



New England Fishery Management Council

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MEMORANDUM

DATE: January 16, 2014
TO: Groundfish Oversight Committee (OSC)
FROM: Groundfish Plan Development Team (PDT)
SUBJECT: Progress on Amendment 18

To inform your meeting on January 23, this memo summarizes the work that the PDT has done related to Amendment 18 since your November 18 Committee meeting. The PDT met via conference call on January 13 to discuss Amendment 18.

Amendment 18 Draft Discussion Document

The Council needs to develop a range of alternatives to be analyzed in the Draft Environmental Impact Statement (DEIS) for Amendment 18. To that end, the PDT is providing an update to the draft discussion document that outlines the alternatives that have been considered to date. The alternatives are organized into sections therein according to the OSC and Council motions to date:

- 4.0 - Alternatives under consideration (i.e. the DEIS Range of Alternatives);
- 5.0 - Alternatives pending further consideration by the Committee;
- 6.0 - Alternatives not recommended by the Committee; and
- 7.0 - Alternatives considered but rejected by the Council.

Sections 5 and 6 will not be included in the DEIS (as usual), but they are included to help organize the OSC and Council decisions thus far. Section 5 contains measures that the OSC has postponed consideration of. Section 6 contains measures that the OSC has moved to not include in the action, but that the Council has not yet voted on.

This document also now includes the purpose and need, action goals, and summary of public scoping comments. The DEIS will need to describe how the Council has considered the comments. Below are a few topics that emerged from scoping that the OSC has not had much discussion of so far. The PDT encourages the OSC to have a discussion of these issues, so that its position can be more clearly articulated in the DEIS.

- Creating inshore/offshore areas. The public expressed concern about large boats moving inshore into the GOM to target cod.
- Creating a quota set-aside for use particularly by new entrants.
- Creating incentives to encourage active participation in the fishery, preventing a situation where 100% of the ACE is leased.
- Creating baseline criteria for leasing: restricting leasing by vessel size, fishing area or species.

U.S./CA Quota Trading

Per a Council motion in December, two Framework 51 alternatives that consider a U.S./CA quota trading mechanism (Framework 51, Alternatives 3 and 4, Section 4.2.2), were removed and inserted into Amendment 18 as alternatives under consideration (Section 4.1). The Council's *FW51 Preferred Alternative* (Alternative 2), if approved, would give the Regional Administrator authority to adjust the U.S. quotas for U.S./CA stocks mid-season, but only for trades made before the end of FY2014. This approach was meant to put a simple trading mechanism in place for FY2014 while the Council developed a mechanism that would better address allocative issues and industry participation.

Defining non-profit permit banks

The PDT encourages the OSC to clearly articulate the goal of creating a regulatory definition for non-profit permit banks. It is not clear to the PDT what the end goal is for the permit bank definition (Alternative 2, Section 4.2). Is the OSC interested in designing the permit banks to be a tool to support fleet diversity or is the OSC concerned that permit banks may accumulate too much quota? Clearly articulating the goal of having a definition may help with designing alternatives for the definition.

The OSC should consider whether the criteria and process to be defined as a non-profit permit bank outweigh the benefits. Rather than spend a lot of effort now to define permit banks, perhaps the OSC could focus in the near-term on developing alternatives for what the accumulation limits would be, see how the permit banks may be impacted, and then develop options for permit banks.

Alternative 2 criteria

Section 4.2.2 of the discussion document contains the alternative defining a non-profit permit bank as approved by the OSC in November (Alternative 2). Some OSC members questioned whether current non-profit permit banks fall within the criteria in Alternative 2. The criteria included in Alternative 2 are listed and discussed below, with feedback on the question and other PDT comments. Additional information about permit banks is included in the PDT memo dated June 5, 2013.

1. *“It is a partnership, voluntary association, or other non-profit entity established under the laws of the U.S.;”*

Current eligibility: Of the seven non-state permit banks described in the June 5 memo, three entities have federal non-profit status (e.g., South Shore Fishing Community Preservation Fund) and four are entities within an umbrella organization which has federal non-profit status (e.g. Penobscot East Permit Bank). The PDT is currently asking NOAA General Counsel whether this distinction matters.

2. *“It is eligible to hold Northeast Multispecies permits/MRIs;”*

Current eligibility: Of the seven non-state permit banks described in the memo, all are eligible to and do hold Northeast Multispecies permits/MRIs.

Other PDT comment: Since any entity is eligible to hold a permit, this criterion is not restrictive. The PDT suggests either replacing “eligible to hold” with “holds” or creating another alternative with a criterion stating such.

