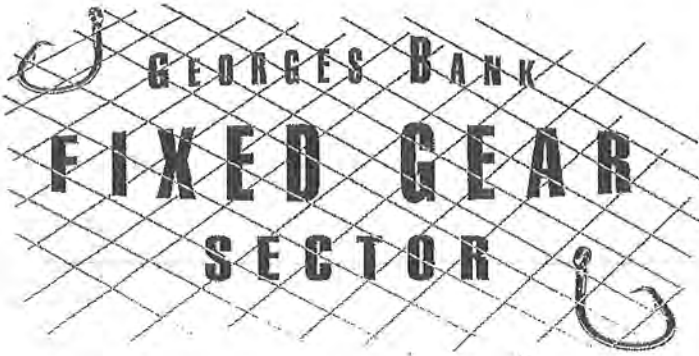


#5C

Additional Groundfish Correspondence

- 1) Georges Bank Fixed Gear Sector
- 2) Northeast Hook Fisherman's Assoc.
- 3) Associated Fisheries of Maine
- 4) Conservation Law Foundation
- 5) Paul Hoffman
- 6) Hilary Dombrowski
- 7) Allyson Jordan
- 8) Rhode Island DEM Permit Banking Sector Plan &EA
- 9) K&K Fishing Corp.



GB Cod Fixed Gear Sector, Inc.
1566 Main Street
Chatham, MA
02633
Phone: 508-945-2432
Fax: 508-945-0981
Email: eric@ccchfa.org



November 5, 2010

John Pappalardo, Chairman
New England Fishery Management Council
50 Water Street Mill 2
Newburyport, MA 01950

Dear Chairman Pappalardo,

On behalf of the Board of Directors of the Georges Bank Cod Fixed Gear Sector, I'm writing to you today to support the elimination of sector dockside monitoring requirements for the 2011 fishing year.

The dockside monitoring program was intended to verify that all fish that are to be landed are accounted for. However, this program was implemented with several fatal flaws that ensure it fails to meet this goal. The integrity of this program is lost since 1) dockside monitors cannot verify that all fish are offloaded from a vessel, and 2) NMFS does not recognize or accept the dockside monitoring data unless specifically requested by the Sector Manager.

Since this program fails to meet its intended goal, we would argue that it is providing little-to-no value to the industry. Because of this, we see no need to maintain an ineffective program in FY2011.

While we appreciate that the funding for this program was made available by NOAA, we would recommend that the Council consult with the industry to develop ideas for how to redirect this funding so not to lose it. We would also recommend that the Council consider implementing any "dockside monitoring" through the NOAA Office of Law Enforcement.

Thank you for your attention to this.

Sincerely,

Michael Russo, President
GB Fixed Gear Sector

cc: to, ah

91 FAIRVIEW AVE
 PORSTMOUTH NH 03801

November 8, 2010

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 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.

On July 30th the Handgear HA permits GOM cod trip limit was reduced from 300 lbs to 75 lbs and on the 18th of October the limit was further decreased to 50 lbs. This cod trip limit reduction put an entire gear class of cod fishermen out of business. Handgear fishermen contributed to the rebuilding to the GOM cod stocks and deserve to benefit from the rebuilding of GOM cod. It is very unfair that the Handgear GOM cod fishery was essentially shut down three weeks after the start of the season in July. We can't compete in a race to fish against more efficient fishing vessels. By the third week of July 85% of the GOM non sector cod fishery was harvested by vessels and handgear boats never had a chance at a fair share of the fishery. This is must be corrected in FW45 to give the handgear permits a shot at their fair share of the GOM cod fishery. We can't survive another year with a three week cod season (or less) which will happen again next year if this is not addressed in FW45.

The only alternative acceptable to the NEHFA is that we have access to fish in the rolling closures. Allowing us to fish in the same rolling closures as Sectors is not acceptable since it will tie the Handgear fishermen to the efforts of both DAS fishermen (proportional cod trip limits) and Sectors (access to some rolling closures). It is time to start managing the Handgear fishermen separately. Tying our access and trip limits to Sectors/DAS fishermen goes backwards in this regard. When the next Groundfish Amendment is developed, more specific rules can implemented, for Handgear fishermen that better address our fishery specific issues. We should have access to the same areas that recreational fishermen have since we use the same gear (hook and line).

The NEHFA supports in FW 45 the following actions:

1. Allow the Handgear Vessels (limited access HA permits) to fish in the GOM Rolling Closures. It is important that we have access to the inshore Statistical Grids 132, 133 124 & 125. This will return the Handgear fishery back to our traditional fishing grounds when the weather is safe for our small boats. At least we will have a 2 month cod season in 2011 before the GOM common pool sub ACL is caught as compared to a 3 week season or less for the whole year. This change should be considered a band aid until the next groundfish Amendment that can better address our fishery specific issues.
2. Removal of the requirement for dockside observers for Handgear boats. The value of the catch is less than the cost of the observer to count the fish on the dock.

There will be no longer a commercial cod jig fishery in the GOM if no action is taken in FW45. 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: PAUL HOFFMAN (NH), HILARY DOMBROWSKI (MA), RON ONORATO (NY), JOHN ZACKS (CT), PAUL KEHLENBACH (CT), JOSEPH CRISCUOLO (CT), MICHAEL PLALA (RI), STEPHEN BARUSSO (MA), THOMAS FOLEY (MA), ROBERT CARBONE (MA), WALTER TOLLEY (MA), JAMES GOULART (MA), KERRY DOON (MA), TED LIGENZA (MA), DONALD BERUBE (MA), MARIO TROMBI (MA), LARRY ROGERS (MA), CHUCK BUTLER (MA), KEVIN TWOMBLY (MA), JACK HILTON (MA), EDWARD COGGESHALL (MA), RONALD KRAUSE (MA), KEVIN HARNOIS (MA), GEORGE COSTA (MA), GEORGE DEMARAIS (NH), SCOTT RICE (NH).

cc: tn, ah

ASSOCIATED FISHERIES OF MAINE

PO Box 287, South Berwick, ME 03908

207-384-4854

November 9, 2010

Mr. John Pappalardo, Chair
New England Fishery Management Council

VIA ELECTRONIC MAIL



Dear John:

I write, on behalf of our membership, to urge the Council to initiate an amendment to implement an individual transferable quota program (ITQ) in New England groundfish.

