



New England Fishery Management Council

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**MEMORANDUM**

**DATE:**           **March 21, 2014**  
**TO:**               Groundfish Oversight Committee (Committee)  
**FROM:**           Groundfish Plan Development Team (PDT)  
**SUBJECT:**       Progress on Amendment 18

To inform your meetings on March 28 and April 4, this memo summarizes the work that the PDT has done or has planned related to Amendment 18 (A18) since your January 23 Committee meeting. The PDT met on February 11, March 4, and March 18 to discuss A18.

*NOTE: This memo does NOT include information about PSC holdings or accumulation limit measures, apart from the discussion in the section on permit banks. The remaining content is not ready at this time, but will be provided as soon as possible prior to the March 28 meeting.*

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### **Amendment 18 Action Timeline**

The current Amendment 18 action timeline has the Council approving the range of alternatives for the DEIS at their meeting April 22-24, 2014. If this is postponed to a later meeting, then Amendment 18 will definitely not be ready for implementation at the start of FY2015, given the necessary timeframes involved with approving and implementing an EIS. By the end of the March 28 Committee meeting, the Committee needs to determine if it will be ready to bring the range of alternatives to the Council for approval, so that proper notification can be made in the *Federal Register*. The Committee can use the April 4 meeting to consider input from the Groundfish Advisory Panel (meeting April 1) and develop measures further.

### **Amendment 18 Draft Discussion Document**

Several updates to the Discussion Document have been made to reflect the Committee and Council motions in January. Additional Committee motions made on March 28 and April 4 can be incorporated into the version that will be discussed at the April 22-24 Council meeting.

### **Data Confidentiality**

In January, the Committee tasked the PDT to expand the information in Table 1 of the January 16, 2014 PDT memo (multispecies permits held by permit banks, replicated here as Table 1) to include the amount of PSC held by permit banks. There has been some confusion as to whether the PSC held by specific entities is non-confidential and the exception to the data confidentiality provisions made when PSCs were first generated. On February 11, Tom Nies wrote a letter to John Bullard to request confirmation in writing on a number of matters relating to data confidentiality, including this issue. Until the NEFMC receives written confirmation, the data in PDT memos will be presented in a nonconfidential manner.

### **Topics from Public Scoping**

The DEIS will need to describe how the Council considered the public scoping comments. The Committee has discussed many of the themes raised during public scoping for this action. In January, the PDT reminded the Committee that it had not had much discussion of four themes. The Committee only had time in January to discuss theme #1, and asked the PDT to provide related data (See next section and separate PDT memo).

1. Creating inshore/offshore areas. The public expressed concern about larger vessels moving inshore in the GOM to target cod.
2. Creating a quota set-aside for use particularly by permit banks, new entrants, etc.
3. Creating incentives to actively fish, preventing a situation where most all of the holders of PSC do not actively harvest fish (lease-only holders).
4. Creating baseline criteria for leasing: restricting leasing by vessel size, fishing area or species.

See Section 3.4.2 of the Discussion Document for more detail on the themes. The Committee either needs to make motions to develop measures in Amendment 18 on these themes or articulate the rationale for not doing so. There will be time on the March 28 and April 4 agendas to discuss these topics.

## **Spatial and Temporal Trends in Fishing Effort**

In January, the Committee discussed the concern raised by the public during scoping for Amendment 18 that, in the absence of trip limits, large vessels are fishing more in inshore areas, particularly targeting Gulf of Maine cod, resulting in area conflicts with smaller vessels and localized depletion. After much discussion, the Committee made the following consensus statement:

*“To task the PDT to analyze the effort by vessel classes in statistical area 514 and adjacent areas, as appropriate, between FY2004 and FY2012; adjacent areas to include areas south of Cape Cod as the PDT deems appropriate.”*

To the date, the PDT has focused its analysis on GOM cod (including statistical area 514 and adjacent areas). The PDT is currently reviewing previous work and conducting new analysis using data from the GOM cod stock area. Information sources include biological information from NEFSC bottom-trawl surveys and catch and effort data from VTRs. The PDT expects to provide an update on this work at the April 4<sup>th</sup> Committee meeting.

## **Permit Banks**

### Discussion Document revisions

Section 4.2.2 has been revised to incorporate the January Committee and Council motions, refining the definition criteria and other conditions for being considered a nonprofit permit bank.

### What is the goal of defining nonprofit permit banks?

The PDT has encouraged the Committee to clearly articulate the goal of creating a regulatory definition for nonprofit permit banks. To date, the Committee has articulated an interest in considering accumulation limits that would be different for these entities. On the one hand the Committee has discussed the idea that these entities provide a public good and should have a higher cap than other entities, and on the other, there is concern that the collective holdings of permit banks should be limited. Is the OSC interested in designing the permit banks to be a tool to support fleet diversity or is the OSC concerned that permit banks may accumulate too much quota? The PDT encourages the Committee to consider articulating the desired outcome(s) and then tailoring the definition accordingly.

*A tool to support the public good:* If this is a desired outcome, the PDT recommends clarifying what sort of public good should be achieved by recognized nonprofit permit banks. Under Alternative 2, the permit bank has free choice to limit to who and how much of its ACE would be available,<sup>1</sup> and the three distinct business entities that it must distribute ACE to could be Board members of the permit bank or owned by the same person. It is not clear what public good these entities should be achieving.

*A tool to prevent permit banks from controlling the entire fishery.* If this is a desired outcome, then consider that as Alternative 2 is drafted, becoming formally recognized as a nonprofit permit bank is voluntary. What would be the incentive to go through the process to become recognized? The carrot discussed by the Committee has been that there would be a higher accumulation limit for the recognized nonprofit permit banks. The carrot would only be sweet

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<sup>1</sup> Technically, a sector controls who the ACE is distributed to, not its members.

enough to the permit banks with holdings above the accumulation cap that applies other entities. Thus, there could be many small permit banks that, in total, hold a great deal of quota. Additionally, Alternative 2 does not specify how much ACE a recognized nonprofit permit bank must lease out or how many non-profit permit banks a nonprofit entity may have. Identifying the core problem would help. If the true desire is to retain a certain amount of active fishermen in the fishery, then perhaps consider measures that would limit lease-only entities somehow.

What is the goal of requiring official nonprofit status?

The Committee needs to articulate the concern that requiring official nonprofit status would address. Nonprofit organizations may earn a profit and invest those profits (e.g., in the stock market) with the intent of earning more money. However, all of the money made by the organization must be held by the organization. Profit sharing by members/owners is not allowed. Does the Committee intend to prevent profit sharing or something else? Of the seven non-state permit banks described in the June 5 memo, three entities have federal non-profit status (e.g., South Shore Fishing Community Preservation Fund) and four are entities within an umbrella organization which has federal non-profit status (e.g. Penobscot East Permit Bank). The PDT is currently asking NOAA General Counsel whether this distinction matters. Unless otherwise recommended by the Council, NMFS may require submission of state-approved documentation. Individual states grant official nonprofit status, and they may do so in slightly different ways. To avoid an accumulation limit, what would prevent a nonprofit entity from creating more than one nonprofit permit bank? Perhaps a non-profit permit bank should not have any active fishing vessels affiliated with its permits (require that all permits be in CPH).

What is the goal of maintaining transparent qualification criteria and application processes?

Unless otherwise recommended by the Council, NMFS may interpret "maintain" and "transparent" as requiring that a sector operations plan, a public document, detail if it has any nonprofit permit bank members that have been approved by NMFS and how those permit banks plan to distribute their ACE. However, the actual distribution of that ACE would be difficult to enforce, because the distribution of sector ACE is made by sectors themselves (see comment below).

