

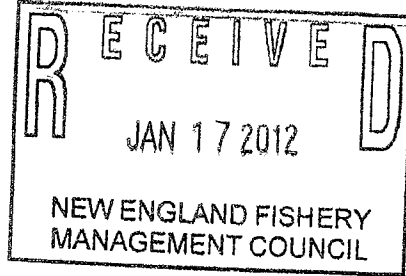
# Correspondence





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

JAN 13 2012



Rip Cunningham, Chairman  
New England Fishery Management Council  
50 Water Street  
Newburyport, Massachusetts 01950

Dear Rip:

We are requesting that the New England Fishery Management Council (Council) clarify the applicability of the rockhopper and roller gear restrictions first established by the Council in 1999 under Framework Adjustment 27 to the Northeast Multispecies Fishery Management Plan. Did the Council intend to apply this restriction to all trawl vessels operating in the nearshore Gulf of Maine (GOM), or just vessels issued a limited access Northeast multispecies permit?

According to Framework Adjustment 27, these restrictions were meant to reduce fishing mortality on GOM cod by reducing the potential for larger vessels to fish inshore. They may also be protective of fish habitat within the nearshore GOM. Although the framework document does not specifically identify vessels that would be subject to these restrictions and only references trawl vessels, the economic impact analysis conducted for this action states that the gear restrictions apply only to groundfish vessels. In contrast, the regulations codifying the rockhopper and roller gear restrictions (50 CFR 648.80(a)(3)(vii)) state that any trawl vessel operating in the Inshore Restricted Roller Gear Area may not use any rockhopper or roller gear in excess of 12 inches in diameter.

Thank you for your help clarifying this provision. If you have any questions regarding this letter, please contact the Sustainable Fisheries Division at (978) 281-9315.

Sincerely,

Daniel S. Morris  
Acting Regional Administrator

cc: TN, CBR (1/17)







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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* | Paul J. Howard, *Executive Director*

February 7, 2012

Mr. Dan Morris  
Northeast Regional Administrator  
NMFS/NOAA  
55 Great Republic Drive  
Gloucester, MA 01930-2298

Dear Dan:

On January 26, 2012, the Council was advised by your agency that Gulf of Maine (GOM) cod is overfished and overfishing is occurring. Since the stock cannot be rebuilt by 2014, the Council was notified that it must prepare and submit an action that will end overfishing and revise the rebuilding program for this stock. On February 1, 2012, the Council received the report of the GOM cod assessment and discussed next steps. This letter forwards the recommendations of the Council on this issue.

The Council passed the following motion requesting interim action by a vote of 16 in favor, 1 opposed, with no abstentions (16/1/0):

*"the Council asks that the NMFS take interim action for FY 2012 to reduce overfishing on GOM (Gulf of Maine) cod while the Council responds to the GOM cod assessment."*

Three motions were passed suggesting components of the interim action. Each motion is followed by the Council vote in parentheses.

*"As part of the Interim Action, the Council recommends NMFS set an FY 2012 interim catch level for GOM cod at between 6,700 and 7,500 mt. This catch should be considered the annual catch limit." (14/3/0)*

*"As part of the Emergency Action requested to address GOM cod, the Council recommends NMFS implement additional recreational measures sufficient to limit recreational catches to the recreational sub-ACL. These measures should consider reducing the GOM cod minimum size limit and/or bag limits to reduce recreational discards." (15/1/0)*

*“That the Council requests the following emergency action of NMFS:*

- 1. open the Nantucket Lightship Closed Area year round*
- 2. open Closed Area 1 May 1-February 15*
- 3. open Closed Area 2 south of 41°50' from May 1 through February 15 for the use of selective fishing gear*
- 4. open the Western GOM closed area, except for the area within the western GOM closed area referred to as 'Jeffrey's Ledge' on page 5 of the habitat PDT memo dated 8/15/11*
- 5. open the Cashes Ledge closed area year round, except for the areas around Ammen Rock, consistent with the habitat PDT recommendation #4 on page 3 of the habitat PDT memo dated 8/15/11” (8/7/2)*

Please note that while the last two motions refer to a request for Emergency Action, it was clear from the Council discussion that the intent was for these measures to be part of the requested interim for FY 2012. Please see the enclosure for a justification for the recommended catch levels. I have also attached a copy of the August 15, 2011 habitat PDT memorandum for your reference.

As always, please call me if you have any questions.

Sincerely,



Paul J. Howard  
Executive Director

enclosures

## **Recommended Catch Levels for FY 2012**

In a letter dated January 26, 2012, the NMFS advised the Council that an interim action for FY 2012 must meet two criteria:

- It must make a substantial reduction in overfishing, and
- It must not further deteriorate the condition of the stock

Without accepting that these two requirements are in fact required by the Magnuson-Stevens Act, the Council offers the following explanation for how the recommended catch limits for GOM cod meet these two criteria.

**1. The proposed catch level must make a substantial reduction in overfishing.**

The SARC 53 estimate of fishing mortality in 2010 is 1.14 (F<sub>mult</sub>). This is the most recent estimate of fishing mortality determined by an analytic assessment. Projections prepared by the Groundfish Plan Development Team (PDT) indicate that at a 2012 catch of 7,500 mt would result in a median fishing mortality of 1.03, a 9.6 percent decline from the 2010 fishing mortality. At a catch of 6,700 mt in 2012 the fishing mortality would be 0.88, a 22.8 percent decline from the 2010 estimate.

**2. The proposed catch level must not deteriorate the condition of the stock.**

The SARC 53 estimate of spawning stock biomass in 2010 is 11,900 mt. Because of catches in 2011 that have already occurred, the stock is expected to have declined to 8,400 mt of SSB in 2011. At a catch of 7,500 mt in 2012, the stock is expected to increase to 9,600 mt by 2013, a 14 percent increase. At a catch of 6,700 mt in 2012, the stock is expected to increase to 10,200 mt, an increase of 21 percent. In neither case is the stock likely to deteriorate.







**New England Fishery Management Council  
Habitat Plan Development Team Meeting Summary**

**August 15, 2011  
Boston, MA**

**PDT members:** Michelle Bachman (NEFMC staff, chair), Chad Demarest, Kathryn Ford, Jon Grabowski, David Stevenson, Tom Hoff, Page Valentine, Peter Auster, Katie Richardson, Moira Kelly, and Mark Lazzari

**Committee members:** Dave Preble (chair)

**Others:** Advisors Ben Cowie-Haskell, Maggie Raymond, and Greg Cunningham, as well as three additional audience members

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The PDT met on Monday August 15, 2011, to discuss issues related to alternatives development for the Omnibus EFH Amendment, specifically, new habitat areas and possible measures for those areas.

***Packaging and analyzing alternatives***

The PDT discussed how to package options into alternatives and how to analyze alternatives throughout the day; these discussions are summarized here. Following this section, individual options are presented on an area-by-area basis.

Consideration for analysis:

- Alternatives should be developed to meet some objective, and will require criteria for analysis and cross-comparison.
  - Metrics that can be used to compare between areas are mean  $Z_{\infty}$ , area size, and  $Z_{\infty}$  per unit area.
  - $Z_{\infty}$  values will be reported as levels/bands rather than as raw numbers, to facilitate interpretation of the results
  - Revenue estimates for current EFH management areas will be estimated based on the adjacent representative areas scheme developed previously
- The status quo alternative should include the current suite of habitat closures, and the impacts of any given alternative will be compared to the impacts of the current habitat closures.
  - The habitat benefits or impacts associated with the mortality closures will be ignored, for now, until groundfish closure alternatives and habitat alternatives are combined and cumulative effects are evaluated. This is consistent with the Committee's 7/21 advice to assume elimination of the mortality closures when conducting habitat analyses.
  - In terms of NEPA document preparation (Affected Environment section in particular), the baseline status of the environment is the baseline status, regardless of whether habitat benefits or impacts have accrued because of the habitat closures or the mortality closures
    - Related to this, the PDT discussed how to separate the performance of groundfish areas in terms of any habitat and groundfish mortality benefits

- The PDT noted that across all gear types, area swept and  $Z_{realized}$  estimates decreased in 2010 as compared to previous years.
- The PDT also discussed that it will be important to understand the limitations of the SASI model when presenting results and using those results to evaluate specific options, for example:
  - Since energy/depth are used as a proxy for feature/epifaunal differences between, the model outputs may be underestimating impacts in the low energy GOM, and overestimating impacts on high energy Georges Bank if the seabed features found in low energy areas have longer/slower recoveries than estimated and those found in high energy areas are better adapted to natural disturbance and have faster recovery than estimated.

