



New England Fishery Management Council

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John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

MEMORANDUM

DATE: January 15, 2021
TO: Groundfish Committee
FROM: Groundfish Plan Development Team
SUBJECT: **Follow-up on universal sector exemption for redfish**

The Groundfish Plan Development Team (PDT) met via webinar on Jan. 7, 2020, to continue discussing the development of an alternative for a universal sector exemption for redfish, to be included in Framework Adjustment 61 (FW61) as Action 4.

Overview

At their December 2, 2020 meeting, the Council recommended the PDT continue to work with Mr. Hank Soule and Mr. Dave Leveille to develop the redfish universal sector exemption and address questions raised by the PDT. The Council also clarified that the universal exemption is for redfish only, and to not include pollock and haddock, as a previous motion had described.

The PDT further discussed the questions and considerations raised (see PDT memo dated November 25, 2020¹) and developed recommendations for revisions/additions to the draft alternative to address these questions. The memo also incorporates additional feedback received from Mr. Soule and Mr. Leveille addressing PDT questions about the industry proposal (see Attachment #1).

PDT Follow Up on Redfish Universal Exemption Alternative: Concerns and Potential Solutions

In developing the draft alternative based on the industry proposal, the PDT had identified several questions and considerations regarding a universal sector exemption for redfish. A number of these questions are related to administrative aspects of a universal exemption, specifically, regarding the performance standards and accountability measures for the thresholds. The PDT

¹ Available at: <https://s3.amazonaws.com/nefmc.org/3d_201125-GF-PDT-memo-to-GF-CMTE-re-FW61-universal-sector-exemption_redfish_201125_123537.pdf>

further discussed these questions and considerations, and the PDT offers potential solutions for the Council to consider.

Issue #1: Unclear monitoring threshold justification

Concern: It is important to describe the intent of the monthly and annual thresholds and the associated performance standards in order to analyze the potential benefits and challenges associated with each threshold at the sector level.

Discussion: Thresholds have significant trade-offs for allowing flexibility while minimizing potential negative biological impacts. Industry has stated an interest in allowing as much flexibility as possible, but also in ensuring that vessels are using the proposed universal exemption to target redfish. Maximizing flexibility, especially for less experienced exemption users, requires reasonable thresholds that account for the possibility of some catch of non-redfish stocks; however, setting thresholds too low creates opportunities for non-redfish targeting. If the threshold is set too low, this may create a significant buffer that would allow targeting of other stocks using 5.5-inch mesh under the exemption. If a sector had successfully targeted redfish and caught greater than 50%, sector vessels could then target other stocks and balance that catch with redfish to meet the 50% threshold. A universal exemption with performance standards for the thresholds would have strict monthly and annual requirements for sectors, and would reduce GARFO's discretion in enforcement actions, such as revocation of a sector's use of the exemption. In the past, GARFO has addressed a sector's inability to meet the monthly threshold via direct communication and has not withdrawn approval for any sector, even when thresholds were not met in multiple months or consecutive months in a year.

The multiple month performance standards for the monthly threshold (sectors must not fail to meet the threshold four or more months in a fishing year or three consecutive months) proposed would decrease the importance of the current 50% threshold in any given month, since under the annual exemption GARFO has worked to increase compliance with sectors regardless of the number of months out of compliance. Under the industry proposal, only years where an individual sector did not meet the threshold three consecutive or four cumulative months out of the year would result in a corrective action (probation for the following year). However, it should be noted that while GARFO has had the authority to revoke use of the exemption, it has not done so for any sector at this time. PDT analysis shows that two sectors, one in 2018 and one in 2019, would have been put on probation for the following year under the industry proposal and that meeting the 50% monthly threshold appears to be more difficult for sectors to meet September through December (see Figure 3 in PDT Memo on FW61 draft environmental impacts for redfish universal sector exemption²).

² See: < <https://www.nefmc.org/calendar/jan-26-2021-groundfish-committee-webinar> >

The annual threshold, while new and slightly higher than the current monthly threshold, at 55%, is lower than what sectors have achieved, on average, across the last five fishing years (75%) and would likely not encourage a change in behavior, however, it would ensure that sectors land at least 55% redfish, regardless of how many months they participate under the exemption. **PDT analysis shows that the annual threshold could be up to 10% higher with minimal likely economic impact, since no sector has landed less than 62% redfish over the last 5 years, and across all sectors the average proportion is 74% redfish.**

