



New England Fishery Management Council

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MEMORANDUM

DATE: June 6, 2007
TO: Council Members
FROM: John Nelson, Sector Committee Chair
SUBJECT: Omnibus Sector Committee Terms of Reference Recommendations

The Omnibus Sector Committee has held three meetings since receiving the Council's terms of reference (TOR) memorandum in February. During these meetings, the Committee formally adopted recommendations on most of the questions and issues raised in the memo, as well as a number of others that arose during its deliberations. In preparation for conveying these recommendations to the Council, I directed the staff to consult with the NMFS Regional Office to determine if there were items that the RO felt needed further clarification. I received the RO's response, and drafted a memorandum to the Sector Committee members asking for their concurrence on my interpretation of the members' views, based on the discussions at the three meetings.

The following presents the recommendations of the Committee on the specific items in the terms of reference memorandum, as well as the other issues raised during Committee deliberations. Where the RO sought clarification, the Committee's consensus is also included, and identified by **shading**. Shaded items were not adopted by a motion of the Committee, but agreement was solicited by a memorandum distributed to members following the last meeting.

The terms of reference for the Sector Committee are as follows:

1. To develop an amendment that would that would enable all FMPs to allow sectors in a consistent manner.
2. The amendment would address the common standards for sectors in all FMPs although there would be some issues that would be handled differently in each FMP.
3. The amendment will not address specific sector proposals for individual fisheries.
4. The development of this amendment will not delay consideration of allowing sectors in the general category scallop fishery in Amendment 11, or other FMPs, as those FMP amendments proceed.
5. The timeframe for the Council to develop the amendment would be one year.
6. The amendment should address how sector proposals should be considered under FMPs, whether a framework adjustment would be required to implement a sector or whether

sectors would be approved through a different process. Each FMP will have to be amended to enable sectors to be established under whatever process is selected.

7. The amendment should address how any sectors that have been established prior to adoption of the omnibus amendment will be affected, and how any changes would be implemented.
8. The term “sector” needs to be clearly defined because the Magnuson-Stevens Act fails to do so.

In regards to the above terms of reference, specifically #8, the Committee has adopted the following two definitions for further consideration as it addresses the terms of reference over the next few months:

1. A *sector* means a group of persons holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a **specified fishing privilege(s)**, in order to achieve objectives consistent with applicable FMP goals and objectives.
2. A *sector* means a group of persons holding limited access vessel permits who have voluntarily entered into a contract and agree to certain fishing restrictions for a specified period of time, and which has been granted a **TAC(s)** in order to achieve objectives consistent with applicable FMP goals and objectives.

These two definitions were developed at the first Committee meeting but based on discussions at subsequent meetings and confirmation by the Chair, the members now agree to recommend Definition #2.

The terms of reference memorandum also directed the Committee to address, but not be limited to the following specific issues:

New MSA Requirements – *The Committee has not yet addressed these two items, awaiting development of NMFS’ Guidelines.*

- The amendment should set cost recovery standards to identify what costs should be paid for by sectors. (Note - Existing sectors in groundfish, and any that may be established prior to the implementation of the omnibus amendment are now subject to mandatory cost recovery.)
- The amendment should address appropriate MSA requirements for LAPPs such as consideration of auction systems and the 10-year review requirement.

Allocation

- It is not clear if a sector must ask for a TAC for all species that it will catch, or whether it can select which species will be bound by a TAC. This is causing problems as additional sectors come forward.
- If there are to be TACs for all species, how will the incidental species TACs be set? On the same historical data as the target species?
- How will the catch of incidental species be treated?

The Committee unanimously approved the following motion which addresses the three bullets above: *That sectors adopt Annual Catch Limits (ACLs) and Accountability*

Measures (AMs) for species managed under the Sector's FMP(s), and measures consistent with ACLs and AMS for each FMP for incidentally caught species.

The Committee discussion included the concept that a sector may choose to be allocated a subset of all relevant stocks, on the basis of stock status. The Committee's intent is that stock condition would be used to determine allocation eligibility in a manner consistent with the relevant FMPs.

- Can/should sector shares be allocated in fixed poundage allocations or in DAS?

The Committee unanimously approved the following motion on the previous bullet: *The Committee recommends that sector shares be allocated as a percentage of the ACL.*

- How should discards be accounted for in sector allocations?

