

NORTHEAST SEAFOOD COALITION

March 18, 2011

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

RE: Comments on the Proposed Rule for NE Multispecies Framework Adjustment 45
Ref: 0648-BA27

The Northeast Seafood Coalition (NSC) is pleased to provide the following comments and recommendations on the Proposed Rule to implement Framework Adjustment 45 to Amendment 16 of the NE Multispecies FMP. NSC's broad membership includes many groundfish fishermen and fishing related businesses throughout the Northeast Region.

The following comments include the input of the 12 NSC-sponsored sectors now whose membership includes more than 300 active trawl, gillnet and hook gear vessels operating from ports from Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut and New York.

The following comments follow the order of the Proposed Measures presented in the preamble of the Proposed Rule.

1. Status Determination Criteria for Pollock

NSC strongly supports the proposed action to integrate the results of the 2010 pollock stock assessment into the FMP including the proposed revised status determination criteria for the stock. This action will essentially codify the emergency action previously taken by the Secretary to implement those new assessment results.

The results of the 2008 GARM III assessment found the pollock stock to be overfished and subject to overfishing. Noting the extreme uncertainties associated with the assessment results which were also inconsistent with observations of pollock abundance in the fishery, NSC joined others in the groundfish industry to press for a new and improved stock assessment in 2010. The results of the new 2010 assessment were that the status of the Pollock stock was changed to 'not overfished and not subject to overfishing'.

The proposed action will ensure that the significant economic benefits of the improved 2010 pollock assessment will continue for the groundfish fishery.

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5. Annual Specifications for the U.S./Canada Management Area

NSC played a leadership role on behalf of the groundfish industry in securing enactment of the International Fisheries Agreement Clarification Act in January, 2010. This legislation clarifies that the US-Canada Transboundary Resources Sharing Arrangement is to be treated essentially as if it were an “international agreement” for the purposes of the Magnuson-Stevens Act (MSA) section 304(e)(4) rebuilding provisions. Specifically, the GB yellowtail founder stock will not be subject to the arbitrary 10-year rebuilding timeline set forth in that section but will instead be sustainably managed and rebuilt according to the strategy employed under the Arrangement which is more reflective of the true population dynamics of the GB yellowtail flounder stock. In response to this statutory change, the Transboundary Management Guidance Committee (TMGC) recently revised the shared GB yellowtail flounder TAC for fishing year 2011 to a level that will both prevent overfishing and rebuild the stock consistent with the broader goals of MSA section 304(e).

Consistent with the TMGC’s action, NSC strongly supports the proposed action to disapprove the GB yellowtail flounder ABC, ACL and US TAC that were originally adopted by the Council in FW45 prior to the enactment of this legislation, and to revise them accordingly. NSC believes this action presents new information and unforeseen circumstances that clearly authorize the Secretary to take an emergency action under MSA section 305(c) through the final rule for FW45. These revisions will provide very important economic benefits to both the groundfish and scallop fisheries, and will enable greater utilization of the optimum yield of other groundfish stocks consistent with National Standard 1.

NSC further notes that this legislation and proposed action will provide a critical example of how and why the current US management strategy for rebuilding overfished stocks, especially those in a multispecies fishery, should be revised to abandon arbitrary rebuilding timeframes in favor of an Fmsy-based strategy that will reflect the ecosystem realities of future stock recruitment, natural mortality and growth that simply cannot be predicted over a long term rebuilding plan.

10. Dockside/Roving Monitor Requirements

In general, the NSC and the leadership of the 12 sectors operating under the Northeast Sector Service Network (NESSN) have consistently questioned the utility of the dockside roving monitoring program.

NSC reiterates this position here and recommends that FW45 revise the current Amendment 16 monitoring requirements to eliminate the dockside roving monitor provisions.

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We continue to believe that the current system is highly inefficient and will become an unsustainable and unjustified cost to our industry in the future when federal funding ends. Notwithstanding the stated intent of the proposed action to address this concern, the proposed changes to the dockside monitor requirements will actually increase, not decrease these costs.

NSC does not support the proposed action and suggest that substantial improvements to the program could be made based on a more careful analysis of the current system and with greater reliance on feedback from the system users rather than internal agency views.

Nevertheless, if the 100 % dockside monitoring (DSM) coverage requirement is retained, then the NSC offers the following specific comments on the proposed actions in order to acquire some level of utility. To reiterate, these comments reflect the views of NSC and the NESSN leadership after considerable consideration.

- (1) Boarding a vessel in order to determine that all fish has been offloaded does not achieve the Agency's goal of improving the utility of the DSM program and would increase the vessel owner's liability and insurance costs.

The economic impact analysis set forth in the proposed action states:

"Because dockside monitoring service providers are required to have sufficient insurance to cover liability associated with dockside monitor injury, this should result in no impact to either inspected vessels or service providers."

