



New England Fishery Management Council

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John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

MEMORANDUM

DATE: January 17, 2007
TO: Groundfish Oversight Committee
FROM: Groundfish Plan Development Team
SUBJECT: **PDT Conference Call January 11, 2007 - Amendment 16 Scoping Comments**

1. The Groundfish Plan Development Team (PDT) held a conference call on January 11, 2007. The PDT reviewed comments received during the scoping period for Amendment 16, focusing on proposals for management systems. Participants in the call included Tom Nies and Chad Demarest (NEFMC), Tom Warren and Doug Christel (NMFS NERO), Kohl Kanwit (Maine DMR), Steve Correia (Massachusetts DMF), Eric Thunberg and Paul Nitschke (NMFS NEFSC), Paul Parker (Groundfish Advisory Panel Chair), and Jim O'Grady (interested party representative).

2. The PDT reviewed each major proposal and compared its elements to the broad criteria listed below. These reflect a combination of the principles published in the scoping document as well as practical issues identified by the PDT. The criteria are:

- What is the primary fishing mortality control?
- Is the proposal an input or output based system?
- Is the method of allocation clearly stated for all permit holders, area, gear, etc.?
- Does the proposal include a mechanism for accountability?
- Is the proposal narrow in focus?
- Can the proposal be analyzed?
- What issues will need to be addressed during development? This is a preliminary, not comprehensive, evaluation.
- Are there major hurdles that need to be resolved early in the process? This criterion attempts to identify problems that *may* prove insurmountable for the

proposal as submitted. In most cases we tried to identify *possible* legal or policy issues that are beyond the expertise of the PDT. NOAA GC was not available to participate in the call to address these questions.

3. Evaluation of the proposals is summarized in the pages attached. During the review, the PDT also identified overarching issues that are summarized in this memo. The PDT briefly discussed several suggestions that were not proposed revisions to the management system. A few comments on those ideas are included in this memo.

General Comments or Concerns

4. A common theme in most, if not all, of the proposals is that improvements in data collection are necessary. Most proposals include recognition that catch data (both landings and discards) must be reported and distributed in a timely manner for the proposals to work as designed. Some of the proposals identify specific tools for improving fishery dependent data collection, such as daily VMS reporting. Given the significant time lags between design and implementation of these systems, the Committee may want to recommend the Council and NMFS begin working immediately to create an improved data collection system that is ready by the time Amendment 16 is implemented. Amendment 13 already authorized daily dealer electronic reports and electronic vessel reports at a finer scale than statistical area. Development of these reporting programs need not (and should not) wait for Amendment 16, though that action may need to require more frequent vessel reports.

5. Closely related to the previous paragraph is that many of the proposals may place increased demands on the observer program. It can be argued that some proposals increase the incentive to discard. Several of the proposals may increase the need to know with certainty the total catch (landings and discards) of individual vessels. As a result, there may be a need for higher levels of observer coverage to meet discard estimation standards either at a higher level of precision or at a finer scale than currently under consideration for the Standardized Bycatch Reporting Methodology (SBRM). At the same time, it is possible that the proposals may make vessels more efficient and result in reduced fishing time, which could reduce the number of required observer days. These impacts on the observer program should be carefully considered and funding options should be explored well in advance of implementation.

6. Differences between the alternatives will complicate analyses. This is particularly true for economic and social impacts. Over the years, NEFSC development of the Closed Area Model provided an integrated analytic tool that estimated biological impacts and provided extensive information on likely economic impacts for the effort control measures used by the Council. That model is not compatible with several of the proposals. The PDT will need to develop different analytic tools that may have to be specific to each proposal. This has several impacts. From a practical standpoint, it may take a lot of time to develop and verify these tools. Given the compressed time available for this amendment, this must be considered as the Committee and the Council choose the alternatives to be developed; they should be identified as early as possible. Second, the Closed Area Model outputs allow for extensive exploration of the distributive impacts of management measures. The PDT cannot guarantee that a similar level of detail will be provided by models that are not yet developed. The Committee and the Council may receive

information that is less quantitative than that provided in the past. Finally, it is possible that the tools will complicate comparing results across alternatives. They may have different assumptions and limitations that make it difficult to directly compare results between alternatives.