NMFS cannot enforce distribution of ACE within a sector

As long as nonprofit permit banks have to join a sector, NMFS will be unable to enforce the criterion that requires that they distribute ACE to at least three business entities. The PDT is concerned that this criterion is inconsistent with current accounting practices, and would require a change in how ACE distribution is monitored. Currently, it is up to a sector to decide how its allocated ACE is distributed; NMFS does not have the authority to control within-sector ACE distribution. This control would require individual allocations (i.e., a LAPP). If the OSC wants to keep this criterion, the PDT recommends not requiring that nonprofit permit banks join sectors, unless the OSC wants to revisit sector ACE distribution and monitoring processes.

When sectors and the ACE trading process were established, it was specifically decided that since trading happens at the sector level, NMFS was not going to replicate tracking of DAS. NMFS had tracked DAS and how many DAS were leased in, the hierarchy of order which DAS were used (leased DAS first, then carry-over DAS, then allocated DAS, because you couldn't release DAS or carry-over twice). NMFS intentionally did not engineer ACE tracking at an individual level. To back engineer that would require both a change to individual allocations (a

huge issue that would require a referendum) and there would have to be a new administrative system to support it.

What is the goal of requiring sector enrollment?

The Committee may want to consider allowing nonprofit permit banks to not enroll in sectors, but require transparency and accountability by other means. NMFS would then be able to enforce requirements on how the permit banks distribute ACE. Consider the burden of requiring that these entities go through the process to both meet the definition and enroll in a sector. Only those entities that really want to be subject to the benefits afforded to them through Amendment 18 (perhaps a different accumulation limit) would make the effort.

Challenges with requiring public annual reports

This requirement that the annual report be public requires significant development still. Currently, the annual reports submitted by state-operated permit banks and sectors are not public documents, because of certain confidential data they contain. From Committee discussions, it is not clear what nonconfidential content the Committee expects a public report to include.

Community Fishing Associations

At the August 14, 2013 Committee meeting, a Committee member suggested looking at language developed in Amendment 15 to the Scallop Fishery Management Plan for ideas that may help define nonprofit permit banks. This suggestion was reiterated at the January Committee meeting. See the PDT memo of September 10, 2013. Scallop Amendment 15 contains measures to implement Community Fishing Associations (CFAs), which could purchase scallop permits and Individual Fishing Quota (IFQ) and lease IFQ. Alternatives to implement CFAs were not chosen by the NEFMC at that time, due to incomplete development, but the Council noted that this should be a priority for future consideration (NEFMC 2010, p. Xiii). The PDT already pulled a few ideas from what was developed in Scallop A15 for the draft definition of groundfish nonprofit permit banks in Amendment 18. If there are additional ideas that resonate with the Committee, these should be specified. The relevant section of the scallop action is appended here again for your convenience (Appendix I).

Nonprofit permit bank holdings

In response to the Committee's request for stock-specific PSC holdings of all state and nonprofit permit banks, the PDT provides the data in Table 1 and Table 2. The nonprofit permit banks summarized therein include those listed in the June 9, 2013 PDT memo. Table 3 has the number of MRIs held (essentially, a replication of the table presented in January). Because of potential confidentiality restrictions (see above), the FY2013 PSC of specific permit banks is not reported in Table 2. The FY2013 PSC data was downloaded on January 28, 2014 from NMFS' Sector Information Portal. Individually, permit banks hold 4% or less of the Northeast multispecies MRIs in the fishery (Table 1). Collectively, they hold about 8% of the permits. The stock with the most amount of PSC held by permit bank collectively (15%) and individually (9%) is GOM cod (Table 2).

## U.S./CA Quota Trading

### Discussion Document revisions (Section 4.1.2)

The PDT reviewed past Committee and Council discussions on U.S./Canada trading. Based on this review, the PDT clarified the language in Alternative 2 to better reflect the Council's intent with respect to how additional quota received from Canada should be distributed. A summary of the PDT's discussion is below for the Committee's consideration. The PDT requests that the Committee confirm it has accurately captured the intent of each alternative.

- a) Alternative 2 Option A is based on a consensus statement made by the Committee at its August 2013 meeting:

*“... to include for consideration a measure that would distribute any additional quota consistent with the sector sub-ACL distribution; if trading groundfish quota then examine an allocation scheme that considers it as additional groundfish quota that contributes to ACE.”*

The PDT interprets the intent of this statement to be a trading process that would be based on the sector sub-ACL. Any quota traded away to Canada would be deducted from the respective sector sub-ACL, and any additional quota would increase the sector sub-ACL, and be distributed to sectors based on the cumulative PSCs for that stock associated with each sector. The PDT discussed that, because trades under this option would be based on the overall sector sub-ACL, sectors would not have to individually agree to any proposed trade. This could be beneficial in some cases, but could also reduce flexibility for trading quota with Canada, particularly if a sector, or group of sectors, support a trade with Canada, while others oppose a trade.

- b) Alternative 2 Option B is based on a motion made by the Council at its September 2013 meeting:

*“... to give the Regional Administrator authority to make transboundary trades of groundfish quota only with components of the fishery trading their away quota. Additionally, any groundfish quota resulting from a trade with Canada should go only to the groundfish fishery.”*

The PDT interprets the intent of this motion to be a trading process that would allow only a sector, or group of sectors, to voluntarily participate in a trade with Canada by contributing any amount of ACE. Any quota traded away to Canada would only be deducted from a participating sector's ACE, and any additional quota received would only be distributed to the participating sectors (proportional to the amount of ACE given up by each participating sector). The PDT discussed that this option could increase flexibility for implementing trades with Canada. For example, this option could increase the feasibility of making inseason trades, after allocations have been made, because sectors could individually decide if they had sufficient ACE in the current fishing year to fund a potential trade with Canada.

The PDT discussed that these current options would only allow sectors to participate in U.S./Canada trading, which the PDT believes was the Committee's intent. The PDT noted that if the Committee would like to consider including the common pool fishery, it could add an alternative that would be based on the groundfish fishery sub-ACL. The PDT discussed that this

is the only possible mechanism to include common pool vessels, since they could not voluntarily participate on an individual basis (i.e., no individual quota). If the Committee does not wish to add an option that includes the common pool fishery, the PDT thought it would be helpful for the Committee to provide additional rationale as to why only the sector fishery is being considered in any potential trading mechanism. This would help strengthen the rationale for these alternatives in the draft A18 document.

#### Other PDT Comment

The PDT reviewed a draft trading timeline (Appendix II) and the Transboundary Management Guidance Committee (TMGC) trading principles (Appendix III) to help further develop the U.S. process for conducting trades with Canada. The PDT's discussion centered mainly on how the trading process would work, including when trades would be negotiated with Canada and how the Regional Administrator would consult with the Council and/or sectors to propose a trade. The PDT concluded that the trading mechanism should leave as much room as possible for flexibility in completing trades with Canada, but that some bounds might be useful.

*Number of trades per year and timing.* The PDT noted that an in-season trading process with Canada is not as simple as the current in-season trading that occurs between sectors. It might not be feasible for a large number of small trades to be proposed at any time during the fishing year due to necessary consultations with the Council, sectors, and respective U.S./Canada management bodies. As a result, it might be useful to specify certain times of the year that the Regional Administrator would review potential trades, or to specify a minimum amount of notice the Regional Administrator would provide sectors in order to review/consider a potential trade. For example, the Regional Administrator would have to notify sectors of a potential trade and sectors would have a maximum of three weeks to respond to the proposed trade.