The Committee may wish to discuss what biological or management risk it is trying to minimize with catch thresholds. The PDT has worked with Mr. Soule and Mr. Leveille to make sure the intent of the proposed thresholds has been clearly defined. The intent of the proposed annual and monthly thresholds is to ensure the exemption is being used to target redfish, minimize impacts on other groundfish stocks, and balance these goals with the flexibility to encourage participation in the exemption. The intent of setting an annual threshold that is slightly higher than the monthly threshold appears to be to ensure that on aggregate sectors are targeting redfish with the exemption, while allowing for seasonal variation in redfish fishery activity as well as flexibility for new or less experienced entrants to the exemption. The monthly threshold performance standard in which a sector must not fail to meet the threshold for four or more months in a fishing year, or for three consecutive months in a fishing year, is intended to change fishing behavior if a sector is consistently missing the threshold. The two thresholds are intended to work in tandem to ensure additional monitoring of exemption catch, and provide industry measurable performance standards and specific ramifications for not achieving them. They are also intended to account for seasonal fishery variations, and to not exclude participation by less experienced operators and sectors.

Potential Solutions:

- **More clearly articulate intent of thresholds to support review of the proposal;**
- **Consider more stringent catch thresholds to drive desired behavior;**
- **Adjust geographic area and provisions so monitoring thresholds are less critical or unnecessary to achieve the goals of the exemption;**
- **Consider other approaches to accomplish the same goals.**

Other Information: The original catch threshold for the exemption was 80% redfish catch based on the REDNET findings (using 4.5-inch mesh), but it was reduced to 50% in the annual exemption in 2015 to encourage vessels to try redfish fishing. Additionally, the 50% threshold was based on the REDNET findings, which showed a reduction in proportion of redfish catch when fishing with 5.5-inch mesh compared to the 4.5-inch mesh previously allowed under the exemption. When approving the 50% threshold in 2015, GARFO expressed concern that 50% could be low enough to potentially allow targeting of non-redfish stocks under the exemption. GARFO proposed to address these concerns in part by implementing reporting requirements and monitoring exemption activity closely. GARFO's review, which was not reviewed by the PDT, showed that with the current 50% threshold a number of vessels regularly had trips below the

50% threshold, but cumulative monthly sector performance was often above the threshold. In some cases, vessels that performed well provided additional buffer for those who didn't perform as well, which allowed the sector overall to meet the 50% threshold. But sometimes, vessels that performed well in some months had decreased performance in subsequent months. In some instances, there are months with very little exemption activity in which the few vessels in a sector that fished failed to meet the threshold. However, it is important to note the thresholds have been applied at the sector level in the past, and the proposed thresholds are also applied at the sector level.

Industry Feedback: The goals of the thresholds are to have better, more defined performance standards, accountability, and transparency. The proposal is more restrictive than the current threshold (there is no annual threshold currently). The bar was deliberately set on the lower end of what is achievable, to encourage access for new entrants. Practically speaking, participation in the exemption is somewhat limited by vessel size and horsepower needs, and we did not want to create a significant additional barrier to entry. Proposing new and more stringent thresholds is intended to balance the flexibility of expanding the exemption area. As in the existing exemption, sectors are expected to take action to restore compliance with thresholds. The proposed area is far smaller than the previous exemption area, balancing redfish selectivity and fleet flexibility. Its westerly boundary restores some access for smaller vessels, while maintaining the ability of sectors to restrict access to expanded areas if a sector does have issues with meeting the thresholds. Since the exemption remains assigned to the sector, not to vessels, the sectors are able to take corrective (and swift) action.

The purpose of defining the number of allowable non-compliant months is to introduce specificity and transparency to the exemption. In the first few years of the exemption, it likely made sense to provide flexibility for GARFO to determine when it might rescind a sector's use of the exemption. But with that flexibility comes uncertainty. With five years' experience for both the industry and GARFO in administering the exemption, sectors will be able to work with members' specific performance metrics, and GARFO will have clear guidance on the appropriate response in the event a sector is not meeting its targets. The industry proposal increases accountability and reduces uncertainty.

Redfish (like other stocks) periodically scatter and become elusive for weeks on end. Experience shows that even veteran operators can have difficulty reacquiring schools of fish, often requiring test hauls on consecutive trips that fail to meet the 50% threshold. A sector's exempted catch performance can also degrade when veteran operators are out of the fishery (e.g., the boat is in shipyard for maintenance/upgrades), leaving less experienced operators the duty of meeting the 50% threshold. There is a clear correlation between the increased experience level of the operator and their ability to maximize redfish catch.

The three-consecutive-month standard is intended to allow for factors such as these, but also to motivate sectors take action to ensure it is not breached.

