

# New England Fishery Management Council Groundfish Oversight Committee

Meeting Summary  
November 18-19, 2013

The Groundfish Oversight Committee (Committee) met in Newport, RI. The Committee discussed the Excessive Shares Analysis conducted by Compass Lexecon, the Northeast Fishery Science Center Social Sciences Branch (NEFSC SSB) report on commercial fishery concentration, recent work on Amendment 18 to the Multispecies Fishery Management Plan, Northeast Multispecies Fishery - FY 2012 Final Results, US/CA trading and recent work on Framework 51 to the Multispecies Fishery Management Plan. Committee members present were Mr. Frank Blount (Chair), Dr. David Pierce (Vice Chair), Mr. Terry Alexander, Mr. Vincent Balzano, Mr. Tom Dempsey, Ms. Ellen Goethel, Mr. Peter Kendall, Dr. Matthew McKenzie, Ms. Sue Murphy, Ms. Laurie Nolan, and Ms. Laura Ramsden. They were supported by the Council Chair Mr. Terry Stockwell, Groundfish Advisory Panel (GAP) Chair Mr. William Gerencer, GAP Vice Chair Ms. Jackie Odell, staff members Dr. Jamie Cournane, Ms. Rachel Feeney, and Dr. Fiona Hogan (NEFMC), Mr. Chad Demarest (NEFSC SSB), Mr. Mark Grant, Ms. Sarah Heil, Mr. Michael Ruccio and Dr. William Whitmore (NMFS NERO) and Mr. Mitch MacDonald and Mr. Gene Martin (NMFS General Counsel).

Discussions were guided by a presentation of Introduction of Compass Lexecon, PDT memo to the GF OSC re Amendment 18 (A18) dated November 7, 2013, Compass Lexecon Presentation: Economic Analysis for Determination of Excessive Share Limits for the Northeast Multispecies Fishery, SSB Updated Analysis on Ownership Concentration dated November 18, 2013, presentation on Amendment 18 Development Update, Groundfish Oversight Committee meeting summary dated September 17, 2013, Groundfish Advisory Panel meeting summary dated September 16, 2013, the Northeast Multispecies Fishery – Final Year-End Results for FY 2012 dated November 5, 2013, NMFS presentation on Fishing Year 2012 Multispecies Monitoring Report, PDT memo to the GF OSC re Framework 51 dated November 12, 2013, PDT memo to SSC cc: OSC re GOM haddock ABCs dated November 7, 2013, GF OSC meeting summary dated September 17, 2013, GAP meeting summary dated September 16, 2013, TMGC Quota Trading Mechanism Guiding Principles, presentation on Framework 51 Development Update, Groundfish Oversight Committee meeting summary dated September 17, 2013, Groundfish Advisory Panel meeting summary dated September 16, 2013 and a series of correspondence received by the New England Fishery Management Council.

## **Excessive Shares Analysis**

Dr. Steven Peterson of Compass Lexecon provided an overview of the draft conclusions of the excessive shares analysis that Compass Lexecon has undertaken at the request of the NEFMC, to help it determine an appropriate excessive shares limit in the Northeast Multispecies fishery, focusing on approaches that may achieve Amendment 18 Goal # 4 – “to prevent any individual(s), corporation(s), or other entity(ies) from acquiring or controlling excessive shares of the fishery access privileges.” Compass Lexecon conducted interviews with vessel owners, sector managers and presidents, industry organizations, an auction house and processors; a public webinar was also held. Data obtained from the NEFSC SSB was also used in the analysis. During the presentation, the concepts of market power and economic rent were explained to the Committee. The analytical process established when examining excessive shares in the surf clam and quahog fisheries was followed for this analysis, including calculation of the Herfindahl-Hirschman Index (HHI) for the fishery. Preliminary results indicate that the markets for fish and ACE (leasing) appear to be highly competitive, and that fishery ownership is not concentrated, but large

permanent holdings could allow the exercise of market power. There may be other measures more likely to achieve goals #1-3 of A18 than accumulation limits

The Committee had a number of questions regarding this analysis. A Committee member did not consider the interviews conducted by Compass Lexecon to have covered enough of the fleet and provided Compass Lexecon with a list of questions regarding this potential omission. A Committee member considered the premise for market power to be a little off with regards to choke stocks because competition may not occur; an individual who has a high allocation of a choke stock can choose to sell it at a high price and everyone else sells at the same price. Compass Lexecon focused mainly on economic analyses and wondered why individuals would not act in their best interests; foregoing the opportunity to make money does not make economic sense. A Committee member disagreed with the conclusion that it would be difficult to monopolize the market even if sufficient ACE were acquired. It was thought that fish were not being caught and were too expensive for smaller vessels to be able to lease, resulting in consolidation. It was hypothesized that individuals could be leasing ACE without the intention to hurt competitors and force them to sell permits. This was considered to be an expensive (and risky) way to eliminate competitors because permits would still have to be purchased on top of foregoing profits by not fishing that leased quota. Compass Lexecon did not think this was occurring in the market; anomalies have been observed in the lease market, but based on the interviews, it was consistently reported that they eventually level out.

Compass Lexecon clarified that when looking at market power, species is more important than stock designation; it is not possible to isolate a stock at a local fresh market. The consultants focused on market power because it is an economic process and did not focus on non-economic influences on the market; potential issues of cooperation that were illegal under anti-trust laws were considered. A Committee member suggested the consultants utilize the anthropological literature that is available for this fishery. A Committee member suggested that the consultants explain the HHI to help the public understand whether there is market power in the industry.

The consultants predicted the use of accumulation caps to achieve the A18 goals would have limited success as it might be inefficient to set low caps; caps might have to be set very low and the industry might not want to be in that position. If the goal was to have over 400 active vessels fishing then extremely low excessive share caps may be required; this may maintain ports and small vessel fishermen but more effective tools should be used instead. An appropriate percentage could not be recommended at the time as the data analysis was not yet complete.

A Committee member thought it was desirable to have both short and long trip boats in the fishery not for quality but for supply. The initial allocation of quota was raised and it was considered by a couple of Committee members to have been unfair and should be revisited. It was also suggested that if the fishery wasn't achieving its ACLs then they should set the ACLs at over 100% to allow industry to land their full allocations.

Some public comment included;

- Brett Tolley, Northwest Atlantic Marine Alliance (NAMA) – Just a couple of points that I wanted to make. I wanted to start off by saying the conclusion of the initial investigation is no surprise. I think it's important to point out that the Compass Lexecon investigation into the surf clam ocean quahog fishery in the Mid-Atlantic a couple of years ago; I think there's a final report that came out in 2011. I spoke to a couple of Mid-Atlantic Fishery Management Council (MAFMC) staff and the conclusion of that study was that as of 2011 there was no market power that existed in the surf clam ocean quahog fishery and the recommendation at the time was for the MAFMC to not establish a cap. It's important to keep that in mind for any fishermen or folks who have been

involved in that fishery. It's clear that if the recommendation is to not put a cap on the surf clam ocean quahog fishery then I don't think there's any fishery in the US that's more concentrated in terms of access than that fishery. So it should be no surprise that the conclusion would be not to put a cap in the New England groundfish fishery. The other point I wanted to highlight was the discussion around the goals 1-3 of A18 and just stressing that I agree that the cap is not a solution to either one 1, 2, or 3 in terms of goals for A18. I'd like to highlight the A18 scoping process and from the NEFMC council staff report that came out for the conclusions for A18 scoping - the number one problem that was identified from the fishing community was the inshore/offshore issue, the concentration of fishing in the inshore areas. That was the number one problem identified. I'd really like to stress that and encourage the Council to be seeking out solutions to that problem. The last point I want to make is that in Dr. Peterson's presentation he just mentioned that evidence of a local fresh market and the idea of substitute for seafood like cod and not distinguishing between a Georges Bank (GB) cod versus a Gulf of Maine (GOM) cod. I bring that up because at NAMA we've been working with a network of hospitals throughout the New England region, which includes Boston children's hospital, Beth Israel, hospitals in RI and VT as well, that are right now committing to purchase their seafood in a different way that focuses on seasonal and local and are willing to put an enormous amount of their resources and money behind that type of purchasing. What we're hearing from those hospitals is that there is no substitute for a GB cod or a GOM cod that they don't want to be purchasing imported cod or farmed cod. I think in terms of looking at market concentration from the perspective of hospitals is also really important and invaluable.

