



Council Report

An update published by the New England Fishery Management Council – February 2009

The Council Report summarizes major issues voted on or discussed at each regularly scheduled meeting of the NEFMC. The Council met most recently on February 9-11, 2009 in Portsmouth, NH.

At its meeting in February, the Council addressed sea scallop, groundfish, herring and skate management issues.

Sea Scallops

NMFS Announces New RPMs to Address Turtle Interactions/Amendment 15 Moves Forward

The National Marine Fisheries Service announced at the February Council meeting new “reasonable and prudent measures” (RPMs) to address the incidental take of sea turtles in the scallop fishery. Following several months of discussion and work by the Scallop Plan Development Team and NMFS staff, the agency modified measures previously outlined in a March 2008 Biological Opinion (BiOp) that would have substantially limited scallop fishing in the Mid-Atlantic from the spring through the fall period.

According to PDT analyses, the initial measures would have resulted in more than a “minor change to fishery operations”, despite low levels of takes, in particular since the implementation of a gear modification that keeps turtles out of scallop dredge bags and a “no jeopardy” finding in the March BiOp concerning the fishery’s impact on sea turtles. The Council voted at its November meeting to support the PDT conclusions which demonstrated projected effort shifts, an adverse impact on yield, fishing mortality and landings, and potential safety-at sea issues.

In a February 5 letter agreeing with the Council that it’s original RPMs would have precipitated more than minor changes to the fishery --- a provision in the Endangered Species Act that is associated with no jeopardy findings --- NMFS highlighted the fact that the new conditions are similar but not identical to the Council’s recommendations. Limiting effort in a specified geographic region will still be required, although the agency ultimately adopted a more flexible approach that is more compatible with the scallop management program. The Council will incorporate measures to implement the new RPMs into Framework 21 to the Scallop FMP, scheduled for implementation in 2010.

The Council also voted to approve, for purposes of conducting further analyses in a Draft Environmental Impact Statement, measures for possible inclusion in Amendment 15 to the Scallop Plan. In addition to annual catch limits (ACLs) and accountability measures (AMs) as required by the reauthorized Magnuson Fishery Conservation and Management Act, measures to be further analyzed will address capacity in the limited access scallop fishery and improve overall economic performance, including stacking and leasing alternatives. The Council also directed the Scallop Committee to consider a sector proposal and measures that would allow a limited access general category IFQ permit to be split from other permits held by the same vessel and transferred independently --- as well as splitting a Northern Gulf of Maine general category permit from other permits on a vessel.

Additional issues in the Amendment 15 package may include an adjustment to the current overfishing definition to be more compatible with area rotation, adjustments to the recently-implemented limited access general category management program and other measures.

Groundfish

Framework 42 Lawsuit Addressed/Amendment 16 Proceeds to Public Hearings

NMFS reported to the Council on the recent First District Court order (Commonwealth of Massachusetts and State of New Hampshire v. Carlos M. Gutierrez) that temporarily vacated the management measures contained in Framework 42 to the Northeast Multispecies FMP. The court also ordered a review of the applicability of the “mixed stock exception”, a management option that was not employed by the Council in the development of the Framework 42 measures. A provision of the Magnuson Act and the National Standard 1 Guidelines for addressing overfishing and stock rebuilding, the exception allows, under specific conditions, the harvest of one stock at its optimal level, despite potentially overfishing another stock, when those stocks are part of the same fishery.

As part of its response to the court, the agency presented the Council with a draft report on the applicability of the mixed stock exception to Framework 42 and asked for Council concurrence with its conclusions. After extensive discussion, a majority of Council members disagreed “with the conclusions of the NMFS report to the court that the mixed stock exception cannot be applied to the Northeast multispecies fishery and requested that NMFS reconsider its position and make it consistent with congressional intent that: 1) optimum yield should be from the fishery as a whole; and 2) one stock should not dictate severe constraints on the fishery as a whole while that stock is being rebuilt.”

As scheduled, the Council also approved draft Amendment 16 to its Groundfish Plan for purposes of seeking input on the proposed measures at public hearings. The specifics of the hearings will be announced, and are planned for this April or May. The final vote on all Amendment 16 measures is planned for the June Council meeting, with NMFS implementation scheduled for May 1, 2010.

In completing the management measures for inclusion in a Draft Environmental Impact Statement, Council members agreed to, among other measures:

- Include wolffish in the management unit, adopting status determination criteria, and proposing to ban the landing of wolffish by all fishermen; and
- Include a rebuilding plan for pollock (the Council was notified February 9, 2009 that this stock is overfished); this could require adjustments to two of the existing effort control alternatives.

The Council further agreed that prior to public hearings it would *not* select preferred alternatives for potential sector contributions (sector shares), non-sector vessel effort control measures or accountability measures for non-sector vessels. As voted on at the February meeting, Amendment 16 will include several modifications to the proposed recreational accountability measures and other recreational fishery issues, as well as a requirement to use 12-inch drop chains on nets with a codend smaller than 6.5 inches in an area of southern New England.

