

## **Appendix 2. In Hindsight: Yellowtail Flounder 2004, New Bedford Community Panel Case Study**

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### ***Introduction***<sup>109</sup>

In mid-July 2004, New Bedford’s *The Standard-Times* reported that fishermen and processors were complaining that so many yellowtail flounder were being caught in such a short time that processors were unable to handle them and prices were plummeting. The article went on to argue that the derby fishery could be resolved as was a similar situation in Alaska’s halibut fishery, that is, by allocating individual transferable quotas.<sup>110</sup>

Fishermen and processors had a different reaction to the situation. Yellowtail are part of the multispecies (groundfish) complex. Thus fishing for them is controlled by Amendment 13 to the Northeast Multispecies Fishery Management Plan. Amendment 13 divided fishermen’s days-at-sea into three categories (A, B & C). “A” days are the principal allocation of days-at-sea to permitted vessel owners. “B” days, far fewer, were to be used on species considered healthy (that is, mortality did not need to be reduced) and could be used in designated areas as part of a Special Access Program (SAP).

The New England Fishery Management Council (the Council) approved a yellowtail SAP for Closed Area 2 with a maximum possible harvest of 4350 mt. This was to be caught in a maximum of 320 trips with vessels limited to two trips a month and 30,000 lbs of yellowtail per trip. Furthermore, the season had the potential to extend from June 1 to December 31. By September 3, however, 85% of the quota had been taken and the area was closed.<sup>111</sup>

One Rhode Island fisherman who typically fishes for yellowtail in the late winter (during Lent) noted that boats he had never seen before, from as far away as North Carolina, were fishing for yellowtail in the SAP. Another noted that usually there are only

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<sup>110</sup> “Derby fishery” is the term used when too many fishermen target a single species at the same time.

<sup>111</sup> Based on the Northeast Seafood Coalition’s “Georges Bank Yellowtail Flounder 911,” a draft report prepared by Vito Giacalone and Jackie Odell. It should be noted that although the season could have remained open until December 31 if only about 45 trips per month had been taken, the SEIS for Amendment 13 projected a four-month season. This analysis was based on the 40 vessels equipped with VMS of the 117 who fished the area in 2002, taking two trips per month (Northeast Multispecies Fishery Management Plan, Final Supplemental Environmental Impact Statement, page I-281). The SEIS also said that if more vessels participated, the season could be “proportionally shorter.”

a few boats fishing for yellowtail in that area of Georges Bank, but during the SAP, “there were more than I could count.”<sup>112</sup>

### ***Landings***

Preliminary reports on landings of yellowtail from May and July 2004 showed that New Bedford had landings of 6,902,000 pounds (3131mt) caught on Georges Bank and 39,000 pounds caught in the Cape Cod stock area. Gloucester had landings of 124,000 pounds (56mt) from Georges, 108,000 pounds from Cape Cod and 4000 pounds from the Gulf of Maine. Pt. Judith had landings of 185,000 pounds from Georges (84mt), 55,000 pounds from the Gulf of Maine, and 15,000 pounds from Southern New England. Portland, Maine had landings of 10,000 pounds (4.5mt) from Georges and 5,000 from the Gulf of Maine. Boston had landings of 93,000 pounds from Cape Cod and 2,000 pounds from the Gulf of Maine.<sup>113</sup>

In documents prepared by the Groundfish Plan Development Team for the Council for Framework 42, the summary information on catches out of the SAP gave monthly totals in pounds as 2,816,400 (1,277.5 mt) in June; 2,810,365 (1,274.76 mt) in July; 2,255,008 (1,022.85 mt) in August and 194,205 (88.09 mt) in September for a total of 8,075,978 (3,663.2 mt) in 307 trips. The report explained that “because SAP trips are not specifically identified in either the VTR or dealer databases, total landings and revenue estimates are based on an analysis of the DAS, dealer, and VTR databases. A link was created between the VTR and DAS database in order to identify SAP trips – 307 (out of 316) SAP trips could be identified.” According to reports published on the NERO website, there were 316 SAP trips that caught 8.3 million pounds of yellowtail flounder (7.6 million pounds kept, 0.7 million pounds discarded).<sup>114</sup>

### ***Market consequences: low and declining prices***

The SAP for yellowtail opened June 1<sup>st</sup>. In week one, 250,000 pounds of yellowtail were sold at the Whaling City Auction in New Bedford. The average price for large yellowtail was 58 cents (minimum of 40 cents) and the average for small yellowtail was 30 cents. In week two, 461,000 pounds were sold with large going for 40 cents to as low as 34 cents per pound. Smalls were 37 cents to as low as 27 cents. Week three, 400,000 pounds were sold, large yellowtail went for 34 cents to as low as 20 cents; small yellowtail was 26 cents to 10 cents. For the rest of June, 553,000 pounds of yellowtail was sold, of which 480,000 were large, 72,000 small. The large sold for 30 cents to as low as 20 cents;

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<sup>112</sup> Vessels from the south usually make an annual migration north at some time during the year, just as some northern boats (e.g., New Bedford vessels) make the trip to Virginia or other southern ports when there are available fish and decent prices expected. What was different during the SAP was that it seemed to industry members that more vessels than usual were attracted and reportedly said that they came because they believed that they needed to create history in the yellowtail SAP. In fact, only four North Carolina boats, one from New Jersey and three from New York participated; however, altogether there were 105 participants in the CAII SAP.

