowski (Vice Chair); Scott Bailey, Ron Enoksen, James Fletcher, Eric Hansen, Gary Hatch, Kirk Larson, Michael Marchetti, Brady Lybarger, Robert Maxwell, Paul Parker, Charles Quinn, and Edward Welch.

AP member absent: Bob Keese

Deirdre Boelke and Jonathon Peros (NEFMC staff) and MaryBeth Tooley (Chair of the Committee)

In addition, approximately twenty members of the public attended.

KEY OUTCOMES:

- By consensus, the AP provided some input on the background document prepared for the ACL structure issue.
- The AP provided recommendations for the Committee to consider related to overall five-year research priorities.
- Under other business, one motion passed to develop an action to prohibit LA vessels from possession of more than 50 bushels of in-shell scallops inshore of the VMS demarcation line.
- Under other business, the AP passed a motion for the Committee to request the Council find out if the NEFSC is actively evaluating if an industry vessel can be used for the dredge component of the federal scallop survey.

Staff reviewed a timeline of scallop actions and workload for 2016. There were several questions about the timing of 2017 specifications in light of the uncertainty about when the EFH action will be effective. It is also not certain yet what specific vehicle will be used for 2017 specifications (framework or specifications package) or whether it will include 2017 only, or 2017 and 2018 measures.

ACL STRUCTURE

Staff gave a presentation on the current ACL structure used in the Scallop FMP under Amendment 15, as well as some initial PDT input on this issue. The PDT has begun development of a scallop ACL flowchart discussion paper. The current ACL structure and fishery allocations in the Scallop FMP are not spatially explicit, such that annual catch limits (ACLs) in the scallop fishery are based on the overall scallop biomass in all areas, including closed areas. However, allocations to the LA component are constrained by the available biomass in areas that are open to the fishery only (open areas and open access areas). Staff explained that this approach may lead to a disconnect between catch limits and allocations. For example, in FY2015 and FY2016 a large proportion of total biomass was within essential fish habitat (EFH) and groundfish closed areas, as well as scallop access areas closed to the fishery. The LAGC allocations are equal to their ACL which includes biomass in these closed areas, the LA ACL includes all areas as well, but the LA allocations are limited to areas that are open only.

Staff explained that Amendment 11 to the scallop FMP created limited entry for three LAGC permit categories, and divided allocations between LA and LAGC IFQ using a 94.5% (LA) and 5.5% (LAGC IFQ) split of projected catch. Amendment 15 (A15) brought the plan in compliance with the 2007 reauthorization of the Magnuson-Stevens Act, and defined overfishing limits (OFLs), acceptable biological catch (ABC), annual catch limits (ACLs), and annual catch targets (ACTs). The scallop plan specifies that the ABC will be equal to the ACL. Management uncertainty in this FMP is accounted for in the difference between the ACL and the ACT. Staff noted that the Council adopted a LA sub-ACT which is lower than the sub-ACL through Amendment 15, and opted to set the LAGC sub-ACT equal to the sub-ACL. Changing where the allocation split occurs (ACL vs. projected catch) has implications when estimates of overall biomass are much higher than projected landings.

Next staff reviewed the recent scallop specifications, and explained that, in general, the approaches adopted in A15 have worked well to-date in terms of fishery harvest compared to allocations and fishery limits. Staff also recapped the recent catch performance of the LA and LAGC IFQ components. An overview of draft objectives for a potential action was followed by an explanation of the draft measures that the PDT had developed for discussion purposes only. In addition to status quo/no action, the PDT brought forward options which focused on: 1) modifying the management uncertainty buffers for the LAGC IFQ component: and 2) incorporation of spatial management into allocations. Staff explained that a potential rationale for modifying the LAGC IFQ management uncertainty buffer is that measures in A15 allow for the LAGC IFQ component to carryover up to 15% of quota from one fishing year to the next. IN addition, the potential approach of basing allocations on projected landings would base LA and LAGC IFQ allocations on biomass that is available to the fishery. Finally, staff reviewed the performance of the observer set-aside allocation, and presented alternative approaches that could be used to calculate observer set-asides.

