



## New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
E.F. "Terry" Stockwell III, *Chairman* | Thomas A. Nies, *Executive Director*

### MEETING SUMMARY

#### Groundfish Oversight Committee

Omni Providence Hotel, Providence, RI  
March 28, 2014

The Groundfish Oversight Committee (CTE) met on March 28, 2014 in Providence, RI to: 1) continue development of Amendment 18 (A18) and, 2) to discuss Framework Adjustment 52 (FW52) that would revise commercial groundfish accountability measures (AMs) for Southern and Northern windowpane flounder stocks.

**MEETING ATTENDANCE:** Mr. Frank Blount (Chairman), Dr. David Pierce (Vice Chair), Mr. Terry Alexander, Mr. Vincent Balzano, Mr. Tom Dempsey, Ms. Ellen Goethel, Mr. Peter Kendall, Mr. Howard King, Ms. Susan Murphy, Dr. Matthew McKenzie, and Ms. Laurie Nolan, Mr. Terry Stockwell (Council Chair), Dr. Jamie Cournane, Ms. Rachel Feeney, Dr. Fiona Hogan (NEFMC staff); Mr. Mark Grant, Ms. Sarah Heil, Mr. Michael Ruccio, Dr. William Whitmore (NMFS GARFO staff) and Mr. Mitch MacDonald (NOAA General Counsel). In addition, approximately 7 members of the public attended.

**DOCUMENTATION:** Discussions were aided by: Meeting memo dated March 21, 2014, PDT memo regarding A18 dated March 21, 2014, Amendment 18 Discussion Document dated March 21, 2014, PDT memo regarding FW52 dated March 24, 2014, Letter from Tom Nies to John Bullard regarding data confidentiality dated February 11, 2014, Groundfish OSC meeting summary dated January 23, 2014, Recreational Advisory Panel meeting summary dated February 19, 2014 and a series of correspondence received by the Council.

**KEY OUTCOMES:**

- The Committee recommended removing the March 1-20 closure and tote requirement for the handgear fishery and consider VMS exemption.
- The Committee recommended in-season trades for US/CA stocks (Section 4.3.2 Alternative 2 Option B as preferred alternative).
- The Committee recommended adding additional alternatives to accumulation limit measures.

**AGENDA ITEM #1: AMENDMENT 18 – FLEET DIVERSITY AND ACCUMULATION LIMITS**

***PRESENTATION: UPDATE: DEVELOPMENT OF AMENDMENT 18 TO THE MULTISPECIES FMP (RACHEL FEENEY)***

Staff presented a summary of recent Groundfish Plan Development Team (PDT) analysis of alternatives for Amendment 18. The Handgear A (HA) fishery alternatives would create a HA fishery sub-ACL. Guidance on how discard rates for the HA fishery within the other fishery components category is

needed. Both proactive and reactive Accountability Measures (AMs) alternatives were developed for Council discussion. Carryover would have to be consistent with the US/CA agreement; other carryover provisions would be the same as applied for sectors. An alternative to remove the March 1-20 closure would be removed; the same exemption given to sectors could apply. Other HA fishery alternatives included removing the trimester AM and the standard tote requirement. The PDT recommended moving the grandfathering alternative to the considered and rejected section. The PDT was also concerned with the ability of NMFS to monitor small ACLs. Staff requested that the Committee discuss the US/CA quota trading alternative to provide guidance on more specific aspects of what the process would be. Staff outlined the accumulation limits alternatives developed by the PDT. The PDT recommended that accumulation limits be at the individual level and not the business entity level. Staff outlined the guidance requested by the PDT regarding permit banks. There are outstanding topics from scoping that still need to be addressed by A18.

A Committee member noted that the handgear A (HA) permit proposal was only supported by the Council at the January 2014 Council meeting because it was implied that solutions had been developed to the problems, which did not seem to be the case based on the presentation. PSC for the handgear A permits was calculated back to 1996; the maximum PSC that could be moved into the potential handgear A sub-ACL by stock was provided in the PDT memo dated March 21, 2014. It was impossible to estimate how much PSC would actually move until this alternative was implemented and handgear A permit holders applied for it, under a voluntary program. There was some concern that under a voluntary program staff could expend a lot of effort on a very small component of the fishery. GARFO staff noted that it was not possible to track this sub-ACL in real time as it was such a small component of landings; it would not be possible to shut the fishery down when it reach 90 or 100% of its sub-ACL during a fishing year. If a handgear A fisherman elected to stay in a sector, their portion of PSC would go to that sector and would be deducted from the maximum potential handgear A sub-ACL.