Sector management of groundfish imposes substantial administrative costs on the industry. We hope the Council will embrace the opportunity to eliminate all unnecessary expenses that have been passed on to the industry through the sector management program. An ITQ would improve the flow of annual catch entitlement between individuals as well as the transparency of those transactions. Development of an ITQ program would also address concerns about "excessive" shares.

We urge the Council to include an ITQ program in the next amendment to the groundfish fishery management plan.

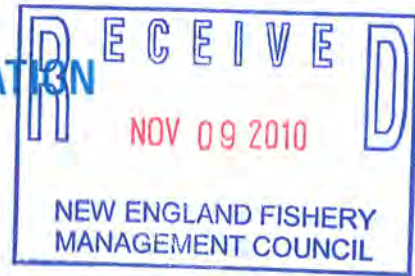
Sincerely,

M. Raymond

Maggie Raymond



CONSERVATION LAW FOUNDATION



November 8, 2010

The Honorable Gary Locke
Department of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230

RE: Request by the Commonwealth of Massachusetts for Emergency Action

Dear Secretary Locke:

We want to thank you for the attention and resources you and the senior management of your fisheries team at NOAA and NMFS have dedicated to New England over the past year and one-half. There is still a long way to go before the trust and economic stability on which the health and sustainability of some of our regional fisheries depend are in place but your team has demonstrated both its willingness and commitment to reach those important objectives in a highly-charged environment.

Specifically, we are writing to provide our perspective on the recent request by Governor Patrick that you exercise emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1855(c) to address an emergency in the New England groundfish fishery. We conclude that the Commonwealth has fallen far short of carrying the burden it bears of demonstrating that emergency circumstances exist, that it has attempted to take advantage of normal procedures for raising the issues it identifies as the basis of the emergency, and that the benefits associated with emergency action outweigh the important benefits of "advance notice, public comment, and deliberative consideration" that emergency action circumvents. In this particular case, acceding to Governor Patrick's request would establish a precedent that would undo the years of hard--and transparent--work at the New England Fisheries Management Council to finally bring long term economic stability and sustainability to New England groundfish fisheries.

Summary of our Position:

Governor Patrick's emergency petition is based on alleged unforeseen economic losses of \$21 million in direct economic losses and foregone yield of \$19 million in the groundfish fishery. *See*, A Report on Economic and Scientific Conditions in the Massachusetts Multispecies Groundfishery (MA Emergency Report) at 2. According to the MA Emergency Report, these alleged losses are attributed to the unforeseen effects of "unnecessarily low ACLs [annual catch limits] and market failure in trading under the new catch shares system..." *Id.* at 4. But the Report provides no data to quantify these effects. Moreover, there is no demonstration that the proposed emergency action would even benefit the class of fishermen that the MA Emergency

62 Summer Street, Boston, Massachusetts 02110-1016 • Phone: 617-350-0990 • Fax: 617-350-4030 • www.clf.org

MAINE: 47 Portland Street, Suite 4, Portland, Maine 04101-9872 • 207-210-6439 • Fax: 207-221-1240

NEW HAMPSHIRE: 27 North Main Street, Concord, New Hampshire 03301-4930 • 603-225-3060 • Fax: 603-225-3059

RHODE ISLAND: 55 Dorrance Street, Providence, Rhode Island 02903-2221 • 401-351-1102 • Fax: 401-351-1130

VERMONT: 15 East State Street, Suite 4, Montpelier, Vermont 05602-3010 • 802-223-5992 • Fax: 802-223-0060

CONSERVATION LAW FOUNDATION

Report identifies as forming the basis for the emergency: the Massachusetts fishermen who either caught more groundfish in recent years than they are now entitled to under the allocation formula approved by the Council, or the Massachusetts fishermen who caught a different complex of groundfish during the qualifying period than they have been landing in more recent years. Finally, there is little doubt that Amendment 16 is producing consolidation in the groundfish fishery as it was intended to and as the prior programs before Amendment 16 had been doing. The Governor's description of this consolidation provides no insight that would allow a conclusion that this was unforeseen by the Council or NOAA Fisheries.

With respect to the science component in the MA Emergency Report, this section of the report stands for the proposition that there are other ways that the fishery could have been modeled and those different approaches could have produced different results. There is no indication that there is new science or new assessment data. The purpose of this section appears to be: *if there are economic circumstances sufficient for an emergency declaration*, then there *may* be different ways to model or analyze various fish stocks to produce different results without overfishing or exceeding the rebuilding timelines. While that may be adequate grounds for a healthy scientific debate, it is not grounds for emergency action nor does the MA Emergency Report provide any suggestion that there is new fisheries data or modeling that independently forms the basis for an emergency action.

Response to Economic Emergency Demonstration In MA Emergency Report

We assume that there are many fishermen who have historically participated in the New England groundfish fishery but are no longer in the fishery or are barely hanging on. Some have taken advantage of buy-out programs, some have shifted their focus to other fisheries like monkfish, dogfish and other species, and others have been forced out and no longer are at sea for a variety of circumstances, many of which were beyond their control. Some, like the fishermen in Downeast Maine, were forced out of the fishery because of the overfishing by roaming boats fishing in their adjacent federal waters, which eliminated groundfish populations that they had always depended on during parts of the fishing year. The social pain and economic loss for individuals and communities associated with this consolidation, which has continued unabated and unanalyzed since at least the mid-1990's, is difficult to overstate.

At the same time, the Council has recognized for some time that the New England groundfish fishery was a bubble, subsidized by rampant overfishing and low cost federal money; a bubble that started to leak in the late 1990's and has continued to deflate through today. Amendment 16 was an important effort to accomplish two purposes: achieve compliance with the new catch limits and accountability requirements imposed by the Magnuson Reauthorization Act of 2006 (enacted in 2007) and inject flexibility into the fishery through sectors, which allowed a relaxation of some of the indirect controls imposed by earlier management regimes and allowed movement of quota inside and outside of sectors. As with all complex fisheries, there were many uncertain management alternatives that faced the Council; CLF believes that they did an excellent job tackling those issues under the circumstances.

