

New England Fishery Management Council

SUMMARY

Monkfish Oversight Committee Meeting

Sheraton Harborside, Portsmouth, NH

July 30, 2009

The purpose of the meeting was to continue development of Amendment 5 to the Monkfish Fishery Management Plan (FMP), and primarily to reconsider the scope of the amendment in the context of meeting the 2011 deadline for implementing Annual Catch Limits (ACLs), Accountability Measures (AMs), and other management reference points to bring the FMP into compliance with the reauthorized Magnuson-Stevens Act (MSRA). While the Councils initially approved considering a wider range of actions in Amendment 5, including modifications to incidental catch limits and adopting a catch share management system (sectors or ITQs), the Committee recognizes that the work necessary to fully develop and analyze a range of alternatives would delay the amendment beyond the MSRA-mandated deadline. In addition to developing recommendations to the Council to narrow the scope of Amendment 5 and defer development of those other management programs to the next action, the Committee reviewed the PDT analysis of the range of options for management specifications of days at sea (DAS) and trip limits for the 2011-2013 fishing years, which are needed to replace the current specifications which were adopted in 2007.

At the start of the meeting, the Chairman informally polled Committee members to establish that there was a consensus to split the amendment, and that the subsequent discussion would be to identify those elements that would remain in Amendment 5, and those that would be deferred to the next action, to be taken up immediately upon completing the current action.

Motion

To split Amendment 5 into two parts, and to consider ACLs, AMs, specifications and trip limit adjustments in the current action (Odlin/Avila)

The maker of the motion explained that the inclusion of trip limit adjustments was to reflect the results of the last assessment, and could be either directed or incidental catch trip limits. Another member of the Committee suggested a different approach, which would be to agree to split the amendment, and then to go through the list of proposed measures and identify those which would be split off, and those which would remain.

Motion to table

To table the motion until after working through the decision document (Grout/Nolan, **motion to table unanimous**)

The Committee then proceeded to work through the updated decision document, in which the PDT identified those items which could be retained in Amendment 5, and likely not result in the requirement to prepare an EIS since they are administrative in nature and not controversial, and would not require extensive analysis. Several items in the decision document also required clarification or specification of details by the Committee before they could be fully described in the draft document.

The first group of measures in the decision document pertains to the biological and management reference points, including specification of Optimum Yield (OY). These items are required by the MSRA and/or revised National Standard 1 Guidelines (NS1G). When the Committee initially recommended the reference points to the Councils for consideration in Amendment 5, it did not include a definition of OY, noting that it would develop one prior to completion of the draft amendment document. The staff noted that in the past, the specification of OY was done in the amendment and framework documents under the section addressing Magnuson-Stevens Act compliance, and was not an action item by the Councils. The NS1G, however, state that OY must take into account the need to prevent overfishing and rebuild overfished stocks. The staff suggested that the ACT represents the maximum yield from the fishery after taking into account scientific uncertainty in the overfishing limit in setting Acceptable Biological Catch (ABC), and management uncertainty in setting measures that will not exceed the ABC. Generally, the greatest benefit to the nation, including social and economic considerations, implies maximizing yield from the fishery while not overfishing, and, therefore, the use of the ACT as a numerical value associated with OY would be appropriate.

Committee members discussed whether the staff recommendation should be adopted. One member stated that OY should be set independent of management, and even, perhaps, scientific uncertainty so that it could be used as an incentive to reduce the factors contributing to uncertainty. Another member suggested that as scientific and management uncertainty is reduced, the value associated with OY will increase as the ACT is increased. Also, management measures are not built around OY, and, therefore, setting OY at the ACT will not, in and of itself, result in any additional constraints on the industry.