The four-month-overall standard is intended to accommodate for factors as described above, and to allow new exemption entrants some leeway as they learn the fishery. It is not unusual for a sector to have just one vessel participating in the exemption at a time, and it is not industry's desire to set a performance standard so high that a new entrant would face a substantial risk of a revocation/probation action in its first year. This standard would allow a sector to be non-compliant for three months of the year (a 75% compliance rate) without facing suspension of its exemption privilege.

PDT Recommendation: The PDT recommends adding language to the alternative that more clearly states the goals of the monthly and annual thresholds (described above). The Committee may wish to weigh in on the goals of the thresholds as well. Additionally, the PDT recommends the Committee consider an additional option for an annual landings threshold of 65%, based on recent analysis conducted by the PDT (see Figure 3 in PDT memo on draft impacts analysis of redfish universal exemption) that shows sectors have consistently exceeded the annual threshold of 55%, and the annual threshold may be up to 10% higher with minimal economic impact.

Issue #2: Unclear guidance on implementation of thresholds

Concern: It is not entirely clear to the PDT which entity (GARFO or sectors) will be responsible for monitoring and enforcing thresholds under universal exemption under the industry proposal.

Discussion: Monitoring thresholds is a significant responsibility. **Will this responsibility be on the agency or sectors?** What is the mechanism for NMFS enforcement of thresholds? Creating a universal redfish exemption with performance thresholds may reduce flexibility for sectors because NMFS will be required to revoke a sector's ability to use the exemption if those thresholds are not met.

Potential Solutions:

- **Refine alternative to state which entity is responsible for monitoring and enforcing thresholds and responsibilities of each entity; and**
- **Clarify the process for monitoring and enforcing thresholds.**

Other Information: There is often a delay of several weeks between the end of a month and the availability of complete catch data to evaluate whether a threshold has been met. Sectors may be able to identify and report failures to meet thresholds more quickly, but for enforcement of a universal exemption in regulations, NMFS must have a role in monitoring and enforcing. It is unclear how annual thresholds would be implemented because complete fishing year catch will not be certain until well after the sector rulemaking for the next fishing year. Even preliminary year-end catch will not be available until months after a proposed rule.

Industry Feedback: A 2-3 week lag in determining whether a sector has fallen out of compliance with the thresholds is more than adequate for timely monitoring and enforcement. The PDT and GARFO alike have concerns over increasing sectors' reporting requirements, but if existing requirements are maintained (report if thresholds are breached, else submit null trip issue reports weekly), program oversight will be adequate for resource protection and no additional reporting burden will be introduced. If GARFO remains responsible for verifying compliance, there are no new sector reporting requirements.

PDT Recommendation: The PDT recommends that GARFO be tasked with monitoring and enforcement of any thresholds, and the PDT recommends this be clarified in the alternative. Sectors are responsible for compliance with sector provisions including those under this exemption, and GARFO is responsible for monitoring to ensure compliance with regulations.

Issue #3: Lack of criteria or process for reviewing universal exemption

Concern: The industry proposal for a universal redfish exemption does not describe whether there will be opportunities to review the exemption in the future.

Discussion: Changes in annual catch limits (ACLs) may affect how much fishing effort occurs under the redfish exemption, which may have implications for selectivity, stock assessments, and ACL specifications for other stocks caught on these trips, though sectors are bound by the redfish sub-ACL, whether it increases or decreases. If the universal exemption does not include any criteria or process for reviewing the exemption, opportunities to react to changes in stock condition could be limited. While the Council always has the opportunity to modify provisions of the FMP, doing so would require action in a Framework or Amendment. **If it is the Council's intention to review or modify the exemption under changing circumstances, it would help to have clear provisions or triggers for review.**

Potential Solutions: In order to maintain flexibility to review the exemption in the future, the Committee could recommend that the Council include a provision that would allow the exemption to be reviewed periodically or when certain triggers are met (e.g., a certain percent change in a stock's ACL, or in years when the redfish stock is assessed).

Industry Feedback: It is likely the exemption's new performance standards would inherently provide a measure of resource protection, in that (a) the fish would be harder to find, at which point (b) thresholds would fail to be met, resulting in (c) exemption participation being reduced or eliminated. In any event, since the Council sets OFLs and ABCs based on assessment reports

and SSC recommendations, the Council has the authority to modify the redfish universal exemption as desired.

PDT Recommendation: The PDT recommends including in the alternative a review process, to occur in years when the redfish stock is assessed. Establishing a review process is important to help ensure the Council regularly evaluates whether the exemption is working as intended, and tying the review to the assessment cycle will ensure there is an opportunity to respond to any changes in the perception of the redfish stock. The review process could include evaluation of the monthly and annual thresholds performance, vessel-level performance, bycatch of other groundfish stocks, any observed changes in selectivity, but is not limited to these criteria.

