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John Bullard, Regional Administrator
Greater Atlantic Regional Fisheries Office
NOAA National Marine Fisheries Service
55 Greater Republic Drive
Gloucester, MA 01930

RE: Comments on Northeast Multispecies
Amendment 18

Dear Administrator Bullard,

On behalf of the Northwest Atlantic Marine Alliance I would like to provide comments on the Northeast Multispecies Amendment 18 (A18).

As an organization that supports fishing families and allies around New England to advance healthier marine ecosystems and fishermen's livelihoods, we have engaged in the Amendment 18 process for the past seven years. We are deeply concerned with the proposed actions under A18, as it is clear that the New England Fishery Management Council (the Council) has failed to achieve its stated objectives as well as failed to uphold the public process. We urge the National Marine Fisheries Service (NMFS) to override the Council and address the issues of excessive consolidation and loss of fleet diversity immediately.

Comments are divided into two parts:

1. The Council's proposed actions for A18 fail to protect fleet diversity and prevent excessive consolidation.
2. The Council has failed to uphold democratic principles over the public process and is incapable of addressing the problem of fleet consolidation.

Background

In 2009-2010 the Council approved Catch Share policy. Although new to New England, Catch Share programs initially began in the United States during the early 90's with the Surf Clam Ocean Quahog (SCOQ) fishery. Since its inception Catch Share policy was designed to commoditize fisheries access and consolidate fishing fleets into fewer, higher capacity and vertically integrated businesses. Within a decade the SCOQ fishery transitioned from a diverse and primarily owner-operator fleet, to a fleet owned and controlled by four multi-national corporations. Today the largest SCOQ quota owner – Thailand based Thai Union Frozen Inc - is also the largest seafood dealer in the world.

Not every Catch Share program has taken this route. In 1995 Alaska's Fishery Council implemented a Catch Share program to manage Halibut and Sablefish. The program design included safeguard protections to ensure access for owner-operator fishermen and opportunity for small,



medium, and large-scale fishing businesses. Safeguards included owner-operator provisions, quota caps ranging between 0.5-1%, leasing provisions, and more.

In 2010 the New England Council rushed to implement Catch Share policy with the promise to immediately establish safeguard protections in the following amendment. Amendment 18 was the vehicle to create safeguards and ensure equity in the fishery; however, following several years of a federally declared groundfish disaster and on the eve of A18 implementation, no real safeguards are on the table.

Instead, the Council has crafted A18 to ensure the status quo continues and allows groundfish quota to further become a tradable commodity, concentrated into fewer hands and leaving no hope for future independent fishermen.

The consequences are real as exemplified by the recent Internal Revenue Service (IRS) sting operation and indictment of New England's largest fleet owner who was empowered by Catch Shares. He is charged with 27 criminal counts of fraud, misconduct, and money laundering. We have long been concerned that policies designed to consolidate the fishing industry would lead to this type of corruption, collusion, and ultimately undermine the Council's conservation goals. The proposed A18 was explicitly designed to avoid affecting this person's business and accumulation of fishing power. As it stands A18 allows for these conditions to continue.

The Council has demonstrated its inability to address the ecological, social, and environmental problems caused by the transition to Catch Share management. Therefore, it is incumbent upon NMFS to override the Council and establish safeguards in order to protect fleet diversity and prevent excessive consolidation.

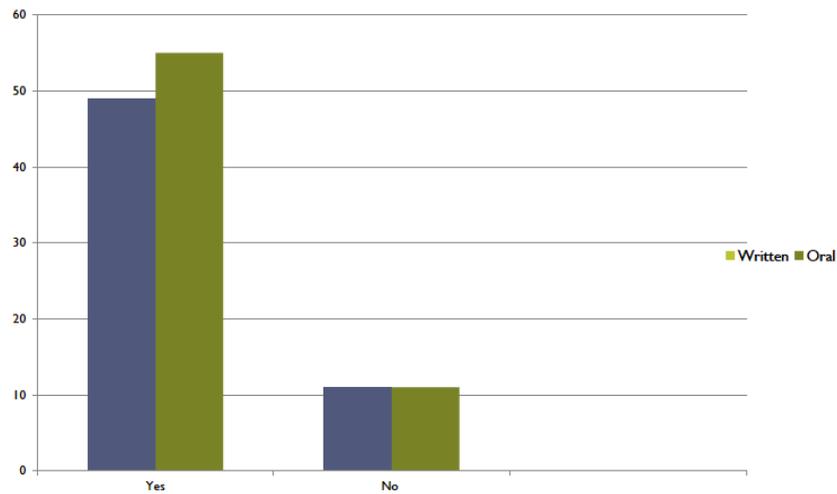
1a) A18 Fails to Address Fleet Diversity and Excessive Consolidation

Amendment 18 has two broad objective statements that were informed by a dozen public scoping hearings and thousands of public comments.

