

New England Fishery Management Council

SUMMARY

Monkfish Oversight Committee Meeting
Sheraton Ferncroft, Danvers, MA
November 1, 2006

The primary purpose of the meeting was to review the Framework 4 Draft Document and recommendations of the Monkfish Advisory Panel (AP), and make final recommendations to the Councils for measures to be submitted. In addition, the Committee reviewed and discussed AP recommendations for a monkfish DAS leasing program, the monkfish incidental catch on scallop vessels participating in the Closed Area Access Programs, the monkfish incidental catch on General Category Scallop vessels fishing in the Gulf of Maine, and a technical matter relating to the mesh requirements on trawls fishing with 12-inch mesh.

The Committee discussion of Framework 4 followed the format in a decision document prepared by the staff. The meeting summary below incorporates the decision memo, with respect to the Framework 4 discussions, and Section numbers provide reference to the appropriate sections of the 10/27/06 draft Framework 4 document.

Decision 1

TAC Alternatives (3.1) – Alternative 1 (PDT recommended method) or Alternative 3 (no action)
The AP recommended Alternative 1.

Motion

To recommend TAC Alternative 1 (5,100 mt and 5,000 mt in the SFMA and NFMA, respectively). (Ruhle/Stockwell, **motion passed unanimously**)

Decision 2

Moratorium on Directed Fishing (3.4.3) – The AP did not support this alternative. The Committee took no action on this alternative, anticipating that it would make alternative recommendations on trip limits and DAS for each area.

Decision 3

NFMA DAS Alternatives (3.2) – Alternative 1 (require MF DAS in the NFMA) or Alternative 2 (no action, MF DAS not required). The AP supported Alternative 1 on the condition that the proposal to allow vessels to declare a monkfish DAS by VMS prior to returning to port is retained.

Motion

To recommend Alternative 1 (require MF DAS in the NFMA) (Stockwell/Ruhle)

The Committee discussed the implications for gear requirements on vessels that start a trip on a multispecies DAS and then declare a monkfish DAS at the end of the trip. This situation would only be an issue for gillnet vessels, who are required under current regulations to use larger mesh

when on a monkfish/multispecies DAS in the NFMA, while trawlers on a monkfish/multispecies DAS are allowed to use the smaller multispecies regulated mesh.

Motion perfected by friendly amendment

If a vessel calls in a monkfish DAS prior to starting a trip, then it must adhere to the monkfish gear requirements. If it starts the trip on a multispecies DAS, and declares a monkfish DAS while at sea, the multispecies gear requirements apply for the entire trip.

The Committee also discussed whether a vessel that started a trip on a multispecies B-regular DAS could “flip” to a multispecies A DAS and then declare a monkfish DAS while at sea. Under the regulations adopted in Framework 3, vessels on a multispecies B-regular DAS operate under the monkfish incidental limit, and are prohibited from directing on monkfish.

Motion perfected by friendly amendment

A vessel must start the trip on a multispecies A DAS to be able to make the at-sea declaration of a monkfish DAS

Motion as perfected (twice) passed unanimously

The Committee discussed the rationale for this provision only applying in the NFMA, and not to vessels fishing in the SFMA. They noted principally that different treatment of monkfish and multispecies vessels in the original FMP was based on a recognition that the two fisheries are distinct in their degree of directivity. In other words, vessels fishing for multispecies in the NFMA have traditionally caught monkfish as a component of their multispecies fishing, and that monkfish fishing was not *per se* a directed activity. Vessels fishing in the SFMA, on the other hand, can, and do direct their effort specifically on monkfish with minimal multispecies incidental catch. For that reason, the original FMP applied different gear requirements in the two areas, and place no restrictions on the monkfish catch on monkfish limited access vessels fishing on a multispecies DAS in the NFMA. The proposal to allow vessels in the NFMA, but not the SFMA, to declare a monkfish DAS while at sea is a recognition that such vessels are far more likely to exceed the monkfish incidental limit while fishing for multispecies on a multispecies DAS than they are in the SFMA.