- Aaron Dority, Penobscot East Resource Center – I think that going forward this is probably going to be most important as a set of evaluating tools and I'd like to get an understanding of what some of the next steps are moving forward. It seems like this is very narrowly focused just on excessive market power and I'd like to hear how the Committee or I don't know if this is going to be a charge that goes back to Compass or the Committee or if the Council staff are going to take a step back and look at a broader suite of issues that came up in the scoping process for this amendment. As part of that I would like to hear about what the successes were in other fisheries and again I don't know if this is outside the scope of your works so forgive me if it is. In other fisheries in the US what has been the success of establishing caps as a tool to address the problem of excessive consolidation – not market power specifically but excess consolidation. I was a little dismayed to see that 7-10 firms controlling the fishery is unconcentrated. I understand that from an economic perspective but I think to move beyond this exercise we need to take a look at what we want in this fishery, what is the ideal and try and manage towards that. Understanding we'll never actually 100% achieve our ideal but hopefully be closer to the mark. Again what tools have worked in other fisheries whether it's accumulation caps or thinking more broadly there's been this discussion about inshore versus offshore fleets. I think that as we move forward we need to recognize that there is a major distinction and clearly a one size fits all approach does not work. Dr. Peterson, I was glad to hear you elaborate on that a little bit. I think that's a direction we ought to go in. I don't know if that's purely an economic question but I do think that obviously if we're setting a cap for example built on the model of the halibut sablefish fishery they had an accumulation cap of 0.5% to 1% depending on the stock, that clearly wouldn't work for the offshore component of our fleet but it might work for a day boat fleet. I'm not exactly sure what the number should be but I think this Committee needs to be cognizant that these are two very different segments of this fleet.
- Chad Demarest, NEFSC SSB – so the conclusion that the Compass Lexecon report, at least as of now, reaches is that the sectors are not able to control the lease of ACE within sector members or the ones that are making the decisions and so I'm curious to know a couple of things. 1. Take this as an assumption, I think it's accurate, there were 5 sectors whose catch exceeded their ACE in

2012. I think there were 11 instances at the stock sector level of the sectors catch exceeding its ACE and that's out of 20 times 16 possible permutations. A very low percentage of possible overages required leasing in and out and we caught 38% of our cumulative ACE. And yet 13 of 16 stocks seem to have traded on the inter-sector lease market at non-zero values. So I'm curious to know if there's any disconnect with holding a part of that or if there are other frictions in the market might be part of that and how firm you are your conclusions that sectors are not able to effectively control the flow of ACE for their members. As a comment, I think there's interesting stuff there and I fundamentally agree with the answer but I think it might be worth diving into it a little bit. There's a big discrepancy between the volume of essentially zero value of PSC or ACE that's being traded and the really meaningful valuable stocks that are being traded so last year there was a really high volume of total of ACE that was traded between sectors but the volume of quite meaningful stocks was quite low. If we were to just hypothetically assume that the sectors were the firms did you calculate a HHI value for what it might look like in that case?

- Chris Brown, RI Commercial Fishermen's Association – The conditions that you conducted this survey in and drew your conclusions and feel that the concerns of the fishermen in the region is one in which allocations or available catch is extremely low for a huge number of the stocks that we have to work with. My question is do you think your findings would be the same had we been in an environment where stocks were all allocated at the upper reaches as opposed to the lower? My concern is that we may arrive at conclusions based on the scenario that we're in that may not hold true or be valid for a scenario that we're hopefully regulating towards. The average fishermen having 20,000 lbs of fish to catch with a 40 ft boat if he had 200,000 lbs to catch with a 40 ft boat, would your findings be consistent and of equally applicable and beneficial in a different scenario. My one other concern is that currently with such low ACLs, it's not hard to sell your fish, it's relatively easy, but when the recovery occurs and simultaneously we have enormous amounts of fish on the market at the same time. I think we're going to have to look at building a wall between the industry and processor shares because there will be different influences on the sale of fish when that happens.

The interviews indicated that individual PSC was being maintained within a sector such that individuals who provided PSC were allowed to fish all of that PSC.

### **SSB Report on Commercial Fishery Concentration**

SSB staff updated the Committee on progress made since June 2013 on investigating commercial fishery concentration; permits in CPH (through a snapshot of full ownership from April 7, 2011 and September 13, 2013) and concentration/accumulation at individual owner level have now been included in the analysis. The analyses indicated that low permit and/or PSC caps would be unlikely to induce divestiture. The inclusion of CPH vessels does not change the perception that ownership of PSC is highly concentrated but widely distributed. The data used in the analysis were incomplete because of complications with the databases and should only be used for discussion purposes. The issue of CPH permits contributes to this uncertainty and should be carefully considered when discussing ownership limits because they could be masking some important details regarding affiliations. The number of permits has changed from year to year; this is potentially caused by permit holders that have not renewed their permits annually or had voluntarily relinquished them. During the time period examined (2007 – 2013), the data suggest that the number of ownership groups has decreased since 2009 while the number of MRIs per ownership group increased until 2010 before remaining relatively constant. The analysis suggests the fishery is concentrated at both the MRI and ownership group levels. PSC is also concentrated amongst the owners holding the largest 290 MRIs. However, the stability of ownership and the amount held by largest individual owners do not appear to have changed after the implementation of catch shares

in 2010. Individual ownership of stock allocations ranges between 4 and 7.5%; GB winter flounder is the exemption and ranges between 10 and 12.5%.

To help understand the implications of permit cap thresholds on PSC accumulation, the percentage of PSC attainable by stock under a range of thresholds was provided; the same analysis was done showing the number of MRIs acquirable by stock under a range of cap thresholds. A different configuration of permits would be required to control a certain percentage of one stock versus another; if the goal was to control a particular stock, the exact permits required must be known, which was considered to be impossible. A Committee member wanted a broader range of thresholds to be available to help inform decisions. It was hoped that fish stocks would rebuild, thus improving the current situation of fishermen not being able to catch their allocations, because of low allocations of various stocks. It seemed to be more economically sound to lease, if an individual could afford it, than to spend a substantially larger amount acquiring a permit.

### **PDT Amendment 18 related Updates**

Staff updated the Committee on PDT progress on A18 alternatives. Staff requested the Committee make motions to provide the PDT with guidance on how to move forward with vessel upgrade restrictions, the Northeast Hook Fisherman's Association (NEHFA) proposal, and the A18 goals. The NERO is proposing an omnibus amendment to address vessel upgrade restrictions and the Committee can choose to contribute to that omnibus or to include specific alternatives in A18. The Committee has discussed the NEHFA proposal at two meetings and needed to decide whether to include various elements of it in A18. Alternatives for goals 1 -3 are underdeveloped and the PDT needed Committee guidance on how they could be met. The PDT has developed potential alternatives for goal #4 but recommended the Committee modify them as they saw fit.

### Vessel Upgrade Restrictions

The vessel upgrade restriction omnibus amendment, as proposed by NERO, addresses gross and net tonnage of a vessel and the one-time upgrade restriction. Some Committee members supported addressing horsepower upgrades because the current restrictions force fishermen to use outdated engines that are costly to repair. Based on scoping, the scallop industry was not in favor of modifying horsepower restrictions. The GAP passed a motion that supported the NERO proposal but also recommended removing the horsepower provision.

**Motion:** That vessel upgrade restrictions in A18 not be considered, and instead, develop vessel upgrade restriction measures via an omnibus amendment in collaboration with NERO. The omnibus should also remove vessel length and horsepower provisions. (Dr. Pierce/Mr. Balzano)

Different measures could be developed for the various FMPs so the scallop fleet could maintain current horsepower restrictions. The NERO would have to determine whether additions could be made to the omnibus amendment.

