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# Correspondence

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**ASSOCIATED FISHERIES OF MAINE**

**PO Box 287, South Berwick, ME 03908**

June 1, 2013

Mr. Terry Stockwell, Chair  
Groundfish Oversight Committee  
New England Fishery Management Council



VIA ELECTRONIC MAIL

Dear Terry:

The groundfish advisory panel (GAP) has met formally and informally on at least four occasions to discuss and develop recommendations on the pending Amendment 18 to the groundfish plan. You are convening the GAP on June 10 to again discuss, among other issues, Amendment 18.

For your convenience I have culled from the GAP meeting summaries, as well as from a letter dated June 2011 and signed onto by the majority of GAP members, the various, though consistent recommendations of the GAP relative to Amendment 18. Please see the pages that follow this cover letter. I hope you find this to be useful.

Sincerely,

*M. Raymond*  
Maggie Raymond

Cc: Bill Gerencer, Chair, Groundfish Advisory Panel

*cc: Council, CBR, FH, VC, RF (6/1)*

## **Recommendations of the Groundfish Advisory Panel relative to Amendment 18**

**June 9, 2011 – several members of the Groundfish Advisory Panel<sup>1</sup> met and crafted a letter dated June 14, 2011 to the NEFMC containing the following recommendations:**

- *The Council should make it a top priority to identify, modify and/or remove impediments to achieving optimum yield from the NE groundfish resource.*
- *With respect to concerns about excessive consolidation, we recommend that the Council conduct an analysis of an ownership cap on groundfish permits that would prevent disenfranchisement of current owners, encourage the consolidation that is still needed to reduce overcapitalization and increase economic viability, preserve sector prerogatives to maintain membership diversity, and protect against market power. We recommend this single focus in order to realize the quickest implementation possible, so that excessive consolidation, as yet to be defined, does not occur.*
- *The Council should, in consultation with its Groundfish Advisory Panel, establish a process for the formation of Community Fishing Associations (CFA). The process should define organizational standards, should require CFAs to establish goals and objectives consistent with the FMP, and should include a requirement for CFAs to report to the Council on progress towards meeting those goals.*
- *The Council should not impose restraints on the flow of allocation trades or leases between individuals, sectors, and/or vessel classes. Such restraints are incompatible with the fundamental concept that sectors themselves should decide when, how and by whom the sector's allocation should be utilized. Trade restraints would limit sectors' ability to pursue their own diversity goals, such as providing allocation to new entrants, or giving preference to owner-operators, specific vessel classes, and/or gear types.*

**November 1, 2011 – Groundfish Advisory Panel meeting – (discussion of Council priorities recommends Amendment 18 at the bottom of the list)**

**Motion:** The GAP recommends as Council priorities, in order of importance:

- 1) Prepare framework to address new assessment information for 9 stocks
- 2) Take action to eliminate all or part of rolling, seasonal and year round mortality closures
- 3) Develop a cost-effective sector monitoring plan, that includes options for electronic monitoring of discards (including a full retention policy for allocated stocks), phasing in industry cost-share over a 5-10 year timeframe.

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<sup>1</sup> Balzano, Bouchard, Brown, Gerencer, Litsinger, Margesen, Odell, Parker, Raymond, Russo, Soule.

- 4) Develop options to move unused ACE between scallops/groundfish fleets and between groundfish commercial and recreation fleets
  - 5) Increase rollover percentage
  - 6) Address LAGC yellowtail AMs
  - 7) Other effort controls including minimum fish sizes
  - 8) Consider Amendment 18 on accumulation limits and fleet diversity including refining definition of fleet diversity
- (Mr. Soule/Mr. Balzano)

Motion carried on a show of hands (12-0).

#### **October 4, 2012 – Groundfish Advisory Panel Meeting**

Motion to substitute: To set as groundfish priorities items 1, 4 and 5 and allocation of SNEMA winter flounder to sectors, allocate groundfish bycatch by the scallop fleet by a fixed percentage for all stocks and allocate a fixed percentage of groundfish stocks in state waters, fix the industry share of observer costs to a percentage of the total or a specific dollar amount and find a legal way to kill more elasmobranchs, revise the SNEMA winter flounder reference points to reflect recent productivity of the stock and to split Amendment 18 to prioritize an action to address accumulation caps by limiting the number of permits that an individual can own. (Ms. Raymond/Mr. Brown).

The motion to substitute the motion carried on a show of hands (7/1/1).

The main motion as substituted **carried** on a show of hands (7/2/0).

#### **March 6, 2013 – joint Groundfish Committee/AP Meeting**

“Amendment 18 should include:

- 1) Analysis of allocation of groundfish sub ACL and AMs to other fisheries including (if possible) state waters
- 2) Analysis of permit splitting so that individuals can acquire additional groundfish PSC without cost of entire suite of linked permits
- 3) Analysis of removing up grade restrictions so that fishermen can move permits to larger platforms to expand fishing range

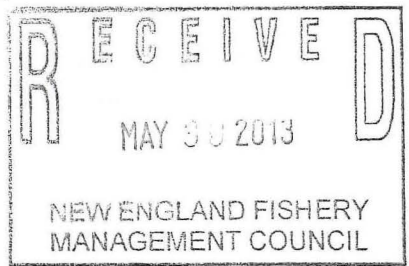
Agreed to by all but 1 GAP member in attendance



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

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

MAY 29 2013



Dear Rip:


We recently received two emergency action requests from the Council which were the result of motions adopted during the Council's April meeting. The first asks for an increase to the fishing year (FY) 2013 white hake catch limit based on the results of the 56<sup>th</sup> Stock Assessment Review Committee assessment. As you are aware, we have already complied with this request by proactively incorporating a 15-percent increase to the white hake catch limit based on the assessment results using our emergency authority in conjunction with the Framework Adjustment 50 final rule. The second emergency request deals with the potential spillover of haddock between the Georges Bank and the Gulf of Maine broad stock areas.

We understand why the Council is requesting an emergency to account for the spillover of haddock between the Georges Bank and Gulf of Maine stocks because there is some indication that an interchange of haddock between the two stock areas may occur. However, there is insufficient data and analysis available to us at this time to justify an emergency action to implement a scientifically based adjustment that would account for this interchange in a way that does not undermine conservation objectives for these 2 stocks. In addition, because the Council has had the opportunity in the past to address this issue, it does not appear to meet our criterion that an emergency rule must address an unforeseen problem or event. Because of this, we cannot grant your request for an emergency action to address haddock spillover.

We are prepared, however, to work with the Council to address its recent motion tasking the Groundfish Plan Development Team and Scientific and Statistical Committee to further examine the potential for accounting for haddock spillover. This motion also requested suggestions on how adjustments to the haddock Acceptable Biological Catches could be informed by this examination for FYs 2013-15. We will work with both groups in the examination of this issue and, if management advice is sufficiently developed and justified, we will support considering a Council action to address spillover of haddock between the 2 stocks.