Motion

To set OY equal to the ACT (Nolan/Munden, **motion passed unanimously**)

The Committee then proceeded to review the ACT options. A member of the public commented that Option 1, the current target TAC in each area, is unnecessary considering the status of the stocks, and that they would result in inappropriate restrictions. The commenter observed that if there is no basis for retaining those options, they should be removed because they will distract the public from commenting on the more realistic options, and will cause unnecessary distress in the public hearing process. The Committee questioned whether these options could be removed, or whether they represent the no action alternative in the environmental assessment document. Staff noted that the no action alternative, with respect to ACTs, is no ACTs, and that the no action alternatives with respect to management measures would be to retain the current specifications of DAS and trip limits. Considering that, the no action alternative for the Southern Management Area (SMA) would be an increase from the current TAC, due to the overages in 2007 and 2008.

Motion

To recommend putting ACT Option 1 for the SMA into the category of alternatives considered but rejected (Nolan/Avila)

A Committee member questioned why the same recommendation would not apply to the NMA, since the northern stock is also rebuilt, and there has not been an overage of the TAC.

Motion to amend

To also recommend that ACT Option 1 for the NMA be considered but rejected (Leary/Odlin, **motion to amend passed unanimously**)

Main motion as amended passed unanimously.

The Committee then took up a staff recommendation for a name change to one of the measures under consideration. Up to now, the measure was titled “Prior Notice of Intent to Land an Overage of the Trip Limit.” Staff informed the Committee that a similar title was already in use in other FMPs, but with different implications, and, after consulting the NMFS staff, recommended that the measure be renamed to “Automatic DAS Adjustment for a Trip Limit Overage”.

Motion

To recommend renaming the “Prior Notice” measure to “Automatic DAS Adjustment for a Trip Limit Overage” (Grout/Alexander, **motion passed unanimously**)

The next item before the Committee was the PDT’s recommendation to remove from consideration in Amendment 5 the proposed modification of the SMA trip gillnet incidental limit when a vessel is on a groundfish, but not a monkfish DAS. This is the first of several incidental limit proposals that the PDT recommends not be further considered in this amendment. Specific to this proposal, the basis for the PDT’s recommendation was summarized in the decision document, as follows:

There is a need for explicit justification why this proposal would only apply to trip gillnets, and not day gillnets. Also, the impact of the proposed action to increase the limit is highly uncertain since it is not possible to predict how fishing behavior will change, and whether the result will be that trips that would otherwise be on a MF DAS would now become GF only DAS with directed monkfish effort. The conversion of this monkfish catch from directed to incidental will increase the proportion of the ACT that needs to be set aside for incidental catch, reducing the allocation to the directed fishery. Incidental catch is not directly controlled by the FMP, other than the allowable landing limits. Analysis of the proposed action will require sufficient observer coverage to determine if it will simply convert discards to landings, or will represent an opportunity to increase monkfish catch. Observer coverage of this fishery may not be sufficient to make such a determination.

Motion

To recommend removal of the SMA Trip Gillnet Incidental Limit proposal from further consideration in Amendment 5 (Nolan/Grout, **motion passed unanimously**)

The Committee then considered the PDT’s recommendation to remove from consideration in this amendment the proposed increase in the NMA Incidental limit when a vessel is on a groundfish, but not a monkfish DAS. The PDT’s comment on this proposal was:

Data on the incidental catch of monkfish by vessels on a groundfish, but not a monkfish DAS, strongly indicates that the current incidental limit (25% of total weight of fish on board, up to 300 lbs. tail wt. per DAS) is not constraining on vessels; therefore, the need to increase the incidental limit to minimize bycatch is not present. Increasing the incidental limit to 500 pounds, however, may present a profitable opportunity to direct on monkfish outside of the monkfish DAS fishery. If this occurs, the proportion of the fishery available to the directed fishery will be reduced. The effect of the proposed increase on behavior cannot be analyzed since nearly all trips are well below the current limit, and there is no means of predicting

whether incidental catches will increase under a higher limit, unless effort patterns change and become directed on monkfish. The PDT also recommends that the incidental limit on groundfish vessels in sectors, and not on a MF or GF DAS be set consistent with the incidental limit for vessels on a GF, but not a MF DAS, at 300 lbs. tail wt. for each day or part of a day on the trip (no percentage threshold).

