

**Appendix V**

**Response to Public Comments**

**Received on the**

**Amendment 16 Draft EIS**

## Response to Comments

Public comments on the Amendment 16 Draft Environmental Impact Statement (DEIS) were accepted during a formal comment period, April 24 through June 8, 2009.

Comments were accepted at public hearings or received at the Council offices by letter, email, or facsimile. The Council held a meeting June 24 and 25 to review the comments. The responses below are based on all comments received up to the date of that meeting. Comments, or revisions to comments, received after that date are not addressed.

Numerous comments were received in support of or in opposition to various alternatives. Those comments were summarized, tallied, and presented to the Council at its June meeting, but are not addressed in the following discussion.

On June 27, 2009, Councilmember Mr. David Goethel submitted a dissenting minority report to the amendment after the conclusion of the public comment period. That report, along with the Executive Committee's response, is included elsewhere in the amendment submission package.

In accordance with NEPA and Section 309 of the Clean Air Act, the Environmental Protection Agency has a special duty to review documents on proposed federal agency actions and prepare written comments. Because of this responsibility, the EPA's comments are highlighted before other public comments below.

## EPA Comment Responses

*The "Needs" enumerated in the "Purpose and Need" section are overly general and should include the specific regulatory requirements that form the basis for the measures developed to meet those requirements.*

- This section has been revised to cite relevant regulatory requirements.

*Additional guidance for developing acceptable NEPA assessments and documents should be provided in Amendment 16*

- NMFS Northeast Region NEPA staff developed specific guidance for sectors on the preparation of EAs. They are providing assistance to sector leadership in writing documents and developing sector plans that meet the relevant requirements of the law. Language to this effect has been added to the amendment.

*The EIS does not explain how matching the minimum size limit of Atlantic halibut to that of haddock is expected to increase spawning opportunities for halibut.*

- This comment was based on a typographical error in the draft document. The minimum size for halibut is linked to the median length at maturity for female halibut, not haddock.

*If the Atlantic wolffish is added to the multispecies FMU, then the unique use of designated EFH for the Atlantic wolffish egg life stage should be given special*

*consideration in future FMPs given the poor status of the stock. The vulnerability of Atlantic wolffish eggs to disturbance from mobile gear should be discussed in the FEIS if this species is selected for inclusion under the multispecies FMP.*

- The discussion of wolffish biology has been updated to highlight the potential vulnerability of Atlantic wolffish eggs to mobile gear based on recent discussions with Canadian scientists.

Describing and identifying EFH does not alone have any direct environmental impacts, but could lead to indirect impacts because EFH designation would trigger Magnuson-Stevens Act requirements to minimize adverse effects of fishing on EFH and to consider the effects of non-fishing actions on EFH. The effects of designating EFH are difficult to analyze because they are indirect and dependent on separate future actions by a variety of entities in addition to NMFS and the Council (e.g., federal agencies that may impose conditions on permits they issue for actions that could harm EFH). Those future actions and the associated environmental consequences are hard to predict. The Council is currently developing an Omnibus Habitat amendment that may consider measures designed to minimize the adverse impacts of fishing on EFH for all managed stocks, including Atlantic wolffish.

*The DEIS uses the acronym "VEC" multiple times before the term is defined. It would be helpful to have this acronym spelled out in the FEIS at first use in the text, and included under the list of acronyms and the glossary.*

- These changes were made to the document.

#### **§4.1 SDC/Rebuilding**

*There is a shifting baseline problem where current numbers seem to be normal even though they fall short of historical numbers*

- Stock assessments are completed by the NEFSC based on many factors including catch surveys and historical data. Details of the methods used to calculate baselines are outside of the scope of issues considered by the Council in this amendment.

*Develop plans that have a better than 50/50 chance of rebuilding; a 75% probability rebuilding target should be used for all stocks*

- The Council has determined rebuilding plans for all groundfish stocks based on a combination of factors including biological and economic impacts of rebuilding targets. For some stocks, this results in selection of a target that has the minimum 50% chance of rebuilding, whereas for others the rebuilding target carries a higher level of certainty. Legal requirements mandate that rebuilding be balanced with the impacts on communities and other national standards; choosing different rebuilding probabilities is one way to address these concerns.

*Halibut needs a broader range of rebuilding options beyond the setting of a target F*

- This comment indicates a misunderstanding of the rebuilding strategy. The choice of the strategy is based on the time period and probability of success; this allows a

rebuilding F to be calculated. The strategy is then implemented through the adoption of specific measures. For halibut, these include the overall effort reductions adopted by the amendment as well as limits on halibut catches and increases in the minimum size. ACLs and AMs are also proposed that will assist in halibut rebuilding.

*The Council should adopt a detailed strategy to achieve habitat gains for winter flounder stocks; The Council should reprioritize the omnibus habitat amendment*

- These comments are outside of the scope of measures considered by the Council. The Council is developing a habitat amendment to address these and other habitat issues.

*Targets should be developed to recover age structure for rebuilding stocks*

- The population structure is not included as a factor for setting ACLs in Amendment 16 because the amendment does not list criteria for setting ACLs. Any comments on such criteria should be included during the formulation of the specs package.

*The targets need to be adjusted to be consistent with SSC recommendations*

- The targets have been adjusted in the final document. The National Standard 2 guidance dictates that, if new information becomes available after an EIS is approved, it may be included so long as it does not substantially alter the measures in the action.

*Keeping SNE/MA winter flounder catch to “as close to zero as possible” is not acceptable*

- SNE/MA winter flounder is projected to be unable to rebuild in ten years even with zero fishing mortality. Take of this stock has been limited to a bycatch-only fishery, and further steps may be taken to reduce mortality through gear modifications or other measures.

*The pollock assessment is faulty and should be revisited*

- The assessment was accepted by an independent peer review. A new assessment may be performed in 2010.

*Most management problems arise from the faulty setting of TACs; NMFS stock survey vessels tow infrequently and in areas with no fish; other sources of mortality, such as pollutants, should be considered in determining appropriate fishing levels*

- These comments are outside the scope of issues considered by the Council. However, the TACs are based on assessments by NEFSC, which are subject to independent peer review. Catch levels are then reviewed again by the SSC. The numbers are therefore based upon the best available science and the most thorough and up-to-date information possible.

