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ASSOCIATED FISHERIES OF MAINE

PO Box 287, South Berwick, ME 03908

207-384-4854

October 23, 2009

Mr. Rip Cunningham, Chair
 Groundfish Committee
 New England Fishery Management Council
 50 Water Street
 Newburyport, MA 01950



Dear Rip:

RE: Exemptions from Gulf of Maine Rolling Closures for Sector Participants

During its June meeting, the New England Fishery Management Council (Council) made a recommendation to exempt sector participants from certain portions of the Gulf of Maine Rolling closures. Following that vote, the Amendment 16 document (page 118) was amended to read:

"Sector vessels are exempt from all GOM rolling closures with the exception of those listed below

- *April: Blocks 124, 125, 132, 133*
- *May: Blocks 132, 133, 138*
- *June: 139, 140, 145, 146, 147, 152*

... Sectors will not be required to adhere to additional mortality controls adopted by this action, such as additional seasonal and year round closed areas, gear requirements and/or restricted gear areas, DAS reductions, and differential DAS counting, since mortality by sector vessels is controlled by a hard TAC. Note that this applies only to additional requirements, and does not automatically exempt the sectors from mortality controls adopted in previous actions that are not listed in 4.3.2. For example, sectors will be required to adhere to those GOM rolling closures that are not included in the list of universal exemptions (unless a specific exemption from the remaining closures is granted when the sector's operations plan is approved)" (emphasis added)

In July, the National Marine Fisheries Service (NMFS) provided sector applicants with guidance on requesting exemptions from the "remaining" rolling closures (see attached). However, when the Sustainable Harvest Sector submitted a request for an exemption from block 138 in May, the NMFS flatly denied the request and responded as follows:

"Finally, of the eleven exemption requests listed above, the Regional Administrator has determined that the following exemption request is not approved to go forward for public comment in the sector proposed rule, for the reason stated below:

8. GOM Rolling Closure block 138 in May

The allocation of annual catch entitlements (ACE) to sectors controls the overall mortality of sectors on each stock; however, these closures also have ancillary benefits to spawning fish and potential targeted fishing of spawning aggregations has impacts to stocks beyond the immediate individual mortality. Although Amendment 16 is proposing universal exemptions for several blocks within the current GOM rolling closure areas, the remaining rolling closure area blocks were specifically not exempted by the Council since they were considered areas that help protect cod spawning aggregations. Furthermore, in addition to spawning protections, some of these areas also provide protection for marine mammals. Therefore, NMFS does not intend to propose exemptions from the Amendment 16 non-universal GOM rolling closure blocks in the sector proposed rule."

cc: TN, CSK (10/26)

I am writing today with two requests:

First, that the Council communicate with the NMFS and affirm the intent of Amendment 16 which does provide sectors with the opportunity to request exemptions from the "remaining" rolling closures.

Secondly, we would also like to request that the Groundfish Committee support the specific request by the Sustainable Harvest Sector to be exempt from the prohibition on fishing in block 138 during the month of May.

While it is common belief that the rolling closures were designed to protect spawning aggregations of fish, there is no language in any of the many Amendments or Framework adjustments implemented between 1997 and the present that identifies spawning areas and or times. The history of the rolling closures is one that extends back to 1996 beginning with harbor porpoise closures, extending to closures that targeted "areas of highest cod landings." (Frameworks 25 and 27) and finally as a backstop measure when a percentage of the cod TAC was landed (Framework 33).

The Amendment 16 analysis of the Council's decision on rolling closures exemptions (see attached, page 507) supports the argument that rolling closures were adopted "primarily to reduce catches of GOM cod". Table 177 in Amendment 16 (page 509) would suggest that the month of May is not a particularly important time for groundfish spawning, with the exception of plaice and GOM haddock. Moreover, the language in this section of Amendment 16 does not place any particular importance on block 138 for groundfish spawning, but does explicitly recognize the importance of blocks 133 and 124.

Block 138 is an area of particular importance to small vessels fishing out of Maine ports. As you can see from attached graphic, it is the only block in the western Gulf of Maine, east of 70°, that remains closed to sector participants.

We sincerely appreciate your taking time to review these requests.

Sincerely,

M. Raymond

Maggie Raymond
Associated Fisheries of Maine



Gulf of Maine Rolling Closure Areas and Rationale for Management Measures

This summary is not a substitute for the regulations; rather it provides a broad overview of restrictions and requirements. You are strongly encouraged to read the regulations in conjunction with this information.