7. Because updated stock assessments will not be completed prior to public hearings, the Council suggested the Amendment 16 Draft Supplemental Environmental Impact Statement (DSEIS) illustrate the impacts of alternatives under “high, medium, and low” mortality reduction scenarios. This is problematic. Not only does this triple the analytic work for the PDT, it may prove difficult to identify these scenarios in a way that provides meaningful information to the public and the Council. Some PDT members are skeptical that this approach is feasible. If it is, the Committee and the Council should recognize that it will increase the work needed to complete the DSEIS and consider that as alternatives are developed.

8. Several proposals proposed as alternatives to the current effort control system suggest removing year-round and/or seasonal closures, trip limits, etc. The PDT notes the Council should carefully consider such actions as there may be reasons to retain some of those measures even if no longer strictly required to control fishing mortality.

Miscellaneous Comments or Concerns

9. Comments were received that did not constitute full-scale management proposals. The PDT only briefly discussed a few of these issues because of a lack of time. The PDT’s comments on these issues are:

- Sectors: Notice was received from two organizations that they may submit applications to form sectors – presumably these would be adopted in Amendment 16 as it is the next groundfish action. Several suggestions were also received for improving the management of the sector program. It is not clear if these suggestions should be part of Amendment 16 or should be considered as part of the Omnibus Sector Amendment. The Committee and PDT will need guidance from the Council on how these suggestions will be considered.
- Allow a vessel to possess a limited access scallop and limited access multispecies permit at the same time: With the exception of a combination permit, this practice is currently prohibited. The PDT commented during the development of FW 42 that this change would allow for better use of capital/vessels, but the Council may want to consider the social and economic impacts in an amendment rather than a framework.
- Allow the closed area access program scallop yellowtail flounder TAC to be allocated to scallop sectors if they are adopted by the scallop plan in the future: Discussions with NMFS staff indicate that this provision would not require a groundfish action but could be adopted under a scallop action. (Note that NMFS may have concerns over administration of such a provision).
- Develop a groundfish research set-aside program: The PDT suggests that any such program should cover all groundfish stocks.

- Modify the General Category Scallop Exempted Fishery east of Cape Cod to allow fishing year round: This fishery is prohibited during times of peak yellowtail flounder spawning. Council staff is confirming the rationale for this limitation that was adopted by NMFS. This suggestion may be outside the range of scoping issues as published in the FR notice. If included in the amendment, any change would not take place until May 2009, which may be later than desired by the scallop industry. Since the Regional Administrator has considerable authority over exempted fisheries, it may also prove possible to have this change adopted by NMFS without a Council action.
- Additional habitat measures: The current Omnibus EFH Amendment (Phase II) will consider additional measures to minimize the impacts of fishing on EFH. It does not make sense to duplicate that effort. The PDT does not believe the suggestion that there should be “general” habitat measures and “rebuilding” habitat measures is consistent with current guidance: we adopt measures to “... minimize, to the extent practicable, the adverse impacts on EFH that are more than minimal and less than temporary in nature.” There is no distinction made that those measures should be different once rebuilding is completed or should be more stringent if rebuilding is ongoing. If wolffish and cusk are incorporated into the fishery management unit, EFH will need to be defined for those species. While it would be preferable to include those definitions in the Omnibus EFH Amendment (Phase I), this may not be possible due to timing and the EFH definitions may need to be added to Amendment 16.
- Allocate TACs or points to the scallop fishery: The PDT notes that if a different management system is adopted provisions will need to be made for all other fisheries that catch groundfish in any quantity – such as the scallop fishery. There may also be opportunities to improve the management of this bycatch, such as be allowing these fisheries to acquire additional allowances.
- Remove chronic violators from the fishery: Beyond Council control
- Return to mother ship operations: Difficult to implement through Council actions.
- Government supervision of offloads: This may fall into the improvement in catch monitoring noted in several proposals and could take several forms (such as government-certified weighmasters).
- Promote commercial mariculture: Beyond Council authority.
- Consider impacts of global warming on management of fisheries: This might be a more appropriate for the scientific advice provided to the Council.