**Motion as friendly amended:** That vessel upgrade restrictions in A18 not be considered, and instead, develop vessel upgrade restriction measures via an omnibus amendment in collaboration with NERO. The omnibus should also remove or change vessel length and horsepower provisions.

The MAFMC would have to be consulted for this omnibus but the timing might be difficult if the proposed additions to the scope were made. Other committees may want to provide guidance on the proposed additions. It was questioned whether changes to the vessel upgrade restrictions would be in

conflict with A18 goal #1, however, the restrictions are an impediment to all sizes of businesses and the motion removes this alternative from A18.

Some public comment on the motion included:

- Maggie Raymond, Associated Fisheries of Maine (AFM) – AFM submitted comments on the omnibus amendment proposal already in support of this motion. I just wanted to reiterate or build on the point that Mr. Alexander made about engines not being the same anymore. It is implausible to replace many engines that have been in operation for 30 years. I just recently went through that personally, my engine blew up and they just don't make them anymore. My only choice was to rebuild it. If I wanted a new engine then I would have to go with a smaller engine but I would have had to change the transmission that I didn't have the money for. When these restrictions were put in place we were in a different place in the groundfish fishery and I'm just speaking of that specifically, not other fisheries. I think we really do need to look at modifying these or removing them. I doubt NMFS would remove them so I was glad to see someone add in the modification language. Also, I wanted to say with respect to the scallop fleet, I think some of the ITQ scallop fishermen might want to upgrade their vessels so that they can more efficiently fish for their ITQ and we ought to let them do that if it's in their best interest.
- Jackie Odell, Northeast Seafood Coalition (NESC) – NESC submitted comments in December 2011 and we supported removing the tonnage restrictions which we felt was an administrative burden on the fleet but felt there was a more thoughtful process that should be followed by the Council in regards to length and horsepower provisions especially in light of A18 that was being discussed at the time and fleet diversity. We thought that length and horse power provisions actually do play a role in fleet diversity and although an increased percentage probably should definitely be allowed that those are elements of fleet diversity that need to be carefully considered. We definitely agree with changing or increasing the percentage allowed to create more flexibility but completely removing length was a concern for the NESC board; we submitted comments in December 2011 in regards to that matter.

The motion **carried** on a show of hands (8/1/2).

#### Northeast Hook Fishermen's Association (NEHFA) Proposal

The Committee was not in favor of the NEHFA proposal, as they considered it an "allocation grab" as it would pull PSC from 110 permits with only a few vessels actively fishing.

**Motion:** That the Committee has considered the NEHFA proposal and decided not to include it in A18 (Mr. Alexander/Mr. Dempsey)

Several reasons were provided by the Committee why this proposal should not be included in A18. It isn't feasible to have a 3<sup>rd</sup> program in addition to sectors and the common pool. The NEHFA seems to want more flexibility, but less accountability. Every fishery component wants fish available for future generations and to enable new entrants into the fishery. There was concern about the amount of staff and administrative effort that would be dedicated to managing a small portion of the fishery and the ability of NMFS to monitor very small amounts of quota, given current data collection and processing timeframes. There was uncertainty about how representative the views of the NEHFA are of all the HA permit holders. The GAP didn't support the proposal, but encouraged NMFS to consider proposal elements as sector exemptions.

The Committee was supportive of some elements of the NEHFA proposal such as removing the tote requirement. Some of the proposed elements could be addressed in a framework, such as removing the trimester limits, however, this was previously considered for a framework but was voted down. A few Committee members reached out to the NEHFA to help them join sectors, but they were not interested in being part of the sector system. A Committee member considered it to be an inefficient use of both Council and NERO staff time to monitor this fishery; the hook quotas are small and therefore almost impossible to monitor separately. There was some concern that this would set precedence and would encourage other industry groups to move forward with similar proposals.

Some public comment included:

- Aaron Dority – Our sector has an active handgear fisherman in the sector; it's a limited access handgear permit that entitles him access to the sector and he leases quota from the permit bank and other permit banks or open market, whatever he needs. That possibility is there. If you're going to vote, if you're going to support this motion I think you need to think about what the impediments are that still exist even in addition to the permit being able to join the sector. These vessels, the permits that are on these vessels are operating on a very small and low end of their range and it's certainly difficult for these fishermen to make it work when they have to comply with the same regulation as everyone else does so for example handgear fishermen on a 25 ft boat are still going to have to carry observers and an at-sea monitor is going to be quite expensive pretty soon once sectors have to foot the bill. That's one consideration, there are others, VMS is obviously paid for but that's another element so you stack these on top of the other and I can certainly understand where Mr. Stettner is coming from when he's been pushing for this. If you go with this then I think one thing you might want to do is make a recommendation to the NERO to take a close look at some of the sector exemptions out there and really try to work with sectors to make it possible for handgear vessels to exist in the sector system, acknowledging that they really are operating on a small boat more so than many of the others in the directed fishery.

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

The Committee agreed by consensus to request that the Enforcement Committee consider whether the tote requirement for handgear vessels could be removed.

#### Accumulation Limits

**Motion:** Move to recommend Council adopt for 4.2.2.4 Use of fishing access privileges:

- (1) Alternative 1 (No action) and
- (2) Alternative 2 (Limit the use of fishing access privileges): For any single fishing year, no individual, or business entity shall harvest through allocated and acquired fishing access privileges more than:
  - a. X% of a stock-specific PSC
  - b. Y% of a stock-specific PSC

Those individuals or business entities holding permits/MRIs prior to the control date of (April 7, 2011) will be restricted to harvesting the percent of stock-specific PSC harvested as of the control date unless the allocated and acquired fishing access privileges exceeds the maximum percentage (X% or Y%) in which case harvesting will be allowed up to allocation/acquired percentage held as of the control date. (Dr. Pierce/Dr. McKenzie)

There was some discussion on who this would apply to; individuals who acquired permits prior to the control date might be exempt regardless of what cap was selected. This motion was not intended to strip anyone of their PSC. However, this motion could make it difficult to sell permits for individuals looking

to get out of the fishery. A Committee member was not in favor of the motion without having some actual percentages included; allocations are dynamic and can change greatly from year to year. NERO staff thought this may be difficult as it requires individual catch to be tracked as opposed to on a sector basis. It was unclear how restrictions could be placed on what an individual accumulates if allocations are not made to that individual but to a sector. A sector can treat PSC as an ITQ. NOAA General Counsel would have to investigate whether this would push the fishery into an IFQ. At the June 2013 Council meeting, the intent was to not use A18 to backfill A16 into a LAPP. NOAA General Counsel advised that if the Committee wanted to add this motion to A18 then implementation could be figured out afterwards; the motion doesn't set up individual trading rights.

A Committee member requested a website be set up for trading ACE, similar to what is used on the west coast, however, that fishery is an IFQ with allocations made to individuals; the NE infrastructure is not set up to track trades on an individual basis.

The motion **failed** on a show of hands (3/5/3).

**Motion:** Move to recommend Council adopt for 4.2.2.3 Alternatives for limiting the holdings of entities other than permit banks, Alternative 1 (No Action) and Alternative 2:

- (1) Option B with sub-options X% and Y% maximum percent MRI with associated PSC; and
- (2) Option D with sub-options X% and Y% of a stock-specific PSC.

Control date exceptions will apply. (Dr. Pierce/Ms. Goethel)

Again, no percentages were provided because it was felt that appropriate ones were not currently available. The motion was inconsistent with the draft alternative.

**Motion as amended:** Move to recommend Council adopt for 4.2.2.3 Alternatives for limiting the holdings of entities other than permit banks, Alternative 1 (No Action) and Alternative 2:

- (1) Option A with 5% maximum Northeast multispecies permits;
- (2) Option B with sub-options X% and Y% maximum percent MRI with associated PSC; and
- (3) Option D with sub-options X% and Y% of a stock-specific PSC.

Control date exceptions will apply.

