



III Northeast Fishery Sector Inc.
10 Witham Street
Gloucester, Massachusetts 01930

14 October 2011

Mr. Paul J. Howard, Executive Director
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

Dear Mr. Howard:

Thank you for your 30 August 2011 letter requesting my presence at the Sector Workshop scheduled for the 25 and 26 of October in Portland, ME. Unfortunately, I am not able to personally attend this workshop due to previously scheduled personal commitments. Northeast Fishery Sector III (NEFS III) realizes the importance of having a “lessons learned” workshop so the Council can hear directly from Sectors about performance under the new management system. In lieu of me, Elizabeth “Libby” Etrie, Program Director of the Northeast Sector Service Network, will be attending on behalf of NEFS III. The NEFS III Board of Directors and I have met with Ms. Etrie and discussed points that the Sector would like addressed at this meeting.

Below, please find responses to the Council’s specific questions requested prior to the Workshop.

1. What ran smoothly in your sector?

The transition to sector management was truly a challenge for all involved. NEFS III members were abruptly transitioned into a new system that was far more complex than the Days at Sea management system. Not only did they have to adjust to new regulations, but they had to quickly learn to trust their new manager and each other. In year one, the Sector worked hard to develop streamlined methods of communication and worked with active fishermen on a daily basis to understand how the Sector could assist them in tracking harvest share usage, trading and understanding the complexity of the new management system. The learning curve was not only for industry, but also the National Marine Fisheries Service. NEFS III worked and continues to work closely with multiple departments within NMFS and it was clear that the transition was challenging them as well. In short, nothing ran smoothly for the first year. As we approach the seventh month of year two, we’re still trying to make the Sector run efficiently and are constantly adapting.

2. *What are the top five problems your sector encountered that impeded operations from running smoothly?*

The day-boat, inshore fleet has been severely impacted by regulations set forth in the FMP and the implementation of catch shares. Prior to sectors, under the effort-based Days at Sea management system, most NEFS III members were catching their daily limit of Gulf of Maine Cod and doing well financially and mentally. However, the stark transition to catch shares has taken a severe toll on not only wallets, but hearts and minds. Today, many vessels that operated daily prior to sectors are now tied to the dock, unused and racking up expenses. This is unacceptable.

Each month, our Sector has seen more “active” fishermen contemplate choosing to become “inactive” and lease their quota to the highest bidder. Furthermore, since May 2010, several family-run small businesses have sold their permits to other individuals in the region. In NEFS III alone, we’ve seen ten permits change hands over the past year and a half. Fishermen, like a former NEFS III Board member, who have historically fished out of Gloucester, are seeking alternative fisheries or leaving the industry altogether. This year, the Board member sold his permits and vessels and transitioned to lobster and bluefin tuna fishing. The currently designed catch share system is diminishing the inshore fleet due to financial hardship stemming from small allocations and antiquated input controls. Review of regulations could assist this Sector and may prevent more hardship. Problems NEFS III encountered that inhibited the Sector are listed below in no particular order.

- **Existing Input/Effort Controls**

Under the first year of the sector system, NEFS III members were severely impacted by effort controls, particularly April rolling closures, Western Gulf of Maine Closure, Fippinnies Ledge and Cashes Ledge. Members were unable to access these areas, which significantly impacted their landings.

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; blocks 138, 139, 140 in May-June; and blocks 145, 146, 147, 152 in June.¹

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

¹ <http://www.nefmc.org/actions/motions/motions-jun09.pdf> (page 19)

either a management action or a biennial specification process².” However to date this analysis has not been completed.

In both fishing years 2010-2011 and 2011-2012, sectors requested exemption for access into some of the remaining rolling closures. Each year these requests were denied by the Agency. Various sectors, including NEFS III, have requested exemptions from the rolling closures again for fishing year 2011-2012. Current indications suggest these will be denied.

In light of these consistent denials, NEFS III urges the Council to task the Groundfish PDT to review and analyze existing rolling closures, and universally exempt remaining rolling closures where appropriate.

Year Round and Seasonal Closures:

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 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 optimum yield (OY). Many of the existing closures greatly hinder fishermen’s ability to access and harvest their available allocation of stocks that are predominantly located 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 was a rushed decision that the Habitat Omnibus process can and should correct immediately.