- Promote a diverse groundfish fishery, including different gear types, vessel sizes, ownership patterns, and geographic locations.
- Prevent any individual(s), corporation(s), or other entity(ies) from acquiring or controlling excessive shares of the fishery access privileges.

The original goal statements were established in 2010 based on public comment and provided the baseline for public comments during the public scoping hearings in 2012. By nearly a 7:1 ratio, public comments overwhelmingly supported A18 to solve the dire problems associated with fleet consolidation and loss of fleet diversity. Comments included hospital, university, and sustainable economy networks that represent thousands of people and over a billion dollars worth of seafood purchasing power.

Majority: Amendment 18 Important



Graph prepared by NMFS, June 2012

However, in early 2013 the goal statements were altered based upon recommendations from the Groundfish Advisory Panel (GAP). The recommendations were not based on public comments, but rather on a small group of special interests. The altered goal statements included “enhancing sector management” and “promoting resilience and stability of fishing businesses”. We reject these added goal statements due to a violation over process and the Council shifting the goal posts mid game.

Rationale for changing the goal statements argued that terms such as ‘fleet diversity’ and ‘excessive consolidation’ were too vague. We agreed then and agree now. That is why we recommended in 2012 that the Council adopt a more thorough definition for fleet diversity:

Fleet Diversity for a given region should include the range of types, sizes, and capacities of fishing boats that are well matched to the scales of the ecosystem’s structure and functions. In other words, we should guarantee that the ecosystem dictate the appropriate scales and spatial distribution of fishing operations for any given region.

In addition to vessel and gear characteristics, the following should also be appropriately diverse for the region’s biological diversity, human health, and social wellbeing:

- *The spatial and geographic distribution of fishing, fishing management, and ports;*
- *The composition of catch – the variety of species caught by each fisherman throughout the year (including other than groundfish);*
- *The diversity, nature, and spatial distribution of fishing operations and their design – including, appropriate shore-side infrastructure so fisheries and marketing can remain local, and business plans that promote diversity.*

1b) Flawed Compass Lexecon Report and Excessive Consolidation

In developing measures to address the A18 goals, the Council hired Compass Lexecon in 2013 to analyze excessive shares in the groundfish fishery. Their report concluded that excessive shares did not exist in the groundfish fishery. Although we disagree with this conclusion, the findings came as no surprise because Compass Lexecon had previously reached the same conclusion in a study of the aforementioned Surf Clam Ocean Quahog fishery, which is widely acknowledged as being among the most highly consolidated fisheries in the world.

Aside from the predicted outcomes, the Compass Lexecon report should also be discredited because it measured the wrong unit. The Council directed Compass Lexecon to measure “market power” in order to understand “excessive consolidation”. Akin to assessing a fish population by only looking in one location, market power misses the bigger picture.

Excessive shares must be assessed based on impacts to fisheries access, quota trading, port infrastructure, jobs, food systems, and impact to the ecosystem – all issues that were ignored by the Compass Lexecon Report.

1c) Council’s Proposed Quota Cap Allows for Excessive Consolidation

The Council’s proposal, which is based on the Compass Lexecon report, is to cap Potential Sector Contribution (quota) at 15.5% of the aggregate groundfish allowable catch. Far from being a real solution, this will further allow excessive consolidation so that single entities may control upwards of 90% of key groundfish species.

For example, take the Gulf of Maine (GOM) cod quota. In 2015 the GOM cod quota was 0.3% of the entire groundfish aggregate stock (total of 13 species). Since the proposed quota cap limits aggregate ownership across all stocks at 15.5% with no restrictions around individual species, one entity is now poised to control all of the GOM cod and be well under the Council’s proposed cap. **Allowing one entity to effectively control all of the cod in the Gulf of Maine, which is just one example, clearly fails to prevent ‘excessive consolidation’.** Instead this direction will allow a few larger companies to own and control key species, further consolidate the fleet into fewer ports, and eliminate fleet diversity.

Recommendation: NMFS should take immediate action and establish quota caps between 2-5% on a species by species basis.

1d) ‘No Action’ on Data Confidentiality is Unacceptable

The Council proposes to take ‘no action’ on data confidentiality. Taking no action violates the public’s right to know who is controlling their public resource. Currently the cost and transaction of quota sales is operating completely in the dark, out of the view of

the public as well as fisheries managers. Meanwhile quota leasing is among the largest overhead costs to fishing businesses.

