

New England Fishery Management Council
Groundfish Oversight Committee
Meeting Summary
January 29, 2009

The Groundfish Oversight Committee (Committee) met in Mansfield, MA to continue development of Amendment 16 to the Northeast Multispecies Fishery Management Plan (FMP). The Committee discussed pending management measures for the Amendment including the Southern New England small mesh drop chain requirement and Atlantic wolffish measures, and reviewed the draft Amendment 16 alternatives. Committee members present were Mr. Rip Cunningham (Chair), Mr. Terry Stockwell (Vice-Chair), Mr. Frank Blount, Mr. Mike Leary, Ms. Sally McGee, Ms. Sue Murphy, Mr. Jim Odlin, Dr. David Pierce, and Mr. Dave Preble. They were supported by staff members Mr. Tom Nies and Ms. Anne Hawkins (NEFMC), Mr. Doug Christel and Mr. Tom Warren (NMFS NERO), and Mr. Gene Martin (NOAA General Counsel).

Discussions were guided by a SNE Small Mesh Drop Chain Requirement staff proposal and the draft Amendment 16 management measures.

Management Measures

SNE Drop Chain Requirement

In response to a request from the Committee during the previous meeting, Council staff presented a document outlining proposed area coverage for a drop chain requirement in Southern New England. A Committee member distributed drawings that described the configuration of the net along with appropriate requirements. These drawings were developed in conjunction with Chris Brown of the Rhode Island Commercial Fishermen's Association and the private company Trawlworks. Mr. Brown explained important characteristics of the net, and advised that his group had been using the net for several years and that it was very effective at avoiding flatfish. He estimated that the average fisherman could implement the net for one hundred dollars or less.

Council staff asked whether the intent was for the rigging to be required for the fluke fishery, and whether 5.5 inches would be the appropriate threshold for the mesh size. Mr. Brown replied that it should be used for fluke and that there are almost no 5.5-inch mesh nets towed. Ms. Murphy stated that descriptions of new nets are generally handled by NMFS' Narragansett Laboratory, and she recommended that Mr. Brown work with the agency in addressing the requisite regulatory language.

Committee members discussed different options for lengths of nets that should be included in the drop chain requirement. Mr. Brown stated that certain nets, such as the Ruhle trawl, would not be aided by drop chains. The Committee generally felt that the proposed 12 inch minimum was too little, and Ms. Murphy stated that the minimum size should be spelled out in the Amendment.

Motion: For the SNE drop chain requirement, the Committee recommends the Council accept language suggested by Chris Brown/Dave Preble but change the minimum mesh for exempted nets to 24 inches and as described in the diagram in the Trawlworks December 2008 drop chain drawing. The drop chain mesh requirement will apply to the area as proposed in Figure 1 page 4 and coordinates listed in the staff memorandum dated January 23, 2009. (Mr. Odlin/Mr. Preble)

Mr. Brown stated that language would be included to the effect that a range of sweeps would be acceptable as long as the ranges were kept. A Committee member clarified that the motion referred to the boundaries in the staff proposal, although the boundaries could be changed after public hearings on the Amendment. He expressed particular concern with the Hudson Canyon area.

The motion **carried** on a show of hands (7-0-1).

A Committee member expressed appreciation that this motion originated with industry, and credited the move away from DAS with fostering innovation amongst fishermen.

Wolffish Landings Prohibition

Council staff described options drafted by the PDT for wolffish management. He reiterated that the species' life history is not well understood and that its assessment was uncertain. Of the two options presented, one was designed to prohibit retention year-round and the other would prohibit it when the fish were likely to be protecting their nests.

Motion: That the Committee forwards to the Council the recommendation that we include a year round prohibition on possession of Atlantic wolffish (Option 1) as the only option other than No Action. (Mr. Odlin/Mr. Preble)

Committee members largely felt that the high survival rate of released fish was a compelling reason to require their live return, and felt that it was important that management measures addressed all wolffish catch. Some members and Council staff raised the issue of whether some catch would be necessary in order to perform assessments on the stock in the future. If retention is prohibited, the ability to monitor the stock would depend on observers and independent surveys.

