

## New England Fishery Management Council Groundfish Oversight Committee

Meeting Summary  
November 5, 2012

The Groundfish Oversight Committee (Committee) met in Portland, ME. The Committee discussed recent work on the analysis of groundfish closed areas, recreational Accountability Measures for FY 2013, At-sea monitor option development, ABC/ACL for sub-components, yellowtail flounder allocations to the scallop fishery, SNE/MA windowpane flounder sub-ACL for the scallop fishery, timing of scallop vessel access to Georges Bank closed areas, groundfish priorities for 2013 and mitigation measures. Committee members present were Mr. Terry Stockwell (Chair), Mr. Tom Dempsey (Vice-Chair), Mr. Terry Alexander, Mr. Frank Blount, Mr. David Goethel, Mr. Peter Kendall, Mr. Harold King, Ms. Sue Murphy, and Dr. David Pierce. They were supported by Council Chairman Mr. Rip Cunningham, GAP Chair Mr. Bill Gerencer, RAP Chair Mr. Barry Gibson, staff members Mr. Tom Nies, Mr. Andrew Applegate, Ms. Pat Fiorelli, and Fiona Hogan (NEFSC), Mr. Mark Grant, Mr. Travis Ford, Ms. Sarah Heil, Ms. Melissa Hooper and Mr. Michael Ruccio, (NMFS NERO).

Discussions were guided by the Groundfish PDT Report dated October 31, 2012, Draft Framework 48 Measures dated November 1, 2012, the Groundfish Oversight Committee Meeting Summary dated October 12, 2012, the Recreational Advisory Panel Meeting Summary dated October 3, 2012, the Groundfish Advisory Panel Meeting Summary dated October 4, 2012, Scallop PDT memos dated October 23, 2012, October 25, 2012 and November 1, 2012, Council Draft Priorities for 2013, a brief summary of the Northeast Skate Complex, Closed Area Technical Team Progress Report presentation and a series of correspondence received by the New England Fishery Management Council.

### **Closed Area Technical Team Update**

Staff provided a summary of recent work completed by the Closed Area Technical Team (CATT). The CATT analysis is applicable to Framework (FW) 48 but will also be used in the Habitat Omnibus Amendment. The CATT is conducting a comparative analysis of exemption area options; three types of areas are included in the analysis, the sector exemption areas, the Essential Fish Habitat (EFH) Closure Areas and the open fishing areas. Northeast Fisheries Science Center Trawl Survey (NEFSC) data from the spring fall and winter will be examined for biological characteristics, average Catch Per Unit Effort (CPUE) by species and proportion of swept area biomass exposed to fishing. An extensive literature review will be conducted. Staff explained that the analysis will include multiple gear types and regulations governing fishing activity by sector enrolled vessels. A qualitative analysis will be conducted on comparative habitat, protected species and economic and social impacts. Staff compared the potential consequences of Option 2 that would allow sectors to request exemptions and that of no action (Option 1). Committee members had a number of questions regarding the analysis. Staff explained that the Committee will be provided with an analysis that uses recent survey data to calculate swept area biomass to estimate how much of the stocks are in the closed areas versus the open areas. Staff explained that a number of species are being examined in addition to

allocated Groundfish and that included lobsters. A Committee member was concerned about spawning cod aggregations in Closed Area I (CAI). Staff explained that the level of detail in the analysis is dependent on the available data; seasonal surveys may not capture every spawning event.

A Committee member informed the Committee of public concern about opening up the closed areas without restraint. In response to those concerns, the Northeast Regional Office (NERO) proposed an Exempted Fishery Permit (EFP) to allow access to the closed areas instead of the sector exemption request process. The EFP would be a NERO action. The idea was very preliminary with few details finalized; however, it was thought that it could restrain effort in these areas while allowing data to be collected to determine where the spawning fish are and where the fish are so as to not harm the stocks. NERO was seeking input from the Committee before proceeding with this option. Some Committee members were concerned about the shortage of time available to develop this option before the December 20<sup>th</sup>, 2012 Council meeting and wanted more information available for the November 2012 Council meeting to allow sufficient time for Council and public comment. There was some debate regarding whether the sector exemptions to closed areas would still be necessary in FW 48 if the EFP option was selected. General Counsel advised that technically the EFP doesn't need to be included in FW 48; however, if access was required after the EFP then it should be included. A Committee member pointed out that these areas were fished in the not so distant past and are not pristine. A Committee expressed support for the EFP approach because it would reassure the public that the fishing industry has no intention of hammering these areas because they don't know what fish or combination of species will be there. Another Committee member was concerned about the quality of the information being provided to the public and thought the analysis by the CATT would answer a number of questions but advised caution on applying blanket statements across a number of areas where limited data are available only for specific areas. NERO staff outlined a number of issues regarding the EFP option that still have to be resolved including observer coverage; the NERO would be able to closely monitor catch by species and restrict fishing activity based on that data. It was generally felt that more information was needed and NERO was requested to provide as much detail as possible at the November Council meeting. Some Committee members were hesitant to adopt this approach because it was meant as a mitigation measure for the industry and thought that under the TAC system it shouldn't be left up to the Service to prohibit fishing in these areas when they deem it necessary. Another Committee member considered the extent of fishing in these areas to be highly variable depending on the TAC available for all species encountered. A Committee member suggested the NERO sector group should meet with sector managers before the December Council meeting to answer their questions on the EFP process. A bottom-up approach was proposed that would allow sectors to request what they need instead of a centralized approach where a blanket EFP was established to answer multiple research questions. NERO staff clarified that this EFP approach would not provide sectors with additional ACE and that it was in very preliminary state with it still being possible to provide feedback that would make this more amenable.

Staff initiated a discussion on the consequences of an EFP on the FW 48 process. It was unclear whether sector exemptions would still be included in the FW if the EFP was used. Staff requested clarification on the regulations of the EFP and why it was being assumed that the sector exemption requests would result in all areas being open year round. Staff were concerned

that if both approaches were developed concurrently that the results of the EFP experiment would provide a better way of allowing access to closed areas and what was included in FW 48 would have to be revisited.

Some public comment included:

- Maggie Raymond, Associated Fisheries of Maine: This conversation is really disconcerting. Like Mr. Nies, I'm concerned with the Agency's comments that wholesale access without constraints and there are several constraints on access to these areas like geography, time and the industry has imposed on itself gear restrictions in CAII for example. The ACL is the major constraint on access to these areas. We have a high level of observer coverage that I'm sure will continue in 2013 that will provide information but I don't see how these areas, yes they've been closed from some times but they're really not different from other areas where we would fish. We run into constraints all the time about having high catch of something that you might not have enough allocation to cover it and we're managing that and we're managing it well. I appreciate that the Agency is trying to address public concerns, irrational as they may be, but this was designed as a mitigation measure for these incredible reductions that we'll be looking at in 2013 and some opportunity perhaps to bring some fish across the dock to keep our businesses running. We've already jumped through a lot of hoops and agreed to this very restrictive agreement with the lobster fishermen in CAII. None of these things had to happen when the scallopers got access to these areas. We never had any conversations about these issues and they're in those areas that we want to have access to I just don't understand why there's so much scrutiny over our access to some very small and highly restricted areas. I hope we can figure out a way to get this done by May 1. It looks more and more like it's not going to happen. When I look back at how long it took us to get the agency to accept our data on the redfish exemption which we still don't have, it concerns me that we're going to go through another process that I don't think we're going to have the kind of input in it as we do with the process that's been moving forward. Hopefully the agency will keep in mind what we thought was the overriding goal, which was to provide some economic opportunity that isn't going to be there if we don't provide access.
- Jim Odlin, Fishing Vessel Owner, Portland, ME and New Bedford, MA: I'm disheartened with listening to this. This gate is not untethered wide open fisheries as some people are describing it. The times that it's going to be open are not spawning times at least not on Georges Bank. Gear restrictions are in place. The TAC on eastern Georges Bank cod is 200mt so if it's caught in that area or if it's caught outside the area what difference does it make? Let's try to get a little more haddock out of it. Secondly, if we go this EFP it just won't work. You're telling people they have to make a business plan based on a lottery because you're going to want observer coverage based on when you get observers sometimes you have observers for eight trips in a row; sometimes we don't get them for eight trips. If there is fish in there, which I'll get to that in a second, you've got to let the marketplace know that they're going to have this fish for a period of time. Otherwise they're not going to get anything for them and they won't be able to develop a market. We've seen that time and time again. Area I, I can tell you has had experiments done in it. It's towed exclusively with scallop gear now the area that we're talking about opening

