

April 18, 2005

TO: Pat Kurkul
Regional Administrator, Northeast Region
National Marine Fisheries Service

RE: Comments on the Proposed Rule for Groundfish Framework 40B

(1) DAS Transfer Program Modifications

Federal Register Page: 70 FR 15813-15814

Section: 648.82 Effort-control program for NE multispecies limited access vessels.

Recommendation: Approve proposed measures to reduce the conservation tax on Day at Sea (DAS) transfers to 20% and remove the requirement that vessels participating in DAS transfer must fall within the tonnage upgrade restrictions.

Explanation:

In its comments on the Amendment 13 Proposed Rule and FSEIS, NSC expressed concern that the large disparity between the 40% tax on DAS transfers and a zero conservation tax on leases would effectively render the DAS Transfer Program useless. If both DAS Transfer and Leasing Programs are to exist, the conservation tax on DAS transfers should be more or less on par with the conservation tax (zero) on leases. NSC reiterates that fishermen should have a real choice between making temporary or permanent decisions about their business plans as they relate to DAS transfers and leasing.

In fact, the experience since implementation of Amendment 13 has confirmed that the DAS Transfer Program as structured in Amendment 13 is completely ineffective. Therefore, NSC supports the reduction of the conservation tax on the DAS Transfer Program to 20% as it at least moves in the direction of parity with the Leasing Program. The proposed elimination of the tonnage permit upgrade restriction also makes this Program more accessible to a larger number of potential users and would be an improvement.

Nevertheless, NSC remains concerned that the DAS Transfer Program, like the Leasing Program, has the potential to produce an unanticipated and undesirable socio-economic restructuring of the groundfish community.

For some number of fishermen, an effective DAS Transfer Program would certainly promote efficiency and partially mitigate the economic impacts of DAS reductions and other management measures necessary for rebuilding. However, there is a broad disparity in the

ability of NE multispecies permit holders to access adequate capital to “stack” permits and the associated DAS. NSC is concerned that the vast majority of permit holders may not have access to such adequate capital.

With this in mind, the DAS Transfer Program has the potential to create two very distinct and disparate classes of permit holders in the fishery relative to the number of DAS held. Those permit holders with stacked permits and, consequently, a large number of A and B DAS, are in a position to endure and even support future DAS reductions of a magnitude that would potentially destroy the financial viability of all those permit holders without stacked permits that are operating under their original Amendment 13 DAS allocations. Under this scenario there would occur a socio-economic and political polarization in the groundfish community that may be very difficult to manage fairly and equitably as required by law. NSC urges NMFS to perform and consider an analysis of this scenario and what the implications are.

(2) DAS Leasing Program Modifications

Federal Register Page: 70 FR 15813

Section: 648.82 Effort-control program for NE multispecies limited access vessels.

Recommendation: Approve proposed measures to allow a one-time downgrade of the DAS Leasing Program permit baseline characteristics to the characteristics of the vessel using the permit.

Explanation:

Permit holders that placed permits on vessels with physical characteristics that are smaller than the baseline characteristics of the permit itself did so without prior knowledge that this might limit their future ability to access DAS for leasing. The proposed action provides a fair and equitable means for such permit holders to be relieved of any disadvantages they may have experienced in the DAS Leasing Program. NSC supports this action, including making this a one-time opportunity to rectify the problem, as well as the proposed restrictions relating to when a “downgraded” permit is moved to another vessel.

(3) Changes to Incidental TACs

Federal Register Page: 70 FR 15814-15815

Section: 648.85 Special management programs.

Recommendation: Approve proposed measures to create a set aside Total Allowable Catch (TAC) of Georges Bank cod for research and to set an incidental TAC of Gulf of Maine cod for the Western Gulf of Maine (WGOM) Closure Area Rod/Reel Special Access Program (SAP).