A Committee member was disappointed in the lack of apparent progress on U.S./Canada trading and considered two of the options to be infeasible. The PDT requested guidance on the finer details of how a trade would be conducted.

Staff clarified that an “individual person” is defined in the data presented as an individual human person or a permit bank. The PDT proposed alternatives for accumulation limits that closely resembled those for the scallop fishery, which apply a cap at the individual human person level and assume that everyone affiliated with a given permit has 100% ownership of it. The alternatives developed to date apply to individual human persons and permit banks, not business entities.

Staff outlined additional topics raised in scoping and requested guidance on whether the Committee would like to develop alternatives to address those comments. A Committee member highlighted that if they were included in A18 that the timeline would be delayed and implementation would be after May 1, 2015.

**Public Comment:**

- David Goethel, F/V Ellen Diane – I’m still trying to understand this business entity. You’re proposing it to be on a person basis so if a person’s name appears on any ownership form then that entity is part of that person? So if a person’s name appears in 6 corporations those 6 corporations collective could not exceed the accumulation limit. At some point today you’re going to have to clarify this because otherwise this could be a potential large loophole. How does this relate to MRIs? How does somebody actually track this? Is an MRI based on a person or an entity? So the MRIs don’t really matter in this case it’s the person; if you approve that option. In other words, if a person’s name appears on 6 different permits those 6 different permits will be

what determines the accumulation limit regardless with how they interact with other people at the MRI level.

- Geoff Smith, The Nature Conservancy of ME – I want to make sure I understand Table 4. The line of questioning that happened earlier made it sound like the understanding was that people with PSC greater than 1 are the ones that are active in the fishery. Then you made the comment that there was leasing involved there too so I think this table is pretty important and maybe spending more time on it would be helpful because I know that clearly that number with the PSC greater than 0 is a lot bigger than the one greater than 1. I think there are a lot of fishermen fishing in the GOM who own less than 1% of the PSC in the GOM that are active in part of this fishery. I think some clarification on what those 2 columns mean would be helpful. I wouldn't want us to draw the conclusion that there are only 45-50 fishermen active in the GOM. I don't think that's what this says. We could probably get the information on the number of fishermen who are actively fishing in the GOM and I would assume that it was greater than 50. The maximum column suggests that those are persons or IDs so that they might be individuals. I'm looking at the GOM cod number and noticing that it is similar to the one for permit banks. Is that the same number? I wouldn't want there to be the impression that all permit banks in the region are one individual entity. There are multiple permit banks being established for multiple purposes, serving multiple communities. If that's what that number is it sort of makes it look like one individual entity.

#### **1. MOTION: DR. PIERCE/MS. GOETHEL**

Move that a sunset provision be included in A18 requiring that non-fishing interests (i.e., lease only PSC holders) to relinquish their PSC(s) unless they become active in the groundfish fishery by that time (date?) as a "frameworkable" item.

*Rationale:* If a permit holder is leasing only then they would lose that PSC. Since implementation time of A18 may still be delayed and this is a major shift in how we would give the PSC, then there is a need for some time for those who are not active to adjust to this. The lease market was considered to not be working well.

#### **Discussion on the Motion:**

The maker of the motion intended this to apply to the Groundfish fishery. The Committee Chair noted that a vessel only needs to land 1 lb of groundfish to be considered part of the Groundfish fishery. The maker of the motion included listing this provision as a frameworkable item in the motion so that details could be worked out later and the overall amendment would not be delayed.

There was some opposition to this motion. It was suggested that effort could increase if fishermen were forced to fish in order to keep PSC they've earned and paid for. It was also thought to be counterproductive to the goals and objectives of A18; the leasing program was thought to protect fleet diversity at a time of low resources. A Committee member thought it was unfair to have only two meetings informing industry that they could lose some PSC. However, a Committee member considered this to be a good way to make sure the Groundfish fishermen would have the Groundfish permits. It was unclear how permit banks would be treated under this alternative.

NOAA General Counsel clarified that a broad outline and goals would still have to be provided in the amendment. The amendment would have to be clear on how this would meet the goals of the Magnuson Stevens Act and bound what the framework will do to meet those purposes. This was also considered to be a reallocation.

A few Committee members considered the lease market to be working as it should be. However the Council Chair raised a concern that fish leasing was not fluent; the Maine permit bank has more fish available than the market seems to demand.