for dragging. The experiments I know were done by Phil Ruhle in there to perfect his Ruhle trawl and our company did I think 100 days in the two areas. CA II and CA I with the separator trawl and it was submitted I don't know what happened to the experiments but they were clean. The other issue is at the time we happened to do that experiment there weren't any fish there. You have to be careful that if you set up a lottery and a guy gets access his eight trips that he has with observers and he went in and tried it and there were no fish well then a month later the fish show up and this poor guy is not going to get in there. How is that fair and equitable? It's not going to work. Some guy is going to win and some guy is going to get nothing. There's no guarantee that there's fish in there on any given day or any given month or time. They have tails and they swim. When we went in and did the experiment, in fact, we lost money doing it because at the time we were getting paid a little bit and we took it very cheap because we anticipated there would be a lot of fish so we would augment the cost of doing the experiment anticipating high catches of haddock but there was nothing there. It was just unbelievable; we couldn't believe it ourselves that there were no fish in there at that particular time. If you're going to use this to mitigate and you go with the EFP then it will not mitigate anything. It will not increase the catch on haddock the way we need to increase the catch on haddock again we left \$450 million worth of fish out there that could have been caught. If you're going to continue to do that then you're going to have a disaster. You do have a disaster. If you had landed that then you might have been looking at a different situation. I think that's a big mistake. I think you have enough parameters around there or a particular issue you need to put into the FW that you're trying to, when people make their exemption request from the sector level, again we're under hard TACs these areas have been towed; scallopers are in CAI now, dragging has occurred in it and experiments have been done and we know we're not catching the TAC and everything else is under a hard TAC so I think it's time to move this along and not try to put more restrictions on it. That won't work.

- Drew Minkiewicz, Fishery Survival Fund: Sitting here listening to this, I'm pretty amazed. It doesn't seem like the Agency has much faith in the catch share system that they so actively promoted throughout Washington DC and the nation. If we're under a catch share system like we are now these closed areas are redundant that's what we're told and that's what they should be. The only reason you should have these areas closed is either for habitat or some kind of spawning protection but year round closures isn't the way to go after spawning protection and there's really not a lot of evidence and I don't see any analysis going into that side of the things. And on habitat outside of Ammen rock, these areas are all fungible. And two, as we've seen we have a habitat amendment that's going to need to move forward. It's very interesting to see you try to create this Rube Goldberg experiment here trying to get people in this year but you have the process in front of you to take care of this and that's the habitat amendment. Why why why is that not being moved forward in an expeditious fashion? That solves all these problems that we're talking about. What the Agency is doing here is once again showing it's utter disdain for actually achieving optimum yield in these fisheries. The agency does nothing but always throw roadblocks into fisheries actions that obtain an optimum yield and here they go again. We have a road to do this and we can take care of yellowtail issues and we can get better access. We can take care of not obtaining optimum yield on scallop issues by moving forward on the habitat amendment but we're not doing it. Why? Instead we're

talking about EFPs and crazy limits and all this other stuff. We have the solution in front of us let's do it. Let's move it. To an earlier point, on scallopers not encountering any issues, for the record, I'm not saying we should throw roadblocks up but it wasn't exactly an easy pass for the scallopers to get into these areas. They had to agree to pay for observers in those areas that turned into paying for observers all the time. They had to change their twine tops. They did extensive research to get in there; the list goes on and on. We were just able to get over the numerous hurdles that were placed in front of us. It took us a couple of years to do so. This process of the Agency not wanting you to catch fish is not new, they do it to everyone and they need to stop doing it.

- Vito Giacalone, Northeast Seafood Coalition: As a fishermen, just trying to figure out how to justify this policy shift. I thought it was well planned as far as it being a mortality closure area only. After all the years of trying to develop a habitat amendment and now over the last few years having a new tool, none of these areas have been identified by that tool. All of these areas are very typical areas. They're not areas that are unique that's why they haven't been identified to date. They're the same as the area directly adjacent to it the only difference is there's a place to catch fish there, that's the reason those were closed as mortality closures. I'm trying to figure out, aside from political pressure or legal threats, why the Agency is going down this road. The whole idea of going to trade effort controls for output controls was so that we could get access to all of the areas that were not identified as being something critical for protection. That's exactly what this does. We're under-harvesting the haddock stock by eighty percent on Georges Bank and we've given the entire Hague Line over to the Canadian's border. I can't for the life of me justify us having the complication of going through the EFP paperwork, that now these sectors are already burdened with a pile of paperwork they need to do. Who's going to be asked to assist fishermen with designing these EFPs. What does Mr. Nies do with the FW48? I still see things all headed in different directions. I thought you had it figured out fairly well. Allow the Omnibus amendment to finish what they need to do and set all the areas aside that are not on the table for that amendment. Let them do what they need to do to finish to finish the amendment on the fast track and take whatever slivers left over that aren't being talked about and they're purely mortality closures and open them up to the sectors in their exemption programs that's the only clear path. Once we start down an EFP I could see that hanging us up and now we've identified some unique portions of the ocean that don't look anything different to anywhere else but these are now the EFP areas and until someone can justify to the Industry why we've decided to go down this road it just looks like giving in to a more political situation and we're in trouble here. We have a fishery that's in disaster and we have mortality closures that are being kept closed without any justification.
- Greg Cunningham, Conservation Law Foundation: From our perspective consideration of the closed areas initially a year plus ago was to have been done under the omnibus habitat amendment. There was a formal notification. There was an opportunity for folks to comment. We were in agreement with folding it into the omnibus analysis because we were assured that there would be a full analysis that there was to be an EIS level analysis of the role of the closed areas and the extent to which they should be reopened or closed. That's why we supported it. My recollection is there wasn't much, if any, opposition to the combination of the two and that pretty full review. To address a comment that was made earlier about environmental organizations that are opposing reopening these areas. I

don't think many environmental organizations are opposing the reopening these areas. What we're opposed to is the rush to judgment on these areas. What we're opposed to is the jump from a process that was identified formally, chosen by the Agency, agreed to by the Council and agreed to by the interested parties who were involved and now we're suddenly taking an alternative route that is trying to expedite this and not review it fully. With all respect to the CATT which is working very hard on this I understand. What I take out of this is there's not going to be the complete picture that we think you need to make this decision by the time FW48 comes around. The sector exemption approach is not number 1 going to identify whether in fact there will be any mitigation provided, will the resources be there, will the revenues be there. Number two it won't tell us whether we're allowing access to the right areas or are we damaging areas that might serve a role that if damaged today would come back to haunt us tomorrow. The sector exemption approach is not the right one, it's not the right timing it's not the full review that we think we all agreed to. As far as this EFP approach, we support looking into it. It appears that, number 1, it will be more considered that there will be some assessment of who's going where when and with what gear, which is critical. I don't think we necessarily were going to get that under the sector exemption approach. Equally important, any of the info if it's truly research oriented or truly investigative that there will be some data coming out of that that could help the omnibus habitat amendment process. We can't say we completely support it at the moment but it appears to be an avenue that's worth further exploration.