3. *“It maintains transparent qualification criteria and application processes for the distribution of ACE to fishermen;”*

Current eligibility: The June 5 memo contains information on qualification criteria and application processes that was voluntarily provided to the PDT by five of the seven non-state permit banks listed in the memo. The degree to which and format that this information is provided to the public varies.

Other PDT comment: The OSC may want to clarify what it means by “maintain” and “transparent.” To whom should the criteria and processes be transparent to: the public, NMFS, or other entities? Should the criteria and processes be made transparent before the start of the fishing year? The OSC may want to clarify, else NMFS would have to develop specific measures through rulemaking to provide and maintain transparency.

4. *“It must distribute ACE to at least three distinct business entities in any fishing year; and”*

Current eligibility: Information was not systematically collected by the PDT on how many entities received ACE for each year of a given permit bank’s existence. However, the information provided to the PDT for its June 5 memo indicates that at least five of the seven non-state permit banks would likely meet this criterion.

Other PDT comment: Alternative 2 contains a condition that the non-profit permit banks must join a sector. The PDT is concerned that criterion #4 is inconsistent with current accounting practices, and would require a change in how ACE distribution is monitored. Currently, it is up to a sector to decide how its allocated ACE is distributed; NMFS does not have the authority to control within-sector ACE distribution. This control would require individual allocations (i.e., a LAPP). If the OSC wants to keep this criterion, the PDT recommends not requiring that non-profit permit banks join sectors, unless the OSC wants to revisit sector ACE distribution and monitoring processes.

5. *“ACE must be leased at below market values.”*

Current eligibility: Information provided by five of the seven non-state permit banks listed in the June 5 memo indicates that they likely would fall within this criterion. However, some permit banks vary the lease price depending on eligibility (e.g., members within a given sector receive a below-market rate, implying that non-members must lease at market rates). At the September 2013 Groundfish Advisory Panel meeting, one GAP member indicated that there are permit banks today that lease at market rates.

Other PDT comment: It would be difficult (if not impossible) to enforce this criterion, and would require more reporting than currently practiced. First, NMFS would have to be able to determine the daily market rate for leasing ACE of all stocks. Generally, the government has difficulty on its own determining prices in a competitive market. Currently, sectors do submit price data to NMFS, but this is voluntary and only for inter-sector trades. Also, these prices are not necessarily stock-specific. Second, non-profit permit banks would need to show receipts or other proof of sales price that correlate with the daily-fluctuating market rate. The only way to enforce this is to have required reporting of prices and a way to validate the price. The OSC may want to identify the goal of this criterion and discuss alternate approaches to achieving it.

Other conditions

In its November 7 memo, the PDT provided the following suggestions regarding the non-state permit banks. Is the OSC interested in adding any of these into Alternative 2 or other alternatives?

- A. *Non-profit permit banks shall comply with existing and relevant leasing and transfer regulations that currently apply to sectors and individual permit-holders including lease reporting protocols, size-class or baseline restrictions (in the vessel transfer provisions), etc.*
- B. *Non-profit permit banks will be approved annually by the National Marine Fisheries Service, provided a complete application has been submitted by agreed upon deadlines. NMFS will ensure that all requirements listed above are fully and satisfactorily met prior to approval.*

This condition would require significant development still for the application and approval processes.

- C. *Non-profit permit banks shall submit a performance report annually to the National Marine Fisheries service, which shall be a public document. These reports shall explain how the above qualification criteria were met.*

This condition would require significant development still. Currently, the annual reports submitted by state-operated permit banks and sectors are not public documents. From OSC discussions, it is not clear whether the OSC expects the reporting by non-profit permit banks to be more transparent to the public.

The OSC may want to consider allowing non-profit permit banks to not enroll in sectors, but require transparency and accountability by other means. The burden of requiring that these entities go through the process to both meet the definition and enroll in a sector may outweigh any benefits afforded these entities through Amendment 18.

Other alternatives

In November, the Committee discussed potentially having other definitions included in the range of alternatives. In September, the Groundfish Advisory Panel passed the following motions:

Motion (3/1/4): *Regardless of accumulation limits, the GAP recommends revising Section 4.3.1.2 [permit bank definition]:*

1. *Must have an affirmative purpose (e.g., geographic focus, new entrant plan, and small business development);*
2. *Remove “non-profit” in line 1 and #1;*
3. *#2, #3, and #4 as is; and*
4. *#5 strike and replace with annual reporting on progress toward stated purpose to be submitted at same time as the annual sector reports.*

Motion (8/0/0): *The GAP recommends that permit bank officers should be limited in how much ACE they can lease from their own permit bank, and permit banks should be exempt from enrolling in sectors.*

Perhaps there could be a few types of permit banks recognized: state-operated, non-profit, private and community permit banks. Different allocation limits could be applied to different types of permit banks. There could be varying standards for involving the public and contributing to the public good. Community permit banks are similar to non-profit permit banks except that they would be affiliated with a specific community. However, there may be too much complication/ administrative burden with creating regulatory definitions for more than one type of non-profit permit bank.

