

New England Fishery Management Council Groundfish Oversight Committee

Meeting Summary

April 18, 2012

The Groundfish Oversight Committee (Committee) met in Portland, ME to continue work on several actions related to the Northeast Multispecies Fishery Management Plan (FMP). The Committee discussed the action on sector issues, an electronic monitoring pilot study and observer costs, the ABC management action, GOM cod planning, trawl gear stowage requirements, and management strategy evaluation. Committee members present were Mr. Terry Stockwell (Chair), Mr. Tom Dempsey (Vice-Chair), Mr. Frank Blount, Mr. Rip Cunningham, Mr. David Goethel, Mr. Howard King, Mr. Glen Libby, Ms. Sue Murphy, Mr. James Odlin, Dr. David Pierce, and Mr. Dave Preble. They were supported by staff members Ms. Anne Hawkins, Ms. Fiona Hogan, and Mr. Tom Nies (NEFMC), Mr. Mark Grant, Ms. Sarah Heil, Mr. Mike Ruccio, and Ms. Melissa Vasquez (NMFS NERO), and Mr. Gene Martin (NOAA General Counsel).

Discussions were guided by a Groundfish Plan Development Team (PDT) report dated April 13, 2012, a draft PDT paper: Developing Effective Monitoring for the Northeast Multispecies Fishery, and background materials on gear stowage requirements.

Sector Monitoring

Council staff presented an updated version of the PDT's monitoring white paper that included options for cost-sharing for sector monitoring.

A committee member stated that the PDT work on observer bias would be extremely important in determining what options are best in terms of costs of observing. Council staff responded that work on selection bias and observer effect was ongoing and some of the information might be available in one month. NERO staff noted that they are looking at landings data from trips with identified misreporting to see what the effect on sector ACEs would be.

One committee member stated that the license fee model would not address the necessary issues because people would have a hard time meeting a lump sum payment at the beginning of the fishing year or at the time of permit transfer. He stated that incentives for payment were outside the scope of Council action. NOAA GC advised that the license fee, cost recovery, and lease/credit models may not be legally permissible because the Magnuson Stevens Act only allows fees to be collected to cover basic administrative costs in non-LAPP fisheries.

A committee member said that when the Magnuson Act is reauthorized, these options should continue to be explored since he was very uncomfortable with the traditional industry-funded model. He felt that it was necessary to clarify goals and objectives before moving forward with this. Another member countered that progress was not being made quickly enough on monitoring issues, and that the purpose of this action was supposed to be to simplify the monitoring program now that money was an impediment to an ideal system. He felt that there should be a policy that observers are assigned randomly by computer and that the service providers and observers should not have any input into

selection, and he also felt that reporting should be streamlined by having dealer reports matched to log books. Another member stated that an industry-funded program needs to be stripped down from the NEFOP standards. One member stated that the auction idea should be further developed to allow for an increase in the amount of monitoring in order to cut down on observer bias.

Public comment included:

- Mary-Beth Tooley, Council member: There are two monitoring programs in Alaska and both still exist. The document should describe them both. It is in the regulations that the cost of management is limited and they only pay at-sea costs. That is a cost-sharing option and these funding mechanisms do not speak well to reducing costs, which is what we need to do as well. There is no point exploring options that are not legally viable, but it would also be valuable to describe them as things that could be considered in the future for the public to consider. The new Gulf of Alaska methodology allowed in Magnuson could be considered here. Quota set-asides are interesting to explore, but we have a limited amount of fish and it could be a struggle. Cost-sharing with the agency is important.
- Jessica Joyce, Gulf of ME Research Institute: We have been working with the monitoring working group and groundfish sectors at GMRI and explored some of these options with the group. Could sectors collect the fees with the fee recovery or lease/credit models? The issue with industry funding is that the standard model is fee-for-service per day. In AK the government collects ex-vessel costs, but a sector may choose as an option to collect ex-vessel value and then pay monitoring fees if they were directly contracting with the vendors.