A Committee member was opposed to moving this forward before appropriate percentages were available because it would lead to more confusion within the industry. The maker of the motion was initially waiting for the Compass Lexecon report, however, that only focuses on market power and the Council needs to make decisions beyond market power. With low allocations for GOM haddock and GB yellowtail flounder, it was unclear how a viable fishery could exist if caps were put on those species; this strategy may only work if the stocks rebuild and ABCs increase. The GAP was concerned with uncertainty that arose from one assessment to the next and made two motions in relation to that.

**Motion:** To postpone the motion until the Compass Lexecon report is received (Mr. Alexander /Ms. Ramsden)

The motion **carried** on a show of hands (6/3/1).

### Permit Banks

Staff asked the Committee if permit banks should be subject to a different accumulation limit and what the non-state permit bank definition should be. A Committee member did not support an aggregate permit bank cap; caps should be done at the individual entity level.



**Motion:** Move that Section 4.2.2.2 alternatives to limit the holdings of permit banks collectively move to the Considered but Rejected section. (Mr. Dempsey/Dr. McKenzie)

*Rationale* – When the time comes, the Committee can discuss and develop permit bank specific caps that either would be the same as an individual entity or something different.

Some public comment on the motion included:

- Maggie Raymond – I think an aggregate cap on permit banks is exactly what the fishery needs. The reason I suggest that is because permit banks - let me start by saying permit banks can and do good things to help people in the fishery but they're discriminatory. Only certain people can benefit from any of the existing permit banks – you have to live in one community or fish with one gear type or you have to be a certain vessel size. They're all discriminatory in some way. Basically worst case scenario, the majority of permits end up being owned by permit banks then they're going to dictate what the fishery looks like. They're going to say only red boats can fish on Tuesday and obviously, that's an exaggeration but they're all discriminatory. They're all restrictive. Every single one of them says only you can access these fish. Only you can have the right to fish. That's very scary to fishing people. The whole idea that somebody who maybe doesn't know anything about fishing is going to control the majority of the access to the resource. I would strongly urge you to vote down this motion. I think an aggregate cap is exactly what is needed for permit banks.
- Geoff Smith, The Nature Conservancy in Maine – I'd like to speak in favor of the motion I think the rationale that Mr. Dempsey laid out is a good one. I just want to clarify one thing for the record The Nature Conservancy as many of you know, operates a very small permit bank in the state of Maine with a couple of permits. We have some very specific objectives for what we are trying to achieve with that effort. I wanted to be clear, I'm not here to speak for any other permit bank that exists in this region but The Nature Conservancy and Island Institute permit bank that I help to run is not discriminatory, we do not say certain people can and certain people cannot have access to the fish on the permits that we control. We have prioritization of people, we have a group of fishermen that we are working with in ME and if there is demand for the quota from those fishermen then we lease the quota to them. If there is not a demand for quota from those fishermen then we offer quota up to anybody else. We've leased quota from our bank to the Sustainable Harvest Sector to a number of the NESCs network sectors, to the sector on Cape Cod, etc. As I said before, I'm not here to characterize what other permit banks do with their fish but we do not have that discriminatory nature that was described by the last speaker and I just wanted to make sure that the Council members were aware of that as they consider this motion.

Some Committee members were opposed to this motion and considered it premature; there was some concern that permit banks could gain control of the fishery. The maker of the motion clarified that caps on individual permit banks were appropriate but that an aggregate caps for permit banks was not favorable. One Committee member noted that there currently wasn't a permit bank in his state and didn't want to preclude that in future.

The motion **carried** on a show of hands (5/3/3).

A Committee member asked if more work was required for the section regarding definition of permit banks. Staff clarified that the PDT drafted language but the Committee has not yet approved it.

**Motion:** Move:

- (1) Non-profit entities (private permit banks) holding permits for the purpose of leasing ACE to active fishermen be referred to as “non-profit permit banks” thereby distinguishing them from other private entities that lease ACE; and
- (2) Adopt the definition of a non-profit permit bank as described in Draft Amendment 18 section 4.2.1.2 of Appendix 1: Alternatives for a Regulatory Definition of a Non-profit Permit Bank except these permit banks would not be required to join a groundfish sector. (Dr. Pierce/Dr. McKenzie)

The Committee Chair requested clarification regarding what happens if a permit bank doesn't distribute ACE to at least 3 distinct fishing entities. A Committee member considered this to be a labor intensive way to get added information from permit banks, if that was the ultimate goal. A Committee member was opposed to removing the requirement to join a groundfish sector. The maker of the motion clarified that the motion would not have criteria #4 and the language at the end should be struck.

**Motion as amended:** Move:

- (1) Non-profit entities (private permit banks) holding permits for the purpose of leasing ACE to active fishermen be referred to as “non-profit permit banks” thereby distinguishing them from other private entities that lease ACE; and
- (2) Adopt the definition of a non-profit permit bank as described in Draft Amendment 18 section 4.2.1.2 of Appendix 1: Alternatives for a Regulatory Definition of a Non-profit Permit Bank.

NOAA General Counsel questioned whether this would require non-profit entities acting as permit banks to operate under this new criteria or whether they would have to form a new type of organization. The maker of the motion clarified that these definitions were coming from the PDT and therefore assumed there was some logic behind them. The GAP discussed permit banks at the September 16, 2013 meeting and began developing a definition but did not make any recommendations on whether the permit banks would be under an accumulation cap.

The seconder of the motion was opposed to the friendly change made by the maker.

**Motion:** Move:

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- (2) Adopt the definition of a non-profit permit bank as described in Draft Amendment 18 section 4.2.1.2 of Appendix 1: Alternatives for a Regulatory Definition of a Non-profit Permit Bank except these permit banks would not be required to join a groundfish sector. (Dr. Pierce/Dr. McKenzie)

Some public comment included:

- Maggie Raymond – I'm trying to figure out why we're struggling so hard to come up with a definition of a permit bank, whether it be non-profit or profit. It seems to me that the reasons for that would be so that those permit banks could have a higher ownership level than an individual. That's what troubles me and that's why I don't think I was looking for the boogey man under the bed in my earlier comments about permit banks owning too many permits. We're to set a different standard for these permit banks and that's why we're trying to develop a definition for them. I would also, I wasn't at the September GAP meeting, but I would not have agreed to take out the word non-profit. The purpose of defining these permit banks was because they were supposed to be doing some social good. Making a profit is not necessarily doing the social good. If those are all owned by non-fishing people then the profits don't go to the fishing people. I think

you really need to think really carefully about why are you even developing a definition of a permit bank what are you then going to do with that. Are you then going to say OK you're a permit bank now, you got your money from some wealthy foundation and you can buy all the permits you want and then you can decide who can fish them. That's not the boogey man. Almost all these permit banks got their money from some wealthy foundation, they didn't come out of the fish hold like we get our permits from. This is what troubles me about this whole discussion. We're going to wordsmith the definition without talking about why we even need a definition.

The Committee struggled with this motion as a permit bank definition was not currently available. The definition was necessary given the goals of A18 and it was considered that the decision about accumulation limits should be made separately. NOAA General Counsel asked if the intent of the motion was to disallow permit banks as they currently exist by requiring the steps as outlined. The Committee member clarified that a permit bank that exists under the existing rules would continue to exist. NERO staff clarified that permit banks have to enroll in a sector to lease out the ACE; this motion would remove that requirement and elevate them to give them more flexibility and suggested that some incentive be provided for a permit bank to fit within the definition. A Committee member thought the requirement to be in a sector was important as it forced some accountability on the permit bank.

Motion to amend: Move:

- (1) Non-profit entities (private permit banks) holding permits for the purpose of leasing ACE to active fishermen be referred to as "non-profit permit banks" thereby distinguishing them from other private entities that lease ACE; and
- (2) Adopt the definition of a non-profit permit bank as described in Draft Amendment 18 section 4.2.1.2 of Appendix 1: Alternatives for a Regulatory Definition of a Non-profit Permit Bank.  
(Ms. Goethel/Mr. Dempsey)

The seconder of the motion to amend thought the change was essential and the Committee could still alter the definition and alternative in the future. Several Committee members asked whether current permit banks would fall within the criteria. Staff clarified that the PDT provided other conditions for permit banks that the Committee has not yet discussed.

