

NORTHEAST SEAFOOD COALITION

March 1, 2010

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

RE: Comments on Framework 44 Proposed Rule (0648-AY29)

The Northeast Seafood Coalition (NSC) is pleased to provide the following comments and recommendations on the Proposed Rule to implement Framework 44.

Please note the comments follow the order in which the Management Measures and Specifications appear in the preamble of the Proposed Rule.

Thank you for your consideration,

Jackie Odell

Jacqueline Odell
Executive Director

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Management Measure 1 Regional Administrator Authority

Discussion:

NSC does not support the in season adjustment authority provided to the Regional Administrator in Framework 44 and instead supports the Council's position and rationale for post season adjustments contained in Amendment 16.

Although NSC has a very important role in the management system for sector vessels, it has consistently argued for the fair treatment of those vessel owners that participate in the common pool, especially those that, for no fault of their own, have no choice but to participate in the common pool. These vessel owners deserve to be given a reasonable and fair opportunity—if not a comparable opportunity to sector vessels-- to survive in the groundfish fishery. This includes providing common pool fishery participants with some reasonable measure of certainty for planning their annual fishing operations.

For this and other reasons, NSC supported Amendment 16 section 4.4.2.3 Option 3A (Commercial Fishery Measures) and section 4.4.7.1.2 (Common Pool AMs) as the appropriate measures for non-sector vessels to meet and be held accountable for mortality objectives. These measures were supported by industry and adopted by the Council at its June 2009 meeting. While section 4.4.2.3 would impose more severe effort reductions on the common pool fleet up-front as compared to other options, it would provide the greater degree of certainty that is necessary for real-world business planning of fishing operations.

Similarly, section 4.4.7.1.2 would revise differential DAS counting in the appropriate areas as the accountability measure if and when an ACL for a stock is exceeded in the common pool fisheries. This revision would be implemented at the start of the following fishing year. This also provides far greater certainty in each fishing year as compared to the highly uncertain environment that would exist in every fishing year under the proposed less-structured system which supports unpredictable in-season adjustments.

Together these two Amendment 16 sections would provide the basis for a fair and effective means to achieve A16 mortality objectives and statutory requirements while providing common pool vessels some reasonable degree of certainty for planning and executing their annual fishing operations. The proposed action to provide the RA with the authority to make sudden, unpredictable in-season adjustments to the common pool fishery management measures certainly does not provide such certainty, and would likely have the opposite effect.

NSC also opposes this approach because it is certain to incite an all-out derby fishery among all common pool participants not knowing how or when an in-season action

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would occur that might close or severely restrict all or parts of the fishery. This is both dangerous and inefficient, and completely contrary to FMP objectives and Magnuson-Stevens Act mandates. This is a very serious, regressive flaw in the proposed action.

Notwithstanding the statements made in the Proposed Rule preamble which claim that this proposal is in response to “industry concerns”, NSC has far more concerns about this proposal and does not support it. There is no way this approach provides common pool vessels with an adequate degree of certainty in planning their annual fishing business operations. It does not treat non-sector vessels fairly and equitably, and it does not provide them with a reasonable or comparable opportunity to survive in this fishery.

On the other hand, NSC does share the concern expressed by industry that the proposed Amendment 16 trip limits for the common pool are too high and will provide a strong incentive for multiple permit holders to “double dip” by using their permits to simultaneously participate in both sectors and the common pool until the common pool ACLs are exhausted. A greater level of participation in the common pool due to “double dippers” will serve to exacerbate the derby effect and further undermine the need to provide others in the common pool fleet with a reasonable opportunity to survive in this fishery .

Consequently, NSC believes the proposed trip limit reduction in this action combined with the measures set forth in Amendment 16 section 4.4.2.3 Option 3A and section 4.4.7.1.2 as adopted by the Council at its June 2009 meeting comprise a fair and effective mechanism to achieve the A16 mortality objectives in a manner that is consistent with statutory mandates.

