

Proceedings of the Harvesting Co-operatives Workshop



December 17, 2004
Urban Forestry Center
Portsmouth, NH




Sea Grant

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General Introduction

Barbara Somers, Rhode Island Sea Grant

Eight years after the passage of the Sustainable Fisheries Act, enacted to protect the nation's marine fisheries, fish stocks continue to be threatened by a host of stubborn management problems. Among the many challenges often cited are inadequate funding, litigation, congressional meddling, and misplaced priorities. There are fisheries on the Pacific Coast of the United States that have decided to form harvesting co-operatives in an effort to stop the "race for the fish." These co-operatives have found they can slow the pace of fishing and reduce capacity, leading to more product at lower cost. They are able to support science and conservation efforts and communication among fishing vessels for the purpose of reducing by-catch and meeting market requirements has improved. Some co-operatives have even been successful in managing by-catch limits as well as the target species. Most importantly, these harvesting co-operatives have allowed for greater participation of fishermen in management decision-making. This type of co-operative differs from the co-operatives that most fishermen are familiar with that are typically organized for the purpose of marketing fish products, buying supplies, or negotiating prices.

As part of a larger series of educational workshops on fisheries management issues, this workshop was aimed at providing a foundation of information for future alternative fisheries management and policy discussions. It provided an opportunity for commercial and recreational fishermen, managers, scientists, environmentalists and others to share up-to-date information and observations and to begin a dialogue about possible next steps.

This document is a composite summary of the workshop and includes an overview of the presentations as well as comments, questions and answers generated by the presentations. Also included is a summary of the panel discussion that took place at the end of the workshop and the ideas generated from the audience that could be considered as next steps for future workshops.

Workshop Overview

This day-long workshop was part of a continuing series of Regional Sea Grant (SG) educational workshops that were put forth through a collaborative effort by the Rhode Island, Connecticut, New Hampshire, Maine, and MIT Sea Grant programs. The Environmental Defense Fund (EDF) also provided funding for this latest workshop. Massachusetts Sea Grant and the Environmental Defense Fund (EDF) were also partners in this latest workshop. A steering committee was formed that consisted of Kathleen Castro (RISG), Robert Pomeroy (CTSG), Rollie Barnaby (NHSG), Sherman Hoyt (MESG), Madeleine Hall-Arber (MASG), Sally McGee (EDF) and Richard Allen (a

private fishery consultant). The workshop was conducted at the Urban Forestry Center in Portsmouth, New Hampshire in an effort to draw stakeholders and managers from the surrounding states. The afternoon format changed from what was originally planned and it was decided that a panel of attendees from various organizations would be formed to express views and field questions regarding information that was presented in the morning.

Opening Remarks

Barbara Somers, Rhode Island Sea Grant

Fisheries management is an important issue that affects all fisheries despite what type of resource is being managed. We would like to introduce another “tool for your toolbox”, specifically harvesting co-operatives as a possible alternative to traditional fisheries management. Part of our mission at Sea Grant is to educate through outreach activities like this workshop and since there are no regulations at stake, the intent is to have a candid, informal discussion about the use of harvesting co-operatives as a management tool in New England fisheries.

The workshop will consist of four presentations to provide information about harvesting co-operatives. There will first be an overview to help put harvest co-operatives in perspective (Bob Pomeroy), a case study of community – based fisheries management (Sherm Hoyt), our keynote speaker from the West Coast who will discuss the legal aspects of harvesting co-operatives and the lessons we can learn from them (Joe Sullivan) and finally, perspectives from a member of a West Coast harvesting co-operative (Teresa Kandianis).

Following the speaker presentations, there will be a panel discussion. Panelists will be asked to discuss how they feel about the information they have heard and whether they feel a harvesting co-operative could be a viable management alternative for some of the New England fisheries.

General Overview: Rights-Based Fisheries Management and Harvesting Co-operatives

Presented by Dr. Robert Pomeroy, Connecticut Sea Grant

Rights-Based Fisheries Management and Fish Harvesting Cooperatives

Robert Pomeroy
Connecticut Sea Grant College Program
University of Connecticut-Avery Point

Rights-Based Management

- Under a rights-based management system, those individuals or groups entitled to have access to the fishery are said to have **use rights**; that is, the right to use the fishery resources; while others do not have the right to use the fishery.
- How we restrict access to the fishery, how much fishing effort each participant is allowed, how much catch each can take

Who Owns the Fish?

- Public trust includes the idea of free access or public right to fish
- No one can have exclusive private ownership of fish until it is captured
- Due to the public trust doctrine, it has been difficult to restrict public rights to access
- Public trust has been based on the idea that those who invest their labor and capital in fisheries have priority rights to them
- With our fisheries in crisis, these ideas are at a crossroads

Rights-Based Management

- Use rights can be considered as being composed of a bundle of individual rights (access, withdrawal, management, exclusion, transfer)



Who Owns the Fish?

- To become sustainable and profitable, there is discussion that the fishing industry must move toward management that allows exclusion and places effective limits on access to fishing
- The public trust doctrine allows government to lease, grant and sell public resources - oil, mining, aquaculture - as long as it does not unduly harm public interests
- In essence, this is "privatizing" the resource by assigning rights (use rights) to individuals, groups, communities, corporations or cooperatives

Rights-Based Management

- Fisheries management systems that assign rights to a share of a fishery are specified by:
 - various rights or sticks (such as access, withdrawal, management, exclusion, transfer)
 - nature of the shares in the fishery (licenses, effort units, quota shares)
 - type of entities that hold rights
 - rules concerning use of the rights
- The make-up of the bundle of rights varies with different fisheries and different points in time

Rights-Based Management

- ◀◀ In the past, an individual fisherman held only one exclusive right - the right to own the fish he caught
- ◀◀ Other rights were held in common
- ◀◀ As fish became scarce and competition and conflict increased, there was a need to regulate, such as through control of certain gear or closing the fishing season
- ◀◀ As it became clear that regulatory techniques were not that effective, the idea of restricting access to the fishery was introduced

Rights-Based Management

- ◀◀ Individual transferable quotas (ITQs) are a form of individual rights where the owner has exclusive rights to participate in the fishery, take a certain portion of the fish, and sell or lease the rights to others
- ◀◀ However, these are limited rights defined in law whose ultimate ownership remains with the public
- ◀◀ Group ownership of fishing rights by communities, cooperatives or corporations is also possible

Rights-Based Management

- ◀◀ As entry to fisheries became limited, those who held permits gained the exclusive right to fish
- ◀◀ Rights to some fisheries have been made more exclusive by assigning individual fishermen or groups the rights to catch a specified share of the total allowable catch
- ◀◀ Creating use rights that can be bought and sold is an attempt to create benefits by converting most of the sticks in the bundle of rights from shared to exclusive rights

Rights-Based Management

- ◀◀ Establishing property rights to fisheries creates stable expectations among users and managers
- ◀◀ Provides right owners with an incentive for long term sustainability
- ◀◀ The government retains the responsibility to conserve fishery resources for the public, who are involved through the management process
- ◀◀ Rights-based management involves limiting access to the fishery; defines who can and cannot participate in the fishery

Rights-Based Management

- ◀◀ There are several forms of rights-based fisheries management:
- ◀◀ Limited access or access rights - TURFs and limited entry licenses
- ◀◀ Input rights - limit total amount of effort, such as time fished, vessel size, amount and type of gear
- ◀◀ Output rights - right to catch a piece of the TAC, such as individual quotas and community quotas