Additional Questions and Issues of Concern to the PDT

The PDT summarizes additional questions and issues of concerns, many of which will be evaluated in the impacts analysis, but the PDT did not provide any specific recommendations.

- **Enforcement concerns around seasonal areas**
 - The PDT discussed that the exemption area contains two small geographic areas that close seasonally each year, and that seasonal areas can complicate use of the exemption, monitoring, and enforcement. Codifying these areas also adds regulatory complexity. Continuing to increase the number of small seasonal closures further limits the ability to focus enforcement on any one area. GARFO has reported that it documented multiple incursions into the single seasonal area throughout the 2015-2019 time period when the seasonal area was closed, largely due to operator confusion, though the PDT has not reviewed this information. Increasing the number of seasonal areas, including seasonal areas that are small in size, and having different seasons for each area, increases the potential for confusion, may hamper compliance, and would increase the monitoring and outreach burden to enforcement.
 - The PDT can qualitatively describe enforceability concerns and impacts of seasonal areas, to evaluate the management risk of each seasonal closure.
 - Industry Feedback: This is no different than enforcing the many other seasonal restrictions in fisheries today.
- **Low expected redfish catch in seasonal areas**
 - The GARFO data review found that the seasonal area in block 131 (west of 2020 Redfish Area) had almost no observed hauls with majority (50% or greater) redfish catch. Additionally, the GARFO review found the seasonal area proposed for stat area 464 had very high catches of pollock relative to redfish catch. PDT

analysis to date supports these conclusions, finding relatively high pollock catch even excluding the proposed closed dates for stat area 464, and proportionally less redfish catch in block 131 compared to other areas (see Figure 1 in PDT Memo on FW61 draft environmental impacts for redfish universal sector exemption).

- The GARFO analyses, which were not reviewed by the PDT, and subsequent PDT analyses suggest these areas have lower proportional redfish catch compared to other areas. The PDT can qualitatively describe impacts of seasonal areas, to evaluate what biological or management risk each seasonal closure minimizes, and whether additional action is needed to address those risks.
- Industry Feedback: (While the PDT did not raise this particular issue for the industry, some of the input industry provided can be applied to this issue.) The PDT inquires if the area should be smaller and more focused on where we are confident redfish catch will be “cleanest”? It correctly notes some of the areas included in the industry proposed exemption area that are restored from the previous exemption area (FY 2015 – FY 2019) are expected to be less efficient for redfish catch and may have issues with meeting the thresholds. We respond that this is the very point of proposing new and more stringent thresholds. As in the existing exemption, sectors are expected to take action to restore compliance with thresholds. The proposed area is far smaller than the previous exemption area, balancing redfish selectivity and fleet flexibility. Its westerly boundary restores some access for smaller vessels, while maintaining the ability of sectors to restrict access to expanded areas if a sector does have issues with meeting the thresholds. Since the exemption remains assigned to the sector, not to vessels, the sectors are able to take corrective (and swift) action.
- **Georges Bank and Gulf of Maine area overlap in proposed area**
 - The PDT has had some discussion about the fact that the majority of the proposed Redfish Exemption Area falls within the Gulf of Maine (GOM) broad stock area (BSA), but also extends into the inshore and offshore Georges Bank (GB) BSAs, raising the possibility of BSA reporting issues. The GARFO data review found higher observed and vessel-reported catches of cod in the portions of the former exemption area that fell in the GB BSAs compared to the GOM BSA. Haddock catch in the GB BSAs was also significant, and while redfish were caught in the GB BSA's, redfish catch was generally less consistent there than was found in portions of the GOM. The data review conducted by GARFO as part of the 2020 sector rulemaking process found that vessels reported substantially higher cod catch proportions on portions of trips that took place in the GB stock area. GB cod is overfished so although cod is usually a small proportion of overall catch, harvest of cod in the GB stock area with 5.5-inch mesh may be reason for concern. Further, ensuring that harvest, especially with smaller mesh, is

accurately attributed to the appropriate stock area is absolutely critical to ensure accurate stock assessments and appropriate management decisions. Redfish is a unit stock, but other species have distinct stocks in the GOM BSA and GB BSAs.

