

# NORTHEAST SEAFOOD COALITION

January 20, 2010

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

## **RE: Comments on Proposed Rule for NE Multispecies Amendment 16**

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The Northeast Seafood Coalition (NSC) is pleased to provide the following detailed comments and recommendations on the Proposed Rule to implement Amendment 16 to the NE Multispecies FMP. NSC's broad membership includes many groundfish fishermen, dealers and processors throughout the Northeast Region.

As a general observation, NSC notes that Sectors and the Sector allocation and management system were not established according to the policies and procedures set forth in section 303A of the Magnuson-Stevens Act (MSA) governing Limited Access Privilege Programs (LAPPs).

There is no question that if the NEFMC takes action in the future to establish an individual fishing quota (IFQ) program or any other LAPP program under the Northeast Multispecies FMP, any such action and Program would be subject to the requirements of section 303A governing LAPPs (a LAPP, as defined in MSA section 3(26), includes an IFQ). Allocations made under any such future IFQ or other LAPP system must be subject to the very comprehensive and deliberate standards and process set forth in MSA section 303A and must be found consistent with numerous other provisions of the MSA.

The deliberate decision by the NEFMC to develop a comprehensive fishery-wide Sector allocation and management system that is not based on or consistent with MSA section 303(A) was largely based on legal advice provided to it by the NMFS Northeast Regional Office. This advice is set forth in the attached letter from Regional Administrator Pat Kurkul to NEFMC Executive Director Paul Howard dated September 12, 2007. Specifically, the letter states:

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“Sector allocations, as currently implemented by the Northeast Multispecies FMP, do not appear to be LAPPs. Whether any new, proposed “Sector allocation” would be considered a LAPP is a fact-based question that would need to be reviewed as proposals develop.”

NSC has made a very substantial commitment to and investment in the Amendment 16 Sector management system. NSC’s purposes have been to advance fishery conservation and management while protecting the best interests of all fishermen in the NE multispecies fisheries—both NSC members and non-members alike. This was partly driven by the stark prospects of forcing fishermen to fish only within the ‘common pool’ for failure to enroll in a Sector which Amendment 16 defines as ‘self-selecting’.

As another general observation, NSC notes that the groundfish industry cannot support the additional costs associated with Sector development and implementation as contemplated by Amendment 16, particularly those costs associated with dockside and at-sea monitoring and reporting, and Environmental Assessment (EA) preparation. This fact is well noted in the Draft Environmental Impact Statement (DEIS) accompanying Amendment 16, and is very unlikely to change in the near to mid-term future notwithstanding the hoped-for rebuilding of groundfish stocks under this Amendment. Consequently, the future success of the Sector management system relies on continued substantial Federal funding to cover these additional costs.

Finally, NSC struggled with providing comments on many of the proposed provisions for the common pool since the true impact of these measures are not properly documented in Amendment 16. The NEFMC during their November 2009 meeting approved substantial revisions to the common pool which are not referenced in this Proposed Rule. NSC will be providing comments once Framework Adjustment 44 is published.

Please note the following detailed comments are presented in the order of the “Proposed Measures” presented in the preamble section of the Proposed Rule, but make reference to the specific sections of the proposed regulatory language in 50 CFR.

Thank you for your consideration,

*Jackie Odell*

Jacqueline Odell  
Executive Director

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## **Proposed Measures in the order they appear in Preamble**

### **Preamble #1: Wolfish**

#### **Discussion:**

Section 648.2 proposes to add wolfish to the long list of species managed under the NE Multispecies FMP and to establish an ACL and AM for this stock even though it has been deemed “data poor”. The proposed rule would prohibit the possession of wolfish, but because the Council did not specifically exempt this species from the trimester TAC AM, NMFS proposes a trimester TAC and closure for wolfish.

NSC does not believe it to be necessary or realistic to utilize in-season projections for wolfish catches by the common pool to adjust differential DAS counting. The proposed method appears to suggest that catches of wolfish that occur throughout the range of GB, GOM and SNE will form the basis of the “projections” yet the differential DAS counting adjustments will all occur in a more discreet Inshore GOM Differential DAS Area as per section 648.82(n)(1)(i)(A).