Several questions followed the presentation including several suggestions. A member of the audience commented that since NGOM is not included in the overall OFL/ABC the diagram of the structure should be clarified that the TAC is added in and then removed before allocations are set for the federal scallop fishery.

The AP reviewed the draft problem statement prepared by the PDT for discussion. One AP member expressed concern that the problem statement is not clear about whether this is a conservation based issue, or an allocative issue. A motion was offered to modify the problem statement to focus on evaluating the allocation split between the LA and LAGC fisheries, as well as evaluating the ability of the ACL structure to protect small scallops. That could express that this issue is both biological and economic. Another AP member argued that there are biological concerns with the current system because if the LAGC IFQ is based on total biomass, but not all biomass is available to the fishery, ultimately that would increase pressure on areas that are open, regardless of what is going on in the rest of the fishery. He argued that if an allocation is based on total biomass with no adjustment for availability, and that allocation is harvested year and year, over time there will be negative consequences on the areas that are open.

Another AP member commented that the performance of the ACL system is hindered when there are large increases in biomass. Another AP member questioned what the plan is protecting small scallops from. A member of the audience argued that protection of small scallops is adequately addressed in the ACL structure, but it is not even for the different components; the LA fishery is bearing most of that conservation since their allocation is based on projected catch from available areas. Specifically, since small scallops are in closed areas, that biomass is part of the total biomass, but not the available biomass. And the LA allocation stems from projected catch which is based on available biomass.

A recommendation was made that the analysis should consider a wide range of possible scenarios to evaluate the effectiveness of the ACL system; for example, when most of the biomass is large scallops, small scallops, most in closed areas versus open. The point was made that the performance of the system is impacted by the distribution of the biomass, both spatially and the age of scallops. The analysis could adjust past allocations to see how the structure would have performed under different allocations to evaluate the performance. It was pointed out that FY2016 may be an anomaly and we may not want to throw this system away if it actually functions well under most conditions, and just not the extremely high biomass of small scallop scenario we are currently under. One specific idea floated was to include an alternative that would adjust the LAGC allocation downward by some amount when the level of available, exploitable biomass is substantially lower than total biomass, as it is in FY2016. But that specific idea was never included in a motion.

Another commented that the LA fishery has not been harvesting their ACT either. It was recommended by one member that an objective could be added to adjust the structure to help the LA fishery harvest their ACT. But it was explained that even the ACT is based on the biomass in all areas, regardless of whether the areas are open or not. Since projected catch is the first place spatial considerations are taken into account, in some cases the LA fishery allocations would never add up to the ACT (i.e. when large proportions of the total biomass are in closed areas the projected catch levels are much lower than the ACT allowed under the current structure).

Motion 1: Parker/Maxwell

Change the draft problem statement to reflect that this action should address two main issues:

- 1) Assess the performance of the ACL structure and determine if it supports the intended allocation split by permit type (94.5% and 5.5%). Consider modifications if it does not.
- 2) Consider modifications to the ACL structure to adjust allocations when there are large amounts of small scallops.

Vote: 4:6:3, motion fails

In addition to the draft measures the PDT developed for discussion relative to the scallop fishery ACL structure, a section was also included on potential adjustments to how the observer set-aside is defined in the overall ACL structure. It is currently removed from the flowchart from the same level as the LAGC sub-ACL (directly from the ABC/ACL), which is based on biomass from all areas, not just available areas. Therefore, the same issues relative to potential concerns that allocations are based on total biomass rather than available biomass could apply to the observer set-aside allocation as well. Despite that, the AP does not support changing how the observer set-aside is allocated at this time; they support status quo. While that may provide more set-aside than is used in a particular fishing year, the majority of the set-aside has been used in recent years, and having more reduces the risk of vessels having to directly pay for observes without set-aside to compensate for those observer costs.

