



#7

New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116

John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

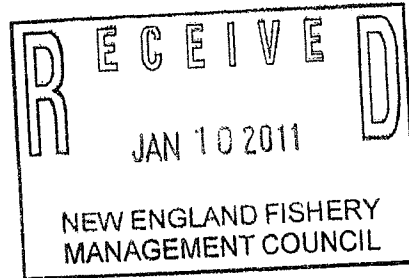
## Correspondence



Groundfish Oversight Committee/New England Fishery Management Council

Frank Blount/ Chairman John Pappalardo

Re: Mandatory 20 Day Block



Council members;

I am writing to you at this time to ask for the repeal of the Mandatory 20 Day Block that is imposed on the Handgear A/B Fishing Permits every year from March 1st to March 20<sup>TH</sup>. This is an unfair burden placed on our fishery. The Handgear Boats should be allowed to take their 20 day Groundfish Block, as all other fishing boats do, at a time of their choosing.

Submitted for your consideration,  
Hilary Dombrowski  
President Cape Ann Hookfishermens' Association

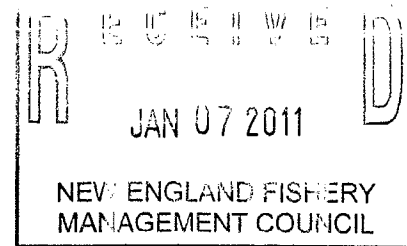




**UNITED STATES DEPARTMENT OF COMMERCE**  
**The Secretary of Commerce**  
 Washington, D.C. 20230

January 7, 2011

The Honorable Deval L. Patrick  
 Governor of Massachusetts  
 Boston, MA 02133



Dear Governor Patrick:

This week President Obama signed into law the International Fisheries Agreement Clarification Act. This is an important step forward that allows the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) to begin negotiations on catch limits with its Canadian counterpart and the New England Fishery Management Council (Council). We hope this important change in the law will provide some relief to the New England fishermen, and we are working diligently to that end.

Thank you for your November 5, 2010, letter regarding catch limits and economic assistance for the New England groundfish fishery. I also appreciate your forwarding the Massachusetts Marine Fisheries Institute's "Report on Economic and Scientific Conditions in the Massachusetts Multispecies Groundfishery" (Report).

On October 14, 2010, I wrote to you and members of the New England delegation stating, "I am prepared to issue an emergency regulation to revise catch limits whenever there is both sufficient economic and sound scientific data available to meet these requirements." To ensure we would receive the specific data necessary to invoke the emergency authority to increase catch limits, NMFS Assistant Administrator, Eric Schwaab, met with senior Massachusetts officials in late October to identify the information that NMFS required.

Following receipt of your letter, I asked NMFS to thoroughly review the Report to determine whether it presents sufficient economic and scientific data to enable me to exercise my emergency authority to revise the catch limits. As the enclosed letter from Assistant Administrator Schwaab details, the Report does not present new scientific data that would justify increasing the catch limits. Rather, it presents alternative methods for evaluating the scientific data used to determine the current catch limits. These alternative methods were previously considered and rejected by the Council.

I need scientific data not previously considered by the Council because the Magnuson-Stevens Fishery Conservation and Management Act does not permit me to overrule Council decisions on the basis of a disagreement over scientific judgment. In the absence of new scientific data, I am consequently unable to exercise my emergency rule authority in response to your request.

The Honorable Deval L. Patrick

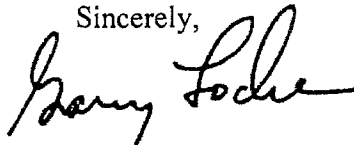
Page 2

I stand ready to increase catch limits whenever new scientific data are available that meet the requirements of the Magnuson-Stevens Act. NMFS will continue to conduct stock assessments on priority stocks in order to gather new data and continually review catch limits. For example, new scientific data allowed NMFS to increase catch limits for pollock last summer, while remaining consistent with the Magnuson-Stevens Act.

With respect to your request for \$21 million in direct economic relief for the impacts caused by the transition to catch shares under Sections 312(a) and 315 of the Magnuson-Stevens Act, the data provided are insufficient to warrant either a fishery disaster or a commercial fishery failure under that Act. NMFS is prepared to work with your staff to identify and more finely analyze necessary data regarding fishermen and communities specifically in need of targeted assistance and will reconsider your request once those data are received. Assistant Administrator Schwab has contacted your staff to set up a meeting within the next two weeks to continue discussions. As you are aware, even if I am able to make a positive disaster determination, the relief funds must be appropriated by Congress.

I appreciate your engagement on these issues and believe that the work our respective staffs have started forms a strong base for continued collaboration. If you have any questions, please call April Boyd, Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

Sincerely,

A handwritten signature in black ink that reads "Gary Locke". The signature is written in a cursive, flowing style.

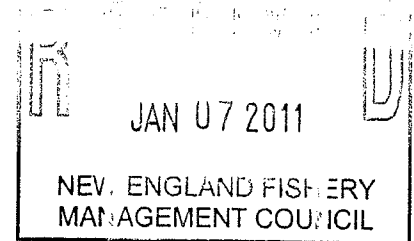
Gary Locke

JAN -7 2011



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
 NATIONAL MARINE FISHERIES SERVICE  
 1315 East-West Highway  
 Silver Spring, Maryland 20910  
 THE DIRECTOR

Mr. John Pappalardo  
 Chair, New England Fishery Management Council  
 50 Water Street  
 Newburyport, MA 01950



Dear Mr. Pappalardo:

As you know, NOAA's National Marine Fisheries Service (NMFS) has been in a dialogue with the Commonwealth of Massachusetts regarding the economic impact of catch limits and sector management for the New England groundfish fishery. I believe that the lasting solutions to problems raised by the Commonwealth are best addressed through the New England Fishery Management Council's public process. Therefore, I am forwarding the Massachusetts Marine Fisheries Institute's *Report on the Economic and Scientific Conditions in the Massachusetts Multispecies Groundfishery* (Report) that was provided to Secretary Locke by Governor Patrick.

The Report raises concerns about stock assessment methodology and process. While the data and suggestions raised in the Report do not justify action to override the Council's or your SSC's scientific judgment as requested by the Commonwealth, I would welcome the Council's or its SSC's review of the information in the Report and the important issues it raises.

One of the Commonwealth's concerns is consolidation within the industry. I understand that the Council is working on a white paper regarding fleet diversity and accumulation limits, and has agreed to develop an amendment to the Northeast Multispecies Fishery Management Plan to address concerns identified in the Report. I applaud the Council for beginning this important work and urge the Council to continue these efforts as well as others to improve sector management. NMFS stands ready to assist the Council on this effort and others that will continue progress towards an economically healthy and sustainable fishery.

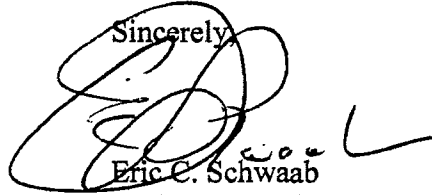
I have offered to continue to work with the Commonwealth on identifying new biological information that could be the focus of new stock assessments that could justify additional expedited action on catch limits. Again, I believe the best place for analyzing any new information and discussing the management implications is at the Council, and I will continue to work with you on incorporating any new information. Secretary Locke remains prepared to issue emergency regulations whenever there is both sufficient economic and scientific data available to meet the requirements of the Magnuson-Stevens Act.

On January 4, 2011, the President signed into law the International Fisheries Agreement Clarification Act. The legislation paves the way to reopen discussions with Canada on the Transboundary Resource Sharing Understanding and rebuilding periods for shared fishery resources. NMFS is immediately initiating discussions with the Council and our Canadian counterpart to move forward under this new standard.



Finally, I will continue to work closely with all stakeholders to both improve fishery management in New England and address the economic concerns of its fishing communities. I fully expect to coordinate these efforts with the Council, with whom NMFS has enjoyed a longstanding and productive partnership. I would be happy to discuss any of these issues with you further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric C. Schwaab', written over the word 'Sincerely'.

Eric C. Schwaab  
Assistant Administrator  
for Fisheries

Enclosure



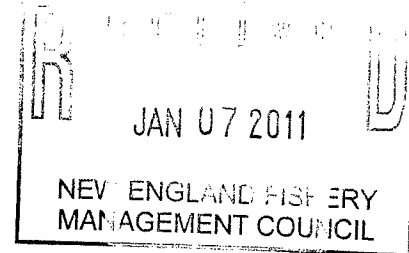
JAN - 7 2011



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
1315 East-West Highway  
Silver Spring, Maryland 20910

THE DIRECTOR

The Honorable Deval Patrick  
Governor of Massachusetts  
State House  
Boston, MA 02133



Dear Governor Patrick:

Thank you for your November 5, 2010, letter to Secretary Locke and the accompanying Massachusetts Marine Fisheries Institute's *Report on the Economic and Scientific Conditions in the Massachusetts Multispecies Groundfishery* (Report) regarding catch limits and economic assistance for the New England groundfish fishery. Our completed review concludes that the Report does not provide new scientific information that is appropriate to replace the peer-reviewed assessment adopted by the New England Fishery Management Council (Council). I am forwarding a copy of your report to John Pappalardo, Chair of the Council, as I believe that the lasting solutions to the problems raised by the Commonwealth are best addressed by the Council's process. I would like to continue to work with your staff to identify ways to assist New England fishermen during this period of lower catch limits.

The Report sets forth commentary regarding both the economic impacts of sector management in Massachusetts and alternative methods for reviewing existing scientific data that support increasing the current annual catch limits (ACL). With respect to the economic impacts of sector management, the Report states that, in aggregate, the National Marine Fisheries Service's (NMFS) landing and revenue data for the first five months of the 2010 fishing years shows that they are comparable to, and in some cases greater than, levels observed for this same period last year; however, the Report expresses concerns that aggregate data mask unforeseen economic impacts that are happening at the community and individual levels. In addition, the Report suggests use of alternative assessments, smaller buffers, and revised rebuilding objectives to increase groundfish ACLs. This letter first addresses the alternative assessments suggested by the Report and then the economic impacts.

While I cannot recommend an emergency increase in catch limits based on the Report, I will continue to work with Massachusetts, other New England states, and the New England Fishery Management Council to prioritize, gather, and analyze additional biological and economic data associated with the groundfish fishery. The final section of this letter suggests a path forward and key steps that we can take together to address the economic and management concerns raised in your letter and in ongoing discussions with your staff.

### Alternative Assessments

The Magnuson-Stevens Act requires that all Fishery Management Councils receive recommendations for ACLs from the Councils' Scientific and Statistical Committees (SSC). The current New England groundfish SSC recommendations were based on the stock assessments provided by the 2008 Groundfish Assessment Review Meeting (GARM III).

THE ASSISTANT ADMINISTRATOR  
FOR FISHERIES



Benchmark stock assessments for 19 groundfish stocks were prepared, presented, and independently peer reviewed at this meeting. Representatives of the fishing industry, the New England states – including Massachusetts – and the Council participated in GARM III. Benchmark assessments are the most robust and in-depth assessments performed for fishery stocks, and employ the best available scientific models and data. Subsequent to GARM III, NMFS scientists updated assessments for two of these stocks. Results of these peer-reviewed assessments were accepted by the Council and its SSC for use in management through a public process. These assessments provide the best available science for the Council and NMFS to use in managing the Northeast groundfish fishery, and the Magnuson-Stevens Act compels their use as a basis for quota setting.

