

# New England Fishery Management Council Groundfish Oversight Committee

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Meeting Summary  
October 11, 2012

The Groundfish Oversight Committee (Committee) met in Hampton, NH. The Committee discussed the goals and objectives for groundfish closed areas, recreational measures for FY 2013, At-sea monitor coverage rates, SNE/MA windowpane flounder AMs and scallop fishery allocations of yellowtail flounder. Committee members present were Mr. Terry Stockwell (Chair), Mr. Tom Dempsey (Vice-Chair), Mr. Terry Alexander, Mr. Erling Berg, Mr. Frank Blount, Mr. David Goethel, Mr. Peter Kendall, Mr. Harold King, Ms. Sue Murphy and Ms. Laura Ramsden. They were supported by staff members Mr. Tom Nies, Mr. Andrew Applegate, Ms. Deirdre Boelke, Ms. Rachel Feeney and Fiona Hogan (NEFSC), Mr. Mark Grant, Mr. Travis Ford, Ms. Sarah Heil, Ms. Melissa Hooper and Mr. Michael Ruccio, (NMFS NERO).

Discussions were guided by the Groundfish PDT Meeting Summary dated October 5, 2012, the Draft Recreational Advisory Panel Meeting Summary dated October 3, 2012, the Draft Groundfish Advisory Panel Meeting Summary dated October 4, 2012, the Groundfish Oversight Committee Meeting Summary dated September 19, 2012, draft Recreational Measures text for Framework 48, Strawman Observer Coverage Options, FY 2010 Other Sub-Component SNE Windowpane Discards by Mesh Size, SNE/MA Windowpane Flounder AM/Sub-ACL Alternatives dated October 10, 2012, documents pertaining to scallop fishery allocations of yellowtail flounder, a brief summary of the Northeast Skate Complex, draft Framework 48 management measures dated October 10, 2012, and a series of correspondence received by the New England Fishery Management Council.

## **Goals and Objectives for Groundfish Closed Areas**

Staff provided a summary of the Closed Area Technical Team (CATT) work on developing the goals and objectives for Groundfish Closed Areas. The CATT expanded on PDT work and identified functions of Closed Area management. The CATT conducted a survey among its members to identify the key functions of Groundfish Closed Areas. The results were used to construct the goals and objectives. The primary goals of groundfish closed area management were to enhance groundfish productivity and maximize societal net benefits from the groundfish stocks while addressing current management needs. The objectives for the design of groundfish closed area management options were improved spawning protection; including protection of localized spawning contingents or sub-populations of stocks, improved protection of critical groundfish habitats, improved refuge for critical life history stages, improved access to both the use and non-use benefits arising from closed area management across gear types, fisheries, and groups. These benefits may arise from areas designed to address the other three groundfish closed area objectives. Staff explained that this work will help in the evaluation and identification of closed areas in the context of the omnibus amendment. A Committee member was concerned that the objectives might be too lofty considering the data needs to achieve them. Staff explained that this approach could focus closures to more localized spots where data are available as opposed to broad closures. A Committee member indicated that the NERO will be

considering these goals and objectives when evaluating the Environmental Assessments in the Sector Operations plans. If there are any apparent conflicts between the goals and objectives during this process, the Council will be tasked with deciding which one takes priority.

Some public comment included:

- Ron Smolowitz, Fishery Survival Fund: This is a good effort but my question is about interspecies behavior and action. The idea of a refugia is important and an area that maintains a large population of cod is good. Was there a discussion in here for establishing a refugia and controlling the predators, like seals, and have true ecosystem management? Instead of having them all eaten by dogfish or seals? How do you actively manage an area to achieve your goals?
- Peter Shelley, Conservation Law Foundation: Does objective 3 include protecting adult population structure? The objectives are excellent but one thing regarding Framework 48 opening mortality areas but one of the assumptions I heard some of the committee working under was that mortality could be controlled by quotas and the damage to habitat could be controlled by the omnibus amendment that is focusing on physical structures. In this survey of the scientific community, only two of those were strictly related to controlling mortality and protecting physical habitat. There are lots of other factors regarding productivity that aren't being considered by the Council before opening up these areas.

**Motion:** The Groundfish Committee recommends the Council adopt the goals and objectives for groundfish closed areas as part as outlined by the Groundfish Plan Development Team memo of October 5, 2012. (Mr. Goethel/Mr. Kendall).

A Committee member expressed concern about the magnitude of the analysis required to ensure these goals and objectives were met potentially delaying access to the closed areas. Staff clarified that these were for the groundfish section of the Omnibus Habitat Amendment. Another Committee member viewed these as a checklist for sector managers to use when requesting an exemption to the closed areas in the Sector Operations Plan.

