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Congress of the United States
House of Representatives
Washington, DC

November 18, 2008

The Honorable James Balsiger
Acting Administrator
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Administrator Balsiger:

I am writing to express my concern over recent National Marine Fisheries Service (NMFS) actions relating to the Atlantic sea scallop fishery and the efforts to protect sea turtles.

Despite the fact that NMFS issued a biological opinion earlier this year finding that the scallop fishery did not place sea turtles at risk of extinction, and in fact determined that there were fewer turtle takes than in previous opinions, the agency has proposed significant changes in the way the scallop fishery operates that will likely lead to substantial reductions in the scallop harvest. These proposals will not only have a negative financial impact on the industry and on fishing communities, including the greater New Bedford area, they also raise safety and conservation concerns.

Specifically, the proposed 50 percent reduction in allowable fishing days during the warmer months when turtles are more likely to be in the same areas as scallop vessels means that fishing activity will tend to be shifted to colder periods which are less safe for fishing. In addition, scallops tend to be smaller during the colder months, so the proposed changes will also likely result in less lucrative fishing or a higher total number of scallops being harvested in order to reach relevant weight limits. I support efforts to ensure that turtle populations are not significantly harmed as a result of scallop fishing activities. But, it is difficult to understand why these changes are being proposed, given the fact that the biological opinion seems to suggest that the impact of scalloping on sea turtles is minimal, and in no way represents a serious threat to their continued long term viability. The economic, safety and conservation issues simply raise further questions about the advisability of going forward with the changes.

These proposals are especially troubling given the fact that the 2005 data, which apparently indicates that there were zero turtle takes associated with scallop fishing, was left out of the calculations which formed the basis for the proposal. Indeed, as you know, NMFS scientific personnel have indicated that excluding the 2005 data from the calculations may raise questions about the statistical validity of the biological opinion. In addition, the efforts by the industry to develop turtle excluding gear, and to promote its use do not appear to have been appropriately taken into account. Accordingly, I urge you to undertake a thorough

reconsideration of the proposed changes, including specifically a more complete analysis of the recent turtle take data.

I would add that I am also very disturbed by the apparent unwillingness of NMFS to make available the documents relating to these matters that have been requested by representatives of the commercial scallop fishing industry. I am a strong supporter of the idea that the role of science in determining fishing levels should be heightened, and I am hopeful that we will continue moving in that direction as the implementation process for the Magnuson-Stevens Reauthorization Act (MSRA) moves forward. However, as I argued both during the development of the MSRA and as part of the discussions around its implementation, with heightened reliance on science there is also a greater need for transparency. If fishermen are to be subject to stricter scientific requirements, it is essential that they have a reasonable level of confidence about the integrity of the data that underlies those requirements.

NMFS's initial determination that the documents in question cannot be released under Freedom of Information Act guidelines flies in the face of that need for greater transparency. While it is possible that some portion of the documents in question may require protection, I disagree very strongly with the notion that the bulk of these documents should be withheld. If the agency is unwilling to expose the relevant portions of its decision making process to public inspection, it will inevitably raise serious questions among those who earn their living in the commercial scallop industry about the integrity of that process. Therefore, I urge you to make every effort to release as many of the documents as possible at the earliest possible date.

The commercial scallop industry has an excellent record of collaborating with fishery managers to keep the fishery operating at sustainable levels, and cooperating in the ongoing work to protect turtles. I believe it is a mistake, and not in the spirit of the collaborative approach the industry has taken, for NMFS to propose changes in the scallop fishery's operations that will cause a negative financial impact on the industry and fishing communities -- as well as raising safety and conservation questions -- when some of the agency's own scientists are questioning the validity of the underlying data. Not agreeing to make the relevant documents available would compound the error. I urge you to either reconsider the proposed changes, or provide more detailed information as to why the agency believes they are needed. And, again, as part of that effort I urge you to release the requested documents in a timely manner.

Thank you for your attention to these matters. I look forward to your response.


BARNEY FRANK