A Committee member hoped that we could remove some items off the remaining analysis list that don't need further analysis. For areas that do need more analysis we could create a process for entry into the areas. The output from the CATT would allow this to move forward with as few restrictions as possible; the CATT was also asked to present data on the number of trawl survey tows completed in the areas under consideration. Another Committee member thought it worthwhile to include the sector exemption request action in FW 48 and the CATT analysis could be used to evaluate the concerns raised by the recreational fishermen.

### **Overview of Framework 48 and Recreational AMs**

Staff informed the Committee that FW 48 will not be ready for a vote at the November Council meeting; a one day Council meeting will be held on December 20, 2012 for a vote. Staff updated the Council on pending work and what will be presented at the November Council meeting such as the U.S./CA TACs and the yellowtail flounder allocation for the scallop industry. Staff guided the Committee through the recreational management measures in FW 48. Due to the timing of the Gulf of Maine and Georges Bank cod benchmark assessments, it will be a tight schedule to have the SSC develop ABCs and hold a Recreational Advisory Panel (RAP) meeting prior to the January Council meeting. A Committee member advised that while this should work, it may still be difficult to implement on time for May 1.

The Committee discussed the strategy outlined by the RAP to reduce catches that identified what metric should be used first, e.g. raise the minimum size. The RAP didn't specify if the list of priorities should be reversed in order to catch their TAC because it was assumed that the TAC would be lowered. A Committee member asked if the new discard mortality estimate for cod was being used an incorporated if the interim action was extended. The interim action extension has

already been published but the new discard mortality rate was not included as the action remained consistent with the last assessment. There was some discussion on whether the measures were mutually exclusive but the RAP chair indicated that, within reason, the minimum size should be adjusted first to an appropriate level and if insufficient to reduce catch then discuss changing the bag limits. The impact of reductions in bag limit on the party/charter industry was considered to be very detrimental to attracting business. Other Committee members considered that the way the motion was written provided sufficient guidance on the RAP's preferred order especially considering that they had no data to work with.

The Committee **agreed by consensus** to approve the language of Option 2: Revised Accountability Measure for the Recreational Fishery in the FW 48 document.

### **At-Sea Monitoring Issues**

Staff advised the Committee that the Groundfish PDT recommended not pursuing monitoring effects level in this action. The PDT did provide an alternate option for monitoring that would maintain coverage of sector trips at the level that NMFS can fund during FY 2013. The PDT will continue work on this issue for future actions. A Committee member didn't consider the eight percent NEFOP coverage sufficient to monitor sectors and might make this option non-approvable; NEFOP funding had not been received yet. Another Committee member supported this because it was a fall back measure and there were concerns that if the industry had to pay for funding at a high coverage level that there would be few trips taken.

**Motion:** To include in Framework 48 the PDT's Option X for observer coverage for FY 2013: at-sea monitoring coverage of sector trips at the level that NMFS can fund during FY 2013. (Mr. Dempsey/Mr. Goethel).

A Committee member expressed concern that this level of coverage is inadequate for a catch share program and the low ACLs will provide for increased constraining costs with insufficient coverage. The issue of 100% coverage in the closed area exemption areas was raised but a Committee member indicated that a decision has not yet been made on a required coverage level in these areas. The NEFSC is working on a response to a letter regarding when Electronic Monitoring (EM) would be approved for monitoring. A Committee member considering this a unifying motion that would get all parties involved, the Agency, the industry and the environmental groups, in asking for more money for monitoring costs in FY 2013.

Some public comment on the motion included:

- Gib Brogan, Oceana: I agree with everything that Dr. Pierce had to say about flying blind going into FY 2013. This fishery with the sector program is data dependent, relies on the monitoring to do the work to make sure we're not going over either a PSC or an ACE or an ACL and going in and throwing the industry at the mercy of the Agency just doesn't make sense here. The language that came from the PDT seems to be much different to what's in the motion. The motion sets a monitoring level that corresponds to the funding coming out of the Agency. Or my read of it is it's going to set an option there and that's not going to satisfy any of the needs of this fishery. Monitoring at a level that NMFS can

fund in FY 2013 and that's setting a very low bar, essentially the NEFOP coverage level and setting that and trying to make the case that that's going to satisfy the needs of this fishery. For all the reasons that were laid out that's just not going to do the trick. I think this is a non-starter. I agree with the intent and the request from the Council to the Agency to continue funding I think that that is a necessary right now but creating an alt that is flawed doesn't serve anybody and it's going to create a hope that operating with a very low observer coverage level that's just not going to do the trick for the fishery. I think this needs to be modified to express the intent expressed at this table but creating a new alternative at this late stage at this low level is just a big mistake.

The motion **carried** on a show of hands (6/0/2).

Staff described work done on an idea developed by the Committee on shifting monitoring effort away from trips that do not catch a lot of groundfish. One of the ideas was to create an option for a measure that would have different coverage rates for Extra-large Mesh (ELM) sink gillnet trips in Southern New England (SNE). An exemption for ELM sink gillnets was recently published but it did not include the two areas proposed in this measure, SA 537 and 539. The bottom longline was not considered for FW 48 because it is included in a proposed exempted fishery already. Staff requested guidance from the Committee on whether they wanted to include the ELM sink gillnet option in the FW document or pursue in an exempted fishery. A Committee member queried whether the existing coverage level for this fishery is dictated by the marine mammal coverage but the exact marine mammal coverage rate was unknown but this measure was developed solely for ASM purposes. A Committee member informed the Committee about the monkfish exception in SNE with gillnet gear at 10" mesh, west of 70° latitude. The monkfish plan requires you to use groundfish DAS until you run out of groundfish DAS and then you can fish monkfish only; when you fish the groundfish DAS you get the discard rate associated with a groundfish trip. A Committee member indicated that an exempted fishery was not possible to achieve this unless there was a joint action by the monkfish and groundfish FMPs that would exempt the groundfishermen from fishing on a groundfish DAS when they're fishing on a monkfish DAS. Another Committee member suggested an additional pre-trip declaration that would allow you to cover that bin at a determined level but this would require a software update, which can be a lengthy process. Decoupling from monkfish was suggested but there was concern about the ability to include this in the FW without delaying it.

**Motion:** To include the PDT's option 2 – lower ASM coverage rates for vessels on a monkfish DAS using ELM sink gillnets in SNE. (Mr. Dempsey/Mr. Alexander).

There was concern about significant monitoring issues associated with this approach; ASM would be at a lower level in these areas. A Committee member wanted to see some analysis of the eastern SA to decide whether it should be included in the final motion as there was concern that trips are not in that area and that area had enough groundfish in it to not be included.

The motion **carried** on a show of hands (5/1/2).