I look forward to discussing this further with the Council at the upcoming June meeting. If you have additional question in the interim, please contact my groundfish team lead in the Sustainable Fisheries Division, Susan Murphy, at (978) 281-9252.

Sincerely,

  
for John K. Bullard  
Regional Administrator

cc: Council, GFCTE, CBR, FH (5/30)





New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
C. M. "Rip" Cunningham, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

May 23, 2013

Mr. John Bullard  
Regional Administrator, Northeast Region  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

Dear John:

Re: 78 *Federal Register* 26118: Interim Final rule on Northeast Multispecies Fishery Framework Adjustment 48

Dear John:

The Proposed Rule for Framework Adjustment 48 (78 *Federal Register* 18188) proposed a change to Eastern U.S./Canada quota monitoring that would have modified the regulations to reflect a practice that was being followed by the National Marine Fisheries Service since the implementation of Amendment 16 in May, 2010. The Proposed Rule would have attributed catches of cod and haddock to either Eastern or Western Georges Bank (EGB or WGB) based on fishing locations as determined by vessel trip reports. This differed from the attribution method the Council adopted in Framework 42 (FW 42), which attributed all cod and haddock caught on a trip to EGB if any part of the trip fished in that area. FW 42 adopted this approach to minimize the probability that misreporting of catch locations would occur.

On April 4, 2013, I wrote a letter opposing this change for several reasons. First, the change had not been explicitly adopted by a Council action and was not consistent with the Amendment 16 regulations that were reviewed by the Council and deemed consistent with Amendment 16. Second, at the time the letter was written, there were concerns that misreporting of EGB cod was an increasingly important issue. The proposed change appeared to create a regulatory loophole that made it easier to misreport EGB cod and haddock. The Interim Final Rule for FW 48 (78 *Federal Register* 26118) made note of the Council's comments and disapproved the proposed change.

The monitoring requirements in the Interim Final Rule appear to have caught the industry by surprise. Some misinterpreted a discussion at the April Council meeting to mean that the proposed change would be adopted and the FW 42 approach would not be used. Vessel operators are having a difficult time with the FW 42 catch attribution approach, as it is preventing them from harvesting EGB haddock at a time when there is no competition from Canadian fishermen and prices are high.

Since that letter was written, additional information has become available that indicates a different approach to catch monitoring may be warranted. First, discussions held at the Council meeting in April and the Groundfish Committee meeting in May suggest I may have misinterpreted the Council's intent for monitoring catches in this area. Second, the Groundfish Plan Development Team (PDT) performed a number of analyses to determine the extent of possible catch misreporting. In summary, the PDT concluded that there was some evidence of differences in fishing behavior between the EGB and WGB areas, and between observed and unobserved trips. Some of the analytic results were consistent with a hypothesis of misreporting, and some were not. The PDT concluded the analyses were inconclusive in determining if misreporting is occurring. The PDT said, however, that given the small quotas for EGB cod, the incentive to misreport is clear. The PDT noted that the FW 42 catch attribution approach might help reduce the possibility of an overage of EGB quotas but would still rely on accurate reporting of fishing locations.

Given this new information, I suggest that NMFS consider possible modifications to catch attribution for trips that fish in the EGB area. There are several steps that could be taken. First, NMFS might implement catch monitoring as described in the FW 48 proposed rule. This might be justified by Section 4.2.3.5.3 of Amendment 16, which indicates all available information will be used to attribute catches to the appropriate stock area. Second, as a partial solution, rather than reconcile catches with all available information annually as adopted by the Interim Final Rule, catches could be reconciled on a more frequent basis. A third approach would be to recognize that the catch attribution regulation is one that is not truly a reporting requirement. As such, a sector could request an exemption from this measure. Sectors might need to provide measures that would minimize the opportunity to misreport EGB catches. Given the importance of this issue to sectors, this approach would need to be publicized and adopted as quickly as possible. Fourth, if NMFS considers that the catch attribution method is a reporting requirement and not eligible for a sector exemption, then the measure could be changed using the authority found in Section 4.2.3.8.1 of Amendment 16.

In addition, as noted by the PDT, there are administrative measures that need to be considered to reduce the opportunity to misreport EGB catches. For example, the requirement that vessels fishing in the EGB area report catches daily could be reinstated, as could the requirement that fishermen specifically declare intent to fish in the EGB area (as opposed to a broad-based declaration that allows fishing in all areas). Alternatively, the requirement that vessel operators report their catch when leaving a broad reporting area could be adopted as authorized by Amendment 16. This measure was developed to reduce the opportunity to misreport in all areas, but NMFS modified its implementation to require only one report at the end of a trip. Additionally, VMS activity could be routinely compared to VTRs and vessel operators could be contacted when the VMS indicates likely fishing activity in areas that are not included in VTRs.

Please consider these comments on the interim final rule and contact me if there are any questions.

Sincerely,



C.M. "Rip" Cunningham  
Chairman



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New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116  
C. M. "Rip" Cunningham, Jr., *Chairman* | Thomas A. Nies, *Executive Director*

May 24, 2013

Dr. William Karp  
Science and Research Director  
Northeast Fisheries Science Center  
166 Water Street  
Woods Hole, MA 02543-1026

Dear Bill:

I am writing to convey two requests from the New England Council.

On April 24, 2013, the Council passed the following motion:

*"{To} request that the Council send a letter to NEFSC to: 1. establish a research track to map changes to spawning sites and general distribution of all groundfish and explore what these changes mean to long term yield from the fishery; and 2. that ecosystem reference points be a term of reference in all future groundfish assessments."*

The motion **carried** unanimously.

The Council also passed a related motion:

*"{The Council} request{s} that the appropriate group (SSC or NEFSC) initiate calculations for a new set of groundfish reference points for the current regime. Once these calculations are complete, have the SSC calculate new ABCs and ACLs as the new reference points become available."*

The motion **carried** on a show of hands (15/1/1).

These two new motions are similar in nature to other motions approved at previous Council meetings. For example, in January the Council asked for new reference points for several groundfish stocks in light of changes to predator/prey relationships and changing environmental conditions, a request you responded to on April 4, 2013. The consistent theme in these motions is a sense that a broader consideration of ecosystem issues is needed in our assessment and management system. Clearly you are sensitive to this concern and I look forward to working with you to incorporate it into our process.



The Council appreciates that the NEFSC has been tasked with several other Council requests, such as cod stock structure, investigation of mixing rates between haddock stocks and a scallop survey peer review. Please let me know if I can help prioritize your responses to these requests.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Nies".