The alternative assessments suggested in the Report were previously considered either as part of the GARM III stock assessment process, or by the Council and its SSC in setting ACLs in this fishery. This Report does not provide any new scientific information that would justify overturning the SSC's determinations that the best available science was used in formulating the current ACLs. Rather, the Report proposes the adoption of previously evaluated approaches that were rejected by the SSC. Consequently, NMFS cannot consider this information either as new or as appropriate to replace the peer-reviewed assessment currently accepted as the best available science as required by the Magnuson-Stevens Act. To do so would require overturning the determinations of the SSC and the Council.

The Report proposes use of smaller buffers to allow an increase in Groundfish ACLs. There is no basis for decreasing the scientific and management buffers by setting the ACLs equal to the overfishing level as suggested in the Report. This approach is counter to the intent of the Magnuson-Stevens Act. The Council developed these buffers based on advice from its SSC as the most appropriate way to ensure a reasonable expectation of rebuilding. The Council and SSC specifically reviewed and endorsed the GARM III recommendations on buffers. The Report's suggestion to base rebuilding objectives on direct estimates of maximum sustainable yield is also contrary to the recommendations of the GARM III peer review. This peer review determined that direct estimates of Maximum Sustainable Yield were unlikely to establish catch limits that met required rebuilding targets.

NMFS will continue to work with fishermen, state resource management agencies, the academic community, and other interested parties to identify, collect, and review new biological information on stocks. For example, in addition to new stock assessment work that justified action on pollock, spiny dogfish, and skates, NMFS is currently working on benchmark assessments for the three winter flounder stocks, which will be reviewed at the Northeast Regional Stock Assessment Workshop in June 2011. In addition, during the week of February 14, 2011, NMFS will facilitate a national workshop on the science needed to support implementation of the Magnuson-Stevens Act, with particular emphasis on the determination and implementation of ACLs. NMFS will host the workshop jointly with the regional Fishery Management Councils and invite nationally recognized experts to attend.

## **Economic Impacts**

The Report addresses the economic impacts of the new management measures on the Commonwealth's groundfish fishery by looking at the number of active vessels in the groundfish fishery and the revenue generated by those vessels. The Report states that for the first 5 months of the 2010 fishing year, two-thirds of the Massachusetts groundfish fleet was inactive while more than half of the fleet had not fished at all. This represents an additional 17 inactive vessels compared to the same period in 2009. NMFS data indicate that in past years, typically, only about half of the Massachusetts vessels registered in sectors fished for groundfish between May and September. For 2010, 81 percent of the vessels in the Commonwealth that fished for groundfish in the first 6 months of 2009 have fished in 2010.

There are positive signs from the fishery for the first 6 months of the fishing year. For example, the Report indicates that total revenue to Massachusetts vessels increased by 21 percent for the first 5 months of the 2010 fishing year compared to the average total revenue for the years 2005--2009. Also, the number and proportion of active Massachusetts' sector vessels earning more than \$100,000 in the first 5 months increased from 2009 to 2010 (from 44 percent to 51 percent).

There may be a number of reasons why fewer vessels have fished thus far, including whether owners with multiple vessels fished with fewer vessels, or vessel owners or sectors waited to fish later in the fishing year to maximize revenue. It is also likely that some vessels that have not landed groundfish are receiving revenue from leasing their groundfish allocation or have been fishing in other fisheries.

The Report implies that sector management concentrates revenues among a relatively small number of vessels. It estimated that the share of revenue earned by the top 10 percent of vessels increased from 57 percent to 64 percent in 2010 compared to 2009. These percentages vary from year to year and are only slightly higher than percentages from some earlier years (e.g., top 10 percent of vessels earned 60 percent of revenue in 2005 and 62 percent in 2007). Therefore, it is not clear that this shift is directly related to recent changes to the management program.

As outlined in the Secretary's letter, we have evaluated your request for a disaster determination under Sections 312(a) and 315 of the Magnuson-Stevens Act. At this time, the information you have provided in the Report is insufficient to warrant a positive determination. However, how sector management is affecting individual fishermen and communities is worth further research within Massachusetts and other states. We want to work with you and the Council to analyze economic data more closely, including information on quota leasing patterns and fishing behaviors, and to identify any fishermen and communities that may be in need of targeted assistance. You may wish to resubmit a request if we are able to identify those targeted needs.

Finally, the Report raises concerns of a "non-functioning market for trading and leasing quota." We agree that open trading is critical to the effectiveness of this program. We looked into the trading to date; nearly 500 leasing transactions, representing more than 27 percent of landings, occurred in May through November, involving all stocks and all sectors. Recognizing that the quota market is relatively new, it may take time to develop a robust market and yield an

appropriate price. NMFS is looking at ways to facilitate the efficiency and transparency of this market by making information on leases and trades available to the public, consistent with confidentiality requirements. This is another area where further discussion and joint research could yield both a better understanding of trends and the identification of any appropriate corrective actions.

### **Steps Forward**

Going forward, I would like to have our staffs agree to work together with a focus on four key areas:

- 1) Identifying, with input from fishermen and the Fishery Management Council, any new biological information that could be incorporated into the next stock assessments that may justify additional expedited action on catch limits;
- 2) More analysis of economic data, including consolidation of catch, quota leasing patterns, and seasonal fishing behaviors to identify specific fishermen and communities that may be in need of targeted assistance;
- 3) Identifying specific courses of action, including the use of existing permit bank funds, to facilitate the permit market for sector transactions that will benefit disadvantaged fishermen; and
- 4) Working with the New England Fishery Management Council to address continued concerns with permit consolidation, as well as the new provisions concerning international agreements which may offer some relief for Georges Bank yellowtail flounder quotas.

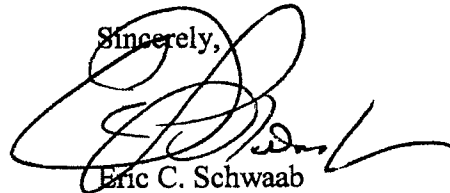
NMFS is also conducting a regional assessment and management review of the fishery management process in New England, focusing on the relationships among the New England Fishery Management Council and NOAA's Northeast Regional Office and Northeast Fisheries Science Center, as well as other management authorities such as the states. The review incorporates other factors affecting the effectiveness of those entities in carrying out their responsibilities under the Magnuson-Stevens Act. NMFS contracted with the Touchstone Consulting Group to conduct approximately 200 interviews of fishermen, Council members, managers, and others engaged in the fishery management process in New England. To date, they have completed approximately 50 interviews and expect to finish the interviews in February 2011. We expect Touchstone to report to us the information gathered in these interviews this spring and a final public report in late 2011, approximately 1 year after initiation.

NMFS is moving forward with the science workshop that Secretary Locke committed to in his previous letter. The workshop, which will be held in early 2011, will focus on many of the science issues referenced in your letter and the Report. We expect to use the results of that workshop along with the management review to continue to improve the fishery management process and we look forward to your continued support of those processes.

Finally, I want to note another important step forward. I am pleased that on January 4, 2011, the President signed into law the International Fisheries Agreement Clarification Act. This effective legislation will help level the playing field between the United States and Canada for important fisheries. This legislation paves the way to reopen discussions with Canada that should lead to increased catch limits for Georges Bank yellowtail flounder. NMFS is immediately initiating discussions with our Canadian counterparts and the Council to move forward.

In conclusion, I look forward to working with your staff to gather and review any additional information to help address possible economic impacts of recent management actions in this fishery and to help fishermen and fishing communities across New England while important stock rebuilding continues and the sector-based management proceeds. I will be reaching out to your staff to set up a follow-up meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eric C. Schwaab', written over the word 'Sincerely,'.

Eric C. Schwaab  
Assistant Administrator  
for Fisheries

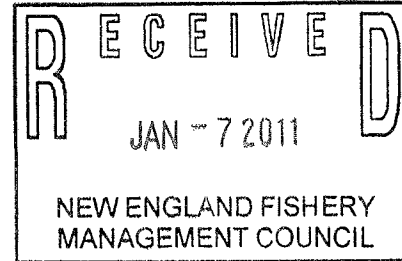




CAPE COD COMMERCIAL HOOK FISHERMEN'S ASSOCIATION, Inc.  
1566 Main Street  
Chatham, MA 02633  
508-945-2432 • 508-945-0981 (fax)  
www.ccchfa.org

January 8, 2011

Rip Cunningham, Chairman  
Groundfish Oversight Committee  
New England Fishery Management Council  
50 Water Street Mill 2  
Newburyport, MA 01950



Dear Mr. Cunningham,

In November, the Council passed a motion outlining their intention to address issues associated with the haddock bycatch cap in the sea herring fishery. I am writing to express support for this process and to urge the Groundfish Committee and the Council to explore a full range of alternatives relating to the regulation of haddock bycatch in the herring fishery.

Specifically, we believe that Groundfish Framework 47 should not simply consider increasing the haddock bycatch cap based on the herring industry's perceived need for more haddock. Instead, this action should also consider mechanisms to incentivize and ensure the herring fleet's improved avoidance of groundfish bycatch. The urgency of this bycatch avoidance was recently underscored by assessment information showing a strong Georges Bank haddock recruitment class. These juvenile fish must be protected and allowed to mature in order to safeguard the continued health of this stock and the future success of the groundfish fishery. These efforts will depend on the Council's effectiveness in limiting and reducing the unintended catch of immature haddock in the herring fishery.

We also ask that the Committee and Council clearly explain how any potential reallocation of the haddock resource is to be achieved and describe the impacts to future annual catch limits and sector allocations for the directed groundfish fishery. Finally, we look forward to meaningful discussions as to how reallocating haddock opportunities in support of the small-mesh herring fishery could represent a troubling precedent for other groundfish stocks.

Again, we appreciate the Council's decision to address these issues through a carefully considered regulatory framework. We look forward to a process informed by extensive and up-to-date information regarding the herring fishery's bycatch performance, especially in groundfish closed areas.

Sincerely,

Tom Dempsey  
Policy Director





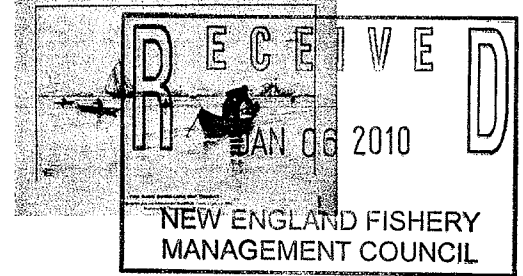
91 FAIRVIEW AVE  
PORSTMOUTH NH 03801

**NORTHEAST HOOK  
FISHERMAN'S ASSOCIATION**

January 5, 2011

**New England Fishery Management Council**

50 Water Street, Mill 2  
Newburyport, MA 01950  
Phone: (978) 465-0492  
Fax: (978) 465-3116



Dear NEFMC Council Members:

We represent a small group of Commercial Fishermen with the Limited Access Handgear HA Permits, employing the use Rod and Reel or Handlines to catch Cod, Haddock and Pollock along with small quantities of other regulated and non-regulated marine fish. Historically and currently our fishermen account for a very small percentage of the groundfish landed in New England. However, the monetary gains obtained by the participants in this fishery are very important to us.

We request that a specific allocation of cod (GOM & Georges Bank) be allocated to the Handgear fisheries in the next groundfish Amendment. We are asking that this allocation be equal to the percentage of the cod fisheries that represents the total combined "Potential Sector Contribution" for the HA & HB permits. This allocation, based on the history of the handgear cod fishery, will achieve the following:

1. Eliminate the current "race to fish" situation where Handgear fishermen in the common pool are competing with modern fishing vessels to catch cod before the common pool sub ACL is caught.
2. Allow the development of specific management measure for the Handgear cod fishery.
3. Rejuvenate a traditional small boat fishery to expand fleet diversity.