The Committee unanimously approved the following motion on the previous bullet: *Discards will not count toward a sector's allocation. Discards will count against a sector's shares, unless a sector can provide other accountability for the discards and obtain an exemption.*

At the April 26 Committee meeting, the RO staff asked if this motion meant that the calculation of a sector allocation, as a percentage of the total landings, would be based on historic landings only (not discards), but when the TAC is calculated each year, and a sector's catch is monitored against the TAC, both landings and discards will be counted. No committee member objected to this interpretation.

- Should sectors be allowed before the Council has clearly allocated catch among the major components of a fishery such as recreational and commercial or set catch limits on an open access group of participants?

Based on the term of reference, item #4 (see above) that states: "The development of this amendment will not delay consideration of allowing sectors in the general category scallop fishery in Amendment 11, or other FMPs, as those FMP amendments proceed," Committee members agreed to not specifically address this question at this time.

Mortality control

- Should there be a consistent policy for dealing with all overages among different sectors or sector and non-sector groups and how should they be handled?

The Committee unanimously approved the following motion on the previous bullet: *Based on provisions in Amendment 13 regarding overages by sector and non-sector vessels: if the sector does not exceed its assigned share or percentage in a given fishing year, but other sectors or the common pool do, the sector's allocation will not be reduced, if the sector exceeds its annual allocation but others do not, then the sector share will be reduced in the following year, and if all sector and open pool vessels stay within their shares, but the resource condition requires a reduction in catch, then all*

groups will take reductions.

- How is a reduction in mortality apportioned between sector and non-sector participants if neither group operates within its limits?

The Committee agreed that this question is partially addressed by the previous motion, and that other specifics should be dealt with by individual species committees within their respective plans.

- Will exceeding a TAC for an incidental species cause the entire sector to close? If so, how will the program prevent someone from discarding and not recording the catch of incidental species, especially low value species, in order to prevent a closure of the target fishery?

Committee members agreed that any TAC applied to a sector, when reached, would result in the sector fishery closing.

- If non-sector vessels exceed the TAC, will adjustments also reduce available TAC to the sector, even if that sector did not exceed its portion? If the non-sector overage is so large that fishing mortality needs to be significantly reduced, it's possible that the compliant sector would be forced to take reductions even though it did not cause the problem.

The Committee agreed that the above bullet was addressed by their previous motion (first motion under the section "mortality control")

Size of sectors –

- Should there be limits on the maximum size of sectors in terms of numbers of vessels or percentage of total landings?
- Should there be a minimum number of participants before a sector is allowed?

The Committee unanimously approved the following motion: *that each FMP, with the exception of red crab, should define a minimum sector size by specifying a minimum number of participants expressed as a number of individuals or % of permits, in order to ensure accountability among sector members, and not complicate administration or enforcement.*

On the question of maximum size of sectors, either as a percent of TAC or percent of the number of permits in a fishery, the Committee members generally felt that the main concern is in regards to a sector achieving monopoly control over the fishery. The Committee agrees that the question of sector size limitations is a matter to be taken up by the individual species committees in development of their own sector programs.

Other issues in the TOR memorandum -

- What happens to the members and capacity that become idle (crew and vessels)? Should the sector amendment specifically address the restrictions, obligations, and limitations that would be placed on all members of the sector? For example, if there are 10 boats in a

cod sector and they agree that five vessels will fish the TAC, is the Council concerned that the idle boats may increase capacity in another fishery?

The Committee unanimously approved the following motion: *Each sector applicant must identify potential redirection of effort as a result of sector operations and propose limitations (“sideboards”) if necessary to eliminate any adverse effects of effort redirection.*

- What are the monitoring, reporting and review requirements for sectors?

The Committee discussed, but took no action to recommend a policy or alternative on this item. Points raised by members in the discussion included the that some observer coverage should be dedicated to sectors to a level that gives a statistically reliable accounting of bycatch that could be applied to the entire sector, and that if observer coverage is mandated, sectors should have a choice of vendors and not be stuck with a sole source vendor at \$1,100 per day. The Committee agrees that the objectives for adopting sector programs are FMP-specific, and should be stated by the species committees when considering the development of sector proposals, and further that the species committees should adopt a periodic evaluation of their sector programs via the review of the annual reports in the context of each FMP’s sector objectives. The Committee also agrees that the requirement to report catch already exists [in the Multispecies Sector Program regulations that would be the basis of any other sector programs], and that any additional monitoring requirement should be stated in each sector’s Operations Plans and reviewed annually.

- If the management program for a fishery has not changed through a change in specifications, framework or other action, should sectors be required to annually submit an environmental assessment (EA)?

The Committee unanimously approved the following motion: *Each FMP may allow proposals that request authorization for multi-year operations.* If a multi-year sector program is allowed, and if the range of possible changes (e.g., membership and quota) is analyzed in the EA, then a new EA would not need to be prepared each year.