Some public comment on the motion:

- Maggie Raymond, Associated Fisheries Maine: I'm looking at this and it says these are the objectives for the design of groundfish closed areas. I think that's what Mr. Nies clarified but others are suggesting that these are criteria that you'd be using for decisions to access the closed areas. That concerns me but actually answering many of these questions is impossible. We don't have the information to identify local spawning contingents of groundfish or sub-populations. That information doesn't exist so if we have to use that to get into these areas? Is this for the design, which is what the document says, or is it something else or would the council have to evaluate for all types of boats before they can access the area?

**Motion as perfected:** The Groundfish Committee recommends the Council adopt the goals and objectives for design of revised groundfish closed areas as part of the Omnibus Habitat Amendment as outlined by the Groundfish Plan development Team memo of October 5, 2012. (Mr. Goethel/Mr. Kendall).

The motion **carried** on a show of hands (9/0/1).

### **Groundfish Advisory Panel Report**

The Groundfish Advisory Panel (GAP) Chair provided a summary of the GAP meeting of October 4, 2012. The GAP made a series of recommendations for the Council regarding state water catches and allocations, establishing a SNE/MA windowpane sub-ACL to the scallop fishery, focusing the analysis of a Georges Bank (GB) yellowtail flounder sub-ACL for the scallop fleet on 8 and 16% of historic catch, rejection of the 500 mt US/CA quota and requesting the TMGC to revisit the GB yellowtail flounder quota, perform a benchmark assessment for GB yellowtail flounder, option 4 for industry funded observer cost responsibility, modification of the minimum size limits to 12 inch for flatfish except for gray sole (13 inches) and pollock was kept at 19 inches, option 3 for full retention and for 100 percent dockside monitoring with adoption of full retention, for access to closed areas but if this is not adopted then restrict recreational access to the closed areas, reconsider removing gear restrictions on access to closed areas, clarification of the monitoring goals and objectives, recommendation of directed observer coverage to closed area and groundfish trips and away from dogfish, monkfish and skate trips, lifting the gear stowage requirement, additions to the priorities list, mitigation measures and discussion of a one-off trade with Canada of 200 mt EGB haddock for 60 mt GB yellowtail flounder.

The GAP chair answered a number of questions from the Committee regarding the GAP motions. The GAP intended to keep the at-sea monitoring program in addition to implementing 100 percent dockside monitoring.

Some public comment included:

- Maggie Raymond, Associated Fisheries Maine: Clarification on 100% dockside monitoring, we discussed how with the full retention programs you have to recognize that if you're landing small fish then you're going to reduce your yield over time so we wanted to make sure that any undersized fish that was landed was fully accounted for in the assessment of those stocks. I don't know if you change the minimum size whether you'll get that information because they'll be discarded. It was specific to a full retention program.

The Committee reviewed the remaining GAP motions. The Committee considered the GAP motion that state directors and NMFS should allocate SNE/MA winter flounder to states on an annual basis as an important, huge undertaking but something that should be discussed and prioritized for a future action. NOAA General Counsel advised that NMFS does not have the authority to allocate stocks.

Some public comment included:

- Jackie Odell, Northeast Seafood Coalition: There will be other motions the Committee will be looking at that came out of the GAP meeting. There is a lot of concern from groundfish fishermen especially right now that this is a zero possession fishery and we're looking at accountability measures and considering mitigation measures for FY 2013. There's a lot of concern from the groundfish perspective that the way that the commercial fleet is held accountable versus state waters, there's a discrepancy there and we're very concerned about how to handle that discrepancy in the future especially if we're looking at future accountability measures or looking to allocate. We're hoping to get enough fish in the fishery that you can allocate to the groundfish fishery but you still don't have a fixed percentage with the states where they are being held accountable to that percentage. There's just concern about how we're handling the state water fisheries especially now that we're considering making modifications for the commercial fleet for SNE winter flounder.
- Richie Canastra, New Bedford, MA: Channel flounders (SNE winter flounders) were a lucrative fishery 5 years ago. We landed about a million tons one year and I think it's important on this motion that one of the states and I forget whom they had 250lbs a day for SNE winter flounder. They want to increase it to 500 lbs per day so we're holding back the commercial fleet for what reason if they're doubling it. This is the box we're in and like Mr. Gerencer said we're trying to find ways to get out of it. That mentioned give the states sector allocations like we have.

The Council Chair addressed the GAP motion that rejected the 500mt TMGC recommendation for GB yellowtail flounder. The U.S. does not use the numbers that come out of the SSC because the Canadians don't have anything on their side that are comparable to that. The U.S. has gone back to renegotiate with Canada on three different occasions; the Canadians would be reluctant to renegotiate and such a request could have detrimental effects on the Understanding. If the Understanding is dissolved, the US would be required to make up for any overage of the Canadians; it seems like we could gain but the potential for us to face serious losses is great. Currently, if either country exceeds its TAC, their own TAC gets reduced in the subsequent year. A Committee member suggested more involvement of the SSC involvement in the TRAC process, however, this has been done in the past when renegotiations were requested and might not solve this issue. Another Committee member considered the SSC advice on GB yellowtail flounder that provided a broad range to be no help at all and that the Committee was bound by the TRAC advice. The Council Chair outlined the plan for future assessments on this stock; the Northeast Fisheries Science Center (NEFSC) is going to do some work on the model to try and diagnose why the models aren't performing and GB yellowtail flounder is a candidate for an ICES workshop on retrospective patterns in stock assessments.