Rights-Based Management

- ◀◀ But it creates self-interest that fosters stewardship
- ◀◀ It also creates winners and losers
- ◀◀ Transferability of rights creates fear that fishing rights will become concentrated in the hands of a few owners
- ◀◀ Public interest is ill served when limited pools of people gain more and more power over access
- ◀◀ Community ownership may be preferable to individual ownership because it precludes individual concentration of ownership

Rights-Based Management

- ◀◀ The functioning of rights-based systems will depend on:
 - ◀◀ how the management is designed,
 - ◀◀ how rights are initially allocated,
 - ◀◀ how it specifies exclusiveness of the right,
 - ◀◀ the conditions under which rights can be transferred,
 - ◀◀ the duration of use rights
- ◀◀ the nature of the resource and attitude of the fishermen
- ◀◀ The assignment of rights not only to fishery access but also to a specified share of the catch is a controversial issue
- ◀◀ Willingness for managers and fishermen to work together to identify the form of rights-based management

Harvesting Agreements

- ◀◀ The fishermen within the sector allocate harvest shares among themselves, and may carry out certain functions such as monitoring and research
- ◀◀ Harvest allocations are usually specified in terms of percentage of the sector's share of the TAC
- ◀◀ License holders may be able to transfer part or all of the allocation among themselves

Rights-Based Management

- ◀◀ Individual fishing rights or property ownership doesn't automatically lead to better stewardship
- ◀◀ It depends on the mentality of the people who participate
 - ◀◀ Questions of equity arise as to who can and cannot take part in the fishery
- ◀◀ Decisions about use rights may be irreversible
 - ◀◀ Once allocated, it may be difficult to make changes

Harvesting Agreements

- ◀◀ To function effectively, certain conditions must exist:
 - ◀◀ relatively small groups with common interests
 - ◀◀ effective system to ensure that actual harvests match individual allocations
 - ◀◀ effective penalties for violations
 - ◀◀ system to keep individuals who are not part of the agreement from taking allocated fish
 - ◀◀ economic benefits to those fishermen who are part of the agreement

Harvesting Agreements

- ◀◀ Used to implement rules that govern sector allocations, such as authorized under Amendment 13
- ◀◀ The government recognizes a group of cooperating individuals that have similar interests, such as a gear or target species
- ◀◀ The number of license holders within the sector is limited and the sector is allocated a share of the TAC

Harvesting Cooperatives

- ◀◀ Antitrust laws make it illegal for producers to agree among themselves to manage production
- ◀◀ To address the issue of a collective harvesting agreement, fishery participants may form harvesting cooperatives; different than market or dock service coop
 - ◀◀ This is made possible under the Fishermen's Collective Marketing Act (FCMA) of 1934

Harvesting Cooperatives

- ◀◀ Three types of FQMA fishery cooperatives:
 - ◀◀ (1) marketing/supply cooperative w/o quota; limited ability to negotiate price or cooperate in harvesting
 - ◀◀ (2) harvest cooperative with group allocation but only cooperate in dividing the share among vessels
 - ◀◀ (3) marketing cooperative with quota which can jointly harvest, market and negotiate prices

Harvesting Cooperatives

◀◀ Advantages:

- ◀◀ TAC is shared among members in a way decided by members, not a management agency
- ◀◀ Decrease share negotiation time and political problems of allocating shares
- ◀◀ If cooperative rules allow trading, members may trade share allocations among themselves
- ◀◀ Value of cooperative membership is the result of the success in managing allocation
- ◀◀ Value is distributed to members and is reflected in value of the cooperative shares

Harvesting Cooperatives

- ◀◀ Much more common on Pacific coast than Atlantic coast
 - ◀◀ Pacific Whiting Cooperative was first
- ◀◀ In 1998, the American Fisheries Act established framework for two pollock harvesting cooperatives
 - ◀◀ Alaska weathervane scallop fishery in 2000
 - ◀◀ Alaska Chignik sockeye salmon fishery in 2002
 - ◀◀ Herring roe fisheries on the Pacific coast

Harvesting Cooperatives

◀◀ Advantages:

- ◀◀ Create and enforce management plans and allocate rights in keeping with local conditions
- ◀◀ Allow fishermen to make adjustments between fishing effort and TAC without privatizing the resource
- ◀◀ Since cooperative is freed of government imposed effort controls, members can design the most appropriate management system for the cooperative's portion of the TAC
- ◀◀ Members can decide to increase or decrease capacity and effort to take advantage of changes in stock abundance and technology

Harvesting Cooperatives

◀◀ Advantages:

- ◀◀ Slow the pace of fishing and reduce capacity, leading to more product at lower cost
- ◀◀ Support science and conservation efforts
- ◀◀ Improve communication among fishermen to reduce by-catch and meet market requirements
- ◀◀ Greater participation of fishermen in management decision-making (co-management)
- ◀◀ With the race for fish ended, harvest can be timed with market demand, allowing for increased quality and yield and optimized product mix

Harvesting Cooperatives

◀◀ Costs:

- ◀◀ Agreements sometimes break down due to poor design and changes in government policy
- ◀◀ It may be difficult for fishermen to accept decisions made by the cooperative
- ◀◀ Increases in profitability are likely to require reduction in active fishing effort
- ◀◀ There will be costs in terms of time and money of forming and operating the cooperative

Harvesting Cooperatives

- ◀◀ Costs:
 - ◀◀ Driven by self-interest
 - ◀◀ Tough bargaining
- ◀◀ The formation of a cooperative will not completely avoid the need for some allocation of the TAC
- ◀◀ Concern in NE: diversity of fleets, factions, numbers of communities involved in any one fishery

Community-based Co-management

- ◀◀ Through involvement in self-management, fishermen take responsibility for a number of managerial functions, allowing the community to develop a flexible and creative management strategy that meets its particular needs and conditions and that it sees as legitimate.
- ◀◀ Adaptive, learning-by-doing and allowing for adjustments and revisions in activities in line with the results obtained and lessons learned.

Harvesting Cooperatives

- ◀◀ Laws exist and harvesting cooperatives are currently being used in US fisheries
- ◀◀ Council action involves limiting the number of license holders, allocating the sector a share of the TAC, and oversight

Community-based Co-management

- ◀◀ North American examples:
 - ◀◀ Maine lobster, clam and sea urchin are community-based management
 - ◀◀ Nova Scotia Fundy Fixed Gear Council

Community-based Co-management

- ◀◀ Defined as a partnership arrangement in which the fishermen and government share the responsibility and authority for management
- ◀◀ Fishermen and their community are given legal authority to manage a fishery
- ◀◀ Through consultations and negotiations, the partners develop a formal agreement on their respective roles, responsibilities and rights in management
- ◀◀ Co-management covers various partnership arrangements and degrees of power sharing

Bob Pomeroy – Comments

There are 3 types of rights based management:

- Limited access or access rights
- Input rights
- Output rights
 - Even under Individual Fishing Quota (IFQ) the ultimate right is still public trust resource
 - Rights based management creates winners and losers, especially IFQs
 - A co-op prevents the concentration of decision making from being in the hands of a few
 - When forming co-ops it is important to know how exclusive the rights are going to be and how long the rights are going to last
 - Unless fishermen have incentives, co-ops won't happen
 - Even with co-ops some people will be left out
 - Some aspects of use rights may be irreversible based on people's expectations continuing to be met

Harvest agreements

- Size is usually up to 20 participants

Types of co-ops

- Marketing/supply co-op without quota – limited ability to negotiate prices or co-op in harvest
- Harvest co-op with group allocation

