

DRAFT

DISCUSSION DOCUMENT

Amendment 18

to the

Northeast Multispecies Fishery Management Plan

Version C

**For consideration by the Groundfish Committee
at their April 4, 2014 meeting.**

Note:

Edits to *Section 4.0 Alternatives under
Consideration* since the March 28 Committee
meeting are in “track changes”.

Prepared by the
New England Fishery Management Council
in cooperation with the
National Marine Fisheries Service

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1.0 EXECUTIVE SUMMARY

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2.0 CONTENTS

2.1 TABLE OF CONTENTS

1.0 Executive Summary 3

2.0 Contents 3

 2.1 Table of Contents 3

 2.2 List of Acronymns..... 4

3.0 Introduction..... 6

 3.1 Context of Existing Management System..... 6

 3.2 Purpose and Need for Action 14

 3.3 Goals and Objectives..... 14

 3.4 Public Scoping..... 16

4.0 Alternatives Under Consideration 22

 4.1 Accumulation Limits..... 22

 4.2 Regulatory Definition of a Nonprofit Permit Bank 27

 4.1 Trading US/CA TACs..... 28

 4.2 Handgear A Permit Fishery..... 30

5.0 Alternatives Pending Further Discussion by the Groundfish Committee..... 34

 5.1 Accumulation Limits..... 34

6.0 Alternatives Considered but Rejected..... 35

 6.1 Splitting Groundfish Permits off of a Suite of Limited Access Permits 35

 6.2 Splitting Groundfish PSC off of a Suite of Limited Access Permits 35

 6.3 Modifying Vessel Upgrade Restrictions 36

 6.4 Accumulation Limits..... 36

 6.5 Regulatory Definition of a Nonprofit Permit Bank..... 37

7.0 Affected Environment..... 38

8.0 Environmental Impacts of Management Alternatives 38

9.0 Data and Research Needs..... 38

10.0 Applicable Law 38

11.0 References..... 38

2.2 LIST OF ACRONYMS

ABC	Acceptable Biological Catch
ACE	Annual Catch Entitlement
ACL	Annual Catch Limit
ALWTRP	Atlantic Large Whale Take Reduction Plan
AM	Accountability Measure
ASPD	Analysis and Program Support Division
ATGTRT	Atlantic Trawl Gear Take Reduction Team
BOF	Bay of Fundy
CA	Closed Area
CAM	Closed Area Model
CPUE	Catch Per Unit Effort
DAM	Dynamic Area Management
DAS	Days-At-Sea
EGB	Eastern Georges Bank
EIS	Environmental Impact Statement
EFH	Essential Fish Habitat
ESA	Endangered Species Act
FMP	Fishery Management Plan
FY	Fishing Year
GARFO	Greater Atlantic Fisheries Office
GB	Georges Bank
GOM	Gulf of Maine
HA	Handgear A
HHI	Herfindahl-Hirschman Index
HPTRP	Harbor Porpoise Take Reduction Plan
LAPP	Limited Access Privilege Program
MMPA	Marine Mammal Protection Act
MRI	Moratorium Right Identifier
MSA	Magnuson-Stevens Act
MSFCMA	Magnuson-Stevens Fishery Conservation and Management Reauthorization Act
NEFMC	New England Fishery Management Council
NEFSC	Northeast Fisheries Science Center
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent
OSC	Oversight Committee
OY	Optimum Yield
PBR	Potential Biological Removal
PSC	Potential Sector Contribution
RA	Regional Administrator
RPA	Reasonable and Prudent Alternative
SAM	Seasonal Area Management
SAP	Special Access Program
SFA	Sustainable Fisheries Act

SNE/MA	Southern New England/Mid-Atlantic Bight
SSC	Science and Statistical Committee
TAC	Total Allowable Catch
TMGC	Transboundary Management Guidance Committee
USCG	United States Coast Guard

3.0 INTRODUCTION

3.1 CONTEXT OF EXISTING MANAGEMENT SYSTEM

This section will describe the existing management program to contextualize the changes proposed in this action and aid in describing the No Action alternatives as required by NEPA. More detail on these actions can be found at <http://www.nefmc.org>.

3.1.1 History of the Northeast Multispecies FMP

Today, 13 species are managed under the Northeast Multispecies FMP as large mesh species, based on fish size and type of gear used to harvest the fish: American plaice, Atlantic cod, Atlantic halibut, Atlantic wolffish, haddock, pollock, redfish, ocean pout, yellowtail flounder, white hake, windowpane flounder, winter flounder, and witch flounder. Three species — offshore hake, red hake, and silver hake (whiting) — are managed under a separate small mesh multispecies program (per Amendment 12). Several large mesh species are managed as two or more stocks based on geographic region.

Groundfish stocks have been managed under the Magnuson-Stevens Act (MSA) beginning with the adoption of a groundfish plan for cod, haddock, and yellowtail flounder in 1977. This plan first relied on hard quotas (total allowable catches, or TACs) and proved unworkable. The quota system was rejected in 1982 with the adoption of the Interim Groundfish Plan, which controlled fishing mortality with minimum fish sizes and codend mesh regulations for the Gulf of Maine and Georges Bank. This plan was replaced with the Northeast Multispecies FMP in 1986, which continued to control fishing mortality with gear restrictions and minimum mesh size, but established biological targets to achieve maximum spawning potential.

3.1.1.1 Amendment 5

Amendment 5 was a major revision to the FMP. Adopted in 1994, it established a Days-at-Sea (DAS) program that reduced fishing effort for some fleet components and adopted year-round closures to control mortality. It also established a moratorium on groundfish permits. Amendment 5 contains a detailed history of the FMP up to 1994 (NEFMC 1993).

3.1.1.2 Sustainable Fisheries Act

Despite the effort reductions taken through Amendment 5, the Sustainable Fisheries Act (SFA), amended the MSA in 1996 to set the standards for effective management higher. The SFA placed new demands on FMPs to reduce bycatch, identify and protect Essential Fish Habitat (EFH), and minimize adverse effects of fishing on EFH to the extent practicable. It also created National Standards that emphasized minimizing impacts to fishing communities, improving safety at sea, significantly reducing bycatch, and improving the collection and use of fishery and biological data (SFA 1996).

3.1.1.3 Amendment 7

Implemented in 1996, Amendment 7 accelerated the DAS effort reduction program by eliminating significant exemptions from the effort control program. It incentivized fishing exclusively with mesh larger than the minimum required, broadened the area closures to protect juvenile and spawning fish, and increased the haddock possession limit to 1,000 lbs. It established a rebuilding program for Georges Bank (GB) and Southern New England (SNE)

yellowtail flounder, GB and GOM cod, and GB haddock based primarily on DAS controls, area closures, and minimum mesh size. Additionally, permit categories were changed or created, including an open access multispecies permit for limited access sea scallop vessels. A program was created for reviewing management measures annually and changing regulations through a framework adjustment process to ensure that plan goals would be met (NEFMC 1997). Of all changes to the FMP prior to 2000, Amendments 5 and 7 had the greatest impact on the fishery, both for stock rebuilding and shaping the socioeconomic conditions of the industry and fishing communities.

3.1.1.4 Amendment 9

Adopted in 1999, Amendment 9 had a significant impact on the fishery, establishing new status determination criteria (overfishing definitions) and setting the Optimum Yield (OY) for twelve groundfish species to bring the plan into complete compliance with the SFA.

3.1.1.5 Amendments 11 and Essential Fish Habitat

Amendment 11 adopted Essential Fish Habitat provisions for New England groundfish stocks in 1999 to comply with the SFA. According to a 2000 ruling of the U.S. District Court for the District of Columbia (American Oceans Campaign et al. v. Daley et al. 2000) however, EFH considerations were inadequate. The prosecution contested the adequacy of evaluations of fishing gear impacts on EFH and challenged NMFS approval of FMPs which did not fully address the impacts of fishing on habitat. The Court found that the agency's decisions on EFH amendments were in accordance with the MSA, but determined that the EAs prepared for EFH amendments did not fully consider all relevant alternatives and violated NEPA. The Court specifically criticized several EAs for evaluating only two options for EFH measures (including No Action). The decision noted that the descriptions and analyses of the environmental impacts of the Proposed Actions and alternatives were vague or not fully explained. The Court ordered NMFS to complete a new and thorough NEPA analysis for each EFH amendment named in the suit.

3.1.1.6 Frameworks 27 to 39

In 1999, the NEFMC submitted Framework 27 as the primary annual adjustment framework. Both Frameworks 27 and 30 contained trip limits for GOM and GB cod. In both cases, the Regional Administrator (RA) was authorized to reduce the trip limit when 75% of the target TAC for each stock is reached. On May 1, 1999, a GOM cod trip limit of 200 lbs per day was implemented, but on May 28, the RA reduced the trip limit to 30 lbs per day, just three weeks into the fishing year. Even before the trip limit was reduced, fishermen reported excessive discards of cod as seasonal closures ended. NMFS announced on July 29, 1999 that it disapproved the 30-day closure on GB cod proposed in Framework 30, but it approved the GB cod trip limit of 2,000 lbs per day and 20,000 lbs maximum possession limit.

The NEFMC submitted Framework 31 on October 14, 1999, which addressed discards in the GB and GOM cod fisheries. NMFS approved an increased GOM cod trip limit on January 5, 2000, but it disapproved a change to the GB cod trip limit program that would have eliminated the authority of the RA to make mid-season adjustments to the trip limit when 75% of the target TAC is reached.

Framework 33 was implemented on June 1, 2000 to reduce or maintain fishing mortality rates for the five critical stocks below Amendment 7 rebuilding targets. The framework implemented new seasonal closures, maintained or reduced trip limits, and mandated that party and charter vessels obtain a Letter of Authorization to fish in the GOM closed areas. The NEFMC also proposed changes to the large mesh permit category, but these were not approved by NMFS.

