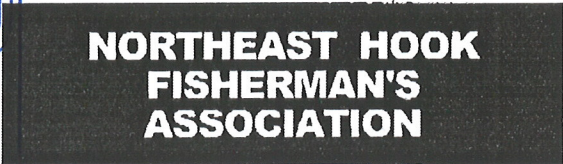
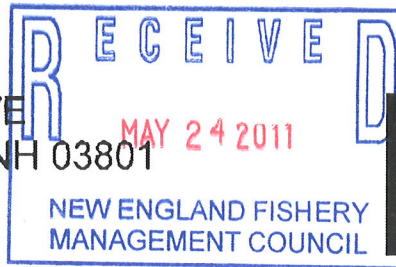


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Correspondence

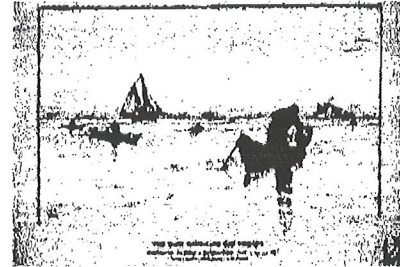
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91 FAIRVIEW AVE
PORSTMOUTH NH 03801



May 23, 2011

New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950
Phone: (978) 465-0492
Fax: (978) 465-3116



Dear Council Members:

The NEHFA represents a small group of Commercial Fishermen with the Limited Access Handgear HA Permits, employing the use Rod and Reel or Handlines to catch Cod, Haddock and Pollock along with small quantities of other regulated and non-regulated marine fish.

One of the topics that may be discussed is "Common pool measure adjustments:" as stated below. The NEHFA is requesting that if there is any increase in the cod trip limits for the GOM or Georges fishery, that the HA permits have the same increase over FW45 limits. For example if the DAS boats go from 500lbs GOM cod to 800lbs, the GOM cod trip limits for HA permits should go from 300lbs to 600lbs. It would not be fair to once again leave the HA permits out from any cod rebuilding that has occurred since HA fishermen have been subjected to low trip limits for years as the stock rebuilt just as DAS fishermen have. Perhaps it is time to make the trip limit the same for both HA permits and DAS boats the same.

The cost of fuel is significantly higher than when FW 45 was discussed and even raising the HA cod trip limits 100 lbs over what they are now will make a significant difference coping with high prices.

6. Common pool measure adjustments: The Regional Administrator is authorized to adjust common pool measures in-season. The Committee has heard comments that reducing trip limits makes individual trips less profitable. The Committee may want to consider developing advice to NMFS that trip limits should be held at higher levels, even if it means DAS adjustments are necessary (such as increased differential DAS counting rates).

Respectfully,

Marc Stettner

NEHFA MEMBERS: Christopher DiPilato, Paul Hoffman, Hilary Dombrowski, Scott Rice, Marc Stettner

cc: TN, AH (5/26)

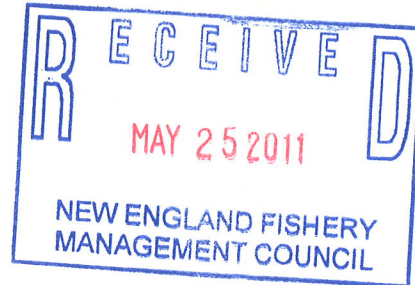
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**PORTLAND FISH EXCHANGE**

6 Portland Fish Pier | Portland, ME 04101
Toll Free 1-866-633-4741 | Tel 207-773-0017 | www.pfex.org

March 29, 2010

John Pappalardo
C/O New England Fishery Management Council
50 Water Street Mill 2
Newburyport MA 01950



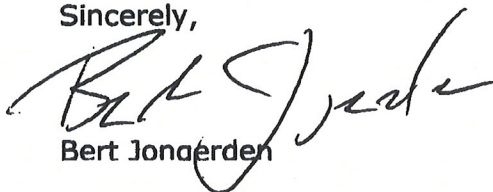
Dear Mr. Pappalardo,

I am writing to ask the Groundfish Oversight Committee to recommend that the full council increase the daily catch limit of GOM cod to 800lbs per trip from 500lbs.

With some specie allocations being increased for Sector Vessels, and DAS leasing being less available – those vessels remaining fishing in the Common Pool are at a disadvantage to acquire adequate allocation of GOM cod and may be forced to fish GB cod – at greater risk of safety .

Increasing the daily trip limit of GOM cod will reduce discards, keep the common pool boats inshore and provide economic relief.

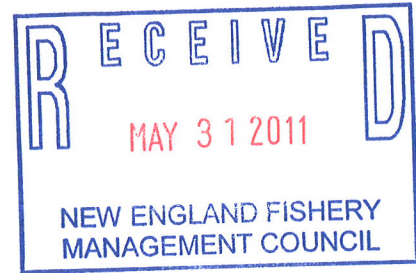
Sincerely,


Bert Jonardden

W. TN, AH (5/26)

May 24, 2011

Patricia Kurkul, Regional Administrator
National Marine Fisheries Service
55 Great Republic Drive
Gloucester, MA 01930



Dear Pat,

We are writing to you today to express our serious concerns about the lack of comprehensive shoreside accountability in the multispecies sector program and the enormous danger this represents to the success of groundfish management, stock rebuilding efforts and the long term profitability of this fishery.

As you know, full accountability and adherence to quotas are absolutely essential to any catch-based management system, including sectors. Without adequate measures to ensure timely and strict adherence to quotas, New England's groundfish fishery will again be threatened by large volumes of unreported landings. Not only will these unreported landings undermine efforts to rebuild and stabilize the resource, but those fishermen and dealers in compliance with all federal rules will lose out when competing in the market with large volumes of cheaper, blackmarket products.