In addition, the current options specify that the Regional Administrator would be required to consult with the Council prior to any trade. The PDT questioned whether the Council could designate the U.S. TMGC or Groundfish Committee to meet this consultation or whether a separate consultation would be required with the full Council. The Committee may wish to provide further guidance on this consultation. Due to the timing of Council meetings, a required consultation with the Council could delay any potential trades, particularly under Option B which would establish a voluntary sector process. This option provides increased flexibility since the Regional Administrator can easily and quickly consult with sectors on any potential trade through already established sector processes. An additional consultation with the Council before or after consultation with the sectors could slow completion of trades with Canada.

*Amount of traded quota.* The PDT discussed how the terms of any trade with Canada would be determined (e.g., ratio of yellowtail to haddock). The PDT noted that the terms of the trade would likely be determined by the respective U.S./Canada management bodies, but discussed if, and how, sectors would help inform this decision. The PDT assumed that the Council and sectors would have an opportunity to provide input on the terms of a potential trade through the consultation process already specified in Alternative 2. Would the Committee like to provide further guidance on this, or do the current options already address this issue?

### Notice of Intent

A revised Notice of Intent (NOI) is required if U.S./Canada trading alternatives are included in Amendment 18. The NOI could be issued by NMFS at any point once Council staff submit a draft NOI. The required 30-day scoping period only needs to be completed before the DEIS is submitted to NMFS. As a result, Council staff intends to wait until after the April Council meeting to submit the draft NOI, when the alternatives will be more fully developed to be sure that the NOI includes all new concepts.

### **Handgear A Fishery**

In January, the Council unanimously passed a motion to include an alternative in Amendment 18 that would create a sub-ACL for Handgear A permits and a handgear fishery that would be distinct from the current sector or common pool programs. The Council also agreed that these measures should no longer be referred to collectively as the "Northeast Hook Fishermen's Association Proposal," various iterations of which had been considered by the Council over the past several months.

In the Amendment 18 Discussion Document, alternatives related to a Handgear A fishery have been moved to the "Alternatives under Consideration" section (Section 4.4) and have been revised to reflect the above motion. Each provision within the motion has been added as an option. Here, the PDT steps through each option with feedback and questions for the Committee to consider and additional comments relating to the ability of NMFS to manage what would be a very small sub-ACL.

### Option A: Handgear A permit sub-ACL

*Motion: "Allocate the handgear A (HA) permit history (PSC) of groundfish HA fishermen catch for cod, haddock and pollock from 1996-2006 as a specific sub-ACL only to be used by HA fishermen;"*

This measure would create a new sub-ACL fishery component specifically for a HA fishery for five stocks, GOM cod, GB cod, GOM haddock, GB haddock, and pollock. The qualification years would remain consistent with current PSC calculation methods with one exception. For a fixed number of permits (66 MRIs), the Georges Bank cod PSC was based on 1996-2001, including one HA permit.

### Qualification years

The PDT recommends replacing "from FY1996 to FY2006" in Alternative 2, Option A with "consistent with current PSC calculation methods".

### Quota allocation system

It needs to be articulated which HA permits would have PSC contributing to the sub-ACL. As written, the motion implies a mandatory program, that all HA permits would be assigned to this sub-ACL, but Option I (p. 14, this memo) implies that a HA permit enrolled in a sector would be fishing under the HA fishery sub-ACL. This would not be possible under the current quota allocation system. A permit cannot enroll in a sector but have their PSC contribute to the sub-



ACL of the common pool, because the sub-ACL of one fishery component may not be used by another fishery component. The PDT has drafted two sub-options, and recommends selecting one of these approaches for joining and fishing under the rules associated with this proposed HA fishery:

**Sub-Option A. Mandatory.** The PSC from all HA permits would contribute only to the HA sub-ACL. HA permit holders would only be able to enroll in the HA fishery, not sectors or the common pool.

*Rationale:* Sub-Option A would prohibit HA permit holders from enrolling in a sector or the common pool, reducing the choices available to HA permit holders.

**Sub-Option B. Voluntary.** Holders of HA permits may elect to enroll in the HA fishery, the common pool, or a sector. The PSC from HA permits would contribute to whichever sub-ACL their permit is enrolled in.

*Rationale:* Sub-Option B would allow continued flexibility for permit holders to elect the fishery component that their permits are affiliated with.

The Council motion indicates that only HA fishermen would use the sub-ACL, except for the grandfathering provision in Option I (p. 14, this memo). Here, "use" could mean harvest as well as leasing. Permits must fish (and lease) within the sub-ACL they are assigned to and NMFS does not control how ACE is distributed and used once it is assigned to a sector. The PDT assumes that the Committee does not intend to enable NMFS to control quota use within sectors. Leasing within the HA fishery would not be feasible since ACE would not be assigned to entities (e.g. sectors). Clarification on these points would be helpful in drafting this alternative.

#### *A hypothetical HA sub-ACL*

To understand what a potential HA fishery might look like in the future, the PDT provides the following information about recent HA effort.

There were 103 HA permits renewed in FY2013. This includes 20 HA permits enrolled in seven unique sectors; one was actively fished and the ACE associated with the other 19 was leased, likely for use by vessels fishing with other gear types. There were 83 HA permits enrolled in the common pool. As of early September 2013, 21 of these had been used to actively fish. Since the common pool closed on January 1, and HA fishing is infrequent in October to December, that number likely still holds. For FY2014, there are 111 HA permits renewed, but the distribution between sectors and the common pool has not been finalized.

Table 3 and Table 4 illustrate what a hypothetical sub-ACL for a HA fishery might look like for the five stocks under consideration. The table takes the PSC for FY2014 associated with all HA permits and calculates what a sub-ACL would be for FY2014, based on the Council's recommended ABCs and ACLs for FY2014 (Framework 51). If enrollment in the HA fishery is voluntary, it is unknown how many HA permit holders would choose this new option vs. sectors or the common pool. Because FY2014 sector enrollment will not be final until after the start of the fishing year, the grouping of HA PSC into common pool and sectors in Table 3 is based on FY2013 enrollment. "Potential FY2014 HA sub-ACL" assumes 100% enrollment of HA permits in the HA fishery. It would be a hypothetical maximum.

A hypothetical HA fishery in FY2014 would have maximum possible sub-ACLs that are likely to be 0.73% of the commercial sub-ACL for each of the five stocks, with the lowest being

GOM haddock at 546 lbs. These hypothetical sub-ACLs are 80% of the FY2013 annual sub-ACLs for the common pool. During FY2013, the common pool exceeded both its annual (2 mt) and trimester (0.5) sub-ACL of Gulf of Maine haddock. In publishing the common pool closure for this stock, NMFS cited that “because there are relatively few common pool vessels, and the Trimester 1 TAC for GOM haddock is so small, it was difficult to project when 90% of the Trimester TAC would be reached (NMFS 2013).” For quotas that are as small as those for the common pool trimesters, the current data delivery systems make it difficult to estimate when 90% of the TAC is projected to be reached. At most, the hypothetical HA fishery sub-ACL for this stock would be 60% lower than the sub-ACL that NMFS had difficulty preventing overages for. Therefore, the PDT contends that monitoring the sub-ACLs for the HA fishery would be extremely difficult, if not impossible to do with any manner of timely response to either 90% or 100% sub-ACL utilization. If about 20 HA vessels remain active, a sub-ACL of ~550 pounds of Gulf of Maine haddock would translate to about 27 pounds of allowable catch per vessel per year. Under this scenario, allowing landings of Gulf of Maine haddock may not be realistic and this would likely be a discard-only stock.

Option B: Other fishery component

*Motion: “Other species caught (harvest and discards) by HA permits (except those grandfathered into sectors) would be accounted for under other component of ACLs (see pg 4 table 1 of 11/7/13 GF PDT memo);”*

*Potential magnitude of “other component” catch*

To understand what the potential catch by vessels fishing in the HA fishery of the stocks that would not be allocated to the HA fishery sub-ACL, the PDT provides the following information about recent HA effort. Table 5 to Table 8 illustrate the magnitude of the ACE contribution by stock, catch, and discards for HA permits for FY2010-2013. In most cases, the discards are <1% of the Other Sub-Component catch.

