

New England Fishery Management Council Groundfish Oversight Committee

Meeting Summary
May 30, 2012

The Groundfish Oversight Committee (Committee) met in Mansfield, MA. The Committee discussed the development of the sector monitoring and ABC actions and a number of issues related to these actions including full retention and AMs. Committee members present were Mr. Terry Stockwell (Chair), Mr. Tom Dempsey (Vice-Chair), Mr. Frank Blount, Mr. David Goethel, Mr. Glen Libby, Ms. Sally McGee, Ms. Sue Murphy, Mr. James Odlin, Mr. David Pierce, Mr. David Preble, Ms. Laura Ramsden. They were supported by staff member Mr. Tom Nies (NEFMC), Mr. Mark Grant, Mr. Mike Ruccio and Ms. Melissa Vasquez (NMFS NERO) and Mr. Gene Martin (NOAA General Counsel).

Discussions were guided by the Recreational Advisory Panel Meeting Summary of May 15, 2012, the Groundfish Advisory Panel Meeting Summary of May 22, 2012, the Groundfish PDT Meeting Summary of May 16, 2012, measure development overview document of May 29, 2012, proposed rule on changes to data confidentiality regulations (77 Federal Register 100 (May 23, 2012), pp 30486 – 30496), draft sector monitoring white paper of May 25, 2012, Groundfish Oversight Committee Meeting Summary of April 18, 2012 and a series of correspondence received by the New England Fishery Management Council.

Recreational Advisory Panel Meeting Summary

RAP Vice –Chair Michael Sosik provided a report on the recent RAP meeting. The Committee discussed the motions summarized in the Recreational Advisory Panel (RAP) Meeting Summary. One committee member questioned why the statement that local depletion had occurred was followed by a request for PDT analysis of the issue. The Committee was hesitant to attribute the decline in cod catch seen by the recreational fleet to directed effort by the commercial fleet on Stellwagen. They tried to consider other causes for the observed decline such as temperature changes and reduced prey availability. One Committee member provided anecdotal evidence of cod leaving the Cox’s Ledge area where little to no effort occurs, highlighting the need to further understand system dynamics. The RAP representative stated there has been no change in bait fish in the area but visual accounts have been given by multiple fishermen of commercial boats fishing Stellwagen Bank. This issue brought up broader questions on cod stock structure that will be addressed at the cod structure workshop in June 2012. The purpose of the requested data analysis is to determine if there has been a shift of effort by boats from Georges Bank and to inshore areas like Stellwagen Bank.

Some of the public comments included:

- Brett Tolley, Northwest Atlantic Marine Alliance: I’d like to follow up on the described problem. Acknowledging that it’s not just the recreational guys seeing this, it’s also been raised by the commercial boats over the last few years. We’ve submitted comments through NAMA and we’ve seen it on the banks. The Massachusetts lobstermen have also

submitted to Amendment 18 scoping comments regarding the concentration of effort on Stellwagen Bank. If we're facing some crises, about low catch limits, the problem of consolidation could exasperate the problem.

Overview of Pending Groundfish Actions

Council staff informed the Committee of the upcoming meeting schedule and timeline for the pending groundfish actions. The Committee discussed the prioritization and the status of the Groundfish PDT analysis. Some questions arose about constant harvest strategy but further analysis is needed to determine the probability of overfishing in subsequent years. The Committee had no objection to including ABC specifications and sector monitoring in a single framework document and will recommend this approach to the Council.

Sector Management Action

Council Staff updated the Committee on the PDT progress in determining if monitoring bias exists. Staff gave an overview of analyses into the possible presence of observer effects. Preliminary results suggest there may be some observer effect in some metrics but the report is incomplete with more work necessary to interpret the implications for catch monitoring. One committee member suggested that the analysis compare catch composition on observed and unobserved trips to detect any shift in catch but an increase of non-choke species on unobserved fish was not thought to be worrisome. Some concern was raised regarding the level of variability in the data with changes in population sizes over time affecting results; setting the CV to 30% of catch was suggested as a possible solution. The composition of analyzed trips by sector was requested to see if that is affecting results, i.e. it is possible that some boats are dominating the analysis because of their number of trips.