NSC strongly rejects this conclusion. The referenced insurance coverage will not protect individual vessel owners from civil actions taken by family members of a DSM that may be injured in the course of inspecting the vessel. Vessels wishing to protect themselves against such civil actions will be required to either purchase new coverage or increased coverage at significant cost in increased premiums.

- (2) The Agency should allow Sectors to use DSM data as a proxy for Dealer data in order to increase the utility of the program. Currently, the only two choices under the NMFS Weekly Reporting guidelines are to identify data in the report as being either Dealer or VTR based data.
- (3) The requirement for roving monitors to conduct multiple inspections of truck offloads should be eliminated. The current DSM Standards specify that if a vessel offloads to a truck with the weigh-out occurring at a later point, the DSM roving monitor must witness both the offload to the truck and the truck offload and weigh-out at the dealer. The standards should be changed so that the roving monitor is only required to witness the vessel offload to the truck. The current approach is inefficient and the cost is excessive to those vessels/sectors that must use trucks to reach a dealer.

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- (4) NSC supports the proposal to remove dockside/roving monitoring requirements from the list of reporting requirements at § 648.87(c)(2)(i), and to allow individual sectors to request an exemption or partial exemption from DSM roving monitoring requirements as part of their annual operations plans.

11. Sector Measures.

NSC supports the measures put forward by NESSN for the Operations Plans Proposed Rule.

NSC has repeatedly stated that the current costs of the Amendment 16 dockside and at-sea monitoring and reporting requirements would be completely unsustainable by the sectors at this time and for the foreseeable future. Improvements in stock status and utilization as well as in sector cost efficiencies remain far from sufficient to enable sectors to assume those costs and remain viable. Implementation of the current A16 requirement for sectors to assume those costs beginning in FY2012 after only two years of operation and stock rebuilding would likely result in the complete collapse of the sector system and bankruptcy of the fishery.

Sector Exemptions:

NSC supports the recommendation to exempt sector vessels operating west of 72 30 W long and using larger mesh in the monkfish fishery from the dockside / roving monitor program. NSC also supports the ability of Sectors to request an exemption from the dockside / roving monitoring program if the dockside monitoring program is not eliminated in FW 45 as recommended earlier. This should be available for all Sectors whether located in a small or large port.

At-Sea Monitoring:

NSC strongly supports the proposed action to delay the industry's responsibility for developing and paying for an at-sea or electronic monitoring program by one year. However, NSC notes that at this time it appears the situation is not likely to improve sufficiently to enable the sectors to assume these costs in FY2013. NSC strongly encourages all possible avenues to be pursued to postpone industries responsibility to incur the cost of At Sea Monitoring (and Dockside monitoring if continued) until such time as industry is profitable again.

14. Corrections and Clarifications

Carry-over of Unused ACE:

NSC is extremely concerned with the stark inconsistency between the language in the preamble used to explain how the proposed action would interpret and implement the 10-

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percent carry-over provision in Amendment 16, and the actual regulatory language to amend 50 CFR Part 648 set forth in the proposed rule.

NSC believes that a rational reading of the proposed regulatory language if considered on its own merits presents the correct and appropriate interpretation of Amendment 16 carry-over provision.

At the beginning of each fishing year, all sectors are eligible to carry-over an amount of ACE equal to up to 10-percent of their original sector ACE allocation for each stock that remains unused at the end of the fishing year into the next fishing year. NSC concurs with this interpretation which appears clearly stated in the proposed regulatory language. NSC also concurs with the exclusion from this provision of GB yellowtail flounder.

However, the preamble language adds the following proviso that is inconsistent with the proposed regulatory language and any reasonable interpretation of the Amendment 16 carry-over authority:

"... provided the sector has not harvested more than 90 percent of its original ACE allocation for that stock by the end of the FY."

We find no basis for this very narrow limitation on the application of the carry-over provision and note that a strict reading of that language would have perverse consequences on sector operations and implementation of the carry-over provision.

For example, as intended, a sector may acquire ACE from other sectors during the course of the fishing year. The harvested amount of this acquired ACE added to the harvested amount of the sector's original ACE of that stock may very well exceed 90 percent of its original ACE for that stock by the end of the fishing year. In fact, that is almost surely to be the case in most instances. This would automatically disqualify that sector from being able to carry-forward up to 10 percent of its original ACE allocation for that stock even though the sector may have unused ACE for that stock at the end of the year. In this way the preamble would effectively destroy the utility of the carry-over provision in Amendment 16, distort the sector ACE trading system, and leave sectors with large amounts of unused ACE each year.

A further concern is that any perceived ambiguity in the proposed regulatory language might lead the agency to look to the preamble language for guidance on interpreting and implementing the regulatory language. This would lead to an erroneous and harmful conclusion as to the Council's intent for this provision in Amendment 16.

NSC strongly recommends that this preamble language be removed and a clarification provided in the final rule that is consistent with the otherwise clear meaning of the proposed regulatory language.