- The PDT acknowledges issues with BSA reporting that have occurred with the exemption in the past, and that have the potential to continue to be an issue. However, the PDT also notes that this is a more general issue for the fishery beyond this exemption, although this exemption allows mesh below the minimum size which may make the impacts of stock area misreporting even more critical, impacting not just catch accounting but selectivity as well. Further, the PDT has noted the Council's preferred alternative in Amendment 23 of a target coverage level of 100 percent, which once implemented is expected to alleviate BSA reporting issues. Although, 100 percent coverage is not expected in FY 2021 given timing of implementation of Amendment 23, and beyond that target coverage of 100 percent is contingent on additional factors including Federal funding for reimbursement of industry monitoring costs. The PDT can discuss these concerns in impacts analysis.
- Industry Feedback: The PDT contemplates enforceability of stock area reporting, but this is no different than what exists in the prior redfish exemption programs, and the groundfishery in general.
- **Overlap with universal exemption allowing 6-inch mesh codends on GB when using selective gear**
 - The PDT has discussed how the GB portion of the Redfish Exemption Area overlaps with another universal sector exemption that allows sector vessels fishing on GB to fish with 6.0-inch codends when using haddock separator or Ruhle trawls, and how this overlap could allow some vessels to target other groundfish (non-redfish) stocks in the GB portion of the Redfish Exemption Area using the smaller mesh permitted by the redfish exemption, while still meeting the sector's 50% monthly threshold, rather than using selective gear on GB to target healthy stocks as intended by the Council. While fishing under the exemption, some vessels could attempt to balance redfish catch with non-redfish catch in such a way to still meet the redfish catch threshold described in the industry proposal, risking that sectors are targeting non-redfish stocks under the exemption. The universal exemption allowing sector vessels fishing on GB to fish with 6.0-inch codends when using selective gear was implemented to facilitate more efficient harvest of GB haddock by incentivizing the use of selective gears that allow vessels to target haddock with reduced catch/bycatch of cod and flounders. Having the option to fish 5.5 inch codends in this overlap area under the proposed redfish exemption, rather than 6-inch codends with selective gear, would disincentivize the use of beneficial selective gears and undermine the existing GB

universal exemption. The use of selective gear is expected to have some level of conservation benefits for certain stocks, so undermining incentives to use it may have conservation impacts.

- At this time there is no data available to analyze biological impacts of this overlap. The GARFO analysis found that there was substantial haddock catch in the overlapping area and that although still relatively small overall there was higher cod catch in this area than the rest of the exemption area. PDT analysis to date supports those conclusions but does not make any comparisons with haddock separator trawl and the related exemption. The PDT can qualitatively describe impacts.
- Industry Feedback: The PDT appears to be concerned about targeting of GB haddock with redfish exemption gear. But with a combination of more stringent performance thresholds and a sector's ability to manage individual vessel behavior, deliberate targeting of any other stock with redfish exempted gear can be monitored, discouraged, and managed.
- **Is there potential for vessels to avoid threshold penalties by changing sectors?**
 - The PDT noted that vessels may be able to change sectors to avoid incurring the proposed penalties associated with non-compliance. The PDT also discussed that the impacts of vessels moving into sectors with or without compliance issues should be analyzed. The PDT could qualitatively describe this consideration and concerns in impacts analysis.
 - Industry Feedback: Sectors cooperatively pursue a common goal of maintaining or expanding sustainable fishing opportunities for their membership. Managers communicate openly, sectors have application and approval processes for potential new entrants, and as noted above, sectors are able to manage at the vessel level.

- **How is a universal sector exemption with performance standards/thresholds implemented?**

The PDT discussed whether including performance standards in a universal exemption complicates the exemption, and what authority GARFO has to prohibit a sector from fishing under a universal exemption if those performance standards are not met. Currently, no other universal sector exemptions contain performance standards or provisions for prohibiting participation by a sector. It may be possible to design an area where fishing is expected to be clean enough that thresholds are unnecessary, or alternatively to reduce the need for a precisely drawn area if thresholds are raised sufficiently high to ensure clean redfish harvest. With thresholds as a component to the exemption, GARFO confirmed

that if tasked with monitoring and enforcing thresholds as the PDT recommends above, it would have the authority to prevent a sector from fishing under a universal exemption if those performance standards are not met.