#### **§4.2.1 Annual Catch Limits**

*Science-based ACLs should be implemented in this amendment; all fishermen and all components of the fishery should be subject to them; ACLs should be calculated*

*conservatively; ACLs should be set for wolffish if added to the management unit; failure to control catch is a direct violation of the M-S Act*

- Science-based ACLs are implemented for all groundfish stocks in this action in accordance with the Magnuson-Stevens Act.

*It is difficult to know whether to sign up for sectors if the actual ACLs will not be calculated until after the sector enrolment deadline*

- Any person who signs up for a sector by the September 1<sup>st</sup>, 2009 deadline will be permitted to leave the sector to fish in the common pool until March 30<sup>th</sup>, 2010. Actual numbers for ACLs could not be included in the amendment because of time limitations with the availability of assessments and deadlines for amendment submission.

*The amendment should address why fishing mortality rates have been exceeded in recent years on some stocks for which the target TACs have not been met*

- Stock assessments are based on the most recent data, and sometimes previous assessments must be adjusted due to new information and retrospective patterns in stock size calculation. It is possible that a fishing mortality rate can be exceeded when an assessment (and corresponding TAC) is deemed to have been set too high in subsequent years. For further discussion of this matter, see §6.2.2.

*ACLs should be updated as part of the biennial adjustment process and should be set as early in the year as possible*

- This provision was adopted by the Council.

*The administrative process for setting ACLs should be explained more thoroughly in the amendment*

- The amendment includes a detailed description of ACL-setting procedures, which is believed to define all aspects of the process. Any questions about the process should be directed to the Council office.

*Uncertainty should consider errors in data; a vulnerability analysis is needed; too many layers of uncertainty are starving the fishery of quota; Analysis should take into account environmental factors such as climate change*

- Scientific uncertainty is considered by the SSC when it sets the ABC for groundfish stocks. There are many areas of science that could be the basis for further research. For that reason, a “buffer” is included in the setting of TAC to prevent overages caused by scientific uncertainty.

*ACL subcomponents are necessary to protect one segment of the fishery from overfishing in another; they should be also be set for the other fisheries including the herring and scallop fleets*

- The use of ACL subcomponents is proscribed in this amendment. The exact calculation of ACL subcomponents will be addressed in a forthcoming specifications plan and its corresponding EA.

*ACLs are not necessary for the component of the fishery that is on a DAS system*

- ACLs on “all stocks in the fishery” are an absolute requirement of the Magnuson-Stevens Act

*ACLs should be completed with stand-alone NEPA documents; further specification should be included on what implementing actions require full environmental review*

- Actual numbers for ACLs will be determined in a forthcoming specifications package and its corresponding EA. Details of what levels of environmental review are required for various implementing actions are described in the amendment (including actions that can be revised by framework action) and by NMFS and CEQ guidance.

*This section should be amended to include the SSC’s recommendations on ABCs and the control rule; the SSC should have the authority to set the ABC*

- The SSC has the responsibility to set the ABCs under the Magnuson-Stevens Act. The amendment has been modified to include the SSC’s recent control rule recommendation.

*ACLs should take into account differing levels of management uncertainty for each stock*

- The exact calculation of ACL subcomponents will be addressed in a forthcoming specifications plan and its corresponding EA. The amendment includes the possibility that management uncertainty may be different for ACL subcomponents.

*The use of ACTs should be considered as an alternative*

- The Council has determined that ACTs are redundant in the setting of groundfish ACLs, and that the concepts of ACL, ABC, and TAC can be used to set catch levels in accordance with the Magnuson-Stevens Act.

*State waters catches should be taken “off the top” when setting ACLs*

- According to the ACL process described in this amendment, state waters catches of regulated groundfish stocks will be included in the determination of ACLs.

*ACL overages on rebuilding stocks should be paid back the following year*

- This provision was generally adopted by the Council. Overages by a sector will be deducted from the sector’s TAC in the following year, and overages by common pool vessels will come out of the subsequent year’s TACs after the hard TAC AM is implemented in FY 2012. Such “repayments” will apply to all fish stocks, not only those in rebuilding programs.

*It should be explained that for stocks that are not landed, the ACL is for bycatch only*

- This comment is correct and is explained in the ACL section of the amendment.

*The common pool is not protected from overages by other subcomponents*

- This statement is generally correct. In the long-term, if the common pool is impacted by overages in other components of the fishery, the Council will consider whether those other components should be subject to an ACL and have their own AMs to address this issue.

#### **§4.2.2 Atlantic Wolffish**

*Atlantic wolffish should be added to the management plan; retention should be prohibited*

- This provision was adopted by the Council.

*Atlantic wolffish should not be added to the management plan until the population status can be better determined; EFH should not be designated until more information is collected*

• Despite the data-poor status of this species, there is consensus among the scientific community that strong management measures must be in place for its protection. Further research is necessary to determine more information about the wolffish, but the Council chose to take action using the best available science to prevent further population decline.

#### **§4.2.3 Sector Management Generally**

*Sectors should promote economic and administrative efficiencies, and costs should not outweigh benefits*

• Measures related to sectors were created with the intent to promote flexibility and efficiency for the industry. It is expected that sector organizers will attempt to create business plans that provide a cost-effective means of fishing under a hard allocation of sector ACE.

*Sectors are actually ITQs/LAPPs and should be subject to relevant M-S Act provisions*

• According to an August 22, 2007 letter from NMFS NERO, sectors are not ITQs because they are not issued permits for harvesting quota and the allocation to a sector is not held for exclusive use. A subsequent letter (dated September 12, 2007) specified that sectors are not considered LAPPs because they do not involve the issuance of a “federal permit, issued as part of a limited access system under §303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person.” Additionally, a sector cannot qualify as a “person” eligible to hold a LAPP under §303A(c)(1)(D) because the definition of “person” is limited to a U.S. citizen, corporation, partnership, or other entity established under Federal or state law, or a permanent resident alien. Sectors are groups of vessels under voluntary contract-arrangements and do not fall under any of those categories.

*Sectors provide opportunities and should be quota-based*

- This provision was adopted by the Council.