NOAA GC responded that there was nothing to prevent a private arrangement for sectors to tax their own members to set up a fund for distribution amongst them as long as it was not a government requirement. Council staff asked where money would go after the sector collected it, and NOAA GC replied that it could go into a public-private partnership such as the last option in the white paper. He did not know whether the fund authorized by Magnuson was currently operational.

A committee member stated that the cost-sharing method used would be determined by the total cost of the program, and thought it was important to minimize costs. Another stated that the PDT should use examples from fisheries more similar to New England's than the Alaska fisheries in terms of quotas and dollar values. The committee chair recommended investigated the red snapper fishery. One member stated that it was important not to have too much administrative overhead and felt that sectors should be allowed to determine how to raise money and what percentage of catch should be monitored.

Motion: To put into the "considered and rejected" category: the fee model, cost recovery model, lease/credit model, and incentives to pay model for cost-sharing for sector monitoring. (Mr. Odlin/Mr. Dempsey)

The maker of the motion provided the rationale that the first three options would not be possible unless the fishery was a LAPP, and that the fishery was not yet ready for incentives for payment as used on the West Coast.

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

Motion: To recommend that a portion of quota set-aside for management uncertainty be allocated to sectors for them to auction between and within sectors to defray at-sea monitoring costs. (Dr. Pierce/Mr. Libby)

The maker of the motion wanted to leave open the percentage of the auction and specifically stated that this motion did not entail any allocation strategy. He clarified that the quota would go to the sectors as a group to enable them to work together to distribute the quota to generate funds to defray the costs of monitoring. A committee member stated that the uncertainty auction concept would allow sectors to handle incentives without having the Council design a research set-aside system. Several members stated that it may be too complicated to administer this and determine who would get the money and the quota. There was concern that it would not be divided equally among the sectors. Ms. Murphy expressed support for the PDT to examine this, but noted that the Council would need to show how uncertainty would be addressed if the buffer was not there. There was also a possibility that this motion would trigger an amendment.

The motion **failed** on a show of hands (1-6-3).

Motion: To recommend that the PDT analyze having a portion of quota set aside for management uncertainty be allocated to individual sectors for them to auction/sell between and/or within sectors to defray at-sea monitoring costs. (Mr. Odlin/Mr. Preble)

The maker of the motion provided the rationale that the individual sector could auction it to their members or trade it with other sectors more effectively. The motion was intended to cover any type of transfer for the quota including but not limited to auction or sale. A committee member thought that the PDT had already been directed to develop these types of options. NOAA GC advised that an option like this may require an amendment depending how it was crafted. If the existing ACE formula was used, so the ACE that was assigned directly to harvest was merely augmented based on the buffer it may not require an amendment. A committee member expressed concern that if larger sectors received larger amounts of fish, it could exacerbate problems with the differences in cost of operations across the fleet. Some other members stated that they would not want individuals within the sector to have control over the additional quota that would be entering a sector and asked the PDT to consider whether that might happen. They also asked to look at the differential economic impacts of this on people in different sectors. Council staff commented that the PDT was previously tasked with looking at this sort of system, but that this discussion clarified the directive.

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

Motion: To develop an option for individual vessels to accept the NEFOP discard rate in lieu of having to pay for observers. (Mr. Goethel/Mr. Preble)

The maker of the motion stated that the rationale was to look at how, for example, smaller vessels may be exempted from monitoring requirements or payment for monitoring as in Alaska. He felt that the NEFOP coverage produced a higher discard rate, so vessels might be able to accept a higher discard rate instead of having to pay for coverage. Ms. Murphy noted that the current requirement for observer coverage would have to change in order accept the current 8% coverage unless the Council considered a

specific exemption for certain vessels. A committee member stated that he supported looking at ways to better direct limited resources across various components of the fleet, but was concerned this motion was too broad and may lead to an 8% coverage rate across the fleet. Another opposed the motion because it did not incentivize reducing discards.

The motion **failed** on a show of hands (3-6-1).