Indeed, the MA Emergency Report reflects some positive early economic returns from Amendment 16: adjusted for inflation total groundfish revenues from Massachusetts boats, after falling 15% for the period from 2005-2009, rose 21% for the comparable period in the 2010 fishing year over that same period in the averaged 2005-2009 fishing years. MA Emergency Report at 7. The same data set indicate that the Massachusetts ports, and presumably the fishing support services in those ports, did even better year-to-year.

CONSERVATION LAW FOUNDATION

The gravamen of the MA Emergency Report with respect to the emergency unforeseen economic impacts of Amendment 16 is that the increased wealth reported for the first five months of the 2010 fishing year was not evenly distributed among Massachusetts fishermen. *Id.* This claim, however, demands further examination. The report lays out a range of statistics. First, the number of boats grossing more than \$300,000 during the first 5 months almost doubled from 21 to 41.¹ That is not evidence of consolidation. The bottom 75% of the active boats decreased gross revenues by 8% over the comparable early time period, but there is no indication that this decrease is a result of insufficient annual catch entitlement (ACE); it could just as easily be related to an individual business strategy to fish later in the fishing year. The \$21 million that the MA Emergency Report indicates was lost to the Massachusetts groundfish fleet is based on a comparison between the FY2010 ACE and the FY2009 Vessel Trip Reports for groundfish landings. That is a meaningless comparison. FY2009 landings history was not used by the Council to make allocations. The basis for the qualifying period for the FY2010 ACE is exhaustively documented in the Amendment administrative record and is the subject of litigation. If the issue for the emergency action is whether there was any expectation that the FY2010 ACE would be comparable to the FY2009 VTR reports, there is no issue because there was never any such expectation.

The Report alludes to “trapped” quota”, *Id.* at 11, but provides no documentation of that phenomenon: How many fishermen are involved? What were their circumstances in prior fishing years? What was the basis for their business decisions in FY2009 and earlier? What other fisheries are they involved in that offset their stated difficulty in obtaining quota? What have the sectors done to make quota available within their membership to such individuals? What are the sector fees and other assessments that affect the net revenues of these operations? Perhaps some of these problems identified in the Report are uniquely associated with the sectors managed by the Northeast Seafood Coalition (NSC), which reportedly had significant start-up problems; we have not heard similar comments from other sector managers.

The MA Emergency Report advances claims such as: “too many fishermen who were very active in the 2009 fishing year cannot afford to buy or they cannot afford to sell [quota]” and “so many fishermen have been placed in this paralyzed state[,]” and “the costs of renting fish have become the highest percentage of fishing expenses of any expense realized in the past[,]” *id.* at 12, without any statistics, analysis or documentation. NSC, who apparently contributed significantly to this Report, manages over 260 active vessels of the total 500 vessels in sectors and yet provides no specific information to inform and substantiate the arguments of this report. Perhaps more damaging to the ultimate claims, the authors of the Report do not appear to have surveyed or collected economic data from any of the non-NSC sectors.

The MA Emergency Report states that “[i]ncreased ACLs for “choke stocks” are expected to allow the fleet to achieve their allocation of other stocks, thereby substantially increasing the mixed-stock yield within the multispecies ACLs. Preliminary analysis of mixed-stock catches suggests the increased ACLs would allow 14,500 tons more than the current ACLs.” *Id.* at 15. This statement, presumably, is the basis for the unsupported conclusion in the report that this “emergency” is causing \$19 million in foregone yields, *id.* at 2 & 17, in addition

¹ It is not clear from the Report whether the authors are reporting on landings and revenues from groundfish, all species, or all finfish. CLF will assume in this comment that the authors are referencing all revenues from boats carrying a multispecies groundfish permit.

CONSERVATION LAW FOUNDATION

to the purported \$21 million in direct costs. There is, however, no evidence that the groundfish fleet is being harmed by so-called “choke” species in FY 2010 to date. The year-to-date analysis (attached as an addendum to this letter) of annual catch limits by species compared to landings by species, indicates that none of the landings to date by the fleet is even remotely approaching the ACL for the species. One-third of the way into the fishing year, the maximum landings (Gulf of Maine haddock) is only slightly more than 40% of the ACL. Most of the stocks are well below 33% at the current time. Assuming the models are right and the fish are actually out there, landings are not being constrained by ACLs; they are being constrained by the business decisions of the sectors and their members.

Finally, while it is obvious that the positive aggregate gross revenues numbers for the Massachusetts groundfish fleet do not reflect the individual financial circumstances of a number of fishermen, the Report provides no information that would allow a more specific analysis of individual impacts. Simply pointing to reduced numbers of active boats or lower revenues per permit for a partial year and implicating overly conservative ACLs as the cause, as the Report does, is inconclusive for any number of reasons. Many individuals, for example, own multiple boats and permits, and individuals were expected to shift quota onto fewer boats. Others who haven’t shown up in the early season statistics have likely made business decisions to fish later in the fishing year now that they can take advantage of higher winter prices without threat of the “race to fish” that existed in the old system. Doubtless there are numerous other explanations. Across the board, the Report simply falls far short of meeting its burden to show that there is an unforeseen economic emergency.

Response to Best Available Science Supporting Adjustment of ACLs

This section of the MA Emergency Report can be summarized in one sentence from the report itself: “[s]cientifically valid alternatives **may** be available for each component of Acceptable Biological Catch to allow increases in ACLs.” MA Emergency Report at 13 (emphasis added). Every item discussed in this section of the report—using direct estimates of F_{msy} instead of $F_{proxies}$; alternative models; reductions in scientific uncertainty calculations; and alterations associated with various components of the rebuilding plan—is a matter that has been previously considered and fully debated and discussed at the appropriate venue: the SSC and the Groundfish Assessment Review Meeting (GARM). The Secretary, in the context of an emergency petition, should not be placed in a position to act as a Monday-morning quarterback to evaluate the scientific arguments as to whether the selected ABCs could or should have been resolved differently. The underlying science process leading up to Amendment 16 and Framework 44 was competent for that purpose and decisions were made accordingly.