*Costs of sector membership may be prohibitive*

• It is expected that sector organizers will attempt to create business plans that provide a cost-effective means of fishing under a hard allocation of sector ACE. If the cost of joining sectors is too high for an industry member to afford, that person can choose to remain in the common pool under effort control measures.

*It is difficult to find a sector to join in certain areas, including New York*

- The creation of individual sectors is outside the scope of Council management. Sectors are not required to limit membership to certain regions, and new sectors can be considered in future actions.

*There is not enough information available on which to base the decision whether to join a sector*

- This amendment provides a thorough description of sector and common pool measures. Information about individual sectors should be disseminated by their organizers and is outside the scope of Council involvement.

*There should be strong incentives to encourage sector participation*

- Sectors are exempt from many of the effort control measures to which the common pool will be subjected. The ultimate decision about whether it will be more desirable to fish in the common pool or in a sector is left to individual fishermen.

*Sectors will lead to consolidation; sectors will destroy small businesses*

- It is difficult to accurately forecast the impacts of sector implementation, and the lack of knowledge about sector participation is a major factor driving the uncertainty of the analysis. After the initial period of sector implementation, in-depth analyses will become much more practical and are expected to be included in future actions. If consolidation occurs against the Council's wishes, corrective management tools could be implemented at a later date. Amendment 16 does not allocate excessive shares of the fishery to any one group.

*The industry is opposed to sectors; sectors are driven by NGOs with no connection to the fishery*

- Sectors were developed with the extensive assistance of a multitude of industry members as well as representatives from a wide array of interests within the fishery. Members of the industry who do are opposed to sector management may remain in the common pool.

*Privatization does not work for public resources*

- Amendment 16, and specifically the implementation of sectors, does not constitute a privatization of natural resources. Sector ACE is not owned by permit holders and does not constitute any sort of property right, but rather is simply a way of determining catch allowances. The M-S Act explicitly states that even individual allocations such as ITQs do not carry any property rights.

*Involuntary partnerships should not be forced upon the industry*

- Industry members who do not wish to join sectors may remain in the common pool under the DAS system as before.

*Open access vessels should be allowed into sectors*

- The Council did not adopt this provision. If open access permits were allowed into a sector and took their history into that sector, and subsequently another open access permit was granted, there would be the possibility of an increase in fishing effort. The current design of the sector system was intended to be “effort-neutral”.

*The sector development/implementation process is rushed*

- The process of sector development occurred over a period of years, involving a large number of Council and Committee meetings that were open to the public. Sectors were originally slated to be implemented in FY 2009, but that date was pushed back one year during the development process. Because of several legally-mandated deadlines, the amendment cannot be further delayed without evoking emergency management actions.

*Sectors have not been proven to work in any mixed trawl fishery*

- Sectors, as designed in this amendment, are a novel concept that has not been explicitly tested elsewhere. Management measures have been designed to maximize their effectiveness, but it is believed that “fine-tuning” of measures may need to occur in the first few years of sector implementation.

*The amendment should facilitate the creation of a leasing-only sector*

- This is a detail of sector operations that is outside the scope of issues considered by the Council, but this action does not prohibit lease-only sectors.

*If sectors fail, there will be long-term damage to fishing infrastructure*

- It is difficult to accurately forecast the impacts of sector implementation, and the lack of knowledge about sector participation is a major factor driving the uncertainty of the analysis. After the initial period of sector implementation, in-depth analyses will become much more practical and are expected to be included in future actions. If consolidation or loss of infrastructure occurs against the Council’s wishes, corrective management tools could be implemented at a later date.

*Sectors create a major safety issue*

- Industry members who do not feel that they can operate safely in sectors may remain in the common pool under the DAS system as before. This comment is difficult to understand, since sector vessels have more flexibility than vessels in the common pool to choose how and when they fish.

*The allocation numbers are too small to make sectors work*

- Fishing mortality levels are scientifically determined in order to prevent overfishing and rebuild overfished stocks. Sectors are allocated a part of the allowable catch based on the history of members.

*Sectors are a hopeful way to maintain community fishing*

- It is difficult to accurately forecast the impacts of sector implementation, and the lack of knowledge about sector participation is a major factor driving the uncertainty of the analysis. It is hoped that the flexibility provided for creating effective business plans will prove useful for many participants in the fishery.

*Large vessels must not be able to use the quota that is assigned to small vessels*

- This comment is an issue for sector operations that is outside the scope of topics considered by the Council. It is not clear why this limit should be considered. Such decisions would be made internally by individual sectors, and the Council does not choose to manage internal sector operations.

*Sectors and the common pool should operate under a similar set of management requirements*

- All requirements of the law, including the use of ACLs and AMs, apply to both sectors and the common pool. However, the two systems were developed differently to provide a meaningful choice to fishermen that may benefit from selecting one management structure over the other.

*Sectors should not be approved since single-species management, and not DAS management, is the main problem in New England*

- The topic of single-species management was outside the scope of issues considered by the Council.

#### **§4.2.3.1 Sector Definition and Formation**

*“Sectors” should be formally defined and recognized in the amendment*

- This provision was adopted by the Council.

*The definition of sectors should be modified to include a minimum number of participants; overly small sectors may effectively be an IFQ*

- This issue was recognized by the Council and adopted at their June 2009 meeting.

*Sectors do not have enough time to develop their operations plans, and people will not have enough time to decide whether to join before the September 1<sup>st</sup> deadline*

- Sectors could develop operations plans sooner than September 1<sup>st</sup> if the timeline presents an issue for choosing whether to join. If operations plans are not ready in time or not acceptable to potential members, people have the right not to join sectors and to remain in the common pool. This is an internal sector issue that is not addressed in the amendment.

*Additional guidance should be provided for developing NEPA assessments*

- The NMFS is working with sector representatives in order to ensure that each sector has the necessary knowledge and resources to meet all the requirements of NEPA.

*Transparency is required during the sector formation process and in the operations plans*

- Sector formation is approved by the Council, and sectors operations plans must be completed through an EA process. These processes are both subject to NEPA requirements and provide ample opportunities for public comment and the open dissemination of information.

*The EA requirement violates the Regulatory Flexibility Act and is essentially a tax on sectors*

- Sector operations plans are required to be submitted as an EA in accordance with NEPA.