“Revised Days-at-Sea”

Scoping Guidance					
Constraining management measure	Input or output based?	Method of allocation stated; distro of TAC for all permit holders?	Mechanism for accountability?	Narrow in focus or absent detail?	Can it be analyzed?
Days-at-Sea	Input	Yes, No	Yes—DAS/VMS	Broad, with some details still to be worked out	Yes, primarily with existing tools

Major hurdles: None

Comments or concerns:

- *Count DAS at 24 hours* – none
- *Reduce size of differential area* – none
- *Eliminate conservation tax for DAS transfer program* – May increase effective fishing effort, modeling outcomes may be difficult
- *Eliminate/reduce rolling closures* – Recent catch rate data not available for time/area closure areas
- *Allow scallopers to acquire groundfish permits* – May involve equity issues
- *One commenter suggested using DAS coupled with an ITQ for a few individual stocks where mortality objectives are exceeded* - Program provides no detail for mechanizing allocation, monitoring or enforcement of ITQ. Furthermore, proposal is silent on how to restrict catch for stocks that need mortality reductions but do not exceed previous year’s TAC.

“Differential Days-at-Sea”
Including the Anderson and Wong proposals

Scoping Guidance					
Constraining management measure	Input or output based?	<i>Method of allocation stated; distro of TAC for all permit holders?</i>	<i>Mechanism for accountability?</i>	<i>Narrow in focus or absent detail?</i>	Can it be analyzed?
Days-at-Sea	Input	Yes, No	Yes—DAS/VMS	Broad, with sufficient detail included in proposal	Yes, but will require new tools

Major hurdles: Potentially high administrative burden

Comments or concerns:

- Timing issues relative to returning DAS
- Calculation of differential rate conditioned on several factors (species composition, trip length, trip limit)
- May increase incentive to discard
- Discards need to be accounted for
- Observer monitoring required
- May increase incentive to misreport landings of stocks of concern

“Hard TACs”

Scoping Guidance					
Constraining management measure	Input or output based?	<i>Method of allocation stated; distro of TAC for all permit holders?</i>	<i>Mechanism for accountability?</i>	<i>Narrow in focus or absent detail?</i>	<i>Can it be analyzed?</i>
Hard TAC	Output	Yes, yes	Yes—TACs distributed by gear, sector, area and time	Adequate detail to make progress	Yes, with difficulty

Major hurdles:

- Ability to determine mortality objectives for each gear, area, sector, and time period is in question.
- Administrative costs associated with monitoring TACs divided into time, gear, vessel size categories are likely to be enormous.

Comments or concerns:

- Dividing TAC into smaller time periods doesn't eliminate derbies, just makes them smaller and harder to monitor
- Mandated level of observer coverage not yet defined to achieve precision on such small scales for undefined areas and time periods – would likely require reanalyzing SBRM work
- Unclear what is meant by “mortality caps.” Fishing mortality (F) caps aren't realistic for a real-time monitoring because F is calculated for calendar year basis; we can only monitor proxies of F through target TACs, a system that is not necessarily accurate.
- Mortality is not currently defined for each sector or for vessels in other fisheries; rather, it is calculated on each stock as a whole over a calendar year.
- Bycatch caps, as well as directed caps on an area and time basis, would be difficult to monitor and project for closures. The tasks involved in administration, monitoring and enforcement for these would likely be too severe given current staffing and budgetary conditions.
- Mortality caps on threatened and endangered species would be difficult to monitor without significantly greater observer coverage.
- So many opportunities to close fishery may hinder ability to achieve OY.
- Program fails to justify why current closures are no longer necessary.
- Determining bycatch TAC set-asides based on historical catch by other fisheries is difficult and potentially inaccurate given current data.
- Determining appropriate mortality and catch levels for ESA and marine mammal species is a problem, and would require significant additional observer funding.

“Individual Hard TACs”

Scoping Guidance					
Constraining management measure	Input or output based?	Method of allocation stated; distro of TAC for all permit holders?	Mechanism for accountability?	Narrow in focus or absent detail?	Can it be analyzed?
Hard TAC	Output	Yes, TACs distributed by proportion of vessel's effort relative to total fleet	Not really	Lacking details	Unknown but shares common components with other proposals

Major hurdles: See Hard TAC and ITQ proposals.

Comments or concerns:

(Note that this proposal is primarily conceptual so details are not well specified)

- How is total fleet effort defined? DAS, or landings?
- Qualification of "C" DAS permits for points could increase effort in the fishery by reactivating latent effort.
- How will regional TACs be established?
- How will areas be defined?

