

New England Fishery Management Council Groundfish/Scallop Oversight Committee

Meeting Summary

April 5, 2010

The Groundfish/Scallop Oversight Committee (Committee) met in Boston, MA to begin work on amendments to the Northeast Multispecies Fishery Management Plan (FMP) and the Scallop FMP that would facilitate the transfer of groundfish between the multispecies and scallop fisheries. Committee members present were Mr. Rip Cunningham (Chair), Mr. Terry Stockwell (Vice-Chair), Mr. Rodney Avila, Mr. Erling Berg, Mr. Howard King, Mr. Mike Leary, Ms. Sally McGee, Ms. Sue Murphy, Mr. Jim Odlin, Dr. David Pierce, Mr. Dave Preble, and Ms. Mary Beth Tooley. They were supported by staff members Mr. Tom Nies, Ms. Anne Hawkins, and Ms. Jess Melgey (NEFMC), Mr. Pete Christopher, Mr. Mark Grant, and Mr. Tom Warren (NMFS NERO), and Mr. Gene Martin (NOAA General Counsel).

Discussions were guided by a draft scoping document, strawman goals and objectives for the amendment, and draft Scallop Incidental Catch Sector (SICS) management measures.

Approval of Draft Scoping Document

Council staff explained the background of this action. It was initiated by several Council motions, including one to develop a joint groundfish/scallop action to address the yellowtail flounder (YTF) bycatch issue in the scallop fishery, and one to develop an action to allow sectors to transfer YTF ACE to newly-formed scallop sectors. The Council's intent was to provide mechanisms to incentivize and allow minimization of bycatch. NERO staff thought this process would require an amendment, possibly supported by an EIS, so a Notice of Intent (NOI) and draft scoping document were written. A 30-day scoping period for written comments is required, but there is no requirement to hold separate scoping hearings, so opportunities for scoping comments would be provided at Committee meetings. The NOI described a narrowly-focused action to transfer YTF between the scallop and groundfish fisheries. Any amendment associated with this NOI would likely not be implemented until either during the 2011 fishing year or at the start of FY 2012. If a referendum associated with an ITQ were to be necessary, implementation could be later than that date.

Public comment included:

- Ron Smolowitz, Fisheries Survival Fund. I have been involved with this process since 1977, and have never seen anything like this. The Council is driving an amendment process by a single motion. If the topic is joint groundfish/scallop issues, then this is going totally down the wrong path. The issues we have confronted that are creating bycatch problems primarily relate to how we've been managing the fisheries, especially in attempts to control effort. Now that the groundfish plan is proceeding with a different form of effort control, this measure should look at ways to help both fisheries achieve their potential. There is no reason for the groundfish closed areas as they are currently mapped out on Georges Bank. Those are impacting ability to achieve optimum yield in both fisheries. I propose that in this joint action, in the scallop component, we use the progress made under the habitat action to analyze groundfish and scallop closures for both area and dates. The FSF has a number of proposals we believe would allow both fleets to attain OY. The start of the fishing year should be the same for both fisheries, if

not all fisheries. This should also be examined in this joint action. This is also the place to examine changing the rebuilding schedule for yellowtail flounder. We have gear options in the scallop fleet to reduce bycatch, but until we establish baselines and target bycatch on species, we won't make progress on gear solutions. There is a host of other issues to be analyzed that fall under the rubric of these amendments.