Broad goals for packaging alternatives are:

- To allow fishing to be conducted as efficiently as possible/to increase fishing opportunities
  - Related to this, to minimize effort redistribution - assuming that areas where the density of fishing effort is high are this way because they are preferred fishing locations where catch can be harvested efficiently
- To protect most vulnerable (most important?) habitat areas
  - The PDT discussed how to prioritize protection of one area relative to another. It was noted that, all else being equal (or at least very similar), if one new and one modified habitat area were proposed, it might be better to recommend maintaining a current area as opposed to creating a new area. (Of course, the situation of ‘all else being equal’ may or may not apply to any particular pair of proposed areas.)

### ***Jeffreys Bank***

Recommendation: The PDT recommends that the Committee consider the new area on Jeffreys Bank defined by the 100 m contour, as this area better covers the hard bottom, more vulnerable bank features. It was noted that although substrate data for Jeffreys Bank, and other GOM features, is somewhat incomplete, the sampling we do have of the top of the banks validates what we would expect to see on the banks and ledges in terms of vulnerable substrate.

Specifically, three options would be considered:

1. Status quo – current area, closed to mobile bottom tending gear, open to all other gears
2. New area – closed to mobile bottom tending gear, but open to fixed gear
3. New area – closed to mobile bottom tending gear and closed to fixed gear

Note that use of lobster fishing gear cannot be managed by the Council, so here fixed gear refers to demersal longlines and sink gillnets. The objective is to minimize to the extent practicable the adverse effects of fishing on habitat, adverse effects being those that are more than minimal and not temporary. The PDT wondered whether some level of fixed gear adverse effect in a habitat area is tolerable from an adverse effects standpoint, and, if so, what is the threshold of fixed gear use that becomes problematic? The PDT discussed that a higher threshold of information would be required to adequately defend the exclusion of fixed gear, and that it is likely that we have not reached that threshold.

To do: (1) Related to new vs. current area: Chad will calculate Z values for both areas. (2) Related to fixed gear use/exclusion: Chad will provide SASI outputs for fixed gears, Peter will provide discussion of any literature related to the specific likely impacts of fixed gears on the seabed structures found on Jeffreys Bank. Questions to address:

- What are attributes of closure that indicate whether or not fixed gears should be allowed?

- What is now on Jeffreys Bank in terms of seabed features? What used to be on Jeffreys Bank?
- What are differences in fixed gear impacts between different seabed types?

### ***Cashes Ledge***

Recommendation: Adjust the western boundary to 69 degrees W and the edge of the shallow feature. Evaluate adjustment of the northern and southern boundaries to better encompass feature.

Specifically, four options would be considered:

1. Status quo - current area, closed to mobile bottom tending gear, open to all other gears (Note that in terms of considering what currently occurs in the CL habitat closure, if the groundfish closure regulations are layered onto the habitat closure regulations, additional gears capable of catching groundfish are currently excluded from the area, but not on the basis of habitat protection.)
2. New area – closed to mobile bottom tending gear, open to fixed gear
3. New area – closed to mobile bottom tending gear, closed to fixed gear (but see fixed gear discussion above)
4. Recommend a smaller area (see McGonigle et al 2010) as a no-fishing zone in order to protect rare and vulnerable kelp forest habitat. This would include a recommendation to ASMFC to exclude lobster gear.

The PDT with audience input discussed the types of fisheries that occur or would be likely to occur on the margins of the new area. Fishing on the western boundary would be challenging to estimate as the area has been part of a mortality closure for years – but on the western side there would likely be flounders and monkfish, on the eastern side, cod, and to the north, cod and pollock, as well as redfish. The area is designated as an HAPC in addition to being a habitat area – the PDT discussed that any revision to the area should review the information that was used to justify the original HAPC designation.

To do: (1) Related to new vs. current area: Chad will calculate Z values for both areas. (2) Related to fixed gear use/exclusion: Chad will provide SASI outputs for fixed gears, Peter will provide discussion of any literature related to the specific likely impacts of fixed gears on the seabed structures found on Cashes Ledge. (3) Related to designation as HAPC – Michelle will evaluate original rationale for both habitat closed area and HAPC – note unique currents, waves, internal features.

### ***Fippennies Ledge***

Recommendation: Single option: Define a gear restricted area based on the 100 m boundary previously drawn by PDT that would be closed to mobile bottom tending gear, open to fixed gear. (Note that fixed gears capable of catching groundfish are currently excluded from this area as it is within the Cashes Ledge groundfish closure.)

### ***Platts Bank***

Recommendation: Single option: Define a gear restricted area based on the 100 m boundary previously drawn by PDT that would be closed to mobile bottom tending gear, open to fixed gear.

The audience commented that Platts Bank in an important area for medium sized vessels that fish closer to shore. The PDT discussed whether, on this basis, a gear modification area was a better option, but decided that a better way to proceed was to add the Platts Bank gear restricted area option to one or more of the packaged alternatives, but not to others. The PDT discussed that in general, gear modification options were more appropriate for larger areas, and that gear restriction options were more appropriate for smaller areas, including those in the GOM.

### ***Jeffreys Ledge***

Recommendation: Define a gear restricted area that would be closed to mobile bottom tending gear, open to fixed gear.

Specifically, two sub-options would be considered:

1. One smaller, L shaped area that lies entirely within the current WGOM habitat closure
2. One larger area that includes the above in addition to additional boulder ridge habitats that occur to the southwest, towards Cape Ann

The group was reminded of research evaluating whether or not there are differences evident between habitats inside and outside of the current WGOM closure – evidence suggests that there are differences in hard-bottom habitats, but not for deep mud habitats, although there were some methodological concerns with the studies available. Further south, studies of deep mud do show a difference between mud habitats inside and outside of current closures. However, sampling in these southern studies occurred at irregular intervals, such that they may be showing inter-annual variation rather than changes related to status as closed/open.

### ***Georges Shoal***

Recommendation: Define three separate areas on Georges Shoal as follows:

1. Small area based on the location of the “pristine area” that incorporates the northern portion of the current habitat closure and is closed to all gear types, including a recommendation on lobster gear.
2. Large area outside the current Closed Area where gear modifications (specifically ground cable length restrictions) for trawls would be required.
3. Smaller area outside the current Closed Area that would be closed to mobile bottom tending gear.

The PDT discussed the juvenile cod HAPC in the area, acknowledging that opening some or all of this area will involve tradeoffs between negative habitat impacts on juvenile cod and other managed species in the area and positive fishery benefits, specifically for sea scallops, which are highly abundant in the middle and southern portion of the closed area. Apparently there is a unique age distribution of cod in this area, with close linkages demonstrated for very young (<1 year old) fish and certain habitat types; this association is more tenuous as the cod age. The PDT discussed that just because the right type of habitat is available doesn't mean that the fish will have good recruitment – but that if they do have good recruitment, protection of their preferred habitats is expected to be beneficial.

There are some unique features in and around the “pristine area” – there is over 50% coverage (relatively high compared to other locations) of emergent epifauna, and a unique (?) tidal mixing front. A very rapid transition into this area from pebble/gravel pavement to larger substrates (cobble) was noted. Similar to Cashes Ledge, the original rationales for both the HAPC and the habitat closed area designations should be carefully reviewed.