Thomas A. Nies  
Executive Director

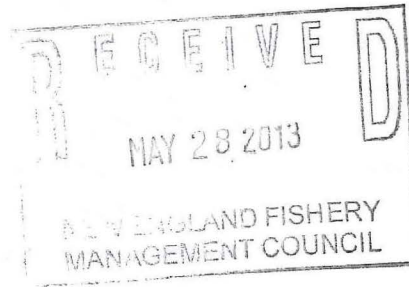
cc: Mr. John Bullard, Regional Administrator, Northeast Region  
Dr. Jake Kritzer, SSC Chair

David T. Goethel  
23 Ridgeview Terrace  
Hampton, NH 03842

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May 24, 2013

Mr. John Bullard  
Regional Administrator  
NOAA/NMFS  
55 Great Republic Drive  
Gloucester, MA 01930



Dear John,

I am writing to you to inform you of trends that have become apparent in the new fishing year. The first trend none of us can solve, but it is disturbing just the same. The people selling their boats, and in some cases permits, are the handful of younger owners in the fleet. This is disturbing to me because these are the people we will need most to transfer the knowledge of fishing as my generation retire or die. This is not unexpected, however, as all the exiting owners have expressed similar sentiments. First, they believe groundfish management is completely dysfunctional and will never be fixed. Second, they are carrying mortgages on vessels and permits which they can no longer pay. Older people are more likely to have less debt, plus they are basically unemployable in this economy and have no choice but to stay.

The second trend, which is helping to drive the first, is the exorbitant price of leased fish. Prices being offered on inshore stocks are currently in excess of the landed value. For example live weight GOM cod are being leased for \$2.00-2.40 per pound (approximately \$2.40-2.80 landed weight), GOM haddock \$1.50, CC-GOM yellowtail \$1.20-1.30, and witch flounder \$1.25-1.40. Contrast this with average landed value of yellowtail from the Cape Ann Seafood exchange for May 24, 2013 which was .99 cents per pound. The problem is being further exacerbated by people selling entire allocations as blocks. This means one has to take the entire amount and suite of species regardless of what you need or can afford. The result is numbers entirely outside the range of small boats.

Many people will say the system is working fine. I would respond, how can that be? We are not talking about a handful of people trading small amounts of fish to balance portfolios. We are talking about wholesale extortion of our hardworking captains and crews who actually fish, by those that do not. In short this makes loan sharks look like a bunch of amateur pikers.

As a solution, I would suggest you install price controls on leased fish retroactive to May first. I would further suggest a maximum price of 50 cents per pound live weight for all species. No one

*cc: Council, OF Cte, FH, RF (5/30)*

understands how price controls distort a free market better than me, but government has a history of stepping in to prevent profiteering in markets. This, to me, is a classic example of such a case.

I have addressed this letter to you, John, because I believe only interim action can stop this issue while the council does amendment 18. Absent immediate action amendment 18 will be irrelevant. Many captains and crews face dire circumstances. They can fish out their gifted allocations in a matter of days and then starve for the rest of the year as self-employed captains and crews cannot collect unemployment. The alternative is to lease fish at these prices and still starve. For example last year with yellowtail at 60 cents per pound, I issued a crewman a check for a week's work of \$5.84 as his share after the customary charges for fuel, ice, leased fish and fish shipping and handling had been deducted from the gross. With yellowtail at \$1.25 I will be sending myself and the crew a bill.

Amendment 16 unleashed the basest human emotion, greed, on the fishery and made it government sanctioned. That same government, through you, can halt that trend by installing price controls. With fewer active commercial fishing vessels than highly endangered Right Whales, I would think some action could be taken to protect the hardworking men and women who feed this nation's families. Surely humans deserve at least as much protection as Right Whales.

I eagerly await your response to this time sensitive issue.

Sincerely,

A handwritten signature in black ink, appearing to read "David T. Goethel". The signature is written in a cursive, somewhat stylized font.

David T. Goethel

NEFMC member, New Hampshire



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New England Fishery Management Council

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May 8, 2013

Mr. John Bullard  
Regional Administrator  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

Dear John:

On April 24, 2013, the Council passed the following motion:

*"{To} recommend the Council request NMFS implement by Emergency Action a measure that will attribute up to 10% of GB haddock quota to the GOM haddock quota and up to 10% of the GOM haddock quota to GB haddock quota."*

The motion **carried** on a show of hands (13/4/0).

Consistent with the Council motion, I ask that an Emergency Action be adopted to adjust the Georges Bank and Gulf of Maine haddock quota for FY2013 by the appropriate amount to account for spillover from the Georges Bank haddock stock into the Gulf of Maine. Enclosure (1) provides additional rationale for this request.

Thank you for considering this request. Please feel free to call me with any questions.

Sincerely,

Thomas A. Nies  
Executive Director

Enclosure (1): Justification for an emergency action to adjust the FY 2013 Gulf of Maine and Georges Bank haddock Annual Catch Limits (ACL)

**Enclosure (1)**  
**Emergency Action Request**  
**to**  
**Adjust the FY 2013 Georges Bank and Gulf of Maine Annual Catch Limits**

The Council requests that the Georges Bank and Gulf of Maine haddock Annual Catch Limits (ACL) for FY 2013 be modified to account for spillover from Georges Bank into the Gulf of Maine. This change should be adopted as an emergency action, consistent with the provisions of section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act. The Council requested this action by a less than unanimous vote on April 24, 2013.

**Emergency Criteria**

National Marine Fisheries Service Instruction 01-101-07 identifies the criteria which must be met in order to justify an emergency action. The following discussion explains how this request meets the requirements of this instruction.

*1. Results from recent, unforeseen events or recently discovered circumstances*

The GB haddock stock assessment was last updated in 2012 (with a terminal year of 2010). The assessment indicated a potential large year class in 2010. The 2012 Eastern Georges Bank haddock assessment also supported the existence of the large 2010 year class; recent catches also confirm the large year class on GB. Neither assessment considered migration between GOM and GB. The Council requested NMFS implement an interim action for GOM haddock to reduce (rather than end) overfishing in 2013, pursuant to MSA 304(e)(6). A response was received on January 24, 2013, less than a week before the final vote on haddock ACLs. The request for interim action was denied; if it had been approved the GOM haddock ACL would have been increased, thus reducing impacts of any spillover. This denial was an unforeseen event, and the information was received too late to modify the ACLs included in the specifications action. In 2003, the large GOM haddock stock did not exhibit an increase in size concurrent with the GB stock. This provided recent evidence that movement between the two stocks might be minimal in 2013. Under these circumstances, spillover was not accounted for in setting haddock ACLs. The large disparity between the two estimated stock sizes in 2013 prompted a reevaluation of the literature, which indicated the trend over a longer time series indicates the two stocks are normally synchronous. Based on recapture results, GB haddock move into the GOM and vice versa (Brodziak et al. 2008). However, further analysis is required to directly estimate movement rates. Needler (1930) showed seasonal migrations (inshore, shallow waters in spring and offshore in winter) were made by haddock; site fidelity was suggested by the tag recaptures. Other migration pathways were noted between GOM and the Bay of Fundy (Schroeder, 1942 and Grosslein, 1962). Movement from the GOM to GB was observed by McCracken (1960). The magnitude of migration has not been quantified in any of the tagging studies but historical movement between regions has been shown. Based on age estimates, Colton (1955) suggests that the GB population is supported by recruitment on GB and surrounding areas. The ACLs need to be adjusted to account for movement between the two stocks.