Decision 4

NFMA Incidental Limit Alternatives (3.3) – Alternative 1 (300 lbs. or 25% of total wt. of fish on board) or Alternative 2 (no action, 400 lbs. or 50% of total wt. of fish on board). The AP did not have a recommendation on these alternatives, noting that a lower limit will discourage directed fishing under the incidental limit, while a higher limit will minimize bycatch. The DPT recommended the lower limit. A member of the audience supported Alternative 2 because under that alternative, permit Category C vessels would have the same trip limit but more monkfish DAS.

Motion

To recommend NFMA Incidental Limit Alternative 1. (Ruhle/Pierce, **motion passed 3-2**)

Decision 5

SFMA Trip Limits/DAS Alternatives (3.4.1) – Alternative 1 (no action, 550/450 lbs.) or Alternative 2 (475/375 lbs.). The decision is whether to reduce the trip limit, or not, and the DAS will adjust proportionally. The AP did not reach consensus on this decision, citing pros and cons of each. The AP stated that they would support an option that would allow vessels the ability to make an annual declaration into one or the other alternative. The PDT did not make a recommendation on either alternative.

The Committee entertained the AP proposal to allow an annual declaration, but were concerned about the administration of the program. A proposed solution would be to adopt one alternative as the default, and allow vessels to declare into the other program.

Motion

To recommend SFMA Trip Limit/DAS Alternative 2 as the preferred alternative (Nolan/Pierce)

Commenters noted that this alternative would be advantageous to inshore vessels, while others, particularly trip boats, or boats that travel from the NFMA to fish in the SFMA, would prefer a higher trip limit to make their DAS more efficient.

Motion to table

To table the discussion of the motion until after the Committee resolves the question of whether to include the choice provision (Stockwell/Leary, **motion to table failed 2-3**)

Main motion failed 1-4

Motion

To recommend SFMA Trip Limit/DAS Alternative 1 (no action) as the preferred alternative. (Leary/Ruhle, **motion passed 4-1**)

Motion

To recommend an enrollment program to allow vessels the ability to select into Alternative 2 at the start of the fishing year (Ruhle/Leary, **motion passed 3-0-1**)

Decision 6

NFMA Trip Limits/DAS Alternatives (3.4.2) – The range of options depends on the outcome of Decisions 1 – 3. The AP did not make a recommendation on these alternatives, again citing the tradeoff between higher trip limits or more DAS. The options under consideration particularly affected Category BD vessels, because under the two most likely options, the trip limits for Category AC vessels are the same, while under Option 2 the DAS are higher. The PDT did not recommend a specific option but strongly recommended against the no-trip-limit option (Option 4).

Motion

To recommend NFMA Trip Limits/DAS Option 1 (daily limit of 1,250 and 886 lbs. tail wt. with 23 DAS) (Leary/Ruhle)

Comments on the motion included:

- A member of the audience representing a group of primarily Category C permitted vessels opposed the motion and supported Option 2, which would give those vessels more DAS at the same trip limit as Option 1. The commenter noted that Category C vessels qualified for a monkfish permit based on significantly higher historical landings than Category D vessels, and the recent landings data illustrate the ongoing dependence of those vessels on monkfish compared to the Category D group.
- A higher trip limit for Category D vessels under Option 1 would make those DAS more efficient
- With fewer DAS under Option 1, vessels would have more days under the lower incidental limit that was already adopted.

Motion failed on a 2-2 vote

Motion

To recommend NFMA Trip Limits/DAS Option 2 (daily limit of 1,250 and 470 lbs. tail wt. with 31 DAS) (Ruhle/Stockwell, **motion failed on a 2-2 vote**)

Motion to reconsider Option 1 (Nolan/Leary) passed 3-1

Motion

To recommend NFMA Trip Limits/DAS Option 1 (daily limit of 1,250 and 886 lbs. tail wt. with 23 DAS) (Leary/Ruhle, **motion passed 3-1**) (*Note: the Committee reconsidered this decision under the discussion of Decision 8, DAS Carryover, and voted to recommend Option 2.*)