The lead author of the MA Emergency Report, Dr. Steve Cadrin, is the chair of the New England Council’s Science and Statistical Committee and has raised many of the same issues now raised in this section previously with the SSC, with the GARM III in August 2008, and directly with the Council. It is unfortunate that the Report is not more forthright in discussing why these analytical approaches were not adopted by that scientifically deliberative process. The report also fails to explain why Dr. Cadrin could not raise these matters with the SSC or the Council instead of authoring this report. In a similar vein, another author of the Report, Dr. David Pierce, is a long-term member of the Council itself. CLF can’t recall any effort by Dr. Pierce to have the Council re-visit the scientific analysis. It would seem to establish a bad, irreversible precedent if the emergency action procedures were used to advance the scientific preferences of one group of scientists over those of others.

CONSERVATION LAW FOUNDATION

Since there is no claim that the science process itself or subsequently discovered data or stock analysis forms the foundation of the emergency request itself, we will not address those aspects of the Report directly. If there is new information or if there are new, more accurate approaches to groundfish assessments the MA Division of Marine Fishery believes are important to the process, they should be encouraged to raise them as part of the management process itself, not as a hypothetical exercise at the end of the Report. CLF would strongly support any re-evaluation of the underlying fisheries science that the SSC determines to be appropriate but it has no place in the record before the Secretary on this emergency petition.

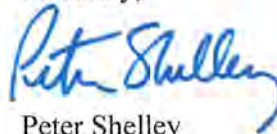
Conclusion

It is notable that this emergency action is not being requested by the one entity in New England that has the best grasp of the current situation: the New England Fishery Management Council. Amendment 16 and Framework 44 were adopted after four years of open, transparent, difficult debate and negotiation. The Commonwealth of Massachusetts was an active, if not dominant, participant in that process. The economic issues that are emerging with the implementation of the amendments are well within the range of the projected impacts that were fully analyzed in the management plan. The Governor's Report contains no specific data, analysis or information to demonstrate "recent and unforeseen events or recently discovered circumstances." Moreover, the Governor has provided no information with which you could conclude that relaxing the ACLs would prevent "significant direct economic loss." Indeed, as we argue above, since the allocation formula would not be changed by the emergency action being proposed by the Governor, any increased quota would simply further benefit the fishermen who are already being benefitted by the current formula. Similarly, the science issues being raised by Dr. Cadrin's team are all issues that were explicitly discussed and debated by the appropriate scientific bodies prior to being adopted by the Council.

There is nothing new in the Governor's submission that would warrant you in taking emergency action. In fact, emergency action would be extraordinarily destructive to the integrity of the Council process and undercut the credibility of the management system, in New England and elsewhere.

We hope that you decline this request for emergency action. We look forward to working with you, NOAA, and NMFS as well as with the Commonwealth of Massachusetts and other jurisdictions who haven't yet been heard on this petition to continue current efforts to improve the groundfish fishery for the benefit of New England fishermen and to restore the fish populations.

Sincerely,



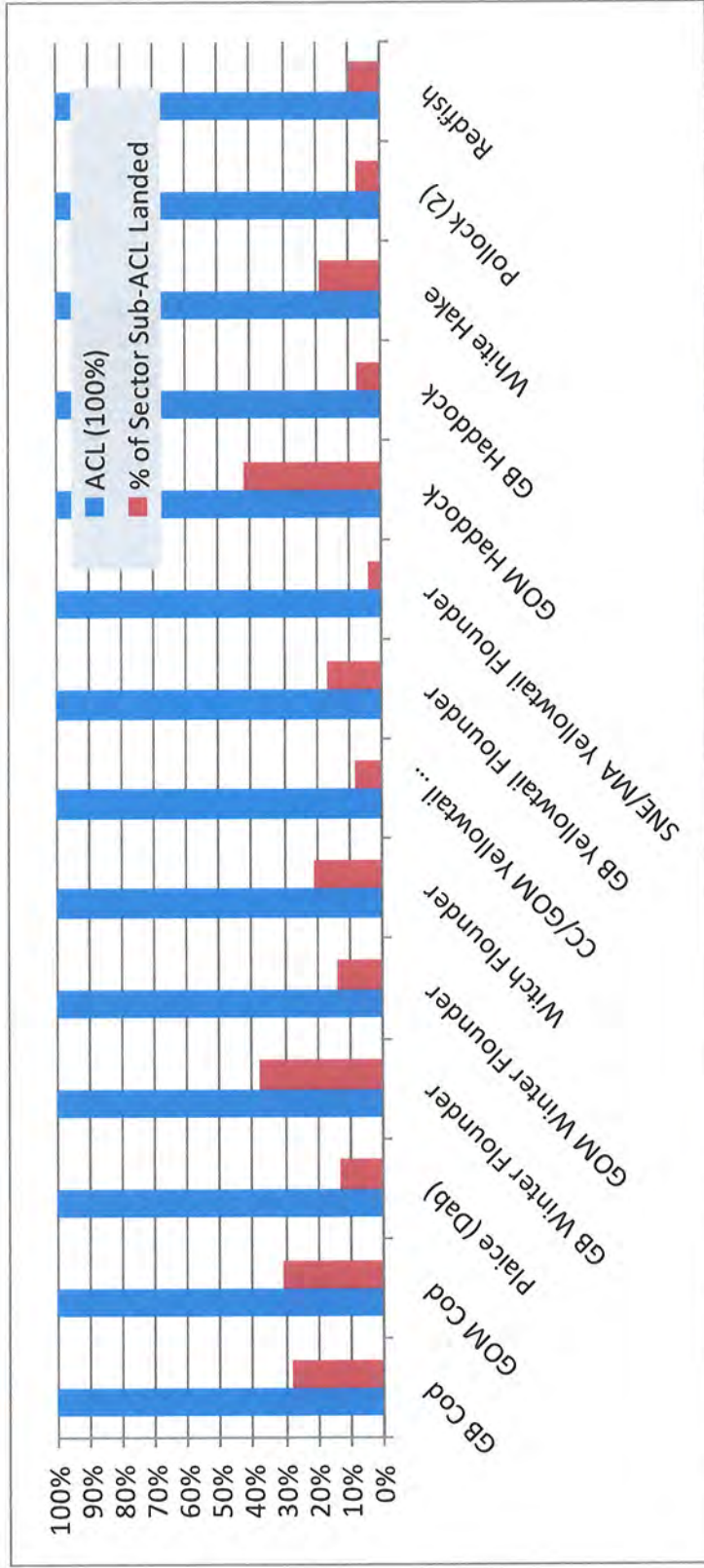
Peter Shelley
Vice President
Conservation Law Foundation

