



## New England Fishery Management Council

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E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

### MEETING SUMMARY

#### Groundfish Advisory Panel

DoubleTree by Hilton, Portland, ME

September 16, 2014

The Groundfish Advisory Panel (GAP) met on September 16, 2014 in South Portland, ME to: 1) discuss Amendment 18 (A18), 2) to discuss Framework Adjustment 53 (FW53), and 3) discuss other business.

**MEETING ATTENDANCE:** Mr. Bill Gerencer (Chairman), Ms. Jackie Odell (Vice Chair), Mr. Carl Bouchard, Mr. Chris Brown, Mr. Richard Canastra, Mr. Paul Parker, Ms. Maggie Raymond, Mr. Ben Martens, Mr. Geoff Smith, Mr. Hank Soule, and Mr. Aaron Dority; Mr. Frank Blount (Groundfish Chair), Dr. Jamie Cournane, Ms. Rachel Feeney, and Mr. Jonathon Peros (NEFMC staff); and Mr. William Whitmore (NMFS GARFO staff). In addition, approximately 10 members of the public attended, includes some Council members. GAP member Mr. Jim Odlin arrived at the meeting later, and participated as an audience member.

**SUPPORTING DOCUMENTATION:** Discussions were aided by the following documents and presentations: (1) meeting memorandum dated September 8<sup>th</sup>, 2014; (2) GAP meeting agenda; (3) Amendment 18 (A18) Action Plan dated July 28<sup>th</sup>, 2014; (4) Plan development team (PDT) memo to the Groundfish Committee re: Amendment 18 dated September 5<sup>th</sup>, 2014; (5) Amendment 18 discussion document dated September 5<sup>th</sup>, 2014; (6) an Amendment 18 Discussion Guide for the September 18<sup>th</sup> Groundfish Committee meeting dated September 5<sup>th</sup>, 2014; (7) A18 Presentation; (8) Framework Adjustment 53 (FW53) Action Plan, dated September 12<sup>th</sup>, 2014; (9a) PDT memo to the Groundfish Committee re: FW53 dated September 12<sup>th</sup>, 2014; (9b) PDT white paper entitled, "Development of Rollover Provisions in the Groundfish Fishery" dated September 4<sup>th</sup>, 2014; (10) FW53 presentation; (11) Groundfish Committee meeting summary of August 4<sup>th</sup> meeting; (12) Groundfish Advisory Panel (GAP) meeting summary, dated April 1<sup>st</sup>, 2014; (13) Correspondence.

#### KEY OUTCOMES:

- Framework Adjustment 53:
  - The GAP recommended that resources be made available to ensure that stock assessments are completed on time, so that specifications can be in place on time.
  - The GAP recommended that in the event that specifications would not be in place for the start of the fishing year, the prior year's specifications remain in place until new measures are implemented.
  - The GAP recommended the development of a "bycatch limit" for sectors for GOM/GB (northern) windowpane flounder.
  - The GAP recommended that a rebuilding plan review be initiated for GOM cod.
  - The GAP recommended that several measures be analyzed for the purpose of eliminating the directed GOM cod fishery and reducing bycatch, while allowing for harvest of other stocks.

- The GAP supports small focused areas to protect spawning fish.
- Amendment 18
  - The GAP recommended that alternatives for splitting the GOM cod ACL into inshore and offshore sub-ACLs be moved to the Considered but Rejected section of this action.

The meeting began at 1:32pm.

After calling the meeting to order, the GAP chair asked if there any proposed changes to the agenda. There were none.

### **FRAMEWORK ADJUSTMENT 53**

#### **Staff presentation: Framework Adjustment 53 (Dr. Cournane)**

At the outset of the presentation, Council staff directed meeting attendees to Documents 8, 9a, and 9b for reference during the presentation on FW53. Staff introduced the FW53 draft action plan (Document 8) – explaining that it is a tool to communicate various components of the amendment and framework adjustment processes, such as PDT resources, and a timeline for completion. Staff went on to present the timeline for FW53 and the likely range of alternatives. The framework was initiated at the June Council meeting (June 17<sup>th</sup> – 19<sup>th</sup>, 2014), and staff is expecting the full Council to vote on measures that will be evaluated in FW53 at its September meeting in Hyannis, MA (September 30<sup>th</sup> & October 1<sup>st</sup> – 2<sup>nd</sup>, 2014), with final action scheduled for the November meeting in Newport, RI (November 17<sup>th</sup> – 20<sup>th</sup>, 2014). The goal – and expected timeline – of this framework is to have management measures in place for May 1<sup>st</sup>, 2015 (i.e., start of FY 2015).

The likely range of alternatives under consideration in FW53 (also see Document #9a) includes updates to status determination criteria, and annual catch limits (Section 4.1 of FW53), as well as a suite of commercial and recreational fishery measures (Section 4.2 of FW53). Given time constraints for completing this framework action, staff explained that the PDT is recommending that two measures (4.2.5, changes to trawl gear regulations, and 4.2.6, recreational management measures process), not move forward with this particular action, and be part of a priorities discussion later in the year.

Staff presented a summary of the New England Fishery Management Council's (Council) Science and Statistical Committee (SSC) recommendations from earlier meetings in 2014, and noted that the SSC will meet next month to make recommendations for Gulf of Maine (GOM) winter flounder, George's Bank (GB) winter flounder, and pollock. In August, the SSC recommended overfishing limits (OFLs) and acceptable biological catches (ABCs) for GOM haddock based on results from the Northeast Fishery Science Center's Stock Assessment Workshop and Stock Assessment Review Committee (SAW/SARC) 59. This was a benchmark assessment, which determined that GOM haddock is not overfished and overfishing is not occurring. Notably, recreational discards were included in this assessment, and were accounted for at a rate of 50% mortality, which represents a departure from past discard mortality assumptions in the assessment for the recreational fishery (previously 0% discard mortality). The increase in GOM haddock stock size was primarily driven by strong recent year classes. The SSC recommendations for ABCs and OFLs follow the default ABC control rule of 75%  $F_{MSY}$ . The SSC also made recommendations for GB yellowtail flounder, a stock that is currently experiencing low productivity. Staff noted that catches of GB yellowtail flounder are at historic lows, as are survey indices. The assessment model for GB yellowtail flounder was rejected for setting specifications by the Transboundary Resource Assessment Committee (TRAC) in 2014, and an empirical approach was

developed and used for catch setting. The ABC for FY2015 and FY2016 was set at 354 mt, and the OFL remains unknown. The SSC intends to revisit the 2016 ABC again next year after the operational assessments (scheduled) are complete.