Examples:

- Pacific whiting
- American Fisheries Act (AFA) – pollock
- Alaska weathervane scallop
- Alaska chignik salmon
- Herring roe

Advantages of co-ops:

- Slow pace of fishing
- Reduce capacity
- More product at lower cost
- Support science and conservation
- Improved communications between fishermen to reduce bycatch and meet market requirements
- Greater part of fishermen in decision-making (co-management)
- Race to fish ended
- Fishing timed with market demand
- Increased quality and yield
- Total Allowable Catch (TAC) shared among members, as decided by members, not the National Marine Fisheries Service (NMFS) or Council
- Decreased negotiation time

- Trading may be allowed
- Value of co-op membership is result of success of managing allocation
- Value distributed to members and is reflected in value of co-op shares
- Enforcement in keeping w/o local conditions
- Adjustments to effort and TAC w/o privatizing resource
- Freed of government imposed rules, more flexible

Disadvantages

- Agreements can fall apart because of poor design or government policy change
- Increased profitability may require reduction in fishing effort
- Costs in terms of time and money to form and operate co-op
- Driven by self interest
- Giving up independence to work as a group
- Formation of co-op will not completely avoid the need for some allocation of the TAC

Examples of community based co management

- Lobster, clam, sea urchin in Maine
- Nova Scotia Fundy Fixed Gear Council

Comments and Questions

Q: As I was listening, I kept thinking about how those points are not always true. Depending on the specific fisheries, these might vary a bit.

A: *Yes, these are general points and can vary tremendously.*

Q: All the co-management currently talked about has a geographical component i.e., same town or area.

A: *Yes, all the examples have a physical commonality.*

An Update on Community-based Management: Empowering Individuals and Institutions to Improve Fisheries Management

Presented by Sherman Hoyt, Fisheries Outreach Coordinator, Collaborative Fisheries Management Program, University of Maine Sea Grant and Cooperative Extension

Empowering Individuals and Institutions to Improve Fisheries Management An Update on Community-based Management

A presentation by Sherman Hoyt, Fisheries Outreach Coordinator

Collaborative Fisheries Management Program

University of Maine Sea Grant and Cooperative Extension

Support from the Birch Cove Fund of the Maine Community Foundation

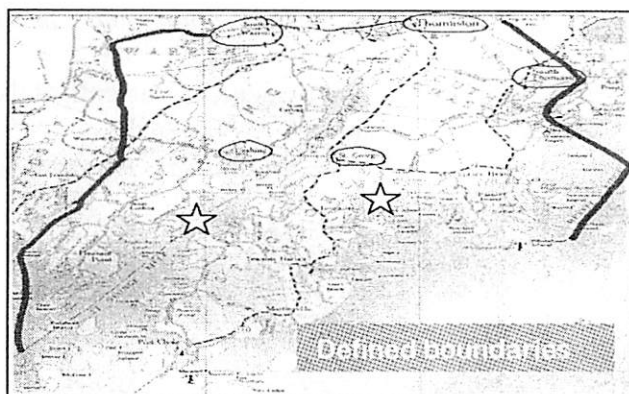
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Urban Forestry Center, Portsmouth, New Hampshire



Potential Benefits of Community-based Management

- Increases capacity of govt. to manage fisheries sustainably
- Increases capacity of communities to meet their social and economic needs
- Partners fishermen with environmentalists to balance ecological and economic needs
- Reduces or eliminates litigation
- Reduces control of public resource by special interests
- Builds social capital - leadership development; reduced conflict



Georges River Clam Management Program

- Organization and capacity building work with five municipalities from 1995 to 1999
- Weekly meetings for 6 months created a local ordinance and inter-local agreement approved by voters in five municipalities
- Research fellowship and Masters thesis - 2002

Governance

Legal:

- Maine law enables town's management of clam fishery
- Town ordinance sanctions fishermen as the primary managers of the resource - Power sharing language in local ordinance - unique to Georges River program

Governing authorities:

- Maine DMR - retains authority to sanction the towns' program
- Five Town Joint Board of Selectmen - 5 members; retains authority to appoint Shellfish Management Committee members; fiscal oversight; hires and supervises warden
- Shellfish Management Committee - primary managers - 15 members; unanimous decisions can only be overruled by unanimous vote of Joint Board of Selectmen

Governance - cont.

- Five town regional program managed as one ecological unit
- Municipal ordinance revisited every three years - Describes the rules for the fishery and must be approved by all voters in the five towns

Problems with the Georges River Program

- appointed committee promotes free riders
- no science based information
- enforcement challenging - fishermen demand more effective enforcement than municipal govt. can deliver

Management Actions

- Daily limit on catch
- Limited entry licensing - non-resident; student; recreational
- Non-transferable licenses - "conservation time" requirement
- Open and close areas for fishing - flat rotation
- Control time of fishing
- Habitat protection - water quality
- Brood stock protection - SCUBA prohibition
- Local enforcement responsibility - town warden
- Set penalties for violations
- Open meetings and issues by petition

Outcomes of the Georges River Program

- Responsibility fosters stewardship - "This is a big responsibility" Cliff Weaver, 1996
- Government can now manage this fishery sustainably - public trust doctrine maintained; program prevents overfishing; program protects natural productivity
- Environmental group partners with fishermen - improved water quality; good jobs; \$2 to \$3 million annual benefit
- Increased social capital - stronger community; statewide leadership
- Protection from special interest - privatization attempt blocked
- Litigation threatened, but not applied

Sherman Hoyt – Comments

Georges River Clam Management Program

This program was developed between the years of 1995-1999. Prior to 1995 there was an open access fishery with statewide participation. Approximately 300 to 400 clambers from throughout the state harvested in the area. There was no management and it was a boom and bust fishery with over 100 year history.

The fishery was closed by water quality problems in the late 1980's and early 90's. Clam populations were high but the fishery was closed. Approximately 100 local clambers were shut out of the fishery. These local clambers began to organize a community-based program in 1995 when water quality was improved and opening of the fishery appeared to be imminent.

During 6 months in 1995 and 1996, weekly meetings were held with Sea Grant facilitating those meetings in an effort to help the communities bordering the Georges River organize a regional management program. 40 - 50 people regularly participated and met at the local high school. This organizational process has been documented in a Masters thesis by Togue Brawn, a former student of Dr. Ralph Townsend at U. Maine School of Marine Science.

One of the goals of this local group was to reduce control of public resources by a private company licensed by the state to harvest and treat clams from polluted areas.

Some very special points to be made about this project:

- Allowed for new entrants, non-residents, (10%), student and recreational licenses
- Community can be broadly defined but was based on town of residency here
- Community values retained: goals and principals, and openness and fairness
- Environmentalists and fishermen were working on the same side
- Social and economic needs are up front

Comments and Questions

Q: Who are the committee members elected by?

A: *The committee members are appointed (not elected) by town officials. Election would be more democratic.*

Q: Who is the membership made up of?

A: *They are all clam fishermen right now.*

Q: Who is in charge of the committee and sets the guidelines for it?

A: *Department of Marine Resources (DMR) sets the broadest standards and retains overall authority however the towns are given legal and practical authority by the DMR. The towns have delegated primary management authority to the fishermen through a local town ordinance (law) approved by all voters in the five towns every three years*

Authority is layered and shared but in theory this authority can be withdrawn by the DMR or the towns. The state thus "outsources" the work of clam management while retaining its public trust mandate. The towns also outsource the daily work of management to the fishermen who know the fishery best. The town governments can withdraw that "privilege" of management if the fishermen fail to manage responsibly and sustainably. The larger community of all voters can also withdraw the management privilege. Thus oversight is extensive with this particular community-based structure.