*Discards*

The Committee should decide how discards of the stocks with a HA sub-ACL and the catch of the other stocks not directly allocated to the HA fishery would be accounted for (See also Option H below). Currently, trips fishing under an HA permit enrolled in the common pool are assigned the common pool discard rate for each stock. This rate is not calculated with data that includes trips fishing under the HA permit, because fishery observers are not assigned to these trips. If the Committee would like a discard rate that is calculated based on HA trips, it should consider how this might be accomplished considering that these trips are not currently observed.

The PDT has developed 4 sub-options to account for HA fishery discards, and recommends renaming Option B as “Discards.” These sub-options (except B) are not included in the Discussion Document, but could be pending further Committee discussion. In weighing these sub-options, the PDT suggests that the Committee consider the potential value of landings from the HA fishery compared to the costs associated with monitoring this fishery.

If the HA fishery is going to be constrained by a GOM haddock catch limit on <500 lbs., it could probably argued that the discards are within the error of the landings data. The total catch of the

HA fishery would likely be smaller than the error associated with the discards of the entire fishery.

**Potential Option: Discards**

**Sub-Option A.** Status quo (i.e., no action). Assign trips fishing under the HA fishery the same discard rate as trips fishing in the common pool.

*Rationale:* This option would be consistent with current approaches. However, there is no discard data from HA vessels in the current common pool discard estimates.

**Sub-Option B.** Account for the catch of other stocks within the other fishery components sub-ACL.

*Rationale:* Sub-Option B reflects the Council motion, but does not account for discards of sub-legal cod, haddock, or pollock, or a situation where possession is prohibited.

**Sub-Option C.** Calculate an annual assumed discard rate for the a HA fishery and subtract that from the HA sub-ACL (for Gulf of Maine cod, Georges Bank cod, Gulf of Maine haddock, Georges Bank haddock, and pollock) and the other fishery component sub-ACL (for all other stocks).

*Rationale:* This approach would take discards of the top and then monitor landings. Since there are no in-season observer trips, the discard rate would be the same for the whole year.

**Sub-Option D.** Assume all discards from trips fishing within the HA fishery to be *de minimus*, and not account for them under any sub-ACL. This sub-option would require the *de minimis* discards to be explicitly considered within the management uncertainty of the fishery.

*Rationale:* The expected discards from a potential HA fishery are very small and within the margin of error for discards of the commercial fishery. If this option is selected, the Committee may wish to discuss if the current management buffers (typically 5%) are adequate.

Option C: Proactive accountability measures

*Motion: "Proactive accountability measures: trip limits set in specifications and modified in season by the Regional Administrator to prevent overage;"*

*Adjusting trip limits in-season*

This HA fishery could be managed with trip limits, but it would not be feasible for GARFO to adjust the trip limits in-season for this fishery. Because this fishery would be very small, in-season monitoring of catch would be difficult to do accurately, given the time to receive and process catch data. Rather than trying to change the trajectory of their catch by adjusting trip limits, the PDT recommends including language that allows the HA fishery to be closed if the sub-ACL is reached in-season.

Given the known lags in data processing, another option to prevent overages is to manage them short, for example, close the fishery at 90% utilization. Most handgear fishing occurs early in the fishing year, so NMFS may be able to know the total catch fairly accurately towards the end of the fishing year. However, if the HA fishery is not subject to the March 1-20 handgear closure (Option F), then fishing effort might increase later in the fishing year.

*Setting trip limits*

For a fishery where the sub-ACLs are so low, a challenge lies in setting reasonable trip limits. For example, what would be a reasonable trip limit for ~100 HA permits for GOM haddock with a sub-ACL of 500 lbs per year? In FY2013 for the common pool, the GOM haddock trip limit started out at 100 pounds, but when the TAC was exceeded, it became zero. The GOM cod trip limit for cod was 100 pounds. Currently, there is no trip limit for pollock. One approach is to set the GOM haddock trip limit at zero and a monitor an assumed discard rate.

The Committee could consider a few sub-options for proactive AMs other than trip limit modifications. These options have not been included in the Discussion Document, pending further Committee discussion.

**Sub-Option A.** When 100% of the HA sub-ACL is reached for a stock, the HA fishery for that stock would close and all vessels fishing under the HA fishery would be subject to a zero possession limit for that stock for the remainder of the fishing year.

*Rationale:* If the sub-ACL is reached for a stock, this approach would allow the HA vessels to continue fishing on other stocks.

**Sub-Option B.** When 90% of the HA sub-ACL is reached for a stock, the HA fishery for that stock would close and all vessels fishing under the HA fishery would be subject to a zero possession limit for that stock for the remainder of the fishing year.

*Rationale:* If the sub-ACL is reached for a stock, this approach would allow the HA vessels to continue fishing on other stocks. Given the small sub-ACLs of a potential HA fishery, the difference between determining when 90% vs 100% is reached would be very difficult, and could still result in overages.

**Sub-Option C.** When 100% of the HA sub-ACL is reached for a stock, the stock area would close for all HA fishery participants.

*Rationale:* This approach would be consistent with current sector and common pool regulations.

*Option D: Reactive accountability measures*

*Motion:* “Reactive accountability measures: any overages of sub-ACLs would be subtracted from subsequent years’ sub-ACL;”

*Reactive AM timing*

Because of the difficulty involved with monitoring small fisheries, there is a higher likelihood that overages may occur. It was noted at the Council meeting that it would not be possible to have an overage subtracted from the year immediately following. To be consistent with current practice, the alternative states that the deduction would be in the year following notification of the overage.

*Stocks to which the AM would apply*

As written, the reactive AM would apply only to stocks allocated to the HA fishery sub-ACL. The Committee should clarify if that is not the intent.

*Flexibility on overages*

The PDT recommends that the flexibility on overages currently afforded to the common pool and sectors apply to the HA fishery, that the HA fishery would only have to repay if the total sub-ACL is exceeded (sub-option A below). The Committee could consider this as one of a few sub-options for reactive AMs. These options have not been included in the Discussion Document, pending further Committee discussion.

**Sub-Option A.** Reactive AMs would be triggered if the HA fishery sub-ACL is exceeded.

*Rationale:* The HA sub-ACL would be accountable for every pound of its overage. This approach would be consistent with the current approach for the sectors and common pool.

**Sub-Option B.** Reactive AMs would be triggered if the HA fishery sub-ACL and the total ACL are exceeded.

*Rationale:* Any HA sub-ACL overage would likely be very small relative to the total groundfish ACL. Several of the recently adopted sub-ACLs (e.g., small mesh) are triggered only when the sub-ACL and the total ACL are exceeded. This sub-Option would be consistent with that.

*Option E: Carryover*

*Motion:* “Up to 10% unused HA sub-ACL may be transferred to the following fishing year;”

*Stocks to which this would apply*

Currently, sectors are allowed to transfer (carryover) up to 10% of unused sub-ACL to the following fishing year, except for the stocks managed under the US/Canada Resource Sharing Agreement (EGB cod, EGB haddock and GB yellowtail flounder). If the Committee would like to allow carryover in this case, it must be consistent with the Agreement with Canada.

*Accountability*

Currently, sectors may carryover up to 10% of unused ACE, which in a HA fishery would be unused sub-ACL. The PDT assumes that the accountability for the carryover would be consistent with current practice for sectors. Thus this catch, if used in the following year, would not be attributed to the sub-ACL for overage determination unless the total ACL is exceeded in that year. In a year where there was additional catch due to carryover, if the total ACL is exceeded and the HA sub-ACL is exceeded, the HA fishery would be required to repay the carried over catch used.