Some public comment included:

- Vito Giacalone, Northeast Seafood Coalition: The industry's perspective is definitely not to threaten or blow up the agreement so whatever gesture made from the US has to be mindful of keeping it cordial but at the same time there is the potential for two fisheries to be shut down. We understand how the data are used in the TRAC; this is how the US responds to the situation. I don't know how this would threaten the agreement unless we

told them we would do what we want to take care of ourselves. The 60mt is a one-off trade and we see that as a separate discussion to other things. I'm afraid that we're going to let this die and be at the 215 mt for GB yellowtail flounder and we still haven't settled the scallop sub-ACL issue so we could end up with zero. Is this a weakness on the US side on how we're handling the TMGC? Why don't we have a mechanism to communicate with Canada? The TMGC was constrained between the 200-500 mt and that's not a criticism. The 215mt doesn't work and now what do we do next? We've got ourselves so much in a box where we can lose our fisheries or break the agreement. Or can we figure out a mechanism to work with them to find a solution.

- Richie Canastra, New Bedford, MA: This has to be addressed and one of the motioners said that it could collapse the groundfish and that should be struck out to say it will collapse both fisheries. We're dealing with Canada it's not Russia, Iran, or the Soviet Union; it's Canada. We have a directed fishery and they have a discard fishery. If we can't find a way to negotiate this so we don't lose billions of dollars then shame on us.

The Committee went on to discuss the GAP recommendation to modify the minimum fish sizes for all flatfish to 12 inches except for gray sole (13 inches). The GAP Chair explained the rationale that the GAP weren't comfortable with the minimum sizes that would provide the maximum reduction in discards but preferred modified ones that considered life history parameters and would still reduce some discards.

**Motion:** To amend Framework 48 section 4.3.3.2 to include the minimum fish sizes recommended by the GAP. (Mr. Goethel/Ms. Ramsden).

There was general support for the recommended changes but one Committee member also supported a move to full retention.

Some public comment on the motion included:

- Ritchie Canasta, New Bedford, MA: I was wondering if Mr. Nies would be able to put up on the screen the size at 50% maturity because we went off that. I don't know if it would be a good idea for you to look at it. As far as the size itself we were looking at what was marketable and not marketable. Fishermen are using a larger mesh it's 6.5 inch mesh. There are some guys using a bigger mesh. Grey sole stays at 13" because we couldn't get 50c for them this morning; they're called rats. But fishermen can always go up on their mesh size and we have boats doing that today.

The motion **carried** on a show of hand (9/0/1).

The GAP recommended 100 percent dockside monitoring if full retention was adopted. There was some agreement with this motion as long as it was tied to full retention. One Committee member was strongly opposed to full retention over concerns that it could incentivize cheating with smaller meshes. There was also a concern over the costs of dockside monitoring for local sellers who sell a few pounds in many locations.

**Motion:** To add an alternative to Framework 48 under dockside monitoring requirements (section 4.3.2.5) that would require 100 percent dockside monitoring with full retention. (Mr. Alexander/Mr. Dempsey).

Full retention was defined to mean all allocated groundfish would be landed regardless of size after some confusion that minimum fish sizes would still exist under full retention. The Committee was concerned that bag liners would be used as in a recent case was brought to the Council's attention of vessels not following the rules. However, the additional data from dockside monitoring could be used to improve stock assessments and potentially reduce the retrospective pattern. Other Committee members were opposed to full retention but considered that it was good to keep this as an alternative until all those concerns could be addressed in the future. One Committee member thought full retention would help electronic monitoring. A Committee member noted that this would be another source of monitoring that would require industry funding. The issue of monitors being prohibited from entering the hold being a loophole was raised.

Some public comment on the motion included:

- Ritchie Canastra, New Bedford, MA: I think again we missed that you can always increase the mesh size. And further add to the 100% dockside monitoring. I've said in the past that the unloaders would pay for it but when you look at the reduction next year it will add a nickel a pound. We should look for dockside monitoring to include samples of the species themselves when they come in so we can do an accurate assessment.

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

The GAP recommended allowing requests for exemptions from the year round closed areas; if status quo was adopted then access by the recreational fishery should be restricted also. A Committee member considered that regardless of the effects of either fishery, the closed area have been a long-term experiment that resulted in no increase in fish because the fish move based on bottom temperature and food.