We believe that the dockside monitoring program, as currently implemented, is inadequate to eliminate the blackmarket distribution of unreported groundfish landings in New England. Therefore we ask that:

- If the funds identified for dockside monitoring in 2011 are to be reassigned, these resources go to support an alternative program designed to ensure maximum quota compliance.
- You work with the Council to identify the development of a 100% dockside and dealer monitoring program (funded by licensed groundfish dealers) as a management priority this year.

Unreported landings are direct and urgent threat to the long-term success of this fishery and to the fishermen whose livelihoods depend on it. We ask that the National Marine Fisheries Service works with the industry to address these problems immediately and to find much-needed solutions.

Thank you for your attention to this matter,

Atlantic Trawlers Fishing Inc., Portland, ME
Cape Cod Commercial Hook Fishermen's Association, Chatham, MA
Mid-Coast Fishermen's Association, Port Clyde, ME
Rhode Island Commercial Fishermen's Association, Point Judith, RI

cc: fn, ah

KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP

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3050 K STREET, NW
WASHINGTON, D.C. 20007-5108

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EMAIL: dfrulla@kelleydrye.com

May 9, 2011

VIA ELECTRONIC MAIL

Captain Paul Howard
Executive Director
New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, MA 01950

Re: Control Date Regarding Accumulation Limits in the Multispecies Fishery

Dear Captain Howard:

On April 7, 2011, the New England Fishery Management Council ("Council") and the National Marine Fisheries Service ("NMFS") published a "Notice of a Control Date for the Purpose of Limiting Excessive Accumulation in the Northeast Multispecies Fishery." 76 Fed. Reg. 19305 (Apr. 7, 2011). On behalf of Associated Fisheries of Maine ("AFM"), we are writing in opposition to this control date. For reasons explained in greater depth below, use of a control date to potentially unwind legal contractual arrangements among private citizens is unique, highly inappropriate, and may implicate constitutional concerns. It also represents bad policy for a fishery which is still overcapitalized.

With that background, we respectfully submit the following detailed comments:

I. The Control Date Fails to Provide Legally Sufficient Notice

As far as we have been able to discern, control dates have almost universally been used by NMFS to provide notice that a limited entry system is being considered and those obtaining an open access permit after that date may not qualify for an allocation or limited access permit.¹ The warning provided new entrants is clear: this government-issued permit may not entitle you to fish in the future, so enter at your own risk. An original, government-issued, open access permit comes with no prior fishing history, associated landings, or substantial cost to the applicant. Under these circumstances, a control date becomes part of the regulatory landscape,

¹ See, e.g., *American Pelagic Fishing Co. L.P. v. United States*, 379 F.3d 1363, 1367 n.3 (Fed. Cir. 2004) ("A 'control date' provides notice to anyone *subsequently* entering a fishery that he is not assured of continued participation in the fishery should a limited entry scheme be implemented.") (emphasis added).

putting an applicant on notice that changes, potentially adverse to his or her future participation, are being contemplated.

In the present case, by contrast, the notice states:

[T]he Council is considering management measures that would address, but would not be limited to, concerns related to preventing excessive control or ownership of fishing privileges, maintaining the diversity of the fleet, addressing impacts of market forces on a highly regulated industry, and maintaining fishery infrastructure and fishing ports throughout New England. Fishing privileges include, but are not limited to, vessels, fishing permits, DAS, fishing quotas, PSCs, annual catch entitlements, sector allocations and any other type of catch share.

76 Fed. Reg. at 19306. The control date “may be used as a reference date for future management measures in determining how to treat fishing privileges acquired before this date and those acquired after this date, depending on the Council’s determinations on limiting control and ownership of such privileges.” *Id.* “[A]ny current or future accumulation of fishing privilege interests in the NE multispecies fishery may be affected, restricted, or even nullified . . .” *Id.*

In other words, the notice warns that for some unidentified class of current fishing participants, permits lawfully purchased (and, potentially, if the plain terms of the notice are to be believed, fishing history established during the Amendment 16 qualification period) could be “nullified.” This is a far different situation than that typically addressed by a control date, not least because good faith transactions, often involving substantial monetary outlays, were undertaken in reliance on a regulatory structure designed to address the very problem of overcapacity.²

Only two notices we have found are even remotely similar in nature to the current proposed control date. In 1999, this Council published a notice informing groundfish permit holders that “performance or fishing effort [expended] after the control may not be treated the same as performance or effort that was expended prior to the control date.” 64 Fed. Reg. 49139, 49140 (Sept. 10, 1999). The notice was published because the large amount of latent effort in the multispecies and scallop fisheries represented a threat to the rebuilding program if it were to

² For example, Amendment 16 states: “One of the major benefits of self selecting sectors is that they provide incentives to self-govern, therefore, reducing the need for Council-mandated measures. *They also provide a mechanism for capacity reduction through consolidation.*” Am. 16, § 4.2.3 (emphasis added). This is one of many, many examples in Amendment 16. *See also, e.g., id.* § 7.3.1.3.8 (“[S]ince sectors are primarily formed to realize efficiencies in the use of vessels out of the consolidation or redistribution of sector vessel effort, such efficiencies may result in reduced overall fishing effort.”); § 7.8.4 (“With the exception of one measure that would add a conservation tax for leased DAS, the remainder of these alternatives would provide increased flexibility to the industry and could encourage consolidation which decreases administrative burden for both NMFS and the industry.”).

become active as stocks became more plentiful.³ This notice, however, is quite similar to the traditional control date published ahead of a limited access program, designed as it was to discourage speculative reentry or increased fishing to build history ahead of potential future management changes.

