

N O R T H E A S T S E A F O O D C O A L I T I O N

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RE: DEIS for Amendment 16 to the Northeast Multispecies FMP

GENERAL COMMENTS

As the attached May 2007 letter to Paul Howard expressed, NSC had grave concerns with the process being followed by the Council and Agency with respect to Amendment 16. Of specific concern was the decision to commit to sector management and move forward with developing specific policy details of sector design and operations without resolving in advance a definitive policy on allocating the fishery.

The allocation of a fishery may be the most profound and far-reaching decision to be made by any Council. It must follow the most deliberate and transparent process possible so as to achieve the most fair and equitable result for all participants in the fishery. Congress fully recognized this reality in part by including referenda requirements in the Magnuson-Stevens Act policies for Individual Fishing Quotas (IFQs) development. This process provides all fishermen with a level playing field to decide if and how to allocate the fishery.

Although a pale distinction from IFQs, Congress exempted Sectors from the referenda requirements but that did not diminish the underlying need for the Council and Agency to achieve fairness and equity in sector-related allocation policies. Instead, the simultaneous development of sector and allocation has been anything but deliberate and transparent to anyone but those who have the time to be very closely involved in the Amendment 16 process. Many fishermen feel they have been put into a box and placed at a significant disadvantage to those who had the ability to participate first-hand in the Amendment 16 process.

NSC's primary concern was then and continues to be now that all NE groundfish fishermen—not just our members—have all of the information they need to make a sound and informed decision concerning their futures and to protect their best interests in whatever direction the

Council and Agency chooses. Indeed, NSC's decision to commit itself to sponsoring 13 sectors was entirely for that purpose.

More than 2 years later we may be more concerned today than we were when we sent that letter to Captain Howard. Fishermen have just received-- only a few days before having to participate in public hearings-- the most basic information about their catch histories. It will not be until at least September that fishermen will be advised as to what the actual TACs for the stocks will be and, therefore, what their catch histories mean in terms of actual pounds of fish and dollars of revenue. It is only that level of information which can enable a serious businessman to make such fundamental decisions about whether to join a sector or remain in the 'common pool'; whether to actively fish or lease their catch share, or whether to remain in the fishing business at all. NSC remains very concerned that this process has not been sufficiently fair, equitable, transparent or timely for our fishermen.

SPECIFIC COMMENTS

(1) Sector Baselines (§ 4.3.3.3.4 & § 4.3.5)

NSC recommends that the Council adopt a baseline period for all commercial sectors and for the recreational fisheries that is exactly the same for each. Any deviation from this has a strong potential to violate MSA National Standard 4. With this in mind:

- NSC strongly supports the same baseline for all commercial sectors as is reflected in current Options 1 – 4 of section 4.3.3.3.4
- NSC strongly opposes Option 5 which would have the effect of creating a special baseline period for the two existing sectors that is distinct from all of the 17 anticipated sectors to be approved under Amendment 16 of section 4.3.3.3.4.
- NSC strongly supports Option 1 for GOM cod and Option 1 for GOM haddock for the recreational fisheries under section 4.3.5.

(2) Transfer of Annual Catch Entitlements (§ 4.3.3.7)

ACE Transferability -- The transfer of Annual Catch Limits within and between sectors is fundamental to achieving the objectives of Amendment 16 including improvements to compliance, efficiency and utilization of the Optimum Yield (OY), and to reducing discards. NSC envisions an active and robust ACE trading system as being central to the success of this sector management system and strongly supports the Council's adoption of Option 2 under section 4.3.3.7.2.

Catch History Freeze-- The treatment of catch history in the context of intra and inter sector ACE trading will determine whether an active and robust ACE trading system will be possible to achieve. Specifically, there will be a very strong disincentive to trade ACE if the catch history associated with traded ACE accrues to the permit that catches the fish as it would be under the current accounting system. The value of any permit will be progressively and perhaps permanently diminished as its ACE is traded away for use by another permit. Concerns about the future value of permits will stifle the ACE trading system.

NSC strongly recommends that the Council address this problem by adopting a policy to freeze catch history under Amendment 16 as expressed in the following suggested provision:

“Upon implementation of Amendment 16 (May 1, 2010), and continuing until amended by a future plan Amendment, catch / landings history resulting from fishing or leasing activities will not accrue to individual permit histories.”