Decision 7

TAC Overage Backstop Alternatives (3.5) – Alternative 1 would put in place a notice action adjustment to DAS in a management area for FY2009 if the TAC for that area is exceeded in FY2007 by more than 10%, or less than 30%. If the overage exceeds 30%, the DAS allocated to vessels for that area would be reduced to zero. Under Alternative 2 (no action) there would be no adjustment in the event of a TAC overage. The AP did not make a recommendation on these Alternatives, but a majority did not support Alternative 1 out of concern about the uncertainty in the underlying science used to develop the management program. The PDT recommended Alternative 1.

General Counsel noted that the agency looks for backstop provisions when considering approval of management plans. He pointed out that Alternative 1, as written requires publication of both proposed and final rules, but the agency may want to seek a waiver of the proposed rule under the Administrative Procedures Act. He recommended that the language be changed so that the implementation of any adjustment simply be “consistent with the Administrative Procedures Act” rather than an obligation to publish a proposed rule.

Motion

To recommend TAC Overage Backstop Alternative 1 (Nolan/Ruhle)

Comments on the motion included the following:

- The trip limit/DAS setting procedure has been successful in hitting the target TAC in the SFMA, and an adjustment under the backstop will likely not be necessary
- The NFMA has not been under DAS and trip limits up to now, and there is a great deal of uncertainty as to how well the program will work in that area
- Without a backstop provision, NMFS may not approve the action
- If the Council wants to retain control over the management program, and not risk Secretarial action in the event of a TAC overage, then it needs to include a backstop provision

Motion passed 3-1

Decision 8

DAS Carryover Alternatives (3.6) –Alternative 1 (limit carryover to 6 DAS) or Alternative 3 (no action, carryover up to 10 DAS). The AP recommends no action, noting that as DAS are reduced, the economic need for carryover DAS is more urgent. The PDT had recommended a reduction in carryover DAS to 4, which was modified by the Committee to 6 DAS under Alternative 1.

Motion

To recommend DAS Carryover Alternative 3, no action. (Ruhle/Stockwell)

One Committee member commented that a larger number of carryover DAS would increase the likelihood that the TACs are exceeded and that the backstop actions would take effect. During the discussion of carryover DAS, two Committee members expressed a different interpretation of how the DAS program would work across the two areas. They understood that the allocations would be additive up to the maximum of 40 DAS which is the baseline in the FMP. In other words, they understood that if the DAS in the south were 23 and the DAS in the north were 31, that a vessel that fished 31 DAS in the north would still have 9 DAS available to fish in the south. The other Committee members, and the staff noted that this was not suggested at any time during the development of the alternatives, but that a vessel could fish in both areas but would not be able to exceed the higher number of DAS in either area. In other words, in the example above, if the vessel fished more than 23 DAS in the north, then it would not have any DAS available to fish in the south, and could fish the remaining 9 DAS only in the north.

Motion to reconsider Decision 6 (NFMA Trip Limits/DAS Alternatives) (Ruhle/Leary, motion passed unanimously)

Reconsidered Motion

To recommend NFMA Trip Limits/DAS (Decision 6) Option 1 (**motion failed 0-4**)

Motion

To recommend NFMA Trip Limits/DAS Option 2 (daily limit of 1,250 and 470 lbs. tail wt. with 31 DAS) (Leary/Ruhle, **motion passed unanimously**)

Motion to bring back to the table the motion concerning DAS Carryover Alternative 3 (Ruhle/Stockwell, motion passed unanimously)

General Counsel commented that providing the vessels with ability to fish all of their allocated DAS and also to carryover additional DAS up to the baseline of 40 is not a safety provision, but a way to exceed the effort control limits. In other words, if vessel are allocated 31 DAS in the NFMA, and fish all 31 DAS, they shouldn't be able to claim that they couldn't use their allocated DAS because of weather or breakdowns, which is the purpose for the DAS carryover. The staff noted that this provision will be re-written in the document to clarify that the carryover DAS will be based on unused DAS from the allocated DAS, not the baseline, up to whatever maximum the Councils recommend.