*Proposed operations plans should be approved by the Council*

- The Council decided not to review individual sector operations plans due to time concerns and possible delays in implementation that could result from such a measure. Also, the Council retains several methods of reviewing sectors, since they hold the authority to approve the formation of new sectors and can submit comments to NMFS during the public comment period on the EAs that include sector operations plans.

*Reviews of operations plans should consider the ability of a sector to prevent large-scale closures*

- Operations plans are reviewed by NMFS, and any comments on their review should be submitted as part of the EA process.

*Individual permit holders should be allowed to vote on the adoption of sector management options*

- This category of details about sector membership and operations are outside of the scope of issues considered by the Council.

*CPH permits should not need to be activated in order to join sectors*

- This provision was adopted by the Council.

#### **§4.2.3.3 Ownership Cap (Sector Allocation)**

*Further justification is needed for removing the 20% cap; the cap should not be removed in the absence of an alternative proposal to prevent undue market control; similar restrictions used by the North Pacific Council should be investigated*

- The Council has never identified management objectives associated with the imposition of a cap on a sector's allocation of a stock. If excessive ownership occurs against the Council's wishes, the cap may be reinstated at a later date or other management tools could be used to prevent fleet overconsolidation. There are also other safeguards in place that could prevent such an outcome. For example, sectors' allocations will be monitored by NMFS through their rosters and operations plans, and the agency could disapprove a sector with inordinate market control for reasons including fairness and equity. Amendment 16 does not allocate excessive shares of the fishery to any one group. The removal of the cap is included to provide maximum flexibility for fisherman to create the best business plan for themselves.

#### **§4.2.3.3.1 Sector Mortality Controls**

*SNE/MA winter flounder should be added to the list of stocks that are not allocated to sectors*

- This provision was adopted by the Council.

*There should be a penalty for discarding of species that are not allocated to sectors, including ocean pout and windowpane flounder*

• This concept was not discussed by the Council but is a valid point. Since sectors do not have an allocation of these stocks, there is little incentive to control catches. Should this prove to be a problem, NMFS could require additional Operations Plan measures to reduce catches of these species, or the Council could adopt limits in a future management action.

*Sectors should have an increased trip limit on monkfish*

• This comment was outside the scope of issues considered by the Council. The monkfish plan may consider changes to facilitate participation in sectors.

#### **§4.2.3.3.2 Sector Overages**

*Overages should be allocated to each permit holder in the sector on a pound-by-pound basis*

• This provision was adopted by the Council for vessels that leave the sector in the year following an overage. How a sector deals with this situation internally is a matter for the sectors to decide in their operations plans and is outside of the scope of Council involvement.

*Sector members causing an overage should not be able to escape accountability by joining the common pool, and the reverse situation also needs to be addressed in A16*

• The reverse situation is not addressed because there is no way in the common pool to attribute an overage to a specific vessel, and vessels in the common pool have not made an agreement that they are responsible for the actions of the whole.

#### **§4.2.3.3.4 PSC/Allocation**

*Allocation should be based on 100% history; allocation should use the longest time frames*

- This provision was adopted by the Council.

*Catch history should remain frozen with the original permit*

• The Council addressed this issue by adopting a provision to freeze groundfish catch history in Amendment 16, until modified by a future action, at their June 2009 meeting.

*The individual PSC calculations sent by NMFS are not accurate; the calculations were sent too late to make a decision*

- This comment is outside the scope of issues considered by the Council.

*The existing sectors should keep their original allocations*

- This provision was adopted by the Council.

*The same baseline should apply to all sectors*

• The Council's choice of Option 5 was consistent with their intent to not change allocations for additional sectors in the future. For further discussion, see the response to Councilman Goethel's minority report.

*There should be another alternative that applies history to stocks caught; there should be an option that applies A days to stocks landed; DAS alone should be converted to an allocation unit; there should be more alternatives based on the size of boat, DAS, catch history, or a combination of those elements; none of the options are fair*

• Other options for calculating PSCs were outside the scope of issues considered by the Council. The development of PSC alternatives took place over a period of nearly two years. There are possibly an infinite number of ways to calculate PSCs. The Council selected a range of alternatives that was believed to provide an adequate choice for final selections. The alternatives considered included those that applied history only for stocks caught, as well as for all stocks, those that considered DAS, and those that considered vessel size. It is not clear that any other formulations would have provided meaningful alternatives to those that were considered.

*The No Action alternative should be chosen because the data is more accurate and it mirrors the allocation for the existing sectors*

• The Council opted to select the option with a longer timeframe in order to smooth out inconsistencies in management measures over the previous years so that history would be as representative of the fleet as possible. In addition, the No Action alternative's use of a rolling time period was recognized as creating administrative difficulties in calculating the PSCs.

*Using any capacity component in the calculation is discriminatory*

- The Council did not adopt any PSC formula that included a capacity component.

*Allocations of GB haddock and redfish should be spread amongst the industry so that the benefits of rebuilt stocks can be shared and to alleviate cuts in other stocks*

- This idea was discussed but not adopted by the Council. .

*Landings from leasing should not be included in the PSC calculations; people who actually did the fishing should be entitled to the history*

• Amendment 13 established the policy that landings history accrues to the permit that lands the catch. PSC calculations adhered to this principle.

*All of the allocation formulas favor large vessels; the formulas are designed to eliminate small vessels*

• The allocation formula does not discriminate on its fact between industry participants and geographic areas, nor does it allocate excessive shares to any one group.

An allocation based on history alone should allow each vessel to retain a PSC that is equivalent to its historical proportion of catch.

*History from the last five years should not be used since Southern New England had a lower trip limit*

- The years chosen for allocation covered a time period in which management measures changed often. Although those measures sometimes differed across geographical areas, there was no perfect allocation formula and the Council deemed straight history to be the most fair and equitable allocation method. The allocations are stock-specific, and all permit holders were subject to the same trip limits at the same time.

*History should go back as far as a vessel can document*

- The Council did not choose history dating from earlier than 1996 for several reasons, including poor data quality and the desire not to use history that departed from the current composition of the fleet.

*Allocation should not be based on history alone, since Mid-Atlantic vessels had low DAS and were forced to lease days*

- The years chosen for allocation covered a time period in which management measures changed often. Although those measures sometimes differed across geographical areas, there was no perfect allocation formula and the Council deemed straight history to be the most fair and equitable allocation method.