- Harriet Didrickson, New Bedford Scallop Vessel Owner. I saw the paperwork laying out a sector plan for scallops. I see all the people against sectors in the groundfish fleet. Hearings are going on in Washington about sectors. I don't know how you can be putting together a plan and put this out. The Council system, is supposed to be a public process with public input. How many people know this is going on? This isn't even a process that's ironed out, and you're going to push it through. A lot of people from many states don't want these sectors. This is going to put them out of business faster: managing to the lowest species. Sectors aren't even in the Magnuson Stevens Act; they're a derivative of quotas. The scallop ITQ was pushed through during the 6 months you didn't have to have a referendum in 2007. The referendum is in Magnuson and it should be respected, but the Council is trying to get around it.
- Greg Mayhew, Martha's Vineyard Commercial Fisherman. What Ms. Didrickson said has us concerned. We're not multipurpose boats anymore. Whoever picked the years for the groundfish allocation did it to exclude people who switched to fishing on other things while the stocks were poor. We caught plenty of scallops when a lot of the guys who are fishing now were in grammar school, and they got the benefit from it. The DAS were limited because of fact that we had done other things like swordfishing, and we lost the ability to fish on thing after thing. For yellowtail, my 10-year average is only less than half of what I caught over the last 10 years on average. It seems to me that my catch allocation is going to increase the value of selling my limited amount of yellowtail quota. I don't see that this will encourage scallopers not to fish on yellowtail. If we wanted to, we could open the area a few weeks early to groundfishing and thin out the yellowtail and then go fish scallops. There is a difference of opinion on the number of scallops – Canadians feel there are a lot more out there. Draggermen know there are a lot out there. Gear modifications could be designed to help the problem, but I don't know how much gear testing has been done. Obviously if they have an observer, they try to go where there's not a lot of yellowtail interaction. The people trying to stay multipurpose are really going out of business.
- Drew Minkiewicz, Fisheries Survival Fund. I second Mr. Smolowitz's comments. It's disheartening to see the narrow focus of this action. This is a rare opportunity to have a joint action where we could do some things we've been meaning to do for some time, including removing the 10% cap on access areas that's redundant under new ACL system. Does anyone know how much yellowtail would have to be traded between the fleets? We are just starting off in this process, and we don't even know what numbers or need there is for trading of yellowtail.

A Committee member stated that this idea had come from scallop fishermen, and noted that he was happy to take it off the table if the scallop industry no longer supported it. Another expressed concern that there would be a problem when the scallop fishery was restricted to 90% of its expected YTF catch in FY 2011. Council staff noted that a mechanism to enable a market-based transfer system was the only alternative to having the Council wrestle with allocation decisions on this stock. Allowing transfer would not automatically solve the problem of having a 10% cap in closed areas. The 90% allocation of what was necessary for the scallop fleet could cost the scallop fishery \$30-\$35 million in 2011 and 2012 according to projections so far. The Council had been looking to mitigate those potential losses. It is difficult to know exactly how much the

YTF is worth to the scallop fishery since the design of the scallop access program in 2011/2012 and the accountability measures (AMs) are not known at this time.

One Committee member summarized that there were many concerns about the current situation, but that there seemed to be no support for bycatch sectors by industry. Since sectors are self-selecting, there was no point to develop them if they would not be utilized. He asked whether industry members would begrudgingly pursue them to meet an eventual strong need for transfer. The Fisheries Survival Fund provided a document that requested to open the discussion to a broader range of possibilities and provided other proposals. Another member pointed out that stasis in the fishery should not be assumed. He spoke in favor of combining committees and increasing efficiency, but was concerned about so many difficult issues including different fishing years in each fishery and modifications to gear that might change the nature of this discussion. He questioned whether any transfer system should be limited to this one stock and this one direction of transfer.

Public comment included:

- Jim Kendall, New Bedford Seafood Consulting. There are more things to be concerned about than forcing a sector policy on another fishery which has no need or want for it. This will lead to more push-back from the industry, less cooperation, and more time trying to defeat that particular purpose. But when it comes to YT, there are genuine problems. We need to convert discards into catch and landings. Allowing the groundfish fleet in Closed Area II, would allow YT to be caught by people depending on it, not those that don't want it. I don't know if the dredge is right way to go until we get true support for cooperative research. The sector question is totally unacceptable, and I wish you would come to that resolve.
- Jeff Pike. I sent a letter saying folks were happy that the Council was anticipating a problem before it actually arose. The Council is often reactionary rather than visionary. It hasn't been answered if there's a genuine need for transfer between the two fisheries. FSF represents virtually entire scallop fishery, so I think their comments would have a lot of merit. My letter to you supported this work, but it was by no means an endorsement of sectors. It was before we saw the draft scoping document which absolutely seems to funnel this discussion toward bycatch sectors, which is only one mechanism that can solve this problem. One proposal would allow a portion of fishery to be on an ITQ, without forcing ITQs in the rest of the fishery. There are a lot of issues with that. Scallopers joining groundfish sectors would be an effective way to get YT, but it would be difficult to determine what history the scalloper brings to the sector. Annual measures aren't settled yet in Amendment 15, and the people I work with don't want any of this work to delay A15. When we approach the AMs in whatever system we adopt, it will increase the costs. None of these solutions appear to change the 10% cap in closed areas. I think we need to go back to answer if there is a real need for quota transfer. In years of working with sectors, and with the current administration, catch shares seems to be the solve-all-problems. If we proceed with a mechanism to transfer YT, concern is it will become not an option, but necessary to fish. And then they could continue to reduce the amount of YT allocated to the scallop fishery, by saying you must buy it.
- Jeff Kaelin: Lund Fisheries. We're not ready to have bycatch sectors established in the scallop fishery. We're looking for mechanism to utilize ACE we have already earned. The question is how much of the YT ACE would be controlled by people who have scallop permits. The approach taken should not be so complex.

- Ron Smolowitz. A key factor is cost. This problem can be solved in many ways. Sectors would be creating a monstrous structure for something is not a big problem. The scallop fishery is the best-managed in the country, and it keeps management costs down. The quantities of catch we're talking about to stay within the 10% cap is 37 lbs/day. We exceeded that in some years by as much as 20 lbs/day in fleet averages. There are mechanisms that can bring us below those targets we had. The only way to monitor small levels of bycatch like that is to have two observers on board the vessel. Otherwise, when the observer's in bed, you totally change fishing characteristics in the area.

One Committee member clarified that allowing the groundfish fleet into closed areas before scallopers would not alleviate the problem of YTF concentrations. In fact that would constitute asking the groundfish fleet to give up revenue to allow scallopers to fish there. Another pointed out how quickly the closed area was shut down last year after a few vessels experienced high YTF bycatch. A solution would be needed, which may include gear modifications, but the industry had resisted regulatory language on gear modifications in the past and therefore should give input as to possible solutions. Many on the Committee echoed that the imposition of ACLs and AMs made bycatch management a particularly pressing issue. One member noted that industry members were concerned about costs, but explained that not being able to go fishing also carried a cost. She felt that any system in which the scallop fishery received no allocation and would require all YTF through transfers of groundfish ACE should be avoided, and that a baseline should be established for the fishery.

The Committee decided to address the strawman goals of the amendment, as many members felt that they would need to go back to the Council with a recommendation of broadening the Committee's tasking in order to reflect the industry's resistance to YTF sectors. Some members worried that if the scope of this action were to be broadened, there might not be any mechanism in place to mitigate YTF concerns until after FY 2011 since priorities were already decided. The strawman goals discussed by the Committee were:

1. To develop measures that allow the exchange of species allocations between the Northeast Multispecies and Scallop fisheries in order to facilitate the harvest of optimum yield from the two fisheries.
2. To reduce bycatch of groundfish species in the scallop fishery by adopting measures that hold individual scallop vessels, or groups of vessels, accountable for their bycatch and thus allow them to benefit from bycatch reduction.
3. To reduce the likelihood that groundfish Annual Catch Limits that are allocated to the scallop fishery prevent the harvest of available scallop yield.

One Committee member was surprised that the scallop industry was not more vocal about the impact of the YT allocation to them over the next three years. He felt that the strawman Goal #1 would have to be struck if the industry would prefer to live with the allocation rather than join sectors. He thought that the only other mechanism to allow transfer would be through ITQs and a referendum. He felt that sectors, as currently formed, are in fact ITQs and would prefer that to sectors if the industry wanted it. Another member was in favor of Goal #1 and felt that diversification was necessary. He felt that this issue could not be addressed in the short term. Other members favored modifications to Goal #1 rather than its complete elimination. One stated that once a baseline is established, she felt that tools could be developed to manage the allocation received by the scallop fleet.