More closely analogous was a notice published by the Pacific Fishery Management Council as it was in the midst of developing a limit on the number of permits with sablefish endorsements a vessel could stack. *See* 66 Fed. Reg. 17681 (April 3, 2001). The notice was to inform fishermen that the Council was considering such a limit and to discourage vessels from accumulating permits in excess of the proposed limit. Significantly, however, the Pacific Council took two steps absent from this New England Council notice: (1) it informed the industry of what that limit would be, thus allowing vessels below it to engage in transactions; and (2) it *grandfathered* vessel owners who had permits in excess of the proposed limit as of the control date. *Id.* We will return to this concept below.

By stark contrast to all the above examples, this control provides no currently vested holder of multiple limited access permits with any indication of what to expect: Will permits be voided? How many? Will there be forced divestiture? How will permits obtained prior to the control date be treated? Will owners who made lawful, good-faith purchases be compensated for losses caused by future decisions? None of these questions have even begun to be answered. All the control date does is create broad uncertainty without providing fishermen any means of assessing risks. As such, this “notice” provides virtually no notice at all.

II. The Control Date Thwart’s Amendment 16’s Strategy for Buffering Economic Impacts of Groundfish Rebuilding

The Council itself has long recognized the problem of overcapacity. In May 2010, as mentioned, Chairman Pappalardo wrote Secretary Locke on the Council’s behalf requesting a permit buyback. The letter states: “Recent studies suggest that the fleet is overcapitalized, with catch limits set at relatively low levels and stock assessments showing that several New England groundfish stocks are still overfished.” It concluded that vessels with “small potential sector contributions . . . may be forced to consider leaving the fishery.”

Indeed, given the extraordinarily low levels of groundfish annual catch limit (“ACL”), the sheer number of permits makes it impossible to devise an allocation allowing all current participants to remain economically viable. This would be equally true if the fishery continued to operate under the days-at-sea system, rather than the Amendment 16 sector program. In fact, Amendment 16 was designed to allow fishermen to make economic arrangements to remain viable during rebuilding, in part by creating a market to allow compensation of those who cannot survive.

³ At the time, there were “over 1,650 limited access permits and approximately 1,350 open access permits issued in the commercial [groundfish] fishery.” *Id.* In 1998, over a third of limited access permit holders did not fish, and those that did used only half their days-at-sea (“DAS”). *Id.*

With no federal buyback program on the horizon, however, these individuals' best hope is for a sale of their permit, either to other fishermen or one of the private or public permit banks.⁴ The control date will limit opportunities for economically advantageous transfers for struggling operators. This is contrary to Council policy and the realities of the fishery.

III. The Control Date Chills Sales and Lender Confidence

Setting aside, for the moment, the question of insecurity about transactions that have already been lawfully consummated, the control date has cast a serious pall over the market for permits. Vessel owners with the capital and financial stability to enter into purchase arrangements generally tend to have multiple vessels/permits.

Going forward, however, any multiple permit holder will necessarily be extremely leery about entering into new purchase agreements due to the uncertainty caused by the control date. The risk of large economic losses is too great to bear under current economic conditions, made all the more so due to spikes in oil prices and unrest in the Middle East. The same can be said for forthcoming heightened safety requirements mandated by the Coast Guard Authorization Act of 2010 and the uncertain future costs of the groundfish monitoring measures.

Even more than owners, banks are extremely unlikely to loan money secured by a permit, given these conditions. Credit markets remain tight following the economic collapse and banks are particularly sensitive these days to issues of loan security. No bank will be willing to provide a loan secured by a permit that could be voided by regulatory action.

It is also important to bear in mind that any sale involves both a willing seller and a buyer with the financial wherewithal to consummate a transaction. For those seeking to sell their permits, such a sale may be entirely a matter of economic necessity. The credit freeze and market chill which has already resulted from the publication of the control date – AFM is aware of at least one sales agreement that has been stalled due to these uncertainties – ultimately most harms those who want or need to sell permits.

IV. The Control Date May Be Inconsistent with National Standards

National Standard 5 holds, "Conservation and management measures shall, where practicable, consider efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose." 16 U.S.C. § 1851(a)(5). As such, efficiency is a major

⁴ One of the uncertainties created by the control date is how it will affect these permit banks, the primary purpose of which is to aggregate large shares of allocations. As AFM has noted before, the notion behind permit banks is to provide a means of "maintaining the diversity of the fleet, addressing impacts of market forces on a highly regulated industry, and maintaining fishery infrastructure and fishing ports throughout New England," albeit at some cost to the goal of preventing "excessive control or ownership." In other words, such banks provide an alternate means of achieving most of the Council's stated goals without raising the same troubling issues presented by the control date. (However, the state banks in particular do raise some concerns of another sort.)

fisheries management objective. In explaining the meaning of this provision, the National Standard 5 Guidelines state:

In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where “conservation” constitutes wise use of all resources involved in the fishery, not just fish stocks.

50 C.F.R. § 600.335(b)(2). As such, there is continuing value in having a good fit between allowable harvest and fishing capacity, although we recognize that such “efficiency” has its limits. For instance, while theoretically, fleets could be reduced to the absolute minimum to harvest a given annual catch limit, such drastic reductions in capacity would likely run afoul of National Standard 8’s mandate to maintain the participation of fishing communities. 16 U.S.C. § 1851(a)(8). Therefore, managers need to balance these two competing economic and social objectives.

The question in the present case, where the New England groundfish fishery continues to have more capacity than can profitably subsist on current allocations, is how to strike this balance. AFM’s position is that the control date poses an impermissible impediment to “efficiency” given current allocations. The chill in the market for permits it introduces fails to allow mutually beneficial transactions to occur that would allow some to exit and others remaining to maintain efficient and profitable operations.

Moreover, there are several other ways to meet the National Standard 8 imperative to protect the range of fishing communities in New England. As mentioned, permit banks are one way that the Council’s objectives of a diverse fleet – in terms of geography, vessel size, and gear type – can be achieved. Other options include making future increases in catch limits available to prior or new entrants.