**Public Comment on the Motion:**

- Maggie Raymond, Associated Fisheries of Maine – I’m not going to speak to specifics of motions because it’s clear where it will end up. At the beginning of this discussion Dr. Pierce said that he wanted the GAP to weigh in on A18; we have done that several times. I don’t know how we can be any clearer on what the majority opinion is on A18. I know that the chairman of the GAP asked that the agenda for next week’s meeting starts off with FW52. In speaking with him, my understanding of why he requested that was because FW52 is really time sensitive; we really need to get that done immediately. In fact, the GAP has weighed in ad nauseum on A18 but we don’t have anything from the PDT in these meeting materials on FW52 so are we going to discuss FW52 at some point today and give the GAP something to discuss next week?
- Vito Giacalone, Gloucester Fishing Community Preservation Fund –Something to think about on this amendment of fleet diversity, and the idea of owner occupied or owner operated vessel. That is what the Gloucester Fishing Community Preservation Fund and as far as I’m aware other permit banks that is their tenant, their 5013c status – to keep active vessels going. We have not participated much from the permit bank perspective on this amendment because we’re still trying to figure out a lot of this amendment, where we can identify problems that then are supported by data that we then see we have a problem to solve. On the permit bank one I just want to point out if you use something like this to say use it or lose it. FW42 is why the Gloucester permit bank has all the permits it has; had it not been for that intervention, you would have had a whole pile of people on that inactive list that you would now be cutting out of the fishery. The reason why they’re independent operators continuing to operate in the fishery today is because of intervention by the Gloucester Fishing Community Preservation Fund permit bank. I’m going to start touting that more often and start relaying it to the 75 guys in Gloucester who stayed in business over it that they basically remain to be targeted for some of these approaches, discriminatory permit bank stuff. You should also talk about what we would do with all the permit banks including state operated permit banks. Those entities are built to help active fishermen stay in business. If you don’t identify that then they’re going to feel like they’re on the other end of this. Definitely firmly opposed of this and would echo comments on the importance of FW52.

**MOTION #1 FAILED 2-8-1.**

**2. MOTION: MR. KENDALL/MR. ALEXANDER**

To recommend to the Council to move the Handgear A fishery alternatives (Section 4.4) to the “Considered but Rejected” section of Amendment 18.

*Rationale:* This issue has been discussed and a lot of questions still have not been answered. A substantial amount of time would be needed to address these questions, which could delay the amendment.

**Public Comment on the Motion:**

- Brian McDevitt, F/V Tracey Anne – I appreciate everyone’s effort to try and help the handgear fishery. It’s a small number of boats trying to stay alive. We looked at PSCs for all the vessels combined. If you went ahead with this it would be 13,000 lbs and if you do the math for the 20 boats in the common pool it is 300 lbs per boat per year and that’s not economically sustainable.

The goal of the FMP is to try and make it economically viable. We're trying to get it to the point where these small number of boats, which are a sustainable fishery. There aren't any discards, the shorts swim away as do non-targeted species. We're able to catch right up to the point, if it's a 200 lbs trip limit, we're basically weighing every fish. At 200 lbs we stop and go home. Table 3 was really an eye-opener for me. Seeing 13,000 lbs is sort of crazy in the big picture. We talk about not having a trimester, for me this is when I want to be fishing from Jan – Mar. It's feasible that 13,000 lbs could be caught in August and my boat is tied up for the next 9 months. I need to look into it further but right now, looking at those numbers, if I have 300 lbs I might as well sell it. Leasing 300 lbs is negligible. When sectors started, we did look at it and talked to a few but it was one of those deals where our PSC was so low it was really not viable. But if there is an option, it is definitely something to explore to keep the boat in the water.

A Committee member thought handgear A (HA) permit holders would be better off fishing in the common pool; there was not enough PSC associated with the HA permit holders to make it worthwhile. The Council Chair noted that HA permit holders could join a sector; two sectors have already offered free membership to HA permit holders. Access to the lease market may increase opportunities for fishing for HA permit holders. Another Committee member noted the full support of the Council at the January 2014 Council meeting to bring this alternative forward.