Framework 36 was completed in December 2001, but the NEFMC did not adopt it nor was it submitted. Frameworks 37 and 38 related to the whiting fishery.

Framework 39 was a joint action with the Scallop FMP and addressed scallop area management in Nantucket Lightship Area and Closed Areas (CA) I and II. These closures had been created to achieve groundfish rebuilding objectives and resulted in increased scallop biomass. The Framework allowed access to those scallop resources while minimizing bycatch of groundfish.

3.1.1.7 Amendment 13

Amendment 13 was developed over a four-year period (1999-2003) to meet SFA requirements, such as adopting rebuilding programs for stocks that are overfished and to end overfishing. In December 2001, during the drafting of the Amendment and immediately following the implementation of Framework 33, Conservation Law Foundation and other organizations successfully filed suit against NMFS alleging that the rebuilding plans NMFS had implemented were not consistent with Amendment 9 overfishing definitions. Additionally, they charged that there had been a consistent failure in management plans to assess bycatch reporting and establish measures to minimize bycatch and bycatch mortality (when bycatch is unavoidable). The plaintiffs prevailed on the issue that the rebuilding plans failed to implement a Standardized Bycatch Reporting Methodology (Conservation Law Foundation v. Evans 2001). After a long series of negotiations among various parties, interim measures were adopted by the court and NMFS was instructed to submit a FMP that complies with the law. Amendment 13, which went into effect on May 1, 2004, met the requirements for both this court order and the 2000 ruling on EFH.

The main purpose of Amendment 13 was to end overfishing on groundfish stocks and to rebuild all of the groundfish stocks that were overfished. The Amendment addressed overfishing definitions, stock rebuilding, reduced fishing effort and capacity in the fishery, included measures to minimize bycatch, instituted improved reporting and recordkeeping requirements, and implemented EFH protections. The Amendment also mandated a periodic review of stock data midway through the implementation period and called for corrective action if necessary.

During Amendment 13 development, the relationship between the multispecies fishing industry and the scientific community underwent some important changes. In September 2002, a Cape Cod fisherman convinced federal scientists that the trawl warps used to tow the groundfish survey gear used by the NEFSC were of different lengths, a fact that was confirmed. A series of workshops then assessed how the warp length discrepancy and confounding structural problems with the otter trawl doors and footrope may have affected data quality. Issues surrounding the trawl warps, reference point estimates, and a trawl survey experiment were evaluated by Payne et al. (2003). They concluded that the data was suitable for management and recommended further investigation of the issues, with greater emphasis on collaborative research to improve communication and understanding among fishermen and scientists, and to collect more comprehensive data for management of the fishery.

3.1.1.8 Frameworks 40A to 43

Framework 40A was created to mitigate economic and social impacts of effort reductions imposed by Amendment 13. It was intended to provide more opportunity for vessels in the fishery to target healthy stocks by instituting the Category B (Regular) DAS Pilot Program, the Eastern US/Canada Haddock Special Access Program (SAP) Pilot Program, and the CA I Hook Gear Haddock SAP, a program that allows longline vessels to fish in CA I to target haddock. The SAP program was partially approved and did not allow participation by vessels that are not members of the GB Cod Hook Sector. An Amendment 13 restriction was relieved that prohibited vessels from fishing both inside and outside the Western U.S./Canada Area on the same trip and allowed for increase in incidental TACs.

The NEFMC sought to improve the effectiveness of the Amendment 13 effort control program, including the opportunities to target healthy stocks. In Framework 40B, the NEFMC considered measures to clarify the DAS allocations and provide a small allocation to all permit holders, to improve opportunities to target healthy stocks, and to adjust the GB Cod Hook Sector provisions to meet those purposes. Framework 40B included measures to address interactions between the herring fishery and regulated groundfish, since catches of groundfish in the herring fishery were discarded and did not contribute to groundfish OY. The framework revised the DAS leasing and transfer programs, modified provisions for the CA II Yellowtail Flounder SAP, changed the allocation criteria for the GB Cod Hook Sector, established a DAS credit for vessels standing by an entangled whale, implemented new notification requirements for Category 1 herring vessels, and removed the net limit for trip gillnet vessels.

Framework 41 revised the CA I Hook Gear Haddock SAP to allow participation by nonsector vessels. The program, like many of the measures in Framework 40A, was intended to help mitigate the economic and social impacts of Amendment 13.

Framework 42 introduced several measures to achieve rebuilding and fishing mortality targets, including the biennial adjustment anticipated from Amendment 13. The Framework instituted a GB yellowtail rebuilding strategy, changes to the Category B (regular) DAS Program and two Special Access Programs, and an extension of the DAS leasing program. It introduced the differential DAS system, where DAS were counted at the rate of 2:1 in certain areas in the Gulf of Maine and Southern New England.

Large haddock year classes had been leading to increased haddock bycatch by mid-water herring trawlers, particularly on Georges Bank. In 2006, Framework 43 imposed for the herring fishery a haddock catch cap, an incidental catch allowance for other regulated multispecies, and a monitoring program for the catch cap. The existing classifications of herring midwater trawl and purse seine gear relative to the multispecies fishery were also modified.

3.1.1.9 FW 42 Lawsuit

The Commonwealth of Massachusetts and State of New Hampshire filed suit against the Secretary of Commerce over FW 42 provisions. The lawsuit argued that the Closed Area Model (CAM) used to develop measures did not comply with National Standard 2 requirements to use the best available science. The lawsuit also argued that measures were more stringent than necessary because the NEFMC and NMFS failed to consider the “mixed stock exception,” which allows overfishing to continue under certain limited conditions.

On January 26, 2009, the U.S. District Court in Massachusetts affirmed the use of the CAM and rejected the argument that its use was not the “best available science.” The order also said “The court temporarily suspends Framework 42 pending serious consideration and analysis of the Mixed-Stock Exception by Defendant.” The court order led to considerable confusion over the management measures that remained in place. After filings by the parties in the suit, the court issued a subsequent ruling on February 17, 2009 that said (in part): “Framework 42 is hereby reinstated except for those provisions relating to the 2:1 DAS counting system, which remains suspended for thirty-eight (38) days from the date of this order.” On February 23, 2009, the court extended the suspension of DAS counting provisions until April 10, 2009 so that the Council could review a NMFS filing on the applicability of the mixed stock exception. Other FW 42 measures were reinstated. On April 10, 2009, the court reinstated FW 42 in its entirety.

3.1.1.10 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act

In 2006, the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSFCMA) updated the original MSA and its SFA amendments (MSFCMA 2007). The MSFCMA reauthorized the MSA for Fiscal Years 2007-2013 and contained new requirements for fishery management, including:

- The use of Annual Catch Limits (ACLs) and Accountability Measures (AMs) in all U.S. fisheries by 2011 to ensure that overfishing does not occur.
 - The ACLs must be set at or below the Acceptable Biological Catch (ABC) recommended by the Scientific and Statistical Committee (SSC) of the particular regional council.
 - The AMs must detail what actions will be taken in the event of an harvest level overage.
 - For stocks that were currently experiencing overfishing, the deadline for ending that overfishing was 2010.
- The use of Limited Access Privilege Programs (LAPP).
 - The term "limited access privilege" means a Federal permit, issued as part of a limited access system under Section 303A to harvest a quantity of fish representing a portion of the ACL that may be received or held for exclusive use by a person; and: (a) includes an individual fishing quota; but (b) does not include community development quotas as described in Section 305(i).
 - Much of the responsibility for the development of LAPPs and their requirements is delegated to the Councils, including what types of LAPPs can best meet the needs of a specific fishery, eligibility criteria for participation, and procedures for allocating harvest privileges.

One requirement in the MSFCMA applies specifically to New England fisheries. The Act states that the NEFMC, “may not approve or implement a fishery management plan or amendment that creates an individual fishing quota program, including a Secretarial plan, unless such a system, as ultimately developed, has been approved by more than 2/3 of those voting in a referendum among eligible permit holders...” Thus, a system for creating a referendum and determining

voting eligibility would need to be formulated if the NEFMC chose to pursue IFQs as a management tool.

3.1.1.11 Interim Rule

Although the NEFMC was developing Amendment 16 to comply with the MSFCMA, NMFS reduced fishing mortality through an interim rule effective for Fishing Year 2009 (NMFS 2009) to ensure compliance with legal deadlines. Interim regulations for commercial vessels include the Amendment 13 default DAS change (an 18% reduction in available Category A DAS) and expansion of the differential DAS counting area in Southern New England. Landing SNE/MA winter flounder, northern windowpane flounder, and ocean pout were prohibited, and a trip limit was adopted for witch flounder. The SNE/MA winter flounder SAP was eliminated for the duration of the rule, as was the state waters winter flounder exemption. There were mitigation measures such as a reduction in the minimum size for haddock, removal of the conservation tax for DAS transfers, liberalization of the DAS leasing program, extension of the Eastern U.S./Canada haddock SAP, and modifications to the CAI Hook Gear Haddock SAP. Recreational measures include an extension of the seasonal closure for GOM cod, a 10-fish bag limit on GB cod for party/charter vessels, a lowering of the minimum size for haddock, and a prohibition on retention of winter flounder in the SNE/MA stock area.

3.1.1.12 Amendment 16

Amendment 16, implemented May 1, 2010, provided major changes in the realm of groundfish management. Notably, it greatly expanded the catch share sector program. Sectors are voluntary, self-selected groups of fishermen that are allocated a portion of the available catch. Amendment 16 also implements annual catch limits (ACLs); exceeding these limits triggers additional management actions called accountability measures (AMs) in compliance with the MSFCMA. The amendment also included a host of mortality reduction measures for “common pool” (i.e. nonsector) vessels and the recreational component of the fishery.