<sup>113</sup> Document made available to Council and public, no indication of authors

<sup>114</sup> [http://www.nefmc.org/nemulti/frame/fw42/appendix\\_II.pdf](http://www.nefmc.org/nemulti/frame/fw42/appendix_II.pdf)

small sold for 26 cents to 18 cents. The average for the month of June was 33 cents to the vessels for large yellowtail, 31 cents for small on 1,256,000 pounds.

June-04	Pounds sold	Lg Yt-average	Lg YT-low	Sm YT-average	Sm YT-low
Week 1	250,000	58	40	30	
Week 2	461,000	40	34	37	27
Week 3	400,000	34	20	26	10
Week 4+	Large- 480,000	30	20		
	Small- 72,000			26	18

According to the Whaling City Auction’s history of yellowtail landings and prices since February 1997, the average price for large yellowtail flounder for the fishing year 5/1/04-4/30/05 was approximately half of the average price for the prior seven fishing years:<sup>115</sup>

Year	Large	Value	Average	Small	Value	Average
2/1/97-4/30/98	1,842,855	\$3,421,720.91	\$1.86	1,297,336	\$2,175,136.98	\$1.68
5/1/98-4/40/99	2,430,722	\$3,599,851.49	\$1.48	2,494,365	\$3,197,441.34	\$1.28
5/1/99-4/30/00	3,424,164	\$4,198,959.58	\$1.23	2,057,108	\$2,098,411.25	\$1.02
5/1/00-4/30/01	3,951,330	\$4,449,552.45	\$1.13	2,150,347	\$1,851,857.68	\$0.86
5/1/01-4/30/02	4,136,253	\$4,403,987.33	\$1.06	1,673,913	\$1,313,362.35	\$0.78
5/1/02-4/30/03	3,018,964	\$3,864,682.02	\$1.28	1,651,419	\$1,879,425.33	\$1.14
5/1/03-4/30/04	2,963,417	\$3,636,245.70	\$1.23	1,280,130	\$1,454,730.53	\$1.14
5/1/04-4/30/05	4,566,074	\$2,992,150.93	\$0.65	1,512,012	\$1,112,502.48	\$0.73
5/1/05-1/31/06	1,959,599	\$2,511,141.74	\$1.28	1,316,544	\$1,391,466.14	\$1.06
		Average 2/97-4/04	\$1.32		Average 2/97-4/04	\$1.13
		Mean	\$1.23		Mean	\$1.14

Consequences for the auction and buyers, including processors, might be thought to be good, given the high volume and low prices of yellowtail. However, the effects were mixed and generally unsatisfactory for them as well as the harvesters. In 2004, vessels and buyers each paid 6 cents per pound to the display auction for the handling and selling of yellowtail.<sup>116</sup> However, the auction did not consider the large volume of yellowtail to be a boon for their business. When volume is so high, they have to pay overtime for their workers. Furthermore, since they provide the liaison between fishermen and processors, they benefit when both are happy. Processors cannot handle sudden volumes of fish, so the price goes down. Although the fillet quality of yellowtail in the early summer is always relatively low due to spawning and prices usually reflect this, the yellowtail SAP was thought to have exacerbated the situation.

<sup>115</sup> For comparison, see a weekly report for the fishing year 2000-01 at the end of this report.

<sup>116</sup> In July 2005 the Whaling City Auction changed its policy so that the buyers are now responsible for the fees. However, “the vessels have always given 5% of their catch to the unloaders for shrinkage.”

According to some seafood brokers, when the prices are so low due to high volume and poor quality, the processors do not benefit. Like the Auction, they too have to pay overtime for their workers and they have to freeze the product rather than selling it fresh.<sup>117</sup> On the other hand, some fishermen complained that the processors were benefiting by freezing the low-priced product with plans to sell it later when prices rose.