For other ideas, perhaps a non-profit permit bank should not have any active fishing vessels affiliated with its permits (all permits must be in CPH). For community permit banks, perhaps at least one non-fishing industry member of the affiliated community must be a board member. To avoid an accumulation limit, what would prevent a non-profit entity from creating more than one permit bank?

Limiting holdings of permit banks collectively

In November, the OSC moved to remove alternatives that would limit the holdings of permit banks collectively. However, at the November Council meeting, there was support expressed for a collective cap. Does the OSC want to reconsider its decision? Table 1 notes the number of permits held by permit banks, as self-reported (see June 5 PDT memo). In total, permit banks hold about 8% of the Northeast multispecies permits in the fishery, so a collective cap of less than 8% may force divestiture of current permit banks.

Table 1 - Multispecies permits held by permit banks

	# of GF Permits Held ^A	% of fishery ^B
<i>State-operated:</i>		
New Hampshire State Permit Bank	4	0.3%
State of Maine Permit Bank	11	0.9%
Total	15	1%
<i>Private:</i>		
Boston Sustainable Fishing Community Preservation Fund, Inc.	not reported	-
Cape Cod Fisheries Trust	22	2%
Gloucester Fishing Community Preservation Fund	49	4%
NEFS XI Permit Bank	2	0.2%
Penobscot East Permit Bank	2	0.2%
South Shore Fishing Community Preservation Fund	not reported	-
The Nature Conservancy/Island Institute Community Permit Bank	3	0.3%
Total	>78	>7%
Grand Total:	>93	~8%
<i>Notes:</i>		
^A Data from PDT query of permit banks, June 2013.		
^B Assumes ~1,200 permits in the fishery.		

Limiting holdings of permit banks individually

Individually, permit banks hold 4% or less of the Northeast multispecies permits in the fishery (Table 1). In terms of potential alternatives, a cap of less than 4% may force divestiture of permits by current permit banks.

Cap on permits vs. MRIs

If the Committee wants to include alternatives that would cap permit ownership, the PDT reiterates its recommendation that the alternatives cap Moratorium Right Identifiers (MRIs) instead. Alternatively, it needs to be clear that through implementation, it is the MRIs that would be limited. The MRI is a unique identifying number that is attached to a multispecies permit. Each permit has its own MRI, and a given MRI is attached to only one permit. Potential Sector Contribution (PSC) is allocated to MRIs, and within the current NMFS data systems, ownership of MRIs would be simpler to track. A plain language description of MRIs and PSC calculation has been published by NMFS: http://www.nero.noaa.gov/sfd/sectordocs/PSC_Calculation.pdf.

Compass Lexecon analysis

Compass Lexecon completed their economic analysis of the groundfish fishery on December 31, 2013 and the final report has been posted on the Council's website and is available as a document for the next OSC meeting. Council staff, the NEFSC and NMFS headquarters are collaborating to work with the Center for Independent Experts to facilitate an independent peer review of the report. The earliest that a panel meeting can be scheduled is June, and it takes about a month after the panel meeting to produce a peer review report. The PDT sees no reason why development of alternatives cannot continue in the interim.

The PDT did not have enough time during its June 13 conference call to discuss the Compass Lexecon final report in depth, but expects to discuss it at the next PDT meeting. However, the PDT noted two items:

- The PDT and OSC have already discussed the idea of a stock-specific PSC cap, which Compass Lexecon recommends. In November, the OSC considered a motion to include a stock-specific PSC cap, but the motion failed, in part due to concerns about the potential that this alternative may require creating a Limited Access Privilege Program for the fishery. To clarify, having a stock-specific PSC cap would not, on its own, require a LAPP. Caps on allocations (i.e., ACE) or how much allocation can be used (i.e., catch) would require allocations to individuals, which seems to cross the LAPP threshold.
- The report correctly highlighted that NMFS does not currently have data on the percent ownership interest of permits owned by multiple individuals. It would be a significant undertaking to procure and verify this data. For the scallop fishery permit cap, for every owner listed on a permit, it's assumed that each has 100% ownership of it. For consistency and simplicity, the PDT recommends a similar approach be taken for any permit (preferably MRI) cap alternatives for the groundfish fishery.