3.1.1.13 Amendment 16 Lawsuit

A lawsuit filed by the Cities of Gloucester and New Bedford and several East Coast fishing industry members against NMFS challenged, among other things, that the sector program constituted a LAPP, and as such, should have been subject to additional requirements, like a referendum among permit holders for approval. In September 2012, The U.S. Court of Appeals for the First Circuit in Boston upheld the first court ruling against the plaintiffs. The provisions of Amendment 16 were upheld (Lovgren, J. et al. vs. Locke, G. et al. 2012).

3.1.1.14 Frameworks 44-51

Framework 44 was also adopted in 2009, and it set specifications for FY 2010 – 2012 and incorporated the best available information in adjusting effort control measures adopted in Amendment 16. Framework 45 was approved by the Council in 2010 and adopts further modifications to the sector program and fishery specifications; it was implemented May 1, 2011. Framework 46 revised the allocation of haddock to be caught by the herring fishery and was implemented in August 2011. Amendment 17, which authorizes the function of NOAA-sponsored state-operated permit bank, was implemented on April 23, 2012. Framework 47, implemented on May 1, 2012, set specifications for some groundfish stocks for FY 2012 – 2014, modified AMs for the groundfish fishery and the administration of the scallop fishery AMs, and

revised common pool management measures; modification of the Ruhle trawl definition and clarification of regulations for charter/party and recreational groundfish vessels fishing in groundfish closed areas were proposed under the RA authority. Framework 48 was partial implemented on September 30, 2013; some measures in FW 48 are still in review. That action proposes revised status determination criteria for several stocks, modifies the sub-ACL system, adjusts monitoring measures for the groundfish fishery, and changes several AMs. Framework 49 is a joint Northeast Multispecies/Atlantic Sea Scallop action that modifies the dates for scallop vessel access to the year-round groundfish closed areas; this action was implemented on May 20, 2013. Framework 50 was implemented on September 30, 2013, which set specifications for many groundfish stocks and modified the rebuilding program for SNE/MA winter flounder. Framework 51 is currently under review and would set specifications for FY2014 and makes several modifications to the administration of ACLs and AMs.

3.1.2 Other Actions Affecting the Fishery

3.1.2.1 Actions to Minimize Interactions with Protected Species

Many of the factors that serve to mitigate the impacts of the groundfish fishery on protected species are currently being implemented in the Northeast Region under either the Atlantic Large Whale Take Reduction Plan (ALWTRP) or the Harbor Porpoise Take Reduction Plan (HPTRP). In addition, the Northeast Multispecies FMP has undergone repeated consultations pursuant to Section 7 of the Endangered Species Act (ESA), including the Biological Opinion dated June 14, 2001. In that Opinion, NMFS concluded that the continued authorization of the Northeast multispecies FMP would jeopardize the continued existence of ESA-listed right whales as a result of entanglement in gillnet gear. A Reasonable and Prudent Alternative (RPA) was provided to remove the likelihood of jeopardy, and the RPA measures were implemented, in part, through the ALWTRP. On April 2, 2008, NMFS reinitiated Section 7 consultation on the continued authorization of the Northeast Multispecies FMP because: (1) new information on the number of loggerhead sea turtles captured in bottom otter trawl gear used in the fishery, and (2) changes to the ALWTRP that will result in the elimination of measures that were incorporated as a result of the RPA for the June 14, 2001, opinion on the continued authorization of the Northeast Multispecies FMP. **The new consultation is on-going but is not complete as of the drafting of this document. [update?]**

3.1.2.1.1 Harbor Porpoise Take Reduction Plan

The Harbor Porpoise Take Reduction Plan (HPTRP) was developed pursuant to Section 118(f) of the Marine Mammal Protection Act (MMPA) to reduce the level of serious injury and mortality of the Gulf of Maine/Bay of Fundy (GOM/BOF) harbor porpoise stock due to incidental interactions with commercial gillnets. Prior to the development of the HPTRP, the bycatch estimate of the GOM/BOF harbor porpoise stock was estimated at 1,500 animals taken per year in U.S. commercial gillnet fisheries between 1994 and 1998. This exceeded the stock's Potential Biological Removal (PBR) level by more than threefold. Under the MMPA, NMFS was required to take action to reduce the serious injury and mortality of harbor porpoises from incidental interactions with gillnet gear. Thus, NMFS formed two take reduction teams to recommend measures to reduce incidental interactions in the Gulf of Maine and the Mid-Atlantic, respectively.

The GOM component of the HPTRP regulations, implemented on December 2, 1998 (Morreale & Standora 1998) manages commercial gillnet gear that catches or is capable of catching multispecies through time and area regulations, from Maine to Rhode Island, between August and May. This includes seasonal gillnet closures during the peak months when harbor porpoises are most concentrated in four of the six GOM management areas. At other times of the year, the HPTRP management areas require the seasonal use of acoustic deterrent devices (i.e. pingers) on all sink gillnet gear.

After implementation of the HPTRP, harbor porpoise bycatch decreased and remained below the PBR of 610 animals until 2004. However, bycatch showed an increasing trend after 2001, and again exceeded PBR beginning in 2004. From 2001 through 2005, the average annual mortality was 652 harbor porpoises per year in U.S. commercial fisheries. NMFS was required to take further action to reduce harbor porpoise takes in gillnet fisheries. NMFS reconvened the Harbor Porpoise Take Reduction Team in 2007 to review and discuss the most recent harbor porpoise abundance and bycatch information and to evaluate measures that may reduce harbor porpoise bycatch to below the PBR. NMFS finalized an amendment to the HPTRP in 2010 (NMFS 2010).

3.1.2.1.2 Atlantic Large Whale Take Reduction Plan

The ALWTRP contains measures designed to reduce the likelihood of fishing gear entanglements of right, humpback, fin, and minke whales in the North Atlantic. The plan includes broad gear modifications and time/area closures (which are being supplemented by progressive gear research), expanded disentanglement efforts, extensive outreach efforts in key areas, and an expanded right whale surveillance program to supplement the Mandatory Ship Reporting System.

Key regulatory changes implemented in 2002 included: 1) new gear modifications; 2) implementation of a Dynamic Area Management system (DAM) of short-term closures to protect unexpected concentrations of right whales in the Gulf of Maine; and 3) establishment of a Seasonal Area Management system (SAM) of gear modifications to protect seasonal concentrations of right whales in the southern GOM and GB.

The ALWTRP measures published on October 5, 2007 expand the gear mitigation measures by: (a) including additional trap/pot and net fisheries (i.e., gillnet, driftnet) to those already regulated by the ALWTRP, (b) redefining the applicable areas and seasons, (c) changing the buoy line requirements, (d) expanding and modifying the weak link requirements for trap/pot and net gear, and (e) requiring (within a specified timeframe) the use of sinking and/or neutrally buoyant groundline in place of floating line for all fisheries regulated by the ALWTRP on a year-round or seasonal basis (MSFCMA 2007).

3.1.2.1.3 Atlantic Trawl Gear Take Reduction Team

The Atlantic Trawl Gear Take Reduction Team (ATGTRT) was first convened in September 2006 by NMFS as part of a 2003 settlement agreement between the Center for Biological Diversity and NMFS to address the incidental mortality and serious injury of long-finned pilot whales, short-finned pilot whales, common dolphins, and Atlantic white-sided dolphins in several trawl gear fisheries operating in the Atlantic Ocean. Incidental takes of pilot whales, common dolphins and Atlantic white-sided dolphins have occurred in fisheries operating under the Atlantic Mackerel, Squid, and Butterfish FMP, as well as in mid-water and bottom trawl

fisheries in the Northeast. The ATGTRT concluded, with NOAA legal guidance, that additional management measures were not necessary at the time (ATGTRT 2008).

3.1.2.2 EFH Omnibus Amendment

The NEFMC is currently developing an Omnibus Essential Fish Habitat (EFH) Amendment for all of its FMPs. The amendment is being completed in two phases. Phase I, completed in 2007, reviewed and updated EFH designations and considered identification of HAPCs. Phase II is reviewing and update the gear effects evaluation and consider alternatives for optimizing management measures for minimizing the adverse effects of fishing on EFH across all FMPs. Implementation is expected in 2015.

3.2 PURPOSE AND NEED FOR ACTION

This amendment is designed to address concerns regarding fishery consolidation and is prepared by the New England Fishery Management Council. After the Proposed Action is reviewed, the Amendment will be approved and implemented by the National Marine Fisheries Service.

Amendment 16 to the Northeast Multispecies FMP expanded the use of sector management for stocks managed by the FMP, and also implemented ACLs and AMs for the fishery. In the specification process for FY2010 (NEFMC 2010), catch limits for many multispecies stocks were set at very low levels, and several of these restrictions have remained in place. There has been concern that the low catch limits, in conjunction with expanded sector management, may lead to excessive consolidation and lack of diversity in the groundfish fleet. Likewise, there is concern that, as stocks rebuild and ABCs increase, there may be increased consolidation and decreased diversity in the groundfish fleet in the future. Because of concerns related to maintaining the diverse makeup of the fleet, as well as an interest in keeping active and thriving fishing ports throughout New England, the Council has considered measures in this action that would impose limits on the amount of allocation that individuals or groups of individuals may control.

3.3 GOALS AND OBJECTIVES

3.3.1 Goals and Objectives of the Northeast Multispecies FMP

The goals and objectives of the Northeast Multispecies FMP remain as described in Amendment 13 and will continue to frame the long-term management of the resource and fishery.

3.3.1.1 Goals

1. Consistent with the National Standards and other required provisions of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law, manage the northeast multispecies complex at sustainable levels.
2. Create a management system so that fleet capacity will be commensurate with resource status so as to achieve goals of economic efficiency and biological conservation and that encourages diversity within the fishery.
3. Maintain a directed commercial and recreational fishery for northeast multispecies.
4. Minimize, to the extent practicable, adverse impacts on fishing communities and shoreside infrastructure.