While the Council directed its Groundfish Plan Development Team and Science and Statistical Committee to further investigate this mixing issue to determine the appropriate rates to use, that work will not be completed in time to affect fishing activity in the early part of the fishing year.

## *2. Presents serious conservation or management problems in the fishery*

Haddock is primarily caught in the Northeast Multispecies fishery. Fishermen using trawls, sink gillnets, and longline gear both target haddock and also catch this species while targeting other groundfish stocks. Most commercial fishing takes place within sectors, a catch share system that allocates specific portions of the quota to fishermen organized into fishing sectors. Considering the low estimated stock size in the Gulf of Maine, any migration from Georges Bank will greatly affect the actual stock size in the Gulf of Maine. A key element of the sectors system is that when a sector catches its quota of a stock, it cannot fish for other stocks in that area. If the ACL for a stock is mis-specified because it is based on insufficient information, it is possible that the stock can constrain catches of other species. This is the concern with not accounting for spillover in the haddock quota. A mis-specified ACL will constrain groundfish fishing activity unnecessarily at a time when reduced catch levels for many stocks are expected to dramatically reduce commercial and recreational fishing activity. This presents a serious management problem for the fishery.

## *3. Can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance public notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process*

The haddock ACL can be readily adjusted through emergency regulations. This would allow the change to be effective early in FY 2013. This would enable fishermen to plan fishing operations for the year and to use the additional haddock catch in a rational manner. The normal rulemaking process, on the other hand, would delay incorporation of migration into the revised ACL until later in the fishing year. It may even delay the change until fall or early winter, preventing smaller vessels that are limited by weather conditions from taking advantage of the increase.

### **Emergency Justification**

There are four situations that may justify an emergency action. This action is not needed to address either an ecological or public health situation. It is, however, needed to address both an economic and social situation. On September 13, 2012, the Secretary of Commerce declared a commercial fishery failure in the Northeast groundfish fishery for FY 2013. This declaration was made in anticipation of reductions in catch limits that were expected. These catch limits were indeed adopted by the Council at its January, 2013 meeting. The National Marine Fisheries Service and the Council explored alternatives to mitigate the effects of the catch reductions. Adjusting the haddock catch limits will provide increased opportunities to fishermen that will help mitigate other catch reductions. This will help prevent losses to both industry participants and fishing communities. The adjusted haddock ACLs will translate into immediate increases in fishing revenues that will prove beneficial to fishing communities.

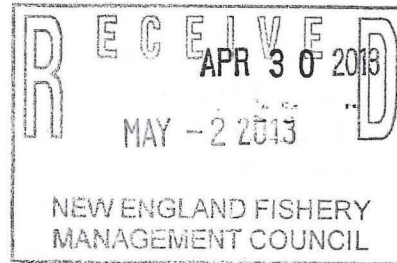
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55 Great Republic Drive  
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C.M. "Rip" Cunningham Jr., Chair  
New England Fishery Management Council  
50 Water Street  
Newburyport, Massachusetts 01950



Dear Rip:

I'm writing to let you know the Secretary of Commerce has partially approved both Framework Adjustments 48 and 50 to the Northeast (NE) Multispecies Fishery Management Plan (FMP). The rules implementing the approved measures become effective on May 1, 2013, with one exception, and will be published in the *Federal Register* soon. We are also implementing three concurrent emergency actions to be effective with the frameworks. We have also partially approved 17 sector operations plans and contracts for fishing year (FY) 2013, providing allocations to these sectors and granting 23 regulatory exemptions. The measures will also become effective May 1, 2013. The following is an overview of the disapproved measures, changes from proposed measures, and emergency measures being implemented:

Framework 50 disapproved measures

- Council's recommended Georges Bank (GB) yellowtail flounder catch limit

Framework 48 disapproved measures

- Creation of a separate GB yellowtail flounder sector discard strata
- At-sea monitoring cost sharing
- Delay of industry at-sea monitoring cost responsibility
- Changes to gear stowage requirements for trawl vessels

Changes from the proposed rules

- The proposed change to the Eastern U.S./Canada monitoring provision was withdrawn
- A 2-month delay in effectiveness for the Framework 48 reduction in minimum commercial fish sizes
- Updated white hake status determination implemented

Emergency actions

- GB yellowtail flounder catch limit
- Reduction of the allowable Gulf of Maine (GOM) cod unused Annual Catch Entitlement (ACE) fishing year (FY) 2012 to FY 2013 carryover amount
- Increase to the white hake catch limit

The following provides a summary of the basis for the disapproved measures, clarifications and emergency rules. A more detailed background and rationale for the disapproved measures, clarifications, and emergency rules is outlined in each respective rule.



cc Council, RF (5/3), CBK, FH, PMF, GF etc

## Disapproved Measures

*GB yellowtail flounder (Framework 50).* The Council's recommended GB yellowtail flounder catch limit of 1,150 mt was disapproved because it was inconsistent with the best available scientific information as required by National Standard 2, and would not prevent overfishing as required by National Standard 1. The Council's catch recommendation was inconsistent with the advice from the Transboundary Resource Assessment Committee (TRAC) and would produce a fishing mortality rate in excess of the reference fishing mortality rate. Furthermore, the Scientific and Statistical Committee's recommendation for a 1,150-mt acceptable biological catch (ABC) was accompanied by the important caveat that this catch level should serve as a "backstop measure only," with no directed fishery. The Council's recommendation contained no specific measures to create a bycatch-only fishery or otherwise reduce GB yellowtail flounder bycatch in FY 2013.

*Separate GB yellowtail flounder discard strata for discard rate calculation (Framework 48).* This recommended measure was disapproved because it is inconsistent with or may lead to inconsistency with National Standard 5 concerning the need for efficiency in utilizing fishery resources, and National Standard 7 concerning minimizing costs and avoiding unnecessary duplication. We determined, based in part on public comments, that this measure would complicate and increase the cost and burden of monitoring, potentially increase uncertainty of catch estimates, and do so without any measurable benefits for sectors.

*At-sea monitoring cost sharing (Framework 48).* This measure was disapproved because it is inconsistent with the Anti-Deficiency Act and other appropriations laws and policies that prohibit Federal agencies from obligating or using Federal funds that have yet been appropriated or authorized. We expressed concerns about this approach when it was being developed. Specifically, Framework 48 proposed to require NMFS to pay for some portion of the costs of at-sea activities, such as logistical costs generated by deployment, which are outside its statutory obligations under the Magnuson-Stevens Act. We believe cost sharing could be viable if restructured, and may be worth pursuing in a future action. As you know, we are already working with both the New England and Mid-Atlantic Councils to pursue cost-sharing options for the herring and mackerel fisheries.