Also, National Standard 10, relating to the safety of human life at sea, likewise can be impaired by the control date. One of the major problems facing the current fleet is its age, with the average vessels older than approximately 25 years. Chronic low allocations and management restrictions have prevented fishermen for the most part from even considering investing in new vessels, and poor revenue streams mean deferred maintenance. Only a stabilized and profitable fleet can afford to invest in vessel safety, as has been occurring in the scallop fishery.

One way to achieve that goal is to allow vessel owners to accumulate sufficient annual catch entitlement for a variety of species to enable them to be profitable. The control date is an impediment to the process.

V. To Reduce Uncertainty, the Council Should Provide Assurance that Current Ownership Levels Will Be Grandfathered

One very important source of uncertainty can and should be eliminated. At the very least, the Council must make a clear statement that any arrangements existing at the time of the control date will be allowed to continue regardless of any future action taken with respect to accumulation limits. That is to say, individuals or companies with current ownership of a

Captain Paul Howard

May 9, 2011

Page 6

number of permits later determined to exceed some future limit should be allowed to retain those permits and sell their business as a unit. Such grandfathering arrangements have been a routine part of “catch share” amendments, particularly in the North Pacific region, going back to the 1990s and earlier, and in the Pacific region example given above. Scallop Amendment 11 also grandfathered in ownership in excess of the 5% cap on total general category allocation.⁵ Generally, these programs grandfather allocations existing at of the time the excessive share cap is establish.

Grandfather provisions are prevalent in these instances where established rights could otherwise be voided, thus raising potential Fifth Amendment due process and takings concerns, as well as to accommodate legitimate and settled expectations.⁶ Such constitutional concerns cannot and should not be gainsaid. While courts have been reluctant to find a property right in a bare fishing permit, often a key determinant has been the lack of transferability of the permit itself and the fact that it did not provide individualized fishing allocations. *See, e.g., American Pelagic Fishing*, 379 F.3d at 1373; *see also Conti v. United States*, 291 F.3d 1334, 1341 (Fed. Cir. 2002).

American Pelagic involved an open access, non-transferable herring permit voided by congressional action, while *Conti* involved a ban on drift gillnets for swordfish—the owner was able to keep his permit. By contrast, courts have found property interests in individual fishing quota permits sufficient to sustain a due process claim under the Fifth Amendment. *See, e.g., Foss v. NMFS*, 161 F.3d 584, 588 (9th Cir. 1998). The Amendment 16 system which provides for both individualized potential sector contributions and devisable days-at-sea is certainly much closer to the latter than either of the former.

We are not suggesting that forced divestiture of lawfully purchased permits or the voiding of some portion of the allocation necessarily amounts to a compensable taking, although there is a fair argument to be made that such actions, particularly as to permits held prior to the control date, arguably fit the mold of a *Penn Central* regulatory taking.⁷ The broader point is that there is no reason for the Council to adopt an approach that walks so close to this constitutional line

⁵ *See also* 75 Fed. Reg. 554 (Jan. 5, 2010) (grandfathering halibut charter vessels holding permits in excess of the plan’s “excessive shares” limit); 72 Fed. Reg. 30052 (May 30, 2007) (grandfathering allocations of North Pacific groundfish in excess of 30% “personal use cap” that permit holders can bring into sector-like cooperatives); 71 Fed. Reg. 10615 (March 2, 2006) (allowing those with permits in excess of the cap to retain those permits); 70 Fed. Reg. 10174 (March 2, 2005) (grandfathering allocations in excess of crab IFQ personal use cap).

⁶ For a sample of a North Pacific Council’s debate on this issue in the context of developing its license limitation program, *see* <http://alaskafisheries.noaa.gov/appeals/npfmcLLP95.pdf>.

⁷ *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978). The three factors a court considers in determining whether a regulatory taking has occurred are: (i) the character of the government action; (ii) the extent to which the regulation interferes with reasonable investment backed expectations; and (iii) the economic impact of the regulation on plaintiffs’ property.

Captain Paul Howard

May 9, 2011

Page 7

given that there are perfectly acceptable means of achieving the control date's stated goals that are not nearly so draconian.

Grandfathering existing allocations is one means of reducing uncertainty and avoiding constitutional issues. Permit banks and other tools, such as assigning future increases in groundfish ACL to new, small-vessel permits, are alternative tools to help ensure a diverse fleet throughout the New England region. At the groundfish fishery's current rebuilding stage, however, there is still a mismatch between allowable harvest levels and the large number of permits. Leaving fishermen who are not currently making it the option to sell their permits helps, at least somewhat, to cushion the economic hardship. The control date is an impediment to such a transaction that can preserve some investment value for the seller.

The Council has the opportunity to withdraw the control date and restore some certainty to the industry. As it moves forward with addressing the concerns motivating this action, the Council should consider a broader range of tools to implement shared policy goals, including a healthy and diverse groundfish fleet. Indeed, it should also move forward with establishing a definition of excessive shares, as required by National Standard 4. In so doing, however, it should take a careful look at the status of the fishery after it has operated under Amendment 16 and also do so in a way that least disruptive of settled business arrangements.

Thank you for taking the time to consider these comments. Please feel free to contact us if you have any questions.