Some of the public comments included:

- Ritchie Canastra, New Bedford MA: I agree that it should be species specific. What species are you looking at? You have a boat that goes out groundfishing and another vessel that's going for redfish or haddock. It should be species specific to make it work.

There is some discrepancy that sectors with more day trips appear to get a higher observer coverage while coverage seems to be biased towards multi-day trips is explained by how observer time was charged prior to 2011 (whole day charged for a partial day). In 2010, the day or multi-day trip factor affected the results. The data indicate that observer coverage was more evenly distributed in 2011. The reduction in this apparent bias may simplify mechanisms used to defray monitoring costs. Council staff provided some draft text on ACE distribution to defray monitoring costs to aid the discussion. The Committee used data from Table 3 on page 12 of the PDT report to do a back of the envelope calculation of the cost of monitoring by landings. One committee member suggested using sub-option E to ensure that monitoring costs are the same across all sectors. Another Committee member wanted a measure that would minimize costs with incentives and to use discards as the basis for calculations.

Some of the public comments included:

- Jim Kendall, New Bedford Seafood Consultant: I can't understand how with more bookkeeping appears to be required for this that some money might be missed in calculating the cost. The fact that it's already being collected means that someone is already picking up the costs. Is there a chance that it could separate itself from whatever package it's already in and be a cost that the industry would have to bear?

The Groundfish Advisory Panel (GAP) (Maggie Raymond) representative described four motions passed regarding sector monitoring funding that included sending a letter to NOAA headquarters regarding funding in FY 2013, to establish a set-aside that would give fishermen on a monitored trip a portion of the set-aside to help defray cost, the need for 100% dockside monitoring if the Council endorses full retention and the need to clarify the purpose of electronic monitoring.

It was not clear whether additional ACE allocation was intended to cover all or part of monitoring costs. One committee member wanted to figure out how to fund 100% of costs.

Motion: Accept as part of Option 2 language for funding mechanisms that we target 100 percent of the costs of at-sea monitoring. Exclude sub-option E from further consideration. (Mr. Odlin/Mr. Preble).

Some concern was expressed that the intent to fund 100% of monitoring costs could require a huge reduction in the sub-ACL to cover it. The removal of options at this early stage was thought to be unfavorable especially as sub-option E attempted to equalize costs across sectors.

Motion to amend: Accept as part of Option 2 language for funding mechanisms that we target 100 percent of the costs of at-sea monitoring (Mr. Pierce/Mr. Goethel).

Some of the public comments on the motion included:

- Aaron Dority, Penobscot East Resource Center: Leave the options in and get as much analysis as you can. Cost does fall disproportionately on different parts of the fleet. Keep sub-option E in the balance.

The motion as amended **carried** on a show of hands (8-4-0).

Further discussion raised the issue of basing the analysis on discards.

Motion to amend: To target 100 percent of the direct costs to the industry. Discards will be used as the basis for calculating these options. (Mr. Odlin/Mr. Preble).

The motion to amend was **withdrawn**.

It was noted that costs should not exceed a percentage of the ex-vessel costs and analysis should include a comparison of total costs to total revenues. By restricting to direct costs, it becomes more fair and doable.

Motion as amended: Accept as part of Option 2 language for funding mechanisms that we target 100 percent of the costs of at-sea monitoring (costs as identified at previous Committee meeting).

The motion **carried** on a show of hands (12-0-0).

Motion: To target 100 percent of the direct costs to the industry. Discards will be used as the basis for calculating these options. (Mr. Odlin/Mr. Preble).

The discussion on using discards as the basis for calculations raised some procedural questions that could not be answered without some analysis of the data. Quality of discard data needs to be examined to determine feasibility. It was thought this method would incentivize the misreporting of discards but it was argued that using cost per discard would have a smoother effect across the board. It was agreed that this motion should to minimize discards and the intent was to have the PDT to develop an option that would achieve that.

