

NORTHEAST SEAFOOD COALITION

April 30, 2012

TO: Capt. Paul Howard
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

RE: Groundfish Amendment 18 Scoping Comments

The Northeast Seafood Coalition is pleased to provide the following comments on the Amendment 18 scoping document. This cites 2 objectives identified by the Council for Amendment 18:

- 1) *“To consider the establishment of accumulation caps for the groundfish fishery; and*
- 2) *To consider issues associated with fleet diversity in the multispecies fishery.”*

The document further states that the resulting *“rules are intended to reduce the likelihood that the groundfish permit holders will control excessive shares of the resource and that over-consolidation will occur within the fleet.”*

NSC will address these two objectives and the issue of excessive shares and consolidation in greater detail below, but provides the following overarching points:

- The groundfish fishery is presently faced with an overwhelming number of threats which have grown in number and severity since this scoping process began including—
 - massive reductions in the ACLs of a number of core stocks including GOM cod, GB yellowtail flounder, and GB cod, CC/GOM yellowtail flounder, GOM haddock, witch flounder and plaice;
 - potential closures or other regulatory restrictions associated with protected species interactions (harbor porpoise and sturgeon); and
 - the continuing challenges associated with the transition to sector management.

Thus, any discussion of “next steps” for groundfish management must be highly sensitive to unintended consequences and disruptions to a fragile fishery economy trying to adapt to the sector management system.

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- Consequently, the financial viability and future of this fishery is in serious jeopardy as never before. If implemented, the concepts contemplated by Amendment 18 further have the strong potential to add further uncertainty and instability for business owners and increase costs by reducing efficiencies(such as through input controls). Such stresses could prove fatal to many small businesses.
- The management responses to these reductions in groundfish stock ACLs and protected species interactions present a set of powerful stresses to fishing businesses that may force significantly greater changes in the demographics and diversity (and consolidation) of the overall fishery than any aspect of the sector management system ever can or will.
- NSC deliberately structured the Northeast Fishery Sectors (NEF sectors) to represent the full diversity of the fishery throughout the region, and provided each of these sectors with the necessary administrative and operational tools to protect and preserve their unique diversity within the context of sector management.
- NSC believes that legitimate goals concerning diversity, excessive shares and consolidation should and will be most effectively addressed by the individual Sectors rather than through a Council regulatory process.

Accumulation Caps

NSC is very sensitive to the need to prevent the accumulation of excessive shares of groundfish resource as well as to the practical effects of mechanisms designed to achieve this objective. NSC calls the Council's attention to two critical points.

- 1) While the issue of excessive shares is a valid concern within a LAPP or a non-LAPP management system, the agency has made a definitive legal determination that the sectors are not LAPPs as defined in the MSA and that sector allocations are not permanent.

Underlying this reality is that sector membership is voluntary and so fishermen can choose between two alternatives—sector management or the 'common pool'. Thus, any decision to address excessive shares through an accumulation cap must consider the effect of such a cap on both alternatives.

NSC notes that the allocation currency in the 'common pool' alternative are Days At Sea (DAS) and that the application of an accumulation cap would limit the number of allocated DAS any individual fishermen might accumulate. With this in mind, NSC calls on the Council to consider what level of DAS allocations it would take for a fisherman to break even and survive in the common pool.

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The advent of ACLs and AMs has resulted in a suite of common pool measures including differential DAS counting. As was seen following FW42, the need for vessels to accumulate additional DAS to survive differential counting is well documented. This reality cannot be overlooked when considering accumulation limits.

- 2) NSC is concerned that the consideration of accumulation limits and other concepts being discussed in the context of this amendment may be driven by the desire by some to ‘backfill’ Amendment 16 sector management to qualify as a LAPP under the Magnuson-Stevens Act (MSA). NSC notes that the agency has made a definitive legal determination that the sectors are not LAPPs as defined in the MSA and that sector allocations are not permanent. With these points in mind, NSC has adopted the following position:

“It is NSC’s position that a LAPP should not be developed unless and until fishermen themselves develop and propose a LAPP through the petition process set forth in section 303A(c)(6)(B) of the Magnuson-Stevens Act (MSA), (rather than being developed from the “top-down” though a Council-initiated process), and that all elements of the Amendment 16 sector system including the allocation formula are on the table for reconsideration in that process. If Amendment 18 develops into an effort to retrofit the current Amendment 16 allocations and the sector system to qualify as a LAPP, then NSC must oppose it.”

Fleet Diversity

NSC is also extremely sensitive to the need to preserve fleet diversity and has invested deeply in achieving this objective. The NSC has played a pivotal role in the “Northeast Multispecies” (groundfish) fishery and its management as the sponsor of 12 of the 17 sectors now operating in the fishery including one serving as a ‘lease-only’ sector. At this writing, 254 trawl, gillnet and hook gear vessels with 514 groundfish permits are members of the NSC-sponsored “Northeast Fishery Sectors” (NEF sectors); operating in ports from Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York.