Q: How are costs covered?

A: *Members have to buy two licenses - a state license and a town license to harvest commercially. Georges River clammers don't want taxpayers to have to pay and possibly resent supporting the clam management program. The cost of hiring a local warden is the major expense and is shared by the five towns and paid by the town licenses. The state licenses help to pay for public health testing which is done by DMR staff and local environmental volunteers.*

Q: Would it be possible to put state regulations into play through this form of management?

A: *State regulations and federal regulations must be implemented and enforced with this community-based system. State management regulations are part of the local ordinance and local management regulations - again a layering of authority and rule making. State regulations are limited to a minimum size, hand harvesting implements only, no SCUBA harvest and no harvest in areas of poor water quality. Local regulations in the Georges River are more restrictive and more extensive than state regulations and are designed to protect the local resource. These include daily harvester quota, restriction on time of harvest, rotational closures for conservation and marketing as well as volunteer stock enhancement work required annually for commercial licenses. Penalties and policy for dealing with violations and conflict are also established at the local level. This is a great strength of community-based management.*

Q: What is being turned over to the participants by using this system?

A: *Access and allocation rights and the responsibility for sustainable management of the local clam resource. Again it is important to remember that this community-based arrangement can be withdrawn by the towns or the state if fishermen are judged to be failing to meet this obligation*

Comments

- This is not a co-op but it is a complete governing and management process.
- No other towns in Maine have given the fishermen legal decision making power in their local clam management ordinance. Sixty towns have clam management ordinances statewide. Many towns practice what might be called "minimal management."
- The clam fishery has a long history of local management in Maine since landowners in Maine (and Mass) own title to the inter-tidal lands (clamflats)

down to the mean low water mark. Maine law grants the public access to these private inter-tidal flats for “fishing, fowling and navigation.”

Harvesting Co-operatives from the West Coast – The Basics

Presented by Joe Sullivan, Attorney of Fisheries related law Mundt MacGregor LLP, Seattle, WA

1. What are harvesting co-operatives?

- At their simplest, they are collective harvesting arrangements implemented through private agreement. They may be, but need not be, formed under the Fishermen's Collective Marketing Act ("FCMA") (15 USC § 521).
- Harvesting co-operatives, as opposed to traditional FCMA organizations, generally restrict the scope of their activity to allocating harvest privileges among their members, and enforcing those allocations.
- They may do so either because one or more of their members fails to meet the Hinatea vertical integration standards (see below), or because their members prefer to conduct processing, marketing and sales activity independently or through one or more different organizations.

2. What are the conditions to formation?

A. Practical conditions:

- Adequate barriers to entry by free riders, such as limited entry licensing, IFQs, "groundfish history" allocations, sub-sector allocations; DAS allocations may serve this purpose.
- A community of interest among participants that enables negotiation and produces a reasonable environment for monitoring and enforcement of agreements.
- The potential to attain additional value through reduced cost, improved recovery, and/or production of higher valued products, which outweighs incentives to compete and co-operative formation transaction costs.
- Adequate data transparency and enforcement mechanisms, i.e., adequate means for verifying harvest allocation compliance (such as observer coverage), rapid data transmission, a trusted third party monitoring agent, and consequences for non-compliance

B. Legal Conditions:

- Private fishery shares are a market allocation among competitors; the Sherman Act outlaws unreasonable combinations in restraint of trade. (However, governmental privileges that have the effect of restraining trade are permissible under the Noerr-Pennington doctrine.)
- Collaboration among competitors is judged under the per se rule or the rule of reason
- Per se rule applies to inherently anti-competitive activity, such as price fixing. If a per se violation is found, there is no need to prove the act caused competitive harm – the court moves to the penalty phase.
- Rule of reason applies to activity that is not inherently anti-competitive. It involves a factual inquiry to determine whether activity is more pro-competitive than anti-competitive from the point of view of the U.S. consumer
- Market allocations are generally considered equivalent to price fixing. Resource market allocations are judged the same as sales market allocations.
- The FCMA provides an antitrust exemption for collective activity among fishermen. It permits properly qualified organizations to conduct activity that would otherwise result in per se liability. The United States v. Hinote case (823 F.Supp 1350, 1993) discusses the standards for FCMA eligibility. The Hinote case balances the degree of the participants' vertical integration against the nature of the collective activity, in context of traditional arrangements in the fishing industry.
- A properly qualified FCMA organization may, but is not required to, conduct collective harvesting, processing, marketing and sales activity. These functions can also be distributed among two or more qualified FCMA organizations.
- Under certain circumstances, resource market allocations may be analyzed under the rule of reason. If they survive ROR analysis, the organization need not qualify under the FCMA. Two factors have proven important: a "regulated output setting" and a restricted scope of activity.

3. A blended approach, that uses State or Federal action to facilitate co-operative formation and/or to address collateral impacts of rationalization, is becoming more common.

- Transaction costs or disparate interests among fishermen may impair formation of co-operatives in sectors with significant latent capacity or large sectors. Governmental action can remove latent capacity and provide sector or sub-sector allocations.
- Fishermen in non-rationalized fisheries may object to potential spillover of excess harvesting capacity into non-rationalized fisheries. This issue can be addressed through governmental sideboards on non-target fishery catch.
- Fishermen who may depend on the resource but who are not vested with an access privilege may object to the exclusionary effect of harvest privilege allocation. This issue can be addressed by preserving an entry level fishery with low barriers to entry, by maintaining small access privilege units that are not subject to consolidation, or by creating attenuating privileges on transfer to create secondary pools of privileges with alternative allocation eligibility criteria or thresholds.
- Communities may object to potential migration of landings and fishery businesses that can result from the transition into fishery rationalization. This issue can be addressed through measures such as regionalization, community fishery quota allocations and community quota purchases.
- Public trust advocates may object to quasi-privatization of fishery resources. This issue is currently being considered in connection with the State waters component of the Gulf of Alaska groundfish rationalization program. Measures being considered by the Alaska Board of Fisheries include:
 - applying the Australian drop-through model (i.e., issuing dedicated access privileges in successive, time limited generations, and conditioning second through nth generation eligibility on compliance with social standards) (see NRC's Sharing the Fish);
 - adjusting second through nth generation eligibility pools in response to changes in stock size and/or product values; and
 - attenuating (i.e., taxing) DAPs on transfer, and using the resulting pool to fund allocations to communities, crew members and/or others.

4. How are harvesting co-operatives formed?

- A sector or sub-sector obtains a discrete fishery allocation and entry limitations. These can be through sector TAC and license limitation, through governmental allocation, or through individual fishing privilege allocation.
- Participants determine internal allocation formula and other essential terms of agreement. Allocations are typically based on a blend of catch history (subject to definition of relevant years) and capacity (the “outside option”). Allocations may be based on bycatch performance standards, if bycatch constrains the target fishery.
- Participants identify monitoring and enforcement agent. Timely reporting of verifiable data is critical.
- A legal entity is formed, and bylaws (rules of governance) and a membership agreement (the harvest share allocation and enforcement contract) are negotiated.