There are very few active Handgear cod fishermen left. The cod jig fishery was the first in New England and if nothing is done it will be the first to be eliminated at a time when cod stocks have rebound.

Respectfully,

**Marc Stettner**

NEHFA MEMBERS: Christopher DiPilato, Paul Hoffman, Hilary Dombrowski, Scott Rice, Marc Stettner

*If you are a holder of a groundfish HA permit and wish to join the NEHFA, please contact the NEHFA at the address above.*

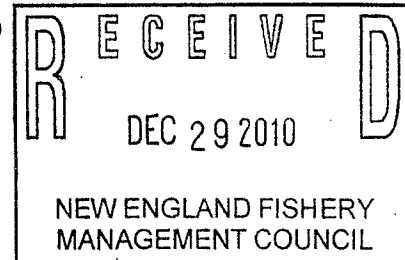




**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
 NATIONAL MARINE FISHERIES SERVICE  
 Northeast Fisheries Science Center  
 166 Water Street  
 Woods Hole, MA 02543-1026

27 December 2010

Paul Howard  
 Chairman, New England Fishery Management Council  
 50 Water Street  
 Newburyport, MA 01950



Dear Paul,

In your 15 December 2010 letter, you requested that NOAA Fisheries consider four options for providing biennial assessment advice to the NEFMC for groundfish stocks:

1. Project forward from the last assessment based on mortality targets without updating any data other than landings and discards.
2. Project forward from the last assessment using actual catch in recent years (e.g. 2008 – 2010). Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. No changes to projection methodology would be made: as an example, if GARM III used a Rho adjustment, use the same one this time.
3. Project forward from the last assessment using actual catch in recent years. Somehow input a recruitment estimate into the projection for recent years (I don't know if this is possible). Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. There may be other technical refinements that could be used here.
4. Update the most recent approved assessment model with recent catch and survey indices. Do not revise ALKs, selectivity, etc.

Center staff evaluated the four options and provide the attached summary of the advantages and disadvantages of each. In summary, Option 2 is the alternative we propose to pursue. Option 1 is doable but provides less information. Options 3 or 4 cannot be exercised if the Center is to fulfill its existing commitments for FY11 assessment advice to the NEFMC, MAFMC, and TRAC.

I plan to attend the Executive Committee on 4 January to present these findings.

Sincerely,

Nancy B. Thompson, Ph.D.  
 Science and Research Director

cc: P. Kurkul F. Serchuk R. Merrick  
 J. Weinberg P. Rago T. Nies (NEFMC)



Summary of Costs and Benefits of Four Assessment Alternatives for 2012-14 Multispecies Groundfish

Option	Advantage	Disadvantage	Consequences
<p>1--Project forward from the last assessment based on mortality targets without updating any data other than landings and discards by stock.</p>	<p>--Only requires update of landings and discards for 2010.</p> <p>--Builds on analyses prepared previously by PDT and delivered to the SSC.</p>	<p>--Based entirely on assumptions from GARM III.</p> <p>--Model results are dependent on assumed recruitment and the stock recruitment model defined in the GARM. For some stocks the projection results are dominated by assumed recruitment. No new information on recruitment patterns since 2007.</p> <p>--Unlikely to be accepted by SSC</p>	<p>--No major externalities for other assessment activities.</p> <p>--Will create demand for a more thorough report</p>
<p>2--Project forward from the last assessment using actual catch in recent years (e.g. 2008 – 2010). Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. No changes to projection methodology would be made: as an example, if GARM III used a Rho adjustment, use the same one this time.</p>	<p>--Incorporates effects of realizes catches on expected population size for 2011 status.</p> <p>--Compares model predictions with fishery independent measures of total stock size.</p>	<p>--Requires development of methods to compare model predictions with survey abundances.</p> <p>--Does not incorporate information related to recruitment</p> <p>--Model results are dependent on assumed recruitment and the stock recruitment model defined in the GARM. For some stocks the projection results are dominated by assumed recruitment. No new information on recruitment patterns since 2007.</p> <p>--Projections depend on persistence of catchability and selectivity patterns from GARM</p>	<p>--Staff time necessary to update landings, discards and surveys.</p>
<p>3--Project forward from the last assessment using actual catch in recent years. Somehow input a recruitment estimate into the projection for recent years Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. Other technical refinements as appropriate..</p>	<p>--Incorporates effects of realizes catches on expected population size for 2011 status.</p> <p>--Compares model predictions with fishery independent measures of total stock size AND recruitment.</p> <p>Does not require changes to ALK</p>	<p>--All of those listed for Option #2.</p> <p>--Mechanisms to identify recruitment include use of historical ALK and/or cohort slicing. These may be problematic if growth rates change rapidly.</p> <p>--Extracting the indices by age begs the question of why wasn't a new assessment updated since all the data are available.</p>	<p>--Staff time necessary to update landings, discards and surveys.</p> <p>--Staff time to estimate survey age or stage specific indices of recruitment and to determine methods for statistical comparisons</p> <p>--Unable to provide at least some previously committed assessment advice</p>
<p>4--Update the most recent approved assessment model with recent catch and survey indices. Do not revise ALKs, selectivity, etc.</p>	<p>--Would incorporate as much recent information as possible.</p> <p>--Would not require updates to ALK</p> <p>--Relies on peer-reviewed stock assessment model; does not require new methods to interpret indices.</p>	<p>--Major costs in terms of staff time.</p> <p>--Results may be unacceptable if major changes in stock status occur or if retrospective patterns change.</p> <p>--Difficult to restrict potential changes in model formulation.</p>	<p>--Drop SARC 52.</p> <p>--Drop TRAC.</p> <p>--Drop or reduce # of updates for MAFMC</p>

More detailed notes on Alternative Approaches follows:

**1) *Project forward from the last assessment based on mortality targets without updating any data other than landings and discards***

- a) Key assumptions
  - i) No changes in underlying parameters from GARM including growth, partial recruitment etc
  - ii) Initial conditions from GARM are appropriate
  - iii) No changes in discard patterns and potential sources of bias.
  - iv) All fishing mortality targets were met
  - v) Increases in F are directly proportional to increases in total catch.
- b) Advantages
  - i) Relatively straightforward to accomplish
  - ii) Creates a predicted sampling distribution of fishing mortality rates based on
  - iii) No changes to existing schedule for SARC, TRAC or Mid Atlantic updates
- c) Disadvantages
  - i) Relies heavily on the assumption of no change in underlying parameters
  - ii) Emphasizes the terminal year estimate of stock size and validity of it's sampling distribution.
  - iii) Results are highly dependent on assumed recruitment.
  - iv) Unlikely to be accepted by SSC since it is built primarily on assumptions.
- d) Requirements
  - i) Review of previous predictions of stock size and landings under target fishing mortality rates.
  - ii) Timely update of landings information for 2010, including state data so that proration can be completed.

**2) *Project forward from the last assessment using actual catch in recent years (e.g. 2008 – 2010). Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. No changes to projection methodology would be made: as an example, if GARM III used a Rho adjustment, use the same one this time.***

- a) Key Assumptions
  - i) Assumes that increases in total weight of catch produce proportional changes in F
  - ii) Requires update of landings and discards for 2010. Timing of this depends on completion of audits for landings, receipt of state landings data, application of Area Allocation (AA) procedures to total year.
  - iii) No changes in underlying parameters from GARM including growth, partial recruitment etc
  - iv) Initial conditions from GARM are appropriate
- b) Advantages
  - i) Incorporates realized catches to inform projection and to update distribution of stock sizes accordingly
  - ii) Minimal effects on SARC, TRAC and Updates.

- c) Disadvantages
  - i) Relies heavily on the assumption of no change in underlying parameters
  - ii) Does not incorporate any new information on recruitment; therefore implies that average recruitment has been achieved. Results are highly dependent on assumed recruitment.
  - iii) Emphasizes the terminal year estimate of stock size and it's sampling distribution.
  - iv) Assumes that retrospective pattern evident in 2008 has not changed
  - v) Qualitative comparison of model predictions with survey trends may not be easy to develop and could be perceived as arbitrary, particularly when conflicting trends are observed.
- d) Requirements
  - i) Update of landings and discards for 2010. Timing of this depends on completion of audits for landings, receipt of state landings data, application of Area Allocation (AA) procedures to total year.
  - ii) Updates of Surveys in terms of numbers and weights
  - iii) Application of survey calibration coefficients
  - iv) AGEPRO updates with new catch data
  - v) Develop appropriate scalar adjustments of survey indices to allow comparisons with aggregated model predictions of stock abundance. Example—compare survey biomass to predicted biomass from projection model.

**3) *Project forward from the last assessment using actual catch in recent years. Somehow input a recruitment estimate into the projection for recent years (I don't know if this is possible). Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. There may be other technical refinements that could be used here.***

- a) Key Assumptions
  - i) Assumes that increases in total weight of catch produce proportional changes in F
  - ii) Requires update of landings and discards for 2010. Timing of this depends on completion of audits for landings, receipt of state landings data, application of Area Allocation (AA) procedures to total year.
  - iii) No changes in underlying parameters from GARM including growth, partial recruitment etc
  - iv) Initial conditions from GARM are appropriate
  - v) Use one of two methods to estimate recruitment from survey indices
    - (1) Assume that all observations below a cutoff length are recruits
    - (2) Apply previous Age Length Key to current estimate of size frequency
- b) Advantages
  - i) Incorporates realized catches to inform projection and to update distribution of stock sizes accordingly
  - ii) Attempts to improve forecast by illustrating effects of recruitment deviations
- c) Disadvantages
  - i) Relies heavily on the assumption of no change in underlying parameters

- ii) Does not incorporate any new information on recruitment; therefore implies that average recruitment has been achieved.
- iii) Emphasizes the terminal year estimate of stock size and its sampling distribution.
- iv) Assumes that any retrospective pattern evident in 2008 has not changed
- v) Qualitative comparison of model predictions with survey trends may not be easy to develop and could be perceived as arbitrary, particularly when conflicting trends are observed.
- vi) Estimating recruitment trends in surveys may be difficult as this is often when model based estimates are most uncertain.
- vii) Major changes in previously scheduled events including:
  - (1) Cancel SARC
  - (2) Reduce participation in TRAC
  - (3) Reduce or eliminate updates for MAFMC (fluke, scup, sea bass, bluefish, dogfish)
- d) Requirements
  - i) Update of landings and discards for 2010. Timing of this depends on completion of audits for landings, receipt of state landings data, application of Area Allocation (AA) procedures to total year.
  - ii) Updates of Surveys in terms of numbers and weights
  - iii) Application of survey calibration coefficients
  - iv) AGEPRO updates with new catch data
  - v) Develop appropriate scalar adjustments of survey indices to allow comparisons with aggregated model predictions of stock abundance. Example—compare survey biomass to predicted biomass from projection model.
  - vi) Recruitment Estimates
    - (1) Develop estimates of recruitment from survey data
    - (2) Compare recruitment estimates with recruitments predicted by model or with previous survey-based values.
    - (3) Agree on a methodology to compare with model based estimates

**4) Update the most recent approved assessment model with recent catch and survey indices. Do not revise ALKs, selectivity, etc.**

- a) Key Assumptions
  - i) No changes in underlying parameters from GARM including growth, partial recruitment etc
  - ii) Initial conditions from GARM are appropriate
  - iii) Historical or average ALK are appropriate for deriving landings and discards at age, and age-specific survey indices.
- b) Advantages
  - i) Uses models to improve understanding of surveys and catches
  - ii) Does not require the development of new procedures to compare model predictions with observed trends
  - iii) Does not require updates to all age-length data
- c) Disadvantages

- i) No change in model formulations may preclude ability to better understand dynamics
- ii) Implications of using ALKs have not been investigated for all stocks.
- iii) If retrospective patterns are not investigated, then adjustment factors from 2008 would be criticized
- iv) Would likely need a large peer review
- v) Major writing requirements could delay timeliness.
- vi) If adverse findings then the most likely recommendation would be a full benchmark. Criticism would be that shortcuts were inappropriate and need full review.
- vii) No SARC 52
- viii) No TRAC
- ix) No Mid Atlantic Updates
- d) Requirements
  - i) Update of landings and discards for 2010. Timing of this depends on completion of audits for landings, receipt of state landings data, application of Area Allocation (AA) procedures to total year.
  - ii) Agree on appropriate age-length key or function of historical ALKs to derive age based estimates of landings, discards, and survey indices.
  - iii) Update landings, discards and survey estimates at age for all stocks from 2008 to 2010
  - iv) Investigate retrospective patterns and recomputed adjustment factors.
  - v) Major writing requirements
  - vi) Peer review panel in addition to SSC.

