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Additional Correspondence



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

APR 13 2012



Mr. C.M. "Rip" Cunningham, Jr., Chairman
 New England Fishery Management Council
 50 Water Street, Mill 2
 Newburyport, MA 01950

Dear Rip:

This letter responds to your request for further guidance on revising the rebuilding plan for Gulf of Maine (GOM) cod. This guidance is based on legal advice, which in turn is based on a review of the legislative mandates of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), our National Standard (NS) Guidelines, and relevant case law. While this guidance is constructed with GOM cod in mind, it would also be applicable in any situation where an inadequate rebuilding determination is made or for any stock that has not reached its rebuilding target by the end of its rebuilding period.

Background

Revision of the GOM cod rebuilding plan is necessary because NOAA's National Marine Fisheries Service (NMFS) determined that the Northeast Multispecies Fishery Management Plan was not making adequate progress toward ending overfishing and rebuilding the stock. NMFS notified the Council of this determination, and the requirement to implement a revised rebuilding plan within 2 years under MSA §304(e)(3), in a letter dated January 26, 2012. In addition, the letter notified the Council that it must implement measures, by May 1, 2013, to immediately end overfishing for GOM cod.

The Council requested, pursuant to MSA §304(e)(6), that NMFS implement interim measures to reduce overfishing until the Council's revised rebuilding measures are implemented. NMFS has implemented interim measures for the first 6 months of the 2012 fishing year, and these measures may be extended an additional 6 months under the provisions of MSA §305(c)(3) that authorize interim measures.

Applicable MSA, NS1 guideline provisions, and relevant case law

In developing revised rebuilding measures for GOM cod, the provisions of MSA §304(e)(3) and (4) apply. The rebuilding plan shall:

- Prevent overfishing
- Specify a time period for rebuilding the fishery that shall be as short as possible, taking into account the status and biology of the overfished stock, the needs of the



fishing community, and the interaction of the overfished stock within the marine ecosystem.

- Not exceed 10 years, except in cases where the biology of the stock, or other environmental conditions, dictate otherwise.
- Allocate both overfishing restrictions and recovery benefits fairly and equitably within the fishery.

NS1 guidelines that apply to rebuilding measures are found in 50 CFR 600.310(j)(3). In order to support the selection of a particular rebuilding plan, the Council must evaluate a range of alternative rebuilding plans whose end dates include and fall between the T_{MIN} and T_{MAX} reference points described in the NS1 guidelines. Selection of a rebuilding target time longer than T_{MIN} must be based on analysis showing that the preferred T_{TARGET} is as short a time as possible, taking into account the needs of fishing communities. The analysis should clearly document the range of economic impacts to fishing communities associated with each of these alternatives by describing their dependence on GOM cod, their vulnerability to near-term reductions in cod harvest, and how related management measures affect various user groups of the fishery.

Rebuilding plan analysis

The following steps are essential for the analysis of revised rebuilding measures:

- Calculate the minimum time to rebuild (T_{MIN}) with no fishing mortality ($F=0$) that provides at least a 50% probability of attaining B_{MSY} . Fishing mortality includes both directed and incidental mortality from all fisheries. The calculation of T_{MIN} starts with the first year the revised measures are to be implemented. This would be 2013 if the Council is implementing revised rebuilding measures coincident with its measures to end overfishing following the end of the interim measures implemented in 2012. Otherwise, the starting point will be the start of the 2014 fishing year – the maximum time allowed for the Council to act.
- Identify the maximum time to rebuild (T_{MAX}). T_{MAX} is 10 years, unless T_{MIN} is longer than 10 years. In that event, the NS1 guidelines describe how to calculate T_{MAX} .
- Identify a range of alternative rebuilding times between T_{MIN} and T_{MAX} , and the associated $F_{REBUILD}$ values. Because the current rebuilding plan specifies an $F_{REBUILD}$ of 75% of F_{MSY} , the analysis may include that case as one of the alternatives.
- Explore and explain the impacts of each alternative to fishing communities and the GOM cod stock. The analysis should include impacts on both the directed fishery for cod and other fisheries that may incidentally catch cod.
- Identify an appropriate T_{TARGET} and $F_{REBUILD}$ based on this analysis that is as short as possible, taking into account the needs of the fishing communities.

The starting point for calculations described above is the first year that the revised rebuilding measures will be implemented. This would be 2013 if the Council is implementing revised rebuilding measures coincident with its measures to end overfishing following the end of the

interim measures implemented in 2012. Otherwise, the starting point will be the start of the 2014 fishing year – the maximum time allowed for the Council to act

I appreciate your patience and collaboration as we move ahead through the process to set appropriate measures to rebuild GOM cod. Should you have any additional questions or concerns about this letter, please contact George Darcy, Assistant Regional Administrator for Sustainable Fisheries at 978-281-9331 or Gene Martin, General Counsel, Northeast at 978-281-9242 regarding legal concerns.