NSC calls to question the use of this method when this stock will not be targeted and all information will be extrapolated from NEFOP observations as there will be no landings. Furthermore, the approach is entirely inconsistent with the treatment of Sector vessels even though they will be constrained by the same zero possession measure.

NSC strongly opposes the continued use of a method for focusing differential counting on smaller areas that ignores the CPUE of all effort in the areas with respect to the stock intended for protection.

#### **Recommendations:**

- Remove wolfish from the list of stocks the RA will utilize projections for the purpose of calculating pre-season 2010 or in-season differential DAS counting adjustments. Since this stock is not allocated to sectors, it would be inappropriate to place all of the AM on the common pool. Under no circumstance should the differential counting be altered in one area for a stock that is caught throughout the range of GB, SNE and GOM.
- Alternatively, the AM for wolfish should be to evaluate catches by CPUE across the region, if sufficient sampling is available, adjust differential counting in subsequent fishing years to account for the CPUE.

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- Reconsider this issue when more data is available in a subsequent Council action such as a framework adjustment.

## **Preamble #3: Rebuilding Programs**

### **Comment 1: 7-Year Rebuilding Plans**

#### **Discussion:**

The proposed rule would implement the 7-year rebuilding programs adopted under Amendment 16 for witch flounder, GB winter flounder, pollock and northern windowpane flounder. These rebuilding plans were each set at 3 years less than the statutory maximum partially under the theory that leaving a 3-year buffer will allow the Council to extend the rebuilding period if at some point it appears that the rebuilding trajectories are not being met.

However, the proposed rule does not specify when the evaluations of the rebuilding trajectories and decisions to revise the rebuilding timeframes will be made during the 7 year period. NSC is concerned that this evaluation not be left until the very end of the 7 year period. It does not make sense to cripple an entire fishery in order to rebuild one stock in 7 years when rebuilding that stock in 10 years avoids that result and still meets the MSA requirements.

Section 648.90(a)(6)(i) indicates that the PDT shall develop recommendations for, among other things, “revising rebuilding programs and associated management measures” as part of its annual specifications process “unless otherwise developed pursuant to the biennial review process. Presumably this would include revising the rebuilding timeframe to extend the period if deemed necessary. This also seems to suggest that the PDT can also recommend revisions to the rebuilding programs as part of the biennial adjustment process set forth in section 648.90(a)(2), but there is not a specific reference to revising the rebuilding programs under that biennial review section.

Further, section 848.90(a)(2)(iii) appears to provide the Council with the authority to revise the rebuilding time frames through a framework action at any time. This section states that in addition to options recommended by the PDT through the biennial review process, “any other measures currently included in the FMP” may be adjusted through future framework adjustments”. Presumably this would include a revision to the rebuilding timeframe, but it does not specifically state that.

Again, it appears that revisions to the rebuilding timeframes could be evaluated and considered in each of 3 processes: the annual specifications process, the biennial adjustment process and at any time through a Framework Adjustment process. Nevertheless, perhaps some specific clarity would be helpful to ensure this happens particularly with respect to stocks now subject to the 7-year rebuilding period.

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In either case, there do not appear to be any criteria or guidance for the Council to decide what revisions to the rebuilding timeframe are appropriate under various circumstances. Maintaining flexibility in this case is important but perhaps some guidance would be useful.

## **Recommendations:**

- Clarify specifically when revisions to the rebuilding time frame will be evaluated and considered. Make an explicit reference to the PDTs authority to develop options for revising the rebuilding timeframes as part of its biennial review/adjustment process, especially for the stocks with rebuilding timeframes set at less than the statutory maximum.
- Make an explicit reference to the Council's framework authority to revise the rebuilding timeframes, especially for the stocks with rebuilding timeframes set at less than the statutory maximum.
- Provide flexible guidance for circumstances that should trigger revisions and how such revisions will be made.

## **Comment 2: SNE Winter Flounder**

### **Discussion:**

Section 648.86(l) states that vessels may not fish for, possess, or land winter flounder caught in or from the SNE/MA winter flounder stock area". Notwithstanding NSC comments dated February 17, 2009, Northeast Multispecies Interim Rule Docket number 080521698-8699-01,, NSC agrees with the rationale provided for this measure set forth in the discussion on SNE/MA winter flounder in the preamble of the proposed rule, particularly as it relates to meeting the objectives of Magnuson-Stevens Act (MSA) and specifically, the flexibility Congress provided under MSA section 304(e)(7).