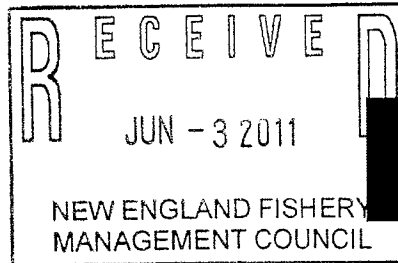
Sincerely,

/s/ David E. Frulla

David E. Frulla
Shaun M. Gehan
Andrew E. Minkiewicz

Counsel for Associated Fisheries of Maine

91 FAIRVIEW AVE
 PORSTMOUTH NH 03801

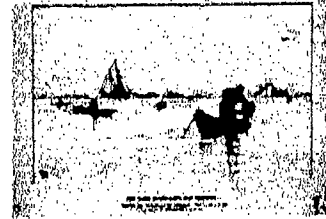


**NORTHEAST HOOK
 FISHERMAN'S ASSOCIATION**

June 2, 2011

New England Fishery Management Council

50 Water Street, Mill 2
 Newburyport, MA 01950
 Phone: (978) 465-0492
 Fax: (978) 465-3116



Dear NEFMC Groundfish Oversight Committee:

We represent a small group of Commercial Fishermen with the Limited Access Handgear HA Permits, employing the use Rod and Reel or Handlines to catch Cod, Haddock and Pollock along with small quantities of other regulated and non-regulated marine fish. Historically and currently our fishermen account for a small percentage of the groundfish landed in New England. However, the monetary gains obtained by the participants in this fishery are very important to us.

The number of active Handgear fishermen catching groundfish has significantly fallen off as has the catch thru various fishery management plans. If the NMFS wishes to have a diverse fleet, changes must be made to preserve and rejuvenate this method of fishing. We request that a specific allocation of cod (GOM & Georges Bank) be allocated to the Handgear fisheries in the next groundfish Amendment. We are asking that this allocation be equal to the percentage of the cod fisheries that represents the total combined "Potential Sector Contribution" for the HA & HB permits. This allocation, based on the history of the handgear cod fishery, will achieve the following:

1. Eliminate the current "race to fish" situation where Handgear fishermen in the common pool are competing with modern fishing vessels to catch cod before the common pool sub ACL is caught.
2. Allow the development of specific management measure for the Handgear cod fishery.
3. Rejuvenate a traditional small boat fishery to expand fleet diversity.

There are very few active Handgear cod fishermen left. The cod jig fishery was the first in New England and if nothing is done it will be the first to be eliminated at a time when cod stocks have rebound.

Respectfully,

Marc Stettner

NEHFA MEMBERS: Christopher DiPilato, Paul Hoffman, Hilary Dombrowski, Scott Rice, Marc Stettner

If you are a holder of a groundfish HA permit and wish to join the NEHFA, please contact the NEHFA at the address above.

cc: tn, ak, etc, Corneil

Dear Council,

I am not a commercial groundfisherman, but I am deeply connected to the fishing community of Chatham, MA, and have concerns for my community and other small coastal fishing communities like it that rely on fleet diversity for economic vitality. I urge the council to address groundfish goals and objectives related to fleet diversity, consolidation, and community protections.

As a board of directors member of the Women of Fishing Families (non-profit organization in Chatham that supports fishing families through scholarships and emergency assistance, and education/community resources) over the past 6 years, it has become increasingly evident in my communications with fishing families that your decisions greatly affect the economic conditions of their livelihoods on the Cape. NEFMC decisions affect the overall health of our communities, employment rates in our communities, our food prices, the corporate structures and entities that are trusted with the ocean's health, and employment. For these reasons alone, it is imperative that the Council keep the fleet diversity conversation in the forefront of their decision-making process.

Your decisions also greatly affect the livelihoods of shore-side supporters in the fishing community. My family owns and operates one of the last remaining private commercial fishing docks in the state of Massachusetts, which is in Stage Harbor, Chatham. Over the past several years, we have experienced a significant decline in landing activity. Historically, all ports in our town have been host to a bevy a fish landing activity, from local Cape fishing vessels and folks around New England and beyond. In June 2010, the Council voted on a goal and objective to "Maintain a balance in the geographic distribution of landings to protect fishing communities and the infrastructure they provide." Postponing the discussion on fleet diversity will only further this epidemic in our community, and others like it, and contribute to factions in fishing communities which are already in crisis.

We need all the protection and advocacy we can get in order to, as stated in an objective in the June 2010 Council vote, "Maintain a diverse groundfish fishery, including gear types, vessels sizes, geographic locations, and levels of participation...and Prohibit any person from acquiring excessive access to the resource, in order to prevent extraction of disproportionate economic rents from other permit holders." If the Council decides to postpone the discussion on fleet diversity, it will become increasingly difficult (more so than it already is) for independent fishermen to sustain a way of life, and contribute meaningfully to their community's economic health.

A management program that cannot meet its own goals and objectives must be addressed. Specifically, the Council can address meeting its goals by initiating "policies that increase the ability and opportunities for owner-operators to succeed in the fishery, which will help prevent excessive consolidation and lead to a more diverse fleet," a possible route proposed by a group of concerned fishermen from many coastal communities in New England.

Thank you for considering these comments in your decision-making process as a Council. It is my right and my choice to lend voice in support of my community.

Thank you,

Shannon Eldredge
Stage Harbor, Chatham

I am unable to attend and am sending these comments in advance of this Thursdays meeting.

Dear Participants of the Groundfish Accumulation Limits Workshop:

I am writing to ask that you take actions to prohibit consolidation/excess accumulation within the North East Multi Species Groundfish Fleet and in doing so allow smaller vessels to profitably exist in the industry.

NOAA has taken appropriate steps to reserve some allocation for smaller vessels through creation of the state permit banks. I ask that you acknowledge this lead and make permanent steps to not overlook the smaller vessels.

NMFS NERO Statistics of Groundfish Landings & Revenue by Vessel Size, 2009 & 2010 shows that vessels > 50' have landings up 8.4% and revenue up 21.5% while vessels <=50' have landings down 51.7% and revenue down 34.2%. The current system rewards larger vessels that can pay higher prices to lease/buy with no limits on how much allocation they can obtain. This creates major problems for smaller vessels that historically fish summer months and during those months obtain a lower market price for their catch.

My hope is that you can find an approach that ends the disparities that exist today.