One Committee member sought a friendly amendment to the motion that would recommend a carryover of 6 DAS, instead of the 10 DAS under consideration. The friendly amendment was not accepted.

Motion passed 3-1 (recommending DAS Carryover Alternative 3, no action, 10 DAS)

Decision 9

Permit Category H (NC/VA) Fishery Boundary Adjustment (3.7) –Alternative 1 would shift the boundary 20 miles north, while under or Alternative 2 (no action) the boundary remains at 38°20'N. The AP recommended Alternative 1, in agreement with the objective of reducing interaction between the gillnet fishery and sea turtles. The PDT did not make a recommendation.

Motion

To recommend Permit Category H Fishery Boundary Alternative 1 (Nolan/Ruhle,
motion passed unanimously)

Decision 10

Sunset provision. The Committee had voted at the previous meeting to include a provision that the DAS and trip limit components of Framework 4 would sunset (terminate) at the end of the 2009 fishing year. The intent of this proposal was to provide increased incentive to resolve the reference point problem and address monkfish management before 2009. Under this proposal, if the measures sunset in 2009, there would be no DAS or trip limit controls in effect.

The Committee started to discuss this proposal but interrupted the discussion to cover other items on the agenda before some interested parties had to leave to catch flights. For the purpose of this meeting summary, the entire discussion of this matter will be included in this section, despite being out of chronological order.

General Counsel suggested that the sunset provision could not be approved on a National Standard 1 basis, and that the Council needs to state what measures will be in place in 2010 barring any further action before that time. The staff pointed out that with the retirement of the RV Albatross, it would be impossible for the FMP to revert to the current system that relies on the survey index to set target TACs.

Motion

To recommend that the measures in place in 2009 will continue in 2010 and beyond, unless the backstop provision eliminates the directed fishery in 2009, in which case

measures will be restored to 2008 levels in 2010 and beyond unless the Councils adopt new measures for 2010 (Ruhle/Leary, **motion passed unanimously**)

Monkfish Incidental Catch in Scallop Closed Area Access Fisheries

Representatives of the scallop industry had requested that the Councils clarify their intent with regards to the monkfish incidental catch limits applicable to scallop dredge vessels fishing in the Closed Area Access Programs. Prior to Scallop Framework 18, those vessels were on a Scallop DAS, and the incidental limit was 300 lbs. tail wt. per DAS. In Framework 18, however, the Closed Area Access program was modified, such that participating vessels were given a scallop trip limit, and no longer charged a DAS, or a DAS equivalent. As a result, NMFS informed those vessels that the monkfish incidental limit would not be that applicable to vessels on a scallop DAS, but rather that which applied to vessels fishing with a dredge and not on a scallop DAS. That limit is 50 lbs. per day up to a maximum of 150 lbs..

The AP and the Committee reviewed preliminary observer data from Closed Area Access trips for 2004, 2005 and part of 2006 to determine whether such a change was necessary to minimize bycatch, or if the current limit was sufficient. The concern is that if the increased limit was not necessary to prevent discards, it could create an incentive to target monkfish to supplement trip revenues. This concern is magnified by the fact that dredge vessels are not size selective, increasing the risk that discards of sublegal-size monkfish could also increase under the higher incidental limit. The data presented was not sufficient to clarify whether an increase is needed.

Several people commented that scallop vessels engaged in the Closed Area Access programs have a financial incentive to return to port with their limit of scallops rather than expend additional time fishing for monkfish in order to fill their incidental limit. They argued that the relative value of monkfish, compared to the scallops would not justify continuing to target monkfish when the scallop limit is reached, especially considering the high cost of fuel. The AP recommended, therefore, that the scallopers be allowed the same bycatch levels as currently allowed on a scallop DAS. One industry representative suggested to the Committee that since all participating vessels must declare their participation in the Closed Area Access Program via the VMS, it would be possible to apply the daily limit only to the time actually fishing in the area, and not to include the steaming time. The commenter also suggested that this would be an interim solution until such time in the future when a complete review of all available data could be completed, and an appropriate incidental limit established for these vessels.