Some public comment included:

- Carl Bouchard: I supported this at the GAP meeting. There's been a lot of commotion about the offshore vessels fishing on Middle Bank and it was brought up this morning. This was a motion to displace some of that effort to fish on healthy stocks. You don't want them on Middle Bank but you don't want to open up an area for them to fish in. If those areas are in such dire straits then no one should fish on them. You have to give these vessels a place to go fish.
- Aaron Dority, Penobscot East Resource Center: I think in moving forward we should proceed with caution and think if there's an opportunity to increase monitoring coverage in these areas. If we can get more data from these areas, we can evaluate the fishing in these areas and answer some of these questions in people's minds. I'm supportive that areas are currently closed that are not serving a use do not necessarily need to remain

closed. We're proceeding too quickly and we need more analysis. I think we should proceed with caution and if they do open get as much evaluation of the impact on those areas as possible.

- Ritchie Canastra, New Bedford, MA: I agree with Mr. Goethel. It's almost like we're treating this area as the Garden of Eden and like it's never been fished on before. It's been fished for 100s of years. Fish do move as we can see with yellowtail flounder. The point is if it was doing good for the fishery then why are we being cut 50-70% on our TACs next year if it was doing such a great job.
- Audience Member: I think the relevant question is how are we doing on catching the TAC this year which was reduced? The fish aren't there even if it's just to save face these areas need to stay closed. It sends the wrong message.

The GAP Chair highlighted the first part of the motion as what the GAP was trying to achieve and that they were concerned with cod and haddock. The Committee **agreed by consensus** to develop this at the next Committee meeting for inclusion in the Omnibus Habitat Amendment.

The Committee moved onto the GAP motion that gear restrictions be reconsidered. The Committee **agreed by consensus** to have no Committee action on this topic since sectors are doing it.

Some public comment included:

- Maggie Raymond, Associated Fisheries Maine: I made this motion because I was concerned about the potential breaking of the yellowtail flounder TAC early in the year. As it turned out the sectors have agreed to impose on themselves a restriction on the Closed Area II access area and we've included that in the agreement with the lobster fishery. Any boats in the Closed Area II will be using the Ruhle trawl or haddock separator trawl. So the committee could leave it so the sectors will be doing it themselves.

The GAP requested that clarification be provided specifying the Council's intent of Monitoring Goals and Objectives. A Committee member thought some motions might be made later in the afternoon and the components should be analyzed separately and collectively. Another Committee member had no objection to the motion but wondered about dockside monitoring as that had been used as an enforcement tool in the past, not a monitoring tool.

Some public comment included:

- Tim Towers: I don't want people to think there are any stocks out there that are healthy. Nothing like what is out there now is like what was there when I was growing up. Pollock stocks are not healthy. I don't know where that comes from. Is there a new definition of healthy? It bothers me; that is all.

## Recreational Advisory Panel Report

The Recreational Advisory Panel discussed the alternative in FW48 that would allow sectors to request exemptions to access the closed areas. The RAP was concerned about the impacts of opening these areas, particularly the Western Gulf of Maine closed area, to commercial fishing on the recreational industry. The RAP passed a motion to not open any of the closed area based on concern for the cod stock and habitat. NEFSC staff presented the bioeconomic model used to develop recreational measures. The RAP discussed management measures for FY 2013 based on a range of ACLs under consideration. The RAP was extremely frustrated with trying to make decisions on management measures with an unknown ACL for cod. It is difficult to determine what reductions are necessary without the ACL. The RAP outlined a range of measures that could be implemented and the order of implementation they preferred for cod and haddock. The RAP passed a motion that would allow the RA to develop different management measures for the for hire and private anglers. A lot of concern was expressed over whether the necessary reductions would make a trip unprofitable. The RAP received a report on increased commercial fishing activity in SA 514 and was concerned about changes in effort by commercial vessels. They considered the decline in cod in the area to be attributable to large vessels fishing inshore. Committee needs to be aware that RAP wants to be involved in management measure development; the recreational industry represents a lot of jobs and growing economic impact.

The RAP representative answered a number of questions from the Committee regarding the RAP motions. The RAP didn't specify any measures but instead chose to rank the preferred order potential measures should be implemented because there was no target sub-ACL available for them to determine what combination of measures would allow continued profitability of the fleet and lower catch accordingly. A Committee member asked if the RAP was looking at ways to increase their catch as they caught approximately 57% in FY 2011 and were projected to catch less than that in FY 2012. The RAP was more concerned with preparing for reduced allocations as they had difficulties catching their quota suggesting the stock biomass had declined. Another Committee member thought the RAP should rethink raising the minimum size of haddock as they have a higher discard mortality. The RAP representative agreed but reiterated the point that the RAP was tasked with developing measures with no information. The RAP representative clarified that they were concerned about opening up the Western Gulf of Maine closed area, despite of the small size of the opening and the potential for the Omnibus Habitat Amendment to open the area anyway, because all aspects of the fleet seemed to be fishing there right now. The RAP also had trouble reconciling opening up closed areas during a declared disaster to wipe out the last of the resource. However, the RAP supported status quo which would allow the recreational fleet to have continued access to the closed area. A Committee member questioned that status quo that would prohibit the commercial fleet from targeting the healthy pollock stock. The RAP was concerned with the negative impacts on habitat and the resource that increased bottom gear could cause.

