

New England Fishery Management Council
Groundfish Oversight Committee
Meeting Summary
 May 26, 2011

The Groundfish Oversight Committee (Committee) met in Danvers, MA to continue development of Framework 47 to the Northeast Multispecies Fishery Management Plan (FMP), among other issues. The Committee discussed Amendment 17 on state-operated permit banks, accountability measures, the GB yellowtail flounder rebuilding strategy, upcoming workshops, scallop access area cap alternatives, common pool measure adjustments, the NEFSC nine-month sector report, NMFS' cooperative research strategic plan, and the policy for approval of additional gear. Committee members present were Mr. Rip Cunningham (Chair), Mr. James Odlin (Vice-Chair), Mr. Erling Berg, Mr. Frank Blount, Mr. James Fair, Mr. David Goethel, Mr. Glen Libby, Ms. Sally McGee, Ms. Susan Murphy, Dr. David Pierce, Mr. David Preble, and Mr. Terry Stockwell. They were supported by staff members Mr. Tom Nies and Ms. Anne Hawkins (NEFMC), Mr. Mark Grant, Ms. Sarah Heil, Mr. Michael Pentony, Ms. Melissa Vasquez, and Mr. Tom Warren (NMFS NERO), and Mr. Gene Martin (NOAA General Counsel).

Discussions were guided by PDT reports from April 7th and May 9th 2011, the draft Amendment 17 and its public comments, the NEFSC cooperative research strategic plan, the Council SOP for the gear approval process, and the NEFSC interim (9-month) sector report.

Amendment 17

Council staff provided an overview of the development of Amendment 17 to the Northeast Multispecies FMP on the subject of NOAA-sponsored state-operated permit banks, and summarized public comments that had been received.

A Committee member commented that there was no question that the permit banks had been pushed through as a lease-only sector, and asked for a response to the legal issues raised in the public comments. NOAA GC staff replied that a final decision would not be made until the amendment was submitted for approval, and that the Council was free to request the types of analysis suggested in the comments. The Council could also add a provision to give themselves more oversight of the permit banks in the future. They should determine if they are comfortable going forward with the amendment as it is written.

Motion: To recommend to the Council that Option 2 be the preferred alternative for Amendment 17. (Mr. Stockwell/Mr. Libby)

A Committee member suggested adding language to have Council input if the level of funding was increased, so that analysis could be done if the permit banks expanded or so that unexpected impacts did not occur. Another wondered whether there was a connection between any potential accumulation limits in the fishery and the structure of these entities.

Motion to amend: *To strike item 8 in alternative 2 and replace it with:* To include in alternative 2 that state permit banks are limited to currently allocated funds. If more funds become available to state permit banks the increase should come to the Council for approval. And that state permit banks be required to report on an annual basis to the Council on the performance of the state permit bank. (Mr. Odlin/Mr. Preble)

Motion to amend as perfected: To strike item 8 in alternative 2 and replace it with: If more funds become available to state permit banks, the use of those additional funds in NOAA sponsored state-operated permit banks described in A17 shall come to the Council for approval prior to using those funds for the purpose of the permit bank outside the sector process. And that state permit banks be required to report on an annual basis to the Council on the performance of the state permit bank. (Mr. Odlin/Mr. Preble)

The Committee clarified that the intent of the motion was that, under Amendment 17, states could operate the non-sector portions of permit banks within the constraint of current funding. However, if in the future Congress gave the states additional money to expand then the states would have to form sectors in order to operate unless the Council approved it as proposed in Amendment 17. NOAA GC staff stated that they would need to consider internally how much say the Council can have in this process. Although laws on the books could prevent projects from occurring even if they were funded by Congress, the Congress could override existing laws if they wanted to. If further guidance is available, it will be provided at the next Council meeting.

A Committee member objected to the striking of provision number eight, and thought the decision was based on a fear that these state permit banks would somehow compete with private permit banks. He felt that the issue should apply to all permit banks, and did not support the motion because it does not give equal treatment to the concept of both types of permit banks. Another member expressed that the state permit banks were not concealing any information and would report on their status at the sector workshop. He felt that striking number eight would make the amendment far more complicated, which was against its spirit. Others noted that the state-operated banks were different because private permit banks would be operating as sectors and subject to Council oversight. Another member felt that the permit banks would set off a competition for funds and was concerned that future funding would not be divided equitably among the states.