Motion: To have the PDT develop an option for proportional monitoring coverage based on groundfish catch. (Mr. Goethel/Mr. Preble)

The maker of the motion provided the rationale that this would change the coverage to provide a clearer picture of what was happening with the majority of the catch across the fleet, since a minority of the boats catches the majority of the fish. The committee discussed whether it made more sense to monitor based on the most discards since some larger boats may have small discard rates, but thought that landings could be a proxy for catch. They agreed that there was sometimes a considerable difference between catch and landings, or interaction with groundfish, and directed the PDT to consider this issue based on whatever metric was most sensible. Council staff noted that catch from various vessels differs by stock and Ms. Murphy noted that gears have different discard rates depending on target stock. Committee members responded that they would like to give the PDT as much latitude as possible to consider these issues and move away from metrics based on trips and strata.

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

Council staff explained the description of changes to the Pre-Trip Notification System that are described in the PDT report. Selection does not occur on an individual vessel level. A committee member suggested that any time a trip is canceled the observer should automatically roll over until the next day that vessel fished. Council staff replied that that approach was tested but that it led to inordinately high coverage on small boats because of frequent weather cancelations. Now an intermediate approach is used that considers a range of acceptable cancelations. The member asked that this system continue to be refined to provide fair coverage.

Observer Costs

Amy Van Atten of the Northeast Fisheries Observer Program (NEFOP) presented information about costs of the current NEFOP and sector at-sea monitoring programs.

In response to committee members' questions, she stated that the attrition rate was usually around 30%, but higher this year because of the change in contracts. If an observed trip is canceled, the contractor now pays the observer a small amount for land-pay since observers were leaving the position out of frustration over canceled trips for which they were not paid. Observers generally make about \$16-20 per hour, but NEFOP does not dictate what a provider should pay for a sea day. The observers are paid for travel over fifty miles from their primary port and not from their homes. There is a cap on the amount of travel that can be reimbursed. Refusals to carry an observer are enforcement violations and are reported within twelve hours. There are roughly 20-30 incidents per year, and most involve leaving without the observer or "waiting out" the observer on board the vessel and starting a trip when the observer leaves. The estimated

cost per day includes taxes, overhead, office staff, and other factors. Some costs are associated with compliance with federal laws such as the Fair Labor Standards Act, which require that employees be paid the minimum wage and offered a basic benefit package.

Electronic Monitoring Pilot Study

Amy Van Atten presented information about pilot studies that were conducted on electronic monitoring (EM) in the groundfish fleet.

In response to questions from committee members, she stated that it may be difficult to have cameras and human observers on a vessel at the same time and that it was important to involve enforcement personnel in the approval of monitoring technology. The West Coast EM program was discontinued because it could not hold up enforcement cases regarding the identification of certain fish species. The initial cost of installing EM equipment is roughly \$10,000, and there are options for leasing it. She stated that EM can generally be done more cheaply than deploying an at-sea monitor, but that a lot of potential for data collection would be sacrificed in doing that. Some estimates show that the cost of EM for a vessel could be about \$300/day in the pilot phase, but that number could be reduced if full-scale implementation occurred.

A committee member noted that the technology did not look like it had improved enough to adequately differentiate between species of fish, and thought that having cameras on docks to monitor offloads might be an alternative for human dockside monitors. Another member states that even with the large number of pilot projects, it did not seem as though EM was closer to being implemented and thought the point that it would need to be part of a comprehensive system was being overlooked.

Ms. Van Atten stated that part of the reason for the high bar for implementation was the specific language in Amendment 16 that required EM to do the task of human observers, and that a comprehensive program would affect costs and outcomes of the study. Council staff noted that there was disagreement over the interpretation of the language. A committee member stated that the monitoring equipment would not only impose a one-time cost, and that maintenance costs would be required. Ms. Van Atten stated that it was difficult to use the video for full catch enumeration and that there were questions about how much of the video would need to be reviewed, but that most programs do a spot-check of videos and use self-reporting for actual catch information.