#### **2a. MOTION TO SUBSTITUTE: DR. PIERCE/DR. MCKENZIE**

Move to adopt the following options within the Handgear A fishery Alternative 2 (Section 4.4.2), include Option A, sub-option B (voluntary); Option B, sub-option A; Option D, Option E; Option F; Option G; and Option H

This motion would allow HA permit holders to voluntarily enroll in the common pool or HA sub-ACL. They would have to enroll every year by the same date that sector applications were due by. However, under a voluntary program there is the possibility that only 10 HA permit holders would enroll and contribute their PSC to the HA sub-ACL. Concerns were raised again on the ability to monitor the HA fishery in real time. Despite these concerns, it was suggested that a proactive AM be included in this alternative in case it was implemented. Because of the difficulties in monitoring small fisheries, the HA fishery could exceed its sub-ACL because of the lag in data. It would take a Council action to exempt the HA fishery from VMS requirements.

#### **Public Comment on the Motion to Substitute:**

- Maggie Raymond – I don't want to speak for or against this motion because it is not my fishery but I see a lot of problems with it. Especially the option to eliminate the trimester quotas because Mr. McDevitt just said he fishes at the end of the fishing year and there might not be anything left. That was the purpose of the trimester quotas but there are some things in here that could be helpful to these guys like removing the March 1-20 closure; that closure can't be particularly effective. Also eliminate the tote requirement. We've offered to have these guys join our sector at very low cost, probably nothing. I think this motion is going to fail and you'll end up with nothing to help them.
- Davie Goethel – Option G, somebody is going to have to explain clearly how that isn't going to potentially end up shutting down the entire common pool. The HA could catch more haddock before you can even monitor it because the quota is so low without trimesters. How will that interrelate with Option A sub-Option B because if you remove trimesters everyone will stay in the common pool. On one hand you have some kind of monitoring in that option A but under Option G if you remove the trimesters you really have nothing. Pare this down a little and take

some of the Options out. The March closure and tote requirements could go away and make people's life simpler.

- Vito Giacalone, Northeast Seafood Coalition – The biggest hang-up for the HA folks to join a sector is the VMS requirement. Since that gear is waived because of the manner in which they fish if that exemption could stay with them when they enroll in a sector then a sector would be a non-cost item to them. So if you did anything with the amendment then maybe evaluate what the downside to having a HA person that's now exempt from VMS joining a sector and being exempt from VMS.
- Aaron Dority, Penobscot East Resource Center – I've offered to several of the HA fishermen who are interested in supporting this action to join our sector. I know a few other sector managers have as well. We currently have 2 HA fishermen in our sector; one of them has been active the other has just dabbled. I would echo that you should look at removing the VMS requirement. They don't have the same requirement outside of the sector system so I don't know what the implications would be for other portions of sector management. I think for this small portion of the fleet it makes sense. I won't encourage you to vote for or against this need to think more and discuss with members. It seems like you're creating another sector. If you're doing that are you passing on the sector management responsibility to NMFS? Because for the existing sectors they have to report catch. There's a reporting responsibility that goes along with sectors. I think it's important to just identify what those responsibilities are, obviously in this case they're not very significant, but who is going to do that work?

**Motion #2a FAILED 2-7-2.**

**2b. MOTION TO SUBSTITUTE: MR. DEMPSEY/MR. BALZANO**

To substitute that within the Handgear A fishery Alternative 2 (Section 4.4.2), to recommend that the Council adopt Option F (removal of March 1-20 closure) and Option H (removal of standard tote requirement), and consider adding VMS exemption for Handgear A permits to the list of possible sector exemptions.

The Committee did not include specifics in the motion on alternatives to VMS if the PDT supported waiving VMS requirement

**Motion #2b CARRIED 10-0-1.**

**Main Motion as Substituted CARRIED 10-0-1.**

**CONSENSUS STATEMENT**

The Committee agreed by unanimous consent to move all other options within the Handgear A fishery measures Alternative 2 (Section 4.4.2) to "Considered but Rejected," besides those included in the prior motion.

**3. MOTION: MR. ALEXANDER/MR. BALZANO**

To recommend to the Council to include in A18 within the U.S./CA trading measures (section 4.3) section 4.3.2 (in-season trades for U.S./CA stocks) with Alternative 2 option B as preferred (allow in-season trades of sector ACE).

## **Discussion on the Motion:**

The Committee had a number of questions regarding the alternatives and how the process of trading would work. The PDT also had a series of questions provided in the PDT memo to the Committee. The Council Chair updated the Committee on TMGC meeting schedule; the Intercessional was cancelled and the next meeting was scheduled for September. Canada was still interested in pursuing the concept of trading but was more interested in trading yellowtail flounder or cod, not haddock.