Attachment

CONSERVATION LAW FOUNDATION

cc: The Honorable Deval Patrick
Dr. Jane Lubchenco, Administrator NOAA
Ass't. Administrator Eric Schwaab, NMFS
John Pappalardo, Chair, NEFMC

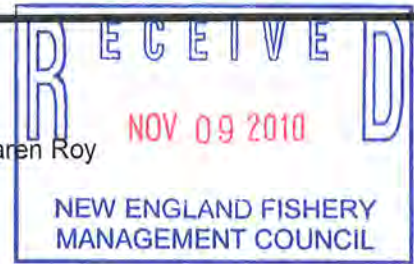
Four-month sector landings versus sector groundfish ACLs (May 1-August 31, 2010)



Source: NMFS four-month landings data (http://www.nero.noaa.gov/ro/fso/reports/Sector_monitoring/Table_4.pdf) compared to 2010 ACLs (http://www.nefmc.org/nemulti/frame/fw44/Addendum_to_FW_44.pdf)

Joan O'Leary

From: hoffman31@comcast.net
Sent: Tuesday, November 09, 2010 12:49 PM
To: Paul Howard
Cc: Tom Nies; Pat Fiorelli; Chris Kellogg; Joan O'Leary; Karen Roy
Subject: Hand Gear A cod trip limits in FW45



Dear NEFMC Council Members;

I am one of a very few commercial fisherman with the Limited Access Handgear HA permits, using rod & reel or handline to catch cod and other ground fish. The small group that I belong to accounts for very small percentage of the ground fish landed in New England. Some of our boats are not much bigger than those of the Dory fisherman of years ago who also fished with hand lines as we do today.

On 7/30/10 Handgear HA permits GOM cod trip limit was reduced from 300lbs to 75lbs. This was just 4 weeks after our season opened due to rolling closures in the GOM. This reduction basically put our small class of fisherman out of business. With the rolling closures we loose the first 3 months of the season because our vessels are limited in size & range.

Please support the following actions:

1. Allow the Handgear Vessels (Limited access HA permits) to fish in the GOM Rolling Closures. It is critical for us to have access to the inshore Grids 132, 133, 124 & 125. This will help boost the traditional handgear fishery and allow us to fish safely inshore as the recreational fisherman already do.
2. Removal of the requirement for dockside observers for handgear boats. The value of the catch is less than the cost of the observer.

Respectfully
Paul Hoffman

New England Fishery Management Council
50 Water Street, Mill 2
Newburyport, a. 01950

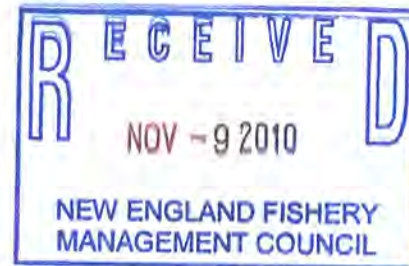
11/9/10

Dear Chairman Pappalardo:

I am writing you and fellow Council Members to ask for your support at the next meeting of the full Council on behalf of the Cape Ann Hook Fisherman's Association. The Groundfish Oversight Committee has recommended changes that will help to continue the Hand Gear A Fisheries survival as a small boat commercial fishery. As Americas oldest and most conservation friendly form of fishing it is absolutely necessary that these changes are voted on in the AFIRMATIVE, the Hand Gear A fishery will not be able to continue under the present rules if these changes are not adopted.

Sincerely,

Hilary Dombrowski, F/V Destiny
24 Gee Avenue
Gloucester, Ma.
President, Cape Ann Hook Fisherman's Association



Joan O'Leary

From: Allyson Jordan [eatlocalfish@gmail.com]
Sent: Tuesday, November 09, 2010 7:42 PM
To: John Pappalardo
Cc: Joan O'Leary
Subject: ITQ's For Groundfish



Dear John,

It has come to my attention that the NEFMC will set its priorities for Groundfish Amendments for the next year and it will NOT include ITQ's for Groundfish. As an active participant in the Groundfish fishery I urge to make it a priority to set ITQ's for Groundfish as soon as possible. With the new Sector management being forced upon us we are desperate to take our business back- and not be in business with other fishermen in sectors. ITQ's are the only option for us to manage our businesses that many have worked on for years. This country was built on small business- why not work with us to keep that "American Dream" a reality with ITQ's?

With the Obama administration touting their hard work on putting Americans back to work- you would think NMFS and NEFMC would work extra hard to make ITQ's in the Groundfish Fishery a priority.

Allyson Jordan
F/V Theresa & Allyson
F/V Jamie & Ashley
Gloucester, MA



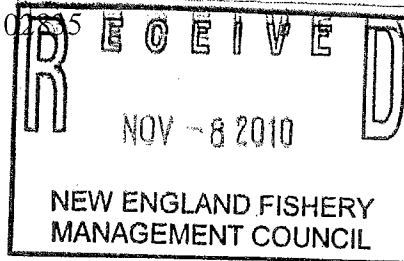
Rhode Island
Department of Environmental Management

DIVISION OF FISH AND WILDLIFE

3 Fort Wetherill Road
Jamestown, RI 02835

401 423-1920
FAX 401 423-1925
TDD 401 222-4462

Patricia A Kurkul
Regional Administrator
NOAA/NMFS
Northeast Region
55 Great Republic Drive
Gloucester, Ma 01930-2276



Date: November 1, 2010

Re: RI Permit Banking Program Sector Operations Plan & Environmental Assessment

Dear Ms. Kurkul:

In accordance with the New England Fishery Management Council's decision to include the State of Rhode Island's Permit-Bank Sector in Framework 45 to the Northeast Multispecies Fishery Management Plan, please find attached the State's draft Operations Plan and Environmental Assessment for the sector for the FY 2011 fishing year.