5. How do harvesting co-operatives operate?

- Through the membership agreement, each member holds a contractual right to harvest a certain percentage of the resource pool available to the co-operative.
- Members may harvest their share themselves, or may transfer some or their entire harvest share to other members under the terms and conditions of the membership agreement. These terms can limit consolidation or limit private rights in one or more elements of the resource pool.
- Members may collectively reduce harvesting capacity within the co-operative through joint purchase of short or long term harvest shares of one or more members.
- The harvesting co-operative acts as a clearing house for harvests and transfers, to insure the co-operative’s pool is not over-harvested. This is typically done through a monitoring agent, who reports to the co-operative Board of Directors.
- The Board of Directors takes enforcement action if a member violates the agreement. This results in enforcement costs being shared.

- Enforcement mechanisms may include injunctive relief, liquidated damages and pledges of collateral to secure penalty obligations.
- Co-operatives may file performance reports with Federal or State management agencies.
- Co-operatives may sponsor research on issues of common interest, such as stock assessments or gear modifications.

6. Case studies:

A. The Pacific Whiting Co-operative

- Four companies held all licenses available for trawl catcher/processor sector of the U.S. Pacific Coast whiting fishery.
- The participants had common fisheries experience, and communicated very well.
- The fishery sector had a high potential of additional value through de-capitalization, increased product recovery, and fishery management corrections
- The sector allocation was limited by a hard TAC and fully harvested.
- The vessels had voluntary 100% observer coverage and reported to a sophisticated, trusted private monitoring service.
- Some member companies were highly vertically integrated, so the co-operative formed under the rule of reason rather than the FCMA.
- Antitrust issues were addressed through Department of Justice business review process (28 C.F.R. § 50.6). DOJ applied the rule of reason, issued a "no enforcement intention" letter and a supportive press release on May 27, 1997. DOJ explicitly recognized that co-operative harvesting arrangements address the waste and inefficiencies of Olympic fishery management and benefit the US consumer.
- The fleet experiences immediate results on implementing the co-operative harvesting arrangement. Prior to implementation, the fleet was achieving a surimi recovery rate of 17.2%. Upon implementation, the recovery rate increased to 20.6%, and several vessels exited the fishery. The fleet was able to manage its

collective harvest to within 1-2% of the TAC. Processing line modifications lead to 24% surimi recovery rate in 1998, and substantial shift to fillet production.

B. The Pollock Conservation Co-operative and High Sea Catchers Co-operative.

- Initially, practical conditions precedent were not met; the sector too diverse, and there were too many latent licenses.
- The American Fisheries Act – October 1998 split the fishery into three sectors and eliminated latent capacity. A separate catcher/processor sector was created for Bering Sea Pollock fishery, and the class of eligible vessels narrowly defined – 20 + 1 catcher/processors, 7 catcher vessels.
- In December of 1998, 20 catcher/processors formed Pollock Conservation Co-operative (PCC), 7 catcher vessels formed Offshore Pollock Catchers Co-operative (OPCC, now HSCC). Interco-op agreement permits leasing of HSCC shares to PCC.
- Operations were immediately modified: 16 of 20 catcher/processors were employed, all catcher vessels retired or reassigned. The 16 remaining catcher processors reduce daily catch rate by 60%; made 45% fewer tows per day than olympic mode; harvested 27% less fish per tow (92 ton average to 67 ton average); dispersed fishing effort over time – took twice as long to harvest half the fish.
- The fleet significantly improved utilization, with a focus on selective fishing activity and market-oriented processing. The product recovery rate increased approximately 20%, the percentage by weight of higher value products increased, i.e. deep ski fillet production increased by approximately 40%, surimi production increased by approximately 8%, standard fillet and mince production decreased by approximately 40%
- The under-harvest resulting from the reserve maintained by NMFS under olympic management ended.
- The arrangement produced significant environmental benefits. The fleet was able to voluntarily comply with ESA sea lion mitigation measures requiring temporal and spatial dispersion of harvests and reduced removals from critical habitat. The fleet instituted an inter-co-operative salmon bycatch management system (with shore-side catcher vessel co-operatives) that closes salmon bycatch hot zones to fishing by private contract rather than regulation.

Joe Sullivan – Comments

Limited access still promotes competition and maximizing the catch but not maximizing benefit. A co-op maximizes benefit. When setting up a co-op, you need to agree on allocation of co-op share – this is a big task, but once that is accomplished, it's a major thing.

Harvest co-ops much simpler than marketing and dock support co-ops. They do not need to be formed under FCMA. If you look at the National Broiler Case (Supreme Court case parallel in agricultural context) it will give you some insight. You should also look at US vs. Highnote case (Supreme Court) under FMCA – one or more of the associations fails to meet vertical integration standards in this case.

There are certain practical conditions you need to form a co-op

- Must have adequate barrier to entry that allows the group to cease competing and move to a rational approach. The barriers that exist cannot be permeable and the existence of latent licenses often causes this problem. In order to enact these barriers, governmental action is required.
- Incentives need to exist for people to negotiate.
- Must have some level of trust among each other or enforcement and monitoring costs will become too high.
- Must be potential to capture additional value. This additional value is usually there and there is a fair chance you'll find it because Olympic competition is usually inefficient (fuel, market glut, weather considerations, market response).
- Must know how much people are catching and assurance that a third party can verify. This may mean observer coverage (tough in terms of cost and access to vessels where people may not want someone watching what they're doing)

Legal conditions you need to form a co-op

- Sherman Act – This outlaws unreasonable combinations in restraint of trade.
- Harvest co-ops allocate to and among a group that otherwise would compete.
- Market allocations generally are considered price fixing, because if you allocate a market among competitors you no longer compete for market share and therefore you no longer need to be price competitive and then you can artificially increase price.
- Per se test – if they see inherently anti competitive activity (i.e. price fixing) the court does not need to analyze it – if the activity is so anticompetitive they can go directly to penalty phase.
- **FCMA is an exemption and allows you to be anticompetitive if you're activities are under FCMA (set prices, decide to provide less product than the market demands).**
- HOWEVER – there are cases where collaboration can be pro-competitive from the consumers' viewpoint.
- If a court would move to "rule of reason", then fishing co-ops will work.

If you restrict your activities to collaborating on harvesting, and that harvest is a regulated output set by the government, and if you can get more product out of the arrangement, then you can get the Department Of Justice (DOJ) anti-trust people to look at your co-op under “rule of reason” – since it is better for the consumer.

Many times you can get more product by dealing with the bycatch cap. Therefore target species available is increased which leads to diversity of product and increased quality of product.

The blended approach provides a combination of benefits. It has limited entry plus sector allocation. Also the government does something else like providing protection for those outside the co-op or other constraints on the co-op (e.g. – if government decides allocation).

So what happens when a fishery is rationalized and boats that no longer fish under co-op go somewhere else? That is when regulatory sideboards come into play.

There are several factors to be considered when forming a co-op. The basic steps are:

- Sector gets allocation
- Sector figures out allocation within sector – blend of catch history and vessel capacity
- Useful to have confidential consultant work out different approaches based on this info
- Range usually isn't that wide thus narrowing the negotiating field
- Need to consider this in the context of additional value captured by co-op
- Allocation can be based on target or non-target species

These are the big question. Then, if you have adequate monitoring and enforcement you can move forward. With the formation of legal entity, the structure for internal governance exists and you can then work towards a membership agreement or contract that everyone in the group becomes party to.

Comments and Questions

Q: How do you avoid anti-trust violations during negotiations (since absent final agreement, negotiations and potential action as a result of negotiations, absent final agreement would be an antitrust violation)?