Several Committee members felt that Goal #2 was not relevant. One felt that it could include the ability of scallop vessels to join groundfish sectors and/or have their own scallop sectors to manage the allocation.

Goal #3 was considered, and some members supported it. One Committee member felt that the goal applied to all fisheries. He felt that there should not be a piecemeal approach to the problem which affected across the board.

A Committee member stated support for a goal that would allow people with both scallop and groundfish permits to combine their allocations without having to transfer ACE from elsewhere.

The Committee discussed the necessity of broadening the scope of the action, and decided that it would be a good use of time to consider what should be included taking resources and priorities into account. The Committee chair noted that some activities may be within the purview of other Committees.

Motion: That the committee recommend to the Council that its mission be broadened to develop measures between the NE multispecies and scallop fisheries to facilitate the harvest of OY from the two fisheries. (Mr. Preble/Mr. Stockwell)

It was noted that the groundfish industry's concerns should be taken into account in addition to the scallop industry's, although the audience was primarily made of scallop fishery representatives. Several members agreed that there should be an operational mechanism that allows vessels that hold both permits to be able to use their allocated YT. One Committee member stated that the inclusion of both the AFM and FSF comments should be implicit in the work, and that the motion would be a clear indicator to the Council that the scope of the amendment should be broadened. Council staff was concerned that the language was not specific enough to meet NEPA requirements for scoping. Some Committee members felt that the motion should be vague so that they could work on associated goals later in the day, while others thought that its vagueness made it useless. One member stated that this could be a topic for the Interspecies Committee's discussion on combining FMPs. The Committee chair noted that their hands were tied to sectors without a broader charge from the Council that could be requested through a motion such as this one. General Counsel staff pointed out that this motion would expand the mission of the Committee, but would not eliminate sectors from consideration. One Committee member stated that she would still support looking at sectors in this fishery.

Motion to substitute: that the committee recommend that the Council not proceed with an amendment to develop SICS (scallop incidental catch sectors) and that the council redefine the Committee's mission to develop measures to reduce the likelihood that groundfish Annual Catch Limits (ACLs) that are allocated to the scallop fishery prevent the harvest of available scallop yield. (Dr. Pierce/Mr. Odlin)

The maker of the motion stated that the scallop industry should be allowed to develop their own initiatives to reduce bycatch, and that it might be appropriate to carve the work up between committees. A Committee member suggested that people should make specific suggestions about what options should be considered so that the full Council would not have to discuss this issue. Some members felt that the second part of the motion was too narrow, and should be applicable to facilitating groundfish yield as well.

Public comment included:

- Rich Canastra, Whaling City Auction. Scallopers are either going to get an allocation right from the top, from DAS, or from sectors. If a scalloper were able to buy a groundfish permit, that permit would have to be in a sector as it stands now in order to buy or transfer quota. It might make sense if they buy a permit and don't have to be in a sector to transfer ACE. This should go to the industry or AP before it comes to the Committee and the Council. SNE winter flounder is a similar problem. Groundfishermen were forced into sectors, even though it's "voluntary", and scallopers are either going to get an allocation off the top, or also be forced into sectors. I suggest January for starting the fishing year. If we go with March, we're in the Lenten season. It has to be either the end of the year or the beginning of the year.
- Jim Kendall. I understand your attempt to bring something back to the Council based on the strawman. Let's see what we could add to this list so that the Council could determine which might work, rather simply say that the industry doesn't want sectors. Timing issues can avoid bycatch, and that should be first thing we look at. Why go in during a time of high bycatch, and then try to find a way to avoid that problem?
- Ron Smolowitz. Agree that we need to remove SICS, because it's the lowest of priorities and would consume most of the staff effort. The second part of the motion needs to be a little more general. We are really trying to develop joint measures to maximize OY between both fisheries while minimizing bycatch. They are two totally different management regimes which really can't be combined. Once we agree that's our goal, we could spend the rest of the day looking at what our options are.
- Greg Mayhew. I agree that it's not just YT that's a bycatch issue. Fluke in the past were targeted by scallopers. Now we jokingly refer to GB as the fluke graveyard. The gear modification issue will be important to the scallop fleet. You would be mad about zoning laws cutting your garage in half. I had to cut 3 ft. off the bow of my boat to qualify when they made a size limit in state waters. Pointless things like that make it difficult for us to maintain any economic sense in the plans we try to do. The next assessment will show more YT as the Canadians project.
- Harriet Didrickson. You are taking money from research and collaborative science to study sectors. Magnuson mandates optimum yield in all fisheries, which won't be done with dragger sectors, and probably not at all. They are estimating 50% of people will be gotten rid of right away.