Motion

To recommend deferring to the next action consideration of the 500 lb. (tail wt.) incidental limit in the NMA (Odlin/Nolan, **motion passed 7-1**)

The next PDT recommendation was to remove from consideration the proposed increase in the scallop dredge incidental limit. The PDT commented that:

Scallop dredge vessels are currently allowed to land 300 lbs. of tails per scallop DAS, or per day while in Access Area Fisheries while not on a scallop DAS. Observer data indicates that the vast majority of discards of monkfish is due to the size of fish caught, either too small for market or below the minimum legal size. Increasing the allowable landing limit will not reduce this component of bycatch, but may provide incentive for some vessels to target monkfish. Based on available landings data, it appears that most dredge vessels are maximizing their scallop effort while on scallop DAS and are not targeting monkfish under the current landing limit since the current limit does not appear to be constraining.

Motion

To recommend deferring to the next action consideration of an increase in the scallop dredge incidental limit (Nolan/Grout)

At this point, a member of the Committee suggested that it would be more efficient to consider all of the PDT's recommendations in a single motion, with amendments as needed.

Motion to amend

To recommend the Councils approve all of the PDT's recommendations for deferring action on specific measures, as identified in the decision document (Odlin/Nolan, **motion to amend passed unanimously**)

Main motion as amended, passed unanimously.

As a result of the previous amended motion, the Committee is recommending that the Councils defer action on changes to the following measures:

- Monkfish catch limits on vessels in Groundfish Sectors, not on a groundfish or monkfish DAS
- Allowing monkfish vessels with groundfish permits to join groundfish sectors for the purpose of using monkfish Annual Catch Entitlements (ACE) in 2011 and beyond
- Allowing all monkfish vessels to join groundfish sectors (which would require that Amendment 5 be declared a joint groundfish/monkfish amendment)
- Catch share proposals, including sectors and ITQ's, as well as the proposal that the Councils may consider catch share management by area

With regard to catch share proposals, the PDT provide the following comments for Committee consideration:

As stated in the PDT Report of 5/13/09, while many, if not all PDT members support in concept the use of catch share management, they do not feel there is adequate time to develop such programs in Amendment 5 while still meeting the primary obligations to implement ACLs and AMs, and to update specifications of DAS and trip limits, by 2011. While the Committee has approved the strawman proposal, there are numerous details that remain unresolved, and require both substantial analysis as well as iterative Committee deliberations as the PDT analyzes and reports on the details being developed. The following list of questions and issues raised by the PDT is not a comprehensive and complete list of current and potential items to be resolved by the Committee, but it exemplifies the scope of yet unfinished details. Some of these pertain to specifics described in the strawman proposal, while others are external to it, but are needed for such a proposal to be complete. These items will need to be addressed, whether or not the Committee concurs with the PDT's recommendation to postpone development of catch share programs:

- a. NMFS NEPA staff recommends development of additional alternatives within the strawman for consideration in the EIS to meet the requirement for a "reasonable range" of alternatives. For example, there is only one qualification alternative for the NMA. For comparison, GF Amendment 16 had 5 options. The NEPA staff is not suggesting that there needs to be 5 options in this amendment, but there needs to be more than one. A second example is that there is only one set of items being proposed for "universal exemption", and there may be others.*
- b. Qualification options – These are technically not "qualification" but "allocation baseline" alternatives. Vessels have already qualified for limited access permits under the original FMP. The qualification criteria were history based, and established two levels of permits. The use of original permit qualification criteria as the basis for an allocation system has many advantages: appeals have been completed; vessels in each of the two permit groups would be treated the same based on their original qualification history, eliminating the complications created by the fact that vessels have been differentially impacted by regulations under the FMP, the gillnet lawsuit, or regulations in other fisheries that impact each vessel's monkfish catch; etc.*
- c. Calculation of vessel history – The proposals for allocation options using vessel history will require additional specificity, such as, how to deal with the differences between dealer reports and VTRs, attribution of monkfish stock area to dealer landings, use of RSA DAS in vessel history, external circumstances (e.g., major repairs) that may have affected a vessel's ability to generate catch history during one of the baseline years, and differences between vessel owner records and dealer/VTR data entered in NMFS' data bases.*
- d. Appeals of initial allocation- the strawman proposal discusses some general items that would be subject to appeal, but there are no alternatives outlining the detailed approaches to these items. The strawman does not also discuss the implementation schedule for individual vessels or the entire fishery while appeals are pending. Other fisheries in this region (e.g., tilefish and scallop GC IFQ) offer alternative approaches for consideration. The appeals process should be fully explained, including how much time a vessel has to appeal, what evidence will be considered, etc.*