**5) Option 4 plus use recent ALKs for some stocks. This would involve a bit of triage with a focus on the most important stocks, notably GOM cod.**

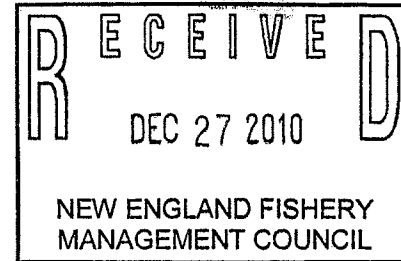
- a) Key Assumptions
- b) Advantages
  - i) Greater scientific credibility for process
- c) Disadvantages
  - i) No SARC 52
  - ii) No TRAC
  - iii) No Mid Atlantic Updates
  - iv) If adverse findings then the most likely recommendation would be a full benchmark.
- d) Requirements
  - i) All as in option 4 plus many others





December 27, 2010

Mr. Paul Howard, Executive Director  
New England Fishery Management Council  
50 Water Street  
Newburyport, Massachusetts 01950



RE: Bycatch Caps for the Atlantic Sea Herring Fishery

Dear Mr. Howard:

I am writing on behalf of the Herring Alliance<sup>1</sup> to provide comments on Council discussions and decisions, concerning groundfish bycatch in the Atlantic sea herring fishery, at the meeting in Brewster (16 November 2010).

Council efforts, specifically herring Amendments 4 and 5, have focused on the widely-recognized need to reduce bycatch in the Atlantic sea herring fishery.<sup>2</sup> There continues to be substantial public concern about bycatch in the herring fishery, particularly about the mid-water trawl fleet and the impact this fleet is having on groundfish, river herring and other species. Fishermen whose livelihoods depend upon haddock and other groundfish are understandably concerned about unrealized potential yield due to the juvenile groundfish that are caught by vessels permitted to fish in the mid-water, not on the bottom.<sup>3</sup>

The recent Council decision to ... *create Framework Adjustment 47 to address issues associated with the haddock bycatch cap in the sea herring fishery for implementation in 2011*<sup>4</sup> ... provides an important

<sup>1</sup> The Herring Alliance has 34 member organizations and represents nearly 2 million individual members; See membership at: [www.herringalliance.org/alliance-members](http://www.herringalliance.org/alliance-members)

<sup>2</sup> The current draft of Amendment 5 (30 November 2010) identifies four objectives that are all pertinent here: (1) To implement measures to improve the long-term monitoring of catch (landings and bycatch) in the herring fishery; (2) To implement other management measures as necessary to ensure compliance with the MSA; (3) To implement management measures to address bycatch in the Atlantic herring fishery; (4) In the context of Objectives 1 -4 (above), to consider the health of the herring resource and the important role of herring as a forage fish and a predator fish throughout its range.

<sup>3</sup> The current definition of mid-water trawl gear does not include a provision for maintaining a minimum distance from the bottom or surface of the water: *Midwater trawl gear means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time. The gear may not include discs, bobbins, or rollers on its footrope, or chafing gear as part of the net.* see 50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES, Federal Register / Vol. 72, No. 47 / Monday, March 12, 2007 / Rules and Regulations p 11271; if not caught as juveniles, these haddock would grow to be harvestable in the groundfishery.

<sup>4</sup> Motion 3b introduced at the Brewster Mass meeting, 16 November, by Mr. Goethel and seconded by Mr. Stockwell received unanimous support with 14 votes in favor.

opportunity for the Council to address key bycatch issues as mandated by the Magnuson Stevens Act<sup>5</sup> and prioritized by the Council for this fishery.

At the Brewster Council meeting, the mid-water trawl industry pled for increasing the allowed bycatch of haddock in the herring fishery. The industry suggested that the haddock cap is limiting their catch of herring and that this constitutes an emergency. What is limiting this segment of the Atlantic herring fishery is their failure to reduce the bycatch of haddock and other species in their fishery. The haddock cap does, and should, provide an incentive to reduce bycatch and provides a limit that serves to protect the resource.<sup>6</sup> To the best of our knowledge, the fleet has not actually reached the cap, and this should be considered as alternatives for framework 47 are developed.

Although the Council identified bycatch reduction as a top priority for Amendment 5 several years ago, during the recent Brewster meeting the Council had a lengthy discussion as to whether Amendment 5's plans for bycatch reduction might be put on hold to address the industry request to increase bycatch. The Council's decision to keep Amendment 5 as a top priority and to improve the haddock cap as a separate matter through a framework was the right decision. There is no emergency and the cap is functioning as it should, limiting bycatch and creating incentives for cleaner fishing by the mid-water trawl fleet.

The Herring Alliance strongly urges the Council to:

1. Continue to make bycatch monitoring and reduction in the Atlantic herring fishery the highest priority through completion of a strong Amendment 5, as soon as possible.
2. Include alternatives for reducing haddock and other groundfish bycatch in **Framework 47** including alternatives that would:
  - a. Maintain the cap at no more than the current 0.2% of the total combined target total allowable catch (TAC) for GOM and GB haddock.
  - b. Require that individual vessels have caps, including options that are specified for geographic sub-areas, or *stock-areas*, and times.
  - c. Exclude mid-water trawl gear from groundfish closed areas – areas intended to minimize groundfish mortality, including spawning and juvenile fish.
  - d. Prohibit mid-water trawl nets from fishing near the bottom, including a requirement that data from foot rope, and/or head rope, height sensors be logged and made available to NMFS upon request.
  - e. Identify *hotspots* for haddock bycatch by herring vessels using available data from the observer program (NEFOP) and the NMFS seasonal bottom trawl survey. Hotspots are areas where the probability of haddock bycatch is expected to be high and can be used to reduce bycatch with appropriate management measures.
  - f. Develop a system of move-along rules so that when the bycatch rate reaches a specified trigger level, vessels are excluded from an area for a period of time in order to decrease bycatch.

<sup>5</sup> National standard 9 for fishery conservation and management: *Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.* 16 U.S.C. 1851-1852, MSA §§ 301-302

<sup>6</sup> According to NMFS, the cap was never intended to fluctuate with observer coverage levels but rather reflected an amount of haddock the NEFMC and NMFS determined was acceptable: (*"The 0.2-percent cap has been determined to provide sufficient protection to the haddock stocks by constraining any bycatch in the herring fishery to biologically insignificant levels"*).. Federal Register / Vol. 71, No. 157 / Tuesday, August 15, 2006 / Rules and Regulations 46873

3. Direct the Groundfish PDT and / or NMFS to provide an evaluation of the measures that have been implemented since Amendment 1 (2006) to reduce the bycatch of haddock and other groundfish.
4. Provide an analysis of bycatch of haddock and other groundfish in the herring fishery, showing the spatial and temporal distribution of bycatch, and the relative contribution of the various gear types; this analysis should examine fishing in and around groundfish closed areas, and any information that can be used to relate groundfish bycatch to the location of net tows within the water column. Such analyses will be essential for developing a picture of bycatch hotspots (see e above).
5. Provide an analysis of haddock caught in the mid-water trawl herring fishery in terms of forgone yield to the groundfish fishery; the herring fishery is designed to catch small fish and juvenile haddock caught must be considered in terms of the larger haddock that could otherwise be marketed by the groundfish fishery. Any allocation of haddock to the herring fishery through a cap comes at the expense of haddock that could potentially be caught and sold by those whose livelihoods depend upon groundfish.

In Amendment 4, the haddock bycatch cap, as introduced through Framework Adjustment 43, is touted as an example of an effective measure limiting bycatch in the Atlantic herring fishery.<sup>7</sup> Annual caps are a good way to contain bycatch if they are enforced. In Framework Adjustment 43 the Council made a policy choice about the maximum amount of haddock bycatch it was willing to tolerate in this fishery and NMFS defended the cap amount on biological grounds.<sup>8</sup> For the industry to now plead that an emergency situation has developed because it has approached its annual cap does not make sense. Raising the cap would defeat the purpose of the cap and set a bad precedent for similar measures in other fisheries. The haddock bycatch cap was established to protect haddock from mid-water trawl gear. The performance of the cap can be improved through Framework 47 as noted above. The Council's attention should be directed at decreasing bycatch, not increasing it.

One of the benefits of catch limits, whether they are ACLs in an FMP such as the multi-species FMP, or caps on bycatch of specific stocks, is that they establish a clear incentive to develop more selective fishing approaches so that the limiting stocks can be avoided – in this case haddock by the Atlantic herring mid-water fleet. These incentives are important and should not be eroded by raising caps in fisheries that have reached their bycatch limits.

During the development of Amendment 1 to the Atlantic herring fishery (2006) there was significant discussion about the various ways that the herring fishing vessels could avoid haddock bycatch by changing their fishing methods. The Environmental Impact Statement for Amendment 1 includes a section describing this *Voluntary Bycatch Reporting/Avoidance Program*.<sup>9</sup> Similar discussions have emerged in recent years about avoiding bycatch of river herring in this fishery through Amendment 5.

<sup>7</sup> See Framework 43 Final rule: **Federal Register** / Vol. 71, No. 157 / Tuesday, August 15, 2006 / Rules and Regulations, pp 46871-77; see also <http://www.nefmc.org/nemulti/index.html>;

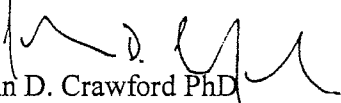
<sup>8</sup> According to NMFS, *The 0.2-percent cap has been determined to provide sufficient protection to the haddock stocks by constraining any bycatch in the herring fishery to biologically insignificant levels.* **Federal Register** / Vol. 71, No. 157 / Tuesday, August 15, 2006 / Rules and Regulations 46873

<sup>9</sup> Section 7.4.1.5.9, pp 371-3, of the Final Amendment 1 to the Atlantic Herring Fishery Management Plan (with FSEIS and IRFA) entitled *Industry Initiatives – Voluntary Bycatch Reporting/Avoidance Program in 2005* includes an elaboration of an industry program proposed by the East Coast Pelagic Association, similar to the voluntary program that has been presented by industry in the context of Amendment 5.

This time the industry has advertised their collaboration with the University of Massachusetts and Massachusetts Department of Marine Fisheries to avoid river herring as bycatch. Effective caps should create strong incentives for the industry to find ways to avoid haddock and other bycatch. Unfortunately, substantial progress in this area has not been demonstrated. This is not the time to lift these incentives.

Over the years it has become increasingly clear that the so-called "mid-water" trawl fleet is not always in the middle of the water column despite the regulatory definition requiring that they not operate their gear in contact with the bottom. In addition to the now well-documented bycatch of bottom-living groundfish, observer reports and testimony from industry representatives has made it clear that bottom contact with mid-water trawl gear is commonplace. The Council should revisit this issue and develop a better definition of mid-water gear so that management appropriate for a truly pelagic mid-water fishery can be developed and be effective.