*Delay sector at-sea monitoring cost responsibility (Framework 48).* We disapproved this measure as we did in Framework 45 because it is inconsistent with the requirements of the FMP, National Standard 1, and section 303(a)(1) of the Magnuson-Stevens Act mandating that overfishing is ended or prevented. We stated numerous times during the discussion and development of this recommendation, delay of sector responsibility of at-sea monitoring would be highly problematic. Sole reliance on our appropriations to determine an at-sea monitoring coverage rate does not ensure that coverage will be sufficient to monitor sector annual catch entitlements (ACEs) or to meet the purpose and goals for sector monitoring described in Amendment 16 and Framework 48. In turn, insufficient monitoring would undermine the effectiveness of annual catch limits (ACLs) and sector ACEs, which are integral to preventing overfishing and facilitating rebuilding of groundfish stocks as required by the Magnuson-Stevens Act.



We are sensitive to the cost associated with monitoring programs and are again providing full funding for FMP-required coverage in FY 2013. We are also exploring options to provide assistance for FY 2013 sector exemption programs that require 100-percent coverage. Despite this 1-year reprieve, the Council must recognize that the Federal funding options are finite. The Council will need to develop options that shift at-sea monitoring costs to industry beginning in FY 2014. As previously stated, we are working closely with both Councils to develop potential cost sharing mechanisms and we are committed to developing electronic monitoring.

*Trawl gear stowage when transiting closed areas (Framework 48).* This measure was disapproved because it is inconsistent with section 303(a)(1) of the Magnuson-Stevens Act regarding rebuilding and ensuring the long-term sustainability of fish stocks and fisheries, section 303(a)(7) of the Magnuson-Stevens Act regarding minimizing the adverse effects of fishing on habitat, and National Standard 9 regarding minimizing bycatch of certain stocks or protected species. After reviewing the Council's recommendation, we share concerns with the U.S. Coast Guard that eliminating trawl gear stowage requirements for only groundfish vessels would undermine enforcement of the prohibition on fishing in closed areas and undermine these provisions of the Magnuson-Stevens Act. Although we disapproved this measure in Framework 48, we are concerned about the safety risks of the existing trawl gear stowage requirements. There is a need to address the issue for all vessels. We intend to initiate a regulatory amendment, working with both Councils, to consider modifications to the gear stowage requirements to address safety concerns, including the VMS/Enforcement Committee's recommendations.

#### Changes from proposed rules

*Eastern U.S./Canada monitoring (Framework 48).* After receiving clarification of Council intent through comments on Framework 48, we withdrew our proposed change to the regulations. As a result, we will use the current regulatory language at § 648.85(a)(3)(ii)(A) as the basis for our monitoring. We will attribute all catch of cod, haddock, and yellowtail flounder caught on a trip that fishes both inside and outside of the Eastern U.S./Canada Area to the U.S./Canada total allowable catches (TACs) inseason. For final catch accounting, we will use all available information, as required by Amendment 16, to determine whether any common pool sub-ACLs or sector ACEs have been exceeded. This will be a change from the apportionment based on fishing location method we have used since Amendment 16 was implemented. We are soliciting additional comment due to implementation questions that we have regarding discard rate application.

*Minimum fish size reduction delay in effectiveness (Framework 48).* Because these measures were not finalized until the start of the fishing year, and based on conversations with state marine fishery agencies, we understand that it will not be possible for all states to implement the Framework 48 change in minimum fish sizes for May 1. We are delaying the effectiveness of the minimum fish size changes in Federal waters until July 1 to allow the states to come into compliance with the reduced minimum fish size measures. We will work with states and industry to ensure that everyone is aware of what minimum fish sizes apply and when.

Like the Council, we are also concerned that the reduction in minimum fish sizes could lead to a shift in behavior by some fishermen, who may target small fish to the detriment of conservation

objectives. We will work with the Council and develop catch monitoring to ascertain if smaller fish are being targeted in a way that compromises these objectives.

#### Emergency rule measures

*GB yellowtail flounder (in conjunction with Framework 50 final rule).* Because we disapproved the Council's recommendation, the FY 2013 GB yellowtail flounder ABC of 1,150 mt established in Framework 47 would become effective had no additional action been taken. Because this was higher than the TRAC recommendation and would likely result in overfishing, we took emergency action under section 305(c) of the Magnuson-Stevens Act to implement a shared ABC of 500 mt to ensure consistency with the Magnuson-Stevens Act requirements and the FMP. This results in a U.S. TAC of 215 mt.

*GOM cod carryover (in conjunction with Framework 50 final rule).* As indicated in correspondence sent to the Council on March 1, 2013, the FY 2013 total potential catch (total fishery level annual catch limit + carried over catch) for GOM cod exceeds the overfishing limit (OFL). To better ensure that overfishing will not occur on this overfished stock, we used emergency authority to reduce the Amendment 16-provided carryover. The maximum of 10 percent for unused FY 2012 ACE was reduced to a maximum of 1.85 percent to reduce total potential catch to a level below OFL.

In a related issue, we used our section 305(d) authority under the Magnuson-Stevens Act to clarify how to account for carryover in 2013 and 2014 and beyond for all groundfish stocks caught by sector vessels. As explained in detail in framework the clarification for FY 2013, as a transitional clarification, and FY 2014 and beyond are designed to ensure that carryovers are consistent with National Standard 1 guidelines, and safety and management needs and concerns of the fishing industry.

These clarifications are justified under section 305(d) of the Magnuson-Stevens Act, that NMFS which allows the Secretary to implement regulations necessary to ensure that FMPs are carried out in a way that is consistent with the Act and other applicable law. Nevertheless, we have published the final section 305(d) carryover clarifications as an interim final rule to solicit additional public comment. The interim final measures are slightly changed from those proposed, and would not become effective until May 1, 2014. We encourage the Council to consider developing its own measures regarding carryover. We are prepared to work closely with the Council over the next year, should the Council choose to develop an alternative approach for FY 2014 and beyond. Should it not do so, our interim final approach will ensure carryover can be administered in a manner consistent with Magnuson-Stevens Act requirements and guidance.

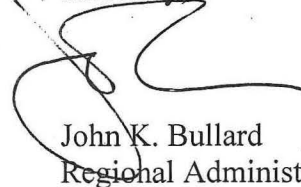
*White hake catch limit increase (in conjunction with Framework 50 final rule).* Consistent with the Council's April request and the catch advice from the February 2013 benchmark stock assessment (SARC 56), we used our emergency authority to increase the white hake catch limit for FY 2013. We are hopeful that having approximately 15 percent more white hake catch available than was proposed in Framework 50 will provide some level of additional income to the industry. We understand that it will not offset the potential impacts of the reductions to other

species. The SARC 56 status determination criteria for white hake were adopted in the Framework 48 final rule.