ABC Action for FY 2013-FY 2014

The Committee reviewed measures that were planned for the action that will set ABCs/ACLs for FY 2013 and FY 2014. At the last committee meeting, members considered four groundfish /scallop issues that had been identified for consideration in a future action. The Scallop Committee had since discussed the issues and asked the Committee to work on revising the dates for access to the scallop access areas on Georges Bank. Committee members discussed this request and whether it overlapped with efforts within the Omnibus Habitat Amendment to consider modifying the closed areas. In response to a question, staff said that it was likely that a change adopted in a joint framework would probably be implemented prior to changes adopted through the

amendment. Concern was expressed that the research experiment investigating yellowtail flounder bycatch rates over time was not yet completed and the report may not be available until later in the summer.

Motion: The Groundfish Committee recommends the Council include as a priority starting a joint action with the Scallop Committee to modify the dates for access to the scallop fishery access areas. (Dr. Pierce/Mr. Goethel)

Public comment on the motion included:

- Mary-Beth Tooley: I support this motion. This action will help reduce bycatch of yellowtail flounder.
- Bonnie Spinazzola, Offshore Lobstermen's Association: We have no problem with the opening of these areas. But there is an area in CAII, between June and October of every year where the lobster catch is 90 pct. female and includes large amounts of eggers. We have serious concerns – the SNE lobster fishery is dying. We don't know where eggs and larvae from this area go. Lobstermen are finding small lobsters offshore. This may be the healthiest area in the offshore lobster fishery now. We ask that you consider not opening the areas between June and October for mobile gear.
- Dave Frulla, Fisheries Survival Fund: How did we get here? When access areas were implemented they opened on June 15, supposedly because of spawning yellowtail flounder in the early spring based on one old study. We say open it when it makes the most sense to reduce yellowtail flounder bycatch. We were able to get research set aside funding – did a survey to characterize bycatch month by month, the last trip was yesterday.

The Committee also discussed timing issues related to when the data from the research experiment might be available, and also discussed the impacts of taking up this issue on other groundfish priorities.

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

Ms. Murphy questioned whether the Committee intended to address the issue of scallop fishery bycatch of SNE/MA winter flounder and SNE/MA windowpane flounder. She reviewed recent catches, noting that preliminary estimates for FY 2011 showed that while SNE/MA windowpane flounder catches may have declined they were still sizeable. Staff confirmed that if the ACLs for either of these stocks were to be exceeded, under FW 47 proposals the groundfish fishery would lose fishing opportunities even if the overage was caused by another fishery. Mr. Odlin expressed a desire to address this issue at the next Committee meeting. At that time more information might be available on recent catches. Mr. Dempsey advocated for a more broad-based approach to this issue for all flounders. The Chair agreed to address this issue at the next meeting and will include it as a specific agenda item.

At its last meeting Ms. Murphy advised the Committee that the action for changing the ABCs might need to be supported by an Environmental Impact Statement (EIS) because the issue may be "highly controversial." In addition, an EIS might be needed to support measures identified to protect Atlantic sturgeon. The first step in preparing an EIS is publication of a Notice of Intent (NOI). An NOI notifies the public that an EIS might be prepared, and describes the action that is being considered. The Committee was presented

a draft NOI for review. There was some discussion by Committee members who asked if the reason for an EIS was because of the expected large socio-economic impacts caused by reduced catch limits. Mr. Martin explained this was not the case, and that these impacts would be analyzed whether the action was supported by an EIS or an Environmental Assessment (EA). The Committee chose not to comment on the draft NOI because members had not had sufficient time to review it. The NOI will be reviewed at the April 2012 Council meeting.