Other issues addressed by the Committee, not in the TOR memorandum –

- The Committee discussed the need for in-season transfers of quota between sectors to address unforeseen biological events (e.g., unanticipated, localized abundance spike) so that sector vessels are not put in the position of having to discard fish for lack of sufficient quota.

The Committee unanimously approved the following motion: *Each FMP may allow transfers of quota among sectors contingent on evaluation of proposals.* The Committee agrees that, if any transfers of TAC between sectors is allowed within an FMPs sector program, those transfers would be on an annual basis, and that the sector TACs would be

reset each year based on the membership(which might change from year to year)). Further, the Committee agrees that the sector managers could be authorized to request a quota transfer between themselves, and that they may do so any time after the TAC(s) for the fishing year have been finalized. The species committees should develop FMP specific criteria for the approval or disapproval of TAC transfers. If a sector transfers a portion of its TAC to another sector, and then exceeds its remaining portion, the transferred portion would not be affected, but the sector would have its TAC reduced proportionally the following year by the amount of the overage.

- The Committee addressed the question of what are appropriate baseline periods to be used to calculate the sector's allocation, and whether those should be fixed or moving.

The Committee approved (3-1) the following motion: *Each FMP must identify a single, fixed and permanent baseline for the purpose of sector allocation*, but members also agreed, by consensus, that there may be reasons for exceptions to the previous motion. For example, in the case of the herring fishery where each management area has a distinct quota, sectors may be more appropriately established with different baselines for each area, to be determined by the Herring Committee.

- NMFS Regional Office asked for clarification about the process of forming sectors within each FMP, and if those would be based on the existing Multispecies FMP process. The Sector Committee agrees that the species committees should review the Groundfish Sector language and determine the relevant components for their own sector development.
- NMFS Regional Office commented that the definition of a geographic area associated with each sector would enhance enforcement (provided the geographic area is a smaller area than the jurisdiction of the FMP). The Committee agrees that the question of geographic area limitation on sectors is a matter to be taken up by the individual species committees in development of their own sector programs.
- The NMFS Regional Office commented that the Amendment (or policy) guidance should make it clear that the formation or operation of sectors should not unfairly disadvantage common pool vessels (individually or collectively). The Regional Administrator should have the authority to deny approval of a sector, or withdraw approval of a sector if common pool vessels are being unfairly impacted.

The Committee agrees that individual species committees, in considering sector proposals, must consider bycatch in other fisheries, effort displacement and the impact on common pool (non-sector) vessels and any other relevant factors when allocating TAC. The question remains whether the Regional Administrator's authority to approve sector plans should be based on specific evaluation criteria? If "yes", the Sector Committee Chairman would request input from the Regional Office as to what criteria could or should be used before making a recommendation to the Council or species committees.

- The NMFS Regional Office noted that discussions by the Committee implied, but did not make it clear that vessel can only be a member of only one sector within a particular FMP in a given fishing year. This should be a stated requirement.

The Committee agrees that a vessel can only be in one sector within an FMP in any fishing year, and that a vessel cannot be in more than one sector in different FMPs in the same year.

- The NMFS Regional Office also noted that it may be necessary to state in the guidance that sectors are responsible for ensuring that the sector's eligibility criteria are implemented in a fair and uniform manner.

The Committee agrees that sectors are responsible for ensuring that their eligibility criteria is implemented in a fair and uniform manner.

- The Regional Office asked whether there are blanket exemptions that would be disallowed in all sectors, or would these be decided on an FMP-by-FMP basis? For example, Amendment 13 sector rules prohibit any sector from exemptions to year-round closed areas, permitting restrictions (upgrades), gear restrictions designed to minimize habitat impacts, and reporting requirements of the FMP. The regulations do allow, however, such exemptions to be granted if done through a framework adjustment.

The Committee agrees that the matter of exemptions would be decided on an FMP-by-FMP basis, and would be subject to Council approval during the adoption of the FMP sector program.

- The Regional Office commented that the current groundfish regulation under 648.87(b)(1)(vii) regarding permanent reduction of sector shares (based upon repeated overages) should be clarified. The agency asked, who decides how and whether a share is permanently reduced, and, while the regulations clearly state that the sector's authorization to operate may be withdrawn, the process for doing is not specified, and should be.

The Committee agrees that overages of a sector's allocation would be addressed in the annual evaluation and reauthorization process, and that individual species committees would establish the appropriate response for repeated overages, which may include disapproval of an operations plan.