Only a fraction of the 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.

NEFS III urges the Council to expedite the Habitat Omnibus Amendment to enable the artifacts of the old management regime, implementation of groundfish mortality closures, be removed. Additionally, the Council should evaluate all existing input controls (both rolling closures and year-round/seasonal closures) for the NE Groundfish Fishery Management Plan and make necessary adjustments to more effectively harvest stocks.

²http://www.nefmc.org/nemulti/planamen/Amend16/final%20amendment%2016/4.0_091016_Final_Amendment_16-3.pdf page 118

- **NMFS/Sector data reconciliation/data management/reporting**

Working with the NMFS for data reconciliation/management was a significant challenge. NMFS did not provide reconciliation information until well into year one. It was clear to NEFS III that the Agency was not prepared for the new management system, in terms of reconciliation and data management. In the opinion of this Sector's manager, a system should have been tested and developed prior to starting the fishing year. Often, sector managers were tasked and continue to be tasked with duties that should fall within the scope of a NMFS staff person. For example, thoroughly investigating data issues prior to involving the Sector.

Ultimately, as the fishing year came to a close, the Fisheries Statistics Office within NMFS did develop more streamlined reconciliation methods and we're now collaborating regularly. NEFS III is currently working with Rob Banks of the Fishery Statistics Office who is an asset to their team. He consistently provides timely data and methodically reviews all data prior to sending it to the Sector for review.

- **Differentiation of baseline in Amendment 16 for stakeholders**

The baseline formula established in Amendment 16 created significant challenges for NEFS III members due to low allocations. NEFS III members often expressed their disappointment and frustration with the formula because they were allotted far less fish than they had caught under the previous management system in a given year. Under the DAS system, members consistently said they landed significantly more fish than their PSC, specifically Gulf of Maine Cod.

It is the opinion of this Sector that in Amendment 16, baselines should have been distributed in a consistent manner among all involved. For example, the commercial and recreational groundfish fisheries should have been evaluated and considered on the same timeframe and baseline.

- **Communication between Industry/NMFS/NOAA/Council**

In this Sector's opinion, there is a lack of proper communication between industry, NMFS and the Council. As a sector manager with previous experience in corporate communications/engagement, I am the first to admit that fishermen are one of the most challenging stakeholders to reach. However, the key to reaching any set of stakeholders is developing strategic messaging and delivery mechanisms that will resonate with the intended audience. From the past year and seven months of observing communication from the Agency, it's evident that much of the messaging is lost before comprehension.

For example, NEFS III members often contact me when they receive permit holder letters from the Agency because the letters are confusing and pack too much information on a page. Correspondence with these stakeholders needs to be clear, direct and to-the-point.

Evaluation of communication methods should be a top priority for the Agency and Council, particularly when transitioning management systems. Keeping key stakeholders informed is a necessity and under the first year of catch shares, it was not always done successfully. Many NEFS III members have commented that the current Council process is intimidating, time-consuming and overly formal. This causes the majority of fishermen to completely disengage, which is unacceptable. It was evident at the 3 October 2011 Field Hearing held by MA-Senator John Kerry at the Massachusetts State House that there is a severe lack of trust and two-way communication between the industry and fishery managers. Effort to reestablish a trusting, functional relationship needs to come from the Council or federal government.

Furthermore, as a professional who came into the industry with very little fisheries-related experience, I was faced with a huge learning curve and am still learning on a daily basis. From my observations, there is reliance on sector managers and support staff to communicate on behalf of the Agency or the Council to sector membership. The manager's job description seems to have grown exponentially since the start of the sector management system; these responsibilities are coming from external sources. On a given day, I am communicating with NEFS III members on behalf of the government, research institutions, media, and other bodies that have an interest in understanding sectors.

As a sector manager, I would strongly support an informal industry group be developed to foster desperately needed two-way symmetrical communication platform for the industry, Council and Agency. I understand the Agency is currently evaluating their communications strategy, and I believe the informal industry group suggested above could be an example of how the Agency can learn from their intended audience. Gathering key industry stakeholders to have frank and honest discussions would be truly innovative and powerful. Although we are unable to attend this Sector Workshop, our Sector would gladly participate in these result-driven conversations and would encourage other stakeholders to do so as well. We foresee common issues being discussed with the outcome of amicable, common-sense solutions.