**ABC/ACL for sub-components**



Staff described the ACLs for sub-components that the PDT reviewed and determined that no general changes were needed. The PDT did not find it necessary to change the buffers because the monitoring bias remains unknown and only parts of the ACLs are being caught making the determination of the need for an additional buffer difficult. The PDT did suggest changing the buffer for GB winter flounder from five percent to three percent resulting in a slight increase in the allocation. The buffer for SNE/MA yellowtail flounder was changed from seven percent to five percent; the buffer for scallop fleet was maintained at seven percent. The PDT proposed to increase the GB yellowtail flounder other sub-component to eighteen percent due to small mesh fisheries on GB and is strongly impacted by the small quota; future actions may want to consider a sub-ACL for this fishery or change gear requirements for the whiting fishery. State waters catch for Cape Cod/Gulf of Maine yellowtail flounder has increased resulting in an increase to six percent; the other sub-components was maintained at two percent. A Committee member suggested a proactive approach to Georges Bank yellowtail flounder by required a raised footrope in the FW but concerns about sufficient public notification was raised; the two Council meetings were considered sufficient. Another member informed the Committee of a thesis research project that estimated the biomass of GB yellowtail flounder that suggested we have underestimated the biomass by threefold but it was unclear how that would change the TRAC estimates. Staff clarified that the eighteen percent for the whiting fishery would be included in the document; other alternative based on gear restrictions could not be commented on because they have not been analyzed.

Some public comment included:

- Drew Minkiewicz, Fishery Survival Fund: One question to Mr. Nies, how have fisheries that are not allocated performed with regard to their ACLs? With regards to the eighteen percent for whiting we strongly encourage you to do something as soon as possible allowing on fishery to continue status quo when we have a known gear fix that we know would work. This isn't revolutionary the raised footrope trawl has been around for quite some time. For the whiting fishery, we know it works and to not take advantage to reduce their bycatch when everyone else is doing everything they can to reduce bycatch right now it's just inconsistent and incomprehensible. So whatever you can do to move that forward as quickly as possible to get under the two Council meeting rule to get that in place for the coming year I strongly encourage you to do so.
- Maggie Raymond, Associated Fisheries of Maine: I'd like to support the Council considering that. If you can't do something in this framework then make it a priority. When I was looking at that information in the PDT report I was reflecting on a few years ago when the Council was looking at haddock bycatch in the mid water trawl fishery and I discovered that there was significant haddock bycatch in the whiting fishery on Cultivator Shoal and never acted on that. I think there are other issues with that fishery that we need to take a look at.

**Motion:** To add an option to require the raised footrope trawl to be used in the Georges Bank broad stock area for small mesh fisheries. (Mr. Goethel/Dr. Pierce).

*Rationale:* I know a number of fishermen who use the raised footrope trawl in the whiting fishery on Cultivator Shoal so I know it can be used there but I'm not sure about the Canyons without

input from the squid and whiting fishery. The thing we need to analyze is how deep Georges Bank yellowtail flounder go in the Canyons and whether we need to include all entire Canyon in the raised footrope trawl requirement. This is meant for any mesh below 6.5 inches.

Some public comment on the motion included:

- Jim Odlin: I would think you'd want to look at the other category's history of catch and not just recent so you can figure out how to allocate to that user group. Just because it was eighteen percent last year it could have been a high level and that they should be at five percent. I'm not sure. I suspect there used to be five percent otherwise they would have been in the other category. I thought the mechanism was once someone went out of the other category then you figured out what you'd do with them and move forward with that. That doesn't mean what you give them what they what caused them to get out of the other category and that's what they're allocated.

Staff informed the Committee that it would be difficult to include this in FW 48 because of the short time before final vote in December 2012. A Committee member provided results of a study conducted in Vineyard and Nantucket Sound using the raised footrope trawl and it performed well in shallow water; it is untested in deeper water but it is assumed to perform the same. Another Committee member suggested investigating some of the whiting fishing activity as the only whiting exemption on Georges Bank is the Cultivator Shoal; the southern flank of Georges Bank could be in the SNE broad stock area and not covered by the SNE whiting exemption. Staff considered the high percentage is because of the low quota and not a dramatic increase in catches.

The motion **carried** on a show of hands (8/0/1).

**Motion:** To include an option in FW 48 that would allocate a sub-ACL for Georges Bank yellowtail flounder based on the recent catch history in the small mesh fishery. (Mr. Dempsey/Mr. Goethel).

*Rationale:* We need to be careful when making quick decisions to allocate. Once we give a fishery a sub-ACL of eighteen percent it's not going to be revisited soon and it's going to have long-term consequences. I think we need an option in the document similar to what we've done with sub-ACLs for yellowtail looking at recent catch history in the small mesh fishery on this stock. Without this we only have the eighteen percent and I'm not sure we've fully explored that.

A Committee member considered that given the recent years catch it may not meet the objectives of the motion because recent landings were twenty percent. A lower number was considered to provide incentive to reduce catch of yellowtail flounder.

**Friendly amendment to the motion:** To include an option in FW 48 that would allocate a percentage based sub-ACL for GB YTF based on recent catch history in the small mesh fishery (Mr. Dempsey/Mr. Goethel).

The tonnage appears constant but the percentage increases when the ACL goes down. Clarification was necessary to specify whether a percentage or tonnage was to be used for allocation determination. No time frame was considered in the motion as it was being left to the PDT to define the recent time period. NOAA General Counsel queried why this approach wasn't being suggested for other stocks that have seen large changes in sub-component catch. The maker of the motion thought that to be considered under groundfish priorities given time restrictions on this FW. A Committee member reminded the Committee that an AM would be required for any sub-ACL and this would have to be done in the Whiting FMP; the consequences of this motion were delayed until the priorities discussion. The Regional Administrator (RA) has the authority to shut these fisheries down if they exceed their five percent.

Some public comment on the motion included:

- Jim Odlin: People were put in the other category because they were below five percent. If you automatically you have a situation where they go up to eighteen percent then you're rewarding them. Everybody in the other category is going to be sure they catch more than five percent. You have to take this as a precedence setting thing. The idea that we had these other categories was specific just because someone jumped out of that doesn't mean you automatically let them have eighteen percent going forward I'm just using that as an example but you have to be careful with this. Otherwise if I was in the five percent category then I'd make sure I catch over five percent because that's what my future allocation could be. This is a very serious place to be and just because the tonnage went down of that catch that has nothing to do with people being in the five percent category. They were there because at that time they didn't catch more than five percent.
- Maggie Raymond: I think in the short term it would be best to go at this issue of bycatch of groundfish in the small mesh fisheries through a gear approach first because I share the concerns that Mr. Odlin has raised. I just wanted to point out that I do believe that there is currently a drop chain experiment going on in the squid fishery that would provide some useful information on the motion that passed earlier.
- Dave Frulla, Fishery Survival Fund: We distributed a letter this morning that will raise this issue in more detail this afternoon. The bottom line here is that there isn't enough Georges Bank yellowtail flounder allocated. When you try to do it, it's only going to get more complicated with more unexpected consequences. Larger fisheries where you have winter flounder is 600 mt that are low, you're to allocating them and they are larger than this Georges Bank yellowtail flounder. This is going to spin in ways you cannot imagine. I would encourage you to think about how you're approaching the Georges Bank yellowtail flounder. The problem here is the TAC went in the tank in ways the allocation system isn't designed to handle yet. The small mesh could end up with eighteen percent and scallops end up with sixteen percent; at sixteen percent the scallopers couldn't even get out onto Georges Bank.
- Vito Giacalone: We have to be careful with these issues but to not allocate we don't see how that would solve the problem at all. You can't land yellowtail flounder in the whiting fishery and that's probably why they ended up at 18% in one year. There's no accountability to it at all. If we remove allocation altogether and we just allow the fisheries to be prosecuted what's to stop the eighteen percent to be forty and sixteen to be ninety. You have one group right now that's still held accountable for every pound and

that's the groundfish fleet by not allocated it would put the groundfish fleet in the same situation as the whiting fishery in the past and just go out there and freelance. We just don't have enough yellowtail flounder, it's absolutely right it's the low ACL that's gonna kill all the fisheries but you're still required to divide up an ACL into some kind of sub-ACLs otherwise we end up with the same situation where there's no way to add up to one. Accountability seems to be something we can't let go of as these ACLs get lower.