### ***Great South Channel***

Recommendation: Define two separate areas in the Great South Channel/Nantucket Shoals as follows:

1. Large area with two options:
  - a. Gear modifications (specifically ground cable length restrictions) for trawls
  - b. Closed to mobile bottom tending gear

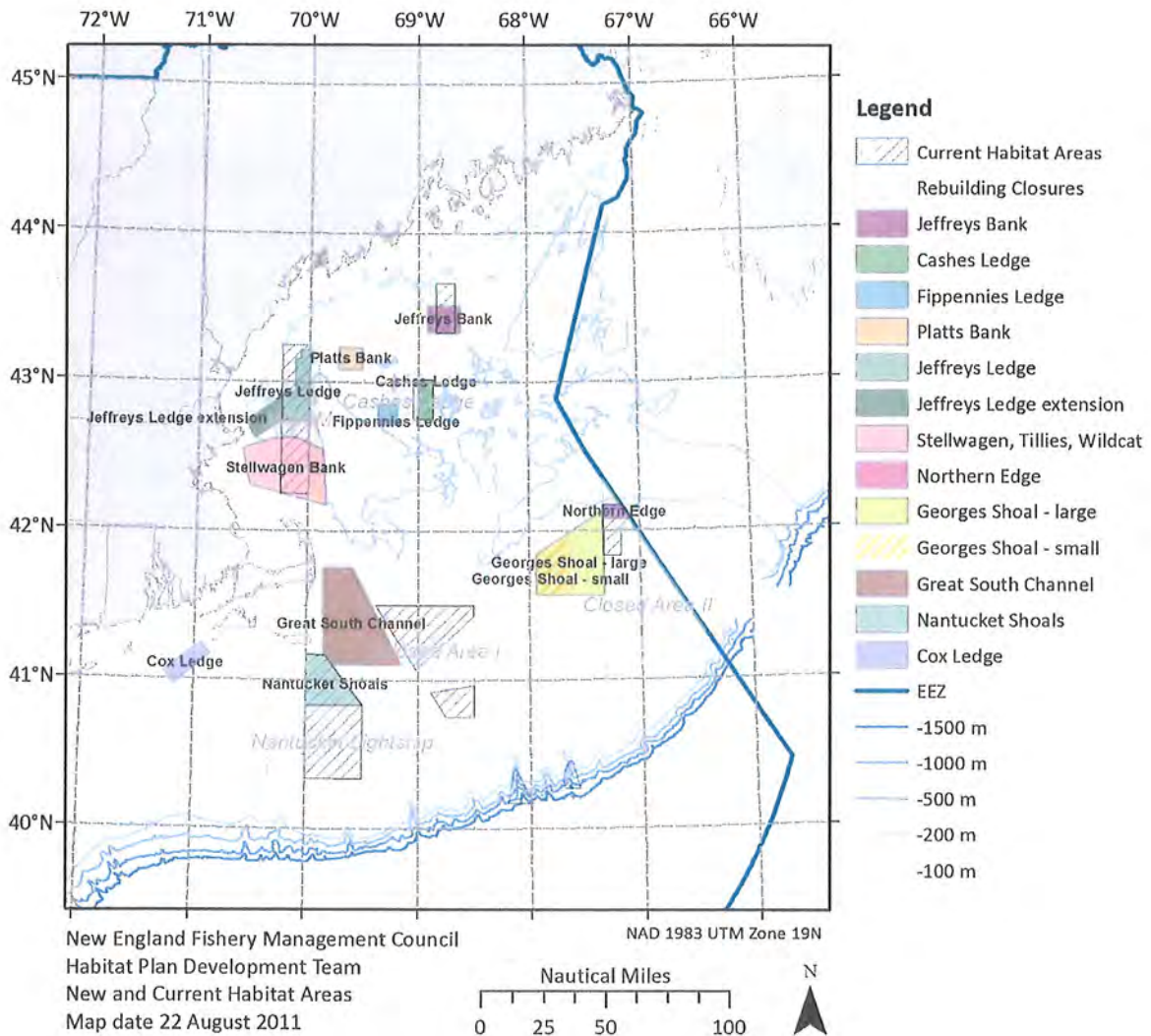
2. Retain the portion of the existing NLCA habitat closed area that is outside of the NLCA mortality closure (i.e. the portion on Nantucket Shoals).

**Cox Ledge**

Recommendation: Single option: Define a gear restricted area based that would be closed to mobile bottom tending gear, open to fixed gear.

The meeting concluded at approximately 6 p.m.

**Habitat management areas developed at August 15 PDT meeting**





-----Original Message-----

From: Paul Howard

Sent: Tuesday, February 21, 2012 3:36 PM

To: Council

Subject: FW: Lisa Ann II

FYI.

-----Original Message-----

From: [captainjim1@comcast.net](mailto:captainjim1@comcast.net) [mailto:[captainjim1@comcast.net](mailto:captainjim1@comcast.net)]

Sent: Friday, February 10, 2012 2:40 AM

To: [p.howard@nefmc.org](mailto:p.howard@nefmc.org); Paul Howard

Subject: Lisa Ann II

Paul,

Something needs to be done about the so called "randomness" of observer coverage. There are boats like myself that have a lot higher coverage than some other boats that fish like us. Also boats shouldn't get hammered more than 2 or 3 trips in a row. We just did 7 in a row. Usually the boats that are easy and have nice accommodations seem to get more coverage than the ones that are in tough shape. The Data collected is not as good by targeting certain boats. The other issue that needs to be adressed is yellowtail discard, we cannot target yellows because there are so many small yellows around. When we have observers we have to tow the rockhopper to avoid high flounder discard. It is very hard to lease yellows for 50cents and sell them for 1.00 lately and discard 30-40 percent ,its impossible with a observer. I do not believe the data being collected is true to how it really is. I shouldn't have to change my fishing with observers aboard, I lose money some of the days because of this. For the smaller boats its even harder since they do not have 2 net reels to change gear types. Hopefully we can move towards assumed discard so we can accurately get real information. Please pass this to the rest of the council. Thanks Jim Ford. F/V Lisa Ann II Sent via BlackBerry by AT&T







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* | Paul J. Howard, *Executive Director*

February 7, 2012

Mr. Dan Morris  
Acting Northeast Regional Administrator  
NMFS/NOAA  
55 Great Republic Drive  
Gloucester, MA 01930-2298

Dear Dan:

During the groundfish discussion at the NEFMC's meeting on February 1<sup>st</sup> 2012, the Council requested two actions that they feel will help mitigate the impacts of low Gulf of Maine (GOM) cod catch levels that are expected in FY 2012. This letter is intended to serve as a request for the following items:

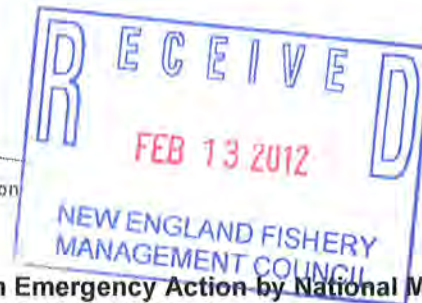
1. The Council requests that NMFS consider the recently revised estimates of recreational GOM catches in FY 2010. The new MRIP data, which has recently been released, shows that the recreational fishery did not exceed its sub-ACL for this stock, as was previously believed when the MRFSS data was used. In light of this new information, we would like to request that recreational accountability measures addressing GOM haddock be adjusted or removed by the most expedient method.
2. The Council would also like to ask that NMFS expedite approval of a sector exemption request that would facilitate targeting of redfish in the GOM. The Council received a presentation on the REDNET project and feels that an increased ability to target the abundant redfish stock will facilitate some fishery participants to be more profitable in the face of reductions in GOM cod ACLs.

Thank you for your consideration of these issues and cooperation on our shared commitment to finding solutions that will sustain our industry through the anticipated reductions in GOM cod catch. As always, please call me if you have any questions.

Sincerely,

Paul J. Howard  
Executive Director





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**Conservation Law Foundation Position Paper on Interim Emergency Action by National Marine Fisheries Service: Fishing Years 2012 and 2103 (Feb. 10, 2012)(corrected)**

The GOM cod spawning stock biomass was estimated to be at 11,868mt in 2010.<sup>1</sup> The SSC has stated that **if the SSB that falls below 7,300mt, the lowest SSB ever recorded (1999), the situation would represent "a state never encountered and therefore in the SSC's judgment presents a significant risk."**<sup>2</sup> The fundamental goal in the near term should be to minimize risk of further SSB or B declines while mitigating short-term economic/social consequences on the most affected fishermen.

The 6,700mt to 7,500mt ACL range proposed by the NEFMC carries with it an estimated 33% chance that SSB could go below 7,300mt and therefore place the fishery at significant risk. It also appears to guarantee that ACLs would be so low in FY2013 that even by-catch fisheries on GOM cod might have to close. The Council recommendation of opening additional closed areas without any analysis of GOM cod (or GB cod) impacts and with complete disregard for the 8 years of work undertaken by the NEFMC Habitat Committee is incomprehensible. The recommendation also fails to provide any compensation for the differential economic and social impacts of managing this emergency through ACLs alone. The net present value (NPV) analysis available to managers of this and other ACL scenarios does not factor in any of the known risks of further SSB declines. Those are simply unacceptable management actions given current information before the agency; they put inshore fish populations, fisheries, and the smaller fishing communities at significant long-term and perhaps irreversible risk.