Nevertheless, NSC remains very concerned about the scientific stock assessment which provided the basis for this management approach.

### **Recommendation:**

- Because this stock is so critical to the SNE fisheries, and because this management approach was based on relatively weak data and an uncertain stock assessment, NSC strongly recommends that the NMFS / NEFSC work quickly to

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perform an updated stock assessment, which review the model and associated assumptions applied, as soon as possible.

- NEFSC and NMFS should recognize the unique advantage Sector vessels may provide as it relates to SNE winter flounder. NEFSC and NMFS should collaborate with Sector vessels in a constructive manner that provides all necessary parties with more accurate data as it relates to this stock.

## **Preamble #5: ABC/ACL Specifications and Distribution Process – ACL Distribution**

### **Discussion:**

Section 648.90(a)(4)(iii)(E)(1)(i) sets forth the baseline period (2001-2006) for allocating the Gulf of Maine cod and haddock stocks to the recreational component of the fishery. NSC notes that this baseline period is different than the baseline period (1996-2006) which applies to calculating PSCs for the commercial component of the fishery (other than GB cod) under section 648.87(b)((1)(i)(E)(1).

Section 648.87(b)((1)(i)(E)(2)(i) sets forth the PSC baseline period (1996-2001) for GB cod for vessel permits committed to participate in the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector which is also different than the baseline period (1996-2006) which applies to all other Sector participants in the commercial component of the fishery (other than GB cod) under section 648.87(b)((1)(i)(E)(1).

NSC recognizes that the proposed rule reflects what was adopted by the NEFMC. However, as was expressed by Council Member David Goethel in a letter to Commerce Secretary Locke, this disparity appears to be inconsistent with a number of important provisions of the MSA including specifically National Standard 4, section 303(a)(14), and section 304(e)(4)(B).

As reflected in these and other provisions of the MSA, Congress has consistently placed an extraordinary emphasis on the need for fishery management measures to be fair and equitable, especially those involving allocations of fishing privileges among US fishermen. In this case, NSC would strongly argue that “equitable” means that the allocative and financial effects of the law are the same for recreational and commercial fishermen, and for all commercial fishermen regardless of which Sector they participate in.

The baseline included in Amendment 16 for the recreational component of the fishery is certainly more favorable overall to that component than the baseline

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adopted for the commercial component of the fishery in terms of which years each Sector had the greatest landings respectively. This is an inequity.

Given that the allocations made to the commercial and recreational components of the fishery constitute a zero-sum game division of the overall ACL for these stocks, the baseline disparity creates a clear inequity in treatment between these two components of the industry. The bottom-line consequence of this disparity is that the recreational component receives a larger portion of the ACLs for these two stocks and the commercial component receives a smaller portion. The potential allocation of additional stocks to the recreational component will only perpetuate and expand this inequity.

Similarly, unlike for all other Sector participants, the PSC allocations for GB cod for vessel permits committed to participate in the GB Cod Hook Gear Sector or GB Cod Fixed Gear Sector is, as stated in the proposed rule preamble, “intended to recognize the investment decisions made by such vessels” under the Amendment 13 criteria. In contrast, the PSCs for all other Sector participants is based strictly on catch history during the baseline years when, in fact, investment decisions were largely based on the DAS leasing criteria which considered DAS and vessel characteristic (length/horsepower). This is an inequity.

NSC shares the concern that the disparate baselines and the resulting allocations set forth in the Proposed Rule may be inconsistent with provisions of the MSA intended by Congress to ensure fairness and equity.

## **Preamble #6: AMs**

### **Discussion:**

The ability of Sectors to trade ACE is among the most important policies in Amendment 16. There is no possibility that the Sector system of management proposed in Amendment 16 will work absent this policy. Further, the ACE transfer process must be very timely and reasonably designed to achieve the dual objectives of Sector accountability and practicable fishing operations. In many ways this system needs to operate like bank accounts in the electronic world that exists today.

NSC has participated in numerous workshops and discussions with NMFS regarding the timing of Sector ACE transactions, overages, and accountability.