Sincerely,



John D. Crawford PhD  
Science and Policy Manager  
Pew Environment Group – New England

3



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

December 16, 2010

Northeast Fishery Sector X  
369 Savin Hill Avenue  
Boston, MA 02125

Dear Sector Manager:

Since the expansion of the sector system that occurred when Amendment 16 became effective on May 1<sup>st</sup> of this year, many complicating factors have become evident that were unforeseen during its development. One such problem is that the Council did not consider how long it might take to reconcile sector reports with NMFS records. As a result, in practice it can take at least several weeks for a sector manager to know that their reports have been accepted, reconciled with the NMFS database, and considered final. The amount of time this reconciliation process takes has led to difficulty in planning sector operations.

In order to verify and turn over sector reports, both NMFS and sector managers need dealer data. One factor in the delay of these reports could occur when dealers are late or incomplete in their reporting. NMFS recently sent a letter requesting sector managers to inform the agency of any dealers who lack timely reporting so that they may be urged to provide better information. At its November meeting, the Council discussed this topic and collectively decided to request your assistance in providing these names to NMFS.

Thank you for your compliance with this request as we try to implement the sector program in the most effective way possible.

Sincerely,



Paul J. Howard  
Executive Director



3



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
John Pappalardo, *Chairman* | Paul J. Howard, *Executive Director*

December 16, 2010

Ms. Patricia A. Kurkul  
Regional Administrator  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

Dear Pat:

Since Amendment 16 was implemented on May 1<sup>st</sup> of this year, many complicating factors about sector management have become evident that were unforeseen during its development. One such problem is that the Council did not consider how long it might take to reconcile sector reports with NMFS records. As a result, in practice it can take at least several weeks for a sector manager to know that their reports have been accepted, reconciled with the NMFS database, and considered final.

Amendment 16 states that “all or a portion of a sector’s ACE of any stock can be transferred to another sector...” and that “this exchange can occur at any time during the fishing year and up to two weeks into the following fishing year.” This requirement is no longer practical because the sectors are unlikely to know their final ACE balance in the two weeks immediately following the end of the fishing year.

The Council requested at its November meeting to ask NMFS to waive the requirement that ACE transfers be completed within two weeks of the end of the fishing year. An alternative approach may be to ask sectors to complete ACE transfers within two weeks of all sectors’ receipt of final NMFS reconciliation of ACE status.

Without this modification to the due date, sectors will not be able to transfer ACE post-season to balance their books as intended by Amendment 16 without the risk of incurring a violation. Please consider this request.

Sincerely,

Paul J. Howard  
Executive Director







New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
Frank Blount, *Chairman* | Paul J. Howard, *Executive Director*

December 15, 2010

Ms. Pat Kurkul  
Northeast Regional Administrator  
NMFS/NOAA  
55 Great Republic Drive  
Gloucester, MA 01930-2298

Nancy B. Thompson, Ph.D.  
Science and Research Director  
Northeast Fisheries Science Center  
166 Water Street  
Woods Hole, MA 02543-1026

Dear Pat and Nancy:

In the fall of 2011 the Council will establish groundfish specifications for FY 2012 –FY 2014. I would like to discuss what information will be used to set those specifications at the Executive Committee meeting scheduled for January 4, 2011. I invite you and your staff to join us so that we can reach a decision on the issue at this meeting. I also plan to invite the Science and Statistical Committee (SSC) chair to participate in this discussion.

During the development of Amendment 16, Council and Center staff discussed the future setting of OFLs/ABCs/ACLs and agreed on a course of action. It was clear that the process could not be similar to GARM III, when benchmark assessments were performed for all groundfish stocks at the same time. Amendment 16 indicates that the Plan Development Team will advise the Council and the SSC based on "...available data, including information on catch (landings and discards), DAS and other measures of fishing effort, estimates and forecasts from recent assessments about stock status and fishing mortality rates, enforcement and compliance with measures, and any other relevant information, such as trawl survey indices or other data." In the absence of updated assessment information (e.g. the planned benchmarks for winter flounder stocks), the advice was to be primarily based on projections from the most recent assessment that would be updated with recent catches. There have been recent informal discussions, however, that suggest this approach may not be sufficiently robust to meet the SSC's needs. This is an issue that we need to resolve as quickly as possible.

---

In my view, there are four broad options that should be explored so that we understand the benefits and costs of each. You and your staff may have additional suggestions. Each of these options has strengths and weaknesses. Some of the options, if selected, may also interfere with other planned assessments. In order to facilitate our discussion, my staff is willing to prepare a short discussion paper that highlights these issues. We will need assistance from the NEFSC to evaluate the options and identify the tradeoffs. The four options I identified are:

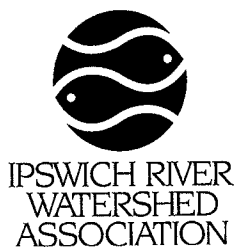
1. Project forward from the last assessment based on mortality targets without updating any data.
2. Project forward from the last assessment using actual catch in recent years (e.g. 2008 – 2010). Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised. No changes to projection methodology would be made.
3. Project forward from the last assessment using actual catch in recent years. Input a recruitment estimate into the projection for recent years. Update survey indices and qualitatively evaluate survey trends to see if there are any obvious red flags raised.
4. Update the most recent approved assessment model with recent catch and survey indices. Do not revise age-length keys, selectivity, etc.

I hope we decide on a course of action at this meeting. I look forward to your participation in this discussion. Please contact me if you have questions.

Sincerely,

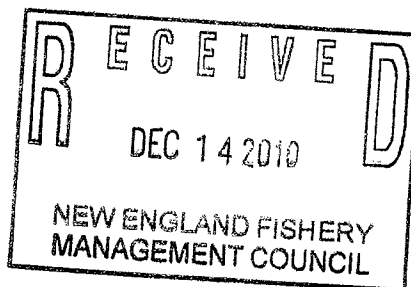


Paul J. Howard  
Executive Director



December 13, 2010

Governor Deval Patrick  
Massachusetts State House  
Office of the Governor, Room 280  
Boston, MA 02133



Dear Governor Patrick:

We are writing to ask you to reconsider your recent decision to request that Commerce Secretary Gary Locke undertake an Emergency Action to increase fishing quotas under the New England Groundfish Plan due to an "economic emergency."

While we appreciate your commitment to do everything within the power of the Governor's office to provide economic assistance to the Commonwealth's fishing ports, we are concerned that the request runs counter to established science and could undermine years of planning and public input that seeks to preserve our precious fishing resources and guard against overfishing.

The science used to determine the catch limits in use today was the most rigorous ever undertaken by the world-renowned Northeast Fisheries Science Center, whose functions are carried out through the coordinated efforts of research facilities located in Massachusetts, Rhode Island, Connecticut, New Jersey, and Washington, DC, including NOAA's Woods Hole Laboratory. It was the product of a peer-reviewed process that took almost a year, included scientists from around the world and made use of the best available science. In short, the integrity of this science is exceptional.

The development of emergency fishery regulations by the Secretary is a serious issue that falls outside of the regular council notice-and-rulemaking process and can be exercised only under the

cc: CBK, TN, AH, PMF (12/16)

most extraordinary circumstances. This particular case could establish a precedent that would undo the years of hard work at the New England Fishery Management Council (NEFMC) to bring long term economic stability and sustainability to New England fisheries.

As you know, a fisheries management plan, guided by industry leaders and state fisheries directors, has been put in place after three years of research, debate and public input. The Massachusetts state marine fisheries director voted for this new management system. This plan should be given time to work; sector managers and fishermen should be allowed to learn from the process, and if adjustments are needed they should be targeted and thoughtfully developed.

It is telling that the NEFMC apparently does not identify the same emergency cited in your request, nor is the council asking for similar emergency action. This council includes commercial fishing interests and state fishing directors, and in the past it has always been a powerful economic barometer of whether an emergency situation existed.

It is also important to note that for many fishermen, the new system seems to be working. The proof is that none of the groundfish species are anywhere near their catch limits; therefore, calling for an increase in catch limits seems unwarranted. Fishermen also now have more control over when and how they fish. This puts the power of the marketplace into the hands of fishermen and gives them an added level of bargaining power with processors. Thus, prices are up and many fishermen have made more money with less effort this year than last. While we recognize that some fishermen may not have received as great an allocation as they felt entitled to, the process was transparent and fair. We would support a tailored state-level process that examines the various claims that are being raised now by some fishermen so that any injustices could be remedied through the council process as quickly as possible. The emergency request, however, is not tailored and would largely benefit the fishing interests that already have fared well as far as allocations are concerned.

Sector management and Amendment 16 were developed by the council with the support of your appointees and your state director based on information provided by the council's scientists as part of an open and democratic process.

We urge you to reconsider your request and give the newly implemented management plan a chance to work. We respectfully request a meeting with you to go over these issues in greater depth. Thank you for your consideration. We look forward to working together to achieve our shared goal of a healthy marine environment.

If you would like to meet and discuss this, please have your staff call Peter Baker at 508.641.4064.

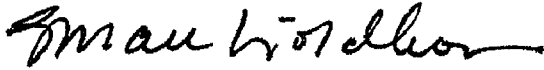
Sincerely,

A handwritten signature in black ink, appearing to be 'PB' or similar initials, written in a cursive style.


Peter Baker  
Manager, New England Fisheries Campaigns  
Pew Environment Group



Peter Shelley  
Vice President  
Conservation Law Foundation



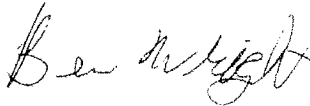
Susan Goldhor, Ph.D.  
The Center for Applied Regional Studies



David S. Miller  
Executive Managing Director  
Clean Energy Venture Group



Michael Gravitz  
Oceans Advocate  
Environment America



Ben Wright  
Global Warming Advocate  
Environment Massachusetts

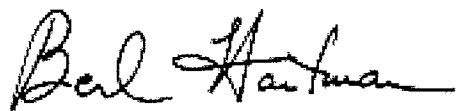
/s/

Don Reed  
Chapter Director  
Environmental Entrepreneurs (E2) New England



Dan Goldman  
Executive Vice President and Chief Financial Officer  
GreatPoint Energy

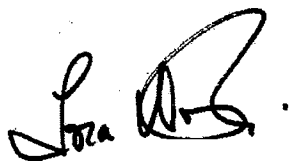
/s/  
Dianne Callan  
Green Tech Legal



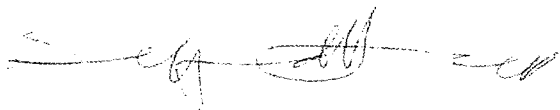
Berl Hartman  
Hartman Consulting



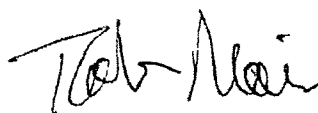
Kerry Mackin  
Executive Director  
Ipswich River Watershed Association



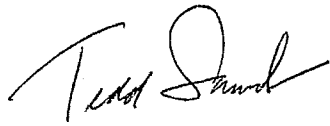
Lora Wondolowski  
Executive Director  
Massachusetts League of Environmental Voters



Bradford H. Sewell  
Senior Attorney  
Natural Resources Defense Council



Rob Moir  
President and Executive Director  
Ocean River Institute



Tedd Saunders  
Chief Sustainability Officer, The Saunders Hotel Group



Dan Proctor  
Chapter Chair  
Sierra Club Massachusetts



Jay Baldwin  
Partner  
Wind River Capital Partners

cc:

Arthur Bernard, Chief of Staff to the Governor  
William Cowen, Chief of Staff Designee to the Governor  
Paul Diodati, Director, Massachusetts Division of Marine Fisheries  
Ian Bowles, Secretary, Massachusetts Executive Office of Energy & Environmental Affairs  
Richard Sullivan, Secretary Designee, Massachusetts Executive Office of Energy &  
Environmental Affairs  
Mary Griffin, Commissioner, Massachusetts Fisheries & Wildlife  
Eric Schwaab, Assistant Administrator, National Marine Fisheries Service  
Dr. Jane Lubchenco, Administrator, National Oceanic and Atmospheric Administration  
John Pappalardo, Chairman, New England Fishery Management Council  
The Honorable Gary Locke, U.S. Secretary of Commerce





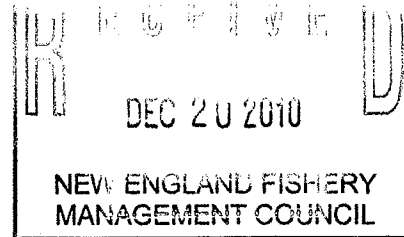
3

**SUSTAINABLE HARVEST SECTOR**

PO Box 356, So. Berwick ME 03908 | 207-956-8497 | www.groundfish.org

December 19 2010

Paul Howard  
New England Fishery Management Council  
50 Water St.  
Newburyport, MA 01950



Dear Paul,

On December 16 you wrote to ask we identify dealers that are late (or incomplete) in reporting purchases. There are two possible reporting deadlines: (1) the standard NMFS-mandate deadline, and (2) other sector-specific requested deadlines.