Sincerely,

Brian Pearce

F/V Gretchen Marie

No. Yarmouth, ME

Date 3/14/2011

Mr. Rip Cunningham, Chair
Groundfish Committee
New England Fishery Management Council

Dear Rip:

I am writing to express my concern over the possibility of accumulation limits in the multispecies sector program.

As I've commented publicly at past committee meetings, consolidation is nothing new in the fishery. I believe the bulk of the consolidation occurred during A13 and today the sale of permits is actually stagnant (except for the inflated sales taking place with the State of Maine permit bank).

Sector management allows a participant the choice to engage in the fishery and either fish or temporarily lease the allocation attached to a permit. Leasing one's allocation to another is not consolidation from my perspective. The permit holder still retains his right to be in the fishery when conditions become favorable.

In regards to "ownership caps", I believe that will only constrain the ability of existing businesses to make changes to their operations as they see fit. If a limit was passed I would argue that permit banks, both public and private should be held to the same standard as individual permit holders.

There's an assumption that attaching the DAS [input control] leasing baseline to transfer of allocation in sector management [output control] will somehow save the "small boats". I happen to own and operate a "small boat" and I believe that length/hp restrictions on allocation transfers will actually reduce the amount of allocation that would be available to my business, not increase it.

For example, this year GB cod simply was not available to the inshore GB fleet. I moved my fishing operation to Provincetown, and needed to lease GOM cod. I traded, with offshore boats, some of my GB cod for GOM cod. If the DAS leasing restrictions were imposed, I would not have been able to make that trade. The offshore boats with the allocation of GOM cod would, instead, have to fish in the inshore GOM.

One only has to look at the groundfish fishery in Nova Scotia to see that limits on leasing between vessel sizes has not done much but create a lot of paperwork and is in the process of being removed in that fishery.

Sincerely,

Mike Russo

**MAINTAINING FLEET DIVERSITY
IN THE NEW ENGLAND GROUND FISH FISHERY**

By

The Northwest Atlantic Marine Alliance

To

The New England Fisheries Management Council

RE:

**The Workshop to Address Fleet Diversity and
Excessive Consolidation in the Groundfish Fishery**

June 5, 2011



QUOTA SET-ASIDES

Quota set-aside programs can and have contributed to the success of Catch Share programs around North America. Quota set-asides can offer certain ecological and socio-economic advantages and contribute to the following NEFMC goals:

- Support fleet diversity by allowing disenfranchised fishing communities to continue participation in the fishery.
- Incentivize conservation measures and fishing practices, for example gear modifications, to align with management's ecological goals.
- Allow for new entrants to have affordable access to the fishery.

Examples of Quota Set-Asides:

- The Alaska Groundfish, Halibut, Crab, and Salmon fisheries utilize a Community Development Quota (CDQ) program. In 2009 between 7.5% and 10% of the TAC was set aside. 65 communities participated. The program generated \$110 million in wages, education, and training benefits as well as \$500 million in revenue to fund docks, harbors, and construction of processing facilities.
- The Canadian Pacific Groundfish Fishery sets aside 10% of the TAC to a crew protection program and 10% to a community development program.
- The US Pacific Groundfish fishery sets aside 10% of the TAC for an Adaptive Management Program (AMP), which is used to mitigate unintended impacts of the new system on communities and processors.
- The Alaska Halibut and Sablefish Fishery sets aside a Community Quota Entity (CQE) program that allows marginalized communities to purchase quota from the federal government at current market rate and then lease back to local residents.

Example of how a Quota Set-Aside Program might look in New England:

10% of the TAC is set-aside for the purposes of mitigating the 'unintentional' consequences of Sector Management and leading managers closer to their goals and objectives. Quota set-asides can be tied to an increase in TAC. The set-aside can be distributed in many ways and is a very flexible tool for fisheries managers to direct effort toward defined goals. Set-aside recipients may include:

- Community Fishing Associations (CFAs) that meet NEFMC approved criteria
- Permit Banks that align with NEFMC goals and objectives
- Fishermen who meet NEFMC approved criteria
- Qualified new entrants such as crew

Prognosis for success or failure

- Quota set-asides work best as an incentive program to direct the fishery to a desired outcome
- Quota set-asides alone cannot ensure a diverse fleet
- Quota set-asides prove to be a highly adaptive tool that can be used in conjunction with other management measures to address a variety of goals

FOSTER AN AFFORDABLE FISHERY

Problems that face New England fishermen because of the high cost of leasing include:

- High costs are preventing anyone with a low initial allocation who hopes to continue to fish from being able to do so.
 - Punishing part-time groundfishermen (because their allocation is lower, their variable costs of quota leasing are higher than for fishermen who received a larger allocation.)
 - Resulting in minimal profit for fishermen who depend on leasing
- Punishing those who target the most valuable stocks, especially GOM cod (particularly fixed gear fishermen)
- Rewarding absentee quota owners who can lease for profit without fishing
- Rewarding those who have a large initial allocation, and providing an incentive to lease rather than to fish.
- Disproportionately rewarding those who land a large volume of fish,
 - Rewarding those who catch large volumes of other stocks (dabs, redfish, hake, etc.)

Example 1: Gillnetter from New Hampshire

If he leased out all of his quota, he would make \$90,000 – without fishing. To earn the same amount from fishing, after paying for crew, gas, insurance, maintenance, and other costs, the price for his fish would have to average \$2.15, whereas his average price in 2009 was \$1.50. He loves fishing and wants to continue, but the incentive to be an “armchair” fisherman is overwhelming.

Example 2: Jig fisherman and longliner from the South Shore, MA.

He fished with his father for years, and bought a permit with DAS but poor catch history a few years ago. Because of his low initial allocation, he has to lease a large amount of his fish. He targets cod, but can only afford to pay 75 cents per pound. Members in his own sector are reluctant to lease to him because they can make nearly double that price by leasing to fishermen in other sectors.