By consensus, the AP does not support inclusion of alternatives to develop measures to adjust how the observer set-aside is accounted for in the ACL flowchart, support for status quo.

Overall, the AP is supportive of the draft document prepared by the PDT. Some felt the problem statement and objectives could use further refinement and additional measures may be identified later in the process, but the AP is generally supportive of the direction to date and encourages more development of alternatives.

By consensus, the AP supports the measures the PDT has developed on this action to date and requests they continue to brainstorm more alternatives.

FIVE-YEAR RESEARCH PRIORITIES

Next, staff reviewed the current five-year research priorities as well as Scallop PDT input on the scallop related research priorities. In general the AP drafted a consensus statement that supports the PDT suggestions with several additional recommendations. The AP was curious why the Habitat Tech Team recommended removal of the specific reference to the Canadian benthic survey in the habitat research bullet specific to scallop fishery research.

By consensus, the AP supports the recommendations by the PDT for the five-year research priorities as well as a few additions:

1. *Feasibility and impacts of federal scallop aquaculture*

2. *Biological assessment of northern sea turtles*
3. *Support industry based electronic catch data collection in the scallop fishery*
4. *Modify EFH PDT priority (b) under scallop fishery section and move higher under EFH general priorities:
“Identification of nursery and over-wintering habitat”*

The general research conversation led into a discussion about the federal scallop survey. A member of the audience reminded the AP that there was previous support at an earlier meeting to have the NEFSC evaluate the feasibility of shifting the federal dredge survey onto industry vessels. This has come up in the past and was discussed by the Council following the scallop survey peer review meeting in 2015. The AP is still very supportive of the Center completing that evaluation and passed a motion to re-emphasize their support.

Motion 5: Gutowski/Quinn

The Scallop AP again recommends that the Committee request the NEFSC evaluate and consider the potential use of industry platforms for the dredge component of the federal survey, outside of RSA supported surveys, as recommended by the findings of the peer review survey workshop.

Vote: 8:0:1, carries

INSHORE WORKSHOP SUMMARY

Staff presented a summary of the recent workshop on inshore scallop fishing issues. There were about a dozen overarching themes that came up throughout the workshop and a handful of final take-homes. In summary, there was no overall consensus on recommendations for next steps. The group agreed the workshop was valuable and there is a strong commitment to work together, but there are different opinions about what the most important issues are, and what if any management actions would be warranted to explore.

A member of the audience explained that there may be some possible measures to reduce fishing pressure nearshore that could be workable, but the LAGC fisheries in New England are very different than the Mid-Atlantic. Another commented that there are other issues that are more critical to the future sustainability of both fisheries that would be more valuable to have a workshop about (i.e. enhancement, controlling predators, issues about meat quality and disease). He stated that this is a successful management plan and we should focus on the things that improve the fishery for all, instead of things that divide the fishery. An AP member commented that some of these issues would go away if LA vessels with LAGC quota did not have to fish their IFQ under a possession limit. If they were able to harvest all or more of their full allocation they may fish farther offshore and relieve pressure nearshore for smaller vessels. Another AP member commented that in his opinion there are measures the Council could develop that would improve the current situation and better recognize the differences between the various LAGC segments that exist.

FIVE-YEAR LAGC IFQ REVIEW

Staff reviewed a draft work plan and outline for the required five year review of the LAGC IFQ program. A technical working group has been identified with staff from NEFMC, NEFSC, and

GARFO. Six overall elements will be analyzed with dozens of data elements including: 1) has the program controlled capacity; 2) has the program controlled mortality and promoted conservation; 3) has the program preserved the ability for vessels to participate at different levels; 4) has the program promoted safety and enforcement; 5) has the program resulted in the greatest overall benefit to the Nation; and 6) has the program prevented excessive shares. The review will consider the requirements of the MSA, the goals and objectives of Amendment 11, the action that implemented the ITQ program, and NOAA draft guidance on the elements that should be included in these reviews. Overall the AP did not have any comments about the draft work plan; no motions or consensus statements were made.