A: *You should get DOJ anti-trust division business review procedure for antitrust compliance – potential co-op proceeds as business as usual until membership agreement is signed and finalized.*

Q: How did the pollock fishery figure out sub allocations to sub co-ops?

A: *The AFA structured co-ops by saying that harvester co-ops could form around shared processors.*

Q: Can you have open, new members?

A: *Yes, you may have to renegotiate though. You may also need to set rules regarding membership (i.e. minimum length of time). Under American Marketing Act (AMA), any vessel can enter if they meet the qualifications. Under the FCMA a co-op can't use the arrangement to "out compete" someone outside.*

Q: Can co-ops live through TAC reduction?

A: *Yes, the weathervane scallops did.*

North Pacific Scallop Co-operative

*Presented by Teresa Kandianis, President North Pacific Scallop Co-operative,
Co-owner Kodiak Fish Company, Seattle, WA*

North Pacific Scallop Cooperative

Teresa Kandianis

Fishery History

- Boom & Bust
- Remoteness from markets
- Incidental catch concerns (crab)
- No influence on supply
- No influence in Alaska

Alaska Weathervane Scallop Fishery

- Occurs mostly in federal waters
- Managed by the State of Alaska
- Very small resource
- Spread from the 137 line to almost the 167 line
- About 200 sq nm footprint

Management Measures

- 80's
- - time and area closures
- - 4" rings
- 90's
- - TAC's
- - 100% observer requirement
- - crab caps
- - crew size
- - more closures
- - fleet moved to freezing at sea

Overcapitalization

- Started work towards a license limitation program
- Mr. Big
- 18 month closure 1995-1996
- State and federal moratorium
- Federal management allowed by Magnuson Act change

Four Years Later

- Two vessels fished in 2004
- Quota has declined by ~30%
- No area has closed due to crab bycatch
- Bycatch of bottom disturbance indicators cut in half
- Trading/leasing allows efficiencies
- Adding value to product
- VMS to track footprint
- Confidentiality waived

Cooperative Formation

- NPFMC approved conservative license program
- Stakeholders met and came to agreement
- Cooperative fishery began in 2000
- Transparent to management agencies
- No fishery regulations govern coop

How we've gained

- Improved safety
- Impact of breakdowns minimized
- Crew stabilized
- Market stabilized

12/30/2004

9

Problems to resolve

- Geographic distribution of vessel allocations
- Crab bycatch cap calculation
- Penalty schedules
- Monitoring requirements (3rd party)
- Provisions for catch of non-coop license holders
- Provisions for early closures
- Voluntary restrictions
- Contract length
- Provisions to protect retired vessel histories
- Provision to stay out of areas utilized by small vessels

What self governance can't do!

- Perception of "undercapitalization"
- Price is not under our control
- NGO's have their own agenda
- - Essential Fish Habitat
- - HAPC
- - Endangered Species
- Ecosystem changes that affect scallop (and crab) populations
- Protect coop against regulation changes

Teressa Kandianis – Comments

The Weathervane scallop fishery is managed by the state of Alaska and is spread out 30° longitude. It consists of small beds and there are cycles of boom and bust. The record catch for the fishery was 1.9 million metric tons, with the lowest being 0 when it was closed. The fishing grounds are in a very remote location compared to the market and trips are typically 2 weeks long with crab being the largest bycatch. Prices are very affected by East Coast supply.

In the 1980s the fishery was managed by time and area closures and a 4" ring size. The 1990s brought new boats from the East Coast and this led to overfishing problems. The first guideline put into place to deal with this was a soft TAC and the state could close the fishery for whatever reason.

In 1993, 100% observer coverage and crab bycatch limits were imposed and there was an industry request for crew size limits of 12 as well as a ban on shucking machinery on board. This led to further closures.

It became clear the fishery was not in a sustainable mode. At this point in time it was only open 3-4 months/year. The industry wanted to improve quality of product and went to freezing product on board. Vessel owners also starting using RoxAnn (sonar) to help locate scallop beds.

Then, the F/V Mister Big forced a loophole in the regulations. Since federal waters are unmanaged, the vessel did not register in state waters and operated under federal non-rules. Emergency action closed the fishery in 1995 for 18 months.

The fishery originally had 17 boats, 12 of which were state vessels. In 1999, the North Pacific Fisheries Management Council enacted a conservation program after which only 9 licenses remained. Some of these were small vessels that were gear limited (one 6 foot dredge).

The only power the state has currently has is to cap the scallops and bycatch of crab in each area and the co-op defines everything else that applies to the fishery.

There are currently six licenses in the co-op, with three boats being active. Under the guidelines of the co-op the total quota is divided by three, but the other three inactive vessels still receive a compensation for not fishing.

When the co-op was formed, the owners all hated each other so they used Joe Sullivan as a facilitator/negotiator and held a meeting. The larger vessels went with the harvesting co-op idea and it was decided that allocation would be based on catch history. The rest of the decisions regarding the fishery easily fell into place from that point on.

The co-op was formed under the AMA, and they call it a stealth co-op. It flies under the radar screen and there is no protection under the federal guidelines. Each fishing area had its own intrinsic value; some are poor quality scallops, some high bycatch areas. Each vessel received a certain percentage of the catch from each area which they can trade based on value.

Contract length for boats in the co-operative is an important component of how it works. Currently it is for a 5 year period and is a rolling contract.

When co-op first started in 2000 there was an immediate price drop because of the East Coast scallops.

The quota was reduced by 30% and the co-op dropped from 7 vessels to 3.

The remaining vessels were allowed to lengthen the time they had on the water and because they were able to move, they became unconstrained by the crab bycatch issue. Vessels had been managed primarily by the bycatch issue before.

It was at this time that the penalty issue arose. One vessel was catching too much bycatch (under a new captain) so the co-op sought injunctive relief.

The vessel had captured 60% of its bycatch allocation.

Based on the guidelines set up by the co-op, the vessel was to pay a \$12/lb penalty. Instead of money, it was voted by the co-op members that the boat had to finish the fishing season in a low bycatch area where the quality of scallops was very low.

Due to the cost of getting to the fishing ground, the weather in that area and the low quality of product, the vessel decided not to fish this year for scallops and is doing something else.

As a result of the co-op, bycatch has been reduced by half in the scallop fishery. Bottom contact indicators are also lower and fishing is cleaner because they can pick areas to fish when scallops are high and bycatch is low. It has also been possible to set aside funding for research.

Non-co-op license holders are all the smaller vessels. They were given their total catch history and areas that they like to fish (more inshore). No problems with threats from these vessels. For example, Cook Inlet is for them only.

Today there is a perception of undercapitalization since there are only two boats in the co-op, but new boats can enter the co-op at any time if they are qualified.

The co-op has allowed the fishery to have:

- Stable crew
- Improved safety
- Market stabilized

- Improved product
- More professional seamen
- Vessel breakdowns have less of an impact in terms of annual catch
- Price still not under their control

To Form a Co-op

- Devise your own scenario; must decide what you want to do and then figure out how to get there.
- You can decide what values you want to maintain. The basics are to set up a system based on a 15 year deal. The first 5 years are considered 1st generation. At the 10 year mark, the whole thing can be restructured. You must have an adaptable plan with imposed consolidation limits and entry procedures. One entity can only own 2% of quota at a time. These are called sideboards in the general design.

Panel Session –

After a morning of presentations on alternative management strategies, an impromptu panel was put together to share their thoughts and opinions about what they had heard as well as some of their own experiences with alternative management. No member of the panel had any material prepared in advance and our choices for members were made in an effort to represent all parties concerned in fisheries management decisions.