Regarding (1), the NMFS mandates that dealers report purchases to it electronically by Tuesday midnight for purchases from the prior week. This should be straightforward: If the NMFS database shows a purchase which falls within the reporting week was uploaded after Tuesday midnight, then the deadline has been missed. The Service is well equipped to identify those delinquent dealers.

Regarding (2), our sector requests dealers report purchases to us within 24 hours of offloading. In our experience compliance is 95% or better. The dealers our vessels work with have largely been diligent about providing us timely information.

Sincerely,

Hank Soule

cc: Council, TN, AH (12/20)





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
NORTHEAST REGION  
55 Great Republic Drive  
Gloucester, MA 01930-2298

November 30, 2010

## Small Entity Compliance Guide

### **Subject: Changes for Midwater Trawl Vessels Fishing in Groundfish Closed Area I**

Dear Limited Access Herring Category A or B Permit Holder:

This letter is to inform you that, **effective January 31, 2011**, NOAA's National Marine Fisheries Service (NMFS) will eliminate the exemption from bringing small amounts of fish on board after pumping operations are concluded for midwater trawl vessels fishing in Northeast (NE) multispecies Closed Area I (CA I) at 50 CFR 648.80(d)(7)(ii)(D). As a result of this change, any midwater trawl vessel fishing in CA I will no longer be able to routinely discard catch that remains in the net at the conclusion of pumping operations, without first bringing it on board the vessel and making it available for sampling and inspection by the observer.

This change is a result of a rulemaking process prompted by a Court-approved joint motion to stay pending litigation (*Taylor et al. v Locke*, 09-CV-02289-HHK) on the November 2, 2009, rule which initially allowed this exemption. As part of the stay agreement, a proposed rule was published on September 7, 2010, seeking public comment on the exemption for operational discards. Over 5,900 comments were received during the comment period, and, after thoroughly reviewing all comments received, NMFS published a final rule on November 30, 2010.

As of January 31, 2011, if any part of a midwater trawl tow is inside of CA I, the vessel will be prohibited from releasing any fish from the codend of the net after pumping operations are concluded, unless the fish have first been brought aboard the vessel and made available for sampling and inspection by the observer, subject to the exemptions described below. None of the other provisions of the requirement for 100% at-sea observer coverage in CA I are changed by this action.

In recognition that there are certain conditions under which fish cannot be sampled, the regulations provide three exemptions, which are not changed by this action. Fish that have not been pumped aboard the vessel may be released if the vessel operator determines that:

- Pumping or otherwise bringing the catch aboard would compromise the safety of the vessel;
- Mechanical failure precludes bringing some or all of the catch aboard the vessel; or
- Spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch.

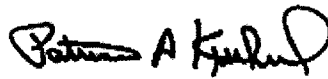


As a reminder, following the release of fish under any of these exemptions, the vessel must stop fishing and exit CA I. The vessel may continue to fish the remainder of the trip outside of CA I, but may not fish any part of a midwater trawl tow inside CA I for the remainder of that trip. The vessel operator must also complete, sign, and submit to NMFS a Closed Area I Midwater Trawl Released Codend Affidavit following such a release of fish. The affidavit form includes fields for vessel information and details of where, when, and why the tow was released, as well as a good-faith estimate of both the total weight of fish caught on that tow and the weight of fish released.

Further, a vessel operator must make all reasonable efforts (including strapping and splitting the net) to pump or otherwise bring aboard as much of the catch as possible before releasing the codend. The vessel operator must notify the observer of the reason for the release and give reasonable assistance to the observer in his/her efforts to visually inspect and identify the catch remaining in the net before it is released.

The Gulf of Maine/Georges Bank Herring Midwater Trawl Gear Letter of Authorization (LOA) will be modified to reflect the elimination of the exemption for operational discards. If your vessel is currently issued this LOA, a new revised LOA will be sent to you shortly. If you have any questions about these new requirements, please contact the Sustainable Fisheries Division at 978-281-9341.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia A. Kurkul". The signature is fluid and cursive, with a large, stylized initial "P" and "K".

Patricia A. Kurkul  
Regional Administrator

and 315, specifically asking the applicants to certify that the proposed assignment or transfer complies with the unjust enrichment provisions of the Commission's competitive bidding rules. The instructions for FCC Form 316 have been revised to assist applicants with completing the new questions.

Federal Communications Commission.

Gloria Miles,

Federal Register Liaison.

[FR Doc. 2010-29671 Filed 11-29-10; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 100813358-0560-02]

RIN 0648-BA16

#### Fisheries of the Northeastern United States; Discard Provision for Herring Midwater Trawl Vessels Fishing in Groundfish Closed Area I

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** Through this action, NMFS removes a regulatory exemption for midwater trawl herring vessels, which was originally implemented by a November 2, 2009, final rule. The exemption allowed midwater trawl vessels with an All Areas and/or Areas 2 and 3 Atlantic herring limited access permit fishing in Northeast (NE) multispecies Closed Area I (CA I) to release fish that cannot be pumped from the net at the end of pumping operations, without those fish being sampled by a NMFS at-sea observer. As a result of this rule, vessels will be required to bring the fish on board the vessel and make them available to the at-sea observer for sampling. The publication of this action is part of a Court-approved joint motion to stay pending litigation.

**DATES:** Effective January 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Policy Analyst, (978) 281-9341, fax (978) 281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 4, 2009, NMFS published a proposed rule (74 FR 45798) to implement changes to access

requirements for midwater trawl vessels fishing in CA I, at the request of the New England Fishery Management Council (Council), with the intended goal of collecting better information on bycatch in the midwater trawl fishery. A final rule was published on November 2, 2009 (74 FR 56562), that implemented regulations requiring 100-percent observer coverage of trips by vessels with limited access Atlantic herring All Areas and/or Areas 2 and 3 category permits fishing for herring in CA I with midwater trawl gear. The rule also prohibited these vessels from releasing fish from the codend of the net, transferring fish to another vessel that is not carrying an observer, or otherwise discarding fish at sea, unless the fish has first been brought on board the vessel and made available for sampling and inspection by the observer. The regulations implemented by the November 2, 2009, rule (74 FR 56562) provided the following exemptions to this prohibition:

- The vessel operator has determined there is a compelling safety reason; or
- A mechanical failure precludes bringing the fish aboard the vessel for inspection; or,
- After pumping of fish onto the vessel has begun, the vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. Under this scenario, the vessel operator must take reasonable measures (such as strapping and splitting the net) to remove all fish that can be pumped from the net prior to release; or
- When there are small amounts of fish that cannot be pumped and remain in the net at the completion of pumping operations.

Additionally, under these regulations, if a codend is released in accordance with one of the first three exemptions, the vessel operator must complete and sign an affidavit to NOAA's Office of Law Enforcement (OLE) stating the vessel name and permit number; the vessel trip report (VTR) serial number; where, when, and for what reason the catch was released; the total weight of fish caught on that tow; and the weight of fish released (if less than the full tow). Completed affidavits are to be submitted to OLE at the conclusion of the trip. Following a released codend under one of the first three exemptions, the vessel may not fish in CA I for the remainder of the trip.

The exception allowing small amounts of fish that cannot be pumped from the net (sometimes called operational discards) to be released unobserved from the net while still in the water was not specifically

mentioned in the proposed rule. NMFS considered this exemption to be a logical outgrowth of the proposed rule that needed no further public comment because it addressed a foreseeable practical problem that a small amount of fish may be left in a net after pumping operations were completed.

However, following publication of the final rule three fishermen filed a lawsuit challenging the exemption allowing the release of small amounts of fish that remain after pumping (*Taylor et al. v. Locke*, 09-CV-02289-HHK). Plaintiffs alleged that this additional exemption violated the Administrative Procedure Act because it was not a "logical outgrowth" of the proposed rule and should have been subjected to public comment, and that it violated conservation requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by allowing fish to be released from herring nets unobserved. Plaintiffs also claimed that the terms "small amounts of fish" and "at the completion of pumping operations" were not adequately defined.

Without admitting any violation of applicable law in publishing the original final rule, NMFS and the plaintiffs agreed to stay the litigation while NMFS repromulgated the challenged provision, to solicit public comment. On September 7, 2010, NMFS published a proposed rule (75 FR 54292), that repromulgated the challenged provision (§ 648.80(d)(7)(ii)(D)) and solicited public comment on whether to retain, delete, or amend the additional exemption in question. The proposed rule sought comment on: Retaining the exemption as it currently exists (status quo); eliminating the exemption (Alternative 1); modifying the exemption by specifying a maximum of 200 lb (90.7 kg) of fish that could be released (Alternative 2); or modifying the exemption by requiring that the codend either be brought on board or lifted out of the water, at the captain's discretion, so the observer could better estimate the amount and type of fish being released (Alternative 3). Public comments were accepted through October 7, 2010. Comments received are summarized and responded to below.

Based on public comment received, NMFS is implementing "Alternative 1," and is removing the exemption for operational discards at § 648.80(d)(7)(ii)(D). Therefore, if fish remain in the net at the conclusion of pumping operations, those fish will have to be brought on board the vessel and made available for sampling and

inspection by the observer, unless one of the other three exemptions applies. Therefore, fish that have not been pumped on board the vessel may be released if the vessel operator finds that: Pumping the catch could compromise the safety of the vessel; mechanical failure precludes bringing some or all of a catch on board the vessel; or spiny dogfish have clogged the pump and consequently prevent pumping of the rest of the catch. If a net is released for any of these three reasons, the vessel operator must complete and sign a CA I Midwater Trawl Released Codend Affidavit stating where, when, and why the net was released, as well as a good-faith estimate of both the total weight of fish caught on that tow and the weight of fish released (if the tow had been partially pumped). The completed affidavit form must be submitted to NMFS within 48 hr of the completion of the trip.

Following the release of a net for one of the three exemptions, the vessel is required to exit CA I. The vessel may continue to fish, but may not fish in CA I for the remainder of the trip.