In September, the SSC met to discuss OFLs and ABCs for GOM cod. The most recent update assessment found that the stock is overfished and overfishing is occurring, spawning stock biomass (SSB) is low, fishing mortality is high, and recruitment is poor. Overall, the stock is in poor condition, and survey indices are at time series lows. At its September 15<sup>th</sup>, 2014 meeting, the SSC recommended a constant catch approach for the next three years, with an OFL of 514 mt, and a provisional ABC of 200 mt. The SSC expressed interest in input from both the Recreational and Groundfish Advisory Panels on the estimated level on incidental, non-target GOM cod catch that the industry can achieve, with the intent of reviewing this information at the SSC's October meeting. Looking ahead to the following year, staff reported to that operational assessments for all 20 groundfish stocks are scheduled for September 2015.

Council staff presented results of the 2014 TRAC and Transboundary Management Guidance Committee (TMGC) meetings. The negotiated transboundary total allowable catch (TAC) for Eastern GB cod was set to 650 mt, which results in a US TAC of 124 mt. For Eastern GB haddock, the total TAC was 37,000 mt, with a US TAC of 17,760 mt. The TMGC agreed on a GB yellowtail flounder TAC of 354 mt (SSC recommended value), resulting in a US ABC of 248 mt.

#### Questions and Comments on the Presentation:

A GAP member asked if the recreational/commercial split for GOM cod was 40/60, more or less. The commercial/recreational split for GOM cod is 66% for commercial, 34% for recreational. Staff noted that these allocations are subject to management uncertainty as well for GOM cod (5% commercial, 7% recreational for GOM cod). An advisor asked for clarification on the SSC's request for information on incidental, non-target catch. Staff noted that the SSC meeting had occurred the day prior, and a report from that meeting was not yet available. Without speaking for the SSC, staff suggested that the SSC was interested in the level of incidental, non-target catch of GOM cod catch that could be achieved in the fishery. A groundfish advisor asked what drives the difference between the OFL and the ABC values in the projections. For stocks with age-based assessments and projections, the OFL is calculated using  $F_{MSY}$  as the fishing mortality in the projection. In Amendment 16 the Council adopted several ABC control rules to use for catch advice. Another GAP member asked how state waters catch impacts the ACL for GOM cod. Before the stock is allocated components of the fishery, the ABC is reduced by 10% to account for state waters catches, and 5% to account for catch by other sub-components. There was interest from the GAP in a back-of-the-envelope calculation of what the 200 mt provisional ABC would translate to as a commercial ACL to help inform the day's discussions. Staff estimated that the commercial portion of the GOM cod ACL would be around 107 mt with an ABC of 200 mt.

A member of the GAP asked if the SSC, the PDT, or Northeast Fishery Science Center (NEFSC) was looking into revising the rebuilding timeline for GOM cod. Staff indicated that the rebuilding timeline for GOM cod had been reset in Framework Adjustment 51 (FW51) starting in FY 2014, with a 50% probability of success to rebuild within ten years. The PDT has not had a discussion about the rebuilding plan, and has only brought the information to the SSC for consideration of an ABC and OFL. An advisor asked when you have a scenario that the stock cannot rebuild with zero fishing mortality within the rebuilding period, is there any process in place that triggers a revisiting of the rebuilding timeline? Staff indicated that three projection scenarios came out of the two different models used in the GOM cod

assessment, and noted that the PDT is concerned about optimistic rebuilding timeline for GOM cod. Another advisor felt that the results of the 2014 GOM cod assessment were a game changer, and that the possibility of rebuilding in ten years (from FW51) is no longer on the table. This is completely different situation from the last [GOM cod] assessment.

Staff presented PDT work that had been completed to calculate a sub-ACL for the scallop fishery for northern windowpane flounder. The same method that was used to calculate the SNE/MA (southern) windowpane flounder sub-ACL for the scallop fishery was used to calculate a range of potential scallop sub-ACLs for northern windowpane. Staff noted that the Scallop Committee and Scallop PDT were working to develop an accountability measure (AM) for northern windowpane in Scallop FW26, while FW53 to the Multispecies FMP would create a sub-ACL for the scallop fishery. Recent catch and discard data from the groundfish and scallop fleets was presented, and the method for calculating the sub-ACL was presented. A member of the RAP requested that catch estimates for General Category scallop fishery be confirmed. The RAP asked when the windowpane flounder stocks would be assessed. Staff responded that operational assessments are planned for 2015. An advisor explained that since the AMs for windowpane flounder had gone into place on Georges Bank (GB), landings of GB winter flounder are down 50%, which has reduced landings revenues by millions of dollars in the Port of New Bedford.

Council staff presented suite of PDT developed GOM cod inshore spawning closures that would expand inshore time/area closures to protect spawning fish. The six (6) spawning closure alternatives were presented to the GAP (see Document 9a, including Appendix 1 of that document). In developing these areas, PDT reviewed analysis conducted by the Council's Closed Area Technical Team (CATT), along with additional spawning information. A member of the GAP was curious about the methods used in the GOM cod hot spot analysis. Staff explained that as part of the Omnibus Habitat 2 Amendment (OH2A), the CATT had developed a hot spot analysis for GOM cod based on a variety of data inputs, including survey information. A member of GAP stated that the configuration of the Gulf of Maine rolling closures developed in earlier Council actions was to "share the pain" across the industry, and that the rolling closures were not a broad brush approach to protecting cod. Another member of the GAP pointed out that the only GOM cod spawning closure area currently in place in the GOM is the Whaleback closure (situated inside block 133, closed to recreational and commercial groundfish fishing from April – June), and that the rolling closures are not explicit spawning closures. The recommendation from the Committee was to expand spawning closures, and the focus should be developing spawning closures. Staff agreed that the Committee motion was to expand GOM cod spawning closures, and added that it was the Groundfish committee's expectation that given the scope of this task, earlier work completed by the CATT would be brought forward while evaluating spawning areas.