Sincerely,



Daniel S. Morris
Acting Regional Administrator

cc: Adam Issenberg, Section Chief, Fisheries and Protected Resources Section, NOAA GC
Dr. William Karp, Acting Director, Northeast Fisheries Science Center
Carrie Selberg, Acting Director, Office of Sustainable Fisheries



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Daniel S. Morris
Acting Regional Administrator

cc: Adam Issenberg, Section Chief, Fisheries and Protected Resources Section, NOAA GC
Dr. William Karp, Acting Director, Northeast Fisheries Science Center
Carrie Selberg, Acting Director, Office of Sustainable Fisheries

Date: April 16, 2012

To: Samuel Rauch
Deputy Assistant Administrator for Regulatory Programs
National Marine Fisheries Service

Russell Dunn
National Policy Advisor for Recreational Fisheries
National Marine Fisheries Service

Daniel Morris
Deputy Assistant Administrator, Northeast Regional Office
National Marine Fisheries Service

Rip Cunningham, Chair
New England Fishery Management Council

Terry Stockwell, Chair
NEFMC Groundfish Committee

Barry Gibson, Chair
NEFMC Recreational Advisory Panel

Tom Nies
NEFMC Staff



Re: New England's for-hire/private recreational boat, multispecies recreational regulations, and socio-economic needs for 2013.

Private and for-hire recreational multispecies fishing trips on Stellwagen Bank and nearby areas have changed significantly since 1983. Back then there were only four or five full time for-hire boats operating in those areas, and recreational fishermen hardly ever ventured out that far (20 to 30 miles). Over time, things have changed dramatically. Today, these same fishing grounds are utilized by a much larger fleet of private boats and the fore-hire fleet has grown significantly as well.

Most of the springtime for-hire customers are not local -- they come from elsewhere in the state of Massachusetts far from the coast, or from out of state. For the majority of customers there is a significant travel component when they come to Massachusetts ports for these early season trips. The customers who travel a long distance for these charters represent approximately 80 percent of the spring bookings for most for-hire captains.

cc: Council, CF 0/5, TN (4/16)

Typical for-hire (6-pack) rates vary from \$1000 to \$1500 per vessel/trip. Rates are mostly based on the captain's experience and type or size of vessel. The private boat fleet is increasing and these boats represent a significant investment for most recreational fishermen. It is not uncommon to see 100 boats on a nice weekend in April or May on the fishing grounds 20 to 40 miles from shore.

The two key species that for-hire and private recreational boats target during the early spring are cod and haddock, and these species are managed under a single recreational TAC. However, identical rules for retention apply for the two primary users (private boat and for-hire boat). In my opinion, this arrangement does not take into account **the very different socio-economic needs** of both users. I would propose that changes in the way these retention rules are applied to each user group will benefit both recreational vessels and for-hire boats. This would be true in the future in particular, given pending current stock assessments.

Past management tools for managing these two recreational multispecies fisheries include changing the length of the season, changing bag limits, and adjusting minimum size limits. Each of these methods has had a different effect on each of the two user groups, yet they have been applied equally as if these two users' **socio-economic requirements** are identical.

Here are a few recent regulatory measures that have impacted recreational fishermen differently.

- Cod retention limits reduced to zero from November to April 15 (Massachusetts waters allows two cod per person during this time frame for private boats only). In actual fact, very few recreational vessels fish during winter months. Most recreational vessels are taken out of the water for winter storage after Labor Day. Several full-time, for-hire boats previously began fishing in March. However, today, customers will not travel to Massachusetts prior to April 15 as a result of the zero retention limits on cod. This regulatory change has, in effect, removed six weeks of our season, having the effect of dramatically reducing the customer base for for-hire boats in the spring. This regulation has had little or no effect on the recreational fleet.
- Currently, (May 1st) the in-season bag limit has been reduced to nine cod, and there is now a nine-haddock per angler limit for both the for-hire and private boat fishermen. Typically, early spring for-hire customers will fish once per season. These customers are balancing their cost for these for-hire trips against the number of filets they will be able to put in their freezer at home. This is very common. Most of these customers are hardy individuals who are willing to endure chilly, early spring weather and sea conditions in favor of having a successful fishing trip. I believe that the present level of retention is a minimum threshold, and if retention levels fall below this threshold, we will lose these customers and, therefore, this critically important revenue. This begs the question: Is it equitable for private boats, typically having greatly increased fishing opportunities (vacations, days off, and every weekend during the season), to have the

same daily retention limits as for-hire vessels? Are the seasonal expectations of both users identical?