5. Provide reasonable and regulated access to the groundfish species covered in this plan to all members of the public of the United States for seafood consumption and recreational purposes during the stock rebuilding period without compromising the Amendment 13 objectives or timetable. If necessary, management measures could be modified in the future to insure that the overall plan objectives are met.
6. To promote stewardship within the fishery.

3.3.1.2 Objectives

1. Achieve, on a continuing basis, optimum yield for the U.S. fishing industry.
2. Clarify the status determination criteria (biological reference points and control rules) for groundfish stocks so they are consistent with the National Standard guidelines and applicable law.
3. Adopt fishery management measures that constrain fishing mortality to levels that are compliant with the Sustainable Fisheries Act.
4. Implement rebuilding schedules for overfished stocks, and prevent overfishing.
5. Adopt measures as appropriate to support international transboundary management of resources.
6. Promote research and improve the collection of information to better understand groundfish population dynamics, biology and ecology, and to improve assessment procedures in cooperation with the industry.
7. To the extent possible, maintain a diverse groundfish fishery, including different gear types, vessel sizes, geographic locations, and levels of participation.
8. Develop biological, economic and social measures of success for the groundfish fishery and resource that insure accountability in achieving fishery management objectives.
9. Adopt measures consistent with the habitat provisions of the MSA, including identification of EFH and minimizing impacts on habitat to the extent practicable.
10. Identify and minimize bycatch, which include regulatory discards, to the extent practicable, and to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

3.3.2 Goals of Amendment 18 to the Northeast Multispecies FMP

The NEFMC has identified four goals for this action:

1. Promote a diverse groundfish fishery, including different gear types, vessel sizes, ownership patterns, geographic locations, and levels of participation through sectors and permit banks;
2. Enhance sector management to effectively engage industry to achieve management goals and improve data quality;
3. Promote resilience and stability of fishing businesses by encouraging diversification, quota utilization and capital investment; and

4. Prevent any individual(s), corporation(s), or other entity(ies) from acquiring or controlling excessive shares of the fishery access privileges.

3.4 PUBLIC SCOPING

3.4.1 Control Date, Notice of Intent and Scoping Process

At the request of the Council, NMFS published a control date of April 7, 2011 (NMFS 2012). The control date is intended to alert the fishing industry and the public that any present or future accumulation of fishing privileges may be limited or may not be allowed after or prior to the published control date. It also is intended to discourage speculative behavior in the market for fishing privileges while the Council considers whether and how such limitations on accumulation of fishing privileges should be developed. However, in establishing this date, the Council is not obligated to take any further action. No limits or restrictions have been imposed on the groundfish fishery by establishing this control date. However, fishermen are encouraged to preserve any documents relating to their holdings or control of fishing privileges in the event that the Council does decide to take a future action.

NMFS published a Notice of Intent (NOI) on December 21, 2011 to announce its intent to develop an amendment (later named Amendment 18) and prepare an Environmental Impact Statement (EIS) to analyze the impacts of the proposed management alternatives. The purpose of the NOI was to alert the interested public to the commencement of the scoping process and to provide for public participation in the development of this amendment, consistent with the requirements of NEPA. The announcement stated that Amendment 18 would “reduce the likelihood that groundfish permit holders will acquire or control excessive shares of fishing privileges in the fishery and that over-consolidation will occur within the fleet” (NMFS 2011). The scoping period extended from that date until March 1, 2012.

NEPA provides a mechanism for identifying and evaluating the full spectrum of environmental issues associated with Federal actions and for considering a reasonable range of alternatives to avoid or minimize adverse impacts to the extent practicable. The scoping process is the first and best opportunity for members of the public to raise issues and concerns for the Council to consider during the development of an amendment. The Council relies on public input during the scoping process both to identify management issues and develop alternatives that meet the Northeast Multispecies FMP objectives. Public comments early in the amendment development process help the Council to address issues of concern in a thorough and appropriate manner.

A scoping document was prepared and distributed to over 1,800 interested parties to inform the public of the Council’s intent to gather information necessary for the preparation of this action and ask for suggestions and information on the range of issues to be addressed. During the scoping period, ten scoping hearings were conducted to receive public comments (Ellsworth and Portland, Maine; Portsmouth, New Hampshire; Fairhaven, Gloucester, Hyannis and Plymouth, Massachusetts; South Kingstown, Rhode Island, New York; and Manahawkin, New Jersey) and numerous written comments were also received. These comments were considered carefully by the Council when developing the management alternatives under consideration in this amendment.

3.4.2 Scoping Comments

Comments were received from a variety of stakeholders, including university scientists, nonprofit organizations, individual fishermen, fishing corporations, state agencies, and other interested citizens (Table 1). At the public hearings, oral comments were received from 56 people (duplicates removed), either representing themselves or a group. Written comments were received from 55 individuals or groups (duplicates removed). All written comments and summaries of hearings are provided in Appendix ##. The major themes identified through the scoping process are summarized here, though viewpoints on these themes varied widely. It should also be noted that several comments represent the views of more than one individual (e.g., from an industry association).

Table 1 - Public scoping comments

	Total	Supports A18 objectives	Opposes A18 objectives	General/unrelated
	oral/written	oral/written	oral/written	oral/written
Fisherman	37/14	22/9	5/5	10/0
Fishing corporation	4/2	2/1	2/1	0/0
Fishing organization	5/6	3/1	2/3	0/2
University scientist	2/3	2/3	0/0	0/0
Nonfishing organization	5/17	5/15	0/1	0/1
State agency	1/1	0/1	0/0	1/0
Other citizen	2/12	1/12	0/0	1/0
Total	56/55	35/42	9/10	12/3

Note:

Duplicate oral and written comments removed, though some commenters submitted both oral and written comments.

A majority of the oral and written comments indicated that the intent of Amendment 18 is very important for the fleet. There was general concern expressed about the effect the catch share system has had on small vessels. Some fishermen said it was impossible remain viable under catch shares, and therefore Amendment 18 had to move forward. There have been severe impacts on crew; at the time of scoping, 165 crew jobs had been lost. Comments opposed to this action were concerned about the potential that an accumulation cap or restrictions to maintain fleet diversity may result in reduced flexibility and profitability of the fishery. The opposition was not in favor of accumulation caps and requested grandfathering individuals with holdings that may be above the cap. The opposition felt that it would be better to allow fleet diversity to be maintained at the sector level instead of mandated.

The following are key themes that emerged from scoping.

3.4.2.1 Fleet Diversity

The majority of comments supported the concept of fleet diversity. The need for a firm definition of fleet diversity was expressed, but the comments did not elucidate specifics. Concerned citizens wanted to ensure that their access to seafood caught by locally-based fishermen continues, feeling that fish should not be just an investment for large entities. Without the implementation of Amendment 18, people foreshadow coastal towns devoid of fishermen and associated infrastructure, job losses, negative impacts on future generations, and fewer

options to enjoy fish. Some commenters noted that the rate of concentration of revenue changed in 2010 following the implementation of catch shares. One commenter thought that a fleet that consisted of only large vessels would limit the Council's ability to react to changing stock assessments. A program to supply healthy food to hospitals is being implemented and could be impacted by fleet consolidation towards just larger vessels. Commenters wanted to provide opportunity for a variety of vessel, gear, entity types, and ports to be active in the fishery, enable fishing communities to define diversity goals and have a degree of local control, maintain participation of rural and historic ports in the fishery, provide opportunity for new entrants in the fishery, and maintain viability of shoreside infrastructure and the inshore and offshore fleets.

Sub-ACL for HA permit holders. A few commenters would like a sub-ACL for Handgear HA permit holders, so that they do not have to enroll in the common pool and have their quota harvested by other gear types. To them, this could help protect a 400 year old fishery. A handgear fisherman stated that he could never accumulate enough quota to get out of the common pool and was looking to this amendment to help, because he cannot access existing permit banks, since he is not in a sector.

Inshore/Offshore Areas. The issue of larger, traditionally offshore vessels fishing more inshore since the removal of cod trip limits was very important to several commenters. The concept of fleet diversity was appealing to preserve the inshore fleet that supports a broad range of coastal communities. Biologically, smaller vessels were thought to not have as much of an impact on the aggregations of cod spawning inshore. Extreme frustration was expressed with the commitment and sacrifices that the inshore fleet made to rebuild the inshore cod stock only to have it seemingly wiped out by the influx of offshore boats. Some suggested that there be a boundary line to separate fishing areas for larger and smaller vessels, dividing the GOM cod into east and west areas. Localized depletion of GOM cod is exacerbating fleet consolidation, because the smaller vessels are unable to catch their quota. There was a suggestion of establishing a sanctuary area for small boat fishermen; the offshore vessels would be able to fish in offshore areas if restricted from fishing inshore – to implement vessel size or horsepower upper limits in specific (inshore) areas.

Quota Set-Aside. The concept of a quota set-aside was considered important to a lot of commenters. It was suggested that allocation should be “taken off the top” for use by set-asides or permit banks. There were a number of suggestions for the recipients of this quota; new entrants were the most recommended. It was thought to be very difficult for new entrants into the fishery due to the high costs of permits; and that the status quo is preventing new entrants. It was expressed that smaller-scale fishermen have difficulty competing with larger corporations speculating on permits, and that there needs to be a mechanism to help smaller-scale fishermen remain competitive. Quota set-asides could be used to establish community permit banks to help small vessels and specific communities. This may ensure the viability of the inshore fleets. Fishermen at the public hearings told of building their own businesses up over the span of a few decades only to lose it with the implementation of catch shares; they are now unable to pass their businesses on to their children, ending family traditions. Another idea was that quota set-asides could be used to reward sectors that meet certain benchmarks. One suggestion was to give fishermen quota from a permit bank after a set profit was made. One caveat of a permit bank is it creates competition by supplying cheap quota to qualifying individuals, but it may have negative impacts on those not benefiting. It was suggested that set-asides could be implemented as the resource recovers, but not at this time.