Public comment included:

- Peter Shelley: Conservation Law Foundation. We appreciate the spirit in which this motion was made and support it fully. The history of the fish in the trawl survey indicates that when the abundance is higher, it will start showing up in the surveys as it did in the 1960's and 1970's. Also, if this is incorporated into the management plan, there has been a lot of knowledge gained in Canada and we would work closely with people there to make sure that a live-release program is effective.
- Chris Brown: Rhode Island Commercial Fishermen's Association. It might be a good time for the scientific community to start monitoring this stock with a different gear type. The assumptions used in the assessment may be wrong: the surveys may only pick up abundances of wolffish if they get past a certain population level. It would be a helpful tool if a signal could come from this Committee that they want to start monitoring the wolffish with a longline survey on a hard bottom. This may lead the way to greater understanding and avoid having to make unnecessary management decisions down the line.

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

Motion: That there be an option for Atlantic wolffish that implements a one fish possession limit per boat (minimum 20 inch fish) for limited access multispecies permit holders, private recreational vessels, and permitted party/charter vessels from April 1 through August 31 with no retention the remainder of the year. (Mr. Blount/Mr. Preble)

The motion was intended to be similar to the rules that allow one halibut per vessel. The maker felt that allowing possession of one fish would add data to the assessment, prevent targeting of the stock, and solve the potential problem of fishermen cutting hooks off to avoid approaching the aggressive fish during live release. Committee members worried that allowing any possession at all could open the door to looser management in the future, and did not want to undermine their serious efforts to restore the stock. Other members did not want to be too restrictive in case the species was not listed as endangered or in case the proposed dates were not, in fact, the correct spawning period. Also, they worried about making extra work for Council and NMFS staff to develop an alternative that would ultimately be rejected.

The motion **failed** on a show of hands (3-5-0).

Legal Update

NOAA General Council staff provided the Committee with an overview of the recent Massachusetts District Court ruling regarding Framework 42. The Court found that the use of the Closed Area Model was appropriate in analyzing the regulations, but that NMFS failed to properly consider the mixed-stock exception in the Framework. Although there is not a requirement to follow the guidelines per se, the judge ruled that the agency must at least give *serious* consideration to the mixed-stock exception. In light of the ruling, NMFS is required to file a report to the Court within 60 days of the order considering the mixed-stock exception as it applied to Framework 42, and until the report is filed Framework 42 will be suspended from effectiveness. NOAA General Counsel staff were still in discussions to determine how to implement the order.

The Chair asked whether the Amendment 16 process could be impacted by the court order, and whether the Committee needed to take any action thereupon. NOAA General Counsel staff advised that it may be prudent, but likely not necessary, to examine the mixed-stock exception for Amendment 16, although such consideration would be unlikely to change the outcome of the regulations since the exemption does not apply to overfished stocks. It was unclear what the Council's role would be in reviewing the mixed-stock exception for Framework 42, since the Council was not a party to the lawsuit and the authority of a judge to force action of non-parties is limited.

Review of A16/Preferred alternatives

Potential Sector Contribution (PSC) Calculation

Council staff revisited the topic of PSC calculation to determine whether the Committee desired to pick a preferred alternative. The draft measures contain five proposed actions, which were explained to the Committee. The exact outcomes of the calculations performed by the PDT were subject to change, since sector membership could change between the time of the analysis and the time of implementation, but the draft numbers could be used as a basis for comparison among the alternatives. Several Committee members expressed hesitation to pick a preferred alternative, since they wanted to hear input from the public. The public's opinions on the topic may have been impacted by the GARM III and by the interim rule.

Motion: To recommend to the Council not to pick a preferred alternative for the PSC allocation issue and to send this section forward to the public as is. (Mr. Odlin/Mr. Stockwell)

The motion **carried** on a show of hands (7-0-1).

Allocation of Groundfish between Recreational and Commercial Fisheries

Council staff reviewed the draft management measures for the topic of allocation. The criteria included in the draft measures would currently likely only result in an allocation for GOM haddock, GOM cod, and possibly GB cod.

Motion: To remove from the recreational/commercial allocation table the stocks that will not meet the criteria established to have an allocation at this time. (Mr. Odlin/Dr. Pierce)

The Committee posited that it would save work for the PDT to remove species that were unlikely to receive an allocation based on the criteria set by the Committee. If removed species were to reenter the threshold for the allocation, they should be re-added to the list. Several members expressed concern that it would be difficult to add species in the future, particularly with respect to choosing a new timeframe for allocation.