**The 2012 & 2013 ACLs, management measures, and emergency relief should be structured with a goal of minimizing the risk of further SSB declines; protecting the small vessel, inshore fleet from collapse; reducing the potential revenue differential between the FY 2012 and FY2013 ACLs; and providing emergency financial assistance during the bridge period. This could be done with an tolerable reduction of 5-year NPVs for the fleet and with a distributed economic impact across the groundfish fleet.**

The management strategy should not and does not need to be based on an approach that either assumes that the near-term assessment science will significantly change the GOM cod biomass estimates or that there will have to be a full or close to full closure in FY2013. **Available GOM cod ACLs should be targeted toward small inshore boats to reduce the disproportionate impacts of ACL reductions on this sector of the fleet.** See text and Tables 1 and 2 attached below. See also National Standards 4, 6 & 8.

The FY2012 ACL levels proposed below by CLF reduce the estimated risk of SSB declines below 7,300mt to below 10%, a marginally tolerable risk but one that would allow further investigation of assessment issues and development of refined FY2013 and rebuilding period management measures. **We believe that the management measures suggested below would support a responsible FY 2012 ACL with temporary management measures to reduce discard mortality and to direct GOM cod ACL toward inshore, small vessels.**

- Create a GOM cod zone comprised of all known GOM cod statistical areas (521 north of 42° and west of 69°; all 511-514; and 515 west of 68°)

<sup>1</sup> SAW 53 (January 2012).

<sup>2</sup> SSC Report of SSC January 25, 2012 Meeting.

*a: Council, TN (2/15)*

- FY 2012 catch levels for any cod caught in GOM cod zone and corresponding PSCs should be based on 4,000mt or less (note: actual landings will be higher because of difference between CY and FY)
- maintain existing closures and institute additional closures for recreational/commercial fishing in known GOM cod spawning areas
- implement NEFMC's recommended recreational management measures
- have NEFMC Recreational Advisory Panel develop management measures for recreation fishing in FY2012 that, at a minimum, would reduce the actual estimated recreation CY2011 harvest by the same proportional amount as the commercial fleet ACL reduction
- lengthen times for seasonal closures to start in December to protect aggregating, pre-spawning cod
- increase probability that commercial GOM cod ACLs are achieved without high discard mortalities and in ways that balance the potential economic effects between the inshore and the offshore boats--
  - implement incentives for trip boats to work offshore (without further compromising GB cod or other stocks) and disincentives to fish inshore
  - set trip limits on GOM cod with full retention required for any boat fishing in GOM cod zone. Any overages on trip counted should have a penalty multiplier toward sector GOM cod ACE (i.e. 1.5 or more) or common pool in-year differential DAS counting or closures
  - ban night-time dragging inside 100-fathom line
  - prohibit boats from making groundfish trips offshore and in GOM cod waters during interim emergency action period. Require sectors to manage vessel election. Offshore boats can mitigate potential economic impacts by leasing/trading GOM cod ACE with inshore boats.
- Commerce should declare emergency economic disaster and Congress/states should create a disaster fund to compensate commercial fishermen and charter/party operators for **demonstrated lost net revenues** in FY2012-13 from a 2007-2010 base period average and support **additional funding to permit banks** to access GOM cod quota for small vessel, inshore fishermen.

\* \* \* \* \*

### Attachment to CLF Position Paper on Interim Emergency Action

Assuming the F rate in FY2013 is set at  $F_{msy}$  (it could be lower), the PDT analysis estimates less than a **2% difference in net present values (NPV) for all ACL scenarios for the FY 2012-FY 2016 period.**<sup>3</sup>

The 2-year NPVs presented by Council staff at the Feb. 1, 2012 NEFMC meeting indicate more significant differences in NPVs between scenarios in fleet revenues and in the small vessel category.

**None of these NPV analyses take the varying risks of further SSB declines and the ACL consequences into account.** The more significant problem is that in all scenarios with ACL cuts alone appear to have significantly larger negative revenue effects for the small, inshore boats fleet.

Small/day boats in southern Maine, New Hampshire, and Massachusetts are at the highest risk economically because of their dependence on GOM cod. **The higher the FY2012 ACLs are set, the greater the share of the revenue losses borne by inshore small vessels.** This same inshore group also shoulders the greatest risk if the biomass continues to decline and the fishery and all fisheries with GOM cod by-catch have to be closed.

Estimated gross revenue effects of various ACLs against a status quo ACL for FY2012									
	ACL (FY)(mt)	Risk of further biomass decline (%)	Combined Commercial Gross Revenues (000's)	Inshore Vssls Gross Revenues (000's)	Fleet Gross Rev. change from status quo ACL (fleet)(000's)	Inshore Vssls Gross Rev. change from status quo ACL (000's)	Percent of revenue losses borne by inshore vssls	Percent Revenue Change from Status Quo ACL (Inshore)	Percent Revenue Change from Status Quo (Non-inshore)
<b>FY2012 (status quo)</b>	<b>7,782</b>	<b>35%</b>	<b>\$89,033</b>	<b>\$7,657</b>					
FY2012	6,000	31.4%	\$90,042	\$6,303	\$1,009	(\$1,354)	100%	-18%	+3%
FY2012	5,000	18%	\$86,096	\$5,424	(\$2,937)	(\$2,233)	76%	-29%	-1%
FY2012	4,000	8%	\$84,356	\$4,555	(\$4,677)	(\$3,102)	66%	-41%	-2%
FY2012 (Fmsy)	1,915	<1%	\$73,413	\$2,496	(\$14,620)	(\$5,161)	35%	-67%	-13%

Two year estimated gross revenue effects of various ACLs against a status quo FY2012 ACL and a constant Fmsy in FY2013									
	Combined 2012 & 2013 FY ACL (mt)	Risk of further SSB decline	Combined Commercial Gross Revenues (000's)	Combined Inshore Vssls Gross Revenues (000's)	Fleet Gross Rev. Change from Status Quo ACL (000's)	Inshore Vssls Gross Rev. change from Status Quo ACL	Percent of two-year gross rev. losses borne by inshore fleet	Percent Revenue Change from Status Quo ACL (Inshore)	Percent Revenue Change from Status Quo (Non-inshore)
<b>FY12&amp;13 (status quo)</b>	<b>9,543</b>	<b>28% FY2012 5% FY 2013</b>	<b>\$161,340</b>	<b>\$9,971</b>					
FY12&13 (6K)	8,082	31.4% FY2012 5% FY2013	\$164,033	\$8,967	\$2,698	(\$1,004)	100%	-10%	2.4%
FY12&13 (5K)	7,256	18% FY2012 5% FY2013	\$160,131	\$8,411	(\$1,209)	(\$1,560)	100%	-16%	0.2%
FY12&13 (4K)	6,431	8% FY2012 3% FY2013	\$158,850	\$7,535	(\$2,490)	(\$2,436)	98%	-24%	-0.04%
FY12&13 (Fmsy)	4,711	<1% FY 2012 <1% FY 2013	\$150,485	\$5,887	(\$10,855)	(\$4,084)	37.6%	-41%	-5%

- Notes:
1. These are gross revenue changes; net revenue changes would be less (reduced variable costs)
  2. The inshore small vessel impacts are not equal between Maine, NH, and Mass.
  3. Source: Groundfish PDT Report and Errata Sheet for January 30, 2012 Memo to Groundfish Committee. It is not known whether the revenue numbers are nominal or discounted.

<sup>3</sup> It is not clear to CLF whether the PDT analysis in its January 30, 2012 report to the Council used discounted numbers or nominal numbers in calculating NPV and whether either approach would change the range of 5-year NPVs over the range of scenarios.



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New England Fishery Management Council

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C. M. "Rip" Cunningham, Jr., *Chairman* | Paul J. Howard, *Executive Director*

February 16, 2012

Mr. Samuel Rauch  
Acting Assistant Administrator for Fisheries  
NMFS/NOAA  
1315 East West Highway, Room 14636  
SSMC3  
Silver Spring, MD 20910

Dear Mr. Rauch:

Enclosed is a letter from the New England Fishery Council's Recreational Advisory panel Chairman, Barry Gibson, which we are forwarding you for NOAA's consideration in the interim rule making.

Please do not hesitate to call me if you have any questions.

Sincerely,

C.M. 'Rip' Cunningham, Jr.  
Chairman

enclosure

cc: Dan Morris, Acting Regional Administrator, NERO

February 15, 2012

Mr. Sam Rauch, Acting Assistant Administrator  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Dear Sam:

It was good to see you at the Gulf of Maine Cod Working Group meeting in Portsmouth, NH, this past Friday.