Incentives to Actively Fish. A portion of the comments expressed the need to prevent a situation where most all of the PSC is held by persons who do not actively fish, because of the fear that it would lead to the consolidation of the entire quota into large corporations that would largely export the fish, maximizing profits versus sustainable harvests. It was suggested that “use it or lose it” measures be adopted to ensure that holders of quota remain active in the fishery.

Baseline Criteria for Leasing and Allocations. Many felt that the formula to calculate allocations, adopted through Amendment 16, is flawed and unfair, because it is based on history instead of vessel characteristics and/or the number of DAS that was associated with permits. South Shore Massachusetts fishermen felt their allocations were hit disproportionately hard by the formulas, because of the rolling closures and trip limits during the period of time used in formulas. The ability of vessels to trade GB cod for GOM cod is seen as a problem and further contributing to the increase of effort inshore. Some baseline leasing restrictions on GOM and GB cod, that would restrict the ability of large vessels to get quota from smaller vessels, were suggested, in addition to restricting the ability to lease into stock areas and certain species. There was one suggestion to retain a certain percentage of a permit’s allocation in the home state if it is sold. Other suggestions included fixing the price of leased allocations, revisiting the split between commercial and recreational fisheries in cod quota allocations, preventing fishing in multiple stock areas of a species in a single trip, having a more equitable distribution of allocation geographically, limiting corporate vessels to specific areas, and to only allowing leases from larger to smaller vessel, not vice versa.

3.4.2.2 Accumulation Limits

Commenters in favor of accumulation caps indicated that they are necessary to dis-incentivize fishing businesses from expanding. It was thought that larger vessels have a larger negative environmental impact. The current lack of accumulation limits is allowing stocks with low allocations to be controlled by a small number of individuals who are able to buy up the quota. It was stated that 40% of GB winter flounder is controlled by three entities, and that this may happen with GOM cod if catch limits are reduced. A broad range of caps were suggested including individual, sector, permit number, quota control and PSC. One commenter considered the current situation to be in violation of National Standard 4 that is designed to ensure equitable allocation to all fishermen in a way that “no particular individual, corporation, or other entity acquires an excessive share of such privileges.” Commenters wanted to match capital with quota availability, while ensuring access to an economically viable number of participants, prevent windfall gains to a small number of individuals at the expense of others, and prevent market control and price-fixing by a small number of owners.

3.4.2.3 Comments Opposed to Amendment 18

Those opposing this amendment generally wanted no caps on the number of permits or allocation, no ACE set-aside, no incentives, no owner requirements, no trading for fish only, no price controls, no area sign in, and no division of the fishery. Opposition centered on the further complication of management, and that diversity goals could be achieved at the sector level. One sector has already accounted for fleet diversity in its sector plan and preferred to keep the freedom allowing sectors do this. It was thought that accumulation limits would violate the consolidation goals of Amendment 16. Amendment 16 did not create a LAPP system, and Amendment 18 was viewed as a way to backfill into a LAPP system. Amendment 18 would reduce flexibility and would trap the fleet in untenable economic positions. The proposed

measures would prevent fishermen from achieving profitability, but if closed areas were opened and they were allowed to catch more fish, the problems would solve themselves. No one has enough allocation to be viable. It was noted that this amendment is causing uneasiness with lenders of capital.

One commenter opposing accumulation caps does not want to punish people who have worked hard to accumulate their quota. A number requested that if an accumulation cap is set, that any party holding quota above the cap be grandfathered in. Any changes to the new, fragile catch share system may negatively impact the system and the fleet should be allowed to adapt.

3.4.2.4 Questions

Some issues the public expressed raise the following questions. Positions pro and con were expressed by the public.

Fleet Diversity

- Should a “fleet diversity” be specifically defined in regulations?
- Can the industry and fishing communities maintain fleet diversity on their own or are regulatory approaches necessary?
- Are permit banks helping to maintain fleet diversity?
- Could fleet diversity be promoted by:
 - Increasing industry flexibility?
 - Increasing opportunity to harvest optimum yield?
 - Restricting ACE leases between vessels of different size categories?
 - Creating sub-ACLs for specific permit categories?
 - Limiting fishing area by vessel size?

Accumulation Caps

- How should harvest capacity match the availability of quota?
- At what point does reduction in overcapitalization result in the control of excessive shares of the fishery?
- If a holdings cap is established, would there be grandfathering of entities whose present holdings level exceeds said cap?

General

- Do we have sufficient data on and clear definition of entities in the fishery?
- Would this amendment decrease flexibility and profitability for the industry?
- Would this amendment make management even more complicated?

3.4.2.5 Nonregulatory Approaches

The scoping comments included ideas for nonregulatory approaches that would meet the Amendment 18 goals and objectives. For example, with criteria or guidelines, sectors could be

given the latitude to create their own processes for maintaining an active fleet that reflects the diversity (e.g. vessels, owners, ports) of their membership. A marketing campaign could be created to highlight locally caught fish. Community supported fisheries could be fostered to better support local fishermen.

3.4.2.1 Other Comments

A few comments were received that were not directly related to the goals of this action. A couple of commenters thought that existing strategies were inappropriate to preserve the ecosystem (e.g. reliance on Catch Per Unit Effort (CPUE) to manage our diverse ecosystem). It was suggested that penalties for multiple violations of exceeded larger trip limits should be enacted. Closed areas should not be opened, and sport fishing should be prohibited in the closed areas. Fishermen expressed some concern about the compounding effect of monitoring costs and the expected further reductions in cod allocations following the benchmark assessment. For monitoring, tiered standards and alternatives to industry funding were suggested. Sector fees were thought to be too high. Fishermen in southern areas were concerned that what happened to cod might happen in other fisheries, such as monkfish. A small number were unhappy with the appearance of unethical voting by certain Council members.

4.0 ALTERNATIVES UNDER CONSIDERATION

4.1 ACCUMULATION LIMITS

4.1.1 Limit the Holdings of Stock-Specific PSC¹

4.1.1.1 Alternative 1: No Action

No action. Do not limit the holdings of stock-specific PSC.

4.1.1.2 Alternative 2: Limit Holdings of Stock-Specific PSC to the Maximum Held by an Individual **or Permit Bank** as of the Control Date

For any single fishing year, individual human person or permit banks shall be assigned no more than the maximum percent of stock-specific PSC held by an individual human person or permit bank as of the control date for Amendment 18 (April 7, 2011), rounded up to the nearest whole number. ~~Here, "individual" includes human persons and permit banks.~~

The Council may select one or more of the stocks listed in Table 2 to which this Alternative would apply.

Table 2 – Potential accumulation limits under Alternative 2

Stock	Accumulation Limit
GB cod	10%
GOM cod	8%
GB haddock	15%
GOM haddock	7%
GB yellowtail flounder	14%
SNE/MA yellowtail flounder	5%
CC/GOM yellowtail flounder	8%
Plaice	9%
Witch flounder	9%
GB winter flounder	23%
GOM winter flounder	7%
Redfish	10%
White hake	8%
Pollock	6%
SNE winter flounder	tbd

Note: This draft data has been prepared by the Groundfish Plan Development Team. Data on SNE winterflounder are not yet available to the PDT. Data represent the maximum PSC held by an individual human person or permit bank-person-id as of April 7, 2011, rounded up to the next whole number and are likely within 1% of the true values. Final data would be provided by the Analysis and Program Support Division (ASPD) at the NMFS Greater Atlantic Regional Fisheries Office.

¹ In January 2014, the Council moved to develop alternatives that would apply a PSC cap to a sub-set of stocks.

Rationale: Alternative 2 would establish an accumulation limit for the multispecies fishery that constrains the holdings of selected stocks in the multispecies complex. This alternative was developed based on the January 2014 Council motion to develop stock-specific PSC caps and the control date established by NMFS at the request of the Council. In the *Federal Register* notice, NMFS indicated that those individuals or entities holding permits/MRIs prior to the control date may be restricted to being assigned PSC by their permit/MRI holdings as of the control date (NMFS 2011; 2012). According to the draft data of PSC holdings available to the Groundfish Plan Development Team, PSC holdings for FY2013 indicate that the current holdings of some entities-individuals and permit banks are greater than the maximum holdings as of the control date (see March 25, 2014 PDT memo). Thus, this alternative may force divestiture. Final data on PSC holdings would be provided by the ASPD at GARFO. This alternative would not limit ACE leasing.

4.1.1.3 Alternative 3: Limit Holdings of Stock-Specific PSC to the Same Level for each Stock Level Likely to Prevent Excessive Shares in the Fishery

For any single fishing year, individual human persons and permit banks shall be assigned no more than 25% of the PSC for a stock. ~~Here, “individual” includes human persons and permit banks.~~

The Council may select one or more of the multispecies stocks to which this Alternative would apply.

Rationale: Alternative 3 would establish an accumulation limit for the multispecies fishery that constrains the holdings of selected stocks in the multispecies complex. This alternative was developed based on the January 2014 Council motion to develop stock-specific PSC caps and an analysis provided by Compass Lexecon (Mitchell & Peterson 2013). Compass Lexecon determined that, conservatively, a theoretical maximum of 25% of stock-specific PSC would prevent excessive shares in a fishery where there is a competitive fringe of at least 38% (>38% of the PSC is held by many people, each with <2% of the PSC), which they determined to be case for the Northeast multispecies fishery. Here, excessive shares is defined as in the Compass Lexecon report, “a share of access rights that would allow a permit owner [holder] or sector to influence to its advantage the prices of the fishery’s output or the prices paid for leased Annual Catch Entitlements (“ACE”)” (Mitchell & Peterson 2013, p. i). Alternative 3 would likely result in maintaining an *unconcentrated* fishery for all stocks, defined as keeping the Herfindahl-Hirschman Index (HHI) to <1,500. According to the draft data of PSC holdings available to the Groundfish Plan Development Team, a 25% cap for a stock may force divestiture only in the case of Georges Bank winter flounder, if that stock is selected by the Council. Final data on PSC holdings would be provided by the ASPD at GARFO. This alternative would not limit ACE leasing.