Consistent with its longstanding support for family-owned businesses and a diverse fishery, NSC sponsored and designed the NEF sectors to be inclusive of the full diversity of fleet and community demographics that were representative of the entire groundfish fishery. This included vessel size, gear, target stocks and home ports throughout the full range of the fishery. The opportunity to join NEF sectors was open to all groundfish permit holders regardless of the size of their initial allocations or whether they were members of NSC.

In addition, NSC restructured the initial sector membership fee for all active sector members to accommodate the financial challenges faced by many fishermen in order to make it possible for

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a greater diversity of fishermen to participate. While the collection of sector membership fees was essential to cover the administrative and legal costs associated with sector establishment and development, NSC was able to reduce these fees in part through securing state and federal funds to help cover these necessary costs. In all respects, NEF sectors were developed with a deliberate and unique commitment to openness and inclusiveness.

Further, NSC developed the NEF sectors to be community-based and to have an internal self-governance system designed specifically to empower each sector (through its operations plans and associated contractual documents) to protect and preserve its unique demographic and economic integrity. Each sector was established as an individual 501(c)(5) corporation with the ability to exercise independent, sovereign control over its allocations and internal decision-making process involving such operational issues as catch management, trading, reporting, enforcement and joint and several liability.

In anticipation that sector operational costs and efficiencies would become a significant challenge to the viability of individual sectors and the sector system as a whole, NSC further developed the Northeast Sector Service Network (NESSN) to provide the NEF sectors with the benefits of administrative and operational economies of scale in performing the many sector functions required under Amendment 16. NSC now serves as the policy voice for the NEF sectors; providing all NSC members with a collective, more effective voice in the fishery management process.

The NSC designed the NEF sectors so as to foster a diverse, small-scale, locally-owned and operated fishery. Each sector is rooted in a particular community, with communities defined by localities, fishing styles, and other commonalities. Some of the NEF sectors are internally diverse; examples are NEF sector 2 whose members' active vessels range in size from 36 feet to 97 feet, and NEF sector 13 whose members' primary ports span four states. Others are more internally homogenous; examples are NEF sector 12 whose members' active vessels vary in size by a maximum of 7 feet, with a median size of 46 feet, and NEF sector 8 whose members' active vessels vary in size by a maximum of 10 feet, with a median size of 75 feet. (An "active" vessel is one declared active in a given fishing year.) Taken together, the 12 NEF sectors contain and represent the full range of diversity in the groundfish industry, along numerous dimensions: locality, business size, vessel size, gear, and others. Some indication of this full range of diversity can be gleaned from the following tables:

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Permits per entity, NEF Sectors 2-13 combined, FY 2011 (254 entities, 514 permits)			
	number of entities	percent of entities	cumulative percent of entities
1 permit	168	66.1%	66.1%
2 to 5 permits	74	29.1%	95.3%
more than 5 permits	12	4.7%	100.0%

Permits per business for all businesses in NEF sectors 2-13 with one or more permits DECLARED ACTIVE ("active businesses"), FY 2011 (174 active businesses, 378 permits among them)			
	number of active businesses	percent of all active businesses	cumulative percent of all active businesses
1 permit	99	56.9%	56.9%
2 to 5 permits	65	37.4%	94.3%
more than 5 permits	10	5.7%	100.0%
Totals	174	100.0%	

Vessel Length Data for Vessels in NEF Sectors 2-13 that Made Sector Trips in FY 2011 (through 4/7/2012)				
<i>Length</i>	<i>Number of vessels</i>	<i>Percent of all vessels</i>	<i>Cumulative number</i>	<i>Cumulative percent</i>
small (0 to 50 ft)	94	48.0%	94	48.0%
medium (>50 to 75 ft)	59	30.1%	153	78.1%
large (>75 to 100 ft)	43	21.9%	196	100.0%
Totals	196	100.0%		

Given NSC's investment in preserving fleet diversity within the NEF sectors, NSC closely monitors important aspects of sector operations and composition. As our preliminary analysis presented in Appendix 1 suggests (see below), dramatic changes to fleet diversity have not occurred and there appears to be a relatively healthy and balanced flow of fish traded among the various demographics of the fleet. Preliminary analysis suggests that individual fishing businesses are working hard to develop business plans and portfolios that enable them to fish for the types and numbers of fish required to operate effectively and in compliance with the regulations. ACE trading has been and will continue to be a vital component in the fishery.