Committee members were concerned about the timing of trades and getting the full Council together for approval; an alternative approval body was proposed such as the TMGC co-chair or Committee, if that would shorten time requirements. A Committee member raised the issue of rights of first refusal within sectors. No process was outlined yet that would require sectors interested in trading with Canada to offer a trade with other sectors first. A potential timeline was suggested: sector could decide to trade in the summer, go through a right of first refusal process, then communicate request through the Council in September; the sector would have to reserve that fish in expectation that the trade was accepted. Because of the many steps, it was suggested that trades should be done on the same timeline instead of as they are requested. The question of requiring a minimum amount for a trade was raised but no conclusions were made.

A Committee member was opposed to individuals in a sector trading directly with Canada as it was too close to an ITQ system. Another Committee member questioned why the Council would allow sectors to trade with Canada but not with other US fisheries such as scallops.

The motion did not include common pool and staff requested clarification that the Committee intended to exclude common pool vessels from requesting trades. A Committee member suggested having the Groundfish Advisory Panel (GAP) discuss the issue and help outline the trading process.

## **Public Comment on the Motion:**

- Maggie Raymond – I just wanted to point out another reason why there is a need for consultation with the Council and through the public process for the public to weigh in. Let's take a scenario where some sector has a significant portion of EGB cod and they make a deal to trade that away to CA fishermen for yellowtail flounder, which they then trade to other US fishermen or use. There is a very small pool of EGB cod. US fishermen could be saying that I need to lease that fish from you and we're saying oh no the sector has that fish and can lease it to CA. That needs to be public so we can have the discussion and decide whether we want to advantage CA fishermen over US fishermen? It could be a valuable trade for yellowtail flounder with CA but US fishermen may need that cod to catch EGB haddock. I don't object to this going forward but there has to be public discussion of the trade and the implications of it for the domestic fishery.
- Vito Giacalone – We strongly support alternative B because it takes a lot of concern out of public end of it; either a sector voluntarily contributes to the trade or it doesn't. We had not thought of this of being a sector deciding individually to trade with CA, we would think that's probably inappropriate. To break the catch 22 is somewhere there has to be a domestic TMGC, I'm not sure the Council is necessary as another step in that. Option B takes that concern out. Have the TMGC consult with the sectors to say we're thinking about this kind of international trade and would think the TMGC would have the US fisheries' best interest in mind. If they decide based on those consultations that they're going to float a potential trade to CA. If the CA agrees and the TMGC looks like something like that might happen then the US sectors are going to be offered the opportunity on SIM to contribute to the trade. Either the US sectors voluntarily cover the trade or they don't. it would be up to the TMGC to have more communication with the sectors to

make sure they don't make a trade they can't cover. It would not be sectors talking to CA about trading fish.

**Motion #3 CARRIED 8-0-0.**

**4. MOTION: MR. ALEXANDER/MR. DEMPSEY**

To add an additional alternative within the accumulation limit measures (Section 4.1) that would limit GB cod PSC to an accumulation limit of 30%, GOM cod at 15%, and pollock at 20% [*This would be an option within Alternative 4*].

*Rationale:* These seem to be the most highly distributed stocks that we have, higher than the other stocks so well over 1000 permits that have some PSC of those 3 stocks so those obviously are the most widely caught stocks. This backs onto Alternative 4 and easier to understand than inshore/offshore. GOM cod is not an inshore fish; I've caught plenty of it offshore. I could go with broad stock but not inshore/offshore.

**Discussion on the Motion:**

There was some support for adding this alternative in the document for analysis, potentially as a sub-option under alternative 4. However, some Committee members were concerned that the percentages were too high and might constitute excessive shares. The percentages were higher than recommended in the Compass Lexecon report. Without convincing rationale, a Committee member was more in favor of the control date measures that would result in divestiture. The maker of the motion selected the percentages based on a PDT table; these were the most widely distributed stocks. A clear methodology on which sub-sets of stocks were selected was requested.

Staff questioned whether this intentionally addressed the inshore/offshore issue as it included an inshore stock, an offshore stock and a more unit stock. However, some Committee members did not consider GOM cod to be an exclusively inshore stock, and same for GB cod being offshore.

**Public Comment on the Motion:**

- Maggie Raymond - To the idea that 30% is too high, I would just point out that the accumulation limit on tilefish is 50% and that clearly passed the NS4 test. I really have an issue with this alternative 4 and the PDT's unspecified reason for designating these stocks as inshore and offshore. I'm pretty sure they were just trying to differentiate them from those stocks which are through the entire range. I think there's a better way to describe them and could be included in this alternative like stock boundary or if that's even necessary. I think it's problematic and it leaves people having a discussion on whether these are inshore or offshore stocks and that's not how they're assessed. We're rebuilding cod to the entire GOM and not just the inshore area. We need to not bias this discussion by calling these inshore/offshore stocks.

