

NORTHEAST SEAFOOD COALITION

August 12, 2005

TO: Patricia A. Kurkul
Regional Administrator
National Marine Fisheries Service
Gloucester, MA

RE: Comments on the Proposed Rule for Groundfish Framework 41
Ref: 70 FR 41189, July 18, 2005

(1) CA I Hook Gear Haddock SAP

Federal Register Pages: 41193-41195

Section: 648.85 Special management programs.

Recommendation:

- Include a specific operative provision in the regulations (Section 648.85(b)(iv)) that reflects the Council motion and intent to prohibit catches made pursuant to this SAP from being considered as ‘catch history’ in any individual fishing allocation program to be established. (see below: [Rule Should Reflect Council Policy Denying Catch History & NSC Recommendation](#))

Explanation:

- Support Non-Sector Access: NSC strongly supports in concept the proposed action to allow non-sector vessels to participate in the SAP. NSC has been on record strongly supporting such participation ever since it was disallowed under Framework 40-A.
- Sector Distinction in Haddock SAP Sets Bad Precedent: For the record, NSC remains strongly opposed to the proposed action inasmuch as it applies a sector / non-sector distinction to this SAP as a purported means to address a derby concern. The Hook Sector was designed and approved **strictly for the purpose of managing GB cod**. Allowing this GB cod sector/non-sector distinction to creep into the management and allocation of other stocks such as GB haddock sets an undesirable precedent that invites future management problems involving sectors.

NSC shares the general concern of the groundfish community with derby fisheries such as those that occurred in the 2004 CAII YT SAP and that continue to occur as a consequence of the rolling closures. NSC also recognizes that legitimate concerns for the potential of a derby have been expressed with respect to non-sector participation in this SAP. However, NSC reiterates its concern that measures to address derby-style

fishing should not create even larger and longer-term problems for groundfish management. Again, we feel the sector/non-sector basis for management and allocation of this haddock fishery is inappropriate and provides an undesirable precedent for similar actions in the future that are not easily reversed.

- No policy basis for arbitrary allocation: NSC reiterates its strong opposition to the proposed action inasmuch as it includes an arbitrary allocation of the GB haddock TAC that lacks any basis in catch history or another legitimate, pre-established allocation policy or criterion. We feel it is disingenuous to characterize the proposed haddock TAC allocation of 500mt to the sector fishery as merely a “cap”. Providing such a well and legally defined group of permit holders with exclusive access to a specific quantity of fish during a specified period of time in a specified area is tantamount to an allocation.

As we have frequently advocated, allocation decisions should follow—not precede and preempt—legitimate allocation policies and criteria established by the Council through a thoughtful, deliberate and transparent process **that has yet to occur**.

- Rule Should Reflect Council Policy Denying Catch History: One of NSC’s greatest concerns is that the catch history that is artificially achieved by the recipients of this arbitrary and unjustified allocation will be used by the individual participants in future allocation decisions that do, in fact, rely on catch history as an otherwise legitimate basis for allocation. Although sector participants and proponents of this SAP originally indicated that acquiring catch history from this SAP for future allocation decisions was not their purpose or interest, this claim was called into question by oral testimony received by the Council at the March 2005 meeting.

The Council apparently agreed with this concern when it adopted the following motion at its March 2005 meeting:

5. Mr. Hill moved and Mr. Ruhle seconded:

"that as part of Framework Adjustment 41, that no individual catch history developed due to access to the SAP will be considered as a part of any future allocation of the overall haddock TAC."

*The motion **carried** on a show of hands (9/6/2).*

The Council elaborated upon this motion in the Council Report of its March 2005 meeting as reflected in the following excerpt (with emphasis added):

*“The Council approved Framework 41 to the Northeast Multispecies (Groundfish) Fishery Management Plan to allow non-sector vessels to fish in the Closed Area I Hook Gear Haddock Special Access Program (SAP). For the 2005 fishing year, the Council agreed to divide the October 1 – December 31 season in half, allowing sector boats to fish in the first half and non-sector boats to fish in the second half. Each period will be capped at 500 metric tons. During a lengthy discussion, **the Council agreed that this approach should not be considered the basis for allocating future fishing privileges in this SAP. Members approved a motion stating that catches in the SAP will not become part of a vessel’s landing history.** Framework 41 will be submitted to NOAA Fisheries in April for review and approval.”*

- **NSC Recommendation:** The Proposed Rule makes only a passing reference to the catch history issue in the “Background” section (70 FR 41190). The Council’s motion and intent is not included in either the description of the proposed measures or in the actual proposed operative changes to 50 CFR 648.

NSC believes the proposed action is deficient in this respect as it does not codify a very specific measure extensively debated and adopted by the Council. The FW41 Final Rule should explicitly reflect the Council’s motion and intent at 50 CFR 648.85(b)(iv) *General Program Restrictions*. Suggested language follows:

“No catches made by any vessel pursuant to this SAP shall constitute catch history for the purposes of any individual fishing allocation program to be established.”

(2) Eastern US/Canada Haddock SAP Pilot Program

Federal Register Page: 41193 & 41195

Section: 648.14 Prohibitions., 648.85 Special management programs.

Recommendation:

- Implement proposed measures to make technical corrections regarding access to the Eastern US/Canada Management Area.

Explanation: NSC supports measures to improve management flexibility and increase access to the abundant GB haddock resource consistent with US obligations under the US/Canada Resources Sharing Arrangement.