The GAP stated that the development of spawning closures should focus on identifying areas where spawning takes place, and not take a broad brush "bigger is better" approach to spawning closures. Clarification was sought on what months would be covered by a winter closure (Document 9a p. 5, and Appendix 1: Figure 13). Staff explained that the PDT did not explicitly define winter, and was looking for input. The presentation focused on high level points from the PDT memo to the groundfish committee (Document 9a) and the rollover provisions for specifications whitepaper (Document 9b). Staff noted operational assessments for all 20 groundfish stocks are scheduled for September of 2015, and that this assessment timeframe pushes back Council processes for setting specifications for FY 2016. To address the issue of beginning a fishing year without specifications, the PDT has examined so-called "rollover provisions" or "default measures" that have been adopted in other NEFMC and MAFMC FMPs. The PDT prepared a white paper to examine how specification roll-over is used in other NEFMC FMPs (see Document 9b, *Development of Rollover Provisions in the Groundfish Fishery*). A straight rollover brings

forward the prior year's ACL until new specifications are set, while the scallop FMP uses a default approach where a portion of DAS are released at the start of the fishing year to allow fishing to begin on time, and a full allocation of DAS follows when final data is available later in the year. The PDT feels that some sort of rollover approach makes sense for the groundfish fishery to allow for the fishing year to begin on time. In particular, the PDT is suggesting a default approach be adopted due to the varying status of stocks managed within the Multispecies complex. Staff walked through two options for rollover that the PDT had discussed. In developing these options, the PDT looked at data from fishing year 2012, 2013, and 2014. One approach could be to set specifications for a period of time (May 1<sup>st</sup> – August 31<sup>st</sup>), while another approach could be to base rollover on a percentage of the prior year's ACL. PDT also looked at recreational catch data from Waves 3 & 4 as part of its analysis.<sup>1</sup> There were no questions from the GAP on rollover.

The GAP transitioned to a discussion focused on recommendations to the Groundfish Committee, and thoughts for additional measures for GOM cod. Staff noted that the Groundfish Committee would be meeting for the next two days, and would consider GAP recommendations at their meeting. A member of the GAP noted that there had been talk about an emergency action (EA) for GOM cod during the current fishing year, and asked what the potential timeline for implementation of an EA might be. The group speculated that if the Council made a recommendation at its September/October meeting that an EA could be in place for January. Another member of the GAP asked for an update on the status of FW 52, and inquired whether or not the implementation of FW 52 would be delayed. Staff explained MFS has sent comments on the FW to the Council following the preliminary submission, and that staff is working through those comments ahead of a final submission. Concern was expressed about the redirection of time and resources caused by surprise assessments – and the impact this is having on other actions that could create opportunity in other parts of the fishery. A member of the GAP requested that the panel not spend time discussion alternatives that the PDT would not likely have time to get to (i.e., changes to trawl gear regulations and recreational management measures process, see p.1 Document 9a), and focus on other management measures that the Council would likely take up in this framework action.

The GAP began by discussing sector annual catch entitlement (ACE) carryover provisions. The GAP asked if ACE carryover represents a required administrative action in FW 53 to adjust regulations to match a court ruling, and whether or not this is something that NMFS would handle. They went on to ask if this is an item that the GAP needed to weigh in on. Staff explained that as long as the provision remains in the framework document, the Groundfish Committee would need to make recommendations to the full Council. Absent Council action, NMFS would need to act unilaterally to modify the regulations. The issue with carryover is that the Federal District Court has ruled that total potential catch cannot exceed the ACE carryover (previously up to 10%).

Some members of the GAP felt that the panel should be silent on ACE carryover. Another member felt that allowing ACE carryover is useless now, noting that sometimes up to 10% of sector ACE can be carried over, and other times the percentage is lower. This advisor stated that they would vote to get rid of it altogether, and felt that sectors should focus on catching the fish are allocated in a given year. They went on to say that, *in practice, sectors will get carryover for stocks that they can't catch, but don't usually have carryover for stocks that are rare – and you never know if you are going to get it or not (at*

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<sup>1</sup> There is a typographical error in document 9a, PDT memo to the Groundfish Committee dated September 12<sup>th</sup>, 2014. Table 5 on page 9 incorrectly labels MRIP data for May/June as Wave 4 and July/August as Wave 5. This table should read Wave 3 where Wave 4 is indicated, and Wave 4 where Wave 5 is indicated. It has been corrected in the Council's Administrative Record

*the start of the fishing year*). Another member of the GAP felt that maintaining carryover was an important to the fishery as a way to facilitate the use of uncaught allocation in the following fishing year. In the Groundfish FMP, carryover is not part of management uncertainty.

On topic of rollover, the GAP began the discussion by confirming that potential provision would address situations in which the directed groundfish fishery could not begin on time due to a delay in rulemaking for formal specification process. A member of the GAP pointed out – and raised concern – that 1) ACE carryover does not become available until well into the fishing year (at the time of this meeting it had not been released), and 2) NMFS is making a FY2013 in-season adjustments to reduce sector allocation of witch flounder, and sectors still do not know how much their ACE will be decreased five months into the fishing year. There was also concern about how much ACE would be available for sectors that primarily prosecute the fishery in the summer, at the start of the fishing year, and how releasing a percentage of the overall ACL could negatively impact those businesses. This member suggested that if a rollover provision is adopted that sectors receive the majority of their ACE at the start of the fishing year so that they can plan and use their ACE as they see fit.

Council staff noted that if the GAP is concerned about the impact of rolling forward a percentage of the ACL into the following fishing year could have on individual businesses and sectors, that it could recommend rolling over 100% of the prior year's ACL (as is done in other FMPs, see Document 9b). Staff explained that there might be reasons for not taking that approach, such as when there are large swings in assessment results, and explained that the PDT's analysis sought to allow fishing to proceed on time (May 1) and not put stocks at risk. The thinking for a four month window was to ensure that rulemaking would continue to proceed and that updated values would be implemented through final rulemaking, with the expectation that rulemaking would happen well before August.