The motion **carried** on a show of hands (6/2/1).

The Committee **agreed by consensus** to incorporate the PDT recommendations on the ABC and ACL sub-components; one Committee member wanted the words "up to" included in the text as gear restrictions might lower the sub-component but this would be difficult to analyze.

### **Georges Bank Yellowtail Flounder Allocation to the Scallop Fishery**

The Council will have to make three interrelated decisions: 1. The Georges Bank yellowtail flounder ABC, 2. Georges Bank yellowtail flounder allocation method and 3. The Scallop FW 24 management alternatives. There is also an additional decision on the timing of the Georges Bank access area. The Scallop PDT has indicated that only alternatives two and four are under active consideration. Staff described the two approaches that could be taken: 1. ABC – Allocation method – Scallop alternative and 2. ABC – scallop alternative – allocation method. There are two potential ABCs to consider, 500 mt and 1150 mt, but staff is using the 500 mt as an example as it is in line with the TMGC advice. For the allocation method, there is a no action, a fixed percentage or ninety percent. There are five scallop alternatives under consideration. The fixed percentage would provide an easy, defined amount known in advance but it ignores annual variation in fisheries and it's not an automatic adjustment and the number may change with time. The ninety percent approach is a closer match to planned fishing activity and an automatic adjustment but it's complicated and has a mixed prediction performance. If the scallop industry is allocated more Georges Bank yellowtail flounder, the groundfish industry would get less; the opposite is also true. The Scallop PDT has completed an analysis of what the impacts are on the scallop industry. With respect to the fixed percentage options, those fixed percentage amounts are so low that it may be necessary to alter the scallop management strategy. A modification might not be necessary in FY 2013 but it is possible the AM would be triggered in FY 2014. Staff presented a table that outlined the economic impacts on the scallop industry. The presented revenue losses were in addition to the projected thirty percent decrease expected next year. There is a risk that CAII would have to be closed in 2014. The ninety percent allocation, while higher, is only ninety percent of what is expected to be caught there is a possibility that it could lead to a closure. The allocation needs to be done so the Scallop FW 24 can move forward.

A Committee member queried why the 1150 mt proposed as an ABC by the SSC, as a bycatch fishery, wasn't being presented here. The Overfishing Level (OFL) that was set by the NEFSC was considered to not valid as it wasn't set by the SSC, despite repeated requests to the SSC to do so. Another Committee member didn't think there was any scientific basis for the SSC's recommendation and the TRAC advice was the best available; anything over 500 mt could result in overfishing and violate National Standards 1 and 2. A Committee member thought the SSC didn't provide rationale for any of their recommendations. NOAA General Counsel explained

that there are other aspects of the law have to be taken into consideration when implementing the law and to state that the upper bound of the SSC range must be taken is an oversimplification; the charge of the Council is to adopt options that meet all of the requirements of the law and not blindly accepting an SSC recommendation that in its total scope does not necessarily fit in those things. Another Committee member suggested picking a preferred alternative based on the options presented and postpone the discussion on the 500 or 1150 mt issue.

The Committee **agreed by consensus** to postpone the 500 or 1150mt ABC issue.

Some public comment included:

- Drew Minkiewicz: I'm very concerned from a procedural standpoint, what's being touted by the Service is not in accordance with the law. The law clearly states that the SSC will set a limit that they do not think should be exceeded. There's nothing about the Agency coming in and giving a number. The whole thing was to get a panel of experts that the SSC is. I can understand the frustration at the SSC not defining an OFL but the answer is not then to go to the NEFSC and just get a number it's to ask a third or fourth time or how ever many times you have to ask to get them to comply with the law. As for not providing the rationale for the 1150mt I could not disagree with that more. I had the good fortune of sitting through that meeting that it was discussed for hours as to why they put the 1150 mt out there. That was because there was so much uncertainty in the assessment that they weren't sure if they were shooting too high or too low because the assessment is poor to say the least. They were worried procedurally if they rejected the assessment out of hand what would happen so as a middle ground they said we don't really believe the assessment and see some troubling signs but there's also so much uncertainty in this assessment that what makes sense is to set this as a bycatch only fishery and if they're not there then they won't catch them and if they are there they'll catch them so let's set it up to 1150 mt, being the TAC from last year. If they get near that then we'll know that the assessment is off and underestimating the population. That was hours of discussion at the SSC before and after lunch because they came back at it again when we thought it was all over at lunchtime. So statements that there was no rationale are completely not based in fact. I encourage anyone who thinks that to go and listen to the tape. There is a rationale. There is a procedure in law that they just can't be cast aside by the Agency for a matter of convenience. You do have a motion that has this in play so Dr. Pierce is right. This is an option; this has to be carried forward. The SSC should give you an OFL but because they haven't doesn't empower the NEFSC to just throw the number out there. That's not how it works.
- Mary-Beth Tooley: Mr. Nies, you were hoping for the economic impacts to be available maybe next week. Have you had any chance to analyze what the needs of the Groundfish fishery would be if it were a bycatch fishery only? If you were to go with the advice from the SSC do we know or have a way to figure out what that number would be? Is that information going to be available for the Council next week? If we have a discussion on whether or not we would go with the advice from the SSC to have a bycatch fishery only it would be good to have some idea of the best ways to go about that. If for your example the separator trawl, I don't know if that's the right answer but perhaps that might make a

difference. Is all that in the material from the TMGC stuff, is that where I go to find it? Or is that something you could have for us by next week. I think I understood some of the rationale for the zero possession but to me there's a difference between zero possession and trying to minimize to the extent practicable interactions with a species and for example not knowing if that's the right way to go or not, if the haddock separator trawl on Georges Bank would allow you to catch haddock and minimize your interactions with yellowtail flounder that might be something for the Council to consider.

- Dave Frulla: Did the Scallop PDT to the extent that you know factor in the eighteen percent that would go to the small mesh fisheries in the charts and economic analyses that they were doing? Because as I read that, that gets you down to 180 mt to split out.

Staff explained that the economic analysis will be done on the 500 and 1150 mt ABCs. A Committee member disagreed with taking unasked for management advice from the SSC in which they use a new and undefined term and don't clearly justify how the OFL and ACL can go up if we're not targeting a stock.

**Motion:** The Groundfish Committee recommends the Council select the ninety percent Georges Bank yellowtail flounder allocation alternative to the scallop fishery as the preferred alternative. (Dr. Pierce/Mr. Blount).

*Rationale:* The ninety percent provides the most benefit for the scallop industry and the nation.

The Committee discussed the different scallop alternatives and the impacts those would have on the groundfish allocation; alternative four would provide more yellowtail flounder to the groundfish fleet than alternative two. Any overages result in a one for one payback; it would have an immediate impact on the groundfish fleet. The Scallop Committee chair clarified that alternative four is not in the Scallop FW 24 document; it is an alternative that is being suggested by the Scallop PDT but has not been voted on by the Scallop Committee. It was thought mathematically possible that the scallop industry could need more than the entire OFL and the impacts on the groundfish industry were very sensitive to the Scallop alternative. A Committee member considered there to be insufficient fish to go around and not everyone should go under so allow the scallop industry to continue; however, another member didn't think the groundfish fishery in New England to be a lost cause.