Several AP members suggested that the report include some information about vessels that did not qualify for the IFQ program to summarize those initial costs of the program. Another request was to evaluate the number of vessels that have made a one-time transfer to a NGOM permit from an IFQ permit.

OTHER BUSINESS

Staff gave a brief presentation on two issues under other business: 1) recent scallop fishing in the NGOM; and 2) input on NOAA Office of Law Enforcement priorities.

- **NGOM Scallop Fishing**

The Council received two letters of correspondence about increased fishing pressure in NGOM from both LA vessels and LAGC IFQ vessels in the southernmost part of the management area. Staff reviewed the regulations and landings history since adoption of the NGOM program under Amendment 11. In general this program was adopted as a placeholder for future management of the sporadic scallop biomass in the Gulf of Maine if and when the resource returned. Vessels with LAGC IFQ and LAGC NGOM permits have fished in the area since adoption of the program in FY2008. At first, total landings were relatively low, until FY2013 when effort increased on Platt's Bank for a few years. Landings in 2015 exceeded the 70,000 pound TAC.

However, the main driver of the correspondence was focused on more recent fishing activity in March 2016. The two primary issues seem to be: 1) increased LA fishing activity is threatening the sustainability of scallop resource in NGOM; and 2) the area wide TAC will be harvested from one relatively small portion of the NGOM management area before other federal fisheries typically begin later in the season. Several members of the public came to testify about concerns they have about the TAC getting harvested very early this year, as well as the negative impacts of LA fishing in the area, which does not get applied to the TAC. In addition, there was testimony that LA vessels are deckloading and shucking inside the VMS demarcation line outside of the DAS system.

One commented that this potential issue has been highlighted for several years as something that should be addressed but has not been able to compete with other management priorities. Two relatively small adjustments have been made to the NGOM program since Amendment 11, but they were rather narrow in scope. Another commented that there are gear conflicts with the lobster fishery in the area now that were never an issue before LA vessels started fishing in this area. Several ideas for potential measures were offered by AP and/or audience members

including: implementing an Emergency Action to close the NGOM, implementing a consistent possession limit of 200 pounds for LA vessels, change the start date for the TAC so it is consistent with traditional winter scallop seasons, prohibit deckloading, assess the GOM resource and potentially increase the TAC, sub-divide the TAC into smaller areas, etc. Several motions were drafted, but ultimately only one passed and others were tabled.

Several AP members voiced concern about the precedent that some of these motions could set. Everyone could agree that deckloading should be prohibited, but some of the other ideas revisit past actions when LA permits were awarded under Amendment 4. One member of the audience argued that all permits are not equal and vessels qualified at different levels because they earned a right to fish at a higher level, and those rights should not be taken away. Some comments were shared that this may not warrant an emergency action since there is no threat of overfishing for the resource overall.

Motion 2: Hatch/Marchetti

Because of the failures of the NGOM management program the AP requests that the Committee recommend NMFS implement an emergency action or other vehicle to close the NGOM area to LA vessels until the inconsistencies can be addressed through the FMP.

Motion to Table: Hatch/Marchetti

Motion 3: Hansen/Gutowski

Forward to the Cmte to develop an action to prohibit a LA vessel from having more than 50 bushels in-shell scallop product inside the VMS demarcation line (intent is to make the rule consistent with prohibition for LA vessels south of 42 20 N).

Vote: 10:0:0, carries

Motion 4: Marchetti/Welch

AP recommends that the Committee consider measures to address the inconsistencies that exist in the NGOM management area program in the next available action.

Motion to table: Marchetti/Welch

- **NOAA Enforcement Priorities**

Staff summarized the current priorities for NOAA enforcement in the Northeast. OLE is looking for feedback on what the most important priorities are, and initial input of what the next five-year priorities should be. The AP was asked to review these priorities and be prepared to comment at the next AP meeting in early June.