Other GAP member echoed concern about the disconnect between fishing activity and the availability of ACE at the start of the fishing year, and expressed concern about the impact that this would have on fishing businesses. This is not a way to operate a business. Another GAP member suggested that if this is a resource issue at NMFS, that the fishing industry should not be the solution to that problem, and that fishing is already hard enough without having to adjust business plans around rollover. Another GAP member felt that the solution to this problem is to continue to complete rulemaking for specifications by May 1. Staff noted that the Groundfish FMP is one of the only FMPs that does not have a backstop to allow fishing to proceed on time in the event of a delay in rulemaking. A member of the GAP felt that a backstop is not a solution to this problem.

#### **MOTION #1 – (Parker/Canastra):**

That the GAP recommend to the Committee that the Committee recommend that NMFS make the resources available to get stock assessments done on-time, so that specifications can be in place on-time.

*Rationale:* It is not an alternative to begin setting catches and allocations that are not based on fact. Timelines need to be set up in such a way that the information needed to manage the fishery is provided, and specifications are in place on time.

*Discussion on the Motion:* A member of the GAP asked why did the NRCC select September for the 2015 operational assessments, and why groundfish was falling so late in the year. Staff noted that scup

and bluefish were scheduled for assessment in the spring at SARC 60, TRAC assessments, and scallop survey methods. An advisor offered a friendly amendment to the motion (*italics below*), with the rationale that the 2014 update assessment of GOM cod was not on the previously vetted Northeast Regional Coordinating Committee (NRCC) schedule, and put everyone in reactionary mode. A GAP member explained the membership of the NRCC, noting that the NRCC sets the schedule for stock assessments. The GAP member noted that they take issue with the process that occurred with the unplanned GOM cod assessment.

**MOTION #1, as friendly amended:**

That the GAP recommend to the Committee that the Committee recommend that NMFS make the resources available to get stock assessments (*as vetted and determined by the NRCC*) done on-time, so that specifications can be in place on-time.

A GAP member recommended that in the event of a delay in rulemaking, that the prior year's specifications be rolled over. This member noted the PDT's concerns about wide swings in ACLs, but explained that as long as the industry has information about what the specifications for the upcoming year will be, industry can plan around those numbers. The issue arises when unplanned assessments pop up, and there is potential for in-season EAs, which leave the industry little time to plan. In cases when the stock assessment information rolls out over a series of months, the industry can plan in advance.

*Motion #1 carried on a show of hands (10/0/0).*

**MOTION #2 – (Soule/Odell):**

That the GAP recommend to the Committee that the Committee recommend in the event that specifications do not get in place on-time, that the last year's specifications remain in place until new measures are implemented. The GAP does not support the PDT's suggestion (for a default percentage approach) and is concerned that some sectors, which concentrate their fishing in the summertime, could find their allocations improperly restricted.

*Rationale:* The GAP is concerned that some sectors who which concentrate their fishing in the summertime, could find their allocations improperly restricted. If sectors know ACLs in advance of May 1st, they can plan for uncertainty and swings in ACL. The maker of the motion wanted to make sure that sectors that rely on summertime fishing do not have quotas held back.

*Discussion on the motion:* A member of the RAP suggested that some of the maker's rationale be included in the body of the motion. The maker modified the motion to reflect the rationale. A member of the RAP asked staff if there were other options that could be explored other than a status quo rollover or a percentage approach (that the PDT had brought forward). Staff reiterated the timeline for assessments in 2015, and the implications of this for the Council process.

An advisory felt that the industry will ultimately be held accountable, and suggested that an approach be developed that allows sectors to advance at your own peril. The advisor went on to say that fishermen do not want to put themselves out of business, or operate in a way that will end their fishing year

prematurely. He said that this seems to be a process glitch that requires a common-sense solution. An advisor suggested that the GAP consider recommending that 80% of the quota be rolled forward in the event of a delay in rulemaking. This suggestion was countered by the contention that the declines of PSC in recent years have whittled away quotas and it is already nearly impossible to prosecute the fishery with the current low quotas. The maker of the motion added that NMFS already holds back 20% of ACE for the upcoming fishing year to account for any overages in the prior year.

### **MOTION #3 – (Odell/Raymond):**

The GAP recommends to the Committee the development of a Northern windowpane flounder (NWP) "bycatch limit" for each sector based on the following formula is recommended to be considered: the percent of the three winter flounder ACLs (GB, GOM and SNE stocks) to a sector would be the percent NWP bycatch limit. A percent NWP bycatch limit would be assigned to any sector without winter flounder ACL. The NWP bycatch limit would be tradeable between sectors. If/when a sector exceeds its NWP bycatch limit, the gear restricted AM would apply to that sector. The GAP would support a sunset clause to his measure.

*Rationale:* Intent is not to create a new PSC allocation, or an allocated stock, which would likely be done through a plan amendment. Instead, this can be considered an aggregate sector level request for a sub-ACL and have the FMP explicitly contemplate a sector distribution and self-management approach with sector level accountability. The GAP seeks guidance from NFMS and Council staff to recommend any language that would make it clear that this is a management measure. The maker suggested that a sunset or expiration date – no further than three years out – would alleviate any concern that this is an allocation. We would recommend that no individual PSC letters or allocations be altered by allocating northern windowpane to allocated stock list, but instead the bycatch allocations would be distributed purely at the sector level based on roster aggregate Georges Bank winter flounder PSC. The aim is to allow for a sector level self-management approach and sector level accountability through a bycatch cap based on the formula suggested in the motion and rationale so that the catch of windowpane can be more closely managed.

*Discussion on the Motion:* The above motion was modified through a series of friendly amendments. An advisor offered additional explanation of the rationale, noting that Northern windowpane is a bycatch with Georges Bank winter flounder, and because there are no landings of northern windowpane, you could not use the Amendment 16 allocation measures. This advisor felt that the AMs have eliminated the winter flounder fishery on Georges Bank. The accounting of windowpane flounder would be the same as it is currently tracked in the fishery. Sectors that did not have a PSC of Georges Bank winter flounder would receive a diminimus amount of Northern windowpane to cover any incidental catches. The goal of this motion is to reduce the catch of windowpane and not trigger accountability measures. The advisor stated that the majority of northern windowpane flounder has been caught by a couple of vessels. Sectors would be better suited to control fishing behavior.