The best scenario for auction, fishermen, processors and perhaps consumers is a steady supply over time. A supply consistent in quality and quantity enables the brokers and processors to develop markets for fresh seafood that are often more profitable than the frozen seafood markets. Those demanding fresh seafood include higher end grocery stores and restaurants. “Many consumers perceive freshly caught seafood as having a higher level of quality than frozen seafood. To many people, unfrozen seafood has a better texture, flavor and appearance than frozen products” (Seafood Enterpriser, North Carolina Sea Grant, Summer 2005). If however there is a break in the supply, alternative or imported product may be used to fill the demand. Regaining market share once lost is difficult.

The low prices on yellowtail affected market prices for other flounders as well. Dabs and channel flounders are usually of higher quality in early summer than are yellowtail, but in 2004 their prices were almost the same as yellowtail. Large dabs, for example, were selling for 41 cents and small for 27 cents at the Whaling City Auction. Typically, in June, these flounders are sold for 75 cents to \$1.<sup>118</sup> Even yellowtail flounder, sold in much smaller quantities, usually has an average price that hovers around the 70 cents mark in June.

Another concern of the fishermen, when the SAP was closed in September, was that the closure would mean that no yellowtail would be available during the holidays and Lent when prices are usually high and fishermen “normally make a good living on yellowtail.”<sup>119</sup> As it turned out, however, fishing was allowed on Georges Bank yellowtail beginning January 13 with a 15,000 lb trip limit on yellowtail and continuing until April 1. Easter was early (March 27), so the fishermen were able to fish through Lent.<sup>120</sup>

Since this SAP was the first one opened for “B” day use, the fishing industry feared that what they regarded as a negative outcome could hamper the development of future “B” day opportunities. It certainly left a negative impression among fishermen who had hoped that “B” days would allow them to survive the requisite cuts in “A” DAS. In fact,

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<sup>117</sup> As one individual noted, “Junk in, junk out!”

<sup>118</sup> The range can be much greater, for example, in the week of June 13, 2003 the range was \$.16 to \$1.05. Notice the variation in prices on yellowtail throughout the year of 2000-01 in the table at the end of this report.

<sup>119</sup> One Rhode Island fishermen noted that for the prior three years he had “made his year” in October, November and December fishing for yellowtail. He said that the SAP closure hurt his business. In fact, however, he may have been confusing the SAP closure with the October 1 closure of the Eastern US/CA area and/or the prohibition of possession of Georges Bank yellowtail on October 1 when the overall TAC was almost reached.

<sup>120</sup> The lack of predictability associated with regulations (e.g., areas closed or opened; gear configurations or sizes changed) is a frequent complaint among industry including both harvesters and shoreside businesses.

the groundfish vessels that did not use their “B” days in the yellowtail SAP had only a limited opportunity to use them at the end of 2004.<sup>121</sup> The only other SAPs opened for groundfishing included one that permitted use of a separator trawl to catch haddock and one that was restricted to the hook gear sector (Hook Gear Haddock SAP).<sup>122</sup>

### *Distrust*

“Derby” fishing and market gluts are often interpreted as the outcome of open access situations, but this case shows the importance of uncertainty about management implications of choices as well as distrust of the management agency and particular decisions it made. Interviews with a sample of participants and dealers elicited an almost universal response to the question of why vessels continued to land yellowtail once the prices dropped. Rhode Island and New Bedford fishermen said that they had to use their “B” days, given the opportunity, or they would lose them in the next round of regulations. A few buyers/dealers said that they had suggested that yellowtail not be targeted, but some sent a mixed message warning the fishermen that they could lose DAS if they did not go.

The basis for this belief harkens back to the early stages of the development of the Multispecies Management Plan. A chair of the NEFMC once stated unequivocally that fishing history would never be used as a basis for allocations of the resource. At that time fishermen were being encouraged to fish for species that were more plentiful than groundfish. Later, when days-at-sea were designed, allocations were directly based on fishing history.<sup>123</sup> Consequently, the fishermen assumed that “B” day use could also serve as precedent for future allocations, regardless of any statement to the contrary by managers, or even the regulations themselves.<sup>124</sup>

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<sup>121</sup> In late 2004, Category B (regular) DAS program did allow use of “B” days. Many vessels on Georges Bank used these days to target yellowtail and winter flounder (Nies, personal communication).

<sup>122</sup> The lack of SAPs that could provide alternative fishing opportunities for groundfishermen to use “B” days resulted in a de facto greater cut in days-at-sea than fishermen had hoped. However, Amendment 13’s SEIS specifically notes that opportunities to use “B” DAS would be limited initially and would have to be developed in future actions. Nor did the economic analysis of Amendment 13 include any projected revenue from “B” DAS. The Haddock Separator Trawl SAP was reportedly underutilized, in contrast to the Yellowtail SAP, because of a lack of familiarity with the trawl, how or whether it worked, and whether or not the catch would be sufficient to cover expenses. Furthermore, this SAP was only open for about a month starting in late November.