GOM Cod

Council staff gave a brief presentation on the next steps for addressing the recent SARC 53 assessment of GOM cod. The Council is required to end overfishing on this stock by May 1, 2013, and must adopt a new rebuilding plan by May 1, 2014. A workshop will be held in June 2012 to review cod stock structure. An assessment for GOM cod will be conducted in either late summer (an updated assessment) or late fall (a benchmark assessment). There are a number of assessment priorities over the next 18 months that will compete for attention from the NEFSC. While the immediate question before the Committee is whether an updated assessment or a benchmark assessment was preferred in 2012, longer range issues also need to be considered. Staff noted that it was likely that if a GOM cod benchmark was added for 2012, then the white hake assessment would be delayed.

Mr. Goethel expressed the view that “turning the crank” was not useful and a full assessment was needed. Mr. Dempsey also spoke in opposition to an operational, or update, assessment.

Motion: The Committee recommends the Council request a GOM cod benchmark assessment in 2012. (Mr. Dempsey/Mr. Libby)

Dr. Pierce expressed support for the motion, but referred the Committee to a letter from the Massachusetts Fisheries Institute that should be addressed in the benchmark.

Motion to amend: The Committee recommends the Council request a GOM cod benchmark assessment in 2012. That assessment should address the ten priority issues identified by the MFI in its April 3, 2012 letter to Sam Rauch. (Dr. Pierce/Mr. Odlin).

Mr. Odlin noted that the Executive Committee report would also recommend a benchmark. Mr. Cunningham cautioned that a benchmark assessment might not result in increased GOM cod catches in 2013. He noted that the data that would be available – which would not include any changes to stock structure – may not be very different from that included at the last assessment. And a different review panel might make very different decisions that could result in a conclusion that the stock’s condition was worse than estimated in 2011. Mr. Dempsey and Mr. Odlin both spoke against any delay in the white hake assessment.

The motion to amend **carried** on a show of hands (8-0-2).

The main motion, as amended, **carried** on a show of hands (8-0-2).

The Committee also agreed to the following consensus statement:

“The Committee recommends the Council pursue a white hake assessment at the same time as the GB and GOM cod benchmark assessments.”

Trawl Gear Stowage Requirements

At the January 2012 Council meeting, the Council referred recommended changes to the trawl gear stowage requirements to the Groundfish Committee for review. The changes were the result of extensive work by the Enforcement Committee. The specific language forwarded to the Committee was:

To recommend that the Groundfish Committee:

- Review Section 648.23 (b), definition of “not available for immediate use”, and determine if the regulations under that section are still necessary;
- To remove from Section 648.23(b)(1)(iv), part (B) that requires the towing wires be detached from the doors;
- To change completely the wording of Sections 648.23(b)(1)(iii), part (A) and 648.23(b)(1)(iv), part (A) to say “the net is on the reel and its surface is covered with an approved material”.

Ms. Murphy questioned why the recommendations had been forwarded to this committee, noting that the regulations applied to many fisheries managed by both the NEFMC and the MAFMC and so broader approval of the changes should be considered. Mr. Goethel reported that the Enforcement Committee had been told that any changes needed to be approved by the Groundfish Committee. The modifications were not considered ideal but had been hammered out through discussions with enforcement representatives. The Coast Guard was adamant that a regulation was needed to make sure that whether a net was ready for immediate use could be detected from the air.

Motion: To recommend to the Council adopt the three bullets adopted by the enforcement committee. (Mr. Goethel/Mr. Blount)

Mr. Odlin opposed the motion on the grounds the entire regulation was unnecessary.

Public comment included:

- Ms. Raymond: We do not support the motion on the board. While we support getting rid of the requirement to disconnect wires – which cannot be done – putting a covering on the net reel does not tell where the net is. A better approach is to get rid of these requirements.
- Mr. Vito Giacalone: There is absolutely no benefit to covering the net. This is just another way to find a vessel in violation. A cover does not render the net useless if the net is overboard. Get rid of these things.

Staff discussed the origin of some of the regulations. Committee members repeatedly questioned the need for the regulations at all – in particular, the net covering.