This provision is not intended to alter existing fisheries statistics accounting methods. The intent is to proscribe the use of landings records credited to individual vessels during the Amendment 16 period for the purpose of a future allocation baseline. Landings records during this period would be essentially ineligible for allocation purposes. This provision applies only to those fish stocks managed under the Northeast Multi-Species FMP.

This prohibition can be lifted by a future council by Plan Amendment and does not “tie the hands of a future council” from doing so. However, the provision and explanation should be drafted such that a future Council would fully understand the implications and rationale for this provision and be appropriately discouraged from retro-actively reversing this Council’s intent for Amendment 16.

Further, because this provision would not take effect until May 1, 2010, (or upon implementation of A16), it would not preclude a future council from utilizing any portion of the period prior to implementation of A16. The A16 PSC baseline is likely to be 1996 through 2006. This proposed provision leaves the 2007, 2008 and 2009 fishing years eligible for use as a catch history period in a future action.

Overall, the purposes and benefits of this provision would be to:

1. Relieve the decisions involving intra and inter sector ACE trading / leasing from the concerns of future permit value implications due to the status quo attribution of landings history.
2. Improve the effectiveness of the “full retention of legal sized fish” requirement by removing the catch history implications of quota trading.
3. Provide a clear policy that will not artificially incentivize activation of permits onto working sector or common pool vessels that may otherwise enroll in the sectors through the CPH method.
4. Provide a sensible alternative to operating in the common pool by removing the ability to create catch history during A16.

(3) Allocation of Resources to Sectors (§ 4.3.3.3)

NSC notes that according to the recent stock assessment the hard TAC for Southern New England Winter Flounder (SNE WF) allocated to sectors will be zero. Therefore, virtually any catch (discards) of this stock will immediately cause the entire SNE WF stock area to be closed to sector fishing. In contrast, under section 4.4.7 Option 2, for example, common pool vessels would likely have a zero-retention limit and continue to fish.

NSC further notes that under section 4.3.3.3.1, Sectors will be allocated a hard TAC of all regulated groundfish stocks with the exception of halibut, ocean pout, and windowpane flounder. NSC strongly recommends that SNE WF be added to this list of unallocated stocks until such time as a future stock assessment results in a TAC for this stock that can be allocated to the sectors.

(4) Sector Monitoring and Enforcement (§ 4.3.3.5.2)

The treatment by Amendment 16 of sector and sector member liability is central to the decision by fishermen of whether or not to participate in a sector and is, therefore, central to whether Amendment 16 sector management system will succeed.

NSC strongly supports Option 2 regarding sector liability as being the only practical option that will achieve the dual objectives of ensuring compliance with key sector obligations and providing an environment that does not discourage sector participation.

(5) Accountability Measures for Common Pool (§ 4.4.7)

Many fishermen remain very unsure of whether to participate in a sector. Exacerbating the difficulty of this decision is the late timing of information that is absolutely critical to these decisions including the individual catch histories and the stock TACs mentioned above. Furthermore, Sectors are self-selecting and are under no obligation to accommodate a fisherman who may want to participate. Not every fisherman has an equal opportunity to participate in a sector.

Consequently, the common pool may become a reality for many more fishermen than the Council or Agency is anticipating. Irrespective of why any given fisherman is in the common pool come Fishing Year 2010, every US fisherman (sector or common pool) must be treated fairly and equitably and in accordance with all of the same National Standards under the law.

Two options for Accountability Measures are presented for consideration for common pool vessels in the commercial fishery. The first option would place the open-access common pool under Hard TACs which would guaranty an unsafe derby fishery and a very rapid closure due to the weakest-stock effect. The practical impact of this option is in stark contrast to how Hard TACs work under sectors. Inherent

to sector participation is the ability to maximize the utilization of the TACs of all allocated stocks through ACE transferability and thereby minimize the weakest stock effect.

NSC strongly recommends adoption of Option 2 under section 4.4.7.1.2 which provides a more balanced approach to addressing TAC overages and is consistent with how the non-sector fishery is managed today.