<sup>123</sup> In 1994 Amendment 5 to the Multispecies Plan, followed by Amendment 7 in 1996, established a two-tier system for limited access that cut the number of DAS allocated to the fishermen. (Amendment 5 planned to reduce fishing effort by 50% over 5 years; Amendment 7 reduced the timeline to 2 years.) One option was the “fleet category” that allocated 139 DAS for the first year to the 514 vessels that had landed any groundfish (even a single pound) and 88 DAS for the following years. The second option was an individual allocation to those who could document their history. (One hundred, ninety boats received an average of 156 DAS for the first year, 120 DAS for the years after.) Those who had switched to other species in part to further conservation goals resented the perception that those who had most “damaged” the groundfish stocks were rewarded with more days. The numbers of DAS have been further reduced by additional measures.

<sup>124</sup> This fear that the “B” day use would dictate future opportunities is said to be one of the reasons the vessels from the Carolinas and elsewhere came north to work in the Yellowtail SAP, although there is usually some movement north (and south) by various boats each year. According to NMFS legal counsel, Councils are not bound by the actions (or agreements) of previous Councils, so this belief has some validity.

Because of this strong belief, interviewees noted, the only way that the derby could have been halted was if National Marine Fisheries Service (NMFS) had imposed a lower trip limit, restricted the number of vessels allowed into the SAP, and/or closed the SAP earlier. Under Amendment 13 to the Multispecies Fishery Management Plan, the Regional Administrator (RA) had the authority to slow the program down when 30% or 60% of the TAC had been caught, but the RA did not impose a trip limit until 70% had been caught.<sup>125</sup> In addition, the industry assumed that they would be allowed to continue fishing until 100% of the TAC was taken but the area was closed at 85% to accommodate expected bycatch in a newly created scallop rotation program in Closed Area II.<sup>126</sup>

There was important diversity in response. For example, In contrast to New Bedford, fishermen from ports to the north said that they stopped fishing for yellowtail as soon as prices dropped rather than continuing until the fishery was closed. Anger towards both NFMS and the fishermen landing in New Bedford was repeatedly expressed, adding to a long history of blaming that divides industry interests along geographic lines. Interestingly, however, the following year, it was Jimmy Odlin, a Council member from Maine who argued for the necessity of a 30,000lb trip limit for each vessel, while Rodney Avila, a Council member from New Bedford urged a 20,000lb limit for yellowtail catches.<sup>127</sup>

Management of groundfish requires that each permitted vessel not fish for a 20-day period in the fishing year in addition to other closures. This is referred to as their “annual block out of the fishery.” Traditionally, many of the Portuguese captains of New Bedford take their annual block out of the fishery in June, primarily because of the poor quality of yellowtail at this time of year. Most who do so believe they are making a choice that benefits the stocks. However, some of these captains fished in the SAP to create a history rather than taking time off.

### ***Further complications***

Adding to the situation was uncertainty and disagreement about the status of the yellowtail flounder stocks or, more specifically, about the appropriateness of management rules and actions. This affected fishermen’s decisions about how much TAC should be requested for the SAP and the size of trip limits.

GARM I said in 2001: “Current biomass is approaching  $B_{MSY}$  and current  $F$  is well below the control rule target (Figure C4).” According to the April 2001 Transboundary

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125 Amendment 13 provides that, when specified portions of the TACs have been harvested, reduced trip limits would be imposed for all groundfish permitted vessels to slow the harvest of any stock that is approaching its TAC. When 70 percent of a specified stock is projected to be caught, and catch rates indicate that the TAC for that stock will be caught by the end of the fishing year, the following trip limits would go into place: Haddock: 1,500 lb (680 kg/day), 15,000 lb (6,804 kg)/trip; yellowtail flounder: 1,500 lb (680 kg)/day, 15,000 lb (6,804 kg)/trip. From: *Federal Register*/Vol. 69, No. 19/Thursday, January 29, 2004/Proposed Rules, p. 4370

126 In Framework 16/39, the Council made clear that the yellowtail TAC for scallopers was to be a cap on catch, not an allocation to the scallop industry, but NMFS implemented it as an allocation.

127 Rodney Avila, personal communication, referring to discussions at a Council meeting held in Portland, ME on June 22, 2005.