Explanation:

It is critical that all sources of fishing mortality be accounted for in both the scientific assessment and management of groundfish stocks, especially stocks of concern such as Georges Bank cod. Therefore, NSC generally supports the need for a limited research set-aside of the incidental TAC for Georges Bank cod, *although there may be more desirable alternatives yet to be considered.*

However, it should be noted that B DAS were allocated to a large number of permit holders all of whom currently benefit from the ability to use these DAS to target healthy stocks and the revenues that may result from this activity. The ability of this large pool of permit holders to more fully utilize the Optimum Yield (OY) of strong stocks depends entirely on the availability of Incidental TACs for stocks of concern, especially Georges Bank cod. This use of B DAS to target healthy stocks as a means to mitigate the adverse economic impacts of DAS reductions necessary for rebuilding other stocks is one of the principal objectives of Amendment 13.

In contrast, the long term results and benefits of research that would utilize Incidental TACs of stocks of concern reallocated from B DAS fisheries to the research set-aside TAC do not necessarily accrue to all or even most of those participants in B DAS fisheries from which the Incidental TAC was essentially reallocated. Nor does the actual use of Georges Bank Incidental TAC during the research fishing activity itself increase access to healthy stocks.

Given the experience to date, it is quite possible that both the research fishing activity and results of research that utilizes the Georges Bank cod set-aside TAC may benefit only a very small number of permit holders such as in the case of SAPs. In this sense, to the extent the use of B DAS becomes limited by this reallocation of Georges Bank cod incidental TAC into the research set aside TAC, the economic benefits of B DAS (and the GB cod resource) would be effectively reallocated from the entire pool of B DAS holders to a very limited pool of research beneficiaries. It is unclear if this reallocation would be fair and equitable, particularly given the lack of any criteria or procedures set forth in the proposed action for distributing and allocating the set aside TAC among competing users or evaluating the scope of research beneficiaries.

That is not to say that such research cannot in some cases produce results that may benefit the larger pool of permits in the long term. But the limited availability of bycatch TAC for this stock coupled with the very low percentage of research results that actually do make any impact should be considered when making this value judgment.

(4) WGOM Closure Area Rod/Reel SAP

Federal Register Page: 70 FR 15811-15812, 15815-15816

Sections: 648.14 Prohibitions. , 648.85 Special management programs.

Recommendation: Approve measures to establish and implement the WGOM Closure Area Rod/Reel Haddock SAP.

Explanation:

NSC supports the creation of this SAP as a means to more fully utilize the Optimum Yield of the healthy yet underutilized GOM haddock stock. In fact, the total GOM Haddock TAC of 40 mt allocated to this SAP is very small relative to the status of the stock.

Further, the biological impact of this SAP on GOM cod as bycatch in this fishery is likely to be small, especially relative to the directed recreational fishery operating in the same area and targeting GOM cod.

Furthermore, fishermen participating in this SAP have no incentive to catch GOM cod. Therefore, the use of catch statistics from recreational fisheries that target GOM cod is not an accurate basis for estimating GOM cod bycatch in this SAP. NMFS should monitor and collect data on this SAP during the two year operational period so that such issues as cod bycatch rates can be more accurately reevaluated at that time.

(5) CA II Yellowtail Flounder SAP

Federal Register Page: 70 FR 15814

Sections: 648.85 Special management programs.

Recommendation: Approve measures to improve the efficiency and effectiveness of the Closed Area (CA) II yellowtail flounder SAP and to minimize negative impacts of the SAP on other fisheries.

Explanation:

There were numerous and well documented problems associated with the design and implementation of this SAP in 2004. Insufficient controls on trip limits and number of trips led to a derby fishery and low prices during the SAP. High overall landings and discards in the SAP limited the subsequent ability of other fisheries to successfully target and utilize the strong Georges Bank haddock stock.

NSC strongly supports the proposed measures that will prevent such problems from recurring in 2005. These measures will facilitate greater utilization of the Georges Bank haddock OY, improve safety of life at sea, and ensure that a much greater benefit to the nation is realized from the Georges Bank yellowtail resource.

(6) Minimum Effective Effort Allocation

Federal Register Page: 70 FR 15813

Sections: 648.82 Effort-control program for NE multispecies limited access vessels.

Recommendation: Approve measures to reclassify 10 C DAS to B Reserve DAS for those permit holders that did not receive any allocation of A or B DAS under Amendment 13. Expand application of the 10 B Reserve reclassification to those permit holders that received more than zero but less than 10 B Reserve DAS under Amendment 13.