Data in the May 2011, NOAA Technical Memorandum #NMFS-F/SPO-118, for year 2009, key species groups, indicates that the private boats value added to the state of Massachusetts is \$41,375,000, while the for-hire boats value added is \$31,808,000. The recreational fishing effort for private boats in the state of Massachusetts is 1,872,000 trips annually, yet trips by for-hire boats are only 227,000. Rough analysis of these data shows that for hire-boats provide approximately 75 percent of the value added to Massachusetts' economy as compared to that of private boats (\$31,808,000 vs. \$41,375,000), with one tenth the number of trips and much less of a biological impact in the fish stocks. It is important to note that Massachusetts represents approximately 50 percent of the for-hire and private boat effort that occurs in all the coastal New England states.

Future management changes may be more stringent due to recent stock assessment results. I think studying the differences between recreational user groups at this time will benefit future rule-making and help to ensure that equitable and optimum use of the resource is achieved. Early seasonal closures will affect private vessels, and further reduction of bag limits jeopardizes the for-hire fleet. It is important to take into account that the needs of both user groups are very different -- it does not make sense to me that management measures should be identical for each group. As one example (also attached), the Highly Migratory Species Management Division of NOAA recognizes the important difference between the socio-economic requirements for private vessel vs. for-hire vessels. I cannot think of any rationale that would not support the same premise when it comes to groundfish.

Please consider a fishery management strategy change in future plans and regulations that supports the different socio-economic needs of user groups in the New England recreational multispecies fishery. I look forward to discussing this issue further with you, and also thank you for taking the time to read this letter.

Ralph Pratt
Charter boat Bampy
Commercial Fisherman
Member, NMFS HMS Advisory Panel
5 Springdale Terrace, Canton, Ma. 02021

Attachments:

- 1) HMS example of BFT bag limits, reflection of a difference in the socio-economic needs of charter boats vs. private boats in a quota limited fishery (see highlighted section).
- 2) #NMFS-F/SPO-118 data, pages 56 and 64 for New England and MA (recreational fishery economic impact)

2009 Economic Impacts of Recreational Fishing Expenditures (thousands of dollars)

	Trips	Jobs	Sales	Value Added	Income
Connecticut	1,436,407	5,212	797,209	304,833	457,344
Massachusetts	3,605,741	4,987	656,958	229,069	357,440
Maine	1,013,724	2,039	166,564	54,551	87,774
New Hampshire	414,337	418	45,516	15,768	25,016
Rhode Island	1,041,782	1,005	113,817	35,744	56,055

2009 Angler Trip & Durable Expenditures (thousands of dollars)

Fishing Mode	Trip Expenditures		Equipment	Durable Expenditures
	Non-Residents	Residents		
			Fishing Tackle	402,151
For-Hire	39,479	18,579	Other Equipment	99,569
Private Boat	29,037	79,565	Boat Expenses	263,640
Shore	164,107	50,478	Vehicle Expenses	612,215
<i>Total Trip Expenditures</i>	232,622	148,621	Second Home Expenses	11,589
			<i>Total Durable Equipment Expenditures</i>	1,389,165
Total State Trip and Durable Equipment Expenditures				1,770,408

Recreational Anglers by Residential Area (thousands of anglers)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Coastal	1,042	969	1,069	1,198	1,155	1,349	1,408	1,408	1,389	1,222
Non-Coastal	121	108	124	152	165	169	188	205	187	165
Out-of-State	NA ¹	NA ¹	NA ¹	NA ¹	NA ¹	NA ¹	NA ¹	NA ¹	NA ¹	NA ¹
Total Anglers	1,163	1,077	1,194	1,349	1,319	1,518	1,596	1,614	1,576	1,387

Recreational Fishing Effort by Mode (thousands of trips)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
For-Hire	309	303	235	319	300	418	458	480	471	449
Private Boat	4,736	4,857	4,513	4,426	4,450	5,017	4,681	4,863	4,921	3,489
Shore	3,720	3,874	3,844	3,833	3,910	3,819	4,510	4,355	3,793	3,574
Total Trips	8,765	9,035	8,592	8,578	8,660	9,254	9,650	9,699	9,185	7,512

Harvest (H) and Release (R) of Key Species Species Groups (thousands of fish)