#### Comments and Responses

A total of 5,924 comments were received during the comment period for the proposed rule from: 2 representatives of the commercial herring midwater trawl industry; 2 coalitions of herring advocacy groups; 5 representatives of recreational fishing organizations; 4 commercial groundfish organizations; 2 state elected officials (MA State Senator Robert A. O'Leary and MA State Representative Sarah K. Peake); 1 U.S. Congressman (Representative William Delahunt, MA); 6 environmental organizations; 1 community organization; 2 agriculture and fishery advocacy groups; the Atlantic States Marine Fisheries Commission (ASMFC); and 5,898 individuals. One comment was received after the close of the comment period. The vast majority of comments were form letters submitted by environmental organizations. The two representatives from the commercial herring midwater trawl industry supported the status quo. All other comments received supported Alternative 1 in the proposed rule. Alternatives 2 or 3 were not supported by any commenters and were criticized as being impractical or ineffective.

*Comment 1:* The two representatives of the commercial midwater trawl herring industry supported the status quo measure and raised concerns about each of the proposed alternatives. To illustrate their concerns, they described current procedures and how these procedures are not compatible with the

proposed alternatives. The commenters noted that, under current operations, a vessel typically brings the full net alongside the vessel, where the end of the net is hoisted aboard in order to attach the pump. The pump and net are then lowered back into the water and splitting lines and straps are used to move catch to the pump. When the pump is moving mostly water, with an occasional fish, pumping is stopped, and the pump is removed from the net, leaving the codend open and releasing any fish that are still in the net. The empty net is then brought aboard in order to reset clips and rings before being set out for the next tow. The commenters assert that it could be dangerous for a vessel to attempt to re-cinch the end of the net after pumping is concluded in order to then bring the net aboard with the remaining catch.

*Response:* NMFS acknowledges that some vessels may need to adjust their fishing practices in order to remove the fish pump from the net without releasing the remaining fish, so that the fish in the net can be brought aboard for the observer to sample. The time between publication of this rule and when it becomes effective can be used by these vessels to develop alternative methods that allow safe operation within these requirements. A vessel may continue to fish outside of CA I while new procedures are developed. NMFS believes the safety and other exemptions sufficiently address commenters' concerns regarding the practical and safety operational difficulties of bringing nets on board vessels after pumping operations while creating a disincentive to invoke the exemption without justification. For any safety problems in bringing the net on board for inspection after pumping operations are complete, the vessel operator may take advantage of the exemption allowing release of fish for vessel safety. However, the vessel would still need to abide by the requirements of this exemption, including leaving CA I for the remainder of that trip.

*Comment 2:* The two representatives of the commercial midwater trawl herring industry asserted that it is impossible for these vessels to safely bring full nets and brailers over the side or over the stern of the vessel. In contrast, several other commenters cited remarks from a member of the commercial herring midwater trawl industry at the July 15, 2010, meeting of the Council's Atlantic Herring Plan Development Team, that a midwater trawl vessel could not bring aboard a full net, but could bring aboard up to 1 ton (907.1 kg) of fish in the net. A commenter who claimed experience on

both midwater trawl and purse seine herring vessels also asserted that up to 1 ton (907.1 kg) of fish could safely be brought on board a midwater trawl vessel.

*Response:* This action does not require full nets and brailers to be brought aboard a vessel. The intent of the subject exemption was the release of very small amounts of fish, perhaps a few hundred pounds per tow, which physically could not be pumped. It was not intended to cover the release of larger amounts of fish. Three other exemptions, for safety, mechanical failure, or spiny dogfish clogging the pump allow release of larger catches that cannot be pumped aboard.

*Comment 3:* The representatives of the commercial midwater trawl herring industry stated that the proposed alternatives are unnecessary because at-sea observers are currently provided nearly every opportunity to estimate the volume, and most often the species of fish, remaining in the net before it is released. Conversely, on this subject several individuals, commercial groundfish organizations, and coalitions of herring advocacy groups opposed observer sampling protocols that rely on such "visual access" to the codend to estimate catch that is released. These commenters supported Alternative 1 as the only way to accurately account for all catch by the midwater trawl vessels operating in CA I.

*Response:* When determining the volume of fish before release, the at-sea observer must often rely on the estimations provided by the vessel operator and crew who are much more familiar with the specific gear in use. Species identification of fish remaining in the net is not typically possible. Observers may be able to identify large-bodied organisms in the net, but are unable to reliably differentiate many fish to their species. Even if fish at the surface of the net are identifiable, the contents may not be homogeneous and the observer cannot determine the full composition of the net. Therefore, released catch is typically classified as "Fish, NK" (i.e., fish, species not known). The Council's request for increased observer coverage in CA I was intended in part to provide additional information on the total catch of this fishery that could then inform future management actions. In order to provide the most complete and valuable information for this purpose, it is important to record, as completely and accurately as possible, the catch of vessels subject to this increased observer coverage. The removal of this exemption may help to address continued questions regarding

stratification of catch within a net or whether the pump housing, which is primarily designed to keep the net out of the pump, might also exclude some larger bodied species.

*Comment 4:* The ASMFC supported Alternative 1, but suggested NMFS periodically review this measure to determine if the level of data collection continues to be necessary and if the burden to the industry is justified.

*Response:* This rule may be reconsidered and even superseded by a future Council action modifying the catch monitoring program for the Atlantic herring fishery as a whole. If the Council does not choose to review and reevaluate the requirements for access to CA I, the regulations would still be subject to the normal periodic review process and could be changed to account for new information about the burden on the fishery if necessary or appropriate.

*Comment 5:* No commenter supported either Alternative 2 or Alternative 3. Representatives of the commercial herring midwater trawl industry, representatives of commercial groundfish industry, and environmental groups all criticized these proposed alternatives as being unworkable.

*Response:* As explained in the proposed rule, these alternatives were intended as examples of possible modification to the existing regulation. The limit on how much can be released in Alternative 2 would be difficult to estimate, and could put the observer in an enforcement role. Alternative 3 would require the vessel crew to re-cinch the net after pumping, which is one of the major hurdles to bringing the catch on board. In addition, raising the net out of the water does not address the question of catch composition within the net and may pose even more logistical problems than bringing the net and catch on board. Therefore, NMFS did not consider either of these as acceptable alternatives for this final rule.

*Comment 6:* Some commenters objected to the Council granting midwater trawl vessels access to CA I for various reasons, including that midwater trawl access to groundfish closed areas was authorized based on less research and analysis than was required for the establishment of the NE Multispecies CA I Hook Gear Haddock Special Access Program (SAP). These comments included opposition to all midwater trawling, requests that the 100 percent observer coverage requirements apply to all groundfish closed areas, questions on the use and enforcement of the Closed Area I Midwater Trawl Released Codend Affidavit, and

objections to the Council's requirement that in order to access CA I vessels targeting groundfish through the NE Multispecies CA I, Hook Gear Haddock Special Access Program had to meet a higher hurdle in terms of documenting bycatch than did midwater trawl vessels.

*Response:* These comments question the underlying provision of allowing midwater trawl vessels access to CA I, and other attendant requirements, which is beyond the scope of this rule, and, therefore not addressed in this final rule.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Atlantic Herring and NE Multispecies FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS received no comments questioning or regarding this certification.

Dated: November 24, 2010.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

#### PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

*Authority:* 16 U.S.C. 1801 *et seq.*

#### § 648.80 [Amended]

■ 2. In § 648.80, remove paragraph (d)(7)(ii)(D).

[FR Doc. 2010-30152 Filed 11-29-10; 8:45 am]

BILLING CODE 3510-22-P

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 0910131362-0087-02]

RIN 0648-XA066

#### Fisheries of the Exclusive Economic Zone Off Alaska; Big Skate in the Central Regulatory Area of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting retention of big skate in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary because the 2010 total allowable catch (TAC) of big skate in the Central Regulatory Area of the GOA has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), November 24, 2010, through 2400 hrs, A.l.t., December 31, 2010.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 TAC of big skate in the Central Regulatory Area of the GOA is 2,049 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2010 TAC of big skate in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that big skate caught in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA





November 10, 2010

Dear Chairman Pappalardo and Council members,

Successful transition to sector management continues to be dependent on a constructive partnership among the sector managers, sector members, NMFS staff, and NEFMC to collaboratively and constructively develop, implement, evaluate, and adjust the various systems to ensure regulatory compliance as well as efficient, purposeful systems. Valuable improvements have been made, yet there is still work to be done. **We ask for clarification of the Council's intent with regard to current and year-end reconciliation timelines of sector ACE reports.**

Six months into the fishing year, sector managers have reported weekly as required; we report harvest levels on a trip-by-trip basis and at the sector level, as well as on the sector's remaining ACE. **We want to be sure the Council is fully aware that the agency has yet to provide us with meaningful confirmation of the accuracy of our weekly reports at the trip level. To date, we have received only superficial auditing of our detail reports (identifying issues such as duplicate records, and incorrect formatting).** We believe you will share our concerns and agree that this makes successful ACE management an even greater challenge.

Based on the agency's input, we have every reason to believe we are applying the complex computations properly and, thus, that our weekly reports are indeed accurate. Successful ACE management rests on the accuracy of our data and assurance from NMFS that our data and calculations are correct. However, the variable nature of discard rates, the difficulty of predicting fishing behavior under a new management regime, and the recent reduction in the GB yellowtail flounder ACL are just a few of the factors which exacerbate the uncertainty as to whether our reports reflect the same information being used by the agency. Please consider that the reconciliation will be significantly more onerous and potentially more disruptive as it gets later in the fishing year.

At the October 27 Groundfish Committee meeting, we raised this issue because of the potential impact it has on year-end reconciliation. Under Amendment 16, sectors have two weeks from the end of the fishing year to conduct any ACE trading necessary to "balance the books." The agency intends to hold 20% of 2011 ACE back to cover any potential overages, indicating that their final reconciliation may take at least two months. If the agency has not completed their final reconciliation, which supercedes the Sector's own data and is the final determination of ACE status for each sector, then, the two week trading period following April 30, 2010 is completely inadequate. We greatly appreciated the Groundfish Committee motion which demonstrated its intent that NERO

have the authority to extend this time frame as necessary, as well as the agency's indications that a sector's good faith efforts to balance their ACE accounts would not result in enforcement action for an overage.

However, given the impact of this issue on 2011 ACE (as well as the 'Right of First Refusal' clause that is in almost every Sector's Operations Plan), **we respectfully request that the Council specify that this reconciliation period be extended to two weeks following final agency reconciliation of each sector's ACE status.**

We hope you agree that the lack of reconciliation to date is a very serious concern and that further delay will place both our sectors and fishermen in potential jeopardy through no fault of their own. We would be happy to work with you to craft a motion that provides the necessary flexibility, and we greatly appreciate your attention to this critical issue.

Thank you again for working with us to ensure that the sector management system is a success.