*Option F: Removal of March 1-20 HA closure*

*Motion:* “Removal of March 1-20 handgear fishing closure;”

March 1-20 is currently closed to vessels fishing with a HA permit. This is a haddock spawning block closure. Since Amendment 5, all groundfish vessels had a 20-day spawning block that they had to call out for. When VMS was instituted in November 2007 (NOAA 2006), handgear vessels were given March 1-20, because they were not required to use VMS and NMFS would not be able keep track of when these vessels actually called out.

Prior to FY2010, the PDT reviewed the regulations requiring vessels to take 20-day blocks out of the fishery during the spring and agreed that there is no apparent biological benefit from this

requirement. This rationale has been used by NMFS to allow sector vessels to be exempt from the 20-day block (see sector EAs), the PDT suggests that the HA fishery could be offered this exemption. However, prohibiting HA vessels from fishing March 1-20 does reduce fishing effort on spawning stocks. NMFS would be concerned about increasing effort on spawning stocks, even though the HA sub-ACL for Gulf of Maine haddock may be under 550 pounds.

Option G: Annual sub-ACL

*Motion: "Eliminate trimester AMs (quotas) for HA permit holders;"*

The trimester AM is a proactive AM, and it is not necessary to have proactive AMs. The PDT acknowledges that it may be possible to ensure that the sub-ACL is not exceeded by other approaches.

Option H: Removal of standard fish tote requirement

*Motion: "Removal of requirement for HA fishermen to carry a tote;"*

Support for this measure has been expressed by NMFS, the Coast Guard, and Council members at the January 2014 meetings of the Enforcement and Groundfish Committees and the Council. The PDT does not have any concerns with including this measure in Amendment 18.

Option I: Grandfathering

*Motion: "Specify handgear groundfish sub-ACL history can only be used by HA fishermen, using handgear, if fishing in a sector. Grandfather any HA permit holders who leased history in 2012 and 2013 from this."*

See PDT discussion on #1 above. Under current regulations, PSC that contributes to a sub-ACL may not have associated ACE allocated to another sub-ACL. This measure would not be possible to enforce without a significant change in the approach to groundfish management. Currently, permit holders have to choose to enroll in: a sector, or the common pool. If a HA fishery sub-ACL were an option, the PSC from the HA permit needs to be attributed to one of the three sub-ACLs (sector, common pool, or HA). It would not be possible for HA sub-ACL to enroll in a sector because the catch cannot be accounted for properly. Further, NMFS cannot control how ACE is used once it has been distributed to a sector. Because of this, the PDT recommends moving Option I to "Considered but rejected" in the EIS. If the Committee is interested in including this measure, there should be a discussion about creating individual allocations in this fishery. However, the Council has already expressed that it is not interested in turning the groundfish fishery into a Limited Access Privilege Program.

The PDT assumes that the Committee is not interested in revisiting the quota assignment system, and recommends moving Option I to "Considered but Rejected".

Other PDT comment

*Managing small ACLs*

The PDT has expressed concerns about the ability of NMFS to manage relatively small allocations, given staff constraints and commitments to data systems that were made to support the catch share management program. The current infrastructure and reporting system is not designed to support monitoring small catch numbers in a manner that would be timely enough to prevent overages. VTRs and dealer reports would be received weekly and NMFS would be

responsible for calculating discards. If the HA fishery is created, NMFS would be unable to do timely in-season monitoring. NMFS would be able to determine with certainty when the sub-ACL is exceeded, but projecting when it would be 100% utilized may be difficult.

#### *Accommodations within the sector program*

The sector program can be modified to address concerns expressed by handgear fishermen. Measures addressing the first two bullets below could be included as another alternative that would modify the sector program.

- *Using VMS.* VMS is required of vessels fishing in sectors. However, the PDT has already communicated that it may be possible to waive this requirement for handgear fishermen. Changes to VMS requirements (e.g. an exemption for vessels fishing with HA permits) would require Council action. These vessels likely do not fish within multiple broad stock areas on a given trip. In lieu of VMS, perhaps they could have a single stock area requirement.
- *At-sea monitoring (ASM).* The ASM requirements of sectors may pose a financial burden if an industry-funded program is implemented in the future. Under current regulations, sector vessels are not exempt from ASM and may not receive ASM sector exemptions. Changes to ASM requirements (e.g. an exemption for vessels fishing with HA permits) would require Council action. The Committee should consider the potential enforcement and equity costs and benefits of doing so.
- *Sector membership.* Another concern expressed has been the costs of joining a sector. However, at least three sectors have offered to waive membership fees to handgear fishermen.

#### *Precedent*

Creating a sub-ACL and distinct regulations for a specific gear type could set a precedent. In the future, there could be fishermen using other gear types that come forward with a similar proposal. The Committee should consider whether the current proposal will be an exception or whether there is a desire to have more gear-specific regulations more broadly.

#### **References**

- NEFMC. 2010. Amendment 15 to the Scallop Fishery Management Plan including a Final Environmental Impact Statement. Newburyport (MA): New England Fishery Management Council in consultation with the National Marine Fisheries Service and the Mid-Atlantic Fishery Management Council. 516 p.
- NMFS. 2013. Fisheries of the Northeastern United States; Northeast Multispecies Fishery, Trip Limit Adjustments for the Common Pool Fishery. Federal Register. 78(136): 42478-42479.
- NOAA. 2006. Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment 42; Monkfish Fishery, Framework Adjustment 3. In: Federal Register. Vol. 71 Washington, DC 62156-62196 p.

**Tables**

**Table 1 - Multispecies permits held by permit banks**

	<b># of GF MRIs Held <sup>A</sup></b>	<b>% of fishery <sup>B</sup></b>
<b><i>State-operated:</i></b>		
New Hampshire State Permit Bank	4	0.3%
State of Maine Permit Bank	11	0.9%
Total	15	1%
<b><i>Private:</i></b>		
Boston Sustainable Fishing Community Preservation Fund, Inc.	2	0.2%
Cape Cod Fisheries Trust	23	2%
Gloucester Fishing Community Preservation Fund	49	4%
NEFS XI Permit Bank	2	0.2%
Penobscot East Permit Bank	2	0.2%
South Shore Fishing Community Preservation Fund	8	0.7%
The Nature Conservancy/Island Institute Community Permit Bank	3	0.3%
Total	89	>7%
<b><i>Grand Total:</i></b>	<b>104</b>	<b>~8%</b>
<i>Notes:</i>		
<sup>A</sup> The PSC data was downloaded on January 28, 2014, from NMFS' Sector Information Portal. The data FY2013 PSCs of all valid MRIs.		
<sup>B</sup> Assumes ~1,200 permits in the fishery.		