- Industry Feedback: Inclusion as a universal exemption, rather than an annual exemption, will increase stability and certainty for potential participants, and improve Council control and oversight of the fishery. The phrase ‘universal exemption’ first appears in Amendment 16 (A16). A16 does not explain the purpose, goals, and design of universal exemptions. However, as a Council creation a universal exemption can be anything the Council wants it to be, and we see no reason the redfish exemption cannot be classified as one.
- **Should modifications be made to the declaration process, or to the penalties associated with misdeclaring?**
 - The PDT discussed whether consideration should be given to recommending implementation of additional penalties for vessels that fail to declare properly under the exemption, or whether there should be changes made to the declaration requirements associated with the exemption. In the past, issues with improper or missing declarations have made it difficult to identify trips that were taken under the redfish exemption, which hindered analysis of exemption activity. The PDT could qualitatively describe these issues/impacts in impacts analysis.
 - Industry Feedback: We do not believe the occasional incorrect declaration merits sanction (nor does the NMFS, which usually corrects those on the back end). Consistent declaration failures are already subject to penalty in sector operations plans.
- **Should exemption trips be exclusively exemption fishing, or will split trips be allowed?**
 - The PDT discussed whether the flexibility to fish part of a trip using standard 6.5-inch mesh before switching into using the universal redfish exemption should be codified into regulation. Allowing vessels to switch into the exemption mid-trip may create enforcement concerns, and may not be appropriate for a universal exemption. Additionally, allowing vessels to switch into the exemption mid-trip may pose challenges for compliance monitoring, as split trips make trip analysis more challenging. Split trips may also increase the uncertainty for determining potential changes in selectivity due to the exemption and may have implications for assessments. The PDT could qualitatively describe these issues/impacts in impacts analysis.

- Industry Feedback: The PDT notes ‘split trip’ concerns, which are fundamentally just groundfish subtrips, but this is no different than what exists in the prior redfish exemption programs.
- **What is the process for placing a sector on probationary status or revoking use of exemption?**
 - The PDT questioned whether placing a sector on probationary status or revoking a sector’s permission to fish under the proposed universal redfish exemption that is in the regulations, as opposed to enforcement of annual sector exemption provisions, would require rulemaking or other notice under the Administrative Procedure Act (APA). The PDT discussed the possibility of establishing objective criteria to facilitate action for probationary status or revoking a sector’s use of a universal exemption, whether or not APA process is ultimately necessary. Changes to sector operations plans or other approach may be part of the process for GARFO.
- **Can sectors constrain their members’ use of a universal exemption?**
 - The PDT discussed whether sectors have the ability to constrain their members’ use of a universal section, and whether all sectors will want their members to automatically have the option to fish under the exemption. The PDT also discussed the implications of required responses to thresholds that are in regulation, as opposed to GARFO using its discretion to respond to compliance issues. To date, GARFO has never withdrawn approval for any sector to use the redfish exemption, and has worked with sectors to address compliance issues when they have arisen. This appears to be something that sectors would address through their contracts.
 - Industry Feedback: Amendment 16 assigns universal exemptions to sectors, and not to individual vessels. As such, a sector is not required to allow all vessels – or even any vessel - access to an exemption, universal or otherwise.
- **Does approval for a universal exemption imply that higher standards need to be met for approval?**
 - The PDT discussed whether the annual redfish landings threshold should be higher than 55 percent, or whether the universal exemption area should be smaller and more focused on locations where redfish density is higher and catch of redfish is expected to be more efficient. The PDT would like feedback from the Committee and Council regarding whether there is or should be a higher standard for universal exemption than those approvable under an annual sector exemption process. Based on recent analysis, the PDT recommends consideration on an additional option for an annual landings threshold of 65 percent (see Item #1 above).

- Industry Feedback: Existing universal exemptions appear to have no higher standards than non-universal exemptions like the redfish exemption program, and existing universal exemptions appear to have no particular performance standards at all.

1 **PDT Redfish Exemption Q&A December 2020**

2

3 *Submitted by groundfish sector managers David Leveille and Hank Soule*
4 *December 17 2020*

5

6 In November 2020, the Groundfish PDT raised several questions concerning an industry-
7 designed redfish universal exemption proposal. We binned our answers into three categories:

- 8 • The redfish exemption as a universal exemption (UE)
- 9 • Standards of the proposed redfish UE
- 10 • Enforceability and administrative issues

11

12 **The redfish exemption as a universal exemption (UE)**

13 The purpose and goal of this industry-designed exemption is to achieve optimum yield of the
14 redfish resource. Objectives include:

- 15 1. Allow use of an efficient mesh size codend to facilitate harvest of redfish (which is
16 currently underharvested).
- 17 2. Increase the harvest of redfish while reducing to the extent practicable bycatch of other
18 groundfish stocks.
- 19 3. Restore flexibility lost with the 2020 contraction of the redfish exemption area.
- 20 4. Remove areas from the exemption which provide little opportunity to effectively target
21 redfish, or little ability to achieve exemption performance thresholds.

22 Inclusion as a UE, rather than an annual exemption, will increase stability and certainty for
23 potential participants, and improve Council control and oversight of the fishery.