The New England Fishery Management Council (Council) recently approved, for submission to the National Marine Fisheries Service, Amendment 16 to the Northeast Multispecies Fishery Management Plan, which proposes, in part, several new measures regarding sector management, including a proposal to universally exempt sector participants from certain Gulf of Maine (GOM) Rolling Closure Areas without the need to apply for a specific exemption. This document describes current GOM Rolling Closure Areas and proposed GOM Rolling Closure Areas for which sector participants will be universally exempted. Although the proposed universal exemptions must first be approved and implemented by NMFS, this summary of the proposed exempted areas is being provided to help in drafting sector proposals based on the possible adoption of Amendment 16.

I. Current Regulations and Proposed Revisions

Gulf of Maine Rolling Closure Areas (based on 30' squares)

Rolling Closure	Current Closures	Proposed Amendment 16 Universal Exemption from Closures for Sector Vessels
Area I March 1 – 31	Blocks 121, 122, 123	All blocks open to sector participants
Area II April 1 – 30	Blocks 121, 122, 123, 124, 125, 129, 130, 131, 132, 133	Blocks 121, 122, 123, 129, 130, 131 open to sector participants (Specific exemption would still be needed for blocks 124, 125, 132, 133)
Area III May 1 – 31	Blocks 124, 125, 129, 130, 131, 132, 133, 136, 137, 138, 139, 140	Blocks 124, 125, 129, 130, 131, 136, 137 open to sector participants (Specific exemption would still be needed for blocks 132, 133, 138, 139, 140)
Area IV June 1 – 30	Blocks 132, 133, 139, 140, 142, 143, 144, 145, 146, 147, 152	Blocks 132, 133, 142, 143, 144 open to sector participants (Specific exemption would still be needed for blocks 139, 140, 145, 146, 147, 152)
Area V October 1 – November 30	Blocks 124, 125	All blocks open to sector participants

II. Exemptions

The Council specified that the blocks not proposed for universal exemption are being excluded to protect spawning cod. In addition, the GOM Rolling Closure Areas overlap with the Harbor Porpoise Gillnet Closure Areas in some locations. While sector gillnet vessels would not be exempt from gillnet closures and pinger requirements in these areas, pingers are not 100% effective at preventing takes. Therefore, exempting sectors from the remaining blocks could increase interactions with harbor porpoises and raise equity issues if an increase in take resulted in management actions for the entire fishery, including non-sector vessels. An exemption raises additional equity concerns in that it would give sectors access to fishing grounds not accessible to non-sector vessels. Furthermore, allowing sectors this exemption could pose enforceability concerns, because it would require enforcement personnel to differentiate exempt vessels from non-exempt vessels at sea.

For an exemption from the remaining GOM Rolling Closure Area blocks, sector operations plans and environmental assessments would need to provide justification that an exemption will not significantly disrupt cod spawning aggregations or increase the take of protected species. Sectors would also need to address equity and enforceability concerns in their justification.

measures are unnecessary for controlling fishing mortality. Most sectors were expected to request, and receive, exemptions from these measures; including them as universal exemptions simplifies sector administration.

Allowing sectors to be exempt from trip limits may reduce regulatory discards. In recent years many discards have been caused by the need for vessels to discard marketable fish to comply with established trip limits. By exempting sector vessels from these requirements, discards of regulated groundfish stocks may be reduced. This may also lead to reduced time spent fishing since more catch can be landed on a given trip, but this will only occur if it is profitable for sector vessels.

The seasonal closed area on Georges Bank was adopted to reduce fishing mortality on GB stocks, primarily GB cod. Again, since sectors have their catches controlled by a hard TAC there is no need for this closure to control fishing mortality from sector vessels. Cod spawning on GB extends into May, so increased sector effort during this period may impact on spawning activity. Given poor recruitment observed in recent years on GB this may be a concern.

Since sector vessels will have their catches controlled by a hard TAC, there is no need for DAS restrictions to limit groundfish catches.

