

Correspondence

NORTHEAST SEAFOOD COALITION

October 19, 2011

Rip Cunningham, Chairman
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950



Dear Rip,

Thank you for the opportunity to provide input to the Council's Sector Lessons Learned Workshop.

A successful sector system requires the Agency, Council, Sectors and industry groups to establish a constructive, sincere collaborative partnership. However, while a truly collaborative partnership can result in constructive administrative corrections between Sectors and the Agency there are specific modifications and clarifications to the Northeast Multispecies Fishery Management Plan that are desperately needed in order to ensure the immediate and longer term viability of sectors as a management option. While we are sure that many of these modifications will be discussed throughout the two day workshop, we wanted to take a moment to highlight some of the most pressing changes needed.

Prior to identifying the overarching needs identified by our members, I wanted to briefly outline the system in which the Northeast Fishery Sectors operate.

When the Northeast Seafood Coalition ("NSC") developed the Northeast Fishery Sectors a new management structure was instituted.

To better equip the Northeast Fishery ("NEF") Sectors' with their day to day operational needs, each Sector was incorporated as a 501 c 5 organization. This has allowed each Sector to operate independently with its own governance structure (board of directors) and decision-making process for issues surrounding catch management, trading, reporting and other operational considerations such as enforcement and joint and several liability matters as outlined in Amendment 16.

Separately, the NSC worked with the leadership of the Northeast Fishery Sectors to develop a separate organization, the Northeast Sector Service Network ("NESSN") to serve as a neutral

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service provider for its member Sectors to achieve economies of scale to perform specific operational needs for sectors such as but not limited to catch management, reporting functions, contractual needs and other business related matters. NESSN also coordinates with NSC on matters brought to their attention through their work that have policy implications.

NSC continues to serve its individual fishing businesses, the majority of which now reside in the Sector management program, in the policy and legislative arenas. As such, NSC serves as the conduit for communications on policy matters for the NEF Sectors.

With this structure in mind, NSC is now forwarding the overarching policy-related issues of importance in collaboration with Elizabeth 'Libby' Etrie, Program Director for NESSN through her operational work and direct communications with the Northeast Fishery Sectors. It is important to note that most of these items are not new. These provisions have either been identified by the NSC to the Council, NOAA / Agency and members of Congress or raised by NESSN and its member Sectors through their Operation Plan submissions and their daily operational discussions with the Agency.

At-Sea Monitoring:

The Council recognized in Framework 45¹ that imposing the costs of At-Sea monitoring in Fishing Year 2012 would reduce profitability and result in making the sector system an economic failure. Therefore, the Council proposed the removal of the requirement for industry to fund ASM in FY 2012, which absent further action would result in industry taking on this responsibility in FY 2013. However, NMFS² disapproved this measure because they were uncertain if federal appropriations would enable them to fully fund the at-sea monitoring requirements in the FMP and thereby determined this measure was inconsistent with the FMP and MSRA.

As acknowledge by the Council in Framework 45 and various industry groups and sectors, At-Sea Monitoring in FY 2012 is a cost industry cannot incur. Immediate action is needed to address this issue.

¹ Framework 45 http://www.nefmc.org/nemulti/frame/fw45/110120_Final_FW_45_Resubmit.pdf pg. 40 & 41

² Framework 45 Final Rule http://www.nefmc.org/nemulti/frame/fw45/final_rule.pdf pg. 23043

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Recommendation – Delay industry’s responsibility for developing and paying for an at-sea or electronic monitoring program until such time as industry is profitable again.

Increasing the ACE Carry Forward Provisions:

Amendment 16 enabled sectors to carry up to 10 percent of unused ACE forward into the next fishing year, with the exception of Georges Bank yellowtail. The transition to the sector management system has greatly altered fishing behavior and business practices learned through the DAS system. Sectors, and their respective members, are still learning how to operate effectively given the ACE constricts imposed by the allocation methodology, modified business practices and financial shortfalls. One mechanism that will provide much needed transitional flexibility is the ability of a Sector to carry over a larger percentage of unused ACE from one fishing year to the next, taking into consideration ACL requirements and the biology of a given stock.