Peter Baker – President, Cape Cod Commercial Hook Fishermen's Association (CCCHFA)

Q: Can you briefly describe how your group works and the regulations it has adopted?

A: *There are 50 members in our group and certain regulations have to be followed. We can no longer fish in Gulf of Maine (GOM) for groundfish, and we stay within a hard TAC, (12.75% of cod on Georges Bank (GB)). From 1996-2001 we have been adding up our catch, our Days at Sea (DAS) when we fish and we only use hook and line (gave up the right to use gill net). We are allowed full retention of legal size cod, we cannot throw anything back that is over 21", we can't fish in closed areas except with Experimental Fishing Permit (EFP) and inshore we use less hooks per line as compared to offshore. We have a sector manager that reports to Pat Kurkul's office. We pay a fee on catch and members must join for at least 1 year. If a boat is sold the fishing permit stays in the sector. There is a split of the TAC monthly and rollover is permitted if the fishery starts late.*

Pat Kurkul – Regional Administrator of Northeast Region, National Marine Fisheries Service

These types of systems provide a real opportunity in New England. Harvesting co-ops are a tool I hope our industry will have a chance to utilize. They deal with the problem of fishing mortality and can help to control fishing mortality a little better. This has been a primary focus over the past 25 years and it would be great to change the focus of the types of things we are concentrating on. I am a supporter of rights based fishery management and I think it may help deal with current problems and issues (i.e., overall capacity, bycatch, complexity (in management programs)). This type of management may provide some stability and a great opportunity but it requires a big commitment. If the fishermen want to take back control, with that comes certain responsibilities. I feel it can lead to better resource decisions and in the end get the industry more involved with management techniques. These changes have to be an industry initiative. Fishermen have to be able to be comfortable with dealing with overall mortality controls, enforcement monitoring and make decisions and go forward based on those decisions. We need to look back, decide which direction we want the industry to go in and how it should look in the future. We need to envision these things for these industries.

***Sally McGee - New England Fishery Management Council Member
Marine Conservation Advocate, Environmental Defense Fund***

This type of management will introduce an increased certainty for the long-term suitability of fisheries but there are barriers in this region. One is the many fears that people have when you say co-operative. To many, having a co-op means losing control not working for yourself. Many feel this means working for the company store. There is a fear of turning into Alaska fisheries which have extreme consolidation but offer different opportunities. There is a lot of flexibility on how a co-op can be formed and if done correctly for the fishery involved, a co-op can help that fishery to meet a lot of different goals. If a group of people decides to participate (economic, social, biological, etc.) a co-op can make management much simpler. It could introduce a simpler management scheme that is self determined with basic parameters from a council and management but with industry defining the nuts and bolts.

John Williamson - New England Fishery Management Council Member

It is unfortunate that there is such a knee jerk reaction in New England to the idea of a new idea. Co-ops are heading in the direction toward ITQs, and there is such a fear of where those mechanisms are going to lead. If we can incorporate ownership and consolidation as an underlying theme of the management process it would be a big step. Industrial type fisheries are developing and this phenomena is happening any way with or without rights based management. Harvesting co-operatives have a counter cyclic balancing mechanism and we are not ready to do this yet. The Atlantic States Marine Fisheries Commission has not grasped this concept well enough. We crossed a line with Amendment 13, whereas the last 25 years have been spent avoiding the basic allocation issue. We have a big negotiation for groundfish allocation but don't have a mechanism in place in which to deal with it. I don't know what the implications are but the counter balancing mechanisms are a concern to be considered.

Dick Allen - Private Fishery Consultant

I am a big opponent of limit entry and advocate of ITQs. If we did what we needed to do by avoiding limited entry, and most people came into the fishery when there was open access. We have gone through a change, and we have been backed into a lot of these things. Co-ops would be a big change and what are the possibilities now? We need to focus on the idea of creating value in the fishery,

Audience Questions and Comments

I take issue with the idea of fear of losing control. Members of a co-op actually regain a little control and get away from the plan/rule of the day. If it does work, a co-op is a great idea.

Q: To Peter Baker: If you get 800,000 lbs with 50 boats, that equals 16,000 lbs per boat. If you hold back a 10% allocation, then you go after 750,000 lbs. Is there fear that this allocation could go to someone else?

A: *You have to balance things and make sure to catch as much as you can each year but not fish it too fast. You try to catch the majority but hold back a portion for conservation purposes. We could not allocate a portion of TAC but allocate them a portion of the stock and in turn give them credit for building up the stock by not fishing all of available fish. If we go over TAC, stock gets diminished, and that might require slight change in thinking in members of the council.*

Q: Peter, could you provide a breakdown of how the CCCHFA came to be involved with the current study?

A: In the spring of 2002 we started developing the idea of the haddock study. It passed at the council meeting in November, 2003. A lot of staff time has been devoted to it, and we retained lawyer from Washington, DC. There has been at least ¼ million dollars put into it and money is one of our biggest obstacles. CCCHFA is on the leading edge of this type of initiative and to move forward it is going to cost more. We are starting from the ground up and we should try to learn from them (the West Coast) so other groups don't have to go through all the steps and time that we had to go through. It took a lot of organization and membership participation to get where we are today.

There are a number of opportunities on the east coast to put a co-op into place. It can help some fisheries add value to their catch. This initiative needs to start with industry members but has to run up to the management level. On the east coast, we need to look at other options then what is in place on the west coast (i.e., 100% observer coverage). It is important to look at other alternatives for enforcement and not necessarily use the exact techniques they did but follow the problems they identified (i.e. how many fixed participants, what will enforcement be).

For the CCCHFA – All boats carry observers and all are on the same level with 60% of trips in closed access. All 56 members have to take a turn on the enforcement committee. All must comply with overall rules of membership but there are rules that are specific to each sector. That pretty much is equivalent to peer monitoring. In breaking a rule you break a contract with the other 55 members.

If industry does come forward with these ideas, what format should they come up with? It is important that the industry lead but co-operation from management is needed.

There seem to be some major differences between CCCHFA and the west coast co-operatives. First is the way they allocate the share of fish, and the fact that CCCHFA is less than 20% for sector. This is different from Alaska co-op in that it wouldn't work if someone outside the co-op had control of a large portion of that resource. The council draws a line around allocation and on the west coast there is no recognition by the council of the co-op. CCCHFA is much less risky because it is not stealth. They set up a sector allocation of a certain percentage. Do those who only get 20% of the stock really get a fair percentage? This really depends on the quality of the stock and other types of stocks

are much more mobile so the way the allocation works would be much different. It comes down to the characteristics of the specific fishery that you are talking about. This is important to investigate before you start up your co-op.

The control on bycatch is individual DAS. If vessels do not use cod days at sea they can't transfer those days to spend on another fishery. There are 50 boats and 50 days and a boat cannot fish more than their 50 days. There is no leasing system, and the sector can develop its own rules on leasing. They can then lease to another sector. On the east coast, we need to start thinking about things differently across fisheries.

No one is suggesting that the industry needs to go off and do this by themselves, but that the initiative has to come from the industry and then NMFS has to be involved in the discussions and thinking about where they go from there. Setting up a co-op could take a lot of resources and it is important to have the expertise available when the time comes.

Q: If provision for harvesting co-op is not in the management plan, can a harvesting co-op form in a federally management fishery?