As you and Rip requested, I have polled the members of the New England Fishery Management Council's Recreational Advisory Panel (RAP), which I chair, to determine the level of support for the proposed recreational nine-cod bag limit and 19-inch minimum size for the 2012 fishing year in the Gulf of Maine.

All 16 RAP members support the proposal. I have also spoken with a number of party and charter boat operators, and although they are concerned about losing even one fish in the bag limit, virtually all stated that they believed they could continue to conduct their businesses with the proposed reduction.

On behalf of the RAP and the region's party and charter operators, I would urge you to implement the nine-fish/19" measures on May 1<sup>st</sup>.

Thanks very much, Sam, for your consideration on this important issue. Please don't hesitate to get in touch should you have any questions or require additional information.

Sincerely,



Barry Gibson, Chairman  
NEFMC Recreational Advisory Panel  
19 Royall Rd.  
East Boothbay, ME 04544  
(207) 633-5929  
(207) 6323-3416 fax  
[Barrygibson6@aol.com](mailto:Barrygibson6@aol.com)

cc: Mr. Rip Cunningham, Chairman, NEFMC  
Mr. Dan Morris, Acting Regional Administrator, NERO



Rip Cunningham, Chairman  
New England Fisheries Management Council  
50 Water Street  
Newburyport, MA 01950



February 21, 2012

Re: Request for Electronic Monitoring Pilot Study to evaluate full retention

Dear Mr. Cunningham,

The Gulf of Maine Research Institute has been convening a monitoring working group (MWG) on and off since summer 2011. The MWG most recently met on February 8 in Peabody, MA. Members of the MWG include fishermen, industry association leaders, sector managers, researchers, and representatives from shoreside support services and an NGO. Representatives from NERO, NEFSC, and the Council (staff) were also in attendance. This letter communicates one of the outcomes from this meeting to the Council in light the Council's development of the sector framework, and recent motions from the Groundfish Committee *"to direct the PDT to evaluate the biological impacts and regulatory barriers to implement a full retention program for all allocated GF stocks for sector vessels"* and *"that the Council request NMFS consider approval of tested electronic monitoring systems as a component of a comprehensive program to address catch monitoring objectives and augment NEFOP"* (January 18, 2012).

During the meeting Amy Van Atten gave a presentation on EM studies and examples in the U.S. and abroad, including the pilot study in New England for groundfish sectors. There was a discussion following her presentation, and the MWG ultimately recommended that the pilot study include an evaluation of the applicability of full retention of all allocated groundfish stocks,<sup>1</sup> for all gear types, and for vessels fishing on multiple-day trips (both one and multiple stock areas per trip), starting in 2012. There was also a recommendation to include a component that demonstrates the feasibility and cost of utilizing EM for monitoring discards only (while allowing other mechanisms for reporting catch kept, e.g., dealer reports and/or dockside monitoring). Other members wanted to explore the use of focusing EM on accounting for discards only without a full retention policy. Details for these recommendations are explained in options 2, 3, and 4 in the attached document.

Currently, the pilot program is researching the feasibility of EM to meet the monitoring goals of Amendment 16, *"To verify area fished and catch (landings and discards), by species and gear type, for the purposes of monitoring sector ACE utilization."* However, several industry members expressed that using EM to monitor discards only, either combined with or without full retention of allocated species, would be a more efficient and cost-effective means of monitoring sectors in 2013 when the industry will be responsible for funding monitoring. As needed, the MWG will be working with staff at both NERO and NEFSC to develop the best approach to integrating these components

<sup>1</sup> Not including zero retention species, or halibut, which has a one fish per trip limit.

cc: TN, AH, Council (2/24), CB

into the pilot study, and will fulfill any requisite permitting and/or regulatory requirements. Members of the MWG associated with sectors also plan to help identify three additional vessels to participate in the pilot study, with at least one trawl vessel that fishes in more than one broad stock area since the study has the least amount of data on these vessels.

The MWG and others will communicate with the PDT on any progress and results from this work, and respectfully requests that the PDT communicates with the MWG on any progress on their analysis. If there is anything else the MWG can do to support the PDT's evaluation of biological impacts and regulatory barriers to implementing a full retention program, please do not hesitate to contact me.

Sincerely,

  
Jessica Gribbon Joyce

MWG member attendees at the 02/08/12 meeting:

Eric Brazer, Sector Manager – Fixed Gear Sector  
John Our – member of Fixed Gear Sector and participant in EM pilot study  
Nina Jarvis - Cape Ann Seafood Exchange  
Aaron Dority, Sector Manager – New England Coastal Communities Sector  
Libby Etrie, Northeast Sector Services Network  
John Haran, Sector Manager – NEFS 13, New Bedford  
Cate O’Keefe – UMASS School for Marine Science and Technology (SMAST)  
Emilie Litsinger – Environmental Defense Fund  
Ben Martens – Maine Coast Fishermen’s Association & Port Clyde Sector Manager  
Frank Mirarchi – member of NEFS 10, South Shore, and participant in EM pilot study  
Mark Phillips – member of NEFS 13, New Bedford  
Maggie Raymond – Associated Fisheries of Maine  
Hank Soule – Sector Manager, Sustainable Harvest Sector

CC:

Amy Van Atten, Branch Chief, Fisheries Sampling Branch  
Bill Karp, Acting Director, Northeast Fisheries Science Center  
Dan Morris, Acting Director, Northeast Regional Office  
Annie Hawkins, Fishery Analyst, New England Fisheries Management Council  
Tom Nies, Fishery Analyst, New England Fisheries Management Council  
Paul Howard, Executive Director, New England Fisheries Management Council

## TECHNOLOGY-BASED MONITORING OPTIONS FOR COMMERCIAL FISHERIES

### DRAFT FOR DISCUSSION

Please direct any comments or questions to Howard McElderry at  
(howardm@archipelago.ca)

### INTRODUCTION

Many jurisdictions are considering the use of technology to improve at-sea monitoring in commercial fisheries. The approach into this question has often been by trying to determine if the technology can replicate the functions of a human observer. We believe it a more useful approach is to consider the monitoring needs of a fishery, given varying levels of operational complexity. To help seed discussion on this approach, this document provides four conceptual technology-based monitoring options, scaled to this complexity. The approaches outlined are directed at ensuring that verified catch accounting occurs for all fishing trips monitored. We recognize that observer programs provide other information in addition to catch accounting (e.g., scientific sampling) and they are needed to continue fulfilling this purpose. The logic though is that coverage levels for catch accounting are generally much higher than what is required for scientific catch sampling and cost efficiencies may be achieved with a combined monitoring approach.

The four options utilize the following information sources for all monitored fishing trips:

- **Electronic Monitoring:** Involving sensors (GPS, winch, hydraulic) and closed circuit television cameras installed on the fishing vessel. Configuration varies according to monitoring option.
- **Dockside Monitoring:** Weights, speciation and enumeration will occur at the dock by a certified dockside monitor.
- **Fishing Logbooks:** The vessel master will be required to keep an accurate record of the fishing trip. The level of detail required varies by monitoring option.

The three pillared data collection approach provides synergy in the information system with more power than each part alone. The EM data set could be analyzed fully (census) with little use of the vessel fishing logbook but there is greater strength with using both. As well, there are significant cost efficiencies with vessel crews maintaining accurate fishing logs, thereby using EM data to audit fishing log accuracy. An audit model adds more analytical complexity but builds more engagement and program ownership with industry.

Catch data for allocated species is usually required on a stock specific basis and some species have multiple area-based stocks within the fishery boundaries. If a fishing trip stays within the same stock area for all species, catch accounting may only need to be resolved on the trip level. If a fishing trip spans multiple areas, catch accounting will be needed at the fishing event level. If the fishing vessel is permitted to discard at sea catch accounting is needed at the fishing event level for the purposes of verification. Monitoring options 1-3 are designed for single area fishing while option 4 is for multiple areas.