Some of the public comment included:

- Carl Bouchard: It is the commercial sector that has made these sacrifices and brought back this resource, not the recreational sector because they had access all the time. The commercial fleet did it. Don't pat yourself on the back too much.

## Recreational Measures for FY 2013

Staff described the draft recreational measure text for Framework 48. The measure tries to create a process that would enable the Regional Administrator to adjust recreational measures in line with the RAP motions. This is intended to be in addition to the management plan; it's an additional tool. This measure has any changes to the measures being implemented before the start of the fishing year because it is difficult to notify all recreational fishermen of in-season changes to regulations. There is precedence for this type of measure as a similar method is used for Accountability Measures for some stocks. A Committee member was concerned about the timing issue for this measure; the recreational cod sub-ACL, when it is known, still has to be analyzed and the January Council meeting would be a tight timeline in order to get this in the proposed rule; it might not be possible to complete this prior to FW 48 being approved. NOAA General Council expressed concern that this process could not be setup in a framework action and could require an amendment. The inclusion in FW 48 of just a range of values for the sub-ACL was not feasible as it wouldn't result in reasonable analyses of the alternatives. A Committee member pointed out that the Mid Atlantic Council frequently faces this issue but they are on a different fishing year. There was concern about NMFS consulting with the Council especially when data wouldn't be available for the November Council meeting and that recreational measures are always adjusted down and never up.

**Motion:** To include in Framework 48, the alternative outlined in the draft recreational measures text as recommended by the staff. (Mr. Dempsey/Ms. Ramsden).

*Rationale:* Obviously there are some logistical questions we need to deal with, first and foremost about the framework. Mr. Goethel's idea of whether this can be done in a proactive AM as in other fisheries and defined that way, I think the concept is a good one since we can't analyze good alternatives in the time we have and information we have and this is a good way to get boats on the water. Details do need to be worked out but we do need to do this.

A Committee member supported the motion but was opposed to increases in the minimum size of haddock as effort control because of the high discard mortality based on tagging studies with very low returns. The RAP representative clarified that they didn't endorse or not endorse this option but saw it as the only way to move forward. The RAP would prefer to have specific input while the specific measures are developed. The economic impact of not knowing the regulations, especially for printing and advertising, is already being felt. They're starting to print now and decide what trade shows they'll advertise in. It's already having an effect.

The motion **carried** on a show of hands (8/0/2).

The Committee reviewed the remaining RAP motions.

Some public comment included:

- Audience member: In regards to the habitat closures, what kind of message does that send? In terms of the haddock, without getting into the weeds of what survives, I think

closed areas are the most effective way of mitigating the impact and if that involves closed areas for recreational people we need to talk about it. In terms of having people sign up for a trip and then have the limits become more austere. I think it's better to start with tough restrictions and then have them become more liberal. For people who are not near the coast, they are more interested in just getting out on the water. There's definitely more to the day than what you bring home in the end and it's certainly frustrating dealing with a 19" limit when all the cod you catch is 19-20". It's disappointing. No matter what kind of catch limits you're talking about it doesn't matter if the fish aren't there. If you're talking about opening areas when there are enough fish out there but right now is not the time.

- Tim Towers: I couldn't agree more with Ed's comment. This isn't the time to be opening areas to have access to more cod and it certainly isn't the time to open anything, maybe closing more areas or closing to recreational public. A lot of these places that are opening up are important feeding areas for flatfish. There's hake spawning areas and the whole habitat area. Most people think it's just the shallow water but it's not, it's the areas around it too there are a lot of fish that go back and forth from the deep to shallow water. We have more pollock but the sizes haven't changed; they leave the areas and they get taken by the commercial fleet so they're catching them but the size is getting smaller. Most people would be disappointed with what's out there. There are areas where these fish are spawning and shouldn't be touched.

### **Scallop fishery allocations of yellowtail flounder**

Staff provided an overview of a couple of alternatives from the joint action with the Scallop Fishery Management Plan, Framework 24. The Scallop PDT has been working on GB seasonal restrictions and preliminary results were presented to the Committee; further work on one modification is necessary before they're final. The alternatives are presented by driving force for a season, e.g. mean scallop weight. The alternatives included: Alt. 1 No Action, Option 1 close when scallop meat weights are lowest (October 1 – April 30), Option 2 close when yellowtail flounder bycatch rates are highest (September 1 – November 30), Option 3A closure takes into account meat weights, yellowtail flounder bycatch, and traditional fishing grounds (Nantucket Lightship closed September 1 – November 30 and again March 1 – April 15; CA I and CA II closed September 15 – April 15), Option 3B close CA II during the fall when yellowtail flounder bycatch rate is highest and meat weights are the lowest (CA II closed August 15 – November 15; CA I and Nantucket Lightship have no closures). Option 3b was developed by the Scallop Advisory Panel and is the least restrictive. Option 3A was rejected by the Scallop Committee but the Scallop PDT is still exploring it. They will try to capture differential impacts on groundfish. The Scallop PDT will work with the Groundfish PDT to develop an alternative that is presented to both groups before final action. The Scallop PDT has not decided on a preferred option yet. The final action on this FW is expected at the November Council meeting and would be adopted for FY 2013.