*The allocation process is flawed by the lack of a complete and accurate landings history for all vessels; this problem is more acute in smaller ports*

- Issues involved with landings history data and appeals of PSC calculations distributed in May 2009 should be directed toward NMFS.

#### **§4.2.3.5.2 Sector Enforcement**

*Joint liability should be limited as much as possible*

- This provision was adopted by the Council within the scope of options considered.

*Sectors should have the flexibility to address liability options in their operations plans*

- Liability issues are relevant to law enforcement and should be standardized across sectors.

*Discarding of legal-sized fish and misreporting of catch should not carry joint liability*

- Liability for these two practices goes to the heart of sector management. One of the chief differences between sectors and ITQs is that sectors are a partnership where fishermen share an allotment of ACE. Direct violations of trust associated with the management of that ACE are enforcement concerns that are considered to be within the purview of the sector to prevent.

*Sector members with high PSCs will not be turned in for violations*

- This is an internal sector issue that is not addressed in the amendment.

*There should be some room for first-year overages as the system adapts and sectors fine-tune their operations*

- This provision would not satisfy the Magnuson-Stevens Act, which requires that ACLs cannot be exceeded and that overages in any segment of the fishery must incur AMs.

#### **§4.2.3.5.3 Sector Monitoring**

*All fish caught should be counted through dockside monitoring and at-sea observing*

- The Council intended to make a monitoring program that would provide a statistically significant indicator of total sector catch and discards. One of the major reasons cited for not approving 100% dockside and at-sea monitoring was cost prohibition.

*Ineffective monitoring programs undermine the effectiveness of ACLs*

- The Council adopted additional monitoring requirements for sectors to address this issue.

*The SBRM is inappropriate to use for calculating observer coverage rates for sectors*

- The NEFSC has stated that the SBRM levels are the best available science. The SBRM provides analytic techniques for estimating the level of coverage needed to achieve a given CV for discard estimates. These techniques have been peer reviewed and found to be valid. The amendment makes this the absolute minimum level of coverage needed but notes that actual coverage levels required will be specified by NMFS. Actual coverage levels can thus consider other information, such as the need for higher levels of coverage to account for the possibility of observer bias or to ensure that quotas are adequately monitored. SBRM coverage is additive to NEFOP observer program coverage.

*It will be impossible to give weighout data in New York, since vessels there box at sea*

- Sector organizers are given considerable flexibility in adopting monitoring schemes. If catch is boxed at sea, it is possible that the number of boxes and a sample weight could be used for weighout data, or the weight could be used that is determined by the dealer. Other responses may be developed by those more familiar with the operations, and the reporting program is flexible enough to allow a sector to get such a system approved.

*Increased monitoring is too expensive; Costs will prevent people from joining sectors; Monitoring costs cannot be afforded except by fishermen that are supported by NGOs*

- Monitoring needs to be adequate for the task it serves, and sectors will need higher levels because they are fishing on a hard TAC and have many unknowns. The NMFS is expecting to secure funding for sector monitoring for at least several years. If federal

money is not available, it is anticipated that the ability to create sound business plans and cost-effective sectors should offset increased monitoring costs.

*Dockside monitoring is unnecessary, since dealer reports already verify the same information*

- Dockside monitoring is an enforcement tool to ensure that sectors are not exceeding their ACE. Sector implementation is fraught with uncertainty, and dockside monitoring adds one more layer of information by which to measure its success and weaknesses.

*Increased monitoring standards should be applied to the common pool as well as sectors*

- This comment is outside the scope of alternatives considered by the Council.

*Real-time monitoring data should be used to apply actual discard rates; sectors should be able to have specific discard rates used if they opt for a higher level of monitoring*

- This provision was adopted by the Council, within the limitations of current reporting capabilities, and will become effective when sectors implement their own independent at-sea monitoring programs.

#### **§4.2.3.6 Sector Annual Reports**

*Specific requirements should be included to evaluate performance of the sector program*

- The sector program is under close public scrutiny and it is expected that evaluation will be ongoing.

*Annual reports should include locations and harvest levels of other species*

- This provision was adopted by the Council in section §4.2.3.6

#### **§4.2.3.7 ACE Transfer**

*Transfer within and between sectors must be allowed*

- This provision was adopted by the Council.

*History must be frozen with the original permit*

- The Council addressed this issue by adopting a provision to freeze groundfish catch history in Amendment 16, unless modified by a future action, at their June 2009 meeting

*Insufficient allocations paired with the necessity of transferring ACE add a lot of complexity to management*

- Sector management is designed to allow participants to maximize efficiency and to make profitable business choices. This system creates more flexibility than was previously in place with DAS management. If industry members feel that they cannot operate profitably or comfortably in a sector, they may opt to remain in the common pool.

*ACE transfer should not carry unintended consequences or endanger the resource*

- It is difficult to determine the future nature and extent of ACE transfer between sectors. Since sectors are subject to a hard TAC, transfer of ACE between sectors is not expected to lead to higher fishing mortality or overfishing. ACE transfer will be monitored and any problems with the program will be revisited in a future action.

#### **§4.2.3.8 Sector Participation in SAPs**

*Sectors should be exempt from closures in the Eastern U.S./Canada area if they have ACE remaining*

- Sectors can only fish in the corner of CAII (within SAP boundaries) during the season of the SAP. However, they are exempt from gear requirements in the SAP because they will be operating under hard TACs. Justification for this measure is provided in §4.2.3.8.2.

*All options that encourage sector participation in SAPs should be approved in order to facilitate sector membership and allow flexibility for sectors to catch their ACE*

- All provisions related to sector participation in SAPs were adopted by the Council.

#### **§4.2.3.9 Interaction of Sectors with Common Pool**

*Sectors should be protected by overharvesting from the common pool*

- This provision was adopted by the Council. Sectors will not receive a deduction in ACE due to overages from common pool vessels.

*Allowing sectors to avoid trip limits complicates the setting of state landing limits*

- This provision was adopted by the Council.

*Sectors should have a universal exemption that allows them to fish in rolling closure areas*

- The Council intended sectors to be exempt from all effort control measures that could be reasonably replaced by the assumption of a hard TAC. The Council voted at their June meeting that this should include all rolling closures except those that were designed to protect spawning stocks.