**Table 2 - FY2013 PSC held by all permit banks (state and non-profit)**

	<b>Maximum</b>	<b>Mean</b>	<b>Median</b>	<b>Total</b>
<b>GB cod</b>	5.438	1.104	0.088	9.777
<b>GOM cod</b>	9.343	1.678	0.678	15.091
<b>GB haddock</b>	4.992	0.712	0.044	6.380
<b>GOM haddock</b>	8.314	1.249	0.092	11.237
<b>GB yellowtail</b>	1.692	0.242	*0.000	2.177
<b>SNE/MA yellowtail</b>	2.334	0.323	0.025	2.813
<b>CC/GOM yellowtail</b>	4.815	0.973	0.318	8.755
<b>Plaice</b>	8.788	1.444	0.288	12.996
<b>Witch flounder</b>	8.065	1.296	0.399	11.666
<b>GB winter flounder</b>	0.550	0.078	*0.000	0.704
<b>GOM winter flounder</b>	5.636	1.177	0.214	10.594
<b>Redfish</b>	6.358	1.033	0.186	9.296
<b>White hake</b>	7.896	1.654	0.304	14.885
<b>Pollock</b>	6.048	1.304	0.140	12.053
<b>SNE/MA winter flounder</b>	1.203	0.227	0.018	1.622
<p><i>Notes:</i> The PSC data was downloaded on January 28, 2014, from NMFS' Sector Information Portal. The data FY2013 PSCs of all valid MRIs. Includes data for the Maine State Permit Bank, New Hampshire State Permit Bank, Boston Sustainable Fishing Community Preservation Fund, Cape Cod Fisheries Trust, Gloucester Fishing Community Preservation Fund, NEFS XI Permit Bank, Penobscot East Permit Bank, South Shore Fishing Community Preservation Fund, and The Nature Conservancy/Island Institute Community Permit Bank.</p> <p>* Value is &gt;0.</p>				

**Table 3 – Hypothetical Handgear A sub-ACL based on FY2014 PSC, by stock**

	Preliminary commercial groundfish FY2014 sub-ACL		Common Pool HA			Sectors HA			Total HA		
			Total FY2014 HA PSC	Potential FY2014 HA sub-ACL		Total FY2014 HA PSC	Potential FY2014 HA sub-ACL		Total FY2014 HA PSC	Potential FY2014 HA sub-ACL	
				mt	lbs		mt	lbs		mt	lbs
GOM cod	830	1,829,837	0.003814941	3.2	6,981	0.003527420	2.9	6,455	<b>0.007342361</b>	<b>6.1</b>	<b>13,435</b>
GOM haddock	220	485,017	0.001044610	0.2	507	0.000081935	0.0	40	<b>0.001126545</b>	<b>0.2</b>	<b>546</b>
GB cod	1,769	3,899,757	0.001555739	2.8	6,067	0.000168270	0.3	656	<b>0.001724010</b>	<b>3.0</b>	<b>6,723</b>
GB haddock	17,171	37,856,671	0.000148649	2.6	5,627	0.000016415	0.3	621	<b>0.000165064</b>	<b>2.8</b>	<b>6,249</b>
Pollock	13,224	29,153,930	0.000650768	8.6	18,972	0.001458137	19.3	42,510	<b>0.002108905</b>	<b>27.9</b>	<b>61,483</b>

*Notes:*  
 The sub-ACLs are based on Council's recommended FY2014 ABC and ACL. Because FY2014 sector enrollment will not be final until after the start of the fishing year, the grouping of HA PSC into common pool and sectors is based on FY2013 enrollment.

**Table 4 - Potential FY2014 HA sub-ACL relative to the FY2014 groundfish sub-ACL and FY2013 cumulative discards of sectors and the common pool**

	Potential FY2014 HA sub-ACL (mt)	% of FY2014 groundfish sub-ACL	% of FY2013 cumulative discard of sectors and common pool <sup>1</sup>
GOM cod	6.1	0.73%	31%
GOM haddock	0.2	0.11%	1.1%
GB cod	3.0	0.17%	6.5%
GB haddock	2.8	0.02%	1.3%
Pollock	27.9	0.21%	26%

<sup>1</sup> FY2013 cumulative discards from:  
[http://www.nero.noaa.gov/ro/fso/reports/Sectors/Commercial\\_Summary\\_2013.html](http://www.nero.noaa.gov/ro/fso/reports/Sectors/Commercial_Summary_2013.html)

**Table 5 - Handgear A Annual Catch Entitlement (ACE) by stock (weight in lb), FY 2010-2013.**

	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	SNE/MA Winter Flounder
2010	624	120	4,708	4,051	1,714	494	310	13,152	9,778	N/A
2011	347	99	490	1,215	245	360	82	12,543	11,034	N/A
2012	112	144	544	1,281	292	607	177	13,849	12,204	N/A
2013	47	111	249	555	123	632	177	16,809	14,309	250

Note: Values are what a Handgear A sub-ACL would have been, assuming all HA permits enrolled.

**Table 6 - Handgear kept catch by stock (weight in lbs), FY 2010-2013.**

	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	SNE/MA Winter Flounder
2010	0	0	247	112	0	0	253	763	186	N/A
2011	0	0	0	0	0	0	0	160	244	N/A
2012	0	0	1	3	1	0	0	79	218	N/A
2013	0	0	0	0	0	0	9	100	65	0

Note: Includes common pool and sector catch.

**Table 7 - Handgear discards by stock (weight in lbs), FY 2010-2013.**

	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	SNE/MA Winter Flounder
2010	0	9	459	80	34	0	84	11	46	0
2011	0	60	782	366	140	0	121	68	374	88
2012	0	47	324	14	11	0	0	18	450	1381
2013	0	37	309	53	20	0	6	34	44	155

Note: Includes common pool and sector catch.

**Table 8 - Handgear discards as a percent of the Other Sub-Component catch by stock, FY 2010-2013.**

	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	SNE/MA Winter Flounder
2010	0	0.02%	0.59%	0.03%	0.04%	0.00%	0.32%	0.02%	0.01%	N/A
2011	0	0.10%	4.38%	1.32%	0.04%	0.00%	0.42%	0.02%	1.66%	N/A
2012	0	0.05%	0.64%	0.00%	0.04%	0.00%	0.00%	0.01%	0.06%	N/A

## COMMUNITY FISHING ASSOCIATIONS

*As developed in Amendment 15 to the Scallop FMP*

The following text is an excerpt from the Amendment 15 FEIS, December 6, 2010. Section 3.4.2.5 contains measures to implement Community Fishing Associations (CFAs), which could purchase scallop permits and Individual Fishing Quota (IFQ) and lease IFQ. Alternatives to implement CFAs were not chosen by the NEFMC, due to "incomplete development, but the Council noted that this should be a priority for future consideration" (NEFMC 2010).

### **3.4.2.5 Implementation of Community Fishing Associations (CFAs)**

At the April NEFMC Council meeting, the NEFMC passed a motion to have the scallop PDT "research and discuss the potential use of "regional fishery associations" or something like them (permit bank) in terms of an entity being permitted to purchase IFQ with or without having to own a LAGC IFQ permit."

The PDT discussed this issue at the May 2009 PDT meeting and ultimately developed two options for the Committee to consider: 1) consider adjustments to the current sector provisions to make them more place-based and allow other entities to control quota, and 2) develop a separate RFA or CFA program with details of provisions that would be considered. The Committee only adapted 2), and requested that Staff continue to identify issues that need to be resolved and requested that the advisory panel review the details and provide input on this alternative.

Community Fishing Associations and similar entities are being developed throughout the United States, particularly on the west coast, to deal with the rationalization of various fisheries, which can negatively affect the sustainability of fishing communities. For example, with the sablefish and halibut rationalization programs in Alaska, various larger entities purchased or were initially allocated large enough quotas that it effectively hurt the sustainability of fishing communities and villages along the Gulf of Alaska coastline. To help mitigate this problem, the North Pacific Fishery Management Council, in conjunction with the State of Alaska, created Community Quota Entities, which are non-profit organizations that can hold quota on behalf of the represented community/communities and allow various fishermen to lease and fish the quota. Further, the Pacific Fishery Management Council (PFMC) is developing Community Fishing Associations to address the consolidation concerns caused by the groundfish trawl rationalization program. The PFMC is currently in development of these CFAs, but their issues are more similar to those that have been raised in New England.