Recommendation – Modify the carry forward provisions of Amendment 16 to enable Sectors to carry over a larger percentage of unused ACE from one fishing year to the next.

Year Round and Seasonal Closures:

Contrary to fundamental goals of US fishery policy, only a fraction of the Optimum Yield of the groundfish multispecies complex is harvested each year. This reality has not improved appreciably under the first year of the sector system. Greater and more efficient access to the stocks is a major part of the solution. In order to achieve Optimum Yield, the Council should evaluate all existing input controls for the Northeast Multispecies Fishery Management Plan and make necessary adjusts to create greater more efficient access to stocks. Specifically,

Rolling Closures:

In Amendment 16 the Council established a universal exemption for all of the Gulf of Maine Rolling closures, with the exception of:

Blocks 124 and 125 in April;
Blocks 132 and 133 in April-May;

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Blocks 138, 139, 140 in May-June; and
Blocks 145, 146, 147, 152 in June³

Additionally this management measure specified that the "Groundfish PDT will review and analyze the existing rolling closures and determine which areas should remain closed to protect cod spawning aggregations. As a result of this analysis, any adjustments necessary to adequately protect concentrations of spawning cod would be adjusted in either a management action or a biennial specification process⁴." However to date this analysis has not been completed.

In both Fishing Year 2010-2011 and 2011-2012 exemption requests were made by Northeast Fishery Sectors, for access into some of the remaining rolling closures. Each year these requests were denied by the Agency. Various Northeast Fisheries Sectors have requested exemptions from the rolling closures again in Fishing Year 2011-2012, however current indications are that these will be denied yet again.

In light of these consistent denials we urge the Council to include tasking the Groundfish PDT with review and analysis of the existing rolling closures, and universally exempt remaining rolling closures where appropriate.

Recommendation – Task the Groundfish PDT with reviewing and analyzing existing rolling closures, and universally exempt remaining rolling closures where appropriate.

Year Round Closures:

As noted above, many of the closures in place today are artifacts of the old effort control system which attempted to control fishing mortality through the imposition of various inefficiencies on the fishery including time-area closures. The Council has now chosen to replace that management strategy with one that uses output controls over fishing mortality with a fundamental objective of increasing the fishery's efficiency and utilization of OY. Many of the existing closures greatly hinder fishermen's ability to access and harvest their available allocation of stocks that are predominantly located

³Amendment 16: <http://www.nefmc.org/actions/motions/motions-jun09.pdf> pg. 18

⁴ Amendment 16: pg 118

http://www.nefmc.org/nemulti/planamen/Amend16/final%20amendment%2016/4.0_091016_Final_Amendment_16-3.pdf

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within their boundaries. Preserving these closures has needlessly and harmfully undermined a core objective of the new sector system.

The decision to combine habitat closures with the existing mortality closures in Amendment 13, due to a lack of time to do otherwise, was a rushed decision that the Habitat Omnibus process can and should correct immediately.

Only a fraction of the Optimum Yield (“OY”) of the groundfish multispecies complex is harvested each year and this improved only slightly under the first year of the sector system. Providing greater and more efficient access to productive fishing grounds for both inshore and offshore vessels through the removal of certain closures will be central to improving both the performance of the sector management system and the economic condition of the fishery.

Recommendation – The Council should expedite the Habitat Omnibus Amendment to facilitate the removal of the groundfish mortality closures that are artifacts of the previous input-control management regime.