- **Sector Annual Reports and Confidentiality**

Sectors received an annual report Guidance document to assist in the assembly of the annual report twenty-four days after the end of fishing year 2010. The regulatory language for Year-End Reports (50 CFR 648.87(b)(1)(vi)(C) specifies specific data sets that Sectors would be required to provide after the close of the Fishing Year. Specifically,

“An approved sector must submit an annual year-end report to NMFS and the Council, no later than 60 days after the end of the fishing year, that summarizes the fishing activities of participating permits/vessels, which must include at least the following information: Catch, including landings and discards of all species by sector vessels, the permit number of each sector vessel that fished for regulated species or ocean pout; the number of vessels that fished for non-regulated species or ocean pout; the method used to estimate discards by sector vessels; the landing port used by sector vessels; enforcement actions...”

However, the regulatory language also vaguely specifies,

“...and other relevant information required to evaluate the biological, economic, and social impacts of sectors and their fishing operations consistent with confidentiality requirements of applicable law.”

As early as April 2010, Sector Managers and other interested parties noted that in order to satisfactorily complete the Year-End Report, guidance on what “other information” was required would be needed as soon as possible and delays in this guidance could significantly hinder a Sectors ability to adequately complete the FY 2010 Year-End Report. In April 2010 and throughout the fishing year, during various NMFS/Sector Manager Conference Calls and separate correspondence with NMFS staff, we repeatedly requested this guidance because we acknowledged data/ information collection done after-the-fact would be difficult, if not impossible, to accomplish. Despite these numerous requests, the Guidance document was simply provided too late to gather all information requested.

Specifically, after the first submission of the Annual Report, more information pertaining to trades within NEFS III (intrasector trades, between NEFS III members) was requested by the Agency. It was the view of the NEFS III Board of Directors that in order to facilitate fluid internal movement of the Sector’s ACE, which was distributed to individual members as harvest share in accordance with its Operations Plan, it was important to establish a process that streamlined internal transfers and kept individual members fishing. These internal transfers of harvest share were viewed as private, proprietary transactions between members consistent with the sector concept/vision, and the Sectors sole involvement was verification that the members had adequate harvest share to complete the internal transfer. NEFS III did not require members to disclose compensation pertaining to these transactions.

In a letter dated 9 September 2011, Ms. Patricia Kurkul, Northeast Regional Administrator for NOAA, referenced the possibility of “future consequences” for failing to comply with the Agency’s requests. Over the past year and seven months of sector management, NEFS III has worked collaboratively with the Agency to transition into this

new system. It is pivotal that the Council, Agency and sectors work together and all involved understand the need for flexibility during a time of change. We urge the Council and Agency acknowledge that it is extremely challenging, if not impossible, to retroactively ask for data that was not initially specified.

3. *What potential modifications to the FMP do you think would be helpful for sector operations?*

- **At-Sea Monitoring Costs for Fishing Year 2012-2013 and beyond**

The Council recognized in Framework 45 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, NMFS 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. Estimates by industry and the NMFS estimate the cost of ASM to be about \$625.00 per sea-day. The recent report *A Review of Observer and Monitoring Programs in the Northeast, the West Coast and Alaska* prepared by Northern Economics estimated that analyzed ASMs cost equate to \$2.21 for every pound discarded in FY2010. Immediate action is needed to address this issue.

NEFS III vessels simply cannot afford to pay for At-Sea Monitoring costs while maintaining any margin of profit. We urge the Council to delay industry's responsibility for developing and paying for an at-sea or electronic monitoring program until such time as industry is profitable again.

- **ACE Carry-Forward**

Amendment 16 currently 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. During the transition from fishing year 2010 to 2011, NEFS III had more than 10 percent remaining on all stocks except White Hake.

NEFS III recommends the Council 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.

- **VTR- Compliance & ACE Transfers**

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.”³ In implementing this management 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.⁴

NEFS III acknowledges 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. Currently, the Agency is internally evaluating 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’. Due to many concerns raised by sector managers, such as the one previously stated, the Agency is currently evaluating a process. 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 the Sectors request that the Council clarify what their intent was with this Amendment 16 provision.