The Proposed Action authorizes the use of a six-inch mesh codend when sector vessels fish with selective trawl gear. This will facilitate targeting haddock by sector vessels. This may result in sector vessels catching haddock of a smaller size than common pool vessels. These impacts are difficult to predict, as mesh size is only one element that bears on the selectivity of the fishery. If sectors catch smaller fish, and account for a large proportion of the catch, over the long-term this could result in changes to the composition of the stock and possible modifications to status determination criteria. Since fishing mortality is based on the number of fish killed, it could also mean that sectors account for a larger percentage of fishing mortality on haddock than is expected based on the quota (ACE) allocated to sectors.

The Proposed Action automatically exempts sector vessels from some of the rolling closures in the GOM. Sectors are exempted from the offshore rolling closure areas in April, the May rolling closure in the Massachusetts Bay area (blocks 124/125) and east of the WGOM closed area, a portion of the June closure extending into the GOM, and the October/November closures of blocks 124 and 125. The biological impacts of this exemption are difficult to predict. When first adopted in FW 25 (NEFMC 1997) the rolling closures were adopted primarily to reduce catches of GOM cod. While not cited in the documents establishing the closures many believe that the timing and areas were intended to reduce fishing activity on cod spawning aggregations. Over the years the closure areas were modified numerous times, most recently in Amendment 13. The Amendment 13 closures were designed to reduce fishing mortality on several groundfish stocks and did not explicitly consider spawning activity.

To the extent the exemptions proposed reflect periods when cod are aggregated (whether for spawning or other reasons), the catch rates by sector vessels may be higher than at other times of the year. Since sector catches are limited by a hard TAC this exemption should not have impacts on fishing mortality. Fishing on spawning aggregations may have impacts beyond those on fishing mortality. Thompson (pers. com.) summarized these in a letter to the Council as follows:

- Fishing activity may disrupt spawning signals and thereby reduce spawning success (Rountree et al. 2006);
- Fishing activity may disturb spawning habitat or habitat essential for early life history stages;

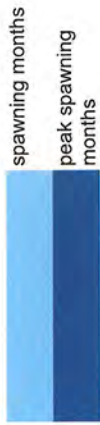
- Spawning fish are stressed and may be less able to survive handling, or capture may reduce egg production, even if fish are released (Taylor et al. 2001);
- Fishing increases mortality which reduces the number of older fish spawning. This may have adverse impacts as there is evidence (at least for cod) that first time spawners perform poorly compared to repeat spawners (Trippel, 1998).

Within the areas of the exemption, there is general information on spawning activity for several stocks. Table 177 summarizes the spawning periods for regulated groundfish in the GOM. According to Lough (2004), cod spawning in the GOM occurs from winter through spring but the time of peak spawning varies with location. Spawning in Massachusetts Bay peaks in January and February, north of Cape Ann it peaks between February and April, and off the coast of Maine it peaks between March and May. Generally, sector vessels are not automatically exempted from closures that overlap these cod spawning periods, though this is further explored below. The extended spawning periods for many groundfish stocks mean it is possible that the areas that are open to sector vessels may include spawning fish. If so, then approving this option may lead to the effects that are described in the previous paragraph. Of particular interest are the peak spawning periods for American plaice and GOM haddock. American plaice maximum spawning occurs in the western Gulf of Maine, with peak spawning in April and May. They are batch spawners, releasing eggs every few days over the spawning period; nursery areas are found in coastal waters of the GOM (Johnson, 2004). Peak spawning for GOM haddock occurs between February and April; Jeffreys Ledge and Stellwagen Bank are the primary spawning sites (Brodziak 2005). Sector a vessel access to the inshore GOM could have impacts on spawning activity of these two stocks.

Recent cod tagging studies provided additional information on cod spawning activity in the inshore GOM, including the areas and times of the rolling closures. Howell et al. (2008) reported a mark and recapture study of cod in the GOM, particularly related to the closed areas. Seasonal changes in abundance in the inshore areas were noted and these seemed consistent with spawning activity. In block 133, two peaks in abundance were observed: November-January and April – July, suggesting two distinct spawning populations. They concluded that the closure of block 124 in April, May, and November seemed appropriate to protect spawning fish, as did the closure of block 133 in April and May but possibly not June. The proposed exemption will allow sector vessels to fish in block 124 in November and May, reducing protection for spawning fish.