4.1.1.4 Alternative 4: Limit Holdings of Stock-Specific PSC by Stock Type

For any single fishing year, individual human persons and permit banks shall be assigned no more than the following PSC: 15% of the inshore-Gulf of Maine, Cape Cod, Southern New England, and Mid-Atlantic stocks, 20% of the unit stocks, and 30% for the Georges Bank offshore stocks. ~~Here, “individual” includes human persons and permit banks.~~

The Council may select one or more of the stocks listed in Table 3 to which this Alternative would apply.

Table 3 - Potential accumulation limits under Alternative 4

Stock	Accumulation Limit
GB cod	30%
GOM cod	15%
GB haddock	30%
GOM haddock	15%
GB yellowtail flounder	30%
SNE/MA yellowtail flounder	15%
CC/GOM yellowtail flounder	15%
Plaice	20%
Witch flounder	20%
GB winter flounder	30%
GOM winter flounder	15%
Redfish	20%
White hake	20%
Pollock	20%
SNE winter flounder	15%

Option A: Limit the PSC holdings of GB cod at 30%, GOM cod at 15%, and pollock at 20%.

Rationale: Alternative 4 would establish an accumulation limit for the multispecies fishery that constrains the holdings of selected stocks in the multispecies complex. This alternative was developed based on the January 2014 Council motion to develop stock-specific PSC caps and related comments from the public and the Council that accumulation limits could be lower for stocks held by a wider distribution of individuals. Draft data of PSC holdings available to the Groundfish Plan Development Team indicate that there are fewer individual persons holding PSC for the GB offshore stocks than the inshore-GOM, CC, SNE or unit stocks. Alternative 4 would allow more concentration of holdings for the offshore-GB stocks. According to the draft data, these percentages would not force divestiture of current holdings (SNE winter flounder data are not yet available to the PDT). Final data would be provided by the ASPD at GARFO. Alternative 4 is consistent with the recommendations of Compass Lexecon, as it would likely result in maintaining an *unconcentrated* fishery for the inshore-GOM/CC/SNE and unit stocks, defined as keeping the Herfindahl-Hirschman Index (HHI) to <1,500, and preventing no more than *moderate concentration* for the offshore-GB stocks, keeping the HHI below 2,500 (Mitchell & Peterson 2013). This alternative would not limit ACE leasing.

4.1.1.5 Alternative 5: Limit Holdings of Stock-Specific PSC

For any single fishing year, individual human persons and permit banks shall be assigned no more than the following PSC: 30% of Georges Bank winter flounder and 20% for all other stocks in the fishery.

Rationale: Alternative 5 would establish an accumulation limit for the multispecies fishery that constrains the holdings of selected stocks in the multispecies complex. This alternative was developed by the Groundfish Committee in March 2013. Alternative 5 is similar to Alternative 3 (25% cap for all stocks), but Alternative 5 would be a lower accumulation limit for all stocks except GB winter flounder, which would be high enough at 30% to not force divestiture of current holdings, according to the draft data of PSC holdings available to the Groundfish Plan Development Team. Final data on PSC holdings would be provided by the ASPD at GARFO. This alternative would not limit ACE leasing.

4.1.2 Limit the Holdings of Permits

4.1.2.1 Limiting the Holdings of Individual Permit Banks²

Here, “permit banks” include the state-operated permit banks as defined in Amendment 17, and nonprofit permit banks as defined in Section 4.2 of this document.

4.1.2.1.1 Alternative 1: No action

No action. Do not limit the holdings of permit banks, public or nonprofit.

4.1.2.1.2 Alternative 2: Limiting the holdings of permits

For any single fishing year, no single permit bank, public or nonprofit, shall hold more than the following percent of Northeast Multispecies permits. This includes permits issued to vessels and eligibilities in Confirmation of Permit History. Permit banks in existence prior to the control date (April 7, 2011) will be restricted to holding the number of permits held as of the control date, unless the following percentage translates to a greater number of permits.

- 1.) X percent
- 2.) Y percent
- 3.) Z percent

Rationale: This alternative would establish an accumulation limit for the multispecies fishery that constrains the number of Northeast Multispecies permits held by state and nonprofit permit banks. Since PSC is allocated to the Moratorium Right Identifier (MRI) number associated with each multispecies permit, it is the number of MRIs that would be limited. Within the NMFS data system, holdings of MRIs would be simpler to track than permits.

² In June 2013, the OSC moved to develop a permit cap for permit banks, but has not had subsequent motions to identify specific percentages.

4.1.2.2 Limiting the Holdings of Entities other than Permit Banks³

Here, “permit banks” include the state-operated permit banks as defined in Amendment 17, and nonprofit permit banks as defined in Section 4.2 of this document.

4.1.2.2.1 Alternative 1: No action

No action. Do not limit the holdings of entities other than permit banks.

4.1.2.2.2 Alternative 2: Limit the holdings of permits

For any single fishing year, no individual or business entity shall hold no more than 5% percent of Northeast Multispecies permits. This includes permits issued to vessels and eligibilities in Confirmation of Permit History. Those individuals or business entities with a holdings interest in these permits prior to the control date (April 7, 2011) will be restricted to holding the number of permits held as of the control date, unless the following percentage translates to a greater number of permits.

Rationale: This alternative would establish an accumulation limit for the multispecies fishery that constrains the number of Northeast Multispecies permits held (to 5%) by entities other than state and nonprofit permit banks. Since PSC is allocated to the Moratorium Right Identifier (MRI) number associated with each multispecies permit, it is the number of MRIs that would be limited. Within the NMFS data system, holdings of MRIs would be simpler to track than permits.

³ In June 2013, the OSC moved to develop an accumulation limit for entities other than permit banks to have a holdings interest in no more than 5% of Northeast multispecies permits, grandfathered to the control date (April 7, 2011).

4.2 REGULATORY DEFINITION OF A NONPROFIT PERMIT BANK

4.2.1 Alternative 1: No action

No action. Do not define a nonprofit permit bank. The only type of permit bank that would continue to be recognized is a state-operated permit bank.

4.2.2 Alternative 2: Defining a nonprofit permit bank

Definition:

An entity shall be considered a nonprofit permit bank under the following criteria:

1. It is a partnership, voluntary association, or other nonprofit entity established under the laws of the U.S.;
2. It holds Northeast Multispecies permits/MRIs;
3. It maintains transparent qualification criteria and application processes for the distribution of ACE to fishermen; and
4. It must distribute ACE to at least three distinct business entities in any fishing year.

Other Conditions:

- A. Nonprofit permit banks shall not be allocated ACE, but must join a groundfish sector.
- B. Nonprofit permit banks shall comply with existing and relevant leasing and transfer regulations that currently apply to sectors and individual permit-holders including lease reporting protocols, size-class or baseline restrictions (in the vessel transfer provisions), etc.
- C. Nonprofit permit banks will be approved annually by the National Marine Fisheries Service, provided a complete application has been submitted by agreed upon deadlines. NMFS will ensure that all requirements listed above are fully and satisfactorily met prior to approval.
- D. Nonprofit permit banks shall submit a performance report annually to the National Marine Fisheries service, which shall be a public document. These reports shall explain how the above qualification criteria were met.

Rationale: State-operated permit banks have already been defined through Amendment 17 to the Northeast Multispecies FMP. Amendment 18 includes alternatives that would limit the accumulation of permit banks differently than other permit holders (Section 4.1). These measures may apply to both the state-operated permit banks and other entities. Thus, a definition is necessary to identify the other entities to which these alternatives would apply. Like state-operated permit banks, a nonprofit permit bank is designed to transfer groundfish allocations to active groundfish vessels in need of assistance. Unlike state-operated permit banks, nonprofit permit banks do not have an agreement with NMFS or any state agency, but are independent nonprofit entities.

4.3 TRADING US/CA TACS

4.3.1 Alternative 1: No action

Option A: Current status quo

The U.S./Canada TACs for EGB cod, EGB haddock and GB yellowtail flounder would be specified at the beginning of the fishing year, and there would be no in-season adjustments to the U.S./Canada TACs. Alternative 1 would not consider the quota trading mechanism established by the TMGC and U.S./Canada Steering Committee, and would not allow additional quota to be distributed to the U.S. at the end of the Canadian fishing year (December).

Option B: Status quo pending Framework 51 implementation

The Regional Administrator (RA) would be allowed to adjust the US/CA quotas (EGB cod, EGB haddock and GB yellowtail flounder) during FY2014, i.e. after allocations were made. Additional quota would be allocated consistent with the current ABC distribution (i.e., sectors, common pool, scallops, small-mesh fisheries), which would include both groundfish and nongroundfish vessels. The RA would not have the authority to change the allocation distribution to the sub-ACLs during the FY. The RA's authority would be time limited and only exist for trades made by or before the end of the 2014 fishing year. Prior to changing measures, the NMFS would consult with the Council and would advise the Council what measures were under consideration.

Rationale: The difference in fishing years between the US (May-April) and Canada (January-December) groundfish fisheries would require adjustments to occur in adjacent years. This measure would allow an adjustment to occur as soon as possible to the end of the Canadian fishing year, potentially providing additional quota for limiting US/CA stocks. The RA's authority would be time limited and only exist for trades made by or before the end of FY2014, to determine if trades between the US and Canada are practical under this approach.

For example, if the U.S. receives additional yellowtail flounder TAC in FY 2014, and trades away a portion of its FY 2015 haddock TAC, the Regional Administrator would increase the FY 2014 U.S. TAC for yellowtail flounder in-season consistent with the current process. The adjustment to the FY 2015 U.S. TAC for haddock would be made as part of the process for establishing TACs.