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

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

Staff noted that there has been limited discussion on goals 1-3 for A18 and asked if the Committee would provide any further motions or tasking for the PDT regarding these. The Council is scheduled to decide the range of alternatives for A18 at the January 2014 Committee meeting. A Committee member did not think it was an appropriate time to consider alternatives for the PDT to develop, with having only been briefed on the Compass Lexecon work this morning; the Committee will have the opportunity to discuss this in January 2014.

### **Northeast Multispecies Fishery, FY 2012 Final Results**

NERO staff provided the FY 2012 final results for the Multispecies Fishery to the Committee. The recreational GOM haddock sub-ACL was exceeded by 8%; the Accountability Measure (AM) was not triggered as it is based on the 3 year moving average of the recreational catch compared to the sub-ACL as defined in A16. The last benchmark assessment for GOM haddock was GARM III and did not include recreational discards. The scallop fishery sub-ACL was exceeded by about 5% for GB yellowtail flounder; the AM was not triggered as the scallop sub-ACL overage was less than 50% and the total ACL was not exceeded. The windowpane total ACL was exceeded by the other sub-component category; the

groundfish sub-ACL was not exceeded. The percent overages may be misleading as they imply a higher magnitude than the actual numbers do; this is because of the low allocations.

NERO attempts to estimate discards and identify trips by FMP; this can be easy or difficult if there is no VMS requirement and VTR and landings composition must be used. Because of these difficulties, there are some unidentified trips; the other sub-component value did exceed their sub-ACL, however, the scallop catch was about 75 mt. The AM will be implemented on May 1, 2014. The overage was more than 20% so the larger gear restricted area, for only trawl gear, will be implemented; gillnet and longline gear are not impacted because they were determined to be a small component when the AM was developed. In FY 2013, the GF fleet has caught 190 mt of windowpane and is close to achieving its 200 mt quota already; based on changes to timing of AM implementation in FW 48 the fleet could be facing an AM in FY 2014 anyway.

It was not possible to provide an in-season estimate of catch for the recreational fleet; the data are not available until 45 days after a wave has ended. NERO currently doesn't provide in-season estimates for the recreational fishery but is considering it for this year. A Committee member thought recreational discards for GOM haddock should be estimated; based on the amount they discard for GOM cod it seemed unlikely that they were not also discarding haddock. An estimate of discards could only be incorporated after a benchmark assessment for GOM haddock was conducted. Quota monitoring is done in line with the most recent assessment. The Regional Administrator (RA) does have the authority (provided in FW 48) to revise the recreational AM prior to the fishing year to ensure they stay within their quota.

Some public comment included:

- Vito Giacalone, Northeast Seafood Coalition – We didn't have questions on the presentation but we do have concerns that arise from it and don't know if they have implications to FW51 or not. The result of the reactive AMs, if that's the right term for them, the larger areas in both the northern and southern gear restricted areas are going to result in, talking to our Southern New England (SNE) members, the SNE winter flounder, and the one bright spot that since the disaster has been the harvesting of the SNE winter flounder. We're told that the large area between Montauk and Cox's is going to take away the lion's share of the area that the groundfish vessels have been harvesting SNE winter flounder. The accesses that are fairly large on the SNE windowpane ACLs seem to be coming from another fishery and we have to be really mindful if we're not going to have another management action I know FW51 is full and ready to go out the door but another very serious one is in the northern area. If you look at the northern area that Ms. Heil put on the screen the northern large gear restricted area basically takes all of Georges Shoals which is west of Closed Area II, which is where all of the GB winter flounder, our healthiest flounder stock. Again floating quite a few of the vessels and shore side infrastructure. We're only at 50% of utility on that healthy stock. This AM with the GF fishery not exceeding its sub-ACL shuts down practically the GB winter flounder fishery that's what I see of this. You have an overage by the scallop fleet which is pretty substantial with no AM and no change in fishing, which means that we could we may not be able to prevent triggering this again in 2015. I think this is pretty much a fishery emergency before us. I don't know how legal it to can be for us to not at least try to do this, where a sub-component held to their ACL is now going to have an indirect economic disaster result to them as an AM and then the rest of the fisheries have no AM. We're not trying to figure out how to put punitive measures in for everyone else but we do need to figure out how to keep these groundfish fishermen from paying the price for an overage that they did not contribute to.

- Chris Brown – Going back about 4 years ago, I came before this Council and the Committee said that we needed to do something about the small mesh discards of the various flatfish in our small mesh fisheries in order to preserve the fisheries. I was told we didn't have a problem. We have a problem now. Nothing's changed. Fishing hasn't changed. The laws have changed a little bit; we have a big problem. If you had asked the fishermen how to solve this problem we could tell you a couple of things, gear solutions, to take care of the small mesh problem, and a different bag fixes the sand dab catch in the large mesh fishery. You can't catch a sand dab in a 6.5 inch diamond bag, nothing smaller than a half sheet of plywood stays in them. We can't afford to lose the flounder fishery. The irony of this is next year, the way this all went down I can tow a whiting net with 100 lbs of lead in the middle of the sweep right down through the closed area saving fluke but I can't do it with a large mesh bag saving flounders. You're not being very effective. You're overlooking a lot of things there are rules and laws on the books that come out of the Mid-Atlantic region, the small mesh exemption for fluke, which is causing all the discards – we need to get rid of that. We need to make that go away. The small mesh exemption that allows us to target fluke within the range of flounders with small mesh has to be taken away. Then we're going to actually have some discards of dabs in the large mesh fishery in the flounder fishery. They're groundfish and we'll retain them in the cod end. The savings in one fishery will support the salvation of the other and you will have an appropriate regional solution both fisheries will be able to be prosecuted. You have to find us room in FW 51 to get these fixes in.
- Maggie Raymond, Associated Fisheries of Maine – I support the comments made by Mr. Giacalone and Mr. Brown. I had my hand up because I was surprised. I know the report from Ms. Heil was primarily to alert everyone to the triggering of the windowpane flounder AMs but the report that was provided online and to the Council had a lot of information about catch and discards in groundfish for all the other species. I would urge you to take a look at those numbers because this problem of bycatch of groundfish in small mesh fisheries is not just specific to windowpane. There is significant, I think 160 mt of witch flounder caught across that other category and for the groundfish fleet right now we could really make good use of that 160 mt of witch flounder because no one in sectors has enough witch flounder to be viable. We need to look at those, all of those fisheries and figure out if there is a way to reduce that bycatch and discards. Ultimately it's the groundfish fleet that suffers as a result of accountability on those fisheries. Last year when you discussed priorities I urged you to take a comprehensive look at all of those fisheries and determine whether or not a sub-ACL and an AM was appropriate for them and Council chose not to adopt that as a priority. I raise that again and will again tomorrow under the priorities discussion. We need to figure out a solution for this. A16 provides a mechanism that says if they go over 5% in that other category you have to do something. We need to look at see what it is that we can do and Mr. Brown is absolutely right, a lot of that can be resolved with gear solutions and industry will figure out a way but they won't unless they're held accountable. Right now they're not. This is a big problem that I hope you will agree to address.
- Chris Brown – The small-mesh exemption is prosecuted effectively and efficiently offshore in waters deeper than 40 fathoms where there are no groundfish. It was initially set up to allow fluke fishermen to target squid, whiting and butters all at the same time and it's fine offshore. In its infancy it was never prosecuted inshore. Over the course of years as things have gotten more difficult guys have realized there are fluke, squid and whiting inshore and they work on that because groundfish has become less and less of a viable option. The inshore portion of that area has to be eliminated. I also think that by accepting fisheries that are say catching 4% groundfish you're running afoul of your other internal laws that the sub-ACLs won't be supported by fisheries that passed one component or one threshold they'll run afoul of the other so you need to make those 2 jive better. Most generally, yes, on rare occasions we venture offshore to target fluke but for the last 35 years I've made 95% of my income inside of 40 fathoms.