The preamble of the proposed rule includes statements that do not reflect those discussions and which suggest an untenable system for addressing Sector ACE overages and accountability. The preamble does not appear to reflect the language

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in the proposed regulations either. Thus, NSC will not provide comments on the preamble.

The proposed regulations address Sector ACE accountability and ACE overages in two separate sections-- at section 648.87(b)(1)(ii)—“Areas that can be fished”, and at section 648.87(b)(1)(iii)—“Sector AMs”. These two sections propose two different standards of accountability for Sector ACE overages and even define the term “ACE overage” differently. It is not clear why.

The first section 648.87(b)(1)(ii)--“Areas that can be fished”, appears to apply only with respect to Sector accountability during the course of the fishing year. It states that a Sector “must project” when an ACE for each stock will be exceeded and “ensure that all vessels in the Sector cease fishing operations prior to exceeding it”.

This section also states that: “Once a Sector has harvested its ACE for a stock, all vessels in that Sector must cease fishing operations....unless and until it acquires additional ACE from another Sector”.

Finally, this section defines an ACE overage as occurring “as of the date received or purchased by the dealer, whichever comes first.”

NSC does not believe this is a reasonable or workable process for Sector ACE accountability and is not necessary to achieve the objectives of the FMP or the Agency. For example, the proposed timing of when an ACE overage occurs -- “as of the date received or purchased by the dealer, whichever comes first.” -- is not practicable. Further, the accounting for an ACE overage does not take into any consideration ACE transfer requests received and/or approved by NMFS. This seems inconsistent with one of the most basic purposes for making ACE transfers.

Based on its extensive discussions with NMFS, NSC believes that this section needs to be substantially revised to reflect these discussions, the objectives of the Amendment and the Agency, and the basic practical realities of Sector operations.

The second section 648.87(b)(1)(iii)—“Sector AMs” appears to apply both to the current fishing year and at or after the end of the fishing year. This section states:

“Should an ACE allocated to a Sector be exceeded in a given fishing year, the Sector’s ACE shall be reduced by the overage on a pound-for-pound basis during the following fishing year, and the Sector, each vessel, vessel operator and/or vessel owner participating in the Sector may be charged, as a result of said overages, jointly and severally for civil penalties and permit sanctions pursuant to 15 CFR part 904. For the purposes of this paragraph (b)(1)(iii), an ACE overage means catch of regulated species or ocean pout by vessels participating in a particular Sector that exceed the ACE allocated to that Sector, as of the date received or purchased by the

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dealer, whichever comes first, after considering all ACE transfer requests received and/or approved by NMFS during the current fishing year (including those that are submitted up to 2 weeks into the following fishing year), pursuant to paragraph (b)(1)(viii) of this section, unless otherwise specified pursuant to section 648.90(a)(5).”

This section suggests a much better approach to Sector ACE accountability than the former section discussed but still needs some revisions. We reiterate the comment above that the timing of when the ACE overage occurs –ie. “as of the date received or purchased by the dealer” is not workable and should be revised.

NSC notes favorably that unlike the pervious section discussed above, this section takes into account ACE transfers. NSC further notes favorably that this section appears to embrace the need to have the Regional Administrator to take into account and credit/debit ACE transfer requests immediately when they are “received”.

With further respect to the timing of when ACE transfer requests are to be credited/debited, NSC notes that section 648.87(b)(1)(viii)—“ACE transfers” states that—

“The Regional Administrator shall inform both Sectors in writing whether the ACE transfer request has been approved within 2 weeks of the receipt of the ACE transfer request.”

This is not a workable timeframe for ACE transfers to be credited. Sectors and vessel fishing operations will grind to a halt if transfers take 2 weeks to be credited to a Sector’s ACE account. ACE transfers need to be credited to/debited from the respective Sectors immediately upon the receipt by the Regional Administrator of the ACE transfer request (as implied by section 648.87(b)(1)(iii) above) in order for the Amendment 16 Sector system to work at all.

## **Recommendations:**

- Revise both section 648.87(b)(1)(ii) and section 648.87(b)(1)(iii) to consistently reflect the following timing elements:

(1) An ACE overage should be defined to occur as of the date the Sector submits its weekly report to NMFS which documents the overage. It will be impossible for a Sector to know that an ACE overage has occurred “as of the date received or purchased by the dealer”, nor would that be necessary to meet the objectives of the Amendment or the Agency.