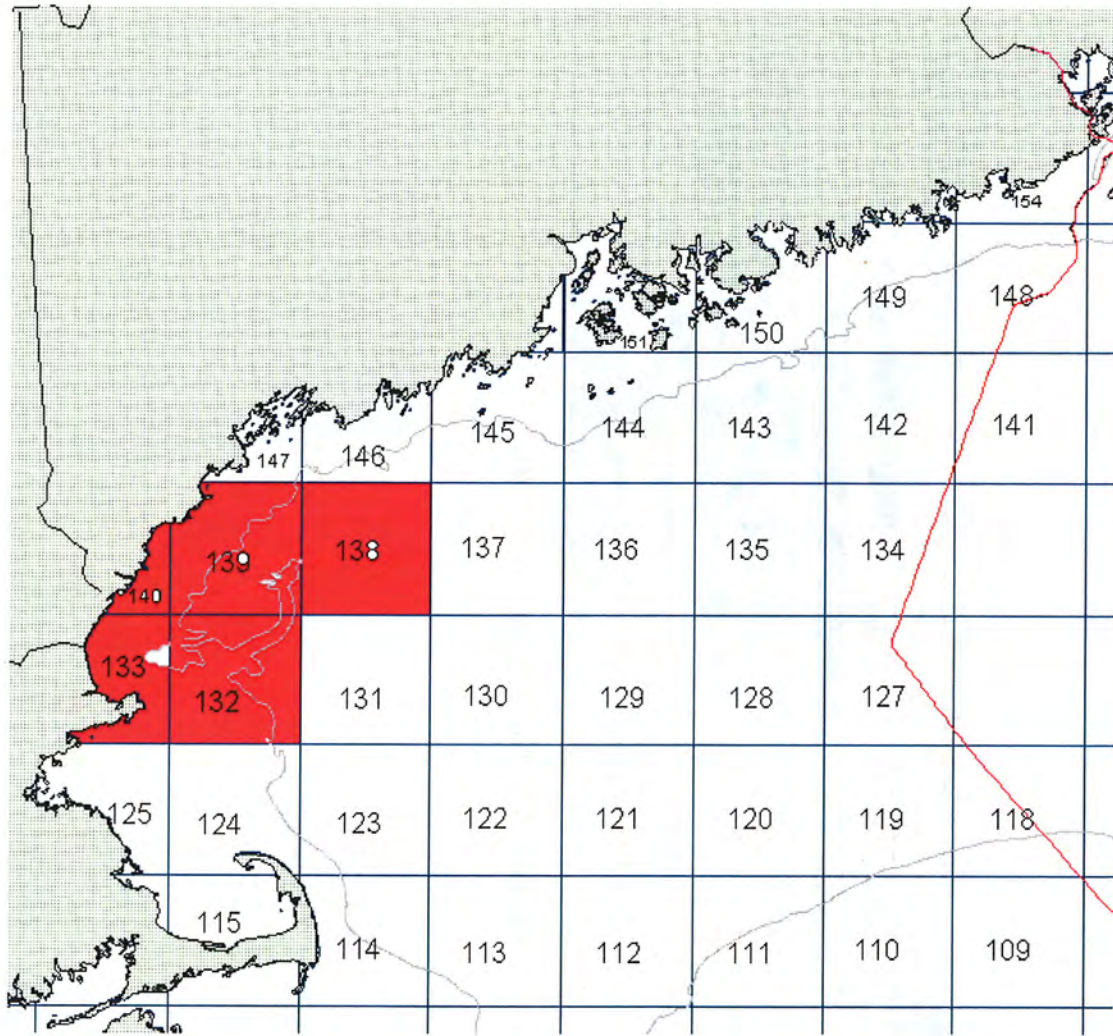
Selecting this option will not have direct impacts on non-groundfish stocks.

Environmental Impacts of the Management Alternatives
 Biological Impacts of the Alternatives



Species	January	February	March	April	May	June	July	August	September	October	November	December	Notes
American Plaice, GM													Berrien and Sibunka 1999
GOM Atlantic Cod													
Atlantic Halibut													Atlantic Canada waters
GOM Haddock													
Northern Ocean Pout													
Pollock													
Redfish													*copulation from Oct-Jan; fertilization from Feb-April; no peak times evident
GB-GOM White Hake													*no peak times evident
GB Windowpane													
GOM Winter Flounder													
GB-GOM Witch Flounder													
CC-GOM Yellowtail Flounder													

Table 177 - Spawning periods for GOM regulated groundfish. (Source: Essential Fish Habitat source documents)



Sector Rolling Closure May 1 – May 31