Motion

To recommend the Councils consider adopting a 300 lbs. tail wt. per day incidental limit while a vessel is in the Closed Area Access Fishery, not to include steaming time.
(Stockwell/Ruhle, **motion passed unanimously**)

General Counsel advised the Committee that such an action would have to be done through a framework adjustment, and could not be a regulatory amendment or technical correction. The Committee agreed that the intent of the motion would be that the Councils add this provision to Framework 4.

Monkfish DAS Leasing

At the June meeting, the Committee voted to remove DAS leasing from consideration in Framework 4, primarily because it did not see how a conservation-neutral leasing program could be developed in sufficient time to be adopted in Framework 4 without risking delay to the entire package beyond the start of the 2007 fishing year. At its September meeting, however, the Committee requested the AP to continue developing a leasing program. The AP reviewed a strawman proposal designed to address the Committee's concerns but opinions were mixed. Those who opposed the proposal were concerned about the impact of potential effort shifts that could undermine the rebuilding program, ultimately resulting a closure of the fishery under the backstop provisions or other reactive action. Those supporting a leasing program stressed that it is important to mitigating the economic impact of the restrictions being proposed in Framework 4, particularly in the NFMA. In general, however, even those opposed to a leasing program at this time support the concept of leasing or some other way of consolidating limited allocations of effort in the long term.

Motion

To include a leasing program for the NFMA in Framework 4, but to delay implementation until DAS have been in place for one year (Ruhle/Stockwell)

One Committee member noted that without a fully detailed and analyzed leasing program in the Framework 4 document, it would have to be done through another regulatory action. In response, a member of the public noted that in Multispecies Amendment 13, the Council asked the agency to develop the leasing program and implement it through proposed and final rule. Even though it was not actually implemented that way, the process was established. General Counsel pointed out that the leasing program was implemented through the emergency interim rule, and was only temporary. The agency cannot implement a permanent program unless it is through a Secretarial amendment.

The Committee stressed again that any leasing program be conservation neutral, and that it may include a conservation tax on leased DAS to achieve that objective.

Motion perfected by friendly amendment

To recommend the Council initiate Framework 5 for the sole purpose of implementing a monkfish DAS leasing program for the 2009 fishing year. The program will have the standard of being conservation neutral to the extent possible and may include a conservation tax as a means to achieving conservation neutrality, and it will incorporate DAS data from the 2007 fishing year.

Perfected motion passed unanimously

Monkfish incidental limit on General Category Scallop vessels in the Gulf of Maine

At the industry's request, the Committee considered whether to recommend allowing General Category Scallop vessels fishing in the Gulf of Maine to retain an incidental catch of monkfish. Currently, those vessels are fishing under a Multispecies Exempted Fishery regulation that prohibits the retention of any species other than scallops. The commenter noted that at the time the exempted fishery was established, those vessels almost never caught anything but scallops, but now they have an occasional monkfish incidental catch that they are required to discard.

Motion

To recommend that General Category Scallop vessels fishing within the exemptions granted under the groundfish plan be allowed the same monkfish incidental catch allowed in small dredge fisheries in other management areas, that is, 50 lbs. tail wt. per day to a maximum of 150 lbs. (Leary/Stockwell, **motion passed unanimously**)

Other business

A member of the Committee asked that it consider a correction to the large mesh regulations for trawl vessels in the southern area, noting that when the 12-inch mesh codend requirement was put into the regulations, the number of meshes to which that requirement applied was not adjusted from that which applied to the 6-inch mesh. This creates a requirement that the codend be twice as long and is not practical. He also noted that vessels fishing with this mesh have virtually no groundfish incidental catch, yet they are required to use a multispecies DAS for each monkfish DAS. He suggested that the multispecies DAS usage requirement be reduced to ½ DAS for each monkfish DAS used when fishing with this gear.

Consensus

The Committee requested the staff to provide additional background on this rule for discussion at the Council meeting.