Sincerely,

Dan Salerno, Manager, Northeast Fishery Sector II

Meredith Mendelson, Manager, Northeast Fishery Sector V

Stephanie Rafael, Manager, Northeast Fishery Sector IX

David DeOlliviera, Manager, Northeast Fishery Sector VII and VIII

Jim Reardon, Manager, Northeast Fishery Sector VI and X

Nick Brancaleone, Manager, Northeast Fishery Sector III

Josh Wiersma, Manager, Northeast Fishery Sector XI and XII

Paula Ryan and Vito Giacalone, Managers, Northeast Fishery Sector IV

John Haran, Manager, Northeast Fishery Sector XIII

Cindy Smith, Manager, Port Clyde Community Groundfish Sector and Tri-State Sector

Hank Soule, Manager, Sustainable Harvest Sector

3

To: New England Fisheries Management Council

Re: The Usefulness of the Dock Side Monitoring Program

From: Joshua Wiersma, Ph.D

Sector Manager

Northeast Fishery Sector XI and Northeast Fishery Sector XII (NEFS XI and NEFS XII)

Endorsed by: The Board of Directors of NEFS XI and NEFS XII

Jay Driscoll (President)

Jamie Hayward (Treasurer)

Carolyn Eastman (Clerk)

Randy Gauron

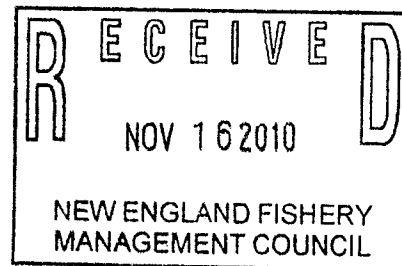
Padi Anderson

Peter Kendall

Ellen Goethal

Tom Lyons

Peter Lagerstrom



Also endorsed by:

Jim Reardon, Sector Manager Northeast Fishery Sector X and Northeast Fishery Sector VI.

These comments are intended to relay some thoughts about the usefulness of the dock side monitoring (DSM) program in its current form. These comments represent the sentiment of my 42 sector members, and are endorsed by the Board of Directors for both Northeast Fishery Sector XI and Northeast Fishery Sector XII, and the Sector manager for Northeast Fishery Sector X and Northeast Fishery Sector VI.

Introduction

Amendment 16 requires that all Sector groups be subjected to 50% (of total trips) random dock side monitoring coverage, and stipulates that next year this percentage will decrease to 20%. Fortunately for Sectors, federal monies are available to pay for up to 1.2 million dollars of total DSM cost this year, and it is likely that monies will be available next year to cover the 20% random coverage. However, the DSM program imposes external costs upon fishermen, the Sector, and the dealers. For fishermen, these costs are associated with increased reporting duties, i.e. trip start hail, trip end hails, increased phone calls to monitoring personnel, reduction in fishing flexibility, increased safety risks, and

cc: TN, AH, Council (11/19)

possible increased waiting time at the dock to offload. For Sectors, the costs are associated with increased reporting, increased data reconciliation, increased data storage, as well as: costs associated with a monitors' waiting time (waiting for a vessel to dock), costs associated with additional requirements for remote offloads, and transactions costs associated with complex business and contract negotiations. For dealers, costs are associated with a re-allocation of capital resources to support DSM events, and with the risks of diminished vessel offloading efficiency and expediency. In conclusion, I will summarize, and present a socio-economic argument why industry and the public would benefit from elimination of the DSM program all together.

### Impacts to Fishermen

Fishermen have learned over a long learning curve how to adapt to the increased reporting requirements. One of the biggest obstacles that still impede their ability to fully adapt is the inconsistency of the satellite communication, particularly for vessels that use Skymate as their communication technology. This issue will not likely be resolved in their near future, given the logistical difficulties of first mandating different coverage performance standards for the satellite providers, and then with transitioning the ground fish fleet to only use companies that meet these new DSM standards. The back-up system to communicate with the DSM provider is the telephone. This is not the most reliable communication device either; especially when the vessel is farther than a few miles from shore. This has resulted in an increase in the total costs from the DSM program due to the costs associated with the uncertainty of an accurate meeting between the DSM monitor and the vessel as it pulls in to port. If the monitor is early, DSM providers charge sectors for "waiting time". If the monitor is late, the vessel loses money from diminished product quality. If the vessel is early, they lose time and money from diminished product quality as they wait for monitor. If the vessel is late, the sector loses money from increased monitors' wait time. In New Hampshire and Massachusetts, this latter case has occurred, and additional costs that could have been avoided if the fishermen followed the effort control of the DSM program, have instead accrued.

In these cases, the monitor arrives at the port at the scheduled time of offload, and the vessel has decided to change its arrival time. Aside from the uncontrolled variables that might make this occur (weather, vessel trouble), the most common reason for this is that a fishermen decides to randomly adapt his fishing behavior to try and take advantage of a favorable opportunity—post end hail. These favorable activities include: the opportunity to catch more fish, or the opportunity to reset a net, perhaps in a different location. Fishing decisions are considered discrete choices along a dynamically changing fishing trip horizon (Hicks and Schnier 2006). They are made, in part, randomly because of the extreme variability of ocean, animal, and atmospheric conditions at sea. Restricting a *fishing choice* along a fishermen's time horizon, for every fishing trip, will result in the inability of a fishermen to maximize the value of his ACE allocation over the course of the fishing year.

The DSM program constrains fishermen to arrive in port, at some "estimate" of time, which must be declared by the fisherman hours before he actually lands. Day boats, as opposed to large trip boats, have the right to access many areas very close to their home port. But by restricting themselves to a fixed return time, they reduce their ability to be flexible in their fishing behavior. DSM program

imposes a constraint, similar to the DAS effort control time constraint. In both cases fishermen race the clock to make their time deadline, and in each case, there is potential to sacrifice more fishing in a favorable location on the way back to port. This means that the DSM program is a form of effort control that impedes the full social value of ground fish harvests. As such, it is inconsistent with both the universal exemptions, i.e. access to rolling closures, no trip limits, no restrictions on *time* at sea; as well as the majority of sectors' individual exemptions—which were primarily granted to reduce the number of effort controls as the agency transitions to output controlled management.

The last point that I wanted to address on behalf of my fishermen are the external costs that the DSM program, in its current form, imposes upon them. These are costs associated with increased safety at sea, increased mental fatigue, and diminished business opportunities. Safety at sea is compromised due to the suite of computer reporting screens that must be navigated, filled in and submitted via VMS while sailing (and the increased costs associated with sending increased messages via VMS is significant). In unfavorable conditions, especially high fog, the risks of navigational accidents increase dramatically. Many fishermen tell me that the worst part about fishing in sectors is the mental burden that all of the new reporting requirements that the DSM program mandate. Not only do they have to learn a much more complex computer program, but they also have to overlook the thought that this is another way of the government telling fishermen that they are untrustworthy. Finally, fishermen have diminished business opportunities to offload and to sell to dealers who have historically maximized their fishing income. This is primarily true for offloads to a truck, where the product was shipped to a final destination before it is weighed. Now, if the final destination is too far for a DSM monitor to efficiently travel to, then the fishermen must change their offloading options, which might entail switching dealers, going to a different port, or buying a truck and scales to become their own dealer—all of which impose additional costs to the fishermen, and all of which have occurred in both of my NH Sectors.

### Impacts to Sector Management

The Sector manager has increased responsibilities to account for a DSM data set that is supposed to mimic dealer data, but ultimately, because only dealer data is used for Sector Weekly reports and for total ACE accounting, DSM data is essentially useless. I believe one “pro” argument for DSM data was its ability to provide the manager with real time “dealer data” to use in place of the VTR (fifty percent of the time) to more accurately account for a sector's ACE usage, because dealer data is only required to be available 11 days after the end of the previous fishing week<sup>1</sup>. However, DSM data still needs to reconcile with dealer data eventually because dealer data is the currency to account for ACE; therefore, uncertainty inherently exists in DSM data quality because even if DSM data matches, it still must always be checked.

Rather than having to reconcile two sets of data, the incentive is to either just use VTR data as a proxy for landings, or to negotiate some special relation with individual dealers to provide real time, daily catch reports. The incentive to move away from using DSM data for ACE management purposes is

---

<sup>1</sup> Dealers are required to report all landings for each fishing week. A fishing week starts on Sunday and ends on Saturday. But, their reports aren't due until Tuesday following that Saturday. This results in an 11 day lag of real time dealer data.

exacerbated by the fact that the government doesn't even use this data for reconciliation. Therefore, the argument that DSM data helps managers is not the case— at least in my case. And because no one actually uses the data, the whole program is just an unjustifiable cost to the taxpayer and an unnecessary burden on fishermen, Sector management, and dealers. Additional external costs to the operation of Sectors also accrue as a result of the increased transactions costs from business negotiations, the increased “wait time” charged for inefficient offloads, and the increased operational costs of data management and storage. Operational costs are also associated with increased time organizing, storing, accounting, and reconciling DSM data and reports. Business transactions costs are associated with nuances of contract negotiations and legal fees.

### Impacts to Dealers

Dealers are not immune to the requirements of the DSM standards, or from the external costs that these standards impose. Operationally, the dealer must provide space for the monitor to work while they witness an offload, and must sign off on the total weight observed. This leaves dealers in a precarious position because if this total weight changes over the course of culling fish, or if the dealer weights don't match DSM weights in the first place, then the dealer could be subject to ramifications from a failure to match records with the DSM. If the dealer total weight is lower than the DSM, they risk being accused of misreporting ACE usage.

External costs are also imposed on dealers when they try to accommodate DSM events, and perhaps prioritize these events over non-DSM events. For example, one of my dealers has allowed the use of their scales at our remote offload ports in order to help the Sectors save money by preventing two monitoring events. However, sometimes this prevents the dealer from efficiently offloading other, non-ground fish landings at their facility. Also, the use of their trucks to coordinate a time-sensitive DSM event is not always feasible because they use their trucks to service other fisheries as well. Some of these fisheries have their own time deadlines that must be met. So the dealer must prioritize their capital equipment usage—sometimes they do so at their own expense, and sometimes they do so at the expense of the sector.

### Conclusion

To conclude, the DSM program in general is flawed in its design, and the infrastructure and technology available to industry and DSM providers to effectively implement the DSM standards is lacking. DSM data is kept secondary to dealer data and not used in any way to protect the integrity of fish landings. In other words, it does not help prevent cheating of ACE usage—another argument for “pro” DSM program. The Joint Enforcement Agreement and the new dealer reporting requirements are more than sufficient to protect the integrity of fish landings and to accurately account for ACE usage. The DSM program is also very costly, and the costs could be unpredictably high in the program's current form and given the current standards. This is especially true for our NH and MA day boat Sectors. The result could be that not enough federal money is available to cover all of these costs. If this is the case, Sectors would have to try and pay the difference with members' fishing revenue. I *believe* there are net benefits to all Sectors from completely eliminating this program; but for my Sector, I *know* that net

benefits would discretely accrue. These benefits are a result of reduced redundancy in reporting, in monitoring, in data reconciliation, in management and storage, and in a reduction of business transactions costs.

It is my opinion that the key in effectively and accurately managing the harvest of allocated ground fish is not through a DSM program; but rather, through real time, or near-real time dealer data reporting. Dealers need to be further integrated into the rules, regulations, and reporting standards of Sectors; and currently, need to be held to a higher reporting standard so that at least they report once a week. Some dealers don't report at all, some dealers double report, some dealers report inaccurately, and most dealers don't provide real time dealer data to the Sector manager (although mine do). If dealers are held to the same stringent standards as fishermen, the long terms success of Sectors will be much more certain. The DSM program will only become more costly, more uncertain, and less efficient next year when the coverage level of vessels is expected to drop to 20% random coverage. Ultimately, the DSM program is an indirect form of effort control, an effort control that won't be minimized even with a reduction in monitoring to 20%. In fact this new coverage letter will automatically increase the marginal cost to the DSM provider, which will result in significantly higher hourly rates next year. Without clearly defining the net benefit of this program, and without utilizing the DSM data to help manage ACE with more certainty, I can't help but think the whole DSM program is like building a bridge to nowhere--useless. Thank you all for your time and for your thoughtful consideration of this matter.

Sincerely,

Joshua B. Wiersma

#### References

Robert L. Hicks & Kurt E. Schnier, 2006. Dynamic Random Utility Modeling: A Monte Carlo Analysis, *American Journal of Agricultural Economics*, vol. 88(4), pages 816-835,