The motion **carried** on a show of hands (7-0-1).

Motion: To recommend the Council not pick an alternative for the recreational/commercial allocation and send this section to the public as written. (Mr. Stockwell/Mr. Preble)

As with the previous topic, some Committee members felt that it was necessary to receive public input before deciding on the appropriate measures. However, others stressed the importance of picking a preferred alternative where possible to facilitate public analysis. Without objection, the motion was perfected to reflect its original intent.

Motion as perfected: The Committee recommends Option 2 as a preferred alternative for the commercial/recreational allocation, but does not recommend picking a preferred set of dates.

Members reiterated concerns with the accuracy of MRFSS data, and pointed out that data unreliability made public input that much more necessary on the issue of setting dates.

The motion as perfected **carried** on a show of hands (8-0)

DAS Leasing/Transfer Options

Council staff noted the large number of DAS transfer and leasing options in the draft management measures, and pointed out that it was somewhat difficult to differentiate between the options. A Committee member stated that Option 5 could be a stand-alone adjustment, and should be additive with other measures.

Motion: For DAS leasing and transfer measures, the Committee recommends as preferred Option 2 (eliminate the DAS transfer conservation tax), Option 2 sub-option A (no refund of DAS taxed for transfers completed prior to Amendment 16), and Option 5. (Mr. Odlin/Dr. Pierce)

The maker of the motion stated that the intent was to eliminate the conservation tax. One member expressed support for the conservation tax on the transfer program, but stated that fishermen had not transferred days when they could lease, in order to keep their future options open. She expressed concerns about effort increase in a leasing program, but supported the motion. Ms. Murphy stated that the motion must be conservation-neutral in sum, and explained that that was the reason the tax existed previously. Council staff noted that the PDT concluded that the leasing program without a tax is not conservation-neutral, but that it was difficult to determine by how much effort was actually increased. A member offered that conservation would occur indirectly through the elimination of dual permits.

Public comment included:

- Maggie Raymond: Associated Fisheries of Maine. We do support eliminating the DAS transfer tax. However I would ask the Committee to look at sub-option B. the Committee needs to consider that sub-option in the context of the allocation options that you do for the sectors. If you choose an option based on length and horsepower, people who have participated in the transfer program would get a double whammy because they only get one length calculation instead of two. I want to emphasize that it is all connected.
- Vito Giacalone: Northeast Seafood Coalition. We support this motion to eliminate the transfer tax. We have not gotten a conservation benefit yet out of the transfer tax, and certainly permits are going away. There is a conservation benefit to have people transfer rather than lease.
- Mike Russo. I am one of the owners who took advantage of the transfer program, and I would like to get back the days. This is the same situation as when we bought the VMS early on and could not get the rebate when it was made available to the rest of the fleet.
- John Williamson: Ocean Conservancy. I do not support the motion. If DAS leasing is being used effectively, and it has been demonstrated that it is not conservation-neutral, you can pretty much draw the inference that DAS transfer is not conservation-neutral. Leasing and transferring should be comparable actions to take. I would like to see Option 3 as the preferred option.

Council staff stated in reply to Ms. Raymond's comment that people who had transferred would not be unfairly penalized, since the date chosen for establishing PSCs preceded any transfers.

Motion to amend: To recommend the Council adopt sub-option B (refund of DAS taxed for transferred completed prior to Amendment 16) instead of sub-option A as the preferred alternative for Option 2. (Dr. Pierce/Mr. Stockwell)

Ms. Murphy stated that for this option to work, shares would have to be re-calculated for people who took advantage of the program, but that it would be possible to determine since it was only a small number of vessels.

The motion to amend **failed** on a show of hands (3-3-2), with the Chair abstaining.

The main motion **carried** on a show of hands (7-1-1).

Effort Control Options

Council staff described the existing effort control options and noted the impacts analyses in the draft document. A Committee member expressed that it was important to include adjustability in trip limits for Eastern Georges Bank stocks.