24 The phase ‘universal exemption’ first appears in Amendment 16 (A16). A16 does not explain
25 the purpose, goals, and design of UEs. However, as a Council creation a UE can be anything a
26 Council wants it to be, and we see no reason the redfish exemption cannot be classified as one.

27 The PDT inquires if a sector can limit a member’s ability to use a universal exemption, and if all
28 sectors want their members to have the option to do this kind of fishing automatically. A16
29 assigns UEs to sectors, not to individual vessels. As such, a sector is not required to allow all
30 vessels – or even any vessel - access to an exemption, universal or otherwise.

31 The PDT inquires if approval for a UE implies higher standards need to be met for approval.
32 Existing UEs appear to have no higher standards than non-UEs like the redfish exemption
33 program. The former have no particular performance standards at all.

1 Standards of the proposed redfish UE

2 The PDT asks, “What are the goals and objectives of the thresholds?” and “What is the
3 implication of required responses to thresholds and accountability as opposed to GARFO
4 discretion?” The answer is better, more defined performance standards, accountability, and
5 transparency.

6 The PDT inquires if the proposed annual redfish catch threshold should be higher than 55%. We
7 respond that the proposal is more restrictive than the current threshold (there is none). We
8 deliberately set this bar on the lower end of what is achievable, to encourage access for new
9 entrants. Practically speaking, participation in the exemption is somewhat limited by vessel size
10 and horsepower needs. We did not want to create a significant additional barrier to entry.

11 The PDT inquires if the area should be smaller and more focused on where we are confident
12 redfish catch will be “cleanest”? It correctly notes some of the areas included in the industry
13 proposed exemption area that are restored from the previous exemption area (FY 2015 – FY
14 2019) are expected to be less efficient for redfish catch and may have issues with meeting the
15 thresholds.

16 We respond that this is the very point of proposing new and more stringent thresholds. As in
17 the existing exemption, sectors are expected to take action to restore compliance with
18 thresholds. The proposed area is far smaller than the previous exemption area, balancing
19 redfish selectivity and fleet flexibility. Its westerly boundary restores some access for smaller
20 vessels, while maintaining the ability of sectors to restrict access to expanded areas if a sector
21 does have issues with meeting the thresholds. Since the exemption remains assigned to the
22 sector, not to vessels, the sectors are able to take corrective (and swift) action.

23 If parts of the Georges Bank exemption areas are restored, the PDT is uncertain of the impacts
24 of the overlap between the GB haddock separator universal exemption and this exemption.
25 The PDT appears to be concerned about targeting of Georges Bank haddock with redfish
26 exemption gear. But with a combination of more stringent performance thresholds and a
27 sector’s ability to manage individual vessel behavior, deliberate targeting of any other stock
28 with redfish exempted gear can be monitored, discouraged, and managed.

29 Lastly, the PDT notes that redfish is currently not overfished, with overfishing not occurring.
30 However, it is concerned if the stock status changed, a universal exemption not subject to
31 agency review would not allow the exemption to be updated or removed as part of the annual
32 operations rulemaking.

33 It is likely the exemption’s new performance standards would inherently provide a measure of
34 resource protection, in that (a) the fish would be harder to find, at which point (b) thresholds
35 would fail to be met, resulting in (c) exemption participation being reduced or eliminated. In
36 any event, since the Council sets OFLs and ABCs based on assessment reports and SSC
37 recommendations, the Council has the authority to modify the redfish UE as desired.

1 Enforceability and administrative issues

2 The PDT questions the Impact of vessels changing sectors to avoid penalties or moving into
3 sectors with or without issues meeting the thresholds. It notes the performance standards are
4 applied at the sector level, but there could be complications of how to apply this if vessels using
5 the exemption switch sectors.

6 There is little reason for concern. Sectors cooperatively pursue a common goal of maintaining
7 or expanding sustainable fishing opportunities for their membership. Managers communicate
8 openly, sectors have application and approval processes for potential new entrants, and as
9 noted above, sectors are able to manage at the vessel level.

10 The PDT ponders enforceability for seasonal areas within the exemption, but this is no different
11 than enforcing the many other seasonal restrictions in fisheries today. It contemplates
12 enforceability of stock area reporting, but this is no different than what exists in the prior
13 redfish exemption programs, and the groundfishery in general. Ditto 'split trip' concerns, which
14 are fundamentally just groundfish subtrips. Concerns about areas where targeting of non-
15 redfish stocks is possible have been addressed earlier.