Since the Council meeting, the National Marine Fisheries Service has published the following notice to provide clarification for fishery participants who may be affected by the Framework 42 court order:

The NE multispecies regulations implemented under Framework Adjustment 42 to the NE Multispecies Fishery Management Plan have been suspended until further notice.

To view regulations that have not been affected by the January 26, 2009 court order, please go to:
<http://www.nero.noaa.gov/nero/nr/nrdoc/09/09fw42coutphl.pdf>.

Herring

Amendment 4 Catch Monitoring Alternatives Approved

The Council received an update on the development of management alternatives under consideration for inclusion in Amendment 4 to the Herring FMP. Discussions at this meeting focused on establishing a comprehensive catch monitoring program for the fishery, approval of a set of program goals and objectives and four general alternatives for further development. A sampling design for an observer program was discussed, and the Council passed a motion to prioritize haddock, river herring, and Atlantic herring as the species on which to base the observer program sampling design.

The four alternatives for the catch monitoring program, which the Herring Committee will continue to discuss over the upcoming months, are based largely on management measures included in several stakeholder proposals for catch monitoring that were submitted to the Council in late 2008 and early 2009. The Council agreed to incorporate those submitted by the fishing industry, CHOIR and the Massachusetts Division of Marine Fisheries for further development in Amendment 4.

The Council also discussed issues related to the timeline for the development of Amendment 4 as well as the herring fishery specifications for the 2010-2012 fishing years, in light of the recent news that a new herring stock assessment will be conducted in June 2009. Although work on Amendment 4 will be delayed during the development of the fishery specifications later this year (following the stock assessment), the Council agreed to move forward as expeditiously as possible with the development of the amendment and prioritized work for the amendment as follows:

1) ACLs and AMs; 2) catch monitoring; 3) river herring bycatch measures; 4) measures to establish criteria for herring vessel access to groundfish closed areas; and 5) measures to address interactions with the mackerel fishery. An update will be provided at the April 2009 Council meeting. The Council is currently scheduled to review all completed work and select the range of alternatives for the Amendment 4 Draft Environmental Impact Statement at the June 2009 Council meeting.

Northeast Skate Complex

Changes to Skate Program Approved

The Council agreed to move forward with Amendment 3 to the Northeast Skate Complex FMP following the postponement of final action in November to accommodate the consideration of new information from the December 2008 Data Poor Stocks Working Group (DPSWG) and its associated peer review panel. It also had the benefit of advice from its Scientific and Statistical Committee (SSC) concerning stock status and the determination of an acceptable biological catch (ABC) for the skate complex.

Based on the uncertainty of the catch data (identification of species), and in particular the lack of correspondence between the magnitude of estimated fishery removals and trends in stock biomass, the SSC recommended an ABC of 23,826 metric tons, an amount to be carried over through the 2011 fishing year and one that is 43 percent below the 2007 catch. The purpose of setting an ABC, an upper limit to catch levels that may be set by the Council, is to prevent overfishing and to promote increases in skate biomass. In this case, the ABC level reflects the lack of accurate data on which to base catch.

The SSC also supported the DPSWG updates to the estimates of overfishing thresholds based on the inclusion of information collected during the 2007 and 2008 bottom trawl surveys conducted by the Northeast Fisheries Science Center. The revisions, however, did not substantially change the status of skates. Thorny skate is overfished, winter and smooth skate are close to an overfished condition (their

biomass indices are near the minimum stock size thresholds) and little, clearnose, and rosette, as well as barndoor skates, are not overfished. The Council agreed to incorporate the new information into Amendment 3 and accordingly, revise the management measures for consideration and approval at the April 7-9 Council meeting in Mystic, CT.

States Approach Deadline to Nominate Council Members

The process is well underway to fill seats that will be vacant on the New England Council beginning in early August 2009. The National Marine Fisheries, on behalf of the Secretary of Commerce, formally asks the governors of the coastal New England states to solicit and submit nominations each year.

As the Magnuson-Stevens Fishery Conservation and Management Act states: *Council members must be individuals, who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned.*

Four obligatory seats, one each from Maine, Massachusetts, Rhode Island and Connecticut, must be filled by residents of these states. Any New England state may nominate a qualified individual to fill the only at-large seat to become available in August. The governors' nomination packages must be submitted to NOAA Fisheries by March 15, making it important to act well in advance of that deadline in order to be considered.

For information on the status of the nomination process, interested parties should contact their state fisheries agency at the following telephone numbers:

- ME Department of Marine Resources in Augusta, ME - 207/624-6553
- NH Fish and Game Department in Concord, NH - 603/271-3421
- Division of Marine Fisheries in Boston, MA - 617/626-1530
- RI Department of Environmental Management in Providence, RI - 401/423-1943
- CT Department of Environmental Protection, Marine Fisheries Division in Old Lyme, CT - 860/434-6043

Materials on the Web

Meeting materials related to the above issues and other agenda items may be found on the Council's website www.nefmc.org. Presentations not discussed in this report, as well as materials related to decision-making are included. Audio files of the full meeting discussions are posted at <http://www.nefmc.org/actions/index.html>.

**Upcoming Council Meeting
April 7-9, 2009 in Mystic, CT**