Motion: In the Eastern US/CA area, the appropriate daily and trip limit would apply for cod as specified by the Regional Administrator. (Mr. Odlin/Dr. Pierce)

Ms. Murphy stated that it would difficult for the Regional Administrator to know what the initial trip limit should be if the Council did not select one. Without objection, the motion was perfected to reflect its original intent.

Motion as perfected: For all non-sector vessel mortality control options, for the Eastern US/CA area prior to the beginning of the fishing year the RA will specify the appropriate cod trip limit.

NMFS NERO staff stated that the RA already does this, and that this action could be done if the Council requested it annually without changing the regulations. The maker of the motion stated that if the option in the document was considered a default rather than setting a strict trip limit that was immune to RA authority, then the motion could be withdrawn.

The motion was **withdrawn**.

Motion: To recommend the Council designate 4.4.2.3, (Non-sector vessels Option 3A, 24-hour clock, Restricted gear Areas), as the preferred alternative. (Mr. Odlin/Dr. Pierce)

Several Committee members stated that this option would create a simpler method of management for the industry. One stated that, in terms of safety, there was not much difference between a 24-hour clock and differential DAS counting, while another expressed lingering concern with the safety issues posed by the 24-hour clock but supported the motion for its avoidance of effort shifts. Ms. Murphy stated that the safety aspect of this alternative would need to be addressed if it were to be implemented, and expressed that if differential DAS were eliminated, there would only be one accountability measure option in the document. Council staff replied that the AM implementing differential DAS could still be used.

The motion **carried** on a show of hands (6-0-1).

Accountability Measures

Council staff explained the two alternatives in the draft document for AMs for non-sector vessels. The first would be a hard TAC system overlaid on the effort control system, and the second would be a change in differential DAS counting.

Motion: For non-sector commercial vessels, the Committee recommends the preferred AM alternative is Alternative 2 (differential DAS). (Mr. Odlin/Dr. Pierce).

Some members of the Committee expressed that alternative two was the only proposed AM in the document that would not lead to a derby fishery.

Public comment included:

- Roger Fleming: Earthjustice. I am going to speak against this motion. We do not think this alternative would comply with the new ACL/AM requirements in the law. It does not account for overages in any way, it only makes adjustments to prevent overages in subsequent years. Second of all, it does not take biology into account. I understand the concerns about Olympic fisheries, but there are designs in measure one that take that into account. In my experience, there are not problems in New England with Olympic fisheries when hard TACs exist. We recommend you take steps to at least improve this option should it get selected by the Council.
- Maggie Raymond: Associated Fisheries of Maine. We would support the adoption of Alternative 2 as the preferred alternative. I agree with the rationale that this is the only option to prevent Olympic fisheries. We have experience with Olympic fisheries in New England groundfish. They were a failure and a devastation to the resource, and there are major safety considerations. We do not achieve OY on the biggest groundfish resource we have in the US/Canada area because there are derby fisheries and it closes early every year.
- Jennifer Litteral: Island Institute. We would also not support this motion, as we are looking for a commonality between the sectors and vessels coming into the common pool. We want to know we are protected from other sectors' overages.
- Peter Shelley: Conservation Law Foundation. I do not see why this region should continue to be driven by the history of the 1970's-1980's. We have new tools. The hard TAC option should be applied. This alternative does not meet the law, and it is curious that you just chose management that gets away from differential DAS and you immediately turned around and tried to construct AMs to bring differential DAS back into the picture.
- Gib Brogan: Oceana. I think this goes against the National Standard 1 guidelines that were just published. I am opposed to this motion.
- Jud Crawford: Pew Environment Group. As a biologist, I urge you not to support this motion or anything that allows you to cycle past ACLs. It is not okay to think you can go beyond the ACL and pay it back in subsequent years or any other way
- Eric Brazer: sector manager. If differential DAS did not work in FW42 and there is concern about them in the interim rule and as we move forward, I question why they would be considered a successful option at this point. We oppose this motion.
- Vito Giacalone, Northeast Seafood Coalition. We think differential counting is a terrible tool, but in this case we are left with no option. Other hard TAC fisheries throughout the world have opportunities to get into the following fishing year's TAC and then making up for it. We do not see the common pool as something that is going to last very long, but we have to have something that allows there not to be a complete Olympic fishery in the beginning. There will be differential counting in subsequent years, so at least give the fishery a fair start.