Explanation:

NSC continues to support, as it did when Amendment 13 was developed, providing a minimum effort allocation of B Reserve DAS to those vessels that did not receive an A or B DAS allocation under the Amendment 13 DAS allocation.

In addition, NSC understands that some permit holders received more than zero but less than 10 B Reserve DAS under Amendment 13. These permit holders would be disadvantaged by the proposed action. NSC supports modifying the proposed action to provide fair and equitable treatment of such permit holders by ensuring that they also receive a minimum total allocation of 10 B Reserve DAS. It should be noted that the DAS effective use rate in 2004 was significantly less than the rate on which Amendment 13 management measures were based.

(8) DAS Credit for Standing by Entangled Whales

Federal Register Page: 70 FR 15814

Section: 648.82(m) DAS credit for standing by entangled whales.

Recommendation: Approve the proposed action.

Explanation:

NSC strongly supports this proposed action which speaks for itself.

(9) Herring Vessel Interactions with Regulated Groundfish

Federal Register Page: 70 FR 15812, 15813

Sections: 648.14 Prohibitions, 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

Recommendation: Approve the proposed action as a temporary solution to a problem that requires a more comprehensive approach that should be based on further cooperative efforts

between the Herring and Groundfish industries. In addition, NMFS should revise and improve NMFS onboard observer bycatch sampling regime on herring fishing vessels.

Explanation:

NSC strongly supports efforts to collect better data and to improve the understanding of groundfish bycatch in herring mid-water trawl fisheries so that appropriate monitoring and management measures can be designed to satisfy statutory requirements to minimize bycatch and bycatch mortality to the extent practicable.

Certainly, the proposed action to require advanced trip notification to facilitate the placing of observers on Category 1 permit herring fishing vessels is an important first step. In addition, NSC strongly recommends that NMFS revise its current observer bycatch sampling regime on such vessels in order to substantially improve bycatch data and statistical estimates.

NSC also strongly supports the proposed action to require Category 1 permit herring fishing vessels to notify NMFS Enforcement of the time and place of landing of those trips not carrying an onboard observer in order to further monitor and collect data on groundfish bycatch in this fishery. The combined coverage of these trips for monitoring bycatch at sea and dockside should be as high as possible and approaching 100% until a full understanding of this problem is achieved.

(10) Trip Gillnet Limitations.

Federal Register Page: 70 FR 15812

Section: 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

Recommendation: Approve the proposed action.

Explanation:

NSC supports the proposed action to restore the net limits for Trip gillnet vessels that were in place prior to the Settlement Agreement in *CLF, et al., v Evans*, and to remove the tagging requirements for Trip gillnet vessels.

(11) Dumping Prohibition for Vessels Under a Category B DAS

Federal Register Page: 70 FR 15812

Section: 648.14(a)(176) Prohibitions.

Recommendation: Approve the proposed action.

Explanation:

NSC strongly supports the current “no discard” requirements for fishing on B DAS set forth under Framework 40A. The current prohibition on the discarding of legal sized cod and other regulated groundfish while fishing on a B DAS is fundamental to the ability of B DAS fisheries to achieve their stated objective to provide greater opportunities to fully utilize the OY of strong stocks as a means to offset the adverse economic impacts of rebuilding plans for other stocks without undermining the biological objectives of such rebuilding plans.

Therefore, NSC strongly supports the proposed action to close any loophole that might allow fishermen to circumvent the current “no discard” rules by dumping the entire contents of a net that is not onboard the vessel.

Request for Comments**1) WGOM Closure Area Rod/Reel Haddock SAP**

See comments item 4 above.

2) GB Cod Research Set-Aside

See comments item 3 above.

3) Minimum effective Effort Allocation

See comments item 6 above.

4) Publication of DAS Allocation Information

NSC has consulted with a number of permit holders on this request for comment. Based on this consultation, NSC strongly recommends against the proposal to post vessel’s DAS allocation information on the NERO website unless this function is made voluntary. Most permit holders expressed concern that they do not wish to be contacted with unsolicited inquiries. Again, this may be a valuable service on a voluntary basis. NMFS could consider setting up a mechanism to post and remove such information at a permit holder’s specific request.