The State is seeking a waiver from the September 1, 2010 deadline for the submittal of operations plans, because, as of that date, the Council was poised to consider adding measures to Framework 45 that would facilitate the operations of NOAA-sponsored, state-operated permit banks as entities distinct from sectors. At the Council's September 28-30 meeting, the issue was taken up as part of the Framework 45 discussion. Based on legal advice, the Council held that the proposed measures could not be included in a framework adjustment, and opted to pursue a single-issue amendment to consider the measures. It is unclear how long that process will take. While that initiative plays out, the State wishes to pursue its sector application, since, under current rules, states can only operate permit banks (i.e., lease ACE and/or DAS) if they form or join a sector. Rhode Island has in fact been awarded a \$1 million grant from NOAA Fisheries for the purpose of establishing a state-operated permit bank. The grant was awarded on August 30, 2010, and is based on an MOA between NOAA Fisheries and the RI Department of Environmental Management on June 24, 2010. Thus, the State is seeking status as a sector under Framework 45 solely for the purpose of being able to develop and administer the state permit bank, pursuant to the agreement with, and award from, NOAA Fisheries.

As indicated in the Operations Plan, the State is also seeking waivers from other Operation Plan requirements that will have no bearing on the RI Permit Banking Program

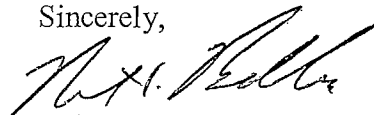
Sector, since the sector will be a lease-only sector

As indicated in the Operations Plan, the State is poised to move forward, in consultation with industry, with the development of the administrative structure and operational guidelines for the permit bank, but that process has not yet begun. As such, it will be awhile before the bank obtains any permits, and leases any ACE or DAS. Until that happens, certain elements of the Operations Plan, such as lists of participants and permits held by the bank will have to remain pending. For this same reason, we also request an exemption from the requirement, set forth in your October 27, 2010 letter to Mark Gibson, RIDEM Deputy Chief for Marine Fisheries, that sector rosters be submitted by December 1, 2010.

Perhaps the key issue that remains subject to continuing discussion is the generic requirement that sectors must be comprised of at least three distinct entities. It is possible that Rhode Island will address that issue via an intra-state partnership, potentially involving such entities as the RI Department of Environmental Management and the RI Economic Development Corporation; it is also possible that the four states that received federal grant awards to establish state-operated permit banks – RI, MA, NH, and ME – might explore an inter-state relationship as a way to address and meet the “rule-of-three” requirement. We hope to address and resolve this issue as soon as possible, but it is difficult to project exactly how long that process will take.

Thank you for your consideration. If you or your staff have any questions regarding this submission, please contact me at (401) 423-1926, or Robert.Ballou@dem.ri.gov

Sincerely,



Robert Ballou
Acting Chief
Division of Fish & Wildlife

CC: William Whitmore, NMFS
Paul Howard, NEFMC
W. Michael Sullivan, RIDEM Director
Larry Mouradjian, RIDEM Associate Director
Mark Gibson, RIDEM Deputy Chief

State of Rhode Island Permit Banking Program Sector
Preliminary Operations Plan

Rhode Island Department of Environmental Management
Division of Fish & Wildlife
Marine Fisheries Program
3 Fort Wetherill Road
Jamestown, RI 02835

DRAFT

November 1, 2010

The Rhode Island Department of Environmental Management (RIDEM) requests approval from NMFS of the Preliminary Rhode Island Permit Banking Program Sector (RIPBPS) Operations Plan. RIDEM also requests allocation of Annual Catch Entitlements (ACE) and Days at Sea (DAS) from permits acquired through the RIPBPS of those fish stocks managed under the Northeast Multispecies FMP that the Council determines have adequate biomass to be allocated to the fishery in FY 2011 and beyond. If approved, FY2011 will be the first year the Sector will operate.

This Operations Plan is submitted in accordance with 50 CFR 648.87(b)(2), which states: "To be approved to operate, each sector must submit an operations plan and sector contract to the Regional Administrator no later than September 1 prior to the fishing year in which the sector intends to begin operations." This Operations Plan will remain valid throughout the 2011 Fishing Year (FY 2011). RI is seeking an exemption from the September 1 operations plan deadline, as no permits have been acquired to date. RI will supply all permit-related information in an amended operations plan

I Background

The RIPBPS will differ significantly from those sectors previously authorized. RIDEM will act as the operating agent for the RIPBPS. The RI Permit Bank, administered by the RI Economic Development Corporation, will acquire permits. RIDEM will serve as the owner of record for permits held by the Bank. The ACE and/or DAS associated with those permits will be distributed to eligible vessels within eligible sectors. Eligibility will be determined subject to the requirements outlined in the Memorandum of Agreement (MOA) between NOAA Fisheries and RIDEM. RIDEM will also require recipients of permit bank ACE and/or DAS to land their catch in RI. All permit bank permits will be placed in Confirmation of Permit History Status (CPH), as required by the MOA. Because there will be no active fishing vessels within the PBS, many of the required operations plan elements listed in 50 CFR 648.87(b)(2) are not applicable.

II Proposed Action and Alternatives

This section describes the fishing alternatives, including existing fishing conditions under the No-Action Alternative, and the Proposed Action (Alternative 1), which is approval of the RIPBPS Operations Plan.

III Description of the State of Rhode Island Permit Banking Program Sector and Proposed Operations

A Draft Operations Plan for the RIPBPS is hereby offered as a component of this EA. The RIPBPS would consist of at least three permits, none of which would be actively fished. The RIPBPS will be operated as a lease-only sector. The RIPBPS requests an allocation of each of the following stocks of Northeast large-mesh multispecies (also

referred to as “allocated target species”) based on the landings history of the Sector permits:

1. GOM Cod
2. GB Cod
3. GOM Haddock
4. GB Haddock
5. Redfish
6. Pollock
7. White Hake
8. Cape Cod/GOM Yellowtail Flounder
9. GB Yellowtail Flounder
10. SNE/MA Yellowtail Flounder
11. GOM Winter Flounder
12. GB Winter Flounder
13. Witch Flounder
14. American Plaice

The RIPBPS may request an allocation of additional stocks if the Council approves the allocation of such stocks.