(2) The Sector must be given the opportunity to submit a request for an ACE transfer at the same time it submits its weekly report in an amount at

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- least sufficient to cover the ACE overage documented in that weekly report.
- (3) The Regional Administrator must credit/debit the respective accounts of the Sectors involved in any ACE transfer immediately upon receiving the ACE transfer request and required documentation. If this process is followed, then the Sector should not be required to issue a “cease fishing” order to its vessels if the ACE transfer request is sufficient to cover the ACE overage in the weekly report.
  - (4) If a cease fishing order is necessary because a sufficient ACE transfer request is not submitted to the RA along with the weekly report documenting the overage, then the Sector must be given a reasonable amount of time ( X hrs?) to send such “cease fishing” notification to each of the relevant Sector vessels.
  - (5) Sector vessels must be given a reasonable amount of time ( X hrs ?) to receive the “cease fishing” notice and to actually cease fishing operations from the time the notice was sent from the Sector manager.
  - (6) Neither the Sector nor the Sector vessels involved should be held in violation or subject to OLE enforcement action if these timeline elements are complied with.
  - (7) If a Sector submits an ACE transfer request that was immediately credited to its account but which was subsequently disapproved by the Regional Administrator, the RA must notify the Sector immediately and the Sector must issue a “cease fishing” order to the relevant Sector vessels according to the timeframe in (4) until such time as the disapproved ACE transfer request can be rectified and approved.
  - (8) On an annual, fishing year basis, consistent with section 648.87(b)(1)(iii), Sectors should be given until 2 weeks into the following fishing year to balance its ACE accounts through ACE transfer requests before any Sector, vessel, vessel owner/operator, etc. is subject to any violation or joint and several liability.
- Revise section 648.87(b)(1)(viii)—“ACE transfers” in paragraph (B)—“Approval of an ACE transfer request” to reflect the need for the Regional Administrator credit/debit the respective accounts of the Sectors involved in any ACE transfer immediately upon receiving the ACE transfer request and required documentation.

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## **Preamble #8: Recordkeeping and Reporting Requirements**

### **Discussion:**

NSC appreciates that both NMFS and the Office of Management and Budget are interested in receiving comments on the issues of whether these requirements are over-burdensome, duplicative and necessary to achieve the agency's objectives.

NSC believes the Agency needs to embrace an electronic reporting system as quickly as possible and defer imposing unachievable paper reporting requirements and replace them with electronic reporting as soon as possible. NSC has invested heavily in creating an electronic infrastructure of onboard and web based tools designed to meet the increased demands of Sector management while removing redundancy to the extent possible.

The proposed system of reporting for sectors and sector vessels will unnecessarily drain limited sector management and fisherman time and human resources.

NSC believes the proposed system appears to contain a notable policy inconsistency. While this action falls short of implementing EVTR technology because the agency position is that the infrastructure and transmitting systems are not yet tested to a level deemed reliable, this same action imposes new requirements for Trip-End hail reports that will rely upon those very same systems.

Furthermore, this action fails to recognize the fact that while the agency will be waiting for paper VTRs before performing complex calculations, the private sector is expected to accomplish the same tasks in approximately 36 hours, or 1 ½ working days. The proposed action requires Sectors will have access to paper VTRs within 24 hours of an offload, manually transcribe all of this information into their private management software systems and download moving daily discard ratios and Dealer reports from NMFS SIMMS web portal. The reality is that unless the VTR data is entered into and transmitted via an electronic system, the tasks required to accomplish a weekly sector report will be more than overly burdensome, they are likely impossible.

NSCs comment here is that while fishermen and sectors continue to be responsible for producing, collecting and now physically delivering / mailing paper VTRs or risk non-compliance, the reporting frequency and complexities of this action demand electronic systems.

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This reality is not contained or analyzed within the proposed action yet the requirements silently impose duplicative demands on fishermen and sector managers.

## Trip-End Hail Report:

This trip level report requires nearly all of the data elements of a fully compliant VTR and is required to be sent via VMS 6 hours prior to crossing the demarcation line.