Resources Assessment Committee (TRAC) report on yellowtail,<sup>128</sup> “[o]verfishing is not occurring, and the stock is recovering from an overfished state, according to the Sustainable Fisheries Act (SFA) status determination criteria.” The same report did warn, “Inadequate sampling of U.S. landings, the lack of sufficient discard samples in the U.S. fishery, and the absence of age determinations from the Canadian fishery contribute to uncertainty in estimates of size and age composition of the catch and raise concerns about the reliability of VPA results.”<sup>129</sup> Nevertheless, the report also stated: “Despite these problems, similarity of results from VPA and the production model are somewhat reassuring that conclusions about trends in stock size and fishing mortality are reliable: “

The TRAC status report 2004/03 assumed a total catch of 7,900 mt of Georges Bank yellowtail in 2004: 6000 mt for the US and 1900 mt for Canada. The report noted that the combined US and Canada catches in 2003 were “approximately 6800 mt.”<sup>130</sup> This report reported that the stock biomass had increased and recruitment had improved since the mid-1990s. However, the report noted, fishing mortality for fully recruited adults (4+) had not fallen below the reference point of .25 since before 1973, despite management efforts. The report also reiterated the 2001 TRAC report warning, “Retrospective analysis is used to detect a pattern of inconsistencies with a tendency to over or underestimate fishing mortality, biomass, and recruitment relative to the terminal year estimate.”

A more complete report of the TRAC stated: “To meet the term of reference, the TRAC agreed to use the 2003 ADAPT results to perform projections, with the understanding that results are highly uncertain. For example, using the 2003 ADAPT result,<sup>131</sup> the projected 2004 catch at  $F_{ref}$  is 7900 t (Stone and Legault 2003). Considering the great uncertainty in the assessment, a status quo catch strategy (6100 t) may be reasonable.”<sup>132</sup>

Amendment 13 of the U.S. Northeast Multispecies (groundfish) Fishery Management Plan assumed that the US share of the Georges Bank yellowtail TAC in 2004 would be 58 percent of a total TAC of 11,713 or about 6800 mt. Differences between the stock status numbers used in Amendment 13 and the numbers provided in the Transboundary Management Guidance Committee’s (TMGC) guidance document (based on the TRAC), were controversial, and Council member David Pierce, during a Council meeting on January 28, 2004, moved for a review of the differences. The Final Amendment 13 stated that the agreed upon US quota was 6000 mt. However, fishing industry members interviewed complained that the quota and trip limits for the Yellowtail SAP were voted on before the TMGC document was understood. Some suggested that if

<sup>128</sup> Northeast Fisheries Science Center Reference Document 01-08 (July 2001)

<sup>129</sup> VPA or Virtual Population Assessment is an age structured analytical assessment that uses fishery catch statistics and sampling for age and size composition.

<sup>130</sup> [http://www.mar.dfo-mpo.gc.ca/science/trac/TSRs/TSR\\_2004\\_03\\_E.pdf](http://www.mar.dfo-mpo.gc.ca/science/trac/TSRs/TSR_2004_03_E.pdf) (June 2004)

<sup>131</sup> ADAPT (VPA)

<sup>132</sup> Overholtz, W.J. (TRAC Chairman). Proceedings of the Seventh Meeting of the Transboundary Resources Assessment Committee (TRAC), Woods Hole, Massachusetts, May 27-29, 2003

they had realized that the overall TAC would be 6000 mt, they would have requested a lower TAC and lower trip limits in the SAP.<sup>133</sup>

TAC setting affected decisions about continuing in the SAP, as did the inability to predict—or the failure to anticipate—other management actions. If all vessels had caught their maximum allowable catch in the Yellowtail SAP, 4354 mt would have been landed (320 trips x 30,000 lbs). Some of the fishermen continued to fish in the SAP after prices dropped believing that there would be sufficient quota so that they would be able to target yellowtail outside the SAP later in the year. If NMFS had not set aside 600 mt for the potential scallop bycatch, and if they had not overestimated discards in the SAP, more yellowtail may have been available to groundfishermen.<sup>134</sup>

The rapid attainment of yellowtail TAC had effects on the haddock fishery due to by-catch concerns. By October 1, the lack of available TAC eliminated opportunities for fishermen to access haddock on a portion of Georges Bank near the Canadian border. Due to the potential yellowtail bycatch, the area was closed to groundfishing until January 13, 2005. When the area was reopened a smaller trip limit on yellowtail was imposed.

### ***Agency Responses***

Fishermen and others interviewed raised the question of why the regional office of the National Marine Fisheries Service did not take measures to restrict access to the yellowtail SAP, to prevent the derby nature of the fishery. The Federal Register states, “The Regional Administrator has broad authority to modify possession restrictions and trip limits under this SAP.” Nonetheless, a spokesperson for NMFS explained that the R.A. could not slow the access<sup>135</sup> without explicit direction from the Council. According to this spokesperson, the Council had not identified “triggers” for when trip limits should be reduced when a certain portion of the TAC had been taken. Because NMFS “can only approve or disapprove plans and measures, not impose measures on their own,” the spokesperson continued, they rely on direction from the Council. However, as noted earlier, the Council did specifically identify triggers in Amendment 13 (See page 6).