The RIPBPS will ensure its ACE is not exceeded by requiring regular reporting by all recipients of RIPBPS ACE (through their sector managers), per the reporting requirements outlined in the MOA. The reporting mechanism has not yet been established, but will be sufficient to ensure that leased ACE is not exceeded.

The decision concerning which permits will be entered into the RIPBPS will be made only after RIDEM acquires permits, which is expected to take place beginning sometime in 2011.

Because all permits within the RIPBPS will be inactive permits held by the Permit Banking Program, RIDEM does not anticipate the need to notify NMFS if a member is expelled from the sector as a result of violation of sector regulations. RIDEM will require all recipients of RIPBPS ACE to sign a contract in which they agree to abide by the terms and conditions of the MOA. If it is determined that individuals have breached the terms of this contract, NMFS will be immediately informed of the circumstances of the violation. In addition, the penalties (as described in the contract) will be administered.

IV Location/Timeframe and Gear of the State of Rhode Island Permit Banking Program Sector

As noted above, there will be no active vessels in the RIPBPS. Recipients of RIPBPS ACE will fish primarily in the waters off southern New England, but it is possible that they may fish anywhere within the U.S. EEZ. It is anticipated that all vessels that lease quota from the RIPBPS will utilize otter trawls, gillnets and/or hook gear.

V Fishing Year 2011 (May 1, 2011 – April 30, 2012) State of Rhode Island Permit Banking Sector Operations Plan Harvesting Rules

The RIPBPS will be a lease-only sector, and will adhere to all rules associated with the allocation of ACE, ACE transfers, data management, and reporting requirements. The harvesting rules associated with vessel operations, monitoring and gear restrictions will be based on the NMFS-approved harvesting rules in the sector agreements for those sectors that will lease ACE from the RIPBPS. These harvesting rules must also not conflict with the terms and conditions outlined in the MOA.

VI NMFS Contract Requirements for FY 2011

1. A list of all participants and a contract signed by all participants: RIDEM is not yet able to provide this information, since the grant has not yet been finalized between the parties. RIDEM will supply this information to NMFS when the grant is finalized (expected late 2010, prior to the 2011 fishing year).
2. A list of all Federal and state permits held by sector members: RIDEM is not yet able to provide this information, since the grant has not yet been finalized and permits have yet to be acquired by the RIPBPS. The information will be provided as it becomes available.
3. Length of commitment: as stated in V above, the plan spans one year, May 1, 2011 to April 30, 2012
4. Designated representatives or agents: Robert Ballou (Acting Chief, RIDEM, Division of Fish and Wildlife) – RIPBPS representative; Najih Lazar (Supervising Marine Biologist, RIDEM Division of Fish & Wildlife) -- Grant Manager. A Board of Directors will be established pending final establishment of sector membership (see Part 1.2 of EA).
5. Distribution of ACE: Refer to attached MOU for specifics on distribution of ACE in the RIPBPS
6. Plan for the consolidation of ACE: Not applicable at this time. Once the grant is finalized and permits acquired, RIDEM will amend the OP, prior to the start of the fishing year, to detail how leasing will be conducted, whether to one or multiple sectors. The primary goal of the RIPBPS is to restore and preserve access to small rural communities throughout Rhode Island. By distributing fishing opportunities to numerous smaller eligible vessels, it will decrease the risks and/or impacts of consolidation
7. A plan and analysis to show how the sector will avoid exceeding allocated ACE: Not applicable. The RIPBPS is a lease-only program. The RIPBPS won't be responsible for monitoring or enforcing sector regulations. All monitoring requirements will be met by the sectors to which ACE and/or DAS are distributed
8. A plan describing discipline procedures: Not applicable, lease only, no active fishing vessels.
9. Explanation of how sector will notify NMFS is member is expelled: Not applicable, lease only, no active fishing vessels
10. ACE thresholds that may trigger revision to reporting frequency: Not applicable, lease only, no active fishing vessels

11. Details regarding the sector plans for notifying NMFS once ACE threshold has been reached: Not applicable, lease only, no active fishing vessels. RIDEM will notify NMFS of transfers and lease arrangements
12. Describe how groundfish bycatch will be avoided: Not applicable, lease only, no active fishing vessels
13. Sector Manager weekly reports: RIDEM will only be responsible for the Sector Manager ACE Status Report. Other sections of this requirement do not apply. Sector Managers will supply all other reports.
14. Harvest Rules detailing exemptions requested: As a lease only sector, none of the administrative provisions apply. RIDEM is seeking exemptions from the DAS leasing program requirements. Additionally, RIDEM is requesting an exemption to the upgrade provisions on vessel length and horsepower. As referenced above, RIDEM also request an exemption from the Sept 1 and Sept 10 deadlines, as no permits have been acquired to date to supply the required information.
15. Release of Confidential Data: All RIPBPS permits will be owned by the State of Rhode Island. The RIPBPS, as a government entity, is subject to all Freedom of Information Act requests and is therefore not eligible to keep data confidential.
16. Monitoring and Enforcement Provisions: Also not applicable as a lease only program with no active fishing effort.

State of Rhode Island Permit Banking Program Sector
Preliminary Environmental Assessment

Rhode Island Department of Environmental Management
Division of Fish and Wildlife
Marine Fisheries Program
3 Fort Wetherill Road
Jamestown RI 02835

DRAFT

November 1, 2010

1.0 Introduction:

The Rhode Island Department of Environmental Management (RIDEM) is preparing an operations plan for the State of Rhode Island Permit Banking Program Sector (RIPBPS) for submittal to the National Marine Fisheries Service (NMFS). RIDEM requests that the RIPBPS be assigned an annual catch entitlement (ACE) for stocks managed under the Northeast Multispecies Fisheries Management Plan (FMP) for the 2011 fishing year (FY 2011) and beyond for any permits that are acquired. The RIPBPS will be a lease-only sector; its purpose will be to facilitate operations of the State of Rhode Island Permit Banking Program.