## Recommendation:

- Sector vessels will be using onboard reporting software to enter the required data and transmit via VMS messaging. Allow sectors to include the remaining fields of a fully compliant VTR and utilize same to meet all Vessel Trip Reporting requirements. Vessels can still use the backup systems for DSM contained in their DSM programs and Paper VTR backup if no confirmation is received from the DSM system.

## Sector Weekly Report:

Fisheries Statistics Office of the Agency will be applying daily discard rates to the dealer and VTR information they receive. The FSO generated figures will rule and overwrite anything a sector submits. Sectors need to have access to SIMMS daily discard rates so they can visually monitor their sector ACE. But the need to do the complex calculations for each trip within the narrow window of time allowed is unreasonable and unnecessary.

## Recommendation:

- Eliminate the requirement for sector managers to compute daily discard rates for the previous week and replace with a feedback loop that updates each week's report with FSO reconciled report that includes the discard calculations. Sectors could provide VTR reported discards in the preliminary portion of the weekly report. Note: NSC is working with other sector proponents to provide the agency with a comprehensive data flow proposal for consideration and discussion.

## Increased Reporting Frequencies:

NSC believes this requirement to increase reporting frequency from weekly to daily unnecessary and overly burdensome. The observations in the previous comments are exaggerated here especially while the continued requirement of paper VTRs and daily discard calculations remain unchanged. NSC does not believe a more frequent reporting than weekly will improve the sectors ability to manage their ACE. In fact, we believe the contrary to be true as limited Sector management resources are

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diverted to meet reporting requirements and away from managing the sector ACE directly with the members. Also, dealer reports will not be available daily.

Recommendation:

- Remove requirement to increase Sector Reporting to daily.

At Sea Monitor Educational Requirements:

NSC strongly supports the minimum education requirements for at sea monitors for sector vessels. The primary responsibility of an at sea monitor is catch verification. Unlike NEFOP observers that gather scientific data, at sea monitors are responsible for witnessing catch and discards of sector vessels. It is important to note that holding them to the same educational standards as NEFOP observers is not only unnecessary but will have the adverse impact of creating an increased financial burden for sector vessels. At sea monitors and NEFOP observers are tasked with different responsibilities which justify the different educational requirements.

Recommendation:

- Maintain education minimum requirements for at sea monitors as proposed in this amendment.

## **Preamble #9 Effort Control – GOM Haddock sink gillnet pilot program.**

NSC supports the implementation of the pilot program for gillnet vessels to target haddock with 6” gillnet gear. NSC requests that NMFS modify the NEFS operations plans for gillnet fishermen to utilize 6” gillnet gear effective upon the RA approving the use of such gear at any point during A16.

## **Preamble #14: Sector Measures – Universal Sector Exemptions**

**Discussion:**

Section 648.87(c)(2)(ii) sets forth the universal exemptions that apply to all Sectors including section 648.87(c)(2)(ii)(D) which provides an exemption GB Regulated Mesh Area. The same exemption does not apply to the GOM Regulated Mesh Area (RMA).

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NSC believes that trawl fisheries targeting the fully-rebuilt GOM haddock stock would benefit substantially from this more selective gear for two reasons. First, it would provide for an increase in the retention of GOM haddock without increasing the retention of GOM cod (noting that this cod stock is also at historically high levels). Second, the use of smaller 6-inch codend mesh size in the haddock separator trawl or Ruhle trawl in the GOM RMA would facilitate increased utilization of the Acadia redfish stock. Under the current requirement of a 6.5-inch codend, the allocated ACE of this redfish stock is likely to remain substantially underutilized contrary to the MSA objectives of National Standard 1 to achieve optimum yield.

NSC notes that providing this flexibility for using smaller mesh in the GOM would not undermine the conservation of GOM stocks. Ultimately, Sector fishing mortality is limited to hard TACs which are subject to substantial dockside and at-sea monitoring requirements and the requirement to retain all legal sized fish. NSC further notes that allowing for the use of the haddock separator trawl and the Ruhle trawl in multiple stock/management areas reduces the burdens on both enforcement and fishing operations.

Furthermore, NSC supports the use of 6" gillnet gear for the purpose of targeting haddock in all areas. With the current 6 ½" requirement, this gear type is no longer effective for targeting haddock.