### OPTION 1: FULL CATCH RETENTION

- **Overview:** Vessels fishing under this option would fish single management area and keep all fish catch aboard until the vessel offloads in port. At- sea monitoring is designed to verify fishing locations and ensure that full retention requirements are met.
- **Fleet eligibility:** This option is suitable for all gear types and most fisheries as the primary monitoring objective is to make sure that all catch is retained aboard the vessel. Catch identification and quantification is not required.
- **EM System Configuration:** The EM system includes GPS, sensors on the winch (if present) and hydraulic system, and CCTV cameras covering the entire area where catch comes aboard and is stowed. CCTV imagery is recorded from the first fishing event until the vessel comes to port. Sensor data is recorded for 100% of the fishing trip.
- **On-Board Catch Handling Requirements:** All fish species must be retained aboard for quantification upon offload. This includes both allocated species and all other fish species.
- **Fishing Logbook Requirements:** For the purposes of monitoring, a vessel fishing logbook must contain a record of total catch for the entire trip. Fishing event level detail is not required.

### OPTION 2. FULL RETENTION OF REGULATED SPECIES

- **Overview:** Vessels fishing under this option would fish a single area and retain all regulated species until the vessel offloads in port. The discarding of other catch species is permitted, provided that such events are recorded by CCTV and in the vessel fishing logbook. At- sea monitoring is designed to verify fishing locations, full retention of allocated species, and to estimate the discard of other species.
- **Fleet eligibility:** This option is suitable for fixed gear fisheries (gillnet and longline). Suitability for trawl operations is dependent upon catch quantities and onboard

catch sorting methods. In both cases, regulated species and other species must be clearly distinguishable from one another.

- **EM System Configuration:** The EM system includes GPS, sensors on the winch (if present) and hydraulic system, and CCTV cameras covering the entire area where catch comes aboard and is stowed. An additional CCTV camera will be required to provide a close up view of the area where catch is sorted and discarded. The imagery shall be of sufficient quality to clearly distinguish allocated species. CCTV imagery is recorded from the first fishing event until the vessel comes to port. Sensor data is recorded for 100% of the fishing trip.
- **On-Board Catch Handling Requirements:** Crew will be required to adhere to specific catch handling protocols designed for the fishing vessel. The protocol will specify where and how catch is sorted, stowed and discarded. Adherence to the protocol is needed to ensure that the activities are properly monitored by the CCTV cameras.
- **Fishing Logbook Requirements:** For the purposes of monitoring, a vessel fishing logbook must contain a record of total catch for the entire trip. Fishing event level detail is required for fishing effort information and all discarded catch.

### OPTION 3. DISCARDING PERMITTED

- **Overview:** Vessels fishing under this option would fish a single area and are free to retain or discard any species permitted under their fishing regulations. All discarding events must be recorded by CCTV and in the vessel fishing logbook. At-sea monitoring is designed to verify fishing effort and to estimate discarded catch.
- **Fleet eligibility:** This option is suitable for fixed gear fisheries (gillnet and longline). Suitability for trawl operations is dependent upon catch quantities and methods aboard to sort catch. Regardless of gear, regulated and other species must be clearly distinguishable from one another.
- **EM System Configuration:** The EM system includes GPS, sensors on the winch (if present) and hydraulic system, and CCTV cameras covering the entire area where catch comes aboard and is stowed. The CCTV camera layout is the same as with Option 2 with complete fishing deck coverage combined with close up imagery of catch sorting, stowage and discarding locations. The imagery shall be of sufficient quality to clearly distinguish allocated species. CCTV imagery is recorded from the first fishing event until the vessel comes to port. Sensor data is recorded for 100% of the fishing trip.
- **On-Board Catch Handling Requirements:** Crew will be required to adhere to specific catch handling protocols designed for the fishing vessel. The protocol will

specify where and how catch is sorted, stowed and discarded. Adherence to the protocol is needed to ensure that the activities are properly monitored by the CCTV cameras.

- **Fishing Logbook Requirements:** For the purposes of monitoring, a vessel fishing logbook must contain a record of total catch for the entire trip. Fishing event level detail is required for fishing effort information and all discarded catch.

#### OPTION 4. MULTI-AREA FISHING OPTION

- **Overview:** Vessels fishing under this option are free to fish multiple areas and retain or discard any species permitted under their fishing regulations. All retained and discarded catch must be recorded by CCTV and in the vessel fishing logbook (by fishing event). At-sea monitoring is designed to verify fishing effort and to estimate retained and discarded catch.
- **Fleet eligibility:** This option is suitable for fixed gear fisheries (gillnet and longline). Suitability for trawl operations is dependent upon catch quantities and methods aboard to sort catch. Regardless of gear, regulated and other species must be clearly distinguishable according to the management units.
- **EM System Configuration:** The EM system includes GPS, sensors on the winch (if present) and hydraulic system, and CCTV cameras covering the entire area where catch comes aboard and is stowed. The CCTV camera layout is the same as with Option 2 with complete fishing deck coverage combined with close up imagery of catch sorting, stowage and discarding locations. The imagery shall be of sufficient quality to clearly distinguish allocated species. CCTV imagery is recorded from the first fishing event until the vessel comes to port. Sensor data is recorded for 100% of the fishing trip.
- **On-Board Catch Handling Requirements:** Crew will be required to adhere to specific catch handling protocols designed for the fishing vessel. The protocol will specify where and how catch is sorted, stowed and discarded. Adherence to the protocol is needed to ensure that the activities are properly monitored by the CCTV cameras.
- **Fishing Logbook Requirements:** For the purposes of monitoring, a vessel fishing logbook must contain a record of total catch for the entire trip. Fishing event level detail is required for fishing effort information and all catch (both retained and discarded).

## GENERAL COMMENTS ABOUT THE OPTIONS

- **Minimum Data Collection Requirements:** The minimum data collection requirements for the four options are summarized in Table 1, defining what would theoretically be required to address catch accounting needs. In reality, some additional information would be included since it would exist as part of the analysis (determining discards of regulated will also produce estimates of other species), or to satisfy other management needs in a fishery.
- **Species Identification:** The importance of species recognition in EM imagery varies by option, with no importance (Option 1) and the most importance at (Option 4). Providing higher quality imagery for species identification places greater emphasis on system set up and on board catch handling practices. Some species may not be clearly resolvable and special measures such as full retention may be needed to ensure their being accounted.
- **Weight Estimation:** Estimating catch weight on fishing vessels is often an indirect method, measuring volume and applying a density, or counting and measuring to scale pieces to weights. Where direct weights are taken, it is often a subsample that is applied to the whole. The inability for EM to directly weigh catch is no different than methods generally used by observers, however extracting this information from imagery is more difficult and places greater requirement for standardized handling practices. The most promising options include volume based weight estimates using graduated checkers and fish baskets, and graduated boards or chutes for species that have proven length-weight conversions. These methods will have to be verified for the fisheries and species of interest.
- **Variability in Vessel Layout:** The applicability of a vessel for the options presented relate mostly to the type of fishing gear, catch quantities and species caught. While the vessel layout is generally consistent between vessels of the same gear, variability between vessels requires a specific monitoring plan be developed for each vessel. This plan would specify the layout of the EM equipment and the specific onboard catch handling practices needed.

Table 1. Minimum Data Collection Requirements for the Four Technology-Based Monitoring Options.

Available Data Sources		Option 1- Full Retention	Option 2 - Full Retention of Regulated Species	Option 3 –Discarding Permitted	Option 4 – Multi Area Fishing Option
Vessel Fishing Logbook	Fishing Effort Information (gear location, time of fishing, etc.)	Trip Level Detail	All Fishing Events Recorded	All Fishing Events Recorded	All Fishing Events Recorded
	Retained Catch Information	Total for Trip by Species	Total for Trip by Species	Total Weight by Species by Fishing Trip	Total Weight by Species by Fishing Event
	Discarded Catch Information	Discarding Not Permitted	Total by Fishing Event (no regulated species permitted)	Total Weight by Species by Fishing Event (any species)	Total Weight by Species by Fishing Event (any species)
Docksides Monitoring	Regulated Species	Total Weight by Species	Total Weight by Species	Total Weight by Species	Total Weight by Species
	Other Species	Total Weight by Species	Total Weight by Species	Total Weight by Species	Total Weight by Species
Electronic Monitoring	Fishing Effort Information (gear location, time of fishing, etc.)	Verify Complete Data Set	Verify Complete Data Set	Verify Complete Data Set	Verify Complete Data Set
	Retained Catch Information	Not Required	Not Required	Not Required	Total Weight by Species by Fishing Event (for each event monitored)
	Discarded Catch Information	Verify Full Retention	Verify Full Retention of Regulated Species	Total Weight by Species by Fishing Event (for each event monitored)	Total Weight by Species by Fishing Event (for each event monitored)