16 The PDT asks if there should be any consideration for additional penalties for failing to declare
17 or potentially different requirements. For example, vessels that fail to properly declare prior to
18 departing the dock might be prohibited from using the exemption on that trip, and use of sub-
19 legal mesh on that trip might be subject to penalty. We do not believe the occasional incorrect
20 declaration merits sanction (nor does the NMFS, which usually corrects those on the back end).
21 Consistent declaration failures are already subject to penalty in sector operations plans.

22 The PDT notes GARFO typically has a 2-3 week lag in determining whether a sector has fallen
23 out of compliance with the thresholds, but this is more than adequate for timely monitoring
24 and enforcement. The PDT and GARFO alike have concerns over increasing sectors' reporting
25 requirements, but if existing requirements are maintained (report if thresholds are breached,
26 else submit null trip issue reports weekly), program oversight will be adequate for resource
27 protection and no additional reporting burden will be introduced. If GARFO remains
28 responsible for verifying compliance, there are no new sector reporting requirements.

29 Lastly, the PDT asks what mechanism can GARFO use to tell a sector not to use a universal
30 exemption if it fails to meet the performance threshold, and does GARFO have the authority to
31 do this? We submit that if the Council has the right to create and define the content of a UE, it
32 can create and delegate authority to GARFO to revoke use of that UE.

Rationales for the FW61 Redfish Exemption Monthly and Annual Catch Thresholds

Submitted to the groundfish PDT by sector managers David Leveille and Hank Soule, 1/8/21

Background - Existing Thresholds

Monthly

Each participating sector's monthly cumulative exempted fishing landings must be at least 50% redfish. If this threshold is missed and not achieved in subsequent months, the GARFO retains the authority to rescind a sector's privilege to use the exemption.

Annual

There is no annual landings composition performance standard.

FW61 Proposed Thresholds

Monthly

FW61 proposes to strengthen the monthly performance standard by defining and codifying the number of months a sector is allowed to be out-of-compliance with the 50% threshold (essentially changing the GARFO's mandate from 'may' rescind to 'shall' rescind).

If a sector is out of compliance for:

- any three consecutive months of a fishing year, or
- any four months of a fishing year,

then an exemption revocation/probation action is triggered.

Discussion

The purpose of defining the number of allowable non-compliant months is to introduce specificity and transparency to the exemption. In the first few years of the exemption, it likely made sense to allow the provide flexibility for the GARFO to determine when it might rescind a sector's use of it. But with that flexibility comes uncertainty. With five years' experience for both the industry and GARFO in administering the exemption, sectors will be able to work with members' specific performance metrics, and the GARFO will have clear guidance on the appropriate response in the event a sector is not meeting its targets. The industry proposal increases accountability and reduces uncertainty.

Redfish (like other stocks) periodically scatter and become elusive for weeks on end. Experience shows that even veteran operators can have difficulty reacquiring schools of fish, often requiring test hauls on consecutive trips that fail to meet the 50% threshold.

A sector's exempted catch performance can also degrade when veteran operators are out of the fishery (e.g. the boat is in shipyard for maintenance/upgrades), leaving less experienced operators the duty of meeting the 50% threshold. There is a clear correlation between the increased experience level of the operator and their ability to maximize redfish catch.

The three-consecutive-month standard is intended to allow for factors such as these, but also to motivate sectors take action to ensure it is not breached.

The four-month-overall standard is intended to accommodate for factors as described above, and to allow new exemption entrants some leeway as they learn the fishery. It is not unusual for a sector to have just one vessel participating in the exemption at a time, and it is not industry's desire to set a performance standard so high that a new entrant would face a substantial risk of a revocation/probation action in its first year. This standard would allow a sector to be non-compliant for three months of the year (a 75% compliance rate) without facing suspension of its exemption privilege.

Annual

Logically, one would expect an exemption intended to primarily harvest redfish to have an overall catch composition threshold requirement greater than 50%. At present there is none. Though the monthly performance standard contributes toward this objective, industry proposed this new standard to address the NMFS' apparent concern about possible targeting of other stocks while fishing under the exemption.

Discussion

The 55% figure was selected as higher than the monthly threshold (which considers reasonable variabilities), but not so high as to pose serious risk of a revocation/probation action for new entrants. History shows that experienced operators and sectors should have no difficulty achieving this standard, but industry was again concerned that an overly aggressive value could prove daunting for new entrants.

This figure also corresponds with the REDNET component #3 Codend Selectivity catch composition study, which reported when fishing with 5.5 inch mesh, 57% of its groundfish catch was redfish.

Summary

The two thresholds are intended to work in tandem to place heightened scrutiny on exempted catch, and provide industry measurable performance benchmarks and specific ramifications for not achieving them. They are also intended to account for seasonal fishery variations, and to not exclude participation by less experienced operators and sectors.