I must take a moment to address the submission timing of both Council actions for our review and implementation<sup>1</sup>. We were able to complete these actions for May 1 implementation through nothing less than extraordinary efforts from our dedicated staffs. The exceptional circumstances that arose from late submission this year must not become the standard practice of the Council. The compressed schedule for these actions affected the quality of the review and rulemaking processes, required shortened public comment periods, and waivers of the Administrative Procedure Act cooling-off period to ensure measures could be effective by May 1. Moving forward, submission of future groundfish actions after January 15 cannot be guaranteed to be implemented for the start of the fishing year. Adequate review, rulemaking, and public process are essential, and even more so in complex and controversial actions that are the norm for groundfish. Of course we will work with the Council to try and avoid timing complications and will work diligently to review and implement Council actions when they are submitted to us. The upcoming discussion at the Northeast Region Coordinating Council is timely, as I expect some of the process and timing concerns will be discussed at length.

If you have questions over the information in this letter or the final rules, when published, please contact George Darcy, Assistant Regional Administrator for Sustainable Fisheries. He can be reached at (978) 281-9315.

Sincerely,



John K. Bullard  
Regional Administrator

Cc: Dr. Bill Karp, Director, Northeast Fisheries Science Center  
Tom Nies, Executive Director, New England Fishery Management Council  
Terry Stockwell, Chair, Groundfish Committee

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<sup>1</sup> The formal submission of Framework 48 on February 26 provided 64 days for the agency to review the action and conduct rulemaking prior to May 1. For Framework 50, the agency had 40 days to review and conduct rulemaking.

## Email received from Interested Party, Jim Ford

----- Forwarded message -----

From: **Jim Ford- F%2FV Lisa Ann II**

Date: Wednesday, May 8, 2013

Subject: Yellowtail Discards

To: [john.bullard@noaa.gov](mailto:john.bullard@noaa.gov)

Cc: [pat.fiorelli@nefmc.org](mailto:pat.fiorelli@nefmc.org), [hank@shsector@gmail.com](mailto:hank@shsector@gmail.com), David Leveille [dlevmcse@gmail.com](mailto:dlevmcse@gmail.com), Amy VanAtten [avanatte@mercury.wh.who.edu](mailto:avanatte@mercury.wh.who.edu), [cpbouch@aol.com](mailto:cpbouch@aol.com), [george.darcy@noaa.gov](mailto:george.darcy@noaa.gov), nefsector5 [dan@nefsector5@gmail.com](mailto:nefsector5@gmail.com), Lou Goodreau [LGoodreau@nefmc.org](mailto:LGoodreau@nefmc.org), [jackie odell@jackie\\_odell@yahoo.com](mailto:jackie_odell@yahoo.com), Johanna Thomas [jothomas@edf.org](mailto:jothomas@edf.org), "James A. Odlin" [trawlers@maine.rr.com](mailto:trawlers@maine.rr.com), Lorelei Stevens [Lscomfish@comcast.net](mailto:Lscomfish@comcast.net), tom mathews [tmathews@legalseafoods.com](mailto:tmathews@legalseafoods.com), Michael and Lori [cbat@comcast.net](mailto:cbat@comcast.net), [monica.allen@noaa.gov](mailto:monica.allen@noaa.gov), clark II - [sandfish52@aol.com](mailto:sandfish52@aol.com)

NOAA, Council:

As the year goes on with such low limits on Yellowtail something needs to be done as far as vessels that fish inside of 70.15. Discards need to be separate from the inshore and offshore vessels. I myself fish west of 70.15 and catch yellows on a regular basis, most of the people in my sector (SHS) fish east of 70.15 and get charged with my yellowtail discard when they do not catch any yellowtail at all. It also works going the other way, I'm charged way more dabs and reds than I catch or discard. With these low quotas I hope that you can make some changes so that all of can continue to make a living and not make things harder for other fishermen that don't have the quota that they do not catch, but are charged for discard. Cod is also a problem, inshore we are seeing a lot of undersize cod the past few months (this is good) but the offshore vessels are charged with our discard when they don't see the amount of small cod discard as we do., please try to look at a solution to this problem. The recreational party/charter are seeing a pile of small under size cod and haddock since this opened up, also good sized fish, which is also good for our future. Please take the time to work this out, so assumed discard can be only applied to boats east or west of 70.15 to get better science and more accurate numbers. I am going to try my hardest to continue to make a living fishing, but I am getting to the point that I am pretty scared that I might not be able to continue with such low limits and high cost of quota.

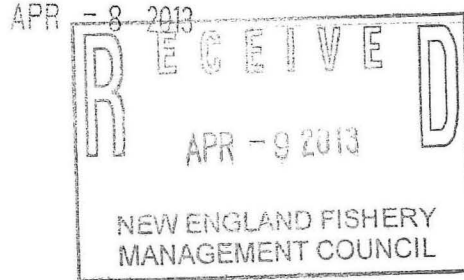
Thank you for your time.

Jim Ford F/V Lisa Ann II



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

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



Dear Rip:

I am pleased that Amendment 18 to the NE Multispecies Fishery Management Plan is once again on the Council's docket and development is proceeding. This is a very important action and one that I believe needs to move as quickly as possible to address at least the critical issue of capping accumulation of ownership and control of catches in this fishery. To that end, I encourage the Council to consider narrowing the immediate focus of the amendment to this issue. I encourage the Council to address this issue as quickly and as simply as possible. I recognize there are many other issues that the Council may need to address in the longer term, but acting quickly to address accumulation could potentially provide the industry greater stability while the Council works on those other issues.

As we have stated in the past, the agency stands ready to provide assistance to the Council during the amendment development process. I look forward to the future Council discussions on accumulation limits and fleet diversity.

Sincerely,

for John K. Bullard  
Regional Administrator

Cc: Tom Nies, Executive Director, New England Fishery Management Council  
Terry Stockwell, Chair, Groundfish Committee

cc: Council, CBK, PH, RF, GACK (4/9)



Emailed Correspondence received June 5, 2013 from Richard Allen

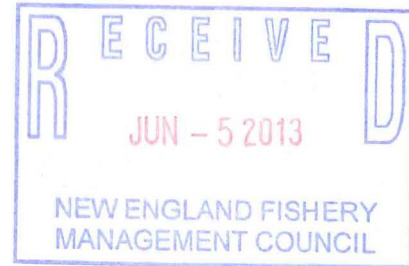
Original Message-----

From: Richard Allen [<mailto:rballen63@gmail.com>]

Sent: Wednesday, June 05, 2013 1:46 PM

To: Rachel Feeney

Subject: Accumulation Limits



Dear Rachel,

I'm happy to see that the Groundfish Committee may be revising the goals and objectives for Amendment 18. Goal 4 currently reads: "Prohibit any person from acquiring excessive access to the resource, through in order to prevent extraction of disproportionate economic rents from other permits holders."