Concern has been raised at recent New England Fishery Management Council meetings about consolidation of the IFQ among LAGC participants. There is concern that larger entities will buy out smaller boat permits, stack IFQ, and effectively reduce the number of vessels in ports and number of players in the general category fishery. This will more than likely have negative consequences on the fishing communities throughout New England. The Scallop PDT, now, has been tasked with developing alternatives for creating Community Fishing Organizations, which would be permitted to acquire quota for distribution throughout the geographic community it represents.

The primary concerns described at meetings are that small, independent fishermen are at risk because of escalating prices for permits and LAGC IFQ, which are preventing new local entrants into the fishery. There is concern that permits are going to leave smaller fishing communities

and lead to corporate consolidation impacting historical fishing communities. One specific goal identified is to enable an entity to hold quota and lease it to qualified fishermen in their defined community. The entity would not need to own a vessel and would not have to be engaged in harvesting. Some have voiced that the organizations should be place-based, or focused on a particular community. This alternative would consider explicit regulatory language to recognize and support *non-profit* entities that could purchase and hold permits and/or quota to be leased to qualified local fishermen at affordable rates.

#### **3.4.2.5.1 No Action (PROPOSED ACTION)**

A process for future community fishing associations or CFAs would not be established in Amendment 15.

#### **3.4.2.5.2 Establish a process for Community Fishery Associations**

This alternative would establish a process for the creation of Community Fishery Associations (CFAs), non-profit organizations that are allowed to hold quota (and permits if approved) on behalf of a defined community. These groups may be formed around common homeport(s) and/or landing port(s), and are designed to support local commercial fishermen. The following text provides an outline for the various required components of such an entity, including: required definitions, qualification/application, geographic designation/community affiliation, participation requirements and restrictions, Community Sustainability Plan (as outlined in Magnuson-Stevens Reauthorization Act), and other considerations for these entities.

Recently, the Pacific Fishery Management Council (PFMC) has also taken steps to address similar problems facing traditional fishing communities on the West Coast as a result of the trawl rationalization process. The PFMC is currently developing regulatory support for CFAs using language of the Magnuson-Stevens Act. This proposal draws extensively on these PFMC efforts.

*Rationale:* The purpose of establishing this process is to allow greater opportunities for fishery participants to proactively engage in resource governance, provide greater flexibility for fishermen, enable communities to thrive by establishing a community-driven plan, and create outcomes that are more socially and economically beneficial for communities within the biological limitations of the fishery. These entities would also support qualified new entrants to the fishery by allocating some portion of the holdings to be leased to individuals who have harvesting experience in the local fishery and who are working to start an independent fishing operation in that community.

#### **Definition of a CFA**

A Community Fishing Association may be a partnership, voluntary association or other nonprofit entity established under the laws of the U.S. that is eligible to hold quota (and possibly permits) and distribute said quota/permits to permitted fishermen within the geographic community that the CFA represents. These entities will be beholden to the eligibility requirements and participation criteria governing Regional Fishery Associations as outlined in the Magnuson-Stevens Act.

The goals of establishing Community Fishing Associations are to:

1. Mitigate the potentially negative economic and social impacts of current transitions to quota management in the LAGC fishery.
2. Provide affordable local industry access to fisheries resources.
3. Provide opportunities for qualified new entrants to the fishery.
4. Preserve traditional fishing communities and necessary onshore infrastructure.
- 5.

#### **Qualification as a CFA**

To be recognized as a CFA, an entity must:

1. Meet the geographic designation and membership requirements (below).
2. Have the expressed support of local governing entities (county, city or port district).
3. Meet the organizational standards (below).
4. Develop an adequate community sustainability plan (MSA 303A(c)(3)(i)(IV)).
5. Be organized and maintained as a non-profit corporation under U.S. law.

#### **What CFAs Can Own and Lease Out**

*Option A, Quota Only.* Under this option CFAs would be able to purchase IFQ which can be leased to qualifying fishermen already possessing a LAGC permit.

*Option B, Quota and Permits.* This option would allow CFAs to purchase IFQ and permits which can then be leased to qualifying fishermen within the community.

#### **Geographic Designations and Community Affiliations**

CFAs must be located within the management area of the Council (Based on MSA 303A(c)(3). The geographic areas served by a CFA may overlap with the area served by another. However, a CFA may only represent one "community" (i.e., a single management company *may not* administer multiple CFAs).

For the purposes of this program, a "community" is defined here as either a single coastal town or small number of coastal towns that are geographically and economically interconnected. A "small number" is intended to be near or under ten, and county boundaries may provide an appropriate guideline for delineation. For example, the ports of New Hampshire (Portsmouth, Rye, Hampton, Hampton Bays and Seabrook) all occupy one county (Rockingham), are in reasonable proximity to each other and conceivably rely on the same onshore infrastructure. They number less than ten, and therefore could be defined as a "community" in terms of CFAs. A second example would be the ports of Plymouth County in Massachusetts (Green Harbor, Hull, Marion, Marshfield, Ocean Bluff, Plymouth, and Scituate). CFAs need not include all ports within one county, and as mentioned earlier, geographic areas served by a CFA may overlap.

Prior to approval, a CFA must demonstrate substantial support of community members and governing jurisdictions in the area it seeks to represent. Examples of such support include community petitions, and written endorsement from community leaders (mayor, etc.) or councils.

### **Participation Requirements**

The program developed by this FMP is limited to the LAGC scallop portion of the fishery, and harvest of the IFQ is restricted to LAGC permit holders only. These fishermen may lease CFA-held permits/quota to be harvested in compliance with all existing and relevant state, federal and international commercial fishing regulations. Harvest of LAGC IFQ under a CFA is restricted to individuals that qualified for a LAGC permit under Amendment 11, unless the option to allow for new entrants is included and approved in a future CFA application.

### **Organization and Operational Standards**

CFAs will establish open and transparent application and qualification criteria for the distribution of permits/quota to community fishermen. These entities will comply with existing and relevant leasing and transfer regulations that currently apply to individual permit-holders including lease reporting protocols, size-class or baseline restrictions, etc.

### **Community Sustainability Plan**

The CFA shall develop a community sustainability plan consistent with required sections of MSRA (MSA 303A(c)(3)(i)(IV)) that includes the following:

1. Specification of the organization's goals and objectives and the means by which it intends to meet those goals and objectives.
2. Description of how the CFA will contribute to the social development, economic development, and conservation needs of the fishery locally, including the needs of entry-level and small vessel owner-operators, captains, and crew. The description shall include anticipated efforts to address the following as necessary to maintain the characteristic of the community or support its economic development:
  - a. sustaining effort by groundfish fisheries;
  - b. maintaining crew, processing and seasonal employment opportunities;
  - c. maintaining local processing activity;
  - d. meeting local community and municipality needs; and
  - e. investing in local infrastructure.

### **Restrictions on Holding Quota**

Much concern in the early stages of CFA research has been that quota will be improperly obtained or used in ways that are a detriment to the LAGC fishery and/or the same community it is designed to help, i.e. obtaining IFQ with the intent that it not be harvested. For this reason a stringent application process and monitoring plan must be implemented to be sure the CFA benefits the community as intended and overall scallop plan in terms of optimizing yield.

### **Application for Status as a CFA**

CFA applications will include:

1. Articles of incorporation and bylaws.
2. Organization chart and explanation of management structure.
3. A community sustainability plan (see above; MSA 303A(c)(3)(i)(IV)).
4. All information needed for NMFS to assess compliance with control limits.
5. Operating procedures including description of a. roles and responsibilities of the

association, board members, staff, and contractors, the process and criteria by which permits/quota will be distributed, and dispute resolution processes.

6. Documentation that shows compliance with all other CFA eligibility requirements.

These applications will not be in a specific action because CFAs are a leasing mechanism which will not affect the rest of the fishery in terms of allocations, etc. Much like general category sectors, CFAs will be required to submit all application materials eight months prior to the start of the fishing year, or July 1.