In addition, the spokesperson said, a web page monitors landings, so fishing industry members could have observed how quickly the TAC was being caught, implying that they could have slowed landings voluntarily. Unfortunately, the existence of the web site was not uniformly known among the fishermen, nor apparently were many aware that they should be keeping track of others’ landings. It is also not an accepted norm among groundfishermen to try to tell their peers what to catch (or when not to catch certain

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<sup>133</sup> Because the 6000 mt TAC was established well before the start of the SAP, this statement may be an indication of the regret that stems from loss of potential benefit realized in hindsight.

<sup>134</sup> <http://www.nero.noaa.gov/ro/fso/usc/yellowtail0405.pdf>

<sup>135</sup> Federal Register/Vol. 69, No. 81/Tuesday, April 27, 2004/Rules and Regulations p. 22913

species). Perhaps even more importantly, for those who were paying attention, what was not known was that access would be halted once 85% of the TAC was reached.<sup>136</sup>

*Final numbers*

According to the September 2005 TRAC report: “US catches for 2004 were 6,757 mt, with landings of 6,208 mt and discards of 549 mt”... “The Yellowtail SAP in Closed Area II accounted for a large portion of these landings and discards.”<sup>137</sup> It should be noted that the TRAC is reporting the catch for the calendar year; the catch for the fishing year was 6,000 mt.

*Industry suggestions for the future*

This case was yet another potential learning experience for groundfish management, particularly in the more complex settings that one might expect for ecosystem-based management. Fishermen might be expected in the future to more closely monitor what is happening in an SAP fishery, both to modify their own behavior and to ask for help from responsible agencies. Interviews also generated a number of other ideas, that could be used by the Council, NMFS, and fishermen’s groups for improved management in the future. Following are these ideas, not ranked:

- Do not open the SAP. “It would take longer to catch them but the price would be higher and the quota would last longer.”
- Do not open the SAP up all at once, e.g., stagger the openings.
- “Make sure that fishermen have other choices for the use of their “B” days so that not everyone is doing the same thing at the same time.”
- Lower the amount of fish vessels could land at any one time so that the quota would last longer.
- Allow small vessels to fish in the SAP in the summer when weather is usually good and give the larger vessels access in the winter (since they can cope with poorer weather)
- Allocate vessels a certain number of days that they could use in the SAP and assign each a time so that not all boats would go out at once.
- Alternatively, fishermen could enroll in a yellowtail program and be allocated a portion of the TAC. However, such a plan could too easily lead to ITQs, according to some fishermen, with negative consequences for conservation and socio-economic concerns.
- Rotate the closed areas.
- Everyone should have a vessel monitoring system (VMS) now. The stakes are high and limits strict, so there should be a way to ensure that cheating is not occurring.

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<sup>136</sup> This also came as a surprise to the Council and Council staff (Nies, personal communication).

<sup>137</sup> Transboundary Resource Assessment Committee Status Report 2005/03 (Revised) (September 2005)

## *Conclusion*

If the Whaling City Auction's experience may be generalized, in 2004 the average price for yellowtail flounder was much less than it had been in prior years. The potential negative consequences of such an economic loss are striking, especially when many groundfish vessels are struggling to remain in the industry while the stocks rebuild. Fishing industry participants suggested that there was also a domino effect on the fishing communities and industry infrastructure of the lost benefit.<sup>138</sup> Nevertheless, the perception of loss may have been greater than it was in fact. The Groundfish Plan Development Team (PDT) estimated the total revenues for the 307 trips that they could identify as trips in the SAP were \$7.2 million. Yellowtail flounder accounted for \$3.45 million, haddock \$929,000, lobster \$645,000, scallops \$501,000, and winter flounder \$495,000.<sup>139</sup>

Though not articulated by industry members interviewed for this report, the losses due to the low prices on yellowtail may have been partially compensated for by the million pounds of haddock and several hundred thousand pounds of winter flounder that the vessels landed in addition to the yellowtail. The SAP allowed almost 1500 more DAS to be used than would have otherwise been available to the groundfish industry. Given the uncertainty inherent in fisheries management, this latter circumstance may be considered a benefit of the SAP since it insures that catch history has been documented for those 1,485 DAS, a potential benefit to the participants. Furthermore, because the vessels were not charged a DAS for transit time to the SAP, 1,995 days were actually used in the summer of 2004.<sup>140</sup>

One could say that it was "a series of unfortunate events" that led to the perception among fishing industry participants of a failure to generate the benefits that some believe could/should have developed from the yellowtail SAP in 2004: More than discrete events, certain pervasive social conditions contributed, including institutional obstacles, communication failure; distrust; and lack of industry unity.