Prognosis for success of failure

- One possible outcome: Researchers studying the halibut fishery in British Columbia, found that 79% of the quota was leased out instead of being fished by the quota owners, and more than half of the operating vessels leased more than 50% of their catch (2009). The crew fared even worse. They lost 73% of their share between 1990, when catch shares started, and 2007. ¹
- An alternative to achieve a successful Catch Share program: Last year, Ecotrust published “Fair Catch: Ten ways to improve the catch share proposal for the West Coast trawl fishery,” outlining economic, social, and ecological recommendations for that fishery, including:
 - “Foster an affordable fishery by limiting quota to active fishermen”, and
 - “Regulating quota leasing to prevent unfair profiting from absentee quota ownership, and to prevent perpetual leasing.

¹ Pinkerton E, Edwards D. The elephant in the room: The hidden cost of leasing transferable fishing quotas. Marine Policy 33 (2009) 707-713.

OWNER-OPERATOR INCENTIVES

Carefully constructed and implemented owner-operator provisions can act to directly limit consolidation and promote fleet diversity.

The NEFMC goals directly acknowledge and affirm the value and importance of preserving owner-operators as part of a diverse fleet. Owner-operated firms were the norm in our groundfish fishery until recent years. Owner-operators tend to be family and community-based, with long term interests that foster stewardship of the resource, the marine environment, and coastal communities. These firms offer certain ecological and socio-economic advantages:

- Promoting owner-operator provisions supports federal standards requiring the sustained participation of small owner-operated fishing vessels and fishing communities
- Owner-operators are more likely to hire local crew, contract with local shoreside services, and spend fishing profits locally, thereby supporting local communities and regional economic development. They also tend to be more spread out, supporting the geographic distribution of landings to protect fishing communities and infrastructure
- Owner-operators, especially those with smaller boats, pay closer attention to what is going on in the fish populations and marine ecology. This knowledge is deeply useful to society's understanding of how the marine ecosystem works and is key for adaptive and eco-system based management,
- Because owner-operators often have relatively small firms, in aggregate they can adapt to changes in ecological and economic conditions more efficiently than a smaller number of larger firms.

Examples of owner-operator incentives for New England:

A number of options could incentivize the retention of an owner-operator portion of the fleet, each with a different balance of benefits and limitations. Among them are:

- Reward owner-operators, such as by annually allocating a pool of quota set-aside for that purpose. (See also "Quota Set-Asides")
- Reward permit or quota transfers by lease or sale from a non-owner-operator to an owner-operator.
- Penalize permit or quota transfers by lease or sale from an owner-operator to a non-owner-operator.
- Revert permits or quota that is not owner-operated for some number of years (whether unused or used by non-owner-operators) into a general pool for reallocation.

Prognosis for Success or Failure

- Owner-operator provisions can work in conjunction with other diversity measures to support NEFMC goals.
- If other market and management conditions allow incentives for consolidation and vertical integration of the industry to rise, the spirit of owner-operator provisions can be circumvented by ostensible owner-operators who rely on financing from processors or other investors, and thereby lose autonomy in business decisions. Correspondingly, some benefits of the owner-operator firm structure outlined above would also be lost.
- Maintaining an owner-operator portion of the fleet can help support the Council's longer term scientific and management goals

QUOTA ACCUMULATION RESTRICTIONS AND ALLOCATION MEASURES

Decisions about the allocation and accumulation of quota and rules governing its transfer will determine what the fisheries and fishing community economies will look like for any system of fisheries management that is based on catch limits, such as sectors in New England. Allocation measures and accumulation restrictions determine which boats and which ports survive, and thus who fishes. They can also be used to determine the diversity and distribution of the fleet, and will also affect the diversity and distribution of fish species and populations. Allocation measures may support the following NEFMC goals:

- Prevent excessive consolidation of the New England fishing fleet that results in fewer small scale fishing boats and fewer fishing ports.
- Contribute to the vitality and diversity of fishing communities and the New England fishing fleet.
- Help conserve and recover the natural distribution of fish populations and biological diversity.

Possible allocation and accumulation control measures for New England

- Accumulation caps: establish limits on ownership of quota to prevent the amassing of quota into the hands of a few entities (caps of 2%-10% of TAC are typical in other regions and the appropriate effective level would have to be determined for New England and possibly for different sections of the region);
- Transferability: limit accumulation through rules on quota transfers. (See also “Foster an affordable fishery”)
- Prohibit quota ownership by non-fishing entities, other than approved permit banks, and quota never to be traded for investment purposes.
- Re-evaluate allocation formulas once clear goals and objectives have been defined for the New England fishing fleet as a whole (e.g. through a visioning process) and ecosystem based fisheries management is implemented.
- Consider allocations for defined nearshore waters: boats over a specified length not eligible to receive nearshore allocation. (i.e. divide the inshore and offshore fleets to conserve fleet diversity, see also “Long term measures to support a diverse fleet”).

Prognosis for success or failure

- Limiting accumulation of quota, through caps and/or transfer rules, can preserve the small boat fleet while allowing the program to gain momentum without consolidation.
- How long accumulation limits are needed or whether they should be more restrictive in the beginning is something that must be assessed with respect to clear goals and objectives for the fleet (i.e. adaptable to outcomes).
- Quota accumulation caps alone won't stop consolidation if other measures are not in place, because there are ways to fool the system.
- In particular for New England issues around allocation percentages are difficult due to the variety of species associated with each permit.
- Allocation formulas can enable flexibility for ecosystem based fisheries management.
- Incentives to divide offshore and nearshore fleets will significantly reduce consolidation and enhance fleet diversity.