The implementation of sectors and hard TAC controls is an explicit change towards reduced reliance upon effort controls that cause inefficiencies. There is no better example of an antiquated effort control than a minimum mesh sizes that will retain the vast percentage of legal sized, healthy, target species.

## **Recommendation:**

- Expand the current universal exemption set forth in section 648.87(c)(2)(ii)(D) to include an exemption from the minimum codend mesh size restrictions for trawl gear set forth in section 648.80(a)(3)(i) when using of a haddock separator trawl or a Ruhle trawl with a 6-inch minimum mesh in the codend when fishing within the GOM Regulated Mesh Area.
- NSC requests that NMFS modify the NEFS operations plans for gillnet fishermen to utilize 6" gillnet gear effective upon the RA approving the use of such gear at any point during A16

## **Preamble #14: Sector Measures – Sector Allocations, Potential Sector Contribution (PSC), and Annual Catch Entitlement (ACE)**

### **Comment 1 – Potential Sector Contributions**

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## **Discussion:**

As was noted in the cover letter, Amendment 16 would establish a catch share system that was not based on and is not consistent with the requirements set forth under MSA section 303A governing Limited Access Privilege Programs (LAPPs). This was a deliberate decision by the NEFMC based on input from the NMFS Regional Administrator suggesting that Sectors did not fall under the MSA definition of LAPPs.

As set forth in section 648.87(b)(1)(i)(A), each Sector is allocated an ACE for each allocated stock “based upon the cumulative PSCs of vessels participating in each Sector”. Section 648.87(b)(1)(i)(E) states: “The PSC calculated pursuant to this paragraph (b)(1)(i)(E) shall remain with the permit indefinitely, but may be permanently reduced or eliminated due to a permit sanction or other enforcement action.”(emphasis added)

NSC notes that while NMFS and the NEFMC may or may not have reached a correct legal interpretation not to apply MSA section 303A to Sectors, there should be no question that if the NEFMC takes a future action to establish an individual fishing quota (IFQ) system under the Northeast Multispecies FMP, that such action and system would indeed be subject to the requirements of section 303A governing LAPPs. The definition of a Limited Access Privilege set forth in MSA section 3(26) includes an explicit reference to an IFQ.

The statement at section 648.87(b)(1)(i)(E) that PSCs “shall remain with the permit indefinitely” suggests that “indefinitely” might include if and when the NEFMC establishes an IFQ program at some time in the future to replace the Sector management system established under Amendment 16.

NSC strongly questions the validity of such an interpretation. The PSC baselines and resulting PSCs established under Amendment 16 were established through a process outside of and not compliant with the comprehensive MSA section 303A LAPP process and requirements. The Amendment 16 PSC baselines and resulting PSCs were for the purpose of Sector allocations and management only, and cannot be automatically relied-upon as the basis for a future IFQ system that is outside of the Amendment 16 Sector system.

Allocations made under a future IFQ or other LAPP system must instead be the subject of the very comprehensive and deliberate standards and process set forth in MSA section 303A and be found consistent with numerous other provisions of the MSA. While NSC notes that the proposed definition set forth in section 648.2 states that PSCs are “for the purposes of participating in a Sector and contributing to that Sector’s ACE for each stock”, the statement at 648.87(b)(1)(i)(E) that PSCs “shall remain with the permit indefinitely” is of very serious concern and needs to be

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revised to reflect these points. PSCs generated through a non-LAPP-compliant process cannot convey automatically to, or provide the currency for, an IFQ system that must be developed through the LAPP process.

## **Recommendation:**

- Revise section 648.87(b)(1)(i)(E) to very explicitly clarify that while PSCs may remain with the permit within the strict context of the Amendment 16 Sector allocation and management system, PSC baselines and resulting PSCs do not apply or remain with the permit for the purposes of a subsequently-implemented IFQ or other catch share system subject to the MSA section 303A LAPP process and requirements.
- Consider including the following text in section 648.87(b)(1)(i)(E):

"Notwithstanding Handgear A permits, Amendment 16 continues to rely upon Amendment 13 DAS allocations as the common individual limited access currency for all permit holders and is the only access currency that can be used by an individual operator independent of a Sector. Amendment 16 PSCs and their respective monetary values should not be relied upon as future values outside the Sector Allocation and Management system."