**MOTION #4 CARRIED 5-3-2.**

**4. MOTION: MR. KENDALL/MR. DEMPSEY**

To add an alternative within the accumulation limit measures (Section 4.1) that would limit PSC at 20% for all stocks, except GB winter flounder at 30% [*This would add an Alternative 5*].

*Rationale* – Alternative 3 is in the middle at 25% I wouldn't mind seeing that at 20% to try to address comments in our discussion. So all stocks would be at 20% except for GB winter flounder, which is already over the cap so make that 30%.

**Discussion on the Motion:**

There wasn't much support on the Committee and from industry for forced divestiture. A Committee member questioned why the Council established a control date if it would not be used. If there was a buyback then everyone's PSC could go up, so caution was suggested when establishing accumulation limits. A Committee member was opposed to the motion because it was relative to alternative 3 that referenced the Compass Lexecon report, which recommended 25%, and that number was considered credible. Another Committee member didn't think there was much evidence of mass consolidation happening in the fishery, which was backed up by two separate reports.

**MOTION 4 CARRIED 4-3-2.**

**CONSENSUS STATEMENT:**

The Committee agreed by unanimous consent to discuss permit banks at the next OSC meeting (April 4, 2014).

The remaining discussion centered on the decision as to whether to treat permit banks the same as individuals or differently. If permit banks were treated the same as individuals, the definition of a non-profit permit bank would not be necessary.

**General Discussion**

A Committee member noted that the terms entity and individual appeared to be used interchangeably throughout the discussion document, which was confusing as they meant two different things. Permit banks were given equal status as a person because of how PSC is distributed. The Committee could choose to treat permit banks differently to individuals. If this was not addressed then permit banks and individuals would be held to the same accumulation limit.

**Public Comment:**

- Maggie Raymond – But in A16 and in the court case that you won arguing that it wasn't an allocation. In A16 comments on the proposed rule, people said put a cap; NS4 needed a cap and the Agency said it wasn't necessary because this is not an allocation. How do you have an allocation cap on something that you said repeatedly is not an allocation? It means the Council can decide not to do it at all and say we considered it but the Regional Administrator is encouraging the Council to do that. It will probably be solved in a court but you've got a history saying this isn't an allocation but we're going to cap your allocation at some arbitrary percentage.

**AGENDA ITEM #2: FRAMEWORK ADJUSTMENT 52 – WINDOWPANE FLOUNDER ACCOUNTABILITY MEASURES**

***PRESENTATION: DEVELOPMENT OF FRAMEWORK 52 TO THE MULTISPECIES FMP***

Staff provided an overview of the projected timeline for the development of Framework 52 (FW52), which would have the Council taking final action in June 2014. The purpose of FW52 is to revise Accountability Measures (AMs) for the commercial groundfish fishery for northern and southern windowpane flounder stocks. Due to overages for both stocks in FY2012, the AMs will be implemented in FY2014. Based on preliminary FY2013 data, an overage for northern windowpane flounder has occurred. At the February 2014 Council meeting, the Council requested that any revision to the current AMs be applied to FY 2014, retroactively, or any overages that occurred prior to FY2014 and initiated FW52. The two stocks have differing statuses; northern windowpane flounder is overfished and

overfishing is occurring while southern windowpane flounder is not overfished and overfishing is not occurring. Staff requested guidance from the Committee regarding potential alternatives, in particular, did the Committee want to revise or keep the current AMs, or revise the AM triggers.

### **Discussion on the Presentation:**

The current AMs will be implemented on May 1, 2014 and will continue unless modified by FW52. FW52 may be able to modify the AM mid-season if it can be shown that objectives for FY2014 are being met.

Based on the survey indices, the increase in northern windowpane stock size was considered to have potentially contributed to the overage in FY2013; the quota may be set too low. The ABC was set using a constant catch strategy because of the uncertainty around the assessment; an updated assessment is expected in 2015.

Staff was unclear on how the AM gear modification areas (or any potential changes to them) related to changes underway in the Omnibus Habitat Amendment or if interactions with the windowpane stocks might increase if current closed areas were opened.