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With this information in mind, many of our fishermen are concerned that Amendment 18 might place additional layers of fishery input controls and constraints on sector operations including their essential ability to trade or lease their ACE as described above. Such external controls might undermine the intended benefits of 'output control' management including the individual ability of each NEF sector to pursue economic viability and preserve their unique demographic identities. As explained above, NSC went to great lengths to ensure that NEF sectors were provided with a critical level of local, small business control and the tools for sector self-determination as a deliberate alternative to imposing rigid external fishery input and sector operational controls. NSC urges very careful consideration of these issues and general caution for any unintended if well-intentioned consequences of such controls. Indeed, sector management has been characterized as an opportunity for fishermen to have greater control over the manner in which they harvest and manage their ACE. The Council should maximize opportunities/flexibility for sector and fishermen 'self-determination' in Amendment 18.

In addition to addressing the intense challenges associated with new stock assessments and protected species interactions, NSC intends to remain focused in the coming year on enhancing the tools and opportunities for sectors and our fishery to achieve economic viability, not on restricting them. Perhaps the greatest priority will be those actions that lead to greater utilization of the Optimum Yield (OY) in the fishery in part by increasing access to groundfish stocks through the reevaluation of current mortality closures and other 'input control' artifacts of the previous DAS system. Equally important is to continue efforts to improve stock assessments and all aspects of groundfish science including especially the data used in such assessments. Increasing the value of landed fish; reducing discards and associated observer costs; and reducing other sector monitoring and operational costs are also central to improving the economic viability of sectors and the fishery overall.

NSC appreciates the opportunity this opportunity to provide input to the Council on these important issues. NSC has discussed these and other related issues extensively and may provide more specific input on additional issues in the future if and when the actual draft Amendment 18 is issued. Thank you for your consideration.

Sincerely,

Jackie Odell

Jackie Odell,
Executive Director

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Appendix 1:

Sectors, Vessel Lengths, and ACE Trades, FY 2011 (through 4/20/2012)

(Initial allocation and trade data downloaded from www.nero.noaa.gov/acetransfer/ on 4/20/2012)

Sectors listed in order of highest % increase, over initial allocation, in GOM cod, from ACE trading, FY 2011 (thru 4/20/2012)

Sector	Vessel Length Data for Northeast Fishery Sectors' Vessels DECLARED ACTIVE in FY 2011 (in feet, rounded to the nearest whole foot)				Net Increases and Decreases Due to ACE Trades, GOM Cod and All Stocks, FY 2011 (thru 4/20/2012)		GOM Cod Data, FY 2011 (thru 4/20/2012) (lbs, live weight)		All Stocks Data, FY 2011 (thru 4/20/2012) (lbs, live weight)	
	min	max	mean	median	GOM cod: net trades as % of initial allocation	ALL STOCKS: net trades as % of initial allocation	GOM cod: Initial ACE Allocation	GOM cod: net trades (in - out)	ALL STOCKS: Initial ACE Allocation	ALL STOCKS: net trades (in - out)
Fixed Gear Sector					120.0%	-16.2%	229,995	275,930	11,752,908	-1,900,265
NEFS 6	62	87	72	70	59.3%	28.6%	281,266	166,793	5,925,195	1,693,909
NEFS 2	36	97	55	48	39.8%	13.4%	2,296,950	915,175	21,515,728	2,874,619
NEFS 10	35	61	45	44	20.5%	19.3%	639,572	131,110	2,502,343	483,470
NEFS 9	68	88	77	76	8.6%	19.1%	191,443	16,378	17,361,663	3,317,595
NEFS 12	43	50	46	45	2.9%	6.8%	270,966	7,902	1,626,826	110,035
Port Clyde Sector					2.2%	28.6%	471,297	10,554	2,861,131	817,752
NEFS 3	30	56	40	40	-3.8%	-3.3%	2,012,022	-76,023	6,498,831	-213,716
NEFS 8	72	82	76	75	-7.5%	2.4%	53,171	-4,004	7,108,971	168,318
Sustainable Harvest 1					-14.0%	-3.7%	2,132,631	-298,959	57,417,461	-2,099,504
NEFS 11	32	51	41	42	-14.2%	-4.7%	1,470,657	-209,199	4,547,797	-213,773
Tri-State Sector					-23.7%	-17.4%	94,090	-22,314	1,751,912	-304,485
Northeast Coastal Comm.					-30.7%	-23.5%	85,613	-26,257	567,149	-133,319
NEFS 7	45	83	66	71	-50.3%	-5.9%	51,902	-26,100	5,205,516	-309,308
NEFS 13	62	90	75	77	-58.5%	1.9%	81,531	-47,732	15,578,523	297,748
NEFS 4	no active vessels				-79.1%	-32.6%	864,614	-684,253	10,354,123	-3,370,405
Sustainable Harvest 3					-98.8%	-24.5%	71,864	-70,995	2,428,129	-595,555
NEFS 5	45	80	65	67	-99.4%	-10.7%	13,731	-13,643	4,272,053	-458,014
Maine Permit Bank Sector					-100.0%	-78.0%	44,363	-44,363	211,747	-165,102
Grand Total					0.0%	0.0%	11,357,676	0	179,488,006	0