Public comment included:

- Maggie Raymond, Associated Fisheries of Maine: Our concerns about the permit bank have been about the non-transparency of the MOAs. I would think the Council would want to have input on any modifications to the MOAs, or totally new MOAs that might be developed between the state and NMFS. What really needs to be done in this amendment is a thorough analysis of the objectives that state on pages 2 and 3 the banks are being made to provide options to small boat enterprises, etc. This needs a thorough analysis as required by law.
- Jackie Odell, Northeast Seafood Coalition: We are concerned about the use of taxpayer dollars and the impacts that have already taken place in the marketplace. There has been a huge change already with the way the state of Maine has been purchasing permits to date, as well as the lack of analyses in A17, as well as a lack of oversight by the Council. The existing permit banks right now did not receive federal money, and they are operating as sectors. So they have a level of oversight by the Council that state permit banks do not.
- Ben Martens, Fisheries Policy Director of Midcoast Fisheries Association and Port Clyde Sector Manager: Last week we had thirteen guys who took part in the Maine permit bank program. I know it is a pilot program, but it is not going to make anybody richer - just allowing these guys to continue to fish. They are very appreciative of the program and working hard to make sure it continues. I agree we need alternative two, and that it needs to be streamlined. I have issues with striking #8, because more funds will really help the small guys who, as we saw in this performance report, are still being hurt and still need help. The need for the permit banks is very apparent.
- Chris Brown, RI Commercial Fishermen's Association and NSC Sector 5: I am not opposed to the intent of the permit banks to provide relief in the transition from DAS to

sectors. Being from a very small state, we're concerned that RI will not have access to the kinds of funds needed to compete. As a permit travels to Maine and is purchased, it could be locked up with the states.

- Aaron Dority, Manager of NE Coastal Communities Sector: I echo Mr. Martens' comments. The ACE leasing auction went pretty well. This is quite small-scale at this point. No members received more than 3500 lbs. of GOM cod, for example. This is a way to help people get started and augment what they have.

NERO staff noted that one of the provisions in A17 would authorize the state permit banks to trade ACE among themselves to rebalance their own portfolios. A Committee member explained that striking item eight did nothing but clarify the prior motion. The state representatives at the meeting stated that they had no problem reporting to the Council on an annual basis. A Committee member from Maine stated that he did not think it would be the norm to buy permits at an inflated price, since people in that state wished they had been at market value.

NOAA GC staff clarified that the Council cannot approve allocation of funds by Congress, but rather that they can decide whether the state permit bank exception will continue as currently described based on new funding, which he thought was the intent of the motion. The maker of the motion clarified that the intent was to have Council input on the permit banks, and Council staff noted that the way it is currently worded, it does not matter where the additional funds come from. The state representatives on the Committee did not support this motion because if their states allocated money to the banks, they would have to negotiate with the Council each time. Another Committee member stated support for the Council oversight, but was unsure whether the total package was desirable since he felt that, with changing value of permits, the nature of the permit banks and their effect on the fishery could change greatly in the future.

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

Motion as amended: To recommend to the council that Alternative 2 (as amended) be the preferred alternative for Amendment 17. To strike item 8 in alternative 2 and replace it with: If more funds become available to state permit banks, the use of those additional funds in NOAA-sponsored state-operated permit banks described in A17 shall come to the Council for approval prior to using those funds for the purpose of the permit bank outside the sector process. And that state permit banks be required to report on an annual basis to the Council on the performance of the state permit bank.

The motion, as amended, **carried** on a show of hands (9-0-1).

Public comment included:

- Jackie Odell: How are permits bought for the permit banks?

NERO staff answered that the grant agreements are the controlling documents for acquisition. Progress on the grants would be reviewed semi-annually by NMFS to make sure the money was used as intended. The MOAs are silent on the acquisition of permits, and take over as the controlling document once the state has acquired the permits. A state representative noted that the state has a rigid process of how to address inquiries and make awards.

Motion: To submit Amendment 17 to the Council. (Mr. Stockwell/Mr. Goethel)

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

Accountability Measures

The Committee received background information from Council staff on the issue of accountability measures (AMs) for several stocks that need to be strengthened beginning in FY 2012. The Committee had previously suggested an area-based approach, which would have an impact on the ability to target other species. The PDT hoped to refine their analyses on these matters. Preliminary data indicates the sub-ACL was exceeded for northern windowpane in 2010 and was not exceeded for the other stocks. Ms. Murphy indicated that the overage was initially thought to be higher but was undergoing reconciliation.