Today, sector managers were informed the Agency has developed a system to track VTRs sent back to owners. We were instructed that now that the download is available to us, we will be given “two months to learn the new system, discuss any questions or concerns with representatives from the VTR office, and *transition sector vessels into*

³ Amendment 16 page 115

⁴ 648.87(b)(1)(viii)(B)

compliance. VTR compliance for annual catch entitlement transfers will be activated for all sectors on Monday, December 12, 2011. Once activated, sectors will still be given a 35-day grace period from the date of a trip before VTR compliance becomes mandatory.”

NEFS III does not believe it is an effective use of their manager’s time or the Sector’s finances to track VTRs for the Agency or ensure missing fields not detrimental to quota management are appropriately filled in and submitted to the Agency. There are specific data sets on a VTR that are essential to successful quota management (i.e. Gear Cod, Mesh/Ring Size, Chart Area). Other data sets (i.e. # of Crew, Number of Hauls, Date/Time Landed) do not impact the Sector or its managers ability to monitor quota. The Fisheries Statistics Office should hold each permit holder responsible for VTR correction, not the Sector via prohibition of ACE trading. Sector managers should not be expected, nor should sectors be expected to bear the cost of their manager spending time doing the job of the FSO. Sectors most often receive the VTR data we need in a timely manner and our Weekly Detail Reports reflect the data accordingly.

We strongly suggest the Council immediately clarify whether it was their intention to task sector managers and sector finances with a responsibility that falls within FSO.

- **Dockside Monitoring for FY 2013 and subsequent fishing years**

Dockside monitoring 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 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 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. NEFS III recommends the Council remove all dockside monitoring requirements for FY 2013 and subsequent years.

- **Increase Annual Catch Limits (ACLs) & reduce 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.

- **Minimum Fish Size Requirements**

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, because discards are deducted from the Sector's overall ACE, the vessels lose future opportunities to utilize the ACE allocated to their Sector. Additionally, adoption 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 would entail should be a focus of 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.

Acknowledging that a discussion evaluating the feasibility of a full retention fishery would require time, we would also like to bring to your attention an immediate modification that could partially alleviate some of the missed opportunities Sector vessels encounter in light of the minimum fish size requirements. Specifically, the Council should prioritize evaluating the current minimum fish size requirements in correlation with the minimum mesh size requirements and determine whether reductions in minimum fish size requirements may provide an opportunity for industry to fully utilize the ACE available to them within the existing minimum mesh size requirements.

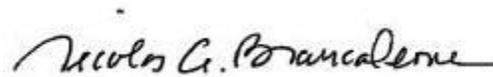
NEFS III recommends the Council evaluate the current minimum fish size requirements in correlation to the minimum mesh size requirements currently in place, and reduce minimum fish sizes for stocks accordingly. Additionally, begin consideration and evaluation on what a full retention fishery may look like, including analyzing whether this could be a mechanism that helps reduce to cost of At Sea Monitoring.

Finally, NEFS III would like to take this opportunity to commend the NEFMC for organizing the

Sector Workshop and recognizing the need for better communication. NEFS III hopes the Council and Agency understand the transition to sector management from the days at sea management system is a challenging, multi-year process. The transition requires constant review, analysis and the ability to implement modifications on an as-needed basis. NEFS III leadership is concerned regarding the long-term vision of sector management and the direction in which the Council foresees the industry in the next five years to ten years. Sector members are strategizing and attempting to create long-term business plans to adapt to sectors, therefore the need for stability is critical. NEFS III is committed to working with the Agency, the Council and other industry stakeholders to make the current system function effectively for all involved. However, we need your commitment as well.

Again, I apologize for not being able to personally attend the Sector Workshop on October 25 and 26. Should members of the Council have any questions that Ms. Etrie cannot answer on behalf of the Sector at the workshop, please don't hesitate to reach out to me directly at (978) 491-8004 or nbrancalone@gmail.com to schedule a meeting with NEFS III leadership.

Sincerely,

A handwritten signature in black ink that reads "Nicolas A. Brancalone". The signature is written in a cursive style with a small dot above the letter 'i' in "Nicolas".

Nicolas A. Brancalone
Sector Manager

cc: Elizabeth Etrie
NEFS III Board of Directors