Some of the public comments on the motion included:

- Ritchie Canastra, New Bedford, MA: About 20 years ago I owned RC Seafoods with 25 employees. It took about \$100,000 to get my plant up to new standards. I considered the inspectors as observers. The problem was my competitors were not being inspected so they were able to undercut me. I think that it should be species per pound and you're not allocated enough fish to make the program work with observers. It's like me doing business and having to pay \$100,000 and there's not enough volume to pay for it. You need the volume back on the table.
- Aaron Dority, Penobscot East Resource Center: I think that this committee and the Council need to first look at the survivability of discards before you commit the industry to having to pay monitoring based on discards. I've heard this numerous times and I'd love to know where the analysis is. I've heard of various boats or gear types that you can discard fish that can survive but they are assumed to be dead. Under this scenario, the fishermen are going to have to pay for them. I agree that there should be an incentive to minimize costs but I just want it to be recognized that not all these fish die.
- Jim Kendall, New Bedford Seafood Consultant: I can't help but wonder how this would relate to reducing discards. If you do reach that goal and reduce them seriously it kind of reminds me of the government telling us to burn less fuel in our cars but the price per gallon increases when we do. Will the same thing happen here?
- Maggie Raymond: It costs \$2.12 per pound for monitoring. I know that we're limiting the costs to 3% of the ex-vessel costs but it doesn't make sense for anyone to pay this much to monitor the fishery.

Motion as perfected: To add a sub-option F that would tie monitoring funds to discard/landings ratio by sector with the goal of incentivizing reduced discards of allocated groundfish.

The motion as perfected **carried** on a show of hands (11-1-0).

Further discussion on the motion included which management measures would require an amendment or a framework, whether the 3% cap might still be too high and if the set-aside was implemented whether extra allocation would only go to actively fishing vessels. In general, the Committee supported the idea of an incremental phase in of monitoring costs that would reduce the impacts of a large increase, as long as it is structured in a way that wouldn't undermine requests for funding in FY 2013, but there was no motion or consensus statement made on the issue.

The Committee supported the GAP motion that requested clarification of the Amendment 16 language regarding electronic monitoring. The intent is to create, not a duplication of effort, but a more streamlined program that is a tool for sectors to use that would help with monitoring.

Motion: Recommend the Council send a letter to NEFSC that clarifies that electronic monitoring is intended to be considered as a potential component of a Sector's catch monitoring program, rather than a complete replacement for all tasks currently performed by an observer or at-sea monitor. (Mr. Dempsey/Ms. McGee)

The motion **carried** on a show of hands (11-0-1).

The Committee moved on to discuss the status of minimum fish sizes of allocated groundfish.

Motion: Request the PDT to examine minimum fish size requirements with a specific focus of reducing discards. (Mr. Goethel/Ms. Ramsden).

It was thought that existing minimum fish sizes were out of date and should be re-examined. Yellowtail flounder was used as an example; there was anecdotal evidence that there are a lot of 12" yellowtail flounders being discarded, which could be a marketable product. The GAP had discussed their motion as a recommendation if the council decided not to go with full retention, with the intent of minimizing discards without affecting stocks by accounting for minimum size at sexual maturity and reducing the potential for targeting of undersized fish. The Committee also expressed an interest in reviewing an analysis showing the percentage of discards for a species are in a size class, to be done by the Groundfish PDT.

Some of the public comments on the motion included:

- Jackie Odell: Many people were hoping that full retention would get away from some of these issues and regulatory discards but many people want to get away from this waste where we could be turning discards into landings and help the sectors out and not have a significant impact on fish. From what we understand there isn't much difference between a 12" and 13" fish. The reason why I support this is because it asks the PDT to examine minimum fish requirements. It would help us know what the sizes should be and that hasn't been looked at in a long time. It would really help the sectors to have a lower discard rate for the sectors as well. The other thing the advisors talked about was to not decrease mesh size.

It was agreed that there is a certain amount of risk associated with revising minimum fish sizes, and with full retention, but discards were over 2 million pounds and it was thought beneficial to try to convert some of that to landings. Without some analysis, recommendations on specific sizes weren't possible because of the associated risk.

The motion **carried** on a show of hands (10-2-0).