An advisor asked about the catch distribution of Northern windowpane flounder, and was concerned about using just Georges Bank winter flounder allocations as the basis for dividing Northern windowpane among sectors. The advisor felt that if you are going to use a proxy stock for allocation then it needs to cover the range of the stock that is being allocated. They went on to say that AMs might change over time, and that a bycatch cap was a good idea. This advisor suggested that using a basket of stocks as the basis for dividing northern windowpane could help address Northern windowpane issues long term. The maker of the motion reiterated that the GAP should work toward solutions that help the offshore fleet fish offshore, highlighting the impact that AMs for non-allocated stocks have had on the fleet. The GAP discussed the opportunity to use sectors in a more creative way to address issues in the fishery, such as



catches of non-allocated stocks. Another advisor liked the idea of a sunset provision, and noted that Northern windowpane is a discard only stock. There was a question as to whether or not the intent was to allow for bycatch limits to be tradable among sectors, and the maker confirmed that this would be possible. It was brought up that the problem had been framed as a few boats catching the majority of the Northern windowpane ACL, and an advisor asked how sectors what sectors would specifically do address this issue. It was offered that sectors currently use operations plans and membership agreements to determine ACE distribution in the sector and harvesting rules. The maker of the motion suggested that the bycatch cap for windowpane would fit into these existing sector processes. Staff followed up on the earlier point made about the distribution of catches and provided the GAP with data and catch distribution maps prepared for Framework Adjustment 52 – the figures indicated that there are catches of Northern windowpane in the Gulf of Maine.

Another advisor felt that the current ABCs and ACLs for Northern windowpane do not match the biomass of fish, and this could not be sorted out until there is another assessment. He went on to say that this issue is impacting 20-25 vessels. There was opposition to the idea of sun-setting bycatch caps, and changing how the caps are divided every few years. There was concern about that this may lead to revising caps every few years.

The GAP circled back to the intent of the motion, which is to address the impact of large AMs for windowpane flounder on George's. An advisor stated that the General Category scallop fishery catches windowpane flounder in the Channel. An advisor felt that the motion was proposing an allocation, and that the GAP should recommend a formula that is replicable. The GAP discussed expanding the formula to include multiple stocks that would work for multiple sectors and fisheries. An advisor felt that the Council would be in the same situation for Atlantic halibut, and wanted a solution that is replicable, transparent and easily transferable to other stocks. There was support for the use of bycatch caps within the sector system, but some concern with the original formula (just GB winter flounder) for dividing the cap. There were questions as to whether or not this represented an allocation, with one advisor focusing on the tradability that was intended. Council staff suggested that if the GAP feels that this would be an allocation, then it might not be something that could be done through a framework. Another advisor felt that adopting solutions like [this one] are predicated upon better data systems, and the NEFSC creating systems that improve real-time data flows back to the fleet. He continued to say that the state of current data systems undermines the sector system. The Chair noted that this motion gets at what the sector system was envisioned to be, with the industry taking ownership of issues in the fishery.

*Public Comment:*

- Willie Whittmore, National Marine Fisheries Service, Greater Atlantic Regional Office – *I just wanted to clarify a few things. I'll send this to General Council to clarify if it is an allocation. It kind of looks like one to me. In Framework 48 we allocated Southern New England/Mid-Atlantic Winter Flounder. It was a non-allocated stock when sectors started and it was allocated in the framework. Just to make the point that all allocations do not need to be in an amendment.*

The GAP discussed data issues with the Northern windowpane stock, explaining that it has not been a commercially exploited stock for a long time. For the most part, there are not landings of Northern windowpane during the baseline period used for allocation through Amendment 16. Therefore, the data on this stock is not as robust as it is for other allocated stocks, which requires outside the box thinking on how to address allocating/dividing it amongst the fishery. The GAP discussed using a basket of all three winter flounder stocks (SNE/MA, GOM, and GB). A member of the GAP stated that revenues from Georges Bank winter flounder landings were off by roughly a million dollars for the year (so far, as a result of the Northern windowpane AM). The GAP circled back to the discussion about a deminimus

amount being allocated to sectors with a low catch history of winter flounder, and it was confirmed that the intent was to divide the Northern windowpane ACL in a way that would not impact sectors that have not traditionally caught windowpane. The GAP discussed the co-catch with windowpane with other stocks. In the Gulf of Maine, some advisors felt that windowpane are caught with winter flounder and yellowtail flounder. The Groundfish PDT looked at survey catches in Framework 52, which showed from 2003 – present, windowpane was also caught with witch flounder (along with winter flounder and yellowtail flounder). A member of the GAP stressed that this issue also applies to Amendment 18, as it would allow larger vessels with extended range to prosecute offshore fisheries.

*Motion carried on a show of hands (5/1/4).*

Public Comment:

- Bonnie Brady, Long Island Commercial Fishermen’s Association. *I know you have a lot on your plate today, but everything you did to try to find a solution for northern windowpane exists with the common pool for Southern New England windowpane flounder. Right now the gear restricted area we have in place, even the smaller one, prevents that catch of other groundfish stocks in Southern New England. I asked at the Groundfish Committee whether or not they could do two things. One was to delay a closure on an AM until NMFS knew for certain the ACL had been exceeded. I was told by Mitch McDonald that the AM had to be put in place as soon as we knew. Well, no one knows until about September or October. That would allow boat in southern New England to catch other groundfish stocks during May and June, which are important months. Secondly, if they could change the AM to a trigger based approach, because it doesn’t matter if we are 10% over or 50% over, as long as we can stay under the AM, when we reach 80% of the ACL put the AM in place. Right now you are punitively effecting common pool vessels in Southern New England for the entire following year because of a 1%-10% overage from the year before. I would love to get a recommendation today for southern New England, because the rationale that you used in the last motion would address what we are living with in southern New England right now. Thank you.*

Following this public comment, the GAP discussed the existing triggers for windowpane accountability measures. An advisor sought clarification on when the AMs for southern New England winter flounder were triggered. Staff explained that small AM area is triggered if the catch exceeds 105% of the ACL, and the large areas is triggered if catch exceeds 120% of the ACL. A member of the GAP supported the contention that May and June are important groundfish months for the Montauk fleet.