Some public comment on the motion included:

- Jim Odlin: Yellowtail flounder is very important to us. We need to have enough bycatch in order to target haddock and other species in eastern Georges Bank. It's been our bread and butter for many years. One thing that the Council has to consider in this type of thing is whatever allocation you pick has to be fair and equitable that's part of the law. Giving one industry ninety percent of what they need and another segment one percent of their need cannot be construed as fair and equitable. I don't know how we had that fly the first time. Not only that but that type of option has done nothing but cause this type of Council problem since we did it. We've been here every year because you cannot depend on projections when you're allocating it just hasn't worked every single year. One of the things that I did when I was sitting up there was I always tried to be fairly consistent

when it came to allocations. If you're consistent with the way you do it, it becomes much easier for you to do. So when we had to allocate haddock on GB bank to the herring fleet we did it based on their past history and we took one of their lowest ones and not the highest from what we were presented with in spite of the fact that we didn't have a haddock problem. So we still allocated based on catch history. When we allocated the general category scallop fishery we allocated it best on catch history. When we allocated the groundfisheries to the recreationals we did it based on past histories. To go down this way it will continue to not work for you. You have to ignore the number, that's a separate issue. You have to allocate it and then the fisheries have to figure out what to do then. If the Council had continued on their path three years ago and had instituted a trade that the scallopers killed, you wouldn't have this problem, you would have allocated it and you would have traded between industries. No one wants the scallopers to go out of business but you have to be fair and equitable. Secondly, the scallop management has to get away from managing the fishery based on yellowtail flounder; you have to manage based on scallops. The changing conditions are always going to be there so if you take a percentage then eventually you'll have to figure out a mechanism for the industries to rationalize it themselves.

- Drew Minkiewicz: I agree with Mr Odlin. Towards managing scallops for scallops, I couldn't agree with him more. We're getting too caught up on stuff. You have to give the scallopers a change to fish and catch those scallops to whatever level of yellowtail flounder they may end up with in the allocation process. You curtail any possible improvements on the ways to do things; the scallop industry has been proactive on how to reduce bycatch. We have paid for and instituted the bycatch avoidance program with SMAST. The research that we're about to talk about looking at lower bycatch is all funded by scallop research set-aside and conducted by scallop vessels. The list goes on; we've been very active changing the twine tops, looking at low profile dredges, turtle dredges. One of the benefits of the turtle dredge is it reduces flatfish bycatch. There is a number of things that we're doing. To this motion obviously of the 3 options before you this is the one that is most beneficial to the scallopers. So we support it but in our letter we propose taking a different approach. The fact is the 215 mt isn't enough fish for a directed fishery it shouldn't be allocated. The majority of the fish that we don't allocate don't exceed the ACL because there's incentive to reduce bycatch and that's what the SSC is talking about as a bycatch fishery I'm confused by the befuddling of the term; it's actually something we do quite a bit. To the theoretical approach to the scallopers that were allocated more than the actually ABC what that then shows is what we already know the assessment is broken. It would give someone the courage to actually overrule it. Mr. Goethel is right that the SSC didn't have the courage to say what they were all thinking it was broken. One of the reasons is because they weren't sure that if we reject the assessment then what do we do. I would argue then to go with the trawl survey indices. The trawl surveys haven't seen a precipitous decline in numbers and are at the highest indices recently but we can't look at them we have to go with an assessment that we've rejiggered three different times. We've been trying to talk amongst ourselves to come up with a better plan. To that possible theoretical of this being allocated more we would finally give someone the courage to say the assessment is broken. How can a bycatch fishery catch more than there are, that's ridiculous. Moving forward with that,

not allocating in one way and if we go this way the scallop industry supports this over the other alts. This is something that allows us to go forward. We'll still have to take reductions but this allows us to move forward. The scallop industry will push hard for alternative two. Alternative four has not been added to the document. It wasn't requested in a motion by any of the Committees or the Council; it has not therefore been put into the document accordingly. If it does make it into the document in November, it fails the 2 council rule. In our mind Alt 4 is not a viable or legal mind in our option. We strongly support alternative two. This option in front of you benefits the nation most. This provides the most benefit to the nation.

- Maggie Raymond: We can't support this motion. Certainly I don't understand how it's even possible to pick a preferred alternative without an idea of the impact is going to be on the groundfish fleet. I can assure that it's going to be significant. There are a couple dozen boats that have been tied up for a couple of years because during the qualification period for groundfish they lived on yellowtail flounder and now they have none. How many hits can the groundfish fleet take? At some point, you can't throw us under the bus to save the scallop fleet. We think a fixed percentage is the way to go forward. It's unfortunate for everyone that this ACL is so low but the fixed percentage will help keep everyone accountable. We can't be completely closed out of Georges Bank and then where will those boats go? Well some of them will go to the Gulf of Maine where we can't have any more pressure. This option is not workable for groundfish fleet and I encourage all of you to vote it down.
- Vito Giacalone: We oppose the motion as probably the least favorable option of the options available. We think this doesn't get to the problem at all and certainly we don't think the solution is to crush the scallop fleet and that's why we don't see the alternatives in what you have before you now as saving anyone. What's killing us is the 215 mt. We oppose the ninety percent. Northeast Seafood Coalition members collectively have approximately 47% of Georges Bank yellowtail flounder PSC; it equates to next to nothing at this level. So when we talk about need you've got a directed yellowtail flounder fisheries that's been basically on hold for four years and it's been in a steady decline based on the ACLs so that fleet is basically tied up unless they own multiple boats and permits. So when we talk about need all these guys have right now is that little bit of lease value that we have from those fish. When we get down to the 218, no one has done an analysis as Ms. Raymond has pointed out on what happens if the haddock fishery shows up again on Georges Bank especially in the shallow part. That's going to require, even with modified gear, some yellowtail flounder maybe a basket or half a basket. That adds up. We're not catching any of our haddock TAC and we're going to lose our fishery. So giving away potentially all the yellowtail flounder, basically means there's no haddock fishery on Georges Bank next year. I can't even contemplate how we can have a preferred alternative on the table without having those consequences evaluated yet. At the very least rather than considered but rejected it shouldn't be voted up. The underlying problem with the science, I think Mr. Goethel gave the best explanation of where the SSC was, I was at that meeting, and they certainly suffered over the uncertainty in the assessment altogether. We do with that they had rejected the assessment to say that the uncertainty was so wild that if the fish are in the way with all else removed then and if



you don't catch them then it's no problem and that's where they came up with the 1150 mt. I think this is going to take some real thought between the two plans on how to make both fisheries survive next year.

- David Frulla: I heard Mr. Giacalone say there hasn't been a directed fishery in the last three years because there hasn't been enough fish. I'm having a hard time understanding why there's a discussion on having any sort of a directed fishery next year when there's even less fish now. The argument that if we use the ninety percent need approach, the groundfish fleet would have no fish to fund haddock doesn't make sense because the alternatives show that yellowtail flounder remains under the scallop alternatives except for the ones that simply don't haunt for anybody. The fact that alternative two is being considered, alternative one was the one the PDT came up with first. The Scallop fleet asked to be moved into Nantucket Despite potential issues with the scallops in Nantucket to try to make things balance out better. We've been at the ninety percent and it hasn't worked perfectly but we're looking at a sixty-odd reduction in access area trips. If you go with alternative four then that goes to seventy-five. If you allocate true to an 8 or 16% then you'd have none. You wouldn't get a full trip. It's a difficult situation and we hope something can be worked out. What seems to be happening though is the system is blundering along. It's going to lead nowhere good for anybody. I've been involved for a while with this, the scallop industry fished almost 360 days then it went to 120 in Amendment 7 and now it's at 30 to 40 DAS at most. At the same time the fishery is a lot more efficient. It needs a little bit of yellowtail flounder to get it going. This is a start of how we can execute the scallop fishery next year.

The motion **failed** on a show of hands (2/4/3).

**Motion:** To recommend to the Council that the preferred alternative for allocating Georges Bank yellowtail flounder be set at a fixed percentage of Georges Bank yellowtail flounder of sixteen percent for the scallop fleet. (Mr. Goethel/Mr. Kendall).