Council staff described the draft management measure on full retention; the Committee accepted the draft measure text as presented by the PDT. The draft measure included language requiring unmarketable or damaged fish to be landed, which was thought not to be insurmountable for this measure. The consideration of mesh size changes was thought to be premature until any changes in fishing behavior under full retention could be determined. There was concern that a shift in landings towards small size fish might occur but considering the price for smaller fish it was thought fishermen would continue to target larger fish. A conservation issue was raised regarding the unknown discard mortality; some of the fish discarded survive. Another Committee member thought too much money was spent monitoring too few fish. A lot of the discarded fish have market value.

Motion: That we have an option of full retention for all allocated stocks in the multispecies complex. (Mr. Odlin/Ms. McGee)

Some of the public comments on the motion included:

- Ritchie Canastra, New Bedford, MA: If you keep the same mesh size, what's being thrown overboard as legal discard could be marketable. Nothing changes. If you could bring in some of those 2 million pounds currently discarded it would help. I don't think fishermen are going to target smaller fish. The problem is if you go to fewer discard and lower the mesh then that would be a problem. David mentioned redfish and the problem there is there's no consistency in the market. Things have changed out in the ocean. Yellowtail flounder look sick .I've brought this up numerous times. You're to going to go out and target smaller fish you'll be behind the 8 ball. I think this would help fishermen out a lot. No one's going to go after the smaller fish.
- Dick Allen: I made many motions on full retention when I was a council member and was told that fishermen would cheat on mesh size, which I didn't think was a good reason not to do it. I think we're in a different situation now and we have to monitor total catch. Most of the issues David brought up would result from changing selectivity. It's the case that any small fish that were caught would mean that larger fish were left in the water because they're part of the quota. If you found there was a decrease then you could downsize the quota accordingly. You can have a sardine fishery if you can figure out how many sardines you can take. Instead of having all those problems created by the discard you could get something from them.

One Committee member suggested retaining minimum fish size under full retention but charge extra for undersized fish. Analysis of the impacts is ongoing but it does suggest that if selectivity changes, it might not just convert discards to landings but may reduce yields.

The motion **carried** on a show of hands (10-2-0).

The Committee discussed the GAP motion of the requirement of 100% dockside monitoring if full retention is implemented. Dockside monitoring was thought to have been included in the full funding request in FY 2013. One Committee member wanted to make dockside monitoring more enforceable by requiring hold inspections; an across the board solution would also assist enforcement. Another committee member didn't think full retention should require dockside monitoring because under catch shares fishermen are trying to maximize their price per pound.

Some of the public comments included:

- Ritchie Canastra, New Bedford, MA: The dockside monitors are not going to be there for small fish. There's going to be no market for them. If someone is doing something illegal and they put small fish on the black market they'll get 25 cents. I can handle dockside monitoring costs with the volume. I welcome it. That's one way of getting the industry onboard. We have 2 unloaders in New Bedford, 2 in Boston and 3 in Gloucester. You have less than 10 in the major ports in MA and if you look at the where the sectors are offloading then it's really simple. It just stops the uncertainty in this business if everyone is monitored.

ABC Action: AM Issues

Council staff provided an overview on SNE/MA windowpane flounder that indicated there might be problems with other fisheries catching more of this stock than the groundfish fishery. It is important to be able to implement an AM to curtail the cause of the catch by restricting the fishery that's engaging in the catch. In light of the recent decision on an Amendment 16 lawsuit, one could argue that there aren't effective reactive AMs for these stocks and the first step would be to set up sub-ACLs.

Motion: To establish a sub-ACL of SNEMA Windowpane Flounders for the scallop fishery based on percentage of overall catches from 2001 – 2010. (Mr. Odlin/Mr. Libby).

The Regional administrator has the authority to restrict certain fisheries if they have more than five percent bycatch of regulated groundfish because they are inconsistent with the groundfish FMP. We may want to re-look at the approved exemptions to see if they still meet the five percent criteria. NKOAA GC advised that the NEFMC could set up ACLs and AMs in other fisheries, e.g. fluke fishery, if the intent is to protect groundfish. One Committee member thought that in the current situation the federal fisheries were last in line for allocations. It was thought the scallop fishery was one that could be examined today and others could wait until the issue could be discussed with MAFMC and ASMFC. The GAP also had a strong position on the fact that the groundfish fishery has been recently penalized for SNE/MA winter flounder because the state fishery increased its catches. The Committee has the ability to set AMs for species we do not manage but may want to consult with other management bodies before doing so.