That goal, in particular, may benefit from further discussion and definition.

Goal 4 reflects a concern that Entity A might be able to profit off other entities if Entity A holds a sufficient % of the ACE for "choke" stocks (with low ACLs) to be able to control the price of the choke stock ACE. This raises the question of how a monopolist benefits from his market power.

Monopolists can't simply set any price that they want for their product.

Monopolists face a demand curve that determines the price that buyers will pay for a certain total supply. The way monopolists use their market power is by withholding product from the market, thereby selling a reduced amount at a higher price. That only works if the price goes up more than the quantity goes down. In the case of "choke stocks," it is the fishery management system that is restricting the supply and causing the price to go up. It isn't clear whether it would be in a monopolist's best interests to keep his already scarce ACE off the lease market in the hope of getting a higher price and higher total revenue.

The issue with choke stocks is not that those who control them will be able to charge more than they are worth, or charge so much that their potential lessees all go out of business. Markets require buyers and sellers. The lease price for choke stocks will be determined by those willing to pay for them as much as it is by those who have them to lease out. We would expect the market to top out at a price that will leave those who pay the lease cost with a normal profit, if the market is competitive and the people in it are rational. If people would lose money at a certain lease price, we would expect them not to lease. They might lose money on the choke stock, but make money on the other stocks that they can land with it. The businesses that can make a normal profit after paying the lease costs will be the most efficient harvesters. As the cost of scarce input resources rise, we would expect the less efficient harvesters to drop out of the market, regardless of whether the scarce input is fuel or ACE.

It may be that there simply isn't enough of a choke stock to allow the full utilization of other stocks with which the choke stocks are caught. In that case, we would expect those who hold the choke stocks to collect all of the economic rent from the fishery that needs the choke stock, leaving those who harvest the fishery with normal profits but no economic rent. The difference

*cc: Council, GF Ctr, CBK, FH, DH, JC, RF (6/6)*

between normal profits and economic rent is critically important to the deliberations on Goal 4. In the absence of property rights in fisheries, all of the potential resource rent was dissipated in overcapitalization and redundant costs, so no one except economists ever thought about the difference between normal profits and economic rent. Now that we have a system of management that is expected to generate economic rent, it is important for everyone to recognize that economic rent represents profits over and above normal profits. Economic rent is also called "net social surplus," because it represents the difference between the value of resources consumed in production and the value of the production. Economic rent in a fishery therefore represents the net benefit to society from harvesting the resource. Rules that reduce economic rent because of concerns about who collects it would reduce the net benefits to the Nation from our fisheries.

The extraction of economic rent by those who happen to hold allocations for choke stocks will happen naturally as the result of the choke stock being scarce and valuable for its ability to enable the harvest of other stocks.

This extraction of economic rent will not result from excessive shares or from misdeeds on the part of those who control the choke stock. It is hard to imagine how any practical accumulation limit would address concerns about disproportionate extraction of economic rent, unless choke stocks were distributed among permit holders in proportion to the PSC for target stocks.

If the Council objects to the fact that economic rent will accrue disproportionately to the holders of choke stocks, it is unlikely that accumulation limits will address this concern. That being the case, it may be worth looking at alternative approaches that would address the concern. I met recently with representatives of Compass Lexecon, a consulting firm that specializes in "competition policy" and is one of the leading antitrust economics firms in the world. They were very interested in the issues raised by groundfish quota trading and threw out multiple suggestions for dealing with the concerns expressed in Goal 4. Their experience with similar concerns in other industries gives them a broad perspective on which to draw. I think their input could really help the Council to address these concerns in a rational way. I contacted them because they were hired by NMFS and the Mid-Atlantic Council to write a report on accumulation limits in the surf clam and ocean quahog fishery. I found their report to be educational as well as technically sound. I believe that kind of knowledgeable, independent input would be helpful to the New England Council's deliberations on accumulation limits.

Please distribute this message to members of the Groundfish Advisory Panel and the Groundfish Committee.

Thank you.

Dick Allen  
[www.FisheryConsulting.com](http://www.FisheryConsulting.com)

"The highest take is not necessarily the best. The take should be increased only as long as the extra cost is offset by the added revenue from sales."

A. G. Huntsman 1949

**Email received to Council office**



**From:** Brian & Tracy Pearce [<mailto:TPEARCE@MAINE.RR.COM>]

**Sent:** Thursday, June 06, 2013 2:18 PM

**To:** Rachel Feeney

**Subject:** comments for Groundfish committee meeting on 6/12

Groundfish Committee Chairman Terry Stockwell and the Groundfish Committee:

I would like to attest to what is happening in the groundfish industry specific to high cost of leasing and consolidation. Please consider these comments in your work on Amendment 18.

Many people are choosing to forego fishing and there are no new entrants, who might offer new and resourceful ideas, due to the high cost associated with leasing quota of select species. Last year some of these species were not even used to their full capacity. This issue is not new with catch shares but New England could be the region to exemplify how the system can work effectively. Lease prices are inflated and leasers need guidance on appropriate leasing rates.

One suggestion might be to limit the price of leasing to a fraction of the average revenue of that species from the previous fishing year, coupled with a minimum amount to lease out per quarter of the fishing year. Right now leasing is a free for all, with no policy or regulation prohibiting leasers from charging exorbitant rates. The lack of oversight is costing owners, the crew and the fish stocks, for no other reason than leasers to profit off quota that is not even owned by them (it is federally owned).

In Amendment 18 scoping the obvious issue to fix is capping how much any one group, sector or individual can acquire or lease in. Additionally, cap the cost leasers can charge for both the selling and leasing out.

Another problem plaguing fishing businesses, again not new in an *ITQ* system, is that there is no plan to change the quota assignments from how they were set years ago. I ask that you formulate a plan to reassign quota to permits that are catching the fish, with the only exception being groups or individuals that are leasing out quota with a proven business plan is to help the environment or fishing industry.

Thank you for your attention to these critical groundfish issues.

Brian Pearce  
F/V Danny Boy





**Paul J. Diodati**  
Director

# Commonwealth of Massachusetts

## Division of Marine Fisheries

251 Causeway Street, Suite 400

Boston, Massachusetts 02114

(617)626-1520

fax (617)626-1509



**Deval Patrick**  
Governor

**Richard K. Sullivan, Jr.**

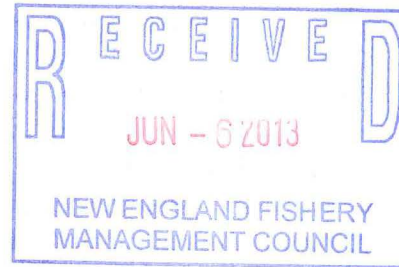
Secretary

**Mary B. Griffin**

Commissioner

June 5, 2013

Mr. John K. Bullard  
Regional Administrator  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930



Dear John:

With May 1 behind us and with there being continued poor news about New England groundfish and the low productivity of the Northeast marine ecosystem, we now all wait for events to unfold as the fishing year progresses with most fishermen's groundfish portfolios being devalued due to low ACLs for key groundfish stocks. These low ACLs – lower than they need to be or should be in some cases – reflect NOAA Fisheries' and the Council's concerns about stock rebuilding.