## **Comment 2 – Sector Allocations / Carry-Over**

### **Discussion:**

Section 648.87(b)(1)(i)(C) sets forth the rules governing carry-over by Sectors of unused ACE into the following fishing year. With the exception of the Eastern GB stocks, Sectors may carryover 10 percent of their unused ACE of a stock and apply that underage to the ACE for that stock in the following fishing year. As discussed in the proposed rule preamble, section 648.87(b)(1)(i)(C) does not allow unused ACE of Eastern GB stocks to be carried-over and apply to the ACE for those stocks in the Eastern US/Canada Area in the subsequent fishing year. The reason given is that because US/Canada stocks are allocated to the US on an annual basis, such carry-over “could result in US harvest of these stocks exceeding the US portions of these stocks for a particular fishing year”.

NSC agrees that it is possible that such carry-over could have this result. NSC also notes that it is also possible that such carry-over would not have that result, particularly if as a result of the application of more conservative rebuilding requirements pursuant to MSA section 304(e)(4), the US is constrained by regulation from fully harvesting its portion of the US/Canada allocation each year.

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Thus, section 648.87(b)(1)(i)(C) should be modified to enable carry-over of unused ACE of all US / Canada stocks including GB yellowtail flounder and Eastern GB stocks into the following year so long as the US portion of the annual allocation of each US/Canada stock is not exceeded. This would help mitigate the inequitable adverse impacts of MSA section 304(e)(4) rebuilding requirements on US fisheries for stocks covered by the US/Canada Understanding.

## **Recommendation:**

- Revise section 648.87(b)(1)(i)(C) to clarify that Sectors may carry-over up to 10 percent of unused ACE of US / CA stocks managed under the agreement so long as the resulting allowable US catch will not exceed the US share prescribed by the TMGC.
- Support legislative efforts to clarify that the exemptions for internationally managed fisheries in section 304(e) apply with respect to stocks covered by the US/Canada Understanding within the US/Canada Management Area.

## **Preamble #18: Transfer of ACE by NOAA-Sponsored Permit Banks**

### **Discussion:**

NSC notes that NMFS is unilaterally proposing that any state-operated permit bank be considered a Sector sponsored by NMFS.

Notwithstanding NSC's support of the concept of community permit banks and their potential to mitigate permanent loss of fishing access from historical fishing communities, this NOAA sponsored concept raises serious concerns.

NSC and the entire NE groundfish community had to follow a very protracted and demanding process with very specific and rigid requirements and timelines for establishing a Sector including the submission of extensive documentation. All proposals to establish a Sector were considered and adopted by the NEFMC through a very deliberate and transparent process, and were included in the Amendment 16 document for final approval and implementation.

During the numerous years it took the NEFMC to develop Amendment 16 the topic of NOAA-sponsored permit banks was never raised. Establishment of a State-owned permit bank as a NMFS-sponsored Sector could have profound implications which, without deliberation and thoughtful analysis, are not well understood. The inclusion of this provision within the Proposed Rule does not provide sufficient detail to enable NSC or others to provide constructive comments.

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NSC is concerned that NMFS is proposing to circumvent the NEFMC and the entire Sector development, approval and implementation process by simply declaring any State-sponsored permit bank to be a Sector in this Proposed Rule. The establishment of multiple State-owned permit banks without limitations and caps, could have profound financial and anticompetitive implications for all Sectors and the entire sector allocation and management system. These implications are not well understood and should have been considered during the extensive Amendment 16 deliberations.

NSC is at a loss as to what standards, procedures, requirements or limitations will apply to these new State-operated Sectors. Amendment 16 does not contain ownership caps and nowhere does it contemplate the potential transformation that could occur if all of the states in the region feel compelled to compete for federal dollars to fund permit banks. The proposed rule language does not limit this concept to a pilot program for the state of Maine, but instead proposes a gaping placeholder in the regulations without council or stakeholder deliberation. It is also unknown what the implications are of having the Federal agency with principal responsibility for implementing and enforcing Amendment 16 Sector requirements serving as a sponsor of a State-operated Sector.

## **Recommendation:**

Work with the NEFMC and public under a Framework Adjustment which will provide a fully vetted, informed and deliberate design.

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