The GAP shifted their windowpane discussion to Northern windowpane catches in the scallop fishery. One advisory felt that creating a scallop sub-ACL with an AM for windowpane flounder would be a good thing for the groundfish fleet, because under current regulations the groundfish fleet is held responsible for overages by all fleets.

#### **MOTION #4 – (Odell/Soule):**

The GAP recommends to the Committee that a rebuilding plan review be initiated based upon new scientific information made available by the Northeast Fisheries Science Center on GOM cod, with the intent of reviewing biological and fishery considerations and possibly extending the rebuilding time period.

*Rationale:* The maker of the motion framed the rationale for this motion with a summary of the GAP motions and Groundfish Committee actions around Framework 51. The maker referenced the building plan review analysis that had been approved by the Council in FW51, and the felt all three criteria for such a review had been met based up the GOM cod assessment update. The maker recounted a GAP discussion from 2013 that focused on the need for management stability.

*Discussion on the Motion:* Council staff noted that the Council had selected the building plan review analysis as preferred in FW51, but that the rebuilding plan review analysis did not make it into the final rule. Staff explained that the Council had selected 10-year rebuilding plans as preferred, and that the building plan review analysis was hinged to seven and eight year rebuilding plans.

Several members of the GAP felt strongly that the GOM cod rebuilding plan should be reviewed. The maker stated that the intent of the rebuilding plan review is not to change an outcome or the data, but to reconsider what the plan is trying to achieve in a given time period. Another advisor felt that if we cannot get there under the prevailing ecological conditions, we need to rethink the rebuilding timeframe and goal. The advisor felt that this motion was asking to see if the goals of the rebuilding plan are realistic. Another advisor felt that that given the wide swings in assessment results, there needs to be more accountability for the NEFSC. There was a question about what was an expected outcome of this request. The maker responded by asking a somewhat rhetorical question: What rebuilding plan would have been adopted if the results of the new GOM cod assessment had been available when the rebuilding plan was put in place? She highlighted the different estimates of SSB, and different projections, and went on to say that the only option is to ratchet down catch and stay on the same path. A GAP member stated that 32% cod mortality in the GOM came from lobster traps, and that traps were contributing to mortality from other gear.

Motion **carried** on a show of hands (6/1/3).

### **MOTION #5 – (Soule/Brown):**

The GAP recommends to the Committee several proposed measures to be analyzed for the purpose of eliminating the directed GOM cod fishery and reducing bycatch:

1. Trawlers would be required to use a 6.5” square mesh codend when fishing west of 70° 15’;
2. Gillnets would have an increased mesh size to 7 or 7.5” or a limit on a number of gillnets that may be fished west of 70° 15’;
3. Limit on stand-up gillnets, either the number of nets being used or the season that they can be used in, west of 70° 15’;
4. No hook gear allowed fishing for groundfish west of 70° 15’ (incl. longlines and tub trawls);
5. Develop the CATT spawning closure alternatives;
6. No recreational fishing allowed in any of the closed areas (CATT areas and Western GOM Closed Area);
7. No lobster gear allowed in the CATT areas or Western GOM Closed Area; and
8. Revoke the lobster gear exempted status;
9. Mandatory VMS requirements for the for-hire fleet.

*Rationale:* These measures are proposed to be analyzed – not implemented. The fleet catches several species in the Gulf of Maine, and it is important to create opportunities to prosecute healthy stocks.

*Discussion on the Motion:*

A motion was friendly amended with the addition of revoking the exempted status of lobster gear to the list of analysis. The GAP discussed mesh sizes, and the changing trawl configurations to reduce the catch of cod. The GAP also talked through attributing cod catch to broad stock areas, and noted that sectors have an agreement in place that is designed to ensure that cod is correctly attributed to go the Gulf of Maine or Georges Bank. There was some question as to what the addition of revoking the exempted gear status of lobster traps would mean for that fishery. An advisor felt that going to 6.5 inch square mesh would eliminate the haddock fishery in the Gulf of Maine. He went on to offer a friendly amendment to the motion a mandatory requirement for all for-hire vessels to carry a VMS. There was discussion as to whether or not a mandatory VMS for the for-hire fleet would reduce cod mortality. Another advisor spoke to a regime shift in the Gulf of Maine, with cod and other animals seeking out colder water in deeper places. He went on to suggest there needs to be more accountability in the fishery.

**MOTION TO AMEND #5a – (Dority/Parker):**

To include no trawl and gillnet gear, similar to #4 above as #10 and #11 on this list.

*Rationale:* If one gear type is mentioned, for consistency, include all gear types if this is just for analysis purposes.

Motion **failed** on a show of hands (2/7/1).

*Discussion on the Main Motion:*

- Jim Odlin, Portland, Maine. *I can't figure out why you would want to go to 6.5" square mesh. The only thing you can catch with 6.5" square mesh is large cod. You can't catch redfish or Pollock, and you catch very few flounders. I think you are going in the opposite direction that you need to go. Same thing with gillnets. A 7.5" gillnet cannot catch Pollock. Why would you limit catch of Pollock. If you are going to do anything to allow our haddock fisheries to be prosecuted, you would use selective fishing gear such as a raised footrope trawl or a Rhule trawl or a haddock separator trawl. We have all the evidence in the world that you can fish and not catch cod. #1 and #2 will have the opposite effect of what you are trying to do.*

A member of the GAP stated he would prefer heightened accountability instead of gear restrictions, and allow fishermen to figure it out on their own. Another advisor did not agree with using the 70° 15' line. The maker of the motion stated that the intent is to look at the CATT alternatives. The Groundfish Chair felt that that list for analysis was getting long, and suggested that the GAP identify and focus on recommendations for analysis that advisors felt were important.