Industry have suggested at previous meetings that sectors could effectively allocate the non-allocated windowpane flounder quota amongst sectors to prevent an overage occurring in future; this could be considered as a proactive AM. However, this may be considered a reallocation that might not be possible to do in a framework action. Despite this being a potential proactive AM, it would still be necessary to have reactive AMs in place. It was thought the Groundfish Advisory Panel (GAP) should discuss this issue and provide feedback to the Committee. As of the Committee meeting, there was no industry guidance on modifications to the existing AMs.

The Committee was opposed to the Groundfish fishery being the only fishery accountable, in terms of AMs, for the northern windowpane flounder stock. A southern windowpane flounder sub-ACL for the scallop fishery was established in FW48 and the associated AM was developed in FW25 to the Scallop FMP. The Committee could advise the PDT to look at the other sub-components for both stocks to determine whether sub-ACLs should be established for other fisheries. However, this strategy may delay the timeline for FW52. GARFO staff noted that even if the Committee decided to allocate the windowpane flounder stocks in FW52 that would not be retroactive to 2014; the AM would still be implemented on May 1, 2015. A Committee member thought it would make sense to provide a sub-ACL to individual fisheries, especially when there are large differences in gear types, instead of combining them all under the other sub-components category.

Staff emphasized the Council motion intent and noted that the current discussion was focused on developing sub-ACLs and AMs for other sub-components of the fishery and not on changes to the existing AM that could be retroactively applied to FY2014. The Committee thought it would be sufficient for staff to develop alternatives in FW52 that would be implemented mid-season and in the long-term develop sub-ACLs for other sub-components to the fishery in the next framework action. NOAA General Counsel told the Committee that an AM could not be removed but it was unclear if emergency action could be taken to address the FY2014 AM.

### **Public Comment on the Presentation:**

- Vito Giacalone – We need a reset button. It was said the underlying AM would work as it is as a reactive AM as long as Groundfish was able to only be accountable to the Groundfish sub-ACL. It's a total waste of time to put in more accountability on the Groundfish fleet when we have no

control over what the other components are going to catch. That's the big disconnect. I don't know legally if we can proceed and establish a sub-ACL based on whatever's been thrown out there for numbers in the past. I saw 129 mt for FY2012 and the Groundfish catch was 129.5 mt. I think the assumed catch for scallop was approximately 20 but they caught over 70 mt. The trigger for the AM for FY2012 was not as a result of the assumed catch that was going to happen in the Groundfish fleet so it wouldn't have mattered what we were doing. FY2013 is a different picture. So the idea that we floated that this could be dealt with quick. If we can break it up into legal sub-ACLs and then let the Groundfish fleet implement something we can already do. Sectors can do this without a regulatory action. We don't need to go through an amendment; we're not going to allocate the fish. It's up to the sectors to all get together and say we cannot exceed that sub-ACL collectively. If the sectors can all agree and collectively in their operations plans talk about how they're going to monitor windowpane catch and when you add up all those sectors operations plans they add up to less than the Groundfish sub-ACL. We've already proven on 15 stocks that we don't go over ACLs. Nobody has been looking at windowpane and that's why we're here. The fix for Groundfish is already there we just have to have the sectors work together to do that. You don't need to allocate windowpane but we're not going to go through the effort of doing that if we're going to be accountable to the overall ACL, which we have no control on. The question is can this framework establish a sub-ACL for the Groundfish component, common pool and sectors if that's what it takes. We'll respect what needs to be set aside for common pool. If that can be done and have the Groundfish fleet only accountable to its own ACL and the AMs already in place, it's been analyzed, it's this big area we'll live with that for now because you don't have time to come up with something else. We need this to be retroactive. We need to avoid the economic devastation that's going to happen as a result of this. If we can reset the AM button and allow the fishery to conduct, post this framework, and police its own sub-ACL from this point on and in some subsequent framework you deal with AMs for the other sub-components.