The motion to substitute **failed** on a show of hands (1-9-1)

Motion to substitute: The Committee recommends the Council not proceed with an amendment to develop SICS and that the Council redefine the committee's mission to develop measures between the groundfish and scallop fisheries to facilitate the harvest of OY from the two fisheries. (Mr. Stockwell/Mr. Preble)

The maker of the motion explained that this would incorporate all the comments provided by AFM and FSF. One Committee member pointed out that this motion simply requires the Council to obey by the law. The maker clarified that it specifically recommend to the Council that the Committee did not support the use of sectors, and would allow the Committee to work to bring forth specific measures developed during the rest of the day as a work plan. Another member asked what would need to happen to allow scallop vessels join groundfish sectors for the purpose of using YT ACE that they had obtained while prosecuting the scallop fishery, and Council staff responded that many items would need to be specified for that to be possible.

The motion to substitute **carried** on a show of hands (5-4-2).

Main motion: The Committee recommends the Council not proceed with an amendment to develop SICS and that the Council redefine the committee's mission to develop measures between the groundfish and scallop fisheries to facilitate the harvest of OY from the two fisheries.

The main motion, as substituted, **carried** on a show of hands (6-5-1), with the Chair casting the tiebreaking vote.

Goals Discussion

The Committee discussed goals for the groundfish/scallop action. One member questioned how groundfish permits could not be impacted by scallop boats going into sectors, and another was concerned about making too many rules for sectors to abide by after the goal of sectors was for fishermen to manage their own destiny.

Motion as perfected: Amend goal #2: to develop measures to reduce catch of groundfish in the scallop fishery by adopting measures that would allow benefits for the fishery from reduction in groundfish catch. (Ms. Tooley/Dr. Pierce)

One Committee member thought it might be appropriate to be less specific at this point.

Public comment included:

- Ron Smolowitz. Is the goal to reduce bycatch of groundfish, or discard/bycatch mortality? That's an important distinction. The difference is that item 1 deals with the fleet as a whole, and item 2 breaks it down into individual actions. The baseline is very important to both. Will any underage of an allocation to the scallop fleet be reassigned to groundfish sectors? If the scallop fleet is required to land legal-size YT, why are we reducing the allocation to 90% of what they need? Those are fish that historically would have caused discard mortality. In effect it is transferring 10% to groundfish sectors. DePaul's work shows we don't inflict any mortality on YT under 30-32 cm, so we have greatly improved selectivity already.

The motion **carried** on a show of hands (8-1-2).

Motion: To delete from the first goal, after measures "that allow exchanges of species allocations" and edit it to read as follows: "To develop measures for the Northeast Multispecies and Scallop fisheries that facilitate the harvest of optimum yield from the two fisheries." (Mr. Stockwell/Mr. Preble).

A Committee member pointed out that the differences between the motions were subtle. The maker clarified that the intention was to allow the FSF and AFM comments to be included.