### Institutional obstacles:

- NMFS did not slow fishing (by lower trip limits, fewer trips, etc.) by using the targets the Council had set.
- NMFS has as one of its objectives the management of living marine resources for optimum use. However, the Magnuson-Stevens Act places restrictions on the agency's ability to make decisions based on economic allocations.

### Communication failures:

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<sup>138</sup> See The Community Panels Project reports for additional information about the potential impacts of regulatory change on communities.

<sup>139</sup> [http://www.nefmc.org/nemulti/frame/fw42/appendix\\_II.pdf](http://www.nefmc.org/nemulti/frame/fw42/appendix_II.pdf)

<sup>140</sup> [http://www.nefmc.org/nemulti/frame/fw42/appendix\\_II.pdf](http://www.nefmc.org/nemulti/frame/fw42/appendix_II.pdf)

- The total US TAC was lower than originally anticipated by fishing industry participants. A newer, more pessimistic assessment was used by the TMGC than the one used in Amendment 13.<sup>141</sup> NMFS notified every permit holder of the TAC in a letter dated April 26, 2004, but evidently the significance of the change was lost on many of the fishermen.
- “B” days were a new concept and relatively few fishermen (or managers) understood how they could or would function.
- Industry misreading of supporting documentation. Some believed the TAC for yellowtail was 7,900 mt, not realizing that 1,900 mt were allocated to Canada.

#### Distrust of and uncertainty about management practice

Fishermen believed that unused “B” days would be lost in the future. The complexity of regulations (with variants depending on gear, vessel size, location of fishing grounds, etc.) and their frequent change makes it extremely difficult for fishermen to keep track of requirements. Furthermore, these same constraints apply to NMFS employees who therefore find it difficult to respond to fishermen’s questions consistently and correctly. Misinterpretations are paid for by the fishing industry and distrust is generalized.

#### Lack of industry unity

- Some fishermen and their representatives were well aware of the potential for the TAC to be reached earlier than expected but this information was apparently not shared freely.
- The independent decision-making of fishing vessel owners and captains, without reference to what might improve benefits for all, is documented in fishing industry research.

This report emphasizes the impression of many fishing industry members that the Yellowtail SAP unnecessarily sparked a derby fishery resulting in landings that were too high, in too short a time period, resulting in lower prices and a waste of quota. Because limited access to groundfish relies in part on a proven catch history, the New Bedford-based industry was adamant that they had to protect their future by creating a history of using the new SAP. A review of the revenues and landings of fish other than yellowtail

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<sup>141</sup> It is not clear why the change in the stock assessment was not clarified in a Council briefing prior to the completion of Amendment 13 (Nies, personal communication).

suggest that the SAP did have some positive benefits. Had access been better controlled and trip limits lower, either by industry agreement or by NMFS using their designated power, the benefits may have been much greater and acknowledged by industry.

### *Epilogue*

The Yellowtail SAP was established on the basis of assessments that indicated that yellowtail stocks were healthy. The situation changed dramatically after 2004, with somewhat contested conclusions that yellowtail flounder stocks are overfished. Measures to further restrict the yellowtail fishery, along with specific stocks of cod, winter flounder and hake, have been proposed. The 2005 Groundfish Assessment Review Meeting (GARM) of August 2005 identified Georges Bank yellowtail, Southern New England yellowtail and Cape Cod yellowtail as overfished with overfishing occurring. The GARM determined that Georges Bank yellowtail had been overfished for some time, contrasting sharply with the earlier TRAC reports.<sup>142</sup>

According to GARM II, fishing mortality in 2004 exceeded Amendment 13 targets for eight stocks. Those stocks are Georges Bank (GB) cod, Gulf of Maine (GOM) cod, GB yellowtail flounder, Cape Cod/Gulf of Maine (CC/GOM) yellowtail flounder, Southern New England/Massachusetts (SNE/MA) yellowtail flounder GB winter flounder, SNE/MA winter flounder, and white hake. However, because GARM II's estimates were assessed for a calendar year and Amendment 13 was implemented in May 1, 2004, the GARM estimates did not reflect the impacts of Amendment 13. Revising the GARM estimates, the Plan Development Team of the Council found that "mortality for GB cod and GB yellowtail flounder (base case model, see section 5.1.2.1) is at or below the Amendment 13 target in CY 2005."<sup>143</sup>

The TMGC's guidance document for 2005 concluded that "the most appropriate combined Canada/USA TAC on yellowtail for 2005 fishing year is 6,000 mt." Combining historical catch with information on resource distribution based on trawl surveys, entitles USA to 71% and Canada to 29%, resulting in a national quota of 4,260 mt for the USA and 1,740 mt for Canada.<sup>144</sup>

On February 2, 2006 the Council approved Framework Adjustment 42 to the Northeast Multispecies Fishery Management Plan to address overfishing of the three stocks of yellowtail flounder, Gulf of Maine cod and "to a lesser extent," two stocks of winter flounder and white hake. The measure reduces allocated days by eight percent and counts days at sea at a rate of two to one in the inshore areas of the Gulf of Maine and an

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<sup>142</sup> The assessments of yellowtail have a history of uncertainty. A paper presented at the American Fisheries Society Annual Meeting in 2005 noted "the assessments of all three stocks [Cape Cod, Southern New England and Georges Bank] tend to overestimate stock size and underestimate mortality leading to considerable uncertainty in catch forecasts."

