

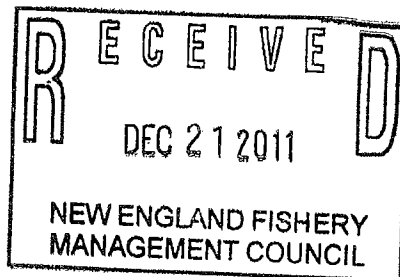
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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276

DEC 19 2011

C.M. "Rip" Cunningham Jr., Chair
New England Fishery Management Council
50 Water Street
Newburyport, Massachusetts 01950



Dear Rip:

I recently received a letter from Mr. Pat Kavanagh, who is concerned that a contract provision within the Northeast Fishery Sectors' operations plans is limiting the movement of annual catch entitlement (ACE) between sectors. My understanding is that all sectors have included a right of first refusal within their operations plans in an attempt to protect the sector and its membership. However, all Northeast Fishery Sector operations plans also include a "right of first offer" which applies to ACE transfers by its members. Essentially, any Northeast Fishery Sector member can lease ACE from another member before this is offered to anyone who is not in a Northeast Fishery Sector.

A sector contract is a private agreement between a fisherman and the sector and the current regulations do not prohibit a sector from establishing a right of first refusal or a right of first offer. For this reason, we have approved these provisions in sector contracts. Fishermen may choose whether or not to join a sector based on many factors, including contract provisions.

Given the potential that this provision may affect the liquidity of the ACE trading market, the New England Fishery Management Council may want to consider this issue in upcoming sector discussions.

Sincerely,

Patricia A. Kurkul
Regional Administrator

Attachment

cc: Council, TN (12/21)



Dec 2, 2011

Ms. Pat Kurkul, Regional Administrator
National Marine Fisheries Service

Dear Ms. Kurkul:

The unencumbered movement of annual catch entitlement (ACE) between groundfish sectors is critical to the ultimate success of catch share management.

I have experienced unreasonable roadblocks to transactions that I have made with individuals enrolled in Northeast Fishery Sectors (NFS) 7 and 8 (both under the same management).

Last year, I entered into a contract with a member of NFS 7 to lease ACE. The sector manager refused to sign off on the lease, and as you know, only sector managers are authorized to submit a request to NMFS for transfer of ACE. In this case, the NFS 7 manager did not offer a first refusal to NFS 7 members. Instead, the manager transferred the ACE in my agreement to NFS 9.

The most egregious event involved a purchase and sale agreement that I made with an individual in NFS 8 to acquire a multispecies permit. The NFS 8 manager, in accordance with the sector's operations plan notified members of their right of first refusal as the member was under contract to sell his permit to someone who is not a member of the NFS 8. The NFS 8 members declined to act on that right of first refusal, and subsequently, the membership of NFS 8 voted to accept my membership in that sector via the sale of the permit.

At this point both the seller and I believed we had met all of the contractual obligations of members of NFS 8. However, shortly thereafter the manager of NFS 8 provided a right of first refusal on my deal to all members of the NFS Network, and NFS 4 acted on the right of first refusal and bought the permit out from under me.

I am writing to ask you to prohibit the Northeast Fishery Sector Network from requiring that members submit a right of first refusal for any deal (lease or sale) by members of the Network. A right of first refusal within one sector should be sufficient to protect the individual sectors, and would allow a more fluid movement of ACE between sectors.

This letter might look familiar to you because I believe I brought this to your attention in July but a recent event prompted me to follow up. A friend of mine from Sector 7 advertised his ACE to the Sustainable Harvest Sector (my sector). An offer was submitted by our manager to his manager, my friend never received that offer but instead got a personal phone call from Carlos Raphael, Sector 9, who leased his ACE. Busting the Raphael/Canastra/Vito cartel would be a wonderful legacy for you and Christmas present for the N.E. fishing industry.

I admire your tenacity in staying in New England through this tumultuous period.

Sincerely,
Pat Kavanagh
K & K Fishing