#### **§4.2.4 Reporting Requirements**

*Area-specific reporting requirements should apply to any vessel that catches groundfish, including scallop vessels*

- All vessels, including those fishing for scallops, have area-specific requirements and additional requirements when they enter a special access area. The monitoring requirements for the scallop fishery are developed in the scallop FMP.

*There needs to be more accurate and unbiased accounting for discards*

- The SBRM established a system for monitoring discards. Additional requirements for sectors are being implemented which should improve discard monitoring.

*More effective electronic reporting programs should be adopted*

- Amendment 13 authorizes the implementation of electronic reporting when the technology is available. The NMFS can adopt and implement electronic reporting when they are ready to do so.

*Daily reporting should be a reality for the groundfish fleet*

- Currently, trip-based reporting is considered to be adequate for its current usage. NMFS has not determined the necessity for daily reporting to date.

#### **§4.2.5 Commercial/Recreational Allocation**

*Baseline years should be the same for all segments of the fleet (i.e. sectors, commercial, and recreational)*

- The recreational allocation and the sector PSC formula are completely separate issues, and the Council provided rationales for choosing the selected measures for each. For further discussion, see the response to Councilman Goethel's minority report below.

*The allocation is unfair since the recreational fishery has less regulations; the longer timeframe smoothes out some of the management inconsistencies*

- The more recent timeframe (2001-2006) for calculating the commercial and recreational allocations was chosen by the Council because of concerns over the quality of earlier data. Also, the more recent information was considered to be more representative of the current makeup of the fishery. Although there were arguments in favor of both options, the Council decided that the use of the later timeframe was more equitable.

*The 2001-2006 timeframe more closely represents the current fishery*

- This provision was adopted by the Council.

#### **§4.2.6 DAS Transfer and Leasing**

*The Council should remove the cap on DAS leasing*

- This provision was adopted by the Council.

*There should be a conservation tax and/or a transfer tax on DAS leasing*

- The Council opted not to include a conservation or transfer tax in order to promote flexibility and efficiency in the industry.

*The conservation and/or transfer taxes should be eliminated*

- This provision was adopted by the Council.

*Tax previously charged for DAS transfers should be refunded*

- The Council opted not to refund previous DAS transfer taxes because it would lead to a small increase in fishing effort. In addition, business decisions made under earlier regulatory schemes cannot be constantly revisited.

*Inshore boats should not be able to lease or stack days, while offshore boats should be allowed to continue to do so*

- This comment is outside the scope of issues considered by the Council. Such an action would lead to criticism of unfair treatment of permit holders.

*Size restrictions on transfers should be continued until a careful analysis of the impacts can be performed*

- This provision was adopted by the Council.

#### **§4.2.7 Special Management Programs**

*Sectors should have year-round access to the Closed Area II Yellowtail Flounder SAP*

- Seasonal access to CAII was adopted in order to target healthy haddock stocks but to deter targeting of yellowtail flounder. Year-round access was not adopted because the area still serves as a tool for effort control for non-sector vessels.

*Revisions to the CAII YTF SAP could lead to the premature closing of the Eastern U.S./Canada Area to non-sector vessels and trigger AMs for GB winter flounder*

- This should not occur. Sectors have their own ACE, separate from the ACL for common pool vessels, and catches of stocks by sector vessels should not impact common pool vessels as long as adequate monitoring is in place.

*The Eastern U.S./Canada Haddock SAP should be reauthorized; sectors should have year-round access*

- This provision (renewal) was adopted by the Council, but year round access was not authorized.

*The Hook Gear Haddock SAP should be expanded; herring vessels should not be able to enter without an observer on board; dumping of unsampled catch should be prohibited*

- The provision expanding the hook gear SAP was adopted by the Council. Herring monitoring provisions are being considered in a herring action.

*The Regional Administrator should have the authority to approve programs in conservation engineering*

- This provision already exists and does not require council action.

*Revisions to the Category B program should be implemented due to changes in stock status*

- This provision was adopted by the Council.

#### **§4.2.9 Scallop and GF Permit Ownership**

*Allowing a vessel to possess both permits will foster efficiency and reduce costs*

- This provision was adopted by the Council.

*If possession of both is allowed, the scallop industry will liquidate the groundfish industry*

- There is no way to predict with certainty what the effects of this measure will be. The conservative nature of the common pool effort controls, combined with a hard TAC on sectors, will serve as a buffer for any increased mortality on stocks associated with this measure. The measure is expected to have similar effects as those for DAS leasing. The analysis does indicate that it is more likely that scallop vessels will acquire groundfish permits given the relative performance of the industries.

#### **§4.3.2 Common Pool Effort Controls**

*The Closed Area Model is uncertain and needs to predict effort shifts, and it should be better explained*

- The Closed Area model used to design effort controls has been used for numerous management actions. The model has been subjected to at least two separate peer reviews and was the subject of litigation that determined it represented the best available science for the design of groundfish management measures. Explanations of the model have been included in Amendment 13 and Framework 42, and evaluations of the model's performance have been included Framework 42 and this action. Appendix II of this action includes a description of the model. The model is designed to account for effort shifts.

*Common pool effort controls should not turn it into a “cesspool”*

- The common pool effort controls are designed to achieve mortality controls targets in the most effective way possible. It should be seen as a viable alternative to sector membership for those who would prefer to fish under DAS.

*Restricted Gear Areas are too expensive*

- Restricted gear areas are generally used to compliment other management measures to meet mortality targets. The Council has determined that benefits accrued from their designation outweigh increased costs and any other hardship. Often, such areas would be closed entirely if the restricted gears were not allowable.

*Differential DAS counting is ineffective and too complicated*

- Differential DAS counting areas for the common pool as an effort control measure were not adopted by the Council.

*Option 2A is not adequately described and would lead to a tremendous loss in yield*

- This provision was not adopted by the Council.

*All of the effort control options have proven to be ineffective*

• The effort control options are new to this amendment and have not yet been implemented. Those who have concerns about the DAS system can choose to fish under a catch share system in a sector. Analyses in the amendment indicate that effort control measures have generally achieved the relative changes in mortality that were targeted.