Dockside Monitoring in FY 2013:

Dockside monitoring⁵ was adopted in Amendment 16 to verify the accuracy of landings by commercial fishing vessels. This requirement was imposed immediately for vessels fishing in sectors. Because this measure did not replace dealer reporting or VTRs, it did not produce a new data stream that assists the assessment and management of the fishing. The Council reasoned in Framework 45 that eliminating the dockside monitoring requirement would reduce the monitoring cost to industry, avoid duplication of effort, and would not reduce the availability of landings information. Additionally, the Council noted that if the cost was covered by NMFS, the industry could see some benefit of continuation of the program. Based on this rationale the Council adopted a measure that eliminated the requirement for sectors to fund dockside monitoring in FY 2011 and FY 2012, and limited the coverage of the program up to the amount of funding that NMFS was able to make available during this time period. However, the

⁵ Framework 45: pg 40

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requirement for industry to fund a dockside monitoring program in FY 2013 and subsequent years currently remains in place.

The recent decision by NMFS to redirect assistance monies away from dockside monitoring was a positive step in the right direction. Since the start of the sector system many have questioned the utility of this program. As implemented the program is highly inefficient and will be an unsustainable and unjustified cost to industry if steps are not taken to remove the requirement for industry to fund Dockside/Roving Monitoring in FY 2013 and subsequent years.

Recommendation: Remove all dockside monitoring requirements.

Clarifications of Council Intent:

"Reporting Requirements":

The Council specified in Amendment 16 that Sectors cannot be exempted from reporting requirements. NMFS consistently reasons that they cannot allow a specific exemption because the requested exemption is a reporting requirement, for items that we do not believe fall within this reporting category. For example, prior to Council clarification the Agency considered Dockside Monitoring a reporting requirement that sectors could not seek exemption from.

Recommendation: Itemized identification of what the Council considers 'reporting requirements' is needed for both clarity and efficiency.

ACE Transfer Rules:

The Council specified in Amendment 16 that any "Proposed ACE transfers will be referred to NMFS. The transfer is not considered authorized until NMFS notifies both sectors. The NMFS review of a transfer request will be based on general issues such as whether both sectors are complying with reporting or other administrative requirements. The responsibility for ensuring that sufficient ACE is available to cover the transfer is the responsibility of the sector manager. NMFS approval of a transfer does not absolve the sector from managing its ACE."⁶ In implementing this management

⁶ Amendment 16 pg. 115

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measure NMFS specified that approval of ACE transfer requests will be approved/disapproved by NMFS based upon compliance by each sectors and its participating vessels with the reporting requirements.⁷

We acknowledge that the data collected on the VTR is valuable to numerous offices within NERO and NEFSC; however while this data is important not all fields required on the VTR are essential for a sector to effectively manage its ACE and thereby have adequate knowledge whether or not ACE is available for a transfer with another Sector for example number of crew. Currently, the Agency is evaluating internally their suspended policy that prohibited a sector from trading ACE when VTRs of trips that have occurred are not in the Agency's possession. However, since the Agency returns VTRs that were submitted in accordance with the weekly VTR requirement for missing data that VTR is effectively treated as 'not received' after a period of time. In order to facilitate the trading of ACE amongst Sectors, and minimize the potential for Sectors to be prohibited from trading when VTRs are returned to their members for corrections of fields not essential to effective quota monitoring the Sectors request that the Council clarify what their intent was with this amendment 16 provisions.

Recommendation - Clarify intent behind the ACE trading measures approved in Amendment 16. Specifically whether the Council intended to have the trading of ACE be prohibited when VTRs are missing.

Better Communications in Regards to Possible Mid-Season Adjustments:

The Sector management system should simplify the regulatory constraints and provide opportunities for Sectors and their Vessels to develop robust business models based on the ACE allocated at the start of the year. However, mid-season adjustments to ACLs can severely impact or limit any business plan adopted by a Sector or their Vessels resulting in economic loss and instability in values. We appreciate the various reasons why mid-season adjustments may be necessary, but feel more effective communication regarding potential modifications and evaluation of the potential impacts need to be considered before implementation.