A Committee member pointed out that in A5 all the fisheries in the Mid-Atlantic were exempt for in the GOM and SNE a fishery had to have less than 5% bycatch in order to be exempt. These criteria should be revisited and the PDT has not been able to review this FMP requirement yet.

### **PDT Framework 51-related updates**

Staff updated the Committee on the Council request to the SSC regarding GOM haddock, a review of the FW 51 timeline, alternatives under consideration, and impacts analysis. On November 15, 2013 the SSC reviewed the PDT report dated November 7, 2013.

The PDT did not recommend changing the current ABC for GOM haddock until the next assessment is completed. The SSC indicated general support for the PDT conclusion; however, the final SSC report was not available for this meeting.

Staff had been provided with guidance that two of the alternatives under consideration for US/CA trading required an amendment as they were new ideas. It was suggested that these be included in A18, provided there was no objection to any delay in the timeline that might be caused if re-scoping was required. NOAA General Counsel advised that anything can be added to an amendment provided the scoping, NEPA and public hearing processes were followed.

A Committee member was confused by the PDT request for guidance on how the rebuilding analysis was different to the current process as it was expected that the PDT would be best able to tell the Committee whether it was redundant or not. Staff explained that the PDT wanted to better understand the intent of that alternative.

The Committee discussed allowing vessels to use their groundfish quota to allow them to fish in another fishery; the example used was GB yellowtail flounder in the whiting fishery. The current regulations make the allocations specific to a sector trip; this issue could be discussed further and would be aided by guidance from NOAA General Counsel.

At the September 2013 Council meeting a motion was made regarding rebuilding plans for GOM cod and American plaice; staff requested clarification of the intent of the motion. The motion was made for these two stocks but could be applied to other stocks in future management actions. The intent was to review the reference points to determine if they were initially set too high if we're not reaching the ACL. A Committee member thought it came down to fishing mortality; stock assessments have experienced retrospective patterns which may cause them to be overly optimistic. There was some concern that this alternative may imply that reference points could be changed outside of a stock assessment. Staff summarized it as an annual process that would be somewhat redundant but more explicit.

A Committee member didn't think a pound for pound payback was required as a small-mesh fishery AM for GB yellowtail flounder but a gear modification could be implemented after it was triggered. Because GB yellowtail flounder is governed under the US/CA agreement there is a pound for pound payback in place already. Vessels can proactively choose to use modified gear to reduce the likelihood of exceeding the sub-ACL and triggering an AM. A Committee member questioned the quality of the estimation of catch in the other sub-components category; a review by the PDT was suggested.

**Motion:** That the PDT review the methods used to estimate the other "sub-components" catch groundfish (Mr. Dempsey/Mr. Balzano)

Some public comment included:

- Maggie Raymond – I have a question about the motion, does this refer to the process that’s somewhat described in A16 where it says for the category described as other non-specified catches will be monitored and if the catch rises above 5% AMs will be developed to prevent the overall ACL from being exceeded. Is that the intent of this motion to trigger this review that’s described in A16?

The maker of the motion wanted to review the methodology to make sure they’re the best numbers possible.

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

A Committee member suggested designing mechanisms that would allow vessels to choose to donate allocation before the beginning of a fishing year to another fishery such as the small-mesh fishery. This strategy would not dedicate allocation directly to the small-mesh fishery but would consider it as a transfer of groundfish allocation. The Committee chair did not think that was something that could be done in a framework as it would allow vessels to use sector allocation for a non-GF trip; NOAA General Counsel had to investigate the issue before providing guidance. The regulations currently prohibit the use of small-mesh gear on a sector trip; it was suggested that an exemption could be made to allow vessels to use a sector trip and not target groundfish but care would need to be taken to ensure the FMP wasn’t undermined.

A requirement for small-mesh vessels to call into PTNS for observers was also under consideration but it was unclear if the intent was to increase the number of observers on these vessels or to standardize the requirements across fisheries. A Committee member was surprised that there were no pre-trip requirements when fishing in the small-mesh fishery and by requiring PTNS it might improve the data on fishing activity on small-mesh vessels. The small-mesh fishery is already under SBRM but has not reached their coverage because of funding limitations and a Committee member did not understand how requiring PTNS would improve funding or observer coverage. Another Committee member thought it was inconsistent to have different requirements for the two fisheries and it would increase the number of fishermen calling the Service to tell them that a trip is going to occur. A Committee member thought it was a requirement with no benefit; vessels could call into PTNS but there’s no guarantee that vessel will take that trip. This alternative was seen as a burden on the industry with little benefit.

An upcoming issue will be the disparity between haddock quota in the Eastern Georges Bank (EGB) and Western Georges Bank (WGB) areas – the EGB quota will be increasing as the WGB decreases. The Committee suggested giving the RA authority to move haddock quota from EGB to WGB, as it is one unit stock, and from WGB to EGB. The alternative as written by the PDT only allows the transfer from EGB to WGB prior to the fishing year as in-season changes to quotas is difficult. A Committee member thought that the Council could always choose to adjust the quotas in the framework process but the authority was being provided to the RA in this framework in case there was insufficient time for the framework process, the quotas could still be adjusted for industry. Another Committee member did not understand why quota could not be moved from WGB to EGB as long as the US/CA agreed TAC was not exceeded. The PDT was concerned that it would be difficult to move quota multiple times a year back and forth and it might result in a sector not having enough haddock to cover the transfers. NOAA General Counsel advised that the Committee could include what they wanted in the framework document; in-season adjustments are already allowed so authority could be given to the RA and a rule making process would implement the adjustments. The draft alternative language was considered appropriate if this was to be applied to other species like cod; the haddock quota is currently very high and fishermen have not achieved the ACL.

Some public comment included:

- Vito Giacalone – Us, sector folks were sitting here and we see a simple solution to this, whether it's in season or not. The one allocation that we have to make sure we stay within is the overall because it's one stock. The rest of it is administrative and if you go ahead and allocate the eastern portion of any of these stocks according to the TMGC/TRAC approved ACL and allow the sectors to transfer and shift fish from their eastern allocation to their west. That can only have a positive effect on the eastern sharing understanding part of it as you can't get more eastern cod, you can only shift from east to west and then you let the sectors voluntarily make that shift and everything takes care of itself. There are always going to be maxed as a country with whatever the initial allocation was so that really simplifies everything and then you use the RA to actually authorize that. Each year say sectors you have 2 weeks, a month or at any point in time in the season to transfer eastern allocation from east to west and you really should look at the sector tool and the SIMM (Sector Information Management Module) management module that we have in place. It can really help take care of a lot of these management decisions. We're really concerned with anything that puts the Council or the RA in a situation where they've got to make this judgment decision of how much to shift on someone's allocation where we have a system set up right now that takes care of that. The sector manager is not authorized to transfer sector ACE from one side of the equation to the other without getting due authorization from all of the members in his sector that it affects. You already have a system in place that can move eastern fish to west you just need to advertise it on SIMM and it will be done to the level that the industry is comfortable with and it meets the law automatically. SIMM won't accept a negative trade, NMFS has to approve it so that can't occur. The sector's balance of eastern stocks is being diminished as it's being fished or trade and they'd only be able to accept the trade or transfer of fish that existed so can't have a negative trade. It would be a voluntary transaction on SIMM that what the RA needs to do though is to authorize this. We can't have someone at SIMM just decide to do that; they need some regulatory authority. If the RA says it's OK to go ahead and accept transfers from eastern haddock to western haddock within the system, it will take care of itself. I think if you're going to put something in FW51 it can simply be the RA is authorized to go ahead and invite the sectors to make the transfers on SIMM. If we had a universal exemption type of thing or a universal piece of language that copied FW 51 language and we put it into all our ops plans every year so that we preserve the opportunity to do that then that would work but all we need the RA to do is to say we're going to do this and now it's up to the sectors to fund it to make the switch. I think really from our perspective is that in FW 51 if there was a discussion about how to do this instead of these complicated methods that the PDT is talking about is to simply give the RA authority to notice the sectors to go ahead and transfer eastern quota to western quota within their own sectors; not between sectors. That would happen after that period of time. Sectors will be deliberating on it and make their internal decisions of say to shift 25% from the western side of the balance sheet. Done. The overall quota is already taken care of. Two or three percent of the GB quota might be common pool so if you want to make a decision on that for the RA to see how much is going to move from one side to the other for the common pool. The proposal was the mechanism for where we would make those shifts and whether it's a one-time thing or something is dynamic throughout the year will depend on how well the system can track what happens if you're going back and forth. If you were to allow it open for the season that would work but you could only move it one way; you can only go east to west you can never go west back to east if you're going to have a dynamic system. If you're going to do it periodically on notices then it could be different. You could give RA authority to notice the sectors that transfers could be made east to west or west to east, he/she will know what is needed at the time, which way we want to move it. Doing it periodically throughout the year will be fine and if it's only one way then the sectors need to know that and then you can leave it open all year and you don't need to track it as long as it's only moving one way.