*The 24-hour clock is a safety concern*

• The Council received comments on both sides of this issue. Day gillnetters already have a similar system in place and do not take major safety risks in order to maximize time fishing. There is nothing in the proposed measure that directly creates a safety issue, since fishermen can choose when and where to fish with safety in mind. No person will be forced to stay on a boat in unsafe conditions. If a specific operations' customary practice would lead to safety issues when fishing under a 24-hour clock, that operator has the option of joining a sector to mitigate those concerns. Comments on the record from industry members both support and deny the existence of safety issues associated with this measure.

*There should be expanded options for the handgear fleet; the number of allowed hooks should be increased; handgear fishermen should be exempted from rolling closures and allowed to use mechanical devices*

- These comments were outside the scope of issues considered by the Council.

#### **§4.3.2.2 GOM Sink Gillnet Pilot Program**

*This program should be implemented to allow targeting of a healthy species; it should be incorporated with adequate research analogous to a SAP*

- This provision was adopted by the Council.

#### **§4.3.2.3 Haddock Minimum Size**

*The minimum size should not be reduced in order to conserve the stock*

• The Council opted to reduce the minimum size in response to the improved stock status of this fish and in response to testimony from fishermen about discard rates and fishing practices.

*The minimum size should be reduced*

• The rationale for reducing the minimum size has been clarified in the final version of the EIS.

#### **§4.3.3 Recreational Measures**

*A 6-cod bag limit would hurt business, and an April 15<sup>th</sup> season opening would be a preferable effort reduction measure; recreational bag limits and size restrictions have great economic impacts than shortened seasons*

- The April 15<sup>th</sup> season opening was adopted by the Council.

*There are plenty of large haddock to catch, so raising the size limit on haddock would not be overly cumbersome*

- The Council reduced the minimum size for haddock so that recreational fishermen can benefit from haddock rebuilding.

*Recreational anglers should not be limited by further effort controls since the commercial fishery is driving stock reduction; the recreational impact to the fishery is minimal*

- The recreational fishery is required by law to have ACLs and AMs. Effort control measures must be drafted in order for the fishery to meet mortality targets. Any necessary reduction in effort has typically been shared between the recreational and commercial fisheries, and the Council has continued this policy with this amendment. Arguments that the recreational fishery has minimal impact on stocks ignore the fact that, for some stocks, recreational fishing constitutes one third or more of the catch. Such a large share cannot be characterized as a ‘minimal’ impact.

*The recreational fishery should operate on mortality limits rather than input controls*

- All fisheries are subject to ACLs and AMs under the most recent revisions to the Magnuson-Stevens Act. Management regimes for the recreational fishery other than output-control measures were outside the scope of topics considered by the Council in this action.

*Reporting measures need to be improved to track mortality in the recreational fishery*

- This comment was outside the scope of topics considered by the Council.

#### **§4.3.4 Halibut Minimum Size**

*Halibut minimum size should be increased; minimum size should be increased for the recreational sector only*

- This provision was adopted by the Council for all components of the fishery

*Halibut minimum size should not be increased*

- The Council opted to increase the minimum size in order to better match the age of maturity for females and to promote rebuilding of the resource.

#### **§4.3.6 Additional Sectors**

*The new proposed sectors should be approved provided they meet all the requirements*

- This provision was adopted by the Council.

*There should be state-based “default” sectors for those who are unable to join on their own*

- This category of details about sector membership and operations are outside of the scope of issues considered by the Council.

#### **§4.3.7 Accountability Measures**

*Implement strong AMs using hard TACs for the common pool and sectors; AMs should be in-season*

- In-season hard TAC AMs were implemented in this action for the common pool starting in FY 2012, and for sectors in FY 2010. The Council chose to use a differential DAS AM for the common pool in the years 2010 and 2011 in order to provide time for a transition to sector management and a hard-TAC backstop.

*Alternative 2 using differential DAS adjustments is legally deficient and cannot be approved*

- The M-S Act requirements for ACLs and AMs, and the NS guidance on implementing these requirements, give extensive latitude to Councils in meeting the requirements. The NS Guidelines make it clear that no specific AM is required. The statute requires ACLs and measures to end overfishing. The differential DAS system proposed in Alternative 2 will end it. The effort control system has reduced mortality on a number of stocks over time, so DAS controls have been shown to be effective and should end overfishing. Additionally, the DAS system being implemented for the common pool has many buffers in place, including adjustments for uncertainty such as the 75%  $F_{msy}$  fishing level, that will provide extra security for ending overfishing. This system is only in place for 2 years and will be replaced by a hard TAC AM in FY 2012.

*Use of a hard TAC will create a derby fishery; in-season AMs will create a derby; trends to derby fisheries are affecting markets; if a hard TAC is used, there should be a warning before the fishery shuts down, or the TAC should be spread to avoid derbies*

- These concerns are recognized in the analyses of the hard TAC AM for non-sector vessels. Measures are in place to attempt to reduce the derby effects: DAS limits, trip limits, seasonal distribution of the quota, etc.

*Recreational harvest needs to be capped; the recreational fishery should be subject to the same AMs as the commercial fishery*

- During discussion on this topic at the June 2009 Council meeting, the RA stated that various issues, including problems collecting data for the recreational fishery, make it difficult to adopt the same types of AMs for this component as those used for the commercial fishery. The implementation of in-season AMs will not be possible until these concerns are addressed.

*Credit should be given for an underharvested ACL to compliment penalties for an overharvested one*

- ACLs are calculated in advance to determine the maximum allowable removals from the fishery. Although the Magnuson-Stevens Act requires penalties for an overharvested ACL, there is no similar latitude for an increased ACL in the case of an underage. However, underharvested ACL should lead to increased stock size, thus bolstering assessments and leading to higher ACLs when they are calculated in subsequent years.

#### **§5.3.2.4 Drop Chain Requirement**

*The drop chain requirement should be implemented in Southern New England in order to selectively protect at-risk stocks*

- The drop chain proposed in this amendment shows some promise for selective fishing. However, this provision was not implemented due to concerns over the lack of peer-reviewed research on the effectiveness of the gear and its possible interactions with other fisheries. It is possible that the gear requirement will be revisited if scientific studies are completed.