“Individual Transferable Quotas”

Scoping Guidance					
Constraining management measure	Input or output based?	<i>Method of allocation stated; distro of TAC for all permit holders?</i>	<i>Mechanism for accountability?</i>	<i>Narrow in focus or absent detail?</i>	<i>Can it be analyzed?</i>
Stock-specific hard TACs	Output	Yes, yes	Yes	Comprehensive, with sufficient detail to understand intentions	Yes

Major hurdles:

- The proposal places burden for qualification on ability to link DAS call-in to activity. Currently this link cannot be made reliably for much of the historical period.
- Limits on quota ownership and quota acquisition will require change in permit application process to clearly identify ownership of all permits. This has proven difficult to implement effectively in other fisheries.
- Obvious potential logistical problem with implementation due to required referendum. If this alternative is selected and the referendum fails, then some back-up plan will need to be identified.
- Proposal relies on level of observer coverage that is higher than what existing program will likely be able to support. Available funding is a problem as is the ability to train and place enough manpower needed. The proposal does provide suggestions for alternatives including video monitoring
- Qualification for initial allocations could not begin until May 1, 2008. This means that workload would include, qualification review, work on all other selected alternatives for the DSEIS, and the GARM III.
- Reauthorization contains language that would require consideration of an auction for initial allocation.
- M-S Act requires cost recovery for any IFQ within specified limits.

Comments or concerns:

- The initial shares for each stock must sum to 1. As described, the allocation formula has two components. The landings history share sums to one. The DAS shares within vessel permit sizes also sum to one, *but the sum of all DAS shares for each vessel sums to 3*. The proposed weighting procedure does not reconcile this problem, though there are options for fixing it.
 - Divide the DAS share by 3. This would have no affect on the relative position of vessels within, or outside of, a size class. Initial weighted landings and DAS shares would also then sum to one.
 - A more complicated solution would be to allocate 50% (75%) of the TAC based on the landings share then take the remaining 50% (25%) and sub-allocate to each vessel permit size group according to the DAS share for all vessels in the permit size group.
- Proposal is silent on what happens if TAC for an entire stock is reached.
- Provisions for overage may not be possible since total TAC cannot be exceeded in any year. That is, TAC for all stocks in every year has to be reconciled.
- Definition of qualifying A DAS may be interpreted as being inconsistent with how qualifying DAS are determined in the description of base allocations.
- Historic period would clearly result in fishing for history since would still be building history through April, 2008. A qualification period that predates January 2007 would eliminate this

tendency. Would also raise questions associated with the ability for some fleet components subject to differential DAS counting to compete with others for history.

- Given the requirement that initial shares must sum to one, can see how cap on allocations associated with DAS would work (i.e. overage gets allocated to everyone else) but can't see how the floor can work (i.e. can't take share away from everyone to make up for the difference).
- Note wording of temporary transfers refers to 1/20th of landed ton seems to imply that discards will not be counted against quota allocations unless option 1 for discards is selected.
- Removal of upgrade provision makes sense but may pose problems with the social objective to maintain existing fleet composition and the provision that limits transfers between size classes. That is, quota could be moved from one size class to another through an upgrade alone. If the recommended ceiling on allocation has been reached does this mean that the upgrade would not be allowed?
- Provision in the proposal that would require forfeiture of proceeds in the event of an unreconciled overage exceeding 10% cannot be enforced under existing law.
- The proposal does not include consideration of bycatch caps of groundfish in other fisheries.
- Potential social and economic impacts would need to rely on assessment of qualifiers/non-qualifiers as well as assigned quota shares. Will need to assess likely amount of consolidation.

“Stewardship Shares”

Scoping Guidance					
Constraining management measure	Input or output based?	Method of allocation stated; distro of TAC for all permit holders?	Mechanism for accountability?	Narrow in focus or absent detail?	Can it be analyzed?
TAC, stock-specific, per-share	Output	Suggest using buyout capacity formula; yes	Strong, well specified	Broad in focus but absent some detail	Yes, though simulation may be difficult

Major hurdles:

- Appropriate allocation of the baseline share by species and permit will need to be nailed down.
- Setting of appropriate share drawdown and reinvestment rates is unspecified and may be troublesome.
- There is a significant administrative burden for monitoring share drawdown, reinvestment, and catch by species and permit.
- There may be significant administrative issue with requiring a stock utilization plan before the fishing year

Comments or concerns:

- Potential for large discarding of a species when the shares are consumed for the limiting species

“Area Management”

Scoping Guidance					
Constraining management measure	Input or output based?	Method of allocation stated; distro of TAC for all permit holders?	Mechanism for accountability?	Narrow in focus or absent detail?	Can it be analyzed?
Hard TACs, species and area-specific	Output – but may use input to slow landings	Yes, unspecified	In concept, yes...real-time monitoring	Broad in focus but absent significant detail	Yes - Biological impacts easier than economic and social

Major hurdles:

- Legal authority to grant smaller groups management control
- Legal authority to charge industry for monitoring
- Proposed association/coop membership may not be consistent with revised M-SA RFA definitions.