- e. *Catch monitoring – the importance of robust, near-real-time catch monitoring under sectors and ITQs is widely acknowledged. For a fishery such as monkfish, with a substantial portion of the total catch being incidental to other fisheries, catch monitoring is potentially more complicated and costly. The proposal does not currently address catch monitoring. Alternatives will need to be developed and analyzed for their effectiveness and cost (to operators, the government, sectors) for inclusion in the EIS and public comment.*
- f. *Cost recovery – The proposal needs to include detailed descriptions of cost recovery alternatives. Costs of monitoring, administration and enforcement are likely to be substantial and alternative approaches to paying those costs need to be presented for public comment.*
- g. *Research Set Aside – vessels currently contribute 0.7 DAS of their allocation to create a pool of 500 DAS for funding monkfish cooperative research. Under an ITQ program, vessels would no longer be allocated monkfish DAS, and under a sector program, while vessels may still be allocated monkfish DAS (since vessels may choose to remain in the common pool), vessels in sectors would likely not be required to use DAS. Therefore, revisions to the RSA program will be required, and the Committee has not yet considered alternatives.*

The Committee then considered the PDT’s recommendation to specify the details of the power-down provision under the mandatory VMS proposal. The PDT noted that in other fisheries where VMS is required there are different types of power-down options, and referenced the regulatory text that it provided the Committee (see Table 1).

Motion

To adopt the power-down exemption similar to that in paragraph D, vessels in the scallop fishery (Odlin/Avila)

Several fishermen commented that the VMS should not be required whenever the vessel is not in the fishery, that is, on a monkfish DAS, not just when the vessel is at the dock or on a mooring. Another member of the public commented that the language in paragraphs A and B are also applicable, and should be included in the exemptions for monkfish vessels.

Motion perfected by friendly amendment

To clarify that paragraphs A and B also would apply, but that paragraph B needs to be modified, by inserting the following language (in italics):” ...the vessel does not engage in any fisheries *where a VMS is required* until the VMS is turned back on...”

Perfect motion passed unanimously

NOAA General Counsel advised the Committee that the Council will need to explain why this VMS exemption is different from other FMPs with regard to allowing vessels with VMS to turn them off while the vessels are at sea. He suggested that this allowance undercuts the effectiveness of the VMS program.

The Committee then returned to the initial motion of the meeting which had been tabled (“To split Amendment 5 into two parts, and to consider ACLs, AMs, specifications and trip limit adjustments in the current action”).

Motion

to bring back the tabled motion (Grout/Alexander, **motion passed unanimously**)

Motion brought to the table was withdrawn.

Motion

To recommend that the Councils split Amendment 5, and defer consideration of the fully shaded measures in the 7/15 version of the decision document to the next management action on monkfish, with the exception of the definition of OY (Grout/Odlin)

A member of the public commented that the Committee should recommend placing ITQs as a priority in the next management action as part of the motion.

Motion to amend

To add that the priority for the next management action will be to consider catch shares (Odlin/Nolan, **motion to amend passed 7-1**)

Main motion as amended passed unanimously.