4.3.2 Alternative 2: Allow in-season trades of U.S./CA stocks

The Regional Administrator would be allowed to adjust the U.S./Canada TACs for the transboundary GB stocks (Eastern GB cod, Eastern GB haddock, and GB yellowtail flounder), consistent with any trade agreed upon with Canada, during the fishing year. Prior to a trade, NMFS would consult with the Council and would advise the Council what trades were under consideration. Any trade between the U.S. and Canada would also be approved by the appropriate U.S./Canada management body (i.e., the Transboundary Management Guidance Committee and/or U.S./Canada Steering Committee).

Option A. Allow in-season trades of sector sub-ACL⁴

Only the quota of the overall sector sub-ACL would be traded away and received as a result of a trade with Canada. Any changes to the overall sector sub-ACL would be applied to sectors based on the cumulative PSCs for the respective stock held by each sector.

Rationale: This option would apply any trade to only the commercial groundfish sector fishery component, with quota given/received only distributed to the overall sector sub-ACL. This would ensure that only the component of the fishery trading away quota would benefit from any additional quota received from Canada. This mechanism would increase flexibility for the sector fishery by potentially providing additional quota for limiting stocks, which could increase fishing opportunities for sector vessels.

For example, if the U.S. receives 50 mt of yellowtail flounder quota in FY 2015, and gives Canada 100 mt of haddock for FY 2016:

- The overall sector sub-ACL for GB yellowtail flounder would be increased inseason by 50 mt for FY 2015, and the additional quota would be distributed to each sector based on the cumulative PSCs for GB yellowtail flounder in that sector; and
- the overall sector allocation for GB haddock that is specified to the Eastern U.S./Canada Area would also be reduced by 100 mt for the upcoming fishing year (FY 2016) consistent with the trade. (Note: This would reduce the total U.S. TAC for eastern GB haddock for FY 2016, but the reduction would only be applied to the overall sector allocation.)

Option B. Allow in-season trades of sector ACE⁵ (*OSC-recommended Preferred Alternative*)

Any groundfish sector may voluntarily participate in a trade with Canada. A sector(s) could choose to contribute to a trade with Canada by notifying the Regional Administrator how much of its ACE for any U.S./Canada stock it was willing to provide. Only sectors in compliance with the necessary reporting and administrative requirements would be permitted to participate in any trades with Canada. The Regional Administrator would then propose this trade with Canada. If approved, the sector(s) would receive the ACE that results from the trade.

Rationale: This option would apply any trade to only the groundfish sectors that voluntarily participate in a trade by contributing ACE of the respective stock. This option would ensure that only the sectors that agreed to participate would be affected by any trade with Canada. This option increases flexibility for sectors, and allows sectors to contribute as little, or as much, ACE as desired towards any trade with Canada. This provides sectors the ability to maximize the benefits of the U.S./Canada trading process by increasing quota for limiting stocks as much as possible in order to increase fishing opportunities for their vessels.

For example, if the U.S. receives 50 mt of yellowtail flounder quota in FY 2015, and gives Canada 100 mt of haddock quota for FY 2015:

⁴ In August 2013, the OSC agreed by consensus to include this alternative in Framework 51. In December 2013, the Council voted to consider this alternative in Amendment 18.

⁵ In September 2013, the Council moved to include this option. In December 2013, the Council voted to consider this alternative in Amendment 18.

- For those sectors that contributed haddock ACE to the trade, their ACE of GB yellowtail flounder for FY 2015 would be increased proportional to the amount of haddock ACE contributed by that sector; and
- For each sector that voluntarily contributed haddock ACE, the sector’s ACE of GB haddock that is specified for the Eastern U.S./Canada Area for FY 2015 would be reduced by the amount contributed.

4.4 HANDGEAR A PERMIT FISHERY

4.4.1 Alternative 1: No action

No Action. Holders of Handgear A multispecies permits would continue to have the choice of enrolling in the common pool or a groundfish sector and be subject to current regulations accordingly. Many of the Options outlined in Alternative 2 could be achieved through participation in sectors, particularly through the use of sector exemptions or specific provisions within operations plans. Handgear A permit holders may form their own sector to have greater control of how the PSC associated with their permits is used.

4.4.2 Alternative 2: Establish a fishery for Handgear A permits⁶

Under this alternative, a new groundfish fishery component and sub-ACL would be created for Handgear A (HA) multispecies permits, which would be distinct from the common pool or sectors. This HA fishery would be subject to the following provisions:

The Council may select one or more of the following options:

Option A: Handgear A permit sub-ACL

(OSC recommends moving this option to “Considered but Rejected”)

Under this option, a sub-ACL would be created for HA permits, allocating the HA permit catch history (i.e., PSC) for Gulf of Maine cod, Georges Bank cod, Gulf of Maine haddock, Georges Bank haddock, and pollock from FY1996 to FY2006. This sub-ACL would only be used by HA fishermen.

Rationale: This option would create a new sub-ACL fishery component specifically for a HA fishery.

Option B: Other fishery component

(OSC recommends moving this option to “Considered but Rejected”)

Under this option, stocks that would not have a specific HA permit sub-ACL, but are caught using a HA permit, would be accounted for under “other sub-component” sub-ACLs.

Rationale: The stocks not assigned to the HA fishery sub-ACL are not commonly targeted by HA fishermen.

⁶ In January 2014, the Council moved to add Alternative 2.

Option C: Proactive accountability measures

(OSC recommends moving this option to “Considered but Rejected”)

Under this option, a proactive accountability measure (AM) would be established for the HA fishery. To prevent overages proactively, trip limits for each stock allocated in the sub-ACL would be set in specifications and modified in season by the Regional Administrator to prevent overage.

Rationale: These AMs would ensure that there are sufficient measures in place to prevent overages of sub-ACLs. Adopting AMs for the HA fishery also ensures that overages caused by the HA fishery would not negatively impact other components of the fishery. Triggering the Handgear AMs based on an overage of the sub-ACL, regardless of whether the total ACL is exceeded, is consistent with how other fisheries are treated (with the exception of the scallop fishery's AM for GB yellowtail flounder). Having AMs linked to each sub-ACL ensures that each fishery component is held responsible for its catch.

Option D: Reactive accountability measures

(OSC recommends moving this option to “Considered but Rejected”)

Under this option, a reactive accountability measure (AM) would be established for the HA fishery. Reactively, an overage in the sub-ACL for a stock would be subtracted from the sub-ACL in the fishing year following notification of the overage.

Rationale: These AMs would ensure that there are sufficient measures in place to prevent overages of sub-ACLs. Because of the timing of availability of data for this fishery, the reactive AM would be implemented in the fishing year following the notification of the overage. Adopting AMs for the HA fishery also ensures that overages caused by the HA fishery would not negatively impact other components of the fishery. Triggering the Handgear AMs based on an overage of the sub-ACL, regardless of whether the total ACL is exceeded, is consistent with how other fisheries are treated (with the exception of the scallop fishery's AM for GB yellowtail flounder). Having AMs linked to each sub-ACL ensures that each fishery component is held responsible for its catch.

Option E: Carryover

(OSC recommends moving this option to “Considered but Rejected”)

Under this option, unused HA sub-ACL would be carried over from one fishing year to the following fishing year, up to a limit of 10% of the unused sub-ACL.

Rationale: Currently, sectors are allowed to transfer up to 10% of unused sub-ACL to the following fishing year, so this measure would be consistent, in part, with how sectors are managed. Sectors are not allowed to carryover stocks managed by the US/Canada Resource Sharing Agreement (EGB cod, EGB haddock and GB yellowtail flounder). Also, most of sectors elect to set aside 10% of their ACE at the beginning of the fishing year to help prevent overages, which if unused, they can then carry over in the next fishing year. Under this option, the HA fishery would not have a set-aside upfront.

Option F: Removal of March 1-20 HA closure

Under this option, the March 1-20 handgear fishing closure would be removed.

Rationale: March 1-20 is a haddock spawning block closure. Currently, sector vessels are exempted annually from a 20-day spawning block as part of their operations plans, so this measure would be consistent with how sectors are managed. Historically, all groundfish vessels had a 20-day spawning block that they had to call out for. When VMS was instituted in November 2007, handgear vessels were given the March 1-20 closure, because they were not required to use VMS and NMFS would not be able keep track of when these vessels actually called out.

Option G: Annual sub-ACL

(OSC recommends moving this option to “Considered but Rejected”)

Under this option, the HA fishery would be managed with an annual sub-ACL, rather than a trimester sub-ACL, as the common pool is currently managed.

Rationale: Amendment 16 established that in FY2012, the common pool would be managed with a trimester sub-ACL versus an annual one for all stocks except SNE/MA winter flounder, windowpane flounder, ocean pout, Atlantic wolffish and Atlantic halibut. Then, Framework 48 exempted handgear from the trimester system for white hake. In FY2010 and FY2011, most of the common pool effort occurred within the first three months of the fishing year. This could be due to a preference for fishing in seasonable weather, but there could also be a “race to fish” factor in play. The annual sub-ACLs were not exceeded. Since the implementation of trimesters, the common pool has exceeded its trimester sub-ACLs in a few cases. There are a number of convergent factors that cause managing the common pool quotas by trimesters challenging. For quotas that are as small as those for the common pool trimesters, the current data delivery systems make it difficult to estimate in-season when 90% of the TAC is projected to be reached.

Option H: Removal of standard fish tote requirement

Under this option, vessels operating under a HA permit would no longer be required to carry a standard fish tote on board.

Rationale: In 1994, through an Emergency Rule and subsequently in Amendment 5, standard totes were required of all vessels. Over time, this requirement has been removed from most fisheries regulations but still applies in a few instances, including vessels fishing with a Handgear A multispecies permit. Currently, the USCG does not use totes for at-sea enforcement on handgear vessels. Since weights measured dockside are the only ones considered official, issuing a possession limit overage violation based solely on weight estimates made at sea would be untenable.