Some public comment included:

- Ron Smolowitz, Fishery Survival Fund: How is this going to work? Right now the seasons are in the Groundfish FMP, so would it remove it from the Groundfish FMP and have the Scallop FMP put it in? Is there going to be a joint committee meeting to discuss this? We're discussing scallop yield and bycatch. Is the Groundfish Committee deciding scallop yield? I want to address Mr. Goethel's comment that there is, according to the assessment, 500 mt of yellowtail flounder and what we've done is do everything backwards. We have the area closed to scallop fishing when it has the least amount of yellowtail flounder present. Yellowtail flounder are in deeper water in the early spring. The fleet did that before the access area was open and was right on top of the yellowtail flounder. There was little yellowtail flounder in April, May and early June. Now the fleet is getting access starting June 15. The yellowtail flounder may be spawning in deeper water. There are a lot of tools being developed; we have research underway that reduces catch of flatfish. We have a tough year ahead of us and we have to get through it but I'm not too worried about the future.
- Shaun Gehan, Fishery Survival Fund: This is something we take seriously because it has implications for allocating it. I did have a question for Ms. Boelke when we had the two week shut down and were looking at the allocations. There were a couple of trips that had captains targeting yellowtail flounder on observed trips but they're severe outliers. There's a question on those sorts of things as they're used. Are we sure that these aren't driving the projections? If you can take a look and see if there are few trips driving the entire numbers or are they widespread. The industry is willing through the research set-aside to step up and implement measures to reduce yellowtail flounder catch. We want to achieve optimum yield on the scallop stock but in a lot of ways we need the tools and right now management is a hindrance to the resource overall. The Fishery Survival Fund will continue to work with the Council to develop these tools and whatever needs to be done to get this flexibility in. I wanted to convey that because ultimately it's millions of dollars coming out of our communities. As we move towards ACLs, there are good reasons to do it for scallops and groundfish and ultimately we can create a web of sub-ACLs that create choke species and that money comes out of the same fishing communities and the business that support the fisheries.
- Maggie Raymond, Associated Fisheries Maine: I believe when the Council voted in June to provide indemnity to the scallop fleet I said I hope you're right they're not going to go over. If that area is closed then we won't have haddock next year. We have an agreement with the lobster industry to not even go in there next year. I'm not sure what the solution is but we have a big problem that the groundfish fleet is accountable only for this stock. We're going to lose the only healthy fishery that we had, which is the haddock fishery. Going forward I hope you'll accept some of the recommendations that you have from the GAP and you have a better way of accounting for the scallop fishery.

Staff described the preliminary estimates of yellowtail flounder catch for the FW 24 scallop specification alternatives under consideration. The estimates presented were preliminary but staff wanted to present it as early as possible. FW 24 is at least a one year framework that may be a two year framework that provides estimates for the next three years. Five alternatives were presented, including a no action alternative. The different alternatives vary depending on the

number of access areas open and the number trips allocated. Alternatives 2 and 4 don't perform that differently so it is likely that the PDT will bring both of those forward to the Committee. Alternative 4 is a new option that the PDT just started looking at because it would have been almost the entire US share. They're all similar in terms of relative impacts; the fishery is going to have a loss regardless of what alternative is selected but they each have a slightly lower loss than the others. The scallop fishery is already facing a 30 percent reduction in catch. There appears to be a change in fishing behavior and probably more trips will be taken in the fall compared to other years; effort is more spread out but hasn't been analyzed yet.

A Committee member requested the latest information on the number of scallop trips left, how close to their allocation the scallop fleet was and when would we find out if there was an overage. The information was available online and at the time of the meeting the scallop fleet had reached 92 percent of the GB yellowtail flounder allocation. The Council Chair informed the Committee that it is up to the US/CA Steering Committee to make the decision regarding the one time trade with Canada and the timeline for that is still unknown. A Committee member asked for clarification of the timing of the scallop AMs. Staff said that it is not an in-season closure if there is an overage of the overall TAC; the closure would occur in the following year. If the TAC is exceeded the RA must close the eastern part of the US/CA area and take action to implement trip limits; if there is an overage then it's deducted from the next year's TAC. A couple of Committee members requested clarification on why discarding appears to be high for the access fleet because they can't all be undersized fish.