Groundfish Plan Development Team  
c/o Annie Hawkins, Fishery Analyst  
New England Fisheries Management Council  
50 Water Street  
Newburyport, MA 01950



February 21, 2012

Re: Sector framework monitoring goals

Dear Ms. Hawkins and PDT members,

The Gulf of Maine Research Institute has been convening a monitoring working group (MWG) on and off since summer 2011. The MWG most recently met on February 8 in Peabody, MA. Members of the MWG include fishermen, industry association leaders, sector managers, researchers, and representatives from shoreside support services and an NGO. Representatives from NERO, NEFSC, and the Council (staff) were also in attendance. This letter communicates one of the outcomes from this meeting to the PDT in light the Council's development of the sector framework, and recent motions from the Groundfish Committee, where the *"Committee recommends that the council adopt the following goals for sector monitoring:*

- *Improve documentation of catch*
- *Reduce cost of monitoring*
- *Enhance safety of the monitoring program*
- *Incentivize reducing discards*
- *Provide additional data streams for stock assessments"* (January 18, 2012)

Given that the full Council's discussion of the Groundfish Committee's motions concerning the sector framework have been postponed until the April 2012 Council meeting, the MWG had a brief discussion on monitoring goals and objectives for consideration at the PDT and Committee meetings leading up to the next Council meeting. The agenda for the day did not permit a lengthy discussion that encompassed all goals, and rather focuses on a few overarching goals and items for consideration. These goals are:

**Goal 1:** For the monitoring program to collect the most robust data possible.

**Outcomes:**

1. To allow for the best data to be integrated into stock assessments.
2. To decrease the gap between the ABC/ACL (management/science uncertainty).
3. To allow for the greatest allowable amount of fish to be allocated to fishery.
4. To develop a monitoring program where confidentiality of data is paramount, regardless of how data is collected (*i.e.*, human observer or video camera).

*cc: AH, TN, Council (2/24)*

**Goal 2:** Create a monitoring program to account for groundfish catch (by area fished/gear type) for the purpose of ACE monitoring at optimized levels of accuracy and precision, and in the most cost effective approach.

**Actions:**

- Demonstrate that Electronic Monitoring can meet monitoring goals and be implemented as an option for the 2013 fishing year.
- Allow for full retention (*of allocated stocks only*) as an option to meeting these goals for the 2013 fishing year.
- Demonstrate the feasibility of applying a fixed discard rate, and allow this approach as an option to meeting monitoring goals for the 2013 fishing year.
- Recognizing the diverse nature of sectors, allowing the flexibility within each sector to meet the optimized levels of accuracy and precision in the most efficient and cost effective method(s). For example, one approach to minimize costs could be to have the ASM program account for *discards only*, while the DSM program or dealer reports would account for *catch kept*.

The MWG will closely follow the work of the PDT, Groundfish Committee, and Council with respect to the development of monitoring goals and objectives for the sector framework. If there is any way the MWG can support any analyses to this end, please do not hesitate to let the group know.

Sincerely,

**Monitoring Working Group member attendees at 02/08/12 meeting:**

Eric Brazer, Sector Manager – Fixed Gear Sector  
John Our – member of Fixed Gear Sector and participant in EM pilot study  
Nina Jarvis - Cape Ann Seafood Exchange  
Aaron Dority, Sector Manager – New England Coastal Communities Sector  
Libby Etrie, Northeast Sector Services Network  
John Haran, Sector Manager – NEFS 13, New Bedford  
Cate O’Keefe – UMASS School for Marine Science and Technology (SMAST)  
Emilie Litsinger – Environmental Defense Fund  
Ben Martens – Maine Coast Fishermen’s Association & Port Clyde Sector Manager  
Frank Mirarchi – member of NEFS 10, South Shore, and participant in EM pilot study  
Mark Phillips – member of NEFS 13, New Bedford  
Maggie Raymond – Associated Fisheries of Maine  
Hank Soule – Sector Manager, Sustainable Harvest Sector

CC: Amy Van Atten, Branch Chief, Fisheries Sampling Branch  
Bill Karp, Acting Director, Northeast Fisheries Science Center  
Dan Morris, Acting Director, Northeast Regional Office  
Tom Nies, Fishery Analyst, New England Fisheries Management Council  
Paul Howard, Executive Director, New England Fisheries Management Council  
Rip Cunningham, Chairman, New England Fisheries Management Council

**ASM Working Group Meeting Notes**  
**February 8, 2012**  
**Holiday Inn, Peabody**

**I. Presentations**

A. Annie Hawkins (NEFMC Staff): PDT's approach to monitoring

The Council plans to reconfigure the entire monitoring program from the ground up, including how to implement a cost-effective program, cost transition to industry, and cost sharing. They are looking at experiences in other parts of the world for options, including work done by the FAO and Archipelago. Annie is in the process of developing a white paper.

Specifically, the PDT identified the following steps as necessary in the development of the monitoring options for the framework:

1. Establish goals
2. Establish standards
3. Summarize requirements in other regions and what benefits they get
4. Clarify A16 requirements (based on what is happening on the water)
5. What data is used for (e.g., to determine discard rates, enforcement)
6. What data, if any can be collected by EM and what Council needs to do for implementation

B. Melissa Vasquez (NERO): Implementation process for industry ASM programs in FY2013

Sectors are currently required to meet A16 monitoring requirements within their ASM proposal in operation plans for the September 1, 2012 deadline. After the deadline, it will be an iterative process for updating operations plans to include new ASM specifics to address the sector framework (when Council has more specific monitoring program goals and requirements).

Dockside will be back in 2013(20% coverage level), absent of further Council action.

C. Amy Van Atten (NEFS/FSB): Electronic Monitoring Pilot Project Update

*See PPT presentation: [www.gmri.org/monitoringworkinggroup](http://www.gmri.org/monitoringworkinggroup)*

D. Cate O'Keefe (UMASS SMAST): Improving discard estimates of New England Groundfish

SMAST is starting a research project on improving discard rates for New England fishermen. (The sector manager of NEFS 11 and 12 analyzed the accuracy around discard rates that follow the regulations with a 30% CV based on the Standardized Bycatch Reporting Methodology (SBRM) versus results from a randomly selected smaller data set.) SMAST is exploring how changes to coverage levels can achieve better accuracy while maintaining an acceptable level precision. This project will attempt to determine if they can develop a fixed

discard rate that more accurately reflects fish presence/discards at certain times of year that isn't necessarily based on SBRM. (The moving average of a rate over the course of the year is problematic for fishermen.) The project will also look at how NMFS is determining coverage levels (based on SBRM) and cumulative discard rates (that are retroactively applied). This will help sectors with ACE trading and achieve discard rates that reflect what fishermen are seeing on the water.

Cate is currently requesting data from study fleet, the observer program, and individual sectors/vessels. Once they have data, it will be analyzed and then the implementation process (Council/regulatory vs. NEFSC) will be addressed.

*Question about SBRM with Oceana law suit? Melissa/Alli – Reference to SBRM is removed, but A16 says 30% CV (based on SBRM), so 30% CV still stands.*

*Question about whether the Council has discussed the SBRM question? Annie – Council isn't there yet, but changing A16 reference to SBRM could be within scope of sector framework.*

## **II. Monitoring goals discussion**

The group had an initial discussion of goals based on the groundfish committee motion on goals; however, they ultimately decided that the group should think about the goals at a higher level, and start from the drawing board (*not necessarily the proposed goals on the table*).

The group then started a discussion of higher level goals around catch accounting (pounds of fish by area/gear), but then started exploring individual-vessel level monitoring, which would provide an incentive for vessels to minimize discards. However, with a smaller stratum, and more discreet discard rate, the coverage levels would be ~70-90% to achieve the same precision/CV level (*see Michael Lanning PPT presentation:*

[http://www.nefmc.org/nemulti/cte\\_mtg\\_docs/111005/Sector%20Groundfish%20CV%20Coverage%20-%20Lanning%20111005.pdf](http://www.nefmc.org/nemulti/cte_mtg_docs/111005/Sector%20Groundfish%20CV%20Coverage%20-%20Lanning%20111005.pdf)), and this may not be affordable. NMFS may be able to provide vessel-level discard rates to the sector, but then each sector would have to manage databases/software to distribute these discard rates to all members. There is currently nothing preventing a sector manager from assigning vessel-level discard rates to sector members.