<sup>143</sup> Draft Multispecies Framework 42 And Monkfish Framework 3-- Measures and Summary of Impacts (February 1, 2006) [http://www.nefmc.org/nemulti/fw42measures\\_feb06.pdf](http://www.nefmc.org/nemulti/fw42measures_feb06.pdf)

<sup>144</sup> Transboundary Management Guidance Committee Guidance Document 2004/01 (September 2004)

area off Southern New England. Some trip limits were also adjusted. Inshore fishermen from Gloucester, Scituate, Provincetown and New Hampshire ports are expected to be substantially affected.<sup>145</sup>

QuickTime™ and a  
TIFF (Uncompressed) decompressor  
are needed to see this picture.

#### Whaling City Auction, Yellowtail Flounder

<b>2000-01</b>	<b>Large-lbs</b>	<b>price</b>	<b>Small-lbs</b>	<b>price</b>
May	52,310	\$1.39	32,590	\$0.93
	78,810	\$0.80	72,065	\$0.35
	101,645	\$1.04	49,459	\$0.85
	71,635	\$0.89	43,196	\$0.80
June	84,918	\$1.02	50,673	\$0.79
	70,655	\$1.07	40,690	\$0.85
	45,845	\$1.09	36,875	\$0.68
	44,845	\$1.19	35,823	\$0.51
	33,340	\$1.09	20,183	\$0.88
July	25,135	\$1.56	28,240	\$1.23
	27,775	\$1.30	29,649	\$0.85
	19,375	\$0.81	13,094	\$0.61
	31,645	\$0.86	46,755	\$0.56

<sup>145</sup> “New Groundfish Rules to Target Stock of Concern,” Press release by New England Fishery Management Council, February 3, 2006.

Appendix 2. In Hindsight: Yellowtail Flounder 2004

August	7,570	\$0.78	11,609	\$0.42
	12,745	\$1.11	9,288	\$0.78
	14,655	\$1.58	18,489	\$1.08
	28,065	\$0.82	24,005	\$0.53
	21,802	\$0.61	30,335	\$0.40
September	20,645	\$1.43	16,426	\$1.23
	42,795	\$1.04	50,075	\$0.75
	19,715	\$0.94	22,912	\$0.63
	27,950	\$0.94	15,810	\$0.72
October	7,245	\$1.00	7,385	\$0.90
	19,940	\$0.81	18,530	\$0.67
	21,470	\$1.06	15,915	\$0.71
	19,705	\$1.26	15,910	\$0.99
November	26,925	\$1.22	25,545	\$0.87
	67,475	\$1.14	60,677	\$0.93
	183,670	\$0.56	114,050	\$0.48
	51,740	\$0.98	49,630	\$0.89
	205,800	\$0.76	54,530	\$0.72
December	209,985	\$0.83	153,082	\$0.52
	165,450	\$0.93	78,500	\$0.50
	197,640	\$1.49	136,312	\$1.17
	52,830	\$1.82	48,895	\$1.30
January	61,890	\$1.66	64,568	\$1.25
	223,265	\$0.76	17,330	\$0.44
	193,730	\$0.92	42,835	\$0.85
	98,770	\$1.18	20,805	\$1.10
	131,560	\$0.95	28,055	\$0.87
February	38,250	\$1.81	15,495	\$1.68
	81,690	\$1.89	30,975	\$1.61
	126,265	\$1.41	31,500	\$1.39
March	128,585	\$1.56	42,100	\$1.38
	96,290	\$1.21	43,150	\$1.02
	72,910	\$1.66	20,890	\$1.49
	134,470	\$1.46	48,235	\$1.27
	71,740	\$1.25	22,350	\$1.06
April	102,410	\$1.23	31,540	\$1.01
	83,390	\$1.50	27,262	\$1.42
	102,590	\$1.33	29,245	\$1.29
	55,890	\$1.31	22,065	\$1.23

The median (mean) price for large yellowtail was \$1.10 and \$.87 for smalls. Highest for large was \$1.89 in February; \$1.68 for smalls also in February. Lowest for large was \$.56 in November; \$.35 for smalls in May.