### **SNE/MA windowpane flounder ACLs and AMs**

Staff explained the draft management measures in FW 48. The No Action alternative would not create additional sub-ACLs for SNE/MA windowpane flounder to the groundfish sub-ACL. The AM would only be implemented for the groundfish fleet and is considered inadequate for the overages for this stock. The other option is to create a sub-ACL for other fleets for this species. The PDT thought that rather than assign this by FMP to look at it by gear then if it's exceeded the AM would apply to all those gears. It would be possible to divide it up and have separate monitoring; the AM is already defined. There is a sub-ACL for scallops, groundfish and state waters and then this other sub-components. In the case of SNE that other sub-components is pretty large. If the overall sub-ACL is exceeded then anyone who uses otter trawls 5.5 inches and over would have to comply with this AM and use selective gear. The difficulty arises when implementing an AM on a fishery that the Council doesn't manage. NOAA General Counsel advised that Councils can work together to create joint actions that can impose an AM in order to protect stocks. The Mid-Atlantic Fishery Management Council (MAFMC) member suggested raising the mesh size used in the fluke fishery to reduce discards but this stock is typically discussed at their December meeting. The PDT chair asked the Committee if the PDT should continue analyzing this alternative as more work needs to be done on what an AM would look like, e.g. selective gear or shut down. A Committee member informed the group that he registers for herring while whiting fishing in areas where he may catch a herring.

**Motion:** The Committee directs the PDT to develop PDT Option 2 for the SNEMA windowpane flounder AM, keeping groundfish and non-groundfish catches separate. (Mr. Goethel/Mr. Kendall).

*Rationale:* Quite frankly, I don't think the groundfish fishery should be subjected to AMs because other sub-components go over their catch. Mr. Nies is correct there are a number of bycatch reduction gears that could be used. The fluke fishery might be a hard one but as Mr. Berg said going to a larger mesh size might be the way to do it. If we say yes to this and the MAFMC members can bring it forward that this is what NEFMC is thinking of doing then it could move forward.

The motion **carried** on a show of hands (9/0/1).

### **ASM coverage standards**

Staff explained the work done to date on revising the ASM coverage standards. The PDT has struggled with monitoring bias that would cause errors in discard estimates. Selection bias is difficult because there are a number of different databases available. The service has PTNS that is rigorously random. It's well designed to try to make a random selection but once a trip is submitted it is turned over to an ASM provider and they can decide to accept or cancel the trip. The well designed random system begins to lose some of its randomness as more decisions are made. There is evidence that there is a statistically significant difference in the trips that are cancelled depending if there is an observer or not. This was examined on a sector level; some sectors showed a difference and others didn't. Changes were made to the PTNS system to account for this. Comparisons amongst mesh sizes there show a consistent bias. We have some differences between sectors. Two elements are important: precision and accuracy. It would be ideal to base coverage on consideration of both but accuracy depends on bias in discard rate on unobserved trips. This has proved extremely difficult to figure out. The bias number for the discard rate is still unknown. The PDT has tried a number of different analyses but has been unsuccessful; any proposed hypotheses have been rejected because the PDT has been unable to bound the bias assumption. The PDT examined the level of coverage needed and what industry would pay for. The PDT is uncomfortable about making an assumption that is not based in reality and is no longer recommending this approach for FW48. The recommended FW48 options are: no action; clarification of coverage standard, application of CV standard (accuracy must be considered); coverage sufficient to detect monitoring effects (the PDT might not be able to get a number). We can detect there are differences between observed and unobserved trips and can set an ASM level that is sufficient to detect if those differences change over time and use that as an indicator of needed changes to the coverage going forward.

A Committee member provided an example of how bias can be introduced when an observer is onboard; a trip was shortened with an observer present because of insufficient number of bunks on the boat. The presence of an observer can alter the decision making process but it doesn't inform about discards or whether they're higher. Another Committee member thought there was an overemphasis on precision using the recent increase in thorny discards he's seen because they're migrating. A precise number of the number of thorny discards could be provided but basing overall thorny skate number on those trips would be inaccurate because they are migrating in October and trips in the remaining 11 months of the year would be much lower. The NEFOP coverage was between five and eight percent prior to sectors and that gave an estimate that was accurate. There was a huge increase in coverage and they were discarding less than

thought overall. The Committee member thought the same thing could be done for less; across stocks you need a lower level of coverage than you need for strata and sector. A Committee member asked if extrapolation was an option to save some money. Staff explained that it was 5% higher at the mean or median distribution. If we want to make sure the ACE isn't exceeded then an uncertainty buffer should be built in. The size of the buffer is dependent on the bias estimate and the PDT doesn't have a defensible number and everything hinges on it. The implications are greater for a sector catching most of its ACE than for one that isn't. A management uncertainty buffer is already in place and a Committee member considered an additional buffer to be double counting. The public perception of fishermen was thought to be low with regards to discards because even with full retention and one hundred percent observer coverage people would think discarding could occur while the observer was sleeping.