1.1 Background and Summary:

Working collaboratively with NMFS, RIDEM has signed a Memorandum of Agreement (MOA) for the administration and implementation of a pilot RI Permit Banking Program. The program objective is to preserve and restore fishing privileges and opportunities to Rhode Island's fishermen and communities.

The MOA establishes the terms and conditions for the administration of the RI Permit Banking Program. Under this MOA, RIDEM, in coordination with the RI Economic Development Corporation, will purchase federal limited access multispecies permits. The fishing access rights associated with these permits will then be leased to RI fishermen who meet the eligibility requirements detailed in the MOA.

Amendment 16 allows ACE to be traded within and between sectors. The program is based on individual percentage sector contributions (PSCs) calculated under Amendment 16, as the percentage sector contributions of each vessel of groundfish species. The RIPBPS will help further the goals (as outlined in the MOA) of the RI Permit Banking Program by facilitating the distribution of ACE to eligible vessels in eligible sectors. Without the RIPBPS, current regulations would require RIDEM to place permits within (and therefore become a member of) any eligible sector(s) to which it would like to distribute ACE. Approval of the RIPBPS will enable RIDEM to avoid the complicated situation that may result from being required to become a member of a sector whose purpose differs from that outlined in the MOA. In addition, creation of the RIPBPS will streamline the administration, operation and efficiency of Rhode Island's Permit Banking Program.

The MOA prohibits permits obtained by RIDEM for the purposes of the Permit Bank from being held on active vessels. The ACE held by RIDEM will be leased to eligible vessels within other sectors that meet the eligibility requirements outlined in the MOA. Gear utilized to fish the ACE will vary, but will likely be limited to otter trawl, gillnets, and hook gear. All recipients of ACE from the RIPBPS will fish within the U.S. Exclusive Economic Zone (EEZ). Because the MOA requires recipients of Permit Banking ACE to be RI-based vessels of no more than 45 feet in registered length, it is anticipated that all recipients of RIPBPS ACE will fish in the near shore waters off southern New England.

This Environmental Assessment (EA) was prepared as required by the National Environmental Policy Act (NEPA) of 1969, and in compliance with the new sector regulations as described in Amendment 16 to the Northeast Multispecies FMP. This EA is being submitted to the New England Fishery Management Council (NEFMC), as required, and describes the potential impacts on the human environment from approval of the RIPBPS.

1.2 State of Rhode Island Permit Banking Sector Description

The RIPBPS will enable Permit Banking Program ACE to be distributed to eligible vessels in eligible sectors without the constraint that permits be placed *within* these sectors. Approval of the RIPBPS will enable the State of Rhode Island to avoid the complicated situation that may result from being required to become a member of a sector whose purpose differs from that outlined in the MOA. It will also streamline the administration, operation and efficiency of Rhode Island's Permit Banking Program.

The definition of a sector requires that it be composed of at least three persons. RIDEM is currently evaluating several options for how the RIPBPS might meet this requirement. Permit holders may consist of individuals from within several communities of the State of Rhode Island or they may include individuals from other states' permit banking programs. RIDEM intends to work closely with NMFS (and the agency contacts from the other recipients of permit banking funds, if appropriate) to create a sector membership that best serves the goals of the Permit Banking Program(s). However it is constructed, the RIPBPS will be a group of at least three limited access Northeast multispecies permit holders voluntarily working together as a Sector under the terms described in Amendment 16 to the Northeast Multispecies FMP.

RIDEM requests approval from NMFS of the Preliminary RIPBPS Operations Plan attached. RIDEM also requests allocation, from any permits acquired, of ACE and Days at Sea (DAS) from any permits acquired of those fish stocks managed under the Northeast Multispecies FMP that the Council determines have adequate biomass to be allocated to the fishery in FY 2011 and beyond. If approved, FY2011 will be the first year the Sector will operate.

2.0 Purpose and Need for the Rhode Island Permit Banking Sector:

As noted above, the purpose of the RIPBPS is to allow the distribution of ACE to eligible vessels in eligible sectors without the constraint that permits be placed *within* these sectors. Because the RIPBPS is designed to facilitate the administration and operation of the Rhode Island Permit Banking Program, it also shares its objectives, which are outlined in the MOA as follows:

- Providing options to fishermen with little access to capital;
- Helping fishermen to improve operating efficiencies;

- Maintaining small-boat enterprises through the combination of a variety of permit attributes (e.g., DAS, PSC) to meet the needs of fishermen and fishing communities for access to fishery resources; and
- Helping fishing communities achieve stable access to local fishery resources for local fishermen.

3.0 Proposed Action and Alternatives

This section describes the fishing alternatives, including existing fishing conditions under the No-Action Alternative and the Proposed Action (Alternative 1), which is approval of the RIPBPS Operations Plan.

3.1 Description of the State of Rhode Island Permit Banking Program Sector and Proposed Operations

A Draft Operations Plan for the RIPBPS is being submitted to NMFS, and a summary of the plan is hereby offered as a component of this EA. The RIPBPS would consist of at least 3 permits, none of which would be actively fished. The RIPBPS will be operated as a lease-only sector. The RIPBPS requests an allocation of each of the following stocks of Northeast large-mesh multispecies (also referred to as “allocated target species”) based on the landings history of the Sector permits:

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3.1.1 Location/Timeframe and Gear of the State of Rhode Island Permit Banking Program Sector

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3.1.1.2 Fishing Year 2011 (May 1, 2011 – April 30, 2012) State of Rhode Island Permit Banking Sector Operations Plan Harvesting Rules

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- 3.2 Alternative 2 – No Action Alternative. Rejected
- 3.3 Alternatives Considered But Rejected From Further Analysis -- Establishment of an Actively Fishing Sector Program by RIDEM
- 3.4 Affected Environment -- Described above in 2.0
- 3.5 Impacts of the Proposed Action and Alternatives -- Described above in 2.0

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November 12, 2010

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

Dear Mr. Pappalardo,

I am writing to urge the NEFMC to vote in favor of eliminating the industry funding for at-sea monitoring in 2012. I understand you will be taking final action on this issue at your Nov 18 meeting. Please consider the difficult times the industry is going through and eliminate industry funding.

Sincerely,

Lawrence P. Kavanagh, Jr.