Staff explained that the sixteen percent came from the highest yellowtail flounder catch by the scallop fleet in 2006 but the discussion at the Council meeting somewhat got away from the direct link.

Some public comment on the motion included:

- Jim Odlin: I support this motion. As I stated before once you get this done it's easy, it's formulaic and you don't have to keep coming back to this particular issue and we know the projection of ninety percent need is not working. Again I submit that that ninety percent need is not fair and equitable. After this you have to figure out, and the industry has mentioned it, we've been trying to figure out how to do this on our own on how we could possibly institute some kind of trading or something that's not inclusive here. The Council has to come up with that solution at some point because not just for this stock but for all stocks as you see in these ACLs and AMs there's going to need to be maneuvering done. It really is irrelevant what the number is. It's irrelevant that if the groundfish

industry didn't go to Georges Bank what it would cost because we've never done any of that analysis before for instance, somebody mentioned recreational. We know we're going to have a problem in the Gulf of Maine with cod. What if we said it's more important to have the commercial fishery because it's so historic that we're not going to allocate to the recreational fishery. It just doesn't work that way, you've got to be fair. I think that's high on their historic catch so give them that and they have to move forward and figure out a, if the science is right, which everybody says it isn't but b, some mechanisms and incentives for them not to catch it. We see now, I just heard a number, what 141 percent overrun, on their projection possibly? Then what good is the projection? That's just not a way to run anything. This to me seems to be the only way to go but then you have to follow up on how to fix this.

- Drew Minkiewicz: Strongly oppose this motion. Ms. Murphy had mentioned the 140 percent projection she also stated those go down throughout the year as you get more observer data in when we go into the low bycatch months that we are entering now so trips that are taken now are going to have a lower D/K ratio and bring down the overall average. Every year we've done this and it goes up and then starts dropping like a stone towards the end of the year and we end up much lower so that 140 number, I wouldn't really give any credence to. I understand why it was put up there but I think we should have these caveats that it will drop like a stone so we're going to be much closer to 100 percent than the 140 percent. So anyone throwing around the 140 percent is just trying to scare you frankly. On this I understand the arguments behind the history and many fisheries have been allocated that way this one hasn't. This will be the first time you do it this way. It wouldn't be consistent with how you've been doing it up until now and you'd be changing it at a when you'd be giving a fishery what you know wouldn't be enough for it to prosecute its fishery. This doesn't allow access to Georges Bank. We're going to push for in the scallop plan basically to allocate based on scallops as we should as has been said by many people. But this amount doesn't get it done and you're knowingly overallocating a fishery doing this and how you would still then allow a directed fishery to go on at such low levels and take another fishery under to allow this miniscule directed fishery doesn't make any sense. So the ninety percent option isn't right; this wasn't right. There's something in the middle. We have time because we have two Council meetings on this topic; you can introduce a new option now. Something in the middle maybe 50/50 that would allow both to go forward because this just like you didn't want to take down the Groundfish fishery and I get that but this one kills the scallop fishery. You're going to take one very successful fishery and you're going to kill it over yellowtail flounder to allow a non-existent directed fishery to go forward? Is that really what the Council is going to do here? I don't like speaking ill of the groundfish fishery or going after them but with 215mt there's no reason for a directed fishery at that level and then to give the scallopers what you know isn't nearly enough to go after a fishery when you know they're already facing a thirty percent reduction. You're taking \$240 million out of the economy. Wouldn't that be a campaign ad? That's not reasonable that's not responsible management. Let's get to a responsible solution that this isn't. Hopefully when we get rid of this assessment and get back to reasonable numbers of yellowtail flounder then maybe we can revisit this because taking \$240 million out of this economy is ludicrous. Not acceptable and to do it for a fishery that by their own statements doesn't exist anymore.

Yes they need fish to go after the haddock but they don't need eighty-four percent to go after the haddock, not with a separator trawl.

- Dave Frulla: The suggestion was made that allocate the sixteen percent and then we'll figure it out. Well there's basically two ways to figure it out. One is cash and private transactions, which one work under the system we have now. The second is to have the scallopers get sucked into the sector system. I really don't relish going back to have that conversation with our clients and say hey you got sixteen percent but the good news is you can get into the groundfish sector program. Most of the groundfishermen want out of the groundfish sector program.
- Vito Giacalone: We see the FW 48 allocation discussion as far as how to split that stock by ratio as a long-term message for policy basically. We have a 2013 emergency that's not going to be solved with what you pick for an alternative for allocation for this fishery in the long run. For the long term reasons and for the policy reasons and the fairness reasons we support this motion at sixteen percent because it's the high. We also recognize that it's not enough for the scallop industry and we also recognize that we don't want or expect scallop fishermen to join. There's got to be a mechanism that somehow use of yellowtail flounder in the scallop fishery can be accounted for in the groundfish side of the equation. There have been some discussions on how that can be done but we're not there yet. The reality is that's not a reason to make a wrong fair policy choice and I think this is a fair policy choice and together we're going to have to figure out how the two fisheries survive. It's not going to be by the simple motion you have before you. How do you allocate fairly and equitably between these two fisheries and split the AMs that are required in MS. We all have to be accountable for our catch and you have to do it fairly.

The motion **carried** on a show of hands (4/3/2).

### **SNE windowpane flounder AM**

The Committee discussed developing an AM for SNE windowpane flounder rather than create a sub-ACL. If it's adopted the scallop fishery will develop AMs but that will still leave some caught by other sub-components. The proposed methodology is to have the AM apply to all trawl gear over a certain mesh size, i.e. over 5 inches. The Mid-Atlantic Council representative said that this had been raised at their last Council meeting and if it should be pursued then it can be put on the December agenda.

The Committee **agreed by consensus** to pursue an AM on all trawl gear over 5 inches for SNE windowpane flounder.

### **Dockside Monitoring for Sector Trips**

Staff explained that the way the measure text is drafted it only includes sector vessels and it should be advised if common pool should be included. There was some discussion on how dockside monitoring (DSM) would be funded and if industry had to pay, what available options

were if they couldn't fund it. There may be some issues with the legality of industry paying for this coverage and the NERO is currently discussing this issue with observer providers. The remaining issue is the mechanism to be used to split costs with the industry. A Committee member wanted a detailed description of this option in the text so that every local seller would be aware of the requirements and that DSM costs could be higher than what they earn. NERO staff informed the Committee that they are working on a number of options but are waiting for the Council vote on whether to remove DSM before pursuing them with sectors.

### **Scallop FW 24 Joint Action**

Staff provided an overview of the Scallop FW 24 joint action with groundfish and focused on PDT analysis of Georges Bank yellowtail flounder abundance in CAI and CAII based on available research to determine suitable access times to these areas. Yellowtail flounder bycatch appears to be lowest in May – June and higher in March – April. It appears that to minimize bycatch of yellowtail and windowpane flounders May – June might be a suitable time for CAII. The number of tows in CAI limited conclusions. This issue will be voted on at the November Council meeting.

### **FY 2013 Mitigation Measures**

The GAP put forward a number of mitigation measures for FY 2013 that included landing barndoor skate. Staff provided a number of reasons on why the Skate PDT did not support landing barndoor skate at this time. These primarily focused on the life history of the species and the recent leveling trend in the survey indices. Barndoor skate are slow growing and mature at older ages when compared to bony fish such as cod. This mitigation measure would require a stock assessment of the Northeast Skate Complex and Council action. One Committee member expressed frustration that fishing on a stock that was not overfished and with overfishing not occurring was prohibited on this stock while other stocks that were overfished were still allowed to be landed. It was felt that a lot of effort was being wasted by throwing these skates over while they could develop a market for the species. Another Committee member pointed out the estimated discard mortality on this species was fifty percent so they weren't all dying and they are not rebuilt yet so this would not be considered as an Emergency Action to allow landing of this species.