Ms. Murphy stated that the National Standard One guidelines indicate that in-season adjustments should occur if the measurements are available, and also require an overage deduction. She stated that this alternative would need more work if it were to go forward.

The motion **failed** on a show of hands (3-4-0)

A Committee member asked NMFS to provide a perspective as to how they believe alternative one would work in practice, since there were many complexities to it.

Council staff addressed the issue of recreational AMs and presented the two options in the draft management measures. In one, the Council would be involved in reviewing the catch and comparing it to the ACL to recommend appropriate AMs to NMFS, whereas in the other it would be the RA's decision with a priority order for the AMs. Staff held concern that the Council would

not be able to meet the timeframe imposed under the first option. The Chair stated that the Committee's inaction on this issue would result in the alternatives be circulated for public hearing without a preferred alternative.

ACE Transfers

Council staff reviewed the option for ACE transfer in the draft document.

Motion: To recommend that for ACE transfers Option 2 be the preferred alternative. (Mr. Odlin/Mr. Leary)

Staff stated that carryover would reduce the incentive to attempt to catch every single pound of a TAC, which behavior could potentially lead to overages and safety concerns. Ms. Murphy noted that this action could potentially lead to overfishing with the carryover in the second year, especially if many people caught the extra ten percent.

Public comment included:

- Maggie Raymond: Associated Fisheries of Maine. We would obviously support this option; we proposed it to the Committee many times. It is a successful provision in pretty much every ITQ program in the world. Omitting this provision would provide an incentive to catch every single pound of a TAC and that creates an opportunity to exceed your ACE pretty easily.
- Peter Shelley: Conservation Law Foundation. We also support this motion for the reasons mentioned. By leaving the fish in the ocean, you leave another year of growth, so there is potentially a conservation benefit from this. We disagree with NMFS that this would lead to overfishing in the next year.
- Jen Litteral: Island Institute and Midcoast Fishermen's Association. We also support this.

The motion **carried** on a show of hands (6-1-0)

Other Document Issues

Council staff presented a list of outstanding issues regarding the draft Amendment 16 document, many of which were intended simply as informational updates for Committee members.

-The data poor working group report on wolffish determined that the stock is overfished, but cannot determine if overfishing is occurring. The Council has not yet received official notice of this stock's status. The Habitat Committee is working on defining EFH for the species, but a rebuilding projection will not be available because of assessment uncertainties.

-As a result of GARM III pollock was reported to be approaching an overfished condition. Since that report the fall 2008 trawl survey was completed. The trawl index increased slightly in 2008, but not enough to prevent it from being overfished. Official notice of the stock's change in status has not been received from NERO, but PDT members are working to develop a rebuilding trajectory anyway. A member suggested that the Committee should inquire about the implications of switching the survey to the Bigelow, such as conversion factors, relative to the information provided by Council staff. The Chair recommended that the question could be posed at the Council meeting after the NEFSC report.

-The Monitoring Working Group did not have a report for the Committee. Observer coverage levels for sector monitoring are still an open issue. Currently, the options in the document are to

have one hundred percent or “less than one hundred percent” observer coverage, with the sole stipulation that the CV of 30% is attained. NMFS staff has indicated to Council staff that they are devising a way to help sectors with determination of appropriate coverage levels. It was noted that there is some difficulty estimating what the observer coverage will need to be to meet the CV for specific gears and sectors, but Ms. Murphy reiterated that each monitoring program must meet the minimum SBRM requirements determined by the NEFSC. There is some concern about a so-called observer effect where fishing happens differently on observed trips, as the CV cannot account for biased results.

-There is an option in the document to have the minimum mesh size for selective trawl gear in the category B DAS program to be 6 inch diamond or square. However, nothing in the draft document addresses other haddock trawl programs, including the haddock SAP.

-Language has been drafted for the fillet issue for recreational fishermen. The Committee indicated that filets should be allowed to be landed, and language was modeled after that in the fluke regulations. NOAA General Counsel staff recommended removing language referencing state requirements, since they would apply by definition anyway.

Motion: To remove the second sentence from Option 1 of section 4.4.3.1 (provisions for landing filets by recreational fishermen). (Mr. Blount/Mr. Leary)

The motion **carried** on a show of hands (4-1-1).