Recommendation: NMFS should take immediate action and require full disclosure and transparency around quota leasing and trades.

1e) 'No Action' on Inshore/Offshore Allows for Pulse Fishing to Continue

The Council proposes to take 'no action' to establish an inshore/offshore boundary within the Gulf of Maine Management Area. The 'no action' came despite this issue receiving the most comments during the A18 public scoping process.

The most common problem articulated during public scoping was that the scale of fishing pressure taking place in the Western Gulf of Maine was too much for the ecosystem to withstand. This problem was caused by the transition to Catch Share management and the lifting of trip limits that previously kept the scale of fishing in check. The result has been both a destabilized ecosystem and displaced community-based fishermen who have historically depended on this area for a living, and still do to this day.

Through public comments fishermen and public brought forth solutions that included gear restrictions, inshore/offshore declarations, and flexible trip limits aimed to disincentive around-the-clock pulse fishing. All of these solutions were ignored.

Recommendation: NMFS should convene a short-term task force of fishermen, managers, and scientists to address this problem and implement safeguards as soon as possible.

2) Council is Failing to Uphold the Public Process

Over the course of the seven-year A18 process hundreds of fishermen and members of the public weighed-in and followed the Council's direction. They showed up to the meetings. They wrote letters. They articulated clear problems and solution statements. Yet the Council effectively ignored the majority of public testimonies, failed in its duties to uphold the public process, and is left with an amendment that maintains the status quo.

During those years I personally witnessed fishermen attend Council meetings only to have the agenda shift at the last minute and not get to have their say. I've seen fishermen interrupted or turned off at the mic. I've even personally had the mic turned off or been interrupted on four separate occasions, with the most recent incident at the April 2015 Council meeting where the Council Chairman publicly called me an asshole.

Patterns of violating the public process have already been acknowledged by the New England Council. In 2011, the Council requested a third-party review of its "public process." The resulting Touchstone Report acknowledged serious problems and found that the Council's governance process is too complex and discourages active

participation; lacks collaboration or constructive dialogue; lacks any presence in the field or use of industry knowledge; requires overly burdensome reporting along with untimely feedback; uses overly complicated wording; is vulnerable to certain Council members “filibustering” in order to make meetings run late into the night; and, lacks a vision or strategic plan to guide decision-making.

The Report also offered solutions including: create a more welcoming environment that fosters “service” to the industry; redesign meetings and provide more time on the agenda for collaborative working sessions that promote active participation and dialogue; change the meeting layout and format to be more collaborative; engage professional facilitators to encourage full participation from Council and audience members; minimize individuals dominating the conversation; work with fishermen to understand how, when, and what information they want to receive; and develop a strategic plan for New England fisheries.

The Report goes on to say that many have lost faith in the process. The responsibility is with the Council to show what it has done to adopt these recommendations since they were issued to restore their faith. Clearly, what we have experienced around Amendment 18 demonstrates not much has been done in the way of implementing any of the report’s suggestions.

There is also the peer-reviewed article “The Discourse of Participatory Democracy in Marine Fisheries Management.” ([link](#)) Written in 2001, the article concludes that despite official claims to the contrary, the fisheries management - especially in New England - is not a genuine participatory democracy, fails to include stakeholders in substantive ways, and does not meet conservation goals.

The article recommends fisher-run workshops for state and federal employees, swapping a day at work periodically with someone in another area of fisheries management, centers for indigenous fisheries knowledge, and formally reconstituting the management process with internal mechanisms that decentralize authority and create authentic participatory roles for fishers and all other interested parties. None of these recommendations were taken into account by the Council.

What the recent events have shown is how a defunct democratic process has made it easy for adopting fisheries management plans that are privatizing, consolidating, and corporatizing our public resource.

Recommendation: NMFS should immediately implement the recommendations from the Touchstone Report as well as the report, “The Discourse of Participatory Democracy in Marine Fisheries Management”.

Moving Forward

The current Catch Share policy has the explicit goal to consolidate the fishing industry and privatize fisheries access. For seven years fishermen and the public followed the process to establish social, environmental, and economic safeguards in order to improve the Catch Share program. But the process failed them. We conclude that the Council is

incapable of defending what is in the best interest of the public and the broader fishing industry. Therefore, we will commit to continue seeking recourse outside of the Council's failed process.

The path forward begins with a commitment to alter course. The Council must avoid repeating the same patterns over and over again and expecting different results. For trust to be restored amongst fishermen and the public, we need to see a public commitment from the Council to address these issues and restore a genuine participatory democracy for fisheries management.

Sincerely,

Brett Tolley

A handwritten signature in blue ink, appearing to read "Brett Tolley", with a stylized flourish at the end.

Community Organizer