After a brief break, the maker brought forward a perfected motion.

**MAIN MOTION AS PERFECTED #5b – (Soule/Brown):**

The GAP recommends to the Committee several proposed measures to be **analyzed** for the purpose of eliminating the directed GOM cod fishery, reducing bycatch, while allowing for harvest of other stocks. (Measures are intended to last 1 year.) The GAP recommends the following:

1. Trawlers would be required to use a 6.5" square mesh codend when fishing west of 70°15';

2. Gillnets would have an increased mesh size to 7 or 7.5" or a limit on a number of gillnets that may be fished west of 70°15';
3. Limit on stand-up gillnets, either the number of nets being used or the season that they can be used in, west of 70°15';
4. Trawlers would be required to use selective fishing gears (eg separator trawl, raised footrope trawls etc.) fishing west of 70°15'.
5. Develop the CATT spawning closure area alternatives;
6. No recreational fishing allowed in any of the closed areas (CATT areas and Western GOM Closed Area);
7. No lobster gear allowed in the CATT areas or Western GOM Closed Area;
8. Zero retention of GOM cod for recreational and commercial fleets.

*Discussion on the perfected motion:*

One advisor felt that the perfected motion was an improvement, but was concerned about excluding a single gear type altogether. The maker of the motion clarified that the intent was to have each request analyzed individually. Another advisor felt that the proposed requirements were too onerous for the inshore fleet.

**MOTION TO SPLIT #5c – (Parker/ ):**

To split # 8 off for separate consideration.

*The motion was accepted as a friendly amendment.*

An advisor expressed support for the motion, and felt that it was important for the Groundfish Committee to have a suite of options to look at from the GAP that could be directed to the PDT.

**MOTION AS FRIENDLY AMENDED #5d – (Soule/Brown):**

The GAP recommends to the Committee several proposed measures to be **analyzed** for the purpose of eliminating the directed GOM cod fishery, reducing bycatch, while allowing for harvest of other stocks. (Measures are intended to last 1 year.) The GAP recommends the following:

1. Trawlers would be required to use a 6.5" square mesh codend when fishing west of 70°15';
2. Gillnets would have an increased mesh size to 7 or 7.5" or a limit on a number of gillnets that may be fished west of 70°15';
3. Limit on stand-up gillnets, either the number of nets being used or the season that they can be used in, west of 70°15';
4. Trawlers would be required to use selective fishing gears (eg separator trawl, raised footrope trawls etc.) fishing west of 70°15'.
5. Develop the CATT spawning closure area alternatives;
6. No recreational fishing allowed in any of the closed areas (CATT areas and Western GOM Closed Area);
7. No lobster gear allowed in the CATT areas or WGOMAC areas;

**MOTION TO AMEND #5e – (Dority/ ):**

To strike #6 and #7 from the list of recommendation.

Motion failed for lack of second.

## **BACK TO THE MAIN MOTION #5d – (Soule/Brown):**

*Main motion as perfected and friendly amended carried on a show of hands (7/1/2).*

## **SPLIT MOTION #6 – (Soule/Brown):**

The GAP recommends to the Committee that zero retention of GOM cod for the recreational and commercial fleets be analyzed (this would be a one-year measure).

### *Discussion on the Motion:*

A member of the GAP did not like the idea of zero retention for GOM cod, and felt that accountability measures and incentives with retention represented a better way forward. An advisor wondered how the fishery would operate with zero retention. Other GAP members felt that catches would be estimated using observer data.

- Jim Odlin – *The problem with GOM cod is that we've never been able to get control of mortality. This is not the first time that we've had to consider zero possession in a fishery. It worked for southern New England winter flounder. As soon as we went to zero possession we got below our mortality targets. It doesn't matter how low of a quota you have, as long as you have a targeted fishery you'll never get there. The only way that you'll ever get to bycatch fishery is to use zero retention. Why would you target cod if you can't sell them? With zero possession you'd automatically have less targeting of a species. This would allow people to still prosecute other fisheries that are healthy. The accountability may be that you have a zero retention fishery and the quota gets caught, then maybe you revert to selective fishing gear, or close areas, to take away the incentive to target on cod.*

An advisor spoke to the groundfish fishery in southern New England, and stated that he was not sure if the zero possession of cod would work the same way it did for SNE winter flounder because the fishery in SNE spends less time targeting groundfish than in the GOM. One advisor felt that once areas are closed they are never reopened.

The motion **failed** on a show of hands (0/3/7).

## **MOTION #7 – (Parker/Martens):**

The GAP recommends to the Committee to support the intent of sector management and the opportunity for innovative fishermen to harvest their own groundfish by:

1. 100% observer coverage (or electronic monitoring);
2. Fishing in a single stock broad stock area on a given trip, without monitoring; and
3. Increased penalties for misreporting stock area or fishing with illegal gear.

*Rationale:* The maker of the motion stated that after sectors were launched managers had failed to support the system of with enough accountability to get the outcome that was hoped for. He felt that relatively low levels of observer coverage, coupled with flexibility in how we prosecute stocks in different areas contributed to some of the problems in the fishery. The maker felt that one place where the fishery could do better is heightened accountability.

*Discussion on the Motion:* A member of the GAP expressed frustration with discarding as a practice, and stated he supported 100% observer coverage. Another member of the GAP was not in support of fishing in a single stock area on a given trip citing the cost of putting together a trip, and stating that vessels needed the flexibility to prosecute multiple stocks on the same trip. An example was given of chasing haddock in the eastern area – if the fish are not there, this advisor said that vessels need the opportunity to

fish in other locations to complete their trip and make money. Forcing vessels to the fish in the GOM stock area was said to run counter to what is being considered in other actions. There was concern expressed that vessels could not afford the cost of observer coverage that would come with 100% monitoring. A different advisor stated unless there was a guarantee that NMFS would pay for 100% monitoring, he could not support the motion.