LONG TERM CONSIDERATIONS FOR ENSURING A DIVERSE FLEET

The effectiveness of most options under present consideration to prevent or slow consolidation and loss of fleet diversity (including those supported here by NAMA) will depend on how powerful the financial incentives become to circumvent the spirit of any implemented regulations, limits, or incentives. If anticipated profits from consolidation and vertical integration of harvest and processing sectors are high, highly capitalized firms will find ways around the best-intentioned rules or restrictions. As groundfish stocks and market value grow, more capitalized firms will become more motivated to control not only processing activities, but also harvesting activities. They might seek to be legally recognized as owners of boats, or as owners, lessors, or lessees of catch shares; or they may seek to control boats and shares through financial arrangements with owners, lessors, and lessees, without taking legal ownership. Consolidation-related socio-economic and ecological impacts could be similar under either scenario.

The following policy options would dis-incentivize undue groundfish industry consolidation, including through non-ownership financial investment, without intervening directly in share allocations. They can be considered as longer term, more enforceable, and less administratively burdensome options, especially if short-term options are implemented in the interim. If some level of consolidation is inevitable under catch shares, it makes sense to also ensure opportunities for smaller firms are secured for the future of the fishery.

Create smaller-scale fishing and management areas

Creating separate fishing and management areas can help discourage industry consolidation. Creating two areas, one inshore and one offshore, would discourage consolidation of the fleet and shoreside portions of the industry. Creating a few smaller areas would more strongly discourage consolidation.

Additionally, emerging scientific consensus supports finer scale management of groundfish populations. Creating protections for the nearshore fleet such as, share set-asides, smaller-scale leasing opportunities, owner-operator incentives, or share accumulation limits would help discourage consolidation among the nearshore fleet, and support management objectives such as protecting spawning aggregations.

Although the offshore and inshore fleets might continue to consolidate if managed separately, incentives to consolidate inshore would be limited to some extent. Reasons for this are several. Among them:

1. Larger boats do not necessarily outcompete smaller boats over time when fishing inshore, partly due to the seasonal availability of inshore groundfish populations, and partly due to the lower fixed costs of running and maintaining smaller boats.
2. Inshore groundfish populations and a smaller boat fleet area is less attractive to vertically integrated fish processing and distribution systems likely to consolidate fleet ownership, partly due to the seasonal availability of fish product, and partly due to the greater difficulty of consolidating ex-vessel markets among a larger number of smaller boats in a larger number of smaller harbors.

3. If small firms no longer anticipate that their businesses and shares will be consolidated by larger firms, they can invest in the longer term stewardship of the resource, and are more likely to support resource conservation measures.

Transparency in the leasing and sale of quota

Requiring the full disclosure of transactions of leased or sold quota supports the principles of a free, fair and open market. Fishermen who know the prices being paid for quota can make informed decisions about investing or divesting their allocations. Fishermen are not only used to watching and timing the market for price fluctuations, one could argue it is an essential skill of a successful fisherman.

A free, fair and open market also supports the goals of maintaining a diverse fleet by preventing entities from depressing or inflating prices in order to manipulate the dockside and/or quota market. Those in favor of a free market approach to fisheries should also support an open and fair market that does not favor one group over another.

Allocation by location, conservation and scale

Current allocation is based on history. Other factors can and should be included in allocation formulas to meet the goals and objectives of fisheries managers. A more diverse combination of allocation parameters will naturally serve to support the goals of maintaining a diverse fleet. Using additional parameters could also balance and rectify the perceived inequities of allocation by history alone.

- Scale-based allocation: Spatial distribution of quota that corresponds to scales of ecological parameters and distribution and movements of subpopulations of fish;
- Conservation-based allocation: Distribute spatially-based quota among those sectors with fishermen who have demonstrated fishing habits and methods guided by principles of conservation;
- Location-based allocation: Allocations based on distribution of fish populations and not transferable to other populations.

APPENDIX A: STATED GOALS AND OBJECTIVES.

COUNCIL MOTION

On June 23, 2010, the New England Fishery Management Council passed a motion stating the following goals related to the issues of diversity and consolidation:

- A.** 1) Maintain inshore and offshore fleets;
- B.** 2) To the extent possible, maintain a diverse groundfish fishery, including different gear types, vessel sizes, geographic locations, and levels of participation;
- C.** 3) Maintain a balance in the geographic distribution of landings to protect fishing communities and the infrastructure they provide; and
- D.** 4) Prohibit any person from acquiring excessive access to the resource, in order to prevent extraction of disproportionate economic rents from other permits holders.

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- E.** Goal 2) Create a management system so that fleet capacity will be commensurate with resource status so as to achieve goals of economic efficiency and biological conservation and that encourages diversity within the fishery.
- F.** Goal 3) Maintain a directed commercial and recreational fishery for northeast multispecies.
- G.** Goal 4) Minimize, to the extent practicable, adverse impacts on fishing communities and shoreside infrastructure.
- H.** Goal 5) Provide reasonable and regulated access to the groundfish species covered in this plan to all members of the public of the United States for seafood consumption and recreational purposes.
- I.** Obj 7) To the extent possible, maintain a diverse groundfish fishery, including different gear types, vessel sizes, geographic locations, and levels of participation.

MSA AND NATIONAL STANDARDS

- J.** NS 4) Allocation fair and equitable
- K.** NS 5) Promote efficiency
- L.** NS 7) Minimize costs
- M.** NS 8) Minimize impacts to fishing communities
- N.** NS 9) Minimize by catch
- O.** NS 10) Promote Safety

Section 303A, Part (d)(5)

- P.** Promote the sustained participation of small owner-operated fishing vessels and fishing communities
- Q.** Address excessive consolidation
- R.** Quota set-asides for entry-level and small vessel owner-operators, captains, crew, and fishing communities
- S.** No excessive shares