DMF shares these concerns, and we continue to argue that current management approaches associated with sector management are high risk, i.e., no possession limits and, now, lower minimum sizes for cod and other stocks. Instead of promoting gear research and use of gear to reduce catches of smaller groundfish and encouraging fishermen to show good stewardship by avoiding smaller groundfish, we've back-slided to "land-em-if-you-catch-em."

Reducing waste and regulatory discards is a laudable goal, and one we support, but past Council decisions supported by NMFS, makes us realize how long-ago wisdom can be ignored. For example, Amendment 2 (October 1988) is a quarter-century old. It proposed to increase yellowtail from 12 to 13 inches and dabs from 12 to 14 inches. It proposed to establish a 9-inch minimum size for redfish. We encourage you to review the very relevant rationale and biological and economic considerations for those proposals.

That rationale and those considerations apparently are no longer valid, even though under "status quo" NMFS noted: "Since implementation in 1986, the Northeast Multispecies FMP has used minimum size limits in conjunction with gear requirements to reduce catches of sub-adult fish. When adopted the purpose of this measure was to provide opportunities for fish to spawn before harvest, as well as to reduce the incentive to use illegal mesh to increase catches (our emphasis)."

Of note, Amendment 2 did not increase the cod minimum size to 20 inches or winter flounder to 12 inches. The Council relied on Massachusetts' more restrictive 12-inch winter flounder limit and wanted more analyses before adopting an increase. For cod the Council was influenced by industry concern that the increase would negatively impact the supply of Canadian fish to regional processors, so it postponed action on the increase. Of course, in later years the Council finally increased the limits for good biological reasons.

Then there's Amendment 3 (August 1989). This Amendment focused on ways for small, immature groundfish to be avoided by relying on fishermen's observations and their identification of areas to be closed temporarily to prevent catch and discard of large concentrations of juvenile, sublegal, or spawning fish. Required mesh size was smaller than (5 ½"), so the incentive to find and protect smaller fish was high [Note: Now we're at 6-inch diamond and 6 ½-inch square].

This program was (and still is) the "flexible action system" (FAAS). Without a FAAS fishermen likely would continue to disregard mesh regulations in the "regulated mesh area" because 5 ½"-mesh retained only 45% of 12" yellowtail and 35% of 12" dabs (according to Amendment 2 rationale). To increase retention of legal-sized fish, fishermen used smaller mesh or mesh liners, so went the belief.

Current regulations (50 CFR § 648.90) provide the opportunity for use of the FAAS to protect smaller fish. The FAAS reads: "*...upon learning of the presence of discard problems associated with large concentrations of juvenile, sublegal, or spawning multispecies...*" The Council and NMFS have drifted away from this approach to protect smaller fish, etc. We have decreased minimum sizes instead (effective July 1). Granted, the FAAS is not easy to use because it requires industry cooperation, monitoring, and timely action. Still, sector management is supposed to promote that cooperation and stewardship. Will it?

Now 13 amendments later we have Amendment 16 and Framework 48. We understand the recent "logic" for the decreases in cod, haddock, gray sole, yellowtail flounder, plaice, and redfish minimum sizes. Nevertheless, we still disagree with NMFS' decision to implement these reduced sizes for all the same reasons we provided in our formal comments on the Framework. We appreciate that the decision was a "close call," and time very well might prove the decision was wrong-headed especially if fishermen change their behavior and target smaller fish – a behavior we suspect is inevitable.

This brings us to the point of our letter. In your response to our comments NMFS stated: "*...at the request of the Council, NMFS is exploring ways to monitor the length frequency of catch in the commercial groundfish fishery beginning in FY 2013 to see if a change in selectivity could be detected. If such an analysis could be completed, NMFS could use this information to advise the Council if adjustments should be considered in a future action.*" We ask if your "exploration" is well underway and when and how you will be able to effectively monitor catches.

We ask for an update because DMF has been obliged to consider decreasing the Commonwealth's groundfish minimum sizes to complement the federal changes. We have done so with great reluctance and trepidation because we believe fishermen's behavior will change and the adverse consequences of that change described in Framework 48 will manifest themselves.

If we take emergency action to adopt these new minimum sizes we will do so despite the Commonwealth's Marine Fisheries Advisory Commission's (MFAC) objection. If implemented, a key consideration will be MFAC public hearing comments and whether our Commission will support adopting the changes as final rules. The decreased minimum sizes could be in place for 90 days from July 1 after which time convincing rationale must be provided to our MFAC for its final approval.

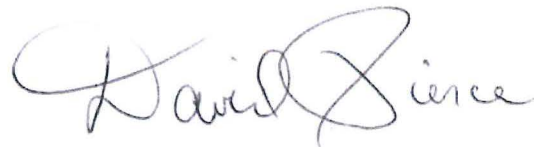
That rationale must include a clear and complete description as to how NMFS will detect changes in fishermen's behavior and when analyses will be available. Also, if a change in behavior occurs, will NMFS act on its own to reinstate the larger sizes, or will you have to wait for the Council to act? Will it take 2 or 3 years before an analyses can be completed and sizes increased, if need be?

Your Federal Register response to our comment and concern about the decrease in minimum sizes gives us reason to wonder if you adopted the new sizes without knowing if NMFS is capable of detecting a change in fishermen's behavior. That's a bit unsettling.

We conclude by highlighting NMFS' own admission about reducing the minimum sizes: "...*there could potentially be unforeseen consequences from targeting smaller fish that could have long-term negative impacts on future landings and revenue...*" We have a fishery failure declared by the Secretary of Commerce. We have difficult-to-meet rebuilding requirements. Therefore, the potential for "long-term" negative impacts should have been enough reason not to lower the minimum sizes.

According to NMFS, having fishermen land smaller fish will "*allow the commercial industry to recoup some revenue from fish that otherwise would be discarded. This small amount of additional revenue may help the groundfish industry cope with the substantial reductions in catch limits expected in FY 2013.*" Dropping minimum sizes to help mitigate drastic cuts in FY 2013 catch limits while realizing the drops very well might have long-term negative impacts on future landings and revenue, is NMFS uncharacteristic risk-taking that some might appreciate. We do not.

Sincerely yours,



David E. Pierce, Ph.D.  
Deputy Director

cc  
Paul Diodati  
Melanie Griffin  
Susan Murphy  
Rip Cunningham  
Tom Nies  
George Darcy  
William Karp