Motion to amend: Recommend the Council adopt the top two bullets adopted by the Enforcement Committee. (Mr. Dempsey/Mr. Preble)

Committee members discussed whether this motion was consistent with the Council tasking, since it appeared to refer an issue sent to the Committee back to the Council. There was growing interest in removing the requirement entirely, which staff cautioned might require a management action. Mr. Martin also noted that the Committee could only recommend changes for the groundfish fishery, which could lead to enforcement concerns.

The motion to amend **failed** on a show of hands (0-7-2).

The Committee next discussed passing two motions that explicitly address the language of the regulations. After some discussion, the following motion was offered:

Motion to substitute: To remove from 50 CFR Section 648.23(b)(1)(iv), part (B) that requires the towing wires be detached from the doors. (Mr. Blount/Mr. Preble)

The motion to substitute **carried** on a show of hands (7-0-2).

The main motion as substituted **carried** on a show of hands (7-0-2).

Mr. Odlin expressed concern over the Committee's approach. As rationale for a different approach, he noted that the regulatory environment had changed dramatically since these measures were first adopted. All groundfish vessels now had VMS, and in the GOM and GB regulated mesh areas vessels on groundfish trips are not allowed to have small mesh on board. While he agreed that it should remain illegal to fish in closed areas he does not believe these regulations are necessary.

Motion: To remove all of these items as requirement from the groundfish FMP (basically, sub-paragraphs (b)(1) through (b)(3), and (b)(5) in 50 CFR 648.23):

(b) Definition of "not available for immediate use." Gear that is shown not to have been in recent use and that is stowed in conformance with one of the following methods is considered to be not available for immediate use:

(1) Nets —

(i) Below-deck stowage.

(A) The net is stored below the main working deck from which it is deployed and retrieved;

(B) The towing wires, including the leg wires, are detached from the net; and

(C) It is fan-folded (flaked) and bound around its circumference.

(ii) On-deck stowage.

(A) The net is fan-folded (flaked) and bound around its circumference;

(B) It is securely fastened to the deck or rail of the vessel; and

(C) The towing wires, including the leg wires, are detached from the net.

(iii) On-reel stowage.

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

(B) The towing wires are detached from the net; and

(C) The codend is removed and stored below deck.

(iv) On-reel stowage for vessels transiting the Gulf of Maine Rolling Closure Areas, the Georges Bank Seasonal Area Closure, and the Conditional Gulf of Maine Rolling Closure Area.

(A) The net is on a reel, its entire surface is covered with canvas or other similar opaque material, and the canvas or other material is securely bound;

(B) The towing wires are detached from the doors; and

(C) No containment rope, codend tripping device, or other mechanism to close off the codend is attached to the codend

...

(5) Other methods of stowage. Any other method of stowage authorized in writing

(Mr. Odlin/Mr. Libby)

The motion **carried** on a show of hands (7-0-2).

The Chair clarified that this motion renders the previous motion moot.

Management Strategy Evaluation (MSE)

Staff gave a very brief overview of MSE approaches to fishery management, as requested by the Committee. The presentation is available on the Council web page. The Committee did not take any action.

Other Business

Mr. Hank Soule asked the Committee if it would be possible to allow sectors to push their unused 2012 allocations of GOM cod into FY 2013 – essentially, removing the 10 percent cap on carry-over. This would benefit the fishery economically, might keep more boats fishing offshore, and might benefit the stock by reducing catches in the short term. He asked how this idea could be explored. Two other industry members spoke in favor of the concept.

The Committee expressed cautious interest in this idea. Ms. Murphy noted that a concern is that any such approach must still meet the requirement to end overfishing in FY 2013. She and Mr. Martin noted that NERO was preparing a response to the Council on carry-over issues, but the need to address national policy implications meant the letter was taking time to be reviewed. Council staff gave a short overview of some preliminary work the PDT had done on this issue, and while noting that there were economic and biological benefits the legal issues were difficult to address. Mr. Blount recognized such an approach might be appropriate if we had confidence in the assessment results, but the information that indicated assessments were often biased high made this approach risky.

The meeting adjourned at 5:27 p.m.