⁷ 50 CFR §648.87(b)(1)(viii)(B)

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Recommendation - Adopt an effective proactive communication policy to ensure industry is aware of potential changes in a timely manner and provide adequate opportunities to adjust business strategies and fishing activities is needed to minimize disruptions and other adverse impacts that mid-season adjustments can cause.

Reduction in Minimum Fish Size:

Under the current sector management system, landings and discards of sub-legal sized (either observed or assumed) are deducted from the Sectors ACE. Discarding of sub-legal size fish results in lost opportunities for Sector members to fully utilize the ACE allocated to their Sector since they are required to discard sub-legal size fish instead of generating income by landing this fish. Furthermore, since the discards are deducted from the Sectors overall ACE the vessels lose future opportunities to utilize the ACE allocated to their Sector.

As an example, during Fishing Year 2010-2011 many Sector vessels were forced to discard yellowtail that was just under the legal size limit of 13 inches. In addition to sector vessels losing income potential because they could not land these marketable fish, Sectors encountered higher assumed discard rates, based on observed trips, which resulted in even less ACE being available to their vessels for harvesting.

Over the last two years Sectors have requested, through their Operations Plan exemption requests, a reconsideration of the minimum fish size requirements, for Fishing Year 2012-2013 many Northeast Fishery Sectors requested to be authorized to land yellowtail that is 12 inches or larger. However, we are not confident that this request will be granted based on concerns raised by the Agency in denying requests such as this in the past. Specifically, the Agency has noted the inability to differentiate between fish caught by sector vessels and common pool vessels shoreside for enforcement purposes. Universal adoption of lower minimum fish sizes on species such as yellowtail and American plaice would nullify the Agencies enforceability issues, and provide a mechanism that could foster achieving optimum yield for this fishery.

Additionally, implementation of a full retention fishery may facilitate the feasibility of alternatives to a human observer, for example electronic monitoring which could minimize the monetary burden industry will face if tasked with funding an At-Sea Monitoring program. Evaluation and consideration on what a full retention fishery might entail should be a focus of

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the Council both when evaluating options to minimize the cost of At-Sea Monitoring to industry and as they address modifications to the FMP which could foster a more effective sector management system.

Recommendation: Reduce the minimum size for yellowtail flounder stocks from 13 inches to 12 inches. Also evaluate a reduction in the minimum fish size for American plaice. In addition, the Council is asked to explore the implications of alternative full retention requirements with the objectives of increasing both sector efficiency and stock utilization, and reducing monitoring costs.

Increase in ACLs / Reduction of Management Uncertainty:

The higher level of accountability in the sector management regime should reduce if not eliminate most of the management uncertainty that is applied while setting the ABCs / ACLs. It is important that managers closely review and question such uncertainty that continues to be applied by the Science and Statistical Committee. The new sector system has come with numerous costs to the fishing industry. The fishery should receive the credit it deserves.

Recommendation: Closely scrutinize the setting of ABCs and ACLs and where appropriate eliminate excessive levels of precaution with respect to management uncertainty.

Administrative Considerations:

It is important to highlight that the current Sector system is a costly, labor intensive program. While it is understandable that many now view Sector Managers as an appropriate individual to task additional responsibilities we urge the Council and the Agency to realize that this approach results in minimizing the opportunity for Sectors to adopt different more cost effective management approaches in the future. Sector Managers should not be viewed as a mechanism that can be utilized to minimize the workload of others. When adopting measures and identifying who is primarily responsible it is essential to consider whether we are shifting more responsibility and thereby more cost onto a Sector when another group may be more appropriate to conduct such work.

In conclusion, in order to fully realize the potential of Sector management all interested parties need to be mindful that a successful transition to this system requires us to consistently

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evaluate the management measures and regulations in place to determine if they are furthering successful sector management or hindering it. The Council should utilize the opportunity presented during this workshop, notably those raised in this letter, to fully understand the issues and make it a priority to address them.

Thank you again for the opportunity to provide our input.