*Public Comment:*

- Terry Alexander, Council Member – *We just increased penalties at the enforcement committee, and fishing with illegal gear was part of that. Observer coverage – we're working on the omnibus amendment right now. And fishing in a single broad stock area – I don't see how we can put a trip together fishing offshore and being stuck in a single stock area. A lot of times, I'm straddling the boarder (of a stock area). I would be opposed to this, it does not give us the flexibility we were supposed to get with sector management.*

An advisor asked what part of FW53 this motion was addressing. The maker said that the motion addresses a lack of accountability in the fishery, and felt that fishing mortality was one of the reasons GOM cod was in the shape it is in. The maker was concerned with status of the GOM cod resource, and felt that the problems in the fishery would only accelerate when quotas get low. The maker went on to express concern with retrospective patterns in stock assessments and the quality of data been used in models.

- Jim Odlin, *The industry cannot pay for 100% observer coverage. We did an EFP, self-funded, and it cost us \$50 thousand dollars for 10 trips. We were in the closed areas supposedly having the highest catch rates you can have in the fishery – and you can't afford observers. We want people fishing on healthy stocks – allow them to roam far and wide. Increase penalties for misreporting? It is already a felony to misreport. You go to jail for it. It is hard to be 100% compliant with gear. Codends shrink. We've gone through bails and bails of codend twine to stay legal because it shrinks. Do we want the Coast Guard out there arresting someone who is a hair under the minimum? I also think that there is any evidence that fishing with a 1/4" smaller codend has caused damage to the stock. Our problem has been that we have failed to deal with mortality.*

An advisor said she could not believe that misreported catch is why there is a retrospective pattern in the assessments, and had a philosophical issue with the motion. There was concern from another GAP member that when you get to really low quotas – we are going to lose accountability in the fleet and lose track of what is happening in the ocean. A supporter of the motion felt that the motion did not speak to who would pay for 100% monitoring, and stated that electronic monitoring has made steps over the past two years and that NMFS has said it would consider electronic monitoring in sector operations plans in 2015. He also felt that with 100% observer coverage or electronic monitoring, that there would not be a need to restrict trips to a single area. With regard the increased penalties, the advisor said he was not concerned with shrinking codends, but with repeat offenders would consider penalties the cost of doing business.

**MOTION #8 – (Odell/Soule):**

The GAP supports small focused areas to protect spawning. These areas should be discrete and dynamic, not static, due to the unpredictability of timing and precise area to ensure real protection. Such areas should be based on science and monitored closely, validating spawning activity. The

goal of spawning areas should be to enhance the reproductive success of the fish while being the least disruptive and costly to the fishery.

*Discussion on the Motion:* A GAP member suggested that the motion was looking to create additional areas similar to Whaleback. He went on to express concern about cod getting to and from spawning grounds, and the use of gillnets around the Whaleback closure. An advisor was concerned about the enforceability of these areas. The maker acknowledged enforcement concerns, but also felt that spawning closures should not be overly expansive and protect areas where fish are not spawning so as to have the greatest positive biological impact with the smallest economic impact on the fishery. An advisor who participated in the cod tagging studies in the Gulf of Maine felt that the Whaleback closure ended up larger than it should have, but also missed an area of spawning cod the first year it was in place (by 5 micro-seconds to the west).

Motion #8 **carried** on a show of hands (6/0/3).

**MOTION #9 – (Canastra/Parker):**

That the GAP not have half-day meetings.

Motion #9 carried on a show of hands (8/0/1).

Staff explained that the meeting had been scheduled for a full day, but due to scheduling conflicts a half day was the best that could be arranged for ahead of the Committee meeting.

**MOTION #10 – (Canastra/Odell):**

The GAP recommends that the Committee reject the recent operational assessment for GOM cod based on the following rationale provided by *Obama’s Memorandum on Scientific Integrity* (March 9, 2009): “*The public must be able to trust the science and scientific process informing public policy decisions. There should be transparency in the preparation, identification and use of scientific and technological information in policymaking. Each agency should have appropriate rules and procedures to ensure the integrity of the scientific process within the agency. When scientific or technological information is considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate...*”

The Gulf of Maine cod updated assessment did not adhere to those principles, nor does it adhere to National Standard 2 Guidelines.

*Discussion on the Motion:* An advisor felt that until NMFS conducts annual assessments for each stock, there will continue to be volatility. Another advisor stated that the trawl surveys are very noisy – and that though annual assessments managers would be chasing highs and chasing lows. An advisor felt that annual assessments would run contrary to the need for stability. Just need to hope that surveys happen at the right time in the right place. Frustration was expressed about the lack of transparency in the 2014 GOM cod assessment. An advisor wanted to know why annual assessments are possible in the scallop fishery, but not for groundfish. This advisor stated interest in efficiency in the assessment process. Staff explained that the assessment did pass peer-review, and noted that the fishing industry and public did have the opportunity to participate in this assessment process. The Groundfish Committee passed a motion at its last meeting asking the NEFSC why the assessment was done on this stock outside of the



usual process. Members of the GAP expressed concern with how cod mortality in lobster traps is being accounted for, as well as data inputs into the assessment.

An advisor expressed concern recent about changes in fishing behavior, and how they might impact the upcoming stock assessments. The advisor explained that fishermen are actively avoiding areas that they do not have an allocation of because they know that they will encounter animals in those areas. She was generally concerned with how commercial catch would be treated in assessments. The GAP Chair said he spoke with Mr. Michael Palmer (NEFSC) before the meeting on this point. The Chair noted that fishermen are actively avoiding cod right now, and felt that the models might not be working because the fishery has changed so much. He confirmed that the NEFSC is aware of these issues.

Motion #9 **carried** on a show of hands (4/3/1).

### **Amendment 18**

In light of how long the Framework 53 discussion went, the GAP opted to not receive the staff presentation on Amendment 18 updates.

#### GAP Recommendations

**MOTION #10** – (Odell/Bouchard):

The GAP recommends that the option for splitting the GOM cod ACL into inshore and offshore sub-ACLs be considered but rejected.

*Rationale:* There is concern about the potential impacts to the inshore fleet from such a measure. A letter was also cited from Carl Bouchard to John Bullard.

*Discussion:* One GAP member felt that more public discussion of these measures should occur prior to making a determination about rejecting the measures.

Motion **carried** on a show of hands (4/3/0).

The meeting was adjourned.