Option I: Grandfathering

(OSC recommends moving this option to “Considered but Rejected”)

Under this option, HA permit holders may opt to enroll in a sector versus the HA fishery. For HA permits enrolling in sectors, the PSC contribution of those permits would be included in the sector sub-ACL rather than the HA fishery sub-ACL. In sectors, the PSC associated with HA permits can only be used by HA fishermen that are using handgear. All HA permit holders who enrolled in sectors in FY2012 and FY2013 and leased their ACE to active fishermen of other gear types may continue to do so.

Rationale: Under current regulations, HA permit holders may opt to enroll in a sectors or the common pool and the sub-ACL of one fishery component may not be used by another fishery component. However, NMFS cannot currently control how ACE is used once it has been distributed to a sector.

Option J: Sector exemption from VMS requirements⁷

Under this Option, a sector may request through its annual operations plans that vessels fishing with handgear in the sector may be exempt from the requirement to use the Vessel Monitoring System VMS. Vessels fishing with handgear in a sector must declare trips through the Interactive Voice Response (IVR) system.

Rationale: Currently, all vessels fishing in a sector must use the VMS. Vessels fishing with Handgear in the common pool use the IVR system to declare a trip and then submit a Vessel Trip Report upon completion of a trip. Option J would allow the approach currently used for Handgear vessels in the common pool to apply to those fishing in a sector. There are costs associated with purchasing the VMS hardware, satellite connections, and data transmission. Option J could be a lower-cost approach and may thus encourage participation in sectors by handgear vessels.

⁷ This option was added by the OSC in March 2014.

5.0 ALTERNATIVES PENDING FURTHER DISCUSSION BY THE GROUND FISH COMMITTEE

5.1 ACCUMULATION LIMITS

5.1.1 Limiting the Holdings of Entities other than Permit Banks⁸

Here, “permit banks” include the state-operated permit banks as defined in Amendment 17, and nonprofit permit banks as defined in Section 4.2 of this document.

5.1.1.1 Alternative 1: No action

No action. Do not limit the holdings of entities other than permit banks.

5.1.1.2 Alternative 2: Limit the holdings of permits by entities other than permit banks

For any single fishing year, no individual or business entity shall hold more than 5% percent of Northeast Multispecies permits. This includes permits issued to vessels and eligibilities in Confirmation of Permit History. Those individuals or business entities with a holdings interest in these permits prior to the control date (April 7, 2011) will be restricted to holding the number of permits held as of the control date, unless the following percentage translates to a greater number of permits.

5.1.1.3 Alternative 3: Limit the holdings of MRIs with associated PSC by entities other than permit banks

For any single fishing year, no individual or business entity shall hold more than the following percent of the MRIs with associated PSC. Those individuals or business entities with a holdings interest in these MRIs with associated PSC prior to the control date (April 7, 2011) will be restricted to holding the number of MRIs with associated PSC as of the control date, unless the following percentage translates to a greater number of MRIs with associated PSC.

- A. X percent
- B. Y percent

5.1.1.4 Alternative 4: Limit the holdings of stock-specific PSC by entities other than permit banks

For any single fishing year, no individual or business entity shall be assigned no more than the following percent of a stock-specific PSC. Those individuals or business entities holding permits/MRIs prior to the control date (April 7, 2011) will be restricted to being assigned PSC by their permit/MRI holdings as of the control date, unless the following percentage translates to a greater amount of stock-specific PSC.

- A. X percent
- B. Y percent

⁸ In November 2013, the OSC moved to postpone a motion that would insert Alternatives 2 – 4 into Section 4.0 until the Compass Lexecon report is received. Alternative 2 is already in Section 4.0 per June 2013 OSC motion.

6.0 ALTERNATIVES CONSIDERED BUT REJECTED

6.1 SPLITTING GROUND FISH PERMITS OFF OF A SUITE OF LIMITED ACCESS PERMITS⁹

6.1.1 Alternative 1: No action

No action. Northeast Multispecies permits may not be split off of a suite of limited access permits.

6.1.2 Alternative 2: Permit splitting

Northeast Multispecies permits may be split off of a suite of limited access permits.

Rationale for not including these alternatives: Limited access permits were linked by an omnibus consistency amendment in the late 1990s (NEFMC 1999). Splitting off multispecies permits has the potential for implications in other fisheries, particularly if effort in other fisheries is increased. If there is a desire to control potential effort shifts into other fisheries, this might require some development of restrictions in those fisheries and FMPs. The groundfish plan could only make permit changes that are applicable to groundfish permits, and without making the changes to other FMPs, some permit holders might wind up with a groundfish permit that cannot be added or combined to any other permit.

6.2 SPLITTING GROUND FISH PSC OFF OF A SUITE OF LIMITED ACCESS PERMITS¹⁰

6.2.1 Alternative 1: No action

No action. The Potential Sector Contribution (PSC) for any specific Northeast Multispecies stock may not be split off of a suite of limited access permits.

6.2.2 Alternative 3: PSC splitting

The Potential Sector Contribution (PSC) for any specific Northeast Multispecies stock may be split off of a suite of limited access permits.

Rationale for not including these alternatives: Splitting PSC of a multispecies stock off of a suite of permits is possible, but could greatly increase tracking complexity. It may not be possible to detach PSC from the multispecies permit it is associated with, without splitting said permit. There could be significant implementation challenges if permit or PSC splitting is recommended for implementation. The Analysis and Support Division of the NERO should be consulted on the feasibility of specific approaches.

⁹ In August 2013, the OSC moved to consider permit splitting in A18, but in September, the OSC and Council moved to not consider this. The OSC and Council felt that permit splitting would best be accomplished via an omnibus amendment.

¹⁰ In August 2013, the OSC moved to consider PSC splitting in A18, but in September, the OSC and Council moved to not consider this. The OSC and Council felt that PSC splitting would involve too much administrative complication.

6.3 MODIFYING VESSEL UPGRADE RESTRICTIONS

Alternatives: Alternatives were never developed in detail.

Rationale for not including these alternatives: GARFO is proposing an omnibus amendment to all FMPs to modify the fishing vessel baseline specifications and upgrade restrictions. This action, as proposed, would not be a Secretarial amendment; however, GARFO staff would prepare the documents and analysis and the final product would be adopted by the NEFMC and MAFMC, with implementation targeted for May 2015. The proposed action would be fairly narrow:

1. Remove the gross and net tonnage restrictions from baseline and upgrade restrictions; and
2. Remove the one-time upgrade restriction.

GARFO is not proposing changes to the vessel length or horsepower provisions, so those elements would remain as part of the vessel baseline, and upgrades would continue to be restricted to 10% of the baseline length and 20% of the baseline horsepower.

In August 2013, the OSC moved to consider vessel upgrade restrictions in A18, but in November, the OSC moved to reverse its decision. The OSC felt that vessel upgrade restrictions would best be accomplished via an omnibus amendment, but that change to vessel length and horsepower provisions should also be considered. In January 2014, the Council moved “that vessel upgrade restrictions not be considered in Amendment 18, and instead, develop vessel upgrade restriction measures via an omnibus amendment in collaboration with GARFO.” The Council also moved “to consider developing an omnibus to remove or change vessel length and horsepower provisions under the next priority discussion; and in the meantime, to raise this issue with the MAFMC and other relevant management entities to discuss these changes.”

6.4 ACCUMULATION LIMITS

6.4.1 Limiting the Holdings of Permit Banks Collectively¹¹

6.4.1.1 Alternative 1: No action

No action. Do not limit the holdings of permit banks collectively.

6.4.1.2 Alternative 2: Limiting the holdings of permits by permit banks collectively

For any single fishing year, all permit banks, public and nonprofit, shall hold no more than the following percent of Northeast Multispecies permits.

- 1.) X percent
- 2.) Y percent
- 3.) Z percent

Rationale for not including these alternatives: An aggregate cap on permit bank holdings is not considered appropriate.

The minority view included: Without a collective cap, permit banks may acquire and control too much share of fishery access privileges.

¹¹ In November 2013, the OSC moved to remove this section, though there was some interest expressed at the November Council meeting to still include this section.

6.4.2 Limiting the Use of Fishing Access Privileges¹²

6.4.2.1 Alternative 1: No action

No action. Do not limit the use of fishing access privileges.

6.4.2.2 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 harvesting¹³ 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.

Rationale for not including these alternatives:

- There is too much variability in ACLs and catch each year to make a fixed percentage work.
- This would limit the utility of permits purchased after the control date, because each permit has a unique portfolio of PSC associated with it.
- This may involve tracking the allocations, leasing and catch of individual entities, which may be difficult since allocations are made to sectors.

6.5 REGULATORY DEFINITION OF A NONPROFIT PERMIT BANK

Alternative: The definition criterion that ACE must be leased at below market values has been removed from Section 4.2, Alternative 2.

Rationale for not including this alternative: It would be difficult (if not impossible) to enforce this criterion, and would require more reporting than currently practiced. First, NMFS would have to be able to determine the daily market rate for leasing ACE of all stocks. Generally, the government has difficulty on its own determining prices in a competitive market. Currently, sectors do submit price data to NMFS, but this is voluntary and only for inter-sector trades. Also, these prices are not necessarily stock-specific. Second, nonprofit permit banks would need to show receipts or other proof of sales price that correlate with the daily-fluctuating market rate. The only way to enforce this is to have required reporting of prices and a way to validate the price.

¹² In November 2013, the OSC considered the language in Alternative 2 as a motion, but the motion failed.

¹³ Prior to the November meeting, the PDT had suggested that since “harvest” typically refers to landings and discards, it would be easier to constrain just landings, rather than landings and discards, since discards are not estimated for individual entities.

7.0 AFFECTED ENVIRONMENT

XXX

8.0 ENVIRONMENTAL IMPACTS OF MANAGEMENT ALTERNATIVES

XXX

9.0 DATA AND RESEARCH NEEDS

XXX

10.0 APPLICABLE LAW

XXX

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