A Committee member clarified that this proposal would be done in the sector ops plan; it was thought at the meeting that this was not on the list of prohibited items for sectors. The industry proposal did not cover common pool vessels; an initial transfer may have to be done for those vessels. The timing of the transfer within a sector was discussed, whether it would be a set time at the start of the year or dynamic throughout the year.

**Motion:** To include an alternative in FW 51 that would allow the RA to approve voluntary sector transfers of eastern to western GB haddock allocations (Mr. Dempsey/Mr. Alexander)

The motion **carried** on a show of hands (8/0/2).

Staff advised the Committee that two of the alternatives under consideration (4.2.3.3 and 4.2.3.4) for quota trading with Canada would require an amendment. The only option that could be done via a framework would distribute received quota amongst the GF and other fisheries with allocations. Committee members were hesitant of establishing a trading mechanism that takes fish from one component and gives it to another.

**Motion:** To move Sections 4.2.3.3 and 4.2.3.4 to the Considered but Rejected section (Dr. McKenzie/Ms. Murphy)

Staff informed the Committee that the PDT will still provide an analysis of these options as there would be no Council action to remove them before final vote. NERO staff pointed out that of the three TMGC stocks this was only an issue for GB yellowtail flounder as groundfish was the only fishery with cod and haddock allocations. A Committee member suggested considering these options in the next available amendment because it was the appropriate way to distribute traded quota; the GAP also supposed option 4.2.3.4. NERO staff suggested including a mechanism to trade quotas in this framework so that a mechanism would be in place if a trade occurred in September 2014.

**Motion as friendly amended:** To move Sections 4.2.3.3 and 4.2.3.4 to the Considered and Rejected section, and consider these alternatives in the next appropriate GF action

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

Some public comment included:

- Dan Forum, Montauk, NY – I just wanted to go back to the small-mesh fishery AMs. The idea that the option of a year-round closed area I think on the southern flank of GB that the interactions with yellowtail flounder are pretty much in the dead of winter, January or February, if at all. I'm wondering if we can instead of having a year round closed area if the sub-ACL is reached, if we can modify it to the time period when the interactions occur. There's a year round viable fishery out there for whiting and a winter time fishery for squid, especially if cultivators would be closed during the summer months because of the sub-ACL being filled. There would be no yellowtail flounder bycatch or interactions in the southern flank of GB in the spring and summer and fall. Could we have the option of looking at when the interactions take place and having a closed area based on that time period? The Council motion, was it to try and separate Cultivators from southern GB? It almost sounds like the motion was to separate out Cultivators out from the rest of the fishery. I don't know we have a year round viable fishery on the southern flank of GB and talking with Mr. Nies, the interactions with yellowtail flounder occur in the dead of winter. There are only one or two tows during that period that make the difference. Obviously we're hoping to avoid this all together with gear modifications, which we use already but unless

this becomes mandatory we all know that there's going to be one or two people who aren't going to want to change their nets and they'll be the people with observers on board. It would be a real shame to lose a year round fishery due to two months of possible interactions with yellowtail flounder. I would still think there would be a way to modify the closed area to be time sensitive if it's possible.

The Committee Chair didn't think this could be addressed at the time. The Council motion failed unanimously and the Committee couldn't override that. A Committee member suggested the PDT look into whether there were seasonal interactions in the small-mesh fishery with GB yellowtail flounder to allowing fishing to continue in seasons when interactions were low. A Committee member suggested more contact with the MAFMC to ensure that everyone affected by these proposed regulations would be sufficiently informed.

A Committee member wanted to take a comprehensive approach at assessing the sub-ACLs for all non-targeted groundfish fisheries.

**Motion:** To recommend that the Council immediately initiate a FW to review the catch of groundfish in non-groundfish fisheries and establish or revise sub-ACLs and AMs where appropriate (Mr. Dempsey)

The motion was **tabled** to allow discussion on FW 51 to continue.

The revised discard strata for GB yellowtail flounder was disapproved in FW 48 but the Committee generally supported that it should be included in FW 51. Staff requested additional rationale that might allow this alternative to be approved in FW 51. Staff argued that the US share of GB yellowtail flounder was increasing and it might not be as much of an issue for fishermen. However, it was felt that it was important to get things right and not allow lower discards in Statistical Area (SA) 522 to mask higher discards in other SAs.

With regards to the zero retention of yellowtail flounder in the scallop fishery, a Committee member thought the original rationale of improving catch information was still valid and fundamental. Another Committee member provided anecdotal evidence that mandatory landing of GB yellowtail flounder was not being complied with. The scallop fleet has a yellowtail flounder allocation and to now say they can't keep any of that does not make sense.

Some public comment included:

- Drew Minkiewicz, Fishery Survival Fund – I have to strongly disagree with the statements made so far about this proposal. The issue of the discards vs. landings is not anecdotal. It's right there in the observer record. The observers have recorded what's being discarded and what is being landed so NMFS you don't have anecdotal evidence, you have actual information showing that it's not happening. I don't have an answer for why guys aren't landing yellowtail flounder. I don't understand it. I advocated for the change to the possession hoping that we would get better information; I was wrong. It's not being landed; we're not getting better information. All the estimates are done from the observer estimates and extrapolating it out across the fleet and that's not going to change if we do this or go back the other way. That is still going to be the case that the number that was applied for the yellowtail flounder bycatch will come from the observer estimates regardless of whether we say keep them or don't keep them. That's a fact; that's what we're seeing right now. The fact is also with being able to land them we have seen some people actually go and target them and that is exactly the last thing we want them to do. My group is spending money out of their pocket funding a bycatch avoidance system so that we don't catch

them and to have some people go out and actually target them because there is an incentive created by this rule, that is counterproductive. That's why we don't support status quo. You want to talk about being consistent, Gen Cat is now able to catch them. That's what we do for part of the fishery but for us that's not OK. There's a lot of inconsistencies in how you handle these things. I'm telling you from what we're seeing and the way we want to move forward where we're catching less yellowtail flounder at the end of the day because as far as the scallop industry is concerned we just want to reduce bycatch. The landing and sale of yellowtail flounder is not a major factor of the fishery. What really hurts us is if an area is closed because we caught too much bycatch. That's the big impact. There's no incentive to target them if you can't land them. That's why we want to move forward with that and just reduce overall bycatch. That's why we want it. It's worked in SNE winter flounder with the zero possession, we've seen catch for the first time since we put that in place go under  $F_{MSY}$ . It is a management tool that works. Yes, we don't like the idea of saying you must throw the fish overboard but it's happening anyway. I don't have a good answer for you on that. I don't know why it is but it is. As I said it's absolutely shown in the observer record. If you look at the numbers that NMFS provides from their observer coverage that has discards and landings so this is not some anecdotes this is actual data in front of us. Moving forward if you want less yellowtail flounder caught by scallop fishery, which is our collective goal then having this option in place allows that and makes it more likely because people have shown that for whatever reason if they have an incentive to target them, then they have and that's a problem.