Some of the public comments on the motion included:

- Drew Minkiewicz, Fishery Survival Fund: We do not support this motion as it is currently crafted. It is taking a piecemeal approach to the problem that needs to be addressed holistically. I understand projections for yellowtail flounder are difficult and not the best system and reflects effort shifts from year to year. This is based on history while there is a wide fluctuation from year to year that isn't really based in any kind of reality so you don't know what the impact will be on the scallop fishery going forward. Why is the scallop fishery being the only one singled out? Why aren't we talking about the state fishery? Why aren't we talking about the general category? General category is given a free ride on yellowtail flounder AMs. This is rushed. How will we manage these fisheries going forwards? We're just setting ourselves up for more EAs and problems down the road. This won't solve anything. I'm perplexed by the advice that the Committee is getting. When this started the AM is set by the FMP governing the regulated stock. That approach has been established. That seems to be the most workable.
- Jim Kendall, New Bedford Seafood Consultant: I support what Drew said. The gear dictated to protect turtles could have an impact. It's supposed to reduce catch but we don't know what's coming from that. It seems like the scallop fishery is being adopted as poster child. This is not based on any science. Over the period of time considered, the changes in fishing seasons have played a role. You're trying to design a fix.
- Gib Brogan, Oceana: We support this motion; this was anticipated in Amendment 15. Move forward and set up sub-ACL for yellowtail flounder in the scallop fishery and other species could be considered in the future. Adding that in right now is going to add it into the management action. We hope the letter to the other groups will happen as well so they can get full accountability for this.

Motion as perfected: To establish a sub-ACL of SNEMA Windowpane Flounders for the scallop fishery based on 90th percentile of recent catches from 2001-2010. (Mr. Odlin/Mr. Libby)

The motion as perfected **carried** on a show of hands (9-2-1).

Following discussion on previous motion, a second motion was made for other stocks as it was thought necessary to give the MAFMC and ASMFC notice that the NEFMC was considering this.

Motion: The Committee requests the Council send a letter to MAFMC and ASMC about the possible intent to set sub-ACLs for SNEMA windowpane flounder in the fluke, scup, and other fisheries identified with high bycatch. (Mr. Goethel/Ms. McGee)

The GAP was concerned about lack of accountability in state waters but one Committee member thought a letter was sent to state authorities about this issue already.

The motion **carried** on a show of hands (12-0-0).

Council Staff provided an overview of AM issues namely those raised in the approval letter for FW 47. The letter stated there are no effective reactive AMs for a few stocks and the issue of implementing the AM in year 3 after the overage occurs. The Committee previously reviewed

area and gear closures and found them unfavorable but they should be considered now along with any new ideas. The AM for halibut was unacceptable because by going to zero retention would not prevent the ACL from being exceeded by discarding. If the available data indicated the fishery will exceed the ACL then action should be taken in that year or the immediately following year.

Motion: Committee recommends to the council that should reliable information be available in year one that an ACL for a non-allocated stock has been attained that the respective AM would go into effect at the start of the next fishing year. (Ms. Murphy/Mr. Dempsey)

The inclusion of language that indicated the AM would be implemented at the start of the next fishing year raised some questions on the ability of an AM to be implemented fast enough. There was some hesitation to have an AM be implemented mid-fishing year because of the impact on fishermen and their business plans.

Some of the public comments on the motion included:

- Gib Brogan, Oceana: We're moving in the right direction but I'm not sure what's different to the year 3 method. If it's exceeded in year 1 and the data arrives on May 15th then it goes into effect in year 3. How is that different? The final rule for NS1 says that they have to use preliminary data to prevent ACLs from being exceeded. This ties the hands of the council to be able to implement one quickly. The agency should retain the ability to respond to problems as they arise and that should be clearly articulated in the FMP and it's not in there right now.

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

A Committee member commented that the discard mortality of the species has not been addressed. One Committee member disagreed with the assumption that 100% of the discards die and thought if they all live then there's no need for an AM because the ACL is never exceeded. Staff clarified that the Committee was confusing two separate issues. The A16 lawsuit decision requires reactive AMs whether or not the ACLs are exceeded and the AMs are implemented. Accounting for discard mortality does not change that requirement.