#### **Criteria for Evaluating Applications and Approval Process**

CFAs will be approved provided a complete application has been provided to the New England Fishery Management Council and the National Marine Fisheries Service by agreed upon deadlines. The Council will ensure that all requirements listed above are fully and satisfactorily met prior to approval, including those pertaining to geographic representation and community support. Approval will include specification of special responsibilities and considerations being afforded the CFA (e.g. the level of quota shares control that will be afforded the CFA).

#### **General Participation and Special Considerations**

CFAs will participate in common with all other participants in the IFQ program and have the same rights and responsibilities, except with respect to special responsibilities and considerations leasing quota under provisions identical to those which apply to all other participants in the LAGC fishery.

##### Special Consideration ó Accumulation Limits

CFAs would be obligated to remain within existing and relevant accumulation limits unless the New England Fishery Management Council decided to explicitly amend such limits in a future action. Currently, an individual permit holder can own up to 5% of the total LAGC IFQ allocation, and a sector can hold up to 20%. The ownership limit under consideration by the PFMC for a CFA is 10%. This accumulation limit recognizes that to be effective, a CFA must be able to accumulate sufficient fisheries access to support more than a single fishing operation within the community, while maintaining a relatively low cap. This action is considering a limit of 5% of LAGC IFQ for any CFA.

##### Special Responsibility ó Reporting Requirements

CFAs would be required to report annually on specific aspects of their operations, CFA performance measures, etc. Specifically, each entity will be required to report the number of lease applications received for their permits/quota; the number, names, and characteristics of the financially independent fishing operations that leased the CFAs permits/quota; the proportion of permits/quota leased in a given year relative to the entity's total holdings; and a summary of how holdings were distributed among applicants. This will help to confirm that the quota is remaining within the community as intended.



### **Monitoring of CFAs**

The Council noted that current monitoring provisions may not encompass what is needed to track use of CFA IFQ. There will likely be need for addition of a new (VMS) code by NMFS so that individual trips can be monitored as to whether they are fishing under CFA IFQ or their own. Alternatively, the Council could decide to have the CFA be responsible for tracking its own use of IFQ, and NMFS would simply continue to track the vessel's overall landings. It also needs to be determined whether the vessel landing the scallops would still be responsible for the cost recovery payment, or if that would be the CFA's responsibility. This should be something that the CFA addresses in its "community sustainability plan."

### **Movement between CFAs**

As multiple CFAs may simultaneously support a given community, a fisherman may lease quota from more than one CFA during a given fishing year. Each permit-holder will remain bound by the existing individual harvesting and ownership caps. The relationship between a CFA and a participating fisherman who leases a permit and/or quota is terminated with the harvest of the leased pounds; from the perspective of the Council and NMFS, there is no membership or expectation of continuing connection between these two independent entities (CFA and the individual).

### **Program Evaluation**

The Community Fishing Association (CFA) program developed by the NEFMC would be reviewed approximately every three years (or when Council priorities permit) after implementation to ensure progress in achieving the stated programmatic objectives and to make any small revisions required. Individual CFAs will need to report to the Council annually with the number of participants leasing quota, the amount of quota leased/controlled, and the amount of quota harvested and the rest of the required information, as discussed above.

### **Organizational Evaluation**

Performance of individual Community Fishing Associations (CFAs) would be fully reviewed after three years of operation. Performance will be measured based on the ability of the CFA to support the objectives of the program and to help meet the needs of the fishing community. This review will result in the continued approval, conditional approval (with specific operational changes to be made), or the disapproval of the CFA by the Council and/or NMFS.

After this initial review, each program will undergo a full review every five years or more frequently if deemed necessary by the Council and/or NMFS.

### **Source**

*NEFMC. 2010. Amendment 15 to the Scallop Fishery Management Plan including a Final Environmental Impact Statement. Newburyport (MA): New England Fishery Management Council in consultation with the National Marine Fisheries Service and the Mid-Atlantic Fishery Management Council. 516 p.*

**Possible inseason trading timeline**

<b>Month</b>	<b>U.S./Canada Quota Trading Timeline</b>	
	<b>Canada</b>	<b>U.S.</b>
September	Request for trade made by Canada and/or U.S. through Transboundary Steering Committee (including species, ratio, quantities)	
		U.S. receives further input on proposed trade from Council and sectors
October	Canada receives further input on proposed trade from Gulf of Maine Advisory Committee (GOMAC); Proposal forwarded to Groundfish fleet to determine level of interest	
	U.S. or Canadian Co-Chair responds to proposed trade; (accept/counter/decline)	
November/ December	If U.S. counters, Canada receives further input on offer from Gulf of Maine Advisory Committee (GOMAC)	If Canada counters, U.S. receives further input on offer from Council and sectors
	Counter offer accepted or declined	
	Final approval of quota trade by Minister	NMFS publishes notice in Federal Register of revised U.S./Canada TACs for current fishing year; revisions to U.S./Canada TACs for upcoming fishing year incorporated into Council action
January	<b>Start of Canadian fishing year</b>	
May	<b>Start of U.S. fishing year</b>	

Note: Canada's GOMAC only meets at specified times of the year (typically March and October)

## TMGC Quota Trading Mechanism

### Guiding Principles

### February 2013

#### Objective

Quota trading should provide an additional source of flexibility for the U.S. and Canada and create additional fishing opportunities. Increased fishing opportunities through quota trades would provide mutual benefit while also maintaining consistency with TMGC harvest strategies.

#### 1. Trades Country to Country

Trades would occur between countries as opposed to between U.S. and Canadian business entities. Initial drive for quota trade would occur at the industry level, and the GOMAC or the Council would approach NMFS or DFO about the possibility of a trade. A request for a quota trade would then be made to the respective country.

#### 2. Respective Management Body Approval

Quota trade mechanism would be presented to Steering Committee. Mechanism would have to be approved by the Council and would likely require a revision to the Fishery Management Plan. For Canada, a trading mechanism would be approved by GOMAC and then forwarded to DFO/Minister for final approval.

Approval of quota trades for Canada would occur at GOMAC/DFO. U.S. approval would need Council/NMFS approval. If Steering Committee approved TMGC annual guidance, quota trades would likely not have to go back to the Steering Committee.

#### 3. Separate Process

Trades would be agreed to separate from the TAC-setting process.

#### 4. Trades could occur prior, during, or after fishing year

As experience is gained in trading, all of these options could be utilized. Initially, the pilot project will determine the next steps.

#### 5. Trades could occur between fishing years

Trade could be made for adjacent fishing years (after annual guidance was set for upcoming fishing year). The TMGC does not recommend multi-year trades at this time.

#### 6. Mutually beneficial

Any quota trades would be mutually beneficial to the respective fishing industries.

#### 7. No impact to catch history or sharing

Quota trades would not impact the catch histories of either country. The TMGC does not intend for quota trades to impact the current sharing agreement or influence catch histories.

8. Biological considerations

The TMGC recommends exploring the implications of temporal and spatial differences in fishing mortality. There may be finer scale biological implications of quota trades; however, these implications would be difficult to discern, and may not be measurable. Quota trades could also exacerbate assessment issues (e.g., retrospective pattern). Other factors that should be considered include changes in selectivity, survey distributions, and potential spawning aggregation implications.

9. Only TMGC stocks

Trades would only be considered for Eastern GB cod and haddock and GB yellowtail.

10. Pilot project

A pilot project could be used to initiate quota trading and explore the process and implementation of a trading mechanism. During the pilot project, the TMGC would review the trading mechanism and recommend refinements/modifications to the process, as required. This review would be completed before the end of the pilot project.