Committee members appreciated both sides of the argument but the fundamental goal of improving catch information remained. A Committee member pointed out that the original rationale for requiring landing yellowtail was really to be a disincentive to target yellowtail flounder because it would not be cost effective; based on the public comment the rationale is the complete reverse to that and that would have to be explained.

**Motion:** To remove Section 4.2.5 Prohibition on Possession of Yellowtail Flounder by the Limited Access Scallop Fishery from FW 51 (Mr. Dempsey/Ms. Murphy)

NERO staff asked the Committee how this would impact the total mortality on the stock separate to the compliance issue.

The motion **failed** on a show of hands 2/7/1.

Staff provided the Committee with draft text for an alternative that would allow sectors to transfer eastern GB haddock quota to western GB that was in line with the industry alternative proposed earlier in the meeting.

“A sector may transfer its Eastern GB haddock ACE to the Western GB US/Canada Area at any time during the fishing year (and up to 2 weeks into following fishing year, unless otherwise instructed by NMFS, to cover any overages during the previous fishing year?). Proposed ACE adjustments will be referred to, and authorized by, NMFS. NMFS would notify the sector of approval or disapproval. NMFS review of an ACE adjustment will be based on general issues such as whether the sector is 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. A sector may not transfer its Western GB ACE to the Eastern US/Canada Area.”

The alternative was based on existing ACE leasing provisions from A16 and modified to address the EGB haddock stock issue. The Committee generally supported the draft text; staff was unsure if the Committee intended to allow leasing at any time but the Committee could modify this in future.

**Motion:** To include as an alternative in FW51:

A sector may transfer its Eastern GB haddock ACE to the Western GB US/Canada Area at any time during the fishing year (and up to 2 weeks into following fishing year, unless otherwise instructed by NMFS, to cover any overages during the previous fishing year?). Proposed ACE adjustments will be referred to, and authorized by, NMFS. NMFS would notify the sector of approval or disapproval. NMFS review of an ACE adjustment will be based on general issues such as whether the sector is 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. A sector may not transfer its Western GB ACE to the Eastern US/Canada Area. (Mr. Dempsey/Dr. Pierce)

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

The Committee discussed including a sunset provision on allowing the RA to make US/CA trades and include a time limit on the transfer so it must be replaced with the more desirable mechanisms that require an amendment. There was some hesitation to do this as it might limit negotiations with Canada and the trading procedure had not been fully agreed to by both countries yet.

The Committee had a number of items that would require an amendment and discussed the possibility of initiating an amendment to deal with trading, 5% exemptions, and windowpane flounder. Staff suggested that discussion might be more appropriate under priorities. A Committee member thought that anything that could be achieved in a FW should be moved forward as it would be faster. Depending on scoping, the trading mechanism could be put into A18 but may affect the timeline. The Council Chair reported that the Executive Committee supported investigating alternative catch setting but this would consume a lot of staff time, which may limit what can be achieved in 2014.

The Committee **agreed by consensus** to task the PDT with evaluating whether the Options 3 and 4 (Sections 4.2.3.3 and 4.2.3.4 respectively, would be appropriate for A18, require additional scoping, and how the timeline would be adjusted.

**Motion:** To recommend that the Council immediately initiate a framework to review the catch of groundfish in non-groundfish fisheries and establish or revise sub-ACLs and AMs where appropriate. (Mr. Dempsey/Mr. Alexander)

A Committee member was hesitant about establishing an AM on a non-groundfish fishery for taking groundfish as bycatch but it was also considered unfair to the groundfish fishery to be the only segment with AMs. Rebuilding the stocks with very low ACLs was seen as very high priority; the response to other fisheries catching groundfish was to establish AMs in an ad hoc basis with very little input from those affected. A comprehensive review was considered the best approach to this issue. Another Committee member thought resources could be better used at this point in time for conducting a stock assessment on stocks that haven't been evaluated in a long time.

Some public comment included:

- Bonnie Brady – I just wanted to say on behalf of the Long Island fishermen. We have paid the groundfish price. Winter flounder is gone. Right now the way this is going to occur, fluke fishery for those guys who are doing it can't catch fluke with a net that doesn't allow you to catch flatfish

so that's going to be toast next. I think that Long Island's fishermen would definitely benefit from and appreciate a joint venture with the mid. So that the economic impact to the other fisheries, the small mesh fishery, the scup fishery, the squid fishery, which a lot of guys who are groundfishing are also doing. We have been getting slapped back forever. You guys have seen me here forever. Every time a groundfish fishery is tanking the SNE takes it first. It would be really great before the other fisheries get impacted to the point where they no longer exist to have a more joint effort working with the MAFMC to try and find viable solutions for both councils.

- Maggie Raymond – I raised this issue last year and implored the Council to deal with it and you chose not to make it a priority. I want to thank those who spoke in support of it. I think this is the single most important issue that the groundfish fishery is facing right now. Our intent is not to do any harm to other fisheries. We know that there are gear solutions that people can and do use to prevent bycatch but when there's no accountability then some people don't do the right thing. We see that in the numbers that were presented to you 160 mt of grey sole, which is 13 % of the groundfish ACL was caught in the small-mesh fisheries. That's just one example. We're starving for grey sole in the groundfish fishery. We need to figure out a way to address this. The motion says where appropriate; some fisheries don't have that big of a problem. You're dealing with a sub-ACL and this framework for yellowtail flounder in the small mesh fishery which is a fraction of the grey sole catch. You have to do it all together as Mr. Dempsey said. You have to look at this comprehensively and figure it out where are the problems and what are the solutions. I know these fishermen; they're really smart and they will come up with solutions. Unfortunately sometimes you have to take out the stick in order for that to happen. This really is important and I really urge you to pass this motion and to address this and we look forward to working with the MAFMC. I spoke with Ms. Nolan during a break and said let's think, is there a way that we can get those boats into a groundfish sector so that they can use their yellowtail flounder bycatch to account for that. There are solutions that we can come up with to deal with this. If we don't do it comprehensively we're going to end up in a situation just where we are today where we allocated SNE winter flounder and said here's \$50 million that's going to go into the fishery and then we're taking it away because windowpane was exceeded by people who are fishing in small-mesh fisheries. It's just wrong and we've got to fix this. A16 says you have to do it. You have to do it. If you don't do it I guarantee someone is going to force you to do it and I don't think we want to go that route. We want to work this out in a way that is beneficial to the groundfish fleet and doesn't unnecessarily impact the other fisheries.
- Vito Giacalone– the NESC membership, we have quite a few members that fish in the small-mesh and diversify as necessarily especially now with the GF stocks being difficult to catch at this point. The responsible way to do this is through a framework and not through independent groundfish actions trying to punish other fisheries or what have you. What we need to do is have it be taken on comprehensively. I don't think things have really been overlooked. We've had a long list of important and difficult things to deal with every single framework action since I can remember. This was one that we saw coming. We said oh my god we have halibut, wolffish, windowpane, pout, AMs plugged in and the only AMs we really have for now is because the sectors are accountable to their ACL. That's not an oversight by any of us or you. It's just a matter of time to take the next step and I agree that this is a priority because the law says we have to have AMs and if we have substantial sub sectors that we can identify that have data that's being produced then we need to put AMs on them. I think it needs to be done in a comprehensive way so we definitely welcome the motion and think this will be good for the small-mesh fisheries as well in the long term.

The motion **carried** on a show of hands (7/2/1).

The Committee discussed ranking priorities. The Committee Chair suggested Committee members put together strong rationale for the priorities discussion at the November 2013 Council meeting – with 8 priorities listed it was unlikely that all could be completed in one year.

**Motion:** For the Council to request the NEFSC to implement a benchmark assessment for Gulf of Maine haddock (Mr. Alexander/Mr. Dempsey)

According to industry, it is impossible to avoid haddock – they are found 2 miles from shore to the GB stock line and in a range of depths. All other methods failed to have the GOM haddock ACL raised, which was vital for the fleet.

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