Committee members discussed a PDT recommendation to allocate SNE/MA winter flounder to sectors and to consider allowing sectors to land that stock. Members considered whether assigning a low trip limit to a species increases discards, and thought that it was difficult to generalize since overall behavior has changed under sectors.

Motion: To allocate SNEMA winter flounder to sectors and allow landing of the ACL. (Mr. Preble/Mr. Stockwell)

The rationale for the motion was given that it would allow fishermen to modify their behavior to control catches and that it would provide sampling information on a stock with very poor data. It was also not likely to increase targeting of the stock since the ACL is so low.

A Committee member asked for information on the extent to which the “choke species” prevented sectors from taking their ACEs. He worried that going from a zero-possession rule to specific extremely low allocations could worsen a difficult situation for many of the sectors by restricting the harvesting of their ACE. He also was afraid this could lead to enforcement concerns. Another member thought that there was a fine difference between a trip limit that allowed targeting and one that allowed bringing in a species for research. He recommended analyzing what was needed for research on age structure, comparing it to the average discard rate, and setting a trip limit in the vicinity of those numbers that would stop the ACL from being exceeded.

One Committee member supported the motion, and was also concerned about common pool vessels. He noted that the recreational fishery is at zero possession and catches far less than is being discarded in the commercial fishery. Council staff clarified that the ACL was not zero, but that the closed area model was used to estimate what would be caught in other fisheries and as unavoidable bycatch, since the SSC thought zero catch was impractical. Ms. Murphy cautiously supported the motion and reiterated the goal of keeping catch as close to zero as possible. She felt it was important to at least consider the analysis of the available information. Several Committee members stated that a zero-possession rule did not do anything to deter discarding, whereas an allocation would provide incentive to avoid catching the fish. They also asked to see study fleet data on what is caught by the common pool and sectors.

Public comment included:

- Chris Brown: I think we have gone down the wrong road for a very long time and do not know what needs to be fixed first. When you have no possession limit, you can predict that you will crash the stock. Somewhere along the line it became acceptable to look only at the large mesh fishery as a source of mortality. Ratcheting that down should be a source of rebound. I would urge you to become more independent to the findings of the study fleet. There is a great potential here for sectors to emerge as a source of the solution to this. At some point in time you will have to hand over the reigns and become co-managers. I read about decentralization of management authority and I really liked it. A

- lot of things can happen when you do that, that we cannot fix through the Council. This is not a large mesh fishery problem, but a small mesh fishery shift.
- Carolyn Woodhead, Cooperative Research Study Fleet Program: In your Committee report today, the data used is from the SMAST study fleet. There is a separate data set from the NEFSC study fleet. We can also track gear types, so if you are interested in further analysis by gear type we have that information available and can provide you with those data summaries.

The motion **carried** on a show of hands (10-1-0).

A Committee member asked what would happen with the other species that had ineffective AMs. He recommended the possibility of using gear-restricted areas instead of area closures to allow some fisheries to function if the AM was activated. For example, he stated, the separator and Ruhle trawls do not catch much winter flounder, and the Ruhle trawl does not catch ocean pout. Another suggested looking at the difference between a rockhopper and a chain net. He also requested more guidance from NOAA headquarters on the use of the mixed-stock exception as he felt these stocks may be well-suited for it.

Georges Bank Yellowtail Flounder Rebuilding Strategy

Council staff provided an overview of changes to the U.S./Canada Understanding incorporated in the International Fisheries Agreement Clarification Act. In light of the changed law, the Committee may consider whether the rebuilding plan should be revisited for GB yellowtail flounder. NOAA GC staff advised that the stock still has to be rebuilt as quickly as possible, but stated that the new law exempts the stock from the ten-year requirement for rebuilding. There is no maximum time frame as long as overfishing is ended immediately and rebuilding occurs as quickly as possible, taking into account communities and other factors including the purpose and intent of the Understanding itself.