Comments or concerns:

- Determination of areas
- Allocation of TACs to areas
- Transition to and implementation of local management
- Possibility of widely varying measures in different areas – possible enforcement concerns.
- Local authority compliance with legal requirements.
- Rec sector interaction.
- New M-S LAP provisions: do they apply? If so, how?
- Interactions with monkfish/skate fisheries.
- What if there are alternative organizations in one area?
- Fairness and equity standard may not apply to all issues- e.g. TACs, boundaries

“The Downeast Initiative”

Scoping Guidance					
Constraining management measure	Input or output based?	Method of allocation stated; distro of TAC for all permit holders?	Mechanism for accountability?	Narrow in focus or absent detail?	Can it be analyzed?
Hard TACs, species and area-specific	Output	Yes, unspecified	In concept, yes...real-time monitoring	Narrow in focus (but not if considered one element of broader area management system), absent some detail	Yes - Biological impacts easier than economic and social

Major hurdles:

- Legal authority to grant smaller groups management control
- Proposed association/coop membership may not be consistent with revised M-SA RFA definitions.

Comments or concerns:

- Determination of areas
- Allocation of TACs to areas
- Determining future value of TAC for area
- Transition to and implementation of local management
- Proposed subdivision of access/effort initially calculated on a permit basis: administrative complexity.
- Local authority compliance with legal requirements.
- No entry/exit rules identified – what if a vessel/permit leaves the coop?
- New M-S LAP provisions: do they apply? If so, how?
- Permit “banking” implies revisions to current permit rules.
- Permit banking impact on non-groundfish permits.
- Coop effort/allocation metric may need to be consistent with other areas.
- What if there is a competing/alternate coop?
- “Relevant state government” – may conflict with M-SA – there ISN’T a relevant state government in federal waters.
- Linkages between other fisheries are not clearly described at this point – effects of splitting permits, etc.
- “Shares’ issue needs to be better defined.

“The Points System”

Scoping Guidance					
Constraining management measure	Input or output based?	<i>Method of allocation stated; distro of TAC for all permit holders?</i>	<i>Mechanism for accountability?</i>	<i>Narrow in focus or absent detail?</i>	<i>Can it be analyzed?</i>
Biological Point Values, Total points allocated	Output	Yes, yes	Yes, with questions	Some kinks to work out, but well-specified	Yes, with difficulty

Major hurdles:

- All output-based systems assume a level of stock biomass understanding and certainty that may or may not be achievable...significant safeguards must be considered to account for uncertainties.
- Adequate monitoring and enforcement may require new ways of thinking about observers, enforcement (at sea and shoreside) and landing procedures.
- Command-and-control style management of Biological Point Values may distort fishery operation in ways that are difficult to analyze and predict.
- The ultimate constraint on mortality, total points (BPVs) allocated, may be insufficient to protect weak-link stocks. High BPV differentials, assumed to be necessary to protect such stocks, may lead to discarding due to large discrepancies in the open-market value of a point, the BPV for a particular fish, and its dockside price paid.
- Quantitative impacts analysis may be difficult and/or may require with high levels of uncertainty

Comments or concerns:

- Voluntary Points Contribution Program: When are points cashed out? What is the basis for the 'interest' accumulated on contributed points? Is there a social or biological benefit to this program?
- Vessel Upgrade Restrictions: are they necessary?
- Hailing/landing/offloading procedures will need to be looked at for enforceability and ability to administer.
- Why full retention of all legal (vice all) fish?
- Are points used for discarded (sub-legal) fish? If not, discards will have to be accounted for in assessing TACs.
- Initial assignment of BPVs may be difficult and, if done incorrectly, may have severe unintended consequences. Nonetheless, this remains perhaps one of the most vital components of the program.
- Periodicity of BPV change may be difficult to get right--how to determine optimal time scales? How to administer them within the regulatory framework?
- Observer coverage funding may need set-aside or other tool.
- Administrative feasibility of landings monitoring is uncertain.
- Interactions with monkfish and skate plans may need additional development.