-The Committee has not considered how the haddock and yellowtail programs will overlap in the Closed Area II SAP. Ms. Murphy stated that the haddock program would need to be monitored to ensure that the yellowtail TAC is not taken. It is likely acceptable to ignore the regulations specifically crafted for yellowtail if the SAP is open for haddock, but NMFS NERO and Council staff will consider the issue further.

-Differential DAS counting could lead to a problem for monkfish vessels, since groundfish days would be used much more quickly than monkfish days in differential areas. Council staff were unclear whether this problem could be addressed in a monkfish action, and a further complication was that the stock was managed jointly with MAFMC. Ms. Murphy stated that it would be possible to get the MAFMC to comment on the matter prior to the draft document being submitted. NOAA General Counsel staff advised that the action does not have to be done jointly, but could be done as a separate action if it could not be timely completed concurrently with Amendment 16. However, the next monkfish amendment is not intended to be implemented until 2011. The Committee did not act on this issue.

-Ms. Murphy raised the issue of penalties for sector overages if a participant were to leave a sector or if the sector were to disband following an overage. Council staff and NMFS NERO staff agreed to work together to draft a proposed process.

-Ms. Murphy discussed selective gear requirements, and asked whether the Committee intended to allow approval of the Ruhle trawl as an additional gear type in the eastern US/Canada area on a permanent basis, or whether it would need to be reauthorized annually. Council staff clarified that the southern New England small mesh drop chain and sink gillnets programs were stand-alone options in the draft document, and would be additive with whatever effort control options were selected.

Motion: The Regional Administrator can permanently authorize additional selective gear in any program or area that restricts gear (such as the Ruhle trawl or other approved gear). (Mr. Odlin/Mr. Preble)

The motion **carried** on a show of hands (6-0).

-A Committee member raised the issue of haddock catch in the eastern area. He explained that optimum yield was not being caught. He wanted the mesh requirements to be consistent with what was adopted in the B day program and to change the demarcation of the eastern area haddock SAP to more closely represent where contact is occurring, since there was no experimental fishery when the lines were created. Committee members supported achieving OY.

Motion: To allow the use of 6 inch diamond or square mesh cod end in the Eastern US/CA area haddock SAP. (Mr. Odlin/Dr. Pierce)

The motion **carried** on a show of hands (6-0).

Motion: To adjust the southern boundary of the triangle in the Eastern U.S./Canada area haddock SAP to the south to the northern border of the HAPC in CAII. (Mr. Odlin/Dr. Pierce)

The motion **carried** on a show of hands (4-0-2).

Other Business

NMFS' Interim Rule

The Committee considered whether it was appropriate to submit comments on the proposed interim rule recently published by NMFS.

Motion: Committee recommends that the Council comments on the interim action include a request to allow fishermen with monkfish C and D permits to fish for monkfish in the SNE closure area without using groundfish DAS. (Mr. Preble/Mr. Leary)

The maker of the motion explained that the particular situation referenced in the motion has nothing to do with groundfish, but agreed with many Committee members that it may be better not to comment on the interim motion with regard to groundfish, since NMFS ignored the Council's recommendations in drafting it. Ms. Maggie Raymond of the Associated Fisheries of Maine suggested that a more sensible wording would be to require the monkfish fishermen referred to in the motion to use the gear that is required on a monkfish-only DAS. However, she expressed concern that it would be extremely time-consuming and fruitless for the Committee to examine every aspect of the interim rule in detail. Committee members echoed her sentiment.

Motion to substitute: This committee recommends the Council reinforce its recommendation for the interim rule and ask that the NMFS give further consideration to its recommendation. (Mr. Odlin/Mr. Leary)

The motion to substitute **carried** on a show of hands (4-0-1).

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

Multiple Sector Membership

Motion: The Committee recommends to the Council to revise the Council sector policy to allow vessels to participate in more than one sector in different FMPs in the same year. (Mr. Odlin/Mr. Blount)

Council staff explained the problem of determining which sector would be charged when a certain stock was caught by a vessel with dual membership. A Committee member replied that the catch would be counted either way since it would come off the top of ACE for groundfish.

The motion **carried** on a show of hands (5-0)

The meeting adjourned at 4:36 p.m.