Recommendations:

- Reject the proposed measure to provide the Regional Administrator with authority to make in-season adjustments to the common pool management measures.
- Implement Amendment 16 section 4.4.2.3 Option 3A and section 4.4.7.1.2.
- Adopt modifications to Amendment 16 proposed possession limits as proposed in this FW44.

Management Measure 2 Modifications to Amendment 16 Proposed Possession Limits

Discussion:

As explained above, NSC supports this proposal as a means to reduce the incentive for multiple permit holders to “double dip” in both the sector and common pool

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fisheries. This action would improve the opportunities for other common pool vessel owners that do not participate in sectors and lessen the derby effect if the Regional Administrator is given in-season adjustment authority under this action.

To reiterate, this proposed revision to the trip limits for common pool vessels combined with the measures under Amendment 16 section 4.4.2.3 Option 3A and section 4.4.7.1.2 would provide a fair and effective mechanism to ensure that the common pool achieves its mortality objectives and participants have a reasonable opportunity to survive in this fishery.

Recommendations:

- Adopt the proposed measure.

Management Measure 3 Requirement for Limited Access Scallop Vessels To Land Yellowtail Flounder

Discussion:

NSC supports the requirement for all sources of stock mortality to be accounted for and for discards to be minimized to the extent practicable consistent with MSA requirements. NSC believes this proposed management measure achieves those objectives, is consistent with the manner in which this and other groundfish stocks are managed in groundfish fisheries, and will be critical to the fair and effective management of yellowtail flounder stocks generally.

Recommendation:

- Adopt the proposed measure.

Specifications 2: ACLs

Comment 1: Scallops

Discussion:

NSC notes that it supports the Council's January 2010 revision to FW21 to the scallop FMP to increase the target F-rate from 0.20 to 0.24.

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NSC further notes that this revision to the scallop plan will have the effect of increasing the allocation (sub-ACL) of yellowtail flounder stocks to the scallop fishery according to the mechanism proposed in this FW44 action.

Notwithstanding that effect, NSC supports the FW44 proposed mechanism for making the sub-ACL allocation of yellowtail flounder to the scallop fishery.

Recommendations:

- Adopt the proposed measure.

Comment 2: GOM Winter Flounder

Discussion

NSC notes that according to the discussion on ACLs in the Proposed Rule, a relatively large percentage (35%) of the ABC for Gulf of Maine Winter Flounder will be deducted for anticipated catch from state waters.

The implications of this deduction for the groundfish fisheries are substantial because it is taken off the top of the ABC before allocations are made to the federal groundfish fisheries.

Recommendations:

- Ensure that the data and methodology used to determine the deductions from ABCs for anticipated, estimated state waters catches of stocks are subject to serious scrutiny under the biennial review process set forth in Amendment 16 and that they can be readily modified as a result of that process and/or through a framework action or annual specification.

Specifications 6: Annual Specifications for U.S./Canada Management Area

Discussion:

The Proposed Rule discussion on this item acknowledges one of the very negative consequences of the bifurcated treatment by the Magnuson-Stevens Act (MSA) of stocks covered by the United States-Canada Transboundary Resource Sharing Understanding. As indicated, this untenable situation has already had the direct consequence of undermining the effectiveness of this Understanding which is

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essential to the effective conservation and management of the shared Georges Bank cod, haddock and yellowtail flounder stocks.

Further, this situation will needlessly force a disproportionate share of the conservation burden on US fishermen and as a result place them at a serious disadvantage to their Canadian counterparts which directly compete with US fishermen in the US marketplace.

These are very serious consequences that are completely inconsistent with many of the most fundamental purposes and objectives of the MSA. The provisions of the MSA which are at the root of this very major problem must be revised in advance of the 2010 fishing year.

There are profound conservation and economic consequences of a failure to correct this problem.

Recommendation:

- The agency must play a much more effective role than it has in securing a timely legislative solution to this problem.