A Committee member thought too much time was being spent on CV estimates of discards and that a fishery should not be managed by discards; more attention should be given to the full retention option. Another member thought this had to be developed in the case that full retention is not selected. An option for one hundred percent observer coverage with full retention was thought to be necessary. The same Committee member also suggested a fixed discard rate in place of ASM coverage because of the high costs that the industry could not afford.

Some public comment included:

- Gib Brogan, Oceana: There are a range of alternatives in this strawman but it's disappointing that option three isn't ready for prime time. For option 2 there's the sub-option to apply it at the stock level overall for the fishery or at the sector stock level, considering how that's done at the sector stock level we think that's the way to go. The more general allocation isn't useful for the way it's set up right now. So we see sub-option A as a non-starter but everything else in there is moving in the right direction. We like to see accuracy and it's what we're looking for. We hope the PDT will keep plugging away.
- Libby Etri: Right now sectors have been entertaining various monitoring programs. They would take a higher rate if it was more consistent. The current CV is prohibiting us from doing that. Is there a way to have more flexibility that would allow fishermen to accept an assumed discard rate if they are selected for an observer?

Some Committee members supported the PDT exploring an alternative that would allow vessels to accept a fixed discard rate, even if it's higher than the actual discard rate, if they were assigned an observer because an observer is more expensive. Staff explained that it might be difficult to develop a new alternative at this stage in the FW development and it would depend on how much work had been done already and the databases available.

**Motion:** To direct the PDT to continue development of the PDT's suggested ASM Options 1, 2 and 4. (Mr. Dempsey/Mr. Kendall).

A Committee member was interested in adding an alternative that would allow vessels to accept an assumed discard rate instead of having an observer. The maker of the motion thought we were

going to see some ACL cuts through this FW that would start aligning with the biomass underneath and that the industry can't absorb these costs but we're not going to rebuild these stocks if we don't have an adequate level of coverage.

**Motion to amend:** To add an option that would allow sectors to accept a fixed discard rate based on NEFOP coverage rather than require additional ASM coverage. (Mr. Goethel/Mr. Alexander).

*Rationale:* This would be added to the original motion. You would still have to take a NEFOP level of coverage paid by the government so you would accept a level of discards based on that coverage.

Some public comment on the motion included:

- Gib Brogan, Oceana: It seems like this gets close to option 3 and applying a sector specific buffer or discard rate to reduce allocation. We have concerns about NEFOP levels being accurate. SBRM is clear it does not provide quota monitoring purposes; using this NEFOP coverage opens things up for even more bias. We believe this is a non-starter.
- Jackie Odell, Northeast Seafood Coalition: We support the concept of having a fixed discard rate. NSC has worked closely with SMAST to see how this would work. We still seem to have the issue of the CV and SBRM. This is something that we support and we hope there will be other options that allow for more flexibility when it comes to the 30% requirements under SBRM.
- Emilie Litsinger, Environmental Defense Fund: I don't see how this motion aligns with the goals and objectives of the Council. I don't know how a fixed discard rate incentivizes reducing discards.

A Committee member was unsure about the logistics of this and what assumed discard rate would be applied in FY 2013. The maker of the amended motion thought it would depend on the PDT analysis and suggested averaging the two years of data under sectors or use the previous year's discard rate; the alternatives already has an option to choose a coverage level other than SBRM 30% CV. Another Committee member believed that three years of data were necessary to do this, which is why it hasn't been considered before. NOAA General Counsel advised that the eight percent NEFOP coverage rate was not a legal standard but assumed the PDT would determine if NEFOP coverage represented a justifiable level to base rates on. It would be hard to justify using a fixed standard if it doesn't represent the discards that are occurring.

A Committee member was concerned that this approach ignored the plasticity of the environment and assumed it was static; conditions change from year to year. This strategy appeared contradictory to helping resolve the retrospective patterns in stock assessments that are often attributed to poor catch data; it may negatively impact allocations and rebuilding plans.

The motion to amend **failed** for a lack of majority (2/2/4).

The main motion **carried** on a show of hands (6/2/1).

### **Other monitoring issues**

Staff described the option of stratifying GB yellowtail flounder for quota monitoring. Area 522 has lower levels than other areas but the PDT has some concerns with this approach as it results in less precise estimates.

The committee **agreed by consensus** with the PDT approach for this.

Staff described the option to shift monitoring effort off trips that land little groundfish, specifically from dogfish or monkfish trips that don't catch a lot of groundfish. However, this is not easy to do as it can be difficult to identify those trips later.

A Committee member hoped the PDT could consider what changes should be made if full retention was selected because it would extend the range of possibilities. Dogfish trips with extra-large mesh were considered easy to track. This strategy could potentially save money. Another Committee member disagreed with this as extra-large gillnets could sometimes catch larger cod and it may prove difficult and complicated to achieve this so leave it as is. The Committee agreed that the PDT should continue to look into it if they had time as they were about where we were when we passed that motion.