Sincerely,

Jackie Odell

Jacqueline Odell
Executive Director

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Portland, ME 04103

207-671-8984

10/23/11

New England Fishery Management Council:

The purpose of this letter is to provide you with my perspective on sectors.

I have been involved in the groundfish industry for my entire life as I am the son of a commercial fisherman. I currently am part owner of a family business that owns a mid-size dragger and a small gillnetter. I'm heavily invested in the industry both in paper and steel. I am part of the Sustainable Harvest Sector.

From my perspective sectors have been a success. We have been able to, for the first time in years, balance our books in the sense of individual accountability. Allotment is clear. Business plans enable us to decide how, when and where we will fish. If I don't have enough fish, I have the ability to lease. This is pretty impressive given the fact that we are only in our second year under this new management.

What this industry needs more than anything is stability and sectors have helped us achieve this. Making untimely changes to the sector system would only set our industry back by years.

There has been talk of re-allocation and even the mere mention of it creates feelings of instability. No one permit holder has enough fish as it is. Taking fish from one person to give to another is only going to make things worse. No matter how fish are allocated someone is going to be unhappy with their part of the pie. Quotas were not arbitrarily decided, rather based on historical landings. Re-allocation would most definitely lead to more problems.

Fortunately, those that don't have enough fish do have a system that allows them to lease. ACE trades, especially those between vessel classes, have created a lot of opportunity for leasing fish. Restricting ACE trades would most certainly limit access and only make it more difficult for large and small boats to do business with one another. We should continue to encourage ACE trades among boats of all sizes.

As I said before, sectors have been successful, however, there are some things the Council should consider that would make the system even more successful. First,

sector monitoring as it is currently delivered is not efficient. The cost far outweighs the benefit. We need to look for a better way to monitor at sea that is more efficient and cost effective. Fisherman are not in a position to fund this status quo monitoring going forward.

Also, mortality closures are no longer necessary. They were put in to effect when we were managed under the old days-at-sea system and no longer make sense. Closed areas are no longer necessary under hard TAC system.

The key to making the sector management system even greater is to support it fully:

- Remove closures that were established under the old system
- Devise a better (any hopefully less expensive) way to monitor at sea
- Allow vessels of all classes to trade with one another
- Let current allocation stand

and most importantly allow the sector system to prove it works before considering changes!

Please contact me if you have any questions regarding my perspective on sectors.

Sincerely,

Thomas P. Kelly

Peter W. Kelly III

Ocean Fisheries, Inc
Celtic Pride, Inc.

October 20, 2011

Mr. Rip Cunningham, Chair
New England Fishery Management Council

Dear Mr. Cunningham:

I am not able to attend the workshop on sectors in Portland next week, but I do want to give you my opinion on sector management.

I am the owner/operator of a 60' groundfish boat and a member of the Sustainable Harvest Sector.

Sector management has been a big change, and it hasn't been easy, but we are figuring out how to make it work. We have a pretty big sector, so we are able to spread the cost of management around.

I don't know how we will continue to make it work though if we are forced to pay observers. The Council must change the regulations so that we are not responsible for this unreasonable cost.

The rolling closures make it real hard for small and mid size boats to catch all of our allocation. For example, there are a lot of dabs in those closures, but we can't get at them when they are there. It would be real helpful, if the Council could get rid of those closures, and get rid of the Western Gulf of Maine closed area while you are at it.

I heard some people talking about things like set-asides and restrictions on trading, and I think those are lousy ideas. No one has enough allocation so there is really nothing to give away. Besides, I worked for my allocation, so I don't think it is fair for someone else to get allocation for free. Right now I have to compete with boats that get cheap quota from the Maine permit bank, and that is not fair. I don't want any restrictions on trading. That makes no sense at all.

Please get this monitoring thing straightened out right away, and let us fish in the closed areas.

Thanks

Ken Hunt
F/V Cavalier
Phippsburg, ME