A Committee member asked to see what timeline would increase the stock by ten percent each year at a fifty percent probability, and another asked to see those numbers as well as other percent increases. They thought it might be possible to tie the end date to a timeline that increases the stock by a certain percent annually. Another Committee member asked what the Canadians are using as the basis for their preferred approach, and deferred to the TMGC to advise on what might minimize conflict and maximize the chance of coming to an agreement quickly.

Update on Accumulation Limits and Sector Review Workshops

Council staff updated the Committee on planning for the June 9th workshop on accumulation limits. It will be a public meeting and focus largely on discussion groups rather than presentations and briefing. A Committee member asked whether the facilitators would be informed on the nature of the issue, and staff responded that the facilitators had been chosen because of their experience with facilitation, good reputation, and background in fisheries work. Council staff also noted that the Council voted to hold the sector workshop in the fall, and planning for that meeting would be ongoing at upcoming Committee meetings.

Scallop Access Area Cap Alternatives

Council staff provided a brief overview of the issue and asked whether the Committee wanted to consider changing the cap of yellowtail flounder that can be caught by the scallop fishery in the

access areas. Staff from the groundfish and scallop plans are working together to coordinate work on this. The Scallop Committee Chair noted that one of the priority items for that committee is to ensure they do not take the entire cap and thereby have a major impact on the fishery in the open areas.

Motion: To consider eliminating the 10 percent cap on yellowtail flounder caught in the GB access areas. (Mr. Odlin/Mr. Stockwell)

Public comment included:

- Drew Minkiewicz, Fisheries Survival Fund: We strongly support this. The 10% cap was from when there were no ACLs to control scallop catch in these access areas. Now it is redundant and causes derby fishing and loss of scallop yield.

The motion **carried** on a show of hands (11-0).

Common Pool Measure Adjustments

Council staff briefed the Committee on the issue that the Council gave the Regional Administrator the authority to modify trip limits and differential DAS counting during the year for common pool vessels. Because of some public letters, the Committee was asked whether they would like to make a recommendation as to what the appropriate modifications should be. The letters largely supported reductions in DAS before reductions in trip limits. A Committee member from Maine stated that most common pool vessels there are smaller gillnetters and would want more days to target pollock, and that there would be winners and losers with both options. Another member requested more information about this in order to move ahead with a recommendation in June. A third member stated that trip limits have mortality implications and affect discards, so a balance should be struck between trip limits that do not provoke huge discards and differential counting. Ms. Murphy stated that it was unclear whether the RA can mix changes to trip limits and differential DAS counting in the middle of the year unless it is specific to whether the ACL will be exceeded or not.

The Committee asked for more information to be brought forward, including what happened to the discard rate every time the trip limit was lowered and to do this by gear class.

- Joel Lisk, Captain of F/V November Gale: I am currently in the common pool and plan to stay there. I support asking the Council to ask NMFS to increase the cod trip limit to 800 lbs. I am a dragger, and last year we had no discards for cod. At 500 lbs. I am going to fish a lot longer. The choke species we ran into was grey sole, and the longer I'm on the bottom, the more grey sole I catch. It makes sense to make the short trip, catch 800 lbs. of cod, go home, and save on fuel. At 500 lbs. I have already lost my helper this year. I only know of two other common pool boats fishing in the Portland area. Everyone else went to sectors. As the voice of the only common pool boats that I know, we would all support going to 800 lbs. I was speaking to a NMFS employee yesterday in Portland, and he made it clear that if we proposed as a group that it be reinstated, it would more than likely be done. So I urge the Council to ask them to push the limit back to 800 lbs.

Review of NEFSC 9-Month Sector Report

The NEFSC's 9-month review of sector operations was circulated to the Committee, and representatives from the Social Sciences Branch will present the report at the June Council

meeting. The Committee Chair explained that the Committee could make recommendations for what additional information they would like to see in the follow-up report that includes the entire 2010 fishing year.

One Committee member said that he would like to see why a certain percentage of boats had a higher income under sectors than before. If the higher income came from targeting rebuilt stocks, then it would be a positive effect since all the ACE of those is not caught. Another member noted that the report identified items that could not be included in its analyses, and hoped that the information could be included in the final version. He wanted to see organizational and monitoring costs associated with joining a sector, changes in operating costs, impacts from inter- and intra-sector trading of quota, and vessel ownership. Other items that Committee members identified that they would like to see in the final report included the effects of quota trading, the effects on infrastructure (including dealers and crew), cost information, non-groundfish revenue, and a comparison of reductions in landings to mortality reductions that were required. A Committee member asked to what extent confidentiality issues will prevent NMFS from incorporating all of the needed performance measures into their final analysis, and what NMFS is doing to address these concerns.