Some public comment included:

- Maggie Raymond: I'm sitting here listening to this conversation about the life history of barndoor skates and I'm trying to figure out how a dead barndoor contributes to rebuilding or reproduces. We've already determined that half of them are dead when they're discarded so again how does that contribute to rebuilding or how do they reproduce. I sat through a Council executive committee meeting where they were going to turn over every rock for mitigation measures for the fishery in FY 2013. What have we found? What's on the table? This idea doesn't really have a significant impact on our sector but it will bring more money to some fishermen who will be desperate for some money in FY 2013. An Emergency Action can be pulled back at any time. If all of a

sudden the landings of barndoor skate go through the roof then stop it; tell them they can't land them anymore. It's not like you're passing a regulation that will go on and on forever. At most it could go on for a year and you can stop it within that year. I hope the Committee will make a motion to advance these recommendations as well as the other recommendation made for an emergency action by the GAP because again I don't see any mitigation on the table yet. We've got to find something.

The second measure proposed by the GAP was due to an emergency situation for yellowtail flounder for FY 2013 to request a trade with Canada and the additional fish would go to the groundfish fishery. The Council Chair informed the Committee that it will be on the intercessional agenda in February but the TAC for FY 2013 had to be finalized to begin negotiations. The Committee also requested the Agency fully fund sector monitoring costs; the decision is still pending. The GAP also requested that the Committee support an Emergency Action to eliminate the monkfish trip limit in the northern fishery management area.

Some public comment included:

- Maggie Raymond: I want to address the issue of why the trip limit appears to be not constraining. My boat had a trip last month, an eight day trip, where we averaged 650lbs monk tails a day on that trip, which meant that we had to use monkfish DAS. We could have had 1200 lbs a day under the monkfish trip limit but we didn't. That only works until you run out of monkfish DAS. And then you have to throw over 350 lbs of tails a day. At \$3.50 a lbs every single day of the week. It's a problem. Why haven't we solved it through the Monkfish FMP. That's a good question; we've been working on monkfish action for two years and we don't have a title on the document. This is the only way that we can potentially get some kind of relief. It won't hurt the stock. Again, the ACT is well below the ACL in this fishery in the northern area. An emergency action you can stop. If everyone starts going crazy on monkfish you can stop. It's 6 months at a whack or less. Let's turn over those rocks and find a place for somebody to make some money.
- Jim Odlin: On the monkfish thing, I don't think the data will ever show it because people move. A monkfish is used in an accumulation of you look at the day's pay, monks, skates, dabs, hake and everything. You fish and catching 600 lbs a day but you're only allowed 300 lbs but we stay doing that until you have the 300 lbs for the full length of the trip and then we move somewhere else. So you may not be discarding the extra 300 lbs but you might not be staying in that area you're actually moving people away from what could be a good day's pay but that extra 350 lbs of monkfish at \$3.50 a lbs is an extra \$1000 for that day. That's the difference between making the day pay and the day not paying. So they would actually just shift so I think it's important to do it. While I'm here and you're on mitigating measures. Something got dropped from the consideration a while back and I'm not sure where but the yellowtail flounder line that we'd been discussing on Georges Bank but I don't know if it got misunderstood or what but it seems to me that we have a big chance of running over on yellowtail flounder on Georges Bank. You're going to close a whole section of Georges Bank that doesn't have yellowtail flounder or you could close the whole section. It has nothing to do with how that area has extrapolation on bycatch assumptions or this area south of it. It has to do with that

area doesn't have yellowtail flounder. So I don't know if it's a mitigating measure or if it's a FW 48 measure but that has to get put back on the table otherwise if and when we catch the yellowtail flounder quota and it shuts down then every boat going is going to be in the Gulf of Maine. If that area which doesn't have yellowtail flounder but has valuable stocks of dabs, monkfish, haddock, everything else is not open then that whole fleet is going to shift. So it's a little different measure from what I saw from the PDT document that they were saying that that area would cause your assumed discard to be higher in the other areas that's true but only until you have one observer and then your assumed discard rate goes away and it becomes actual. You really have to look at that to me as a mitigating measure or some kind of measure somewhere. It doesn't make sense to me to close that whole area of Georges Bank. Where you get it back in the document I don't know. That's going to be crucial that we know we're going to close Georges Bank and that everyone is going to overrun their quota a little and we're going to close it. You have to figure that out.

**Motion:** The council request emergency action to eliminate the monkfish trip limit in the northern fishery management area for limited access vessels fishing on a groundfish DAS under sector management rules as one means of mitigating the reductions in groundfish annual catch limits pending for 2013. (Dr. Pierce/Mr. Alexander).

The Committee discussed when the last stock assessment for monkfish was and generally supported the issue. One Committee member informed the Committee that a no vote was necessary to preserve the Secretary's discretion.

The motion **carried** on a show of hands (5/2/1).

### **Groundfish Priorities for FY 2013**

The Groundfish Committee reviewed the list of priorities presented at the September Council meeting. A GAP member encouraged the Committee to review the GAP motion that modifies the order of Groundfish Priorities for FY 2013.

**Motion:** The Groundfish Committee recommends Council Groundfish priorities in the order 1 through 6, as listed in the draft Executive Committee list dated , with number 1 being the highest priority (Dr. Pierce/Mr. Goethel).

The Committee discussed the issue raised by the GAP on allocating stocks to state waters. The GAP wanted to allocate to the states in order to establish a mechanism to hold the states accountable for their landings instead of the groundfish fleet. Staff raised the issue of resources. The total number that the Council staff can complete in one year is limited and further restricted by mandatory actions that must be completed.

Some public comment on the motion included:

- Maggie Raymond: I just wanted to clarify the advisors' position on this business of allocating sub-ACLs to other fisheries. In the last groundfish action the council briefly

considered allocating SNE/MA windowpane flounder to the sectors but then we decided that we couldn't do that because the state water fisheries had caught so much there was nothing left to allocate to the sectors. If we can't do anything about the state waters then surely we can do something about the catch of winter flounder by the scallop fleet, surely we can do something about the catch of yellowtail flounder by the whiting fleet and by the squid fleet and shouldn't we be concerned about that because we are. We're definitely concerned about these catches that are not accounted for that just get to increase with no accountability and we take the hit for that. It went beyond the state waters issue, we understood that there probably wasn't much that could be done about that but these other fisheries are catching a lot of groundfish that we're losing and we can't afford to lose it. With respect to our recommendation on Amendment 18, everything that I've heard over the last two years about what people want us to do on Amendment 18 would require us to go to an ITQ. Do you really want to spend three years developing an ITQ that then gets voted down by the industry? The only thing you can do quickly to address accumulation limits right now the way the fishery is constructed is to control the number of permits that an individual or entity can own like we have done in scallops in both the limited access and general category ITQ. So, that's pretty much all you can do unless you want to go... How are you going to split off these species from the permits and say you can only have this much of this species when you can't split off your permits? That is going to require an individual allocation, an LAPP. That is going to be a nightmare. If we'd done that two years ago it could have been done by now but no everyone said that wasn't enough we have to do all this other stuff that wasn't clearly defined and now nothing is done. That's really the only thing we can do. That was our recommendation on Amendment 18. I wanted to clarify our concerns about all these other fisheries that are taking groundfish and we have no say in that and there's no way to hold them accountable. That's a serious concern to the industry.

The motion **carried** on a show of hands (6/1/1).

There was no other business raised for the Committee to discuss.