		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Atlantic cod	H	749	1,104	644	706	NA	653	264	313	481	483
	R	1,193	1,378	1,143	1,175	945	1,525	802	1,184	1,287	1,139
Atlantic mackerel	H	4,067	3,851	3,543	2,399	1,588	3,062	4,849	3,079	3,459	3,151
	R	654	772	363	212	162	78	328	188	546	400
Bluefin tuna	H	6	1	1	5	2	12	4	14	14	10
	R	(1)	(1)	(1)	4	15	12	13	9	2	12
Bluefish	H	893	1,462	1,166	1,188	1,284	1,359	1,541	1,359	1,209	776
	R	1,960	3,324	2,148	2,532	3,281	3,451	3,016	3,141	2,899	1,449
Little tunny ²	H	2	3	7	3	13	(1)	2	5	3	1
	R	108	38	54	33	109	52	38	77	76	22
Porgies (scup)	H	3,935	3,031	2,460	4,181	2,983	1,567	1,261	1,871	1,901	1,173
	R	2,549	2,837	2,382	2,829	1,759	1,902	2,548	2,543	3,595	2,563
Striped bass	H	396	498	523	701	608	691	585	638	568	548
	R	10,002	7,931	8,577	6,760	8,586	10,831	16,327	9,739	7,003	4,443
Summer flounder	H	1,558	573	439	549	786	604	592	417	473	161
	R	1,809	1,008	1,559	1,071	1,048	1,491	2,503	1,290	1,941	1,023
Winter flounder	H	143	169	107	83	54	50	61	54	169	121
	R	136	155	74	41	32	43	65	44	76	103
Wrasses (tautog)	H	137	172	265	335	294	228	321	452	299	180
	R	233	338	638	669	545	504	595	981	420	378

¹NA = data are not available because out-of-state resident information is collected for individual states but whether an angler is a resident of a region is not specified

²This species may not be equivalent to species with similar names listed in the commercial tables.

2009 Economic Impacts of Recreational Fishing Expenditures (thousands of dollars)

	Jobs	Sales	Income	Value Added
Trip Impacts by Fishing Mode:				
For-Hire	554	53,315	18,691	31,808
Private Boat	577	67,483	24,712	41,375
Shore	1,605	165,529	59,240	98,007
Total Durable Equipment Impacts	2,251	370,631	126,425	186,250
Total State Trip and Durable Equipment Economic Impacts	4,987	656,958	229,069	357,440

2009 Angler Trip & Durable Expenditures (thousands of dollars)

Fishing Mode	Trip Expenditures		Equipment	Durable Expenditures
	Non-Residents	Residents		
For-Hire	24,050	11,253	Fishing Tackle	124,424
Private Boat	16,531	43,810	Other Equipment	33,935
Shore	83,006	32,282	Boat Expenses	54,541
<i>Total Trip Expenditures</i>	<i>123,587</i>	<i>87,345</i>	Vehicle Expenses	197,660
			Second Home Expenses	9,387
			<i>Total Durable Equipment Expenditures</i>	<i>419,947</i>
Total State Trip and Durable Equipment Expenditures				630,879

Recreational Anglers by Residential Area (thousands of anglers)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Coastal	493	392	465	434	535	585	623	664	655	489
Non-Coastal	90	79	96	112	131	135	151	179	170	144
Out of State	265	279	344	306	335	391	484	465	469	421
Total Anglers	848	750	906	852	1000	1112	1258	1309	1293	1054

Recreational Fishing Effort by Mode (thousands of trips)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
For-Hire	172	134	106	145	133	246	242	242	235	227
Private	2,518	2,569	2,399	2,329	2,456	2,383	2,438	2,419	2,322	1,872
Shore	1,931	1,821	1,701	1,611	1,913	1,809	2,044	2,049	1,907	1,507
Total Trips	4,622	4,524	4,206	4,085	4,502	4,439	4,724	4,710	4,465	3,606