Motion: That we adopt the AMs that were entertained in FW 47 for halibut, wolffish, and a similar approach for SNEMA winter flounder. The AMs are described on pages 23 – 27 of the PDT report (Mr. Odlin/Mr. Dempsey).

The Committee wanted to find alternatives to closed areas because a quota system is already in place. State fisheries were again identified as contributing to this problem but under the M-S Act the Council is unable to allocate to states but is required to have AMs. Potential alternatives to time area closures included changes to allocations and increased mesh size in certain areas. The Committee didn't want to support only one option; they wanted to include it as an alternative.

Motion as perfected: That we include as *alternatives for development* the AMs that were entertained in FW 47 for halibut, wolffish, and a similar approach for SNEMA winter flounder. The AMs are described on pages 23-27 of the PDT report. (Mr. Odlin/Mr. Dempsey)

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

Motion: Recommend the Council explore mechanisms to revise the manner in which recreational ACLs and AMs are administered consistent with the RAP motion. (Mr. Dempsey/Ms. Ramsden).

The Chair recommended this motion be postponed until the next Committee meeting to allow for a detailed discussion on the motion.

Motion to postpone: To postpone the motion until the next meeting (Mr. Preble/Mr. Goethel).

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

Other Business

In light of the upcoming joint Groundfish and Scallop Committee Meeting, one Committee member thought it was important to address some long-term measures related to the allocate of yellowtail flounder to the scallop fishery..

Motion: the Committee recommends the Council develop two options for this framework to address scallop fishery catches of Georges Bank yellowtail flounder:

- Option 1 that allocates a set percentage of Georges Bank yellowtail flounder ACL to the scallop fleet based on past history of the catch, with sub-option A based on past five years of the catch and sub-option B based on past ten years of the catch.
- Option 2: the scallop fleet gets 90 percent of the projected needs calculated on an annual basis and adjusted annually in the specifications setting process for the Georges Bank ACLs. (Mr. Odlin/Mr. Dempsey)

Option 1 describes an approach that would result in a fixed percentage that does not change each year, and Option 2 is what the maker of the motion thought was done in FW 47. Option 2 would require an annual revised projection be done by the NEFSC to estimate what yellowtail flounder allocation the scallop industry would be expected to catch. The 90% clause was included to have some incentive to reduce discards. Option 1 does not take access areas into account. Option 1 requires averaging catch, which can fluctuate largely from year to year. The projections in Option 2 may be problematic and by taking 90% of the projection may constantly shift the baseline of what might be caught.

Some of the public comments on the motion included:

- Jim Kendall, New Bedford Seafood Consultant: I mentioned this at the working group the other day. The scallop group currently has 307mt and there's a dire need for this in the groundfish fishery. The scallop group only needed 98mt so they could easily relinquish 200mt to groundfish. The scallopers have no need or want for this yellowtail flounder and they have taken extreme measures to avoid these fish. One caveat is for zero possession of yellowtail flounder year round. I think that would be doable. I can't see how this would not be effective. If not you could deal with it then.
- Ritchie Canasta, New Bedford, MA: My suggestion is it's nice to have these options up there. Let the industry come up with the solutions. We'll get a better answer at the joint meeting.
- Maggie Raymond, Associated Fisheries Maine: We support these two options going forward. I think it is important for the Committee to take a position on this before the joint meeting. I haven't heard a different solution come forward so I'm not sure you will get another solution at the joint meeting.

One committee member thought it was necessary to try and put more fish back on the table by determining what level of retrospective pattern they were willing to accept. It was thought that a large amount of fish has been removed by the stock assessment. There was some concern about the effect the difference between access area trips from year to year would have. Despite all concerns both options were considered viable for the framework.

The motion **carried** on a show of hands (7-0-1).

Changes to confidentiality

A NERO staff member outlined the proposed changes to the confidentiality proposed rule that are included in the Federal Register release. There was no Committee discussion.

The Committee Chair requested that the comment period be extended.

RAP Motion

The Committee agreed by consensus that the PDT analyze commercial catch and effort data and look into the shift of effort on Statistical Area 514 over the past three fishing years.