NMFS Cooperative Research Strategic Plan

Ms. Carolyn Woodhead from the Cooperative Research Program informed the Committee that the program wanted to ensure its research was meeting the goals of managers, and that this topic would be discussed at the June Council meeting. She reviewed the strategic plan, highlighting changes that have been made, and asked whether there were topics missing that should be put into the FY 2012 cycle.

A Committee member commented that one source of frustration with the cooperative research projects had been that there were a large amount of hurdles to get a certain redfish project permitted. He asked the program to look at its process to facilitate working with stakeholders and to be more user-friendly. Another praised the program, noting that a great deal of progress has been made to respond to the Council's needs. He suggested further attention be paid to the research set-aside auction and that the RSC look into possible shifts in its approach. Other Committee members agreed, saying that the review and auction process could be improved. Another member stated that the RSA has given the Council everything necessary to better manage the fishery, but that the funding is out of sync with the fishing year and the review process too cumbersome to get money to the researchers in a timely way.

Ms. Woodhead stated that NERO would present a paper on scientific research outside of the M-S Act at the June Council meeting. She also noted that the funding cycles are out of sync with fishing seasons and noted that many proposed projects are long-term monitoring surveys, which carry some risk. The mandate is to distribute funds through a competitive process, so the program cannot guarantee a project will be funded in any particular year.

Policy for Approval of Additional Gear

Council staff provided an overview of the issue, which is whether the policy for approval of gear should be revised, and if sectors change how specific gear definitions/regulations should be. More gear codes create more discard strata, which could affect at-sea monitoring costs. Should more data elements be collected so data may be aggregated as needed for stratum definition?

A Committee member stated that he felt gear management was a leftover from input control management and should not be done under catch shares. Other members agreed, but also pointed out that it would be difficult to calculate discards for the entire sector when not everybody is using the same gear and/or there are very few at-sea monitors. One member thought that it was undesirable to have more gear codes for more strata, since that would increase cost to a higher level that would not be needed. He felt that it was important to communicate that the lower the discard rate, the better fishermen will be over time, since many people did not yet understand that. Another thought there was value in managing gear in the closed area access, but agreed with the other comments for the open areas.

A Committee member then stated that bycatch reduction devices would still need to be reviewed in the small mesh fisheries. He thought that the approval process seems stuck in time and asked for suggestions of how it could be streamlined. He also worried about the effects of discards on stock assessments, and wondered if the study fleet could see increased use for that. He thought the RSC process was still valuable and recommended streamlining the approval into a two-step process: deciding that a gear works, then deciding how to implement it. He also noted a problem with observers incorrectly coding gear. Another member thought it was important to do gear research and set up research programs, but that it was essential that choices remain with the industry.

Other Business

A Committee member asked staff again whether it was possible to have the analysis of how the discard rate has changed with changing trip limits for the June Council meeting. Staff replied that it was unclear how much data was available but that they would do what was possible. The Committee Chair stated that it would be possible to make a motion on the issue at the Council. Staff offered to coordinate with NERO to see how they were calculating the trip limit and differential DAS changes in order to provide analyses of how one would affect the other.

Public comment included:

- Jackie Odell: I sent an email to the Chairman earlier this week in regard to FW 47 and/or a subsequent Framework. We are hoping the Council would be able to initiate an action for groundfish to include measures to improve the performance of sectors. We are learning a lot now about how sectors operated last year, and will also have the sector workshop. I think it would be a missed opportunity if we did not find a regulatory vehicle to be able to make improvements.
- Maggie Raymond: We support the request Jackie just made. We are looking at the sector workshop as a real opportunity to come to the Council and tell them what they need to do to make the system work better. If there was no hope that could happen soon, it would be a really discouraging process.

The Committee Chairman reiterated that he would like to see a list of improvements that could be made to sector management as an outcome of the workshop. He stated that he understood the concern to make improvements as soon as possible, but noted that FW 47 already contained the ABC/ACLs and a few other items and could be at risk of not being implemented on time. He favored starting another action as soon as possible.

The meeting adjourned at 3:04 p.m.