- David Goethel – Using the words in this document, it appears to me that we finally got to the train wreck coming from the current version of Magnuson Stevens Act. The SSC concluded that the AIM model projections for both windowpane flounder stocks were too unreliable for determining ABCs. Subsequently the windowpane ABCs were estimated using a 3 year average of the fall AIM mass index multiplied by 0.75 FMSY. This estimate was held constant for the 3 year period. WE haven't got any way of assessing it. Then they go on to deal with the Bigelow to Albatross conversion rates in a fish that is nearly impossible to catch with a trawl unless you configure the trawl to catch it. These are windowpane flounders, they live on hard sand bottom and they're the thickness of a windowpane. Not easy to catch so any index is going to be variable based on how much the net is bouncing on the bottom. I can't find anything in here that says that they're in any imminent danger of biological extinction or anything like that. Then you get onto the Service's AM information sheet and it says "based on past fishing activity we expect this AM could affect approx. 120 Groundfish vessels, 100 sector vessels and 20 common pool vessels and could result in millions of dollars of lost revenue for commercial Groundfish vessels." It's bad enough the boats are going to lose money but what about the foregone loss for the American people. Are we going to have to have a save the longhorn sculpin campaign next? These things are unimportant. They're the poster child for the mixed stock exception. Why hasn't somebody asked to employ the mixed stock exception? I would hope someone would make a motion to include in FW52 the use of the mixed stock exception for the windowpane flounder crisis. The things you're talking about using won't catch flounders. Fix the train wreck that is the Magnuson Stevens Act. We should not have a stock like this controlling the output of our fisheries.

##### **5. MOTION: MR. ALEXANDER/MS. GOETHEL**

To include in FW52 as an alternative the use of the Mixed Stock Exception for management of windowpane flounder.

In order to qualify for the mixed stock exception, a stock cannot be overfished; only the southern windowpane flounder stock would qualify. A Committee member noted that this option was explored during the development of FW47 and was not utilized because it is really difficult to meet the necessary criteria. There was some frustration amongst Committee members that the criteria were so hard to meet that this exemption was extremely difficult to implement. Since it was not possible for the Council to modify the requirements a Committee member suggested using limited staff time for something that was likely to be implemented.

**5a. MOTION: MR. DEMPSEY**

To table the previous motion to the next OSC meeting (April 4, 2014).

**MOTION 5a CARRIED 8-0-0.**

**General Discussion**

In FY2012, the scallop fishery was the largest contributor to the other sub-components category. A Committee member suggested that the scallop fleet could work together to reduce catch of windowpane flounder, as evidenced by their efforts to avoid yellowtail flounder. The suggestion to create a northern windowpane flounder sub-ACL for scallops was thought to be not in line with the Council motion, but was considered necessary as a long-term goal. The issue was likely to come up at the April 2014 Council meeting; if it passed the Council the Scallop Advisory Panel would be notified. No Committee members had suggestions for a quick action that would alleviate the expected economic consequences of these AMs.

GARFO staff informed the Committee that there were some ideas that would require regulatory change that the PDT could develop further. There was likely to be more flexibility in options for the southern stock than for the northern one because of stock status and the expected under harvest of the southern stock in FY2013. The PDT had planned a conference call for Monday March 31, 2014 and any ideas could be discussed with the GAP at the April 1, 2014 meeting. If the Council decided to allocate windowpane flounder then an allocation methodology (e.g., using co-catch as a proxy for allocation years) would have to be decided on, which may require an amendment.

**Public Comment:**

- Vito Giacalone – The sectors were thinking of linking it to another stock to do this internally. There's still something I can't wrap my head around right now. Are we wasting our time on this? If we can't isolate the Groundfish sub-ACL so that if you make a modification, even if it's the same AM area, the change to the AM has to be linked to the sub-ACL and not the overall ACL. If we can't do that then let's not waste any more time on this. The Groundfish Committee can't fix this for Groundfish because we've allowed ourselves to be linked to the overall ACL. We need to fix that immediately. We can fix the catch issue for Groundfish. We're going to figure out internally how sectors are going to stay within the sub-ACL. We could almost not go fishing at all and not catch a single windowpane and still have the AM triggered on the Groundfish fleet because this Committee can't do anything about the overall ACL because you don't regulate scallops or other small-mesh fisheries. We thought this could be done in a quick framework because we believed that you could give components sub-ACLs. We're being told that we can't do that. This is wrong you can't have the entire Groundfish fishery pay. We're trying to go through a regulatory process and fix it. We realize Groundfish yellowtail flounder is a transboundary stock so the ultimate payback is we reduce the overall share but recreational

haddock goes over by a triple and sectors don't shut down if the overall ACL goes over. That's not consistent interpretation of policy.

The Committee agreed to delay making a decision on this issue until after the upcoming PDT and GAP meetings.

**AGENDA ITEM #3: OTHER BUSINESS**

Staff notified the Committee that there would be an update on the Research Steering Committee meeting at the next Committee meeting; Committee members would be provided with the opportunity to advise the Research Steering Committee on groundfish research issues.

Meeting adjourned at 4:17pm.