*There is a lack of scientific support showing that this gear configuration will be effective*

- This provision was not implemented due to concerns over the lack of peer-reviewed research on the effectiveness of the gear and its possible interactions with other fisheries.

*This gear requirement will have a negative impact on other fisheries, including many that do not overlap with the winter flounder*

- This provision was not implemented due to concerns over the lack of peer-reviewed research on the effectiveness of the gear and its possible interactions with other fisheries.

#### **§5.4.3 Alternative Management Systems**

*Allocations should be distributed on a finer scale and there should be dedicated allocations to traditional fishing communities*

- This comment is outside the scope of issues considered by the Council.

*ITQs should be implemented as soon as possible; sector management should be bypassed in favor of ITQs*

- These comments are outside of the scope of issues considered by the Council.

#### **§6.1 Stocks in the Fishery**

*Cusk should be added to the management plan*

- This comment was outside the scope of issues considered by the Council. The Council noted in scoping the possibility that cusk would be added to the management

plan. But in order to manage a stock, an assessment is needed so that stock status and reference points can be determined. Cusk has not yet been assessed by the NEFSC and the information is not available to add it to the management unit.

*Do something about monkfish; monkfish should be integrated into output-controlled management; limited access monkfish permit holders should be allowed to join sectors*

- This amendment can only regulate the groundfish fishery. Any rules about the creation of sectors in other fisheries, or sectors' fishing on other species, need to be promulgated through separate actions.

*There is a lack of analysis of impacts on the lobster resource*

- The amendment does include such an analysis.

*Fluke, seabass, and scup should be managed with sectors*

- This amendment can only regulate the groundfish fishery. Any rules about the creation of sectors in other fisheries need to be promulgated through separate actions.

*Sectors should not remain on DAS to regulate effort on other species*

- This amendment can only regulate the groundfish fishery. Any rules about fishing on other species need to be promulgated through separate actions.

*Open-access boats should be able to combine trips for groundfish with those for other species*

- This is allowed by the groundfish FMP as long as gear is being used that is consistent with the groundfish plan.

*There should be a discussion of ecosystem component species*

- This amendment did not adopt any ecosystem component species at this time. According to the National Standard Guidelines, the inclusion of such species in management plans is optional.

## **§7 Impacts**

*There is no analysis on the possible transformation of the industry*

- The EIS recognizes that there may be changes in composition of the industry as a result of the expansion of sectors. The extent and nature of those changes are difficult to predict because it is uncertain which permits will choose to join sectors.

*There is no analysis on the effects of an unrestricted ACE transfer system on EFH*

- There is no existing database that can be used to efficiently characterize groundfish permit ownership because of the ability of permit holders to establish corporations. NMFS personnel have contracted for creation of such a database so that the future changes in the industry (if any) can be identified.

*The amendment lacks information on ownership of groundfish permits*

- The effects of ACE transfer on EFH are discussed in the analysis. These provisions are not expected to have any different impacts on EFH than current permitting regulations, which allow almost all vessels to use any legal gear to participate in the fishery.

*Uncertainty over sector and common pool participation weakens the impacts analyses*

- It is difficult to accurately forecast the impacts of sector implementation, and the lack of knowledge about sector participation is a major factor driving the uncertainty of the analysis. However, notions of fairness require that decisions about sector enrollment cannot be compelled until the measures are published in the amendment. After the initial period of sector implementation, in-depth analyses will become much more practical and are expected to be included in future actions.

*Uncertainty should be quantified in each of the impacts analyses*

- Uncertainty is quantified to the extent possible in the analyses and other calculations. Due to the amorphous nature of uncertainty, a precise number cannot always be gauged.

*The benefits of improved reporting are underestimated in the analyses*

- The amendment includes much discussion on reporting and monitoring measures. As noted above, precise impacts are difficult to calculate but information is included as to the projected benefits to the extent that they are known.

## **Amendment 16 Miscellaneous Comments**

*Overfishing must be ended*

- This amendment seeks to implement management actions to end and prevent overfishing in accordance with the Magnuson-Stevens Act.

*Catch share management is the best way forward; a move away from input controls is needed; input controls have degraded data*

- Sectors are a form of catch share management that the Council has implemented in this action.

*Ecosystem health should be restored; the amendment should explain the transition to ecosystem-based management*

- This comment is outside of the scope of comments considered by the Council. Ecosystem issues are being appropriately addressed in other Council actions.

*There need to be public hearings in New York/New Jersey; New York should be represented by a Council member*

- The composition of the Council is outside of the scope of issues considered in this action. The low attendance of public hearings on the amendment should be noted. Hearings were held in locations that were chosen to maximize participation and accessibility.

*Amendment 16 is a form of rationalization; the Council should address the future composition of the fishery so it can be debated explicitly and transparently; the amendment should address the impact of sectors on consolidation of the dayboat fishery*

- The impacts of sector implementation are extremely difficult to forecast. The Council has never identified management objectives associated with fleet consolidation. If the composition of the fishery appears poised to change against the Council's wishes, new management tools could be used at a later date to prevent fleet overconsolidation. There are also other safeguards in place that could prevent such an outcome. For example, sectors' allocations will be monitored by NMFS through their rosters and operations plans, and the agency could disapprove a sector with inordinate market control for reasons including fairness and equity. Amendment 16 does not allocate excessive shares of the fishery to any one group, nor does it discriminate on its face between industry participants and geographic areas.

*None of the alternatives preserve community access; the measures are unfair to small boats*

- The impacts of sector implementation are extremely difficult to forecast. The amendment does not discriminate on its face between industry participants and geographic areas. The Council has never identified management objectives associated with community access. Measures to preserve community access could be considered in a future action.

*Gillnet tending should be a requirement in federal waters*

- This comment is outside the scope of issues considered by the Council.

*Public access to the resource is being cut off, particularly for new entrants to the fishery; the Council should consider a set-aside program with default allocations to state programs for new entrants*

- This comment is outside the scope of issues considered by the Council.

*A permit bank should be created as a repository of fishing rights*

- This comment is outside the scope of issues considered by the Council.

*The Council should recognize Community Fishing Associations in Amendment 16*

- This comment is outside the scope of issues considered by the Council.

*If CFAs are recognized, there should be a cap on their ownership*

- This comment is outside the scope of issues considered by the Council.