The committee then received a presentation on the PDT’s development of trip limit and DAS options for the various ACTs. One of the issues identified by Committee members is that using effort and catch data from 2007 and 2008 does not realistically capture the changes that are coming in the groundfish fishery. NMA groundfish effort is likely to be about one-half of the level in recent years, in both the sector component and the common pool fisheries, and, as a result, the incidental catch of monkfish will be much lower. For example, vessels in sectors will need grey sole ACE to be able to fish for monkfish, and the grey sole quota is being cut severely in Amendment 16, which means those vessels will have to stop fishing in areas where monkfish is caught due to the co-incident catch of grey sole.

Motion

To direct the PDT to analyze the impact of a 50% reduction in groundfish fishing effort on the trip limits and DAS allocated to monkfish vessels, and to include an option where the trip limits are the same for all limited access permit categories in the NMA. (Odlin/Leary, **motion passed unanimously**)

Consensus

The PDT should analyze two options for the NMA: one where the trip limits are the same for AC and BD permit categories; and one where the AC trip limit is 1,250 lbs. tail wt. (the current limit) and the DAS are the same as currently allocated (31), solving for the BD category trip limit.

Under other business, the Committee chair sought, and received concurrence from the Committee to ask the Council to send a letter to NOAA’s Catch Share Task Force seeking assistance in developing a catch share program for monkfish.

The meeting adjourned at approximately 3 p.m..

(2) *Power down exemption.*

(i) Any vessel required to transmit the vessel's location at all times, as required in paragraph (c)(1) of this section, is exempt from this requirement if it meets one or more of the following conditions and requirements:

(A) The vessel will be continuously out of the water for more than 72 consecutive hours, the vessel signs out of the VMS program by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, and the vessel complies with all conditions and requirements of said letter;

(B) For vessels fishing with a valid NE multispecies limited access permit, or a valid surfclam and ocean quahog permit specified at §648.4(a)(4), the vessel owner signs out of the VMS program for a minimum period of 30 consecutive days by obtaining a valid letter of exemption pursuant to paragraph (c)(2)(ii) of this section, the vessel does not engage in any fisheries until the VMS unit is turned back on, and the vessel complies with all conditions and requirements of said letter; or

(C) The vessel has been issued a limited access herring permit, and is in port, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such vessels must activate the VMS unit and enter the appropriate activity code prior to leaving port.

(D) The vessel has been issued a general scallop permit and is required to operate VMS as specified in §648.10(b)(1)(iv), is not in possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, and the vessel operator has notified NMFS through VMS by transmitting the appropriate VMS power down code, that the VMS will be powered down, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must repower the VMS prior to moving from the fixed dock or mooring. VMS codes and instructions are available from the Regional Administrator upon request.

(ii) *Letter of exemption.*

(A) *Application.* A vessel owner may apply for a letter of exemption from the VMS transmitting requirements specified in paragraph (c)(1) of this section for his/her vessel by sending a written request to the Regional Administrator and providing the following: The location of the vessel during the time an exemption is sought; and the exact time period for which an exemption is needed (i.e., the time the VMS signal will be turned off and turned on again); and, in the case of a vessel meeting the conditions of paragraph (c)(2)(i)(A) of this section, sufficient information to determine that the vessel will be out of the water for more than 72 continuous hours. The letter of exemption must be on board the vessel at all times, and the vessel may not turn off the VMS signal until the letter of exemption has been received.

(B) *Issuance.* Upon receipt of an application, the Regional Administrator may issue a letter of exemption to the vessel if it is determined that the vessel owner provided sufficient information as required under paragraph (c)(2) of this section, and that the issuance of the letter of exemption will not jeopardize accurate monitoring of the vessel's DAS. Upon written request, the Regional Administrator may change the time period for which the exemption is granted.

Table 1 Regulatory text (CFR Section 648.9 (a)(2)) pertaining to VMS power-down exemptions