Public comment included:

- Jim Kendall. There was an earlier discussion among industry members that a lot of what we've done to date has little residual effect, and we can't quantifiably measure the goals we have exceeded. I'd like to see some way to quantify steps we have taken to give us a

better understanding of how we need to go where we need to be. Why do we treat YT bycatch of scallopers so differently than we do for inshore winter flounder? That has a zero possession limit, but bycatch essentially ignored. Given the small allocation set for YT why don't we just treat it in a similar fashion?

The motion **carried** on a show of hands (9-2-0).

The Committee chair noted that the revisions of goals number one and two carried the assumption that goal #3 has been eliminated.

Motion: to incorporate examples for consideration in the scoping document. (Mr. Preble/Mr. Stockwell)

The motion **carried** on a show of hands (9-1).

Motion: to place on the list of examples for the scoping document the three ideas from the AFM letter dated August 28, 2008 (Mr. Preble/Mr. Avila)

A Committee member expressed concern that there were no analyses or citations describing the implications of these proposals. He also questioned whether public notice requirements were met for considering these options. The Committee chair clarified that these ideas would be used as part of a list of examples, not as firm options. The Committee was merely attempting to craft their request to the Council to increase the scope of this action. It was generally agreed that it would be useful to specify goals for this action to bring to the Council, who could then decide whether to proceed with developing specific suggestions.

Motion: to table the previous motion

The motion was **tabled without objection**.

Motion: To reconsider the first goal (Mr. Preble/Ms. McGee)

The motion **carried** on a show of hands (8-0-0).

Motion: To modify goal/objective 1 to read: "To develop measures for the Northeast Multispecies and Scallop fisheries that facilitate the harvest of optimum yield from the two fisheries by addressing the potential constraints of the groundfish stock allocations." (Mr. Stockwell/Mr. Preble)

The motion **carried** on a show of hands (10-0-0).

Motion: To forward to the Council the following ideas suggested in letters from the Associated Fishermen of Maine and the Fisheries Survival Fund that may address the amendment objectives:

AFM letter # 3: allow scallop permit holders to join a groundfish sector for the purpose of using yellowtail flounder Annual Catch Entitlement (ACE).

FSF letter:

#1: Changing (rather than eliminating) the year round closed areas

#3: Establish access area time periods that reduce yellowtail flounder catch rates

#5: Consider scallop dredge gear options

#7: Establish baseline groundfish targets

#8: Adjust start of fishing years
#10: Eliminate access area cap
(Mr. Preble/Ms. Tooley)

Ms. Murphy clarified that eliminating the access area cap would grant the ability for scallopers to catch unlimited YT in closure areas up to the overall sub-ACL.

Public comment included:

- Harriet Didrickson: You have to take something off the top to give anything to the scallop fishery. The allocation in the groundfish fleet was done as a percentage of history. If everything is already divided, what can you really do?
- Tom Dempsey, CCCHFA. I'm not sure what the language including baseline targets means. There is an explicit suggestion of historical range, and the Council could adjust upwards to compensate for bycatch reduction efforts. I assume the Committee isn't supporting that option so much as taking up the issue of looking at a baseline target if needed. An issue we've brought up before is the Great South Channel Scallop Dredge Exemption Area. Areas 525, 521, and 526 have petitioned for extra access to the limited category fleet. We feel this could be taken up in this measure as well.
- Jim Kendall. Scallop permits cannot currently acquire a share of YT from individuals or sectors now. A signal will be given that scallopers voluntarily chose to join sectors, when they're really forced, to make sectors looks better. We don't hear enough from the guys who are failing and gone. Find a way to get this done without imposing this on the industry. If you can't buy a share from anyone individually, and you have to buy it from a sector, how do you call that a voluntary program?

A Committee member states that if the scallop industry did not want SICS, the Council should not waste any more time on the issue.

The motion **carried** on a show of hands (7-3-1)

The Committee then met in closed section to elect Advisory Panel members.

The meeting adjourned at 3:45 p.m.