Harvest (H) and Release (R) of Key Species Species Groups (thousands of fish)¹

		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Atlantic bonito	H	4	13	6	11	4	15	5	4	3	4
	R	8	8	17	(1)	3	12	18	12	5	1
Atlantic cod	H	599	842	585	583	519	558	188	239	372	286
	R	975	1,119	1,049	937	843	1,337	534	883	1,029	834
Atlantic mackerel	H	2,049	1,811	2,024	1,313	722	1,967	4,296	1,789	2,047	726
	R	231	157	61	45	73	21	203	83	261	152
Bluefish	H	221	357	229	374	406	589	686	587	414	377
	R	596	948	628	1,019	1,468	1,812	1,507	1,344	1,242	814
Haddock	H	81	73	61	75	215	334	151	291	263	196
	R	88	45	125	130	104	87	89	55	108	43
Porgies (scup)	H	1,382	881	975	1,624	1,511	397	314	729	660	772
	R	748	832	879	1,221	855	516	931	936	1,177	1,282
Striped bass	H	181	288	309	407	400	368	340	347	343	336
	R	7,382	5,411	5,719	4,362	5,892	4,840	8,657	5,772	3,641	2,490
Summer flounder	H	379	152	155	177	281	203	219	76	150	48
	R	445	210	336	244	388	308	556	99	181	122
Winter flounder	H	74	61	53	45	40	42	43	37	155	105
	R	100	97	34	30	17	39	35	17	65	91
Wrasses (tautog)	H	88	116	103	47	23	48	63	76	24	27
	R	139	205	284	190	63	148	266	331	86	122

¹In this table, '(1)' = 0-999 thousand fish and '1' = 1,000-1,499 thousand fish.



Atlantic Bluefin Tuna (BFT)
Southern Angling Category Trophy Fishery Closure and
BFT Angling Category Daily Retention Limit

NMFS is taking the following two actions regarding the recreational BFT fishery, effective April 7, 2012, through December 31, 2012:

- (1) Closure of the large medium/giant "trophy" BFT (73" or greater) fishery south of 39°18'N (off Great Egg Inlet, NJ) for 2012.

Information from the NMFS Automated Landings Reporting System and the North Carolina Tagging Program indicate that the codified southern trophy quota (2.8 mt) has been taken.

The annual Angling category trophy limit of one large medium or giant BFT per vessel (73" or greater) remains in effect for vessels fishing in the northern area.

- (2) Adjustment of the recreational retention limit, as follows:

Permit Category	Retention Limit per Vessel per Day/Trip
HMS Angling category	1 school, large school, or small medium BFT (27 to <73")
HMS Charter/Headboat category (when fishing recreationally)	1 school BFT (27 to <47") <i>and</i> 1 large school/small medium BFT (47 to <73")

Based on current considerations of the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, NMFS has determined that the Angling category retention limit applicable to HMS Charter/Headboat category participants (when fishing recreationally) should be adjusted from the default level of 1 school, large school, or small medium BFT (27 to <73"). NMFS considers that implementation of separate limits for private and charter/headboat vessels is appropriate, recognizing the different nature, socio-economic needs, and recent landings results of the two components of the recreational BFT fishery.





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NORTHEAST REGION
55 Great Republic Drive
Gloucester, MA 01930-2276



APR 20 2012

Dr. David Pierce, Deputy Director
Division of Marine Fisheries
251 Causeway St., Suite 400
Boston, Massachusetts 02114

Dear David:

Thank you for your April 4, 2012, letter asking about data available to analyze the effects of the sector management program. We currently collect a substantial amount of information from sectors through their weekly reports and year-end reports. We also collect additional information from all groundfish vessels through existing data collections, such as vessel trip reports. Below is a list of available information that could be used for the analyses you suggested.

Sector Weekly Reports

Catch (landings and discards), by stock

Intersector ACE Trade Information

Amount of ACE traded, by stock, by trade
Value of ACE traded, by trade
Sectors involved, by trade

Sector Year-End Reports

Fishing effort, including sector control, distribution, and targeting of effort; and changes from planned effort or changed from previous behavior
Organizational and monitoring costs
Distribution of costs among members
Effects of external ACE trading and internal redistribution of ACE
Violations of sector operations plans

Vessel Trip Reports

Statistical area fished
Point estimate (Latitude and Longitude) of location of fishing effort within a statistical area
Effort information (amount and type of gear fished, number of tows, hauls, hooks, or nets)
Estimate of catch from statistical area

Dealer Reports

Landings by vessel, trip, species, and port



u: TN (4/23)

Vessel Monitoring System

Geographic areas a vessel enters, and speed in area, by trip

Observer Data

Area fished

Catch (landings and discards)

Effort information

Trip cost information

If there is additional sector information you would like to see collected, I suggest you raise that to the New England Fishery Management Council for consideration for a future action.

We have conducted a number of analyses to date, including the 2010 Final Report on the Performance of the Northeast Multispecies (Groundfish) Fishery and those included in the environmental assessment developed for the proposed fishing year 2012 operations plans. We are currently considering ways to make the existing information more useful to the public and we will provide the information in a more usable form in the future, if possible.

Sincerely,



Daniel S. Morris
Acting Regional Administrator

Cc: Paul Howard
Paul Diodati
Rip Cunningham
Terry Stockwell
Sam Rauch