A: *In the current herring plan, sector allocation is in it but it is nothing along the lines of what Joe was talking about, that exists in the Alaskan co-ops.*

Q: There is a system within all FMP where industry can say these are our options; here is how we do it, which would imply that NMFS had thought through the whole process. Couldn't we do a sector allocation, harvesting co-op without a structure that was approved by the council?

A: *You could do it as long as you are living within the rules of the FMP and form co-operative under it.*

Q: Does herring or scallop have to go through a sector allocation before forming a harvesting co-op?

A: *You only need to go through sector allocation if you want the protection you get from sector allocation which is a quota.*

Q: A co-op and a condo were both mentioned. What is the difference between a condo and a co-op?

A: *A co-op can keep people from moving in. They can prevent the admission of someone who everyone feels is bad news. There are standard terms and a member of a co-op can sell their interest in the co-op (license, harvesting limit) as long as the new member follows the laws in place. The potential for the bad eggs hasn't shown up yet but as they develop, there is more of a possibility of it occurring. Luckily, the bad actors were flushed out in advance in the west coast example.*

The cost of establishing a harvesting co-op is nothing compared to the amount that has been used in the groundfish fishery over the years. Going back to funding, CCCHFA may have been overkill.

It was mentioned before that there is such a knee jerk reaction to words and concepts. The whole idea of a vision and the industry coming up with a vision for the future is scary. It's difficult to get people to agree on one word because people see an implication or hidden meaning behind every word. Fishermen are skeptical of working towards an industry vision, and some are not even sure if it's a good idea.

Do co-ops allow experimentation and flexibility instead of channeling the whole industry in one direction (current mode)?

People are only going to enter into a co-op based on what they will get out of it (i.e. rationalize the fishery, increase the value of the fishery, reduce the cost of fuel, consolidate, etc).

There is a big problem these days with the lack of experimentation. Years ago fishermen went on voyages of discovery to look at new grounds to see if they were productive. There were leaders and followers and that is how fishing grounds develop. Today discovery is unheard of because people are forced to go for the sure thing. They can't afford to take the time to explore anymore because they are losing DAS. It is a sad note about the way fisheries are today compared to what they used to be.

First off let's distinguish scallop fisheries from groundfish fisheries. Scallop fisheries are a lot easier to manage, one species, one gear, and a homogeneous fishery. CCCHFA has carved out of the groundfish sector what is essentially a scallop fishery. The scallop fishery in New England is too big of a group to get them all to agree on what a harvesting co-operative should look like. You have to have the same interest, same voice, in order to get managers to listen. You can't consolidate in the sea scallop fishery at the moment. There are other attributes of co-operatives that are missing, and the major attraction is consolidating. You also want to maximize value of a limited pie while reducing costs and adding value (can't do either right now).

You need to take a look at the problems from these arrangements and set up institutional barriers from those problems ever arising. Take great caution because we are revisiting what was said back in the late 80s and early 90s on ITQs.

Is New England ready for a harvesting co-op?

Panel members and audience participants were asked to outline the opportunities and obstacle they felt were important. The following is a list of issues/concerns that people thought were important:

OPPORTUNITIES

- Sector allocations
- Cape cod/Geographic/TAC/Gear
- Change of focus, simplify and offer stability
- Better business decisions

- More rational management
- Lots of flexibility
- Meet various goals – economic, social and biological
- Potential to simplify complexities
- Can counter trend to industrialization
- Limited entry to in most fisheries
- Some rationalization/reduce fuel costs/higher efficiency
- Benefits can be defined
- More flexible than ITQ'S
- Adaptive and reactive
- Encourages the community
- Creation of new value
- Move negotiating power to the fishermen
- Need to look problems and solve/prohibit them from ever happening

OBSTACLES

- Need comfort level on effort/thru monitoring and law enforcement
- Need industry vision

POSSIBLE FISHERIES

- Scallops
- Herring
- Groundfish

FEARS

- Lose control
- Lose independence
- Consolidation
- Impact on the communities
- Emotional reaction to rights based
- Connotation of industrialization
- Management council not prepared
- Fairness issues
- Loss of allocation if not used

COST OF DEVELOPMENT

- 250-400K
- Observer coverage – how much?
- Latent licenses – where do they come in?
- Protection of the share
- Stock characterization - type makes a difference
- Displaced effort impact

- Cost to the council
- Timing --FMP
- Unknown Process
- Can't exclude bad actors
- Need lawyer
- Legal advice
- Dedicated staff

Joe Sullivan – Closing Remarks

It would be great if we can continue with 2-way communication between the west and east coasts. We can learn from each other.

In hearing the concerns about whether you have the institutional capabilities down is the very encouraging—it is really the first step you need to take.

It is essential that you think about the overall standards that you would apply, the vision idea, the values inherent in the fisheries as they exist and the concerns about moving towards management system which would be fundamental restructuring,

There are principles that need to be established. If you issue rights that are of unlimited duration, then you create an environment in which there is an informal understanding that there are more rights property rights associated with the permit/program than there really are.

Rights based management is represented by all the words on flip charts, nothing beats deliberate assertive move by management. Leasing DAS is a form of de facto rights based management.

Co-operatives allow for output limits without output controls. Harvesting can have the flexibility on how to harvest the resource instead of under the strict regulations as DAS.

Need to have level of stability, environment where people can make a reasonable investment leading to durations of 15 years, drop through model in sharing the fish, series of generations of fishing rights, (see flip chart), as a general framework in whatever they do, are rights of durability that underline,

After you achieve consolidation you should maintain entry level, and allow for blocks of quota that are small and can't be swept up in consolidation. This gives people a chance to move up to larger quotas.

There are social alarms that will exist and crew compensation issues. The eligibility to move up to second step will be based on what your performance was under generation 1, but you need to set up clear standards from the beginning. It's really all about adaptability

not stability. Alaska is talking about limited access fisheries being limited duration (close at sunset). This is related to their concern about adaptability.

Concerning the processor share or processor recognition issue; under the processor quota share the shares are allocated to processors based on processor history which creates a harvester share that matches processor share that has to be delivered. Both processors and fishermen (or boat owners) don't care which way it goes because they are all set. The issue isn't just vertical integration; the issue is when you have one or more processors who are highly integrated and one or two who are not. There are decent models on how to deal with that. The best one is from New Zealand going through process to rationalization. They allow processors to purchase access privileges up to a certain cap. We advise against taking the processor share approach in the Bering Sea. Another approach is that processors can acquire harvester share and make them available to vessels that processor there or to their own harvester vessels.

REFERENCES

For further reading the following documents are available at
http://seagrant.gso.uri.edu/reg_fish/harvesting/index.html:

- Summary of Opportunities and Obstacles for Community-Based Fisheries Management in the United States: A Report to the Ford Foundation by Michael L. Weber and Suzanne Iudicello-Martley.
- Adaptive Management: A Fact Sheet for Connecticut Fishermen by Robert Pomeroy
- Fisheries Comanagement: A Fact Sheet for Connecticut Fishermen by Robert Pomeroy
- Rights-based Fisheries Management: A Fact Sheet for Connecticut Fishermen by Robert Pomeroy
- Alaska's Fisheries Management Co-operatives: A presentation by Ralph Townsend
- Co-operatives in U.S. fisheries: realizing the potential of the fishermen's collective marketing act. Andrew W. Kitts and Steven F. Edwards. *Marine Policy, Volume 27, Issue 5, Pages 357-366.*
- Harvesting Agreements Paper: Harvesting Agreements and Harvesting Co-operatives by Robert Pomeroy and Dick Allen

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