Finally, there was a request for a round-robin check in on the members' monitoring priorities. *These were more specific than the overall goals, and very detailed so they are not included in this meeting summary; however, I can e-mail them out to anyone who is interested, or include them in the final meeting summary if there is enough interest.*

In the afternoon, the group returned to the overall goals discussion, with a plan to draft a letter to the PDT with goals for consideration during the Council's development of monitoring goals in the sector framework. These are the draft goals devised from this discussion:

**Goal 1:** For the monitoring program to collect the most robust data possible.

**Outcomes:**

1. To allow for the best data to be integrated into stock assessments.
2. To decrease the gap between the ABC/ACL (management/science uncertainty).
3. To allow for the greatest allowable amount of fish to be allocated to fishery.
4. To develop a monitoring program where confidentiality of data is paramount, regardless of how data is collected (*i.e.*, human observer or video camera).

**Goal 2:** Create a monitoring program to account for groundfish catch (by area fished/gear type) for the purpose of ACE monitoring at optimized levels of accuracy and precision, and in the most cost effective approach.

**Actions:**

- Demonstrate that Electronic Monitoring can meet monitoring goals and be implemented as an option for the 2013 fishing year.
- Allow for full retention (*of allocated stocks only*) as an option to meeting these goals for the 2013 fishing year.
- Demonstrate the feasibility of applying a fixed discard rate, and allow this approach as an option to meeting monitoring goals for the 2013 fishing year.
- Recognizing the diverse nature of sectors, allowing the flexibility within each sector to meet the optimized levels of accuracy and precision in the most efficient and cost effective method(s). For example, one approach to minimize costs could be to have the ASM program account for *discards only*, while the DSM program or dealer reports would account for *catch kept*.

### **III. Technology-based monitoring options discussion**

Emilie Litsinger (EDF) presented an Archipelago draft document for discussion, "Technology-Based Monitoring Options for Commercial Fisheries" that details four monitoring options utilizing electronic monitoring (EM) that have been used in other fisheries around the world. (*See document for details of each option.*) Discussion of this document quickly transitioned to the EM pilot study Archipelago is conducting under contract for the NEFSC.

While the industry was under the impression that NMFS would not approve EM until the pilot study is complete, Amy Van Atten clarified that for certain gears/species, it may work sooner, and that the pilot does not have to be

completed before EM is implemented. There was a comment that the pilot program may be looking at the wrong objectives (currently evaluating EM against A16 requirements). There was a recommendation for the pilot to look at discards only. There was a question about the ability of EM to account for full retention and discards only, and Amy commented that those options were not currently being evaluated. A discussion pursued about including an evaluation of full retention into the pilot study, and that it should require full retention of allocated groundfish stocks, (*not including prohibited groundfish stocks/species*) and not full retention of all species. Further, it was requested to add trawl vessels that fish for multiple days in more than one broad stock area, if possible, (in addition to the smaller draggers that fish single-day trips in one broad stock area) to the study since the pilot program has the least amount of data on these vessels. Following this discussion, there was a recommendation that the MWG request that the pilot study demonstrates full retention (of allocated stocks) by gear and area fished.

Amy said she would inquire about including these items, but expressed the need to design the research question before the pilot study starts (e.g., full retention for allocated GF species, as to not address prohibited stocks.) The focus would be if and how well EM can document full retention fishery of allocated species for vessels that fish in one area and multiple stock areas. She will talk to NERO about regulatory process with an experimental fishing permit (EFP) since it is too late for sectors to request an exemption for full retention in their FY2012 operations plans.

*Question to Amy or Council of how we turn results of the EM pilot into implementation for 2013?* Amy – form subgroup of MWG that want to focus on EM and communicate/coordinate with PDT/GF Committee to make it work. Melissa – GF committee has already asked PDT to look at full retention; GF committee asked Council to approve/implement EM, although didn't task PDT to look at details/issues.

The discussion on goals ended with a comment about the current A16 monitoring goal to verify catch kept and landings, and a question asking for clarification on how the catch data from observers is being utilized by NMFS (since the sectors are using dealer reports for catch information). Goals should be clear that catch kept data from observers will be used and if data are not used, then the goal should just be for the observer or video to record discards, and use dealer reporting and DSM to verify catch kept. Upon review of the draft notes, Amy commented that kept catch recorded by the observer/monitor is an essential part of the trip-specific discard rate.<sup>1</sup> Additional information can be provided to show

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<sup>1</sup> On "observed" tows, sampling discards is the priority for observers and monitors. The definition of an observed tow is that it contains complete discard catch information. Occasionally tows may be "unobserved" - this may occur if the observer is still sampling priority species from a previous tow, if they are ill or exhausted, or if the captain declares the deck space too unsafe for the observer to access. Observers use their own estimation using actual weights, tally counts, or volume to volume, or captain's estimate - in that order of preference. They may also ask the captain to validate their estimate, or if the

how the observer data (discards and catch kept) are used to estimate catch in the groundfish fishery.

#### **IV. Discussion to narrow focus of MWG**

The fixed discard rate would supplement the NEFOP, and could be higher or lower, but would provide stability, and more real time data. Question about whether a higher discard rate skews stock assessment? Cate – we are looking at this, but as current system is, there may be the same problem.

One idea since an ACL is for the entire fishery is that if you have finer scale data, you can leave the buffer at the sector level. With management uncertainty, it is applied twice, and the Council hasn't decided what level of risk to take.

*Question about whether goal(s) should include connection between monitoring and uncertainty? (MWG ran out of time to discuss this question.)*

There will be two subgroups within the MWG, one will focus on the fixed discard rate study, and the other will focus on the EM pilot and implementation. The meetings will be on same days to keep everyone updated.

*Question about inviting others to meetings?* Acting directors of NERO and NEFSC are updated but if MWG has a formal proposal/question, then they can be invited – otherwise, should be okay.

*Question about inviting a Council member?* While there may be some usefulness, it seems appropriate to keep these lines separated.

Coordination with Council and NMFS: The MWG will draft meeting summaries, letters, and updates to share with Annie, Amy, Melissa, and Alli, who will do the same for PDT and NMFS meetings concerning monitoring. We will all coordinate to reduce any redundancy in efforts between the groups and support each other as the monitoring program is reconfigured in the sector framework and as sectors start developing their ASM programs in their FY2013 operations plans.

#### **V. Next Steps**

The PDT may schedule a meeting within the next couple of weeks, the GF committee meeting should be in March and the Council meeting is at the end of April. The subgroups will touch bases over e-mail and a conference call, if necessary, to formulate timelines and next steps. The full MWG will next meet sometime in early April to update everyone on progress.

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volume of discards was such that they couldn't sample the kept portion of catch before it is stored. They will also ask the captain for the kept catch on "unobserved" tows.

ACTION: Attendees will e-mail Jessica for their subgroup preference, and then she will set up conference calls and eventually set the next meeting date.

ACTION: The MWG will draft two letters: one letter to the PDT regarding monitoring goals, and another letter to the Council sharing the MWG's request to the NEFSC to evaluate full retention and discards only – *options 2, 3, 4 in technology based monitoring options* – into the EM pilot program.



ASSOCIATED FISHERIES OF MAINE

PO Box 287, South Berwick, ME 03908-0287

February 27, 2012

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

VIA ELECTRONIC MAIL



Dear Terry:

I write to request that the groundfish committee include the following options in the sector improvement framework.

- 1) A sector exemption from the minimum mesh size requirement in order to allow vessels to use 4 1/2" and greater codends for the purpose of targeting redfish.

On February 1, 2012 the NEFMC approved a motion to ask NMFS to expedite the exemption request described above. We request that the Committee include an option for this exemption in the pending framework. A final report on the experimental fishing component of the cooperative research project that supports this request will be made available by the end of March 2012 in sufficient time for final vote by the Committee on this option.

- 2) Add block 138 in May to the list of exemptions from rolling closures for sector vessels.

On November 18, 2009 the NEFMC approved a motion to endorse requests by sectors for exemption from this closure. However, the NMFS has repeatedly denied sector requests for this exemption.

Block 138 is an area of particular importance to small and mid size vessels fishing out of Maine ports. It is the only block in the western Gulf of Maine east of 70° that remains closed to sector participants.

The Amendment 16 analysis of the Council's decision on universal rolling closures exemptions supports our argument that rolling closures were adopted "primarily to reduce catches of GOM cod". Under hard quotas, rolling closures are no longer necessary to reduce fishing mortality. Table 177 in Amendment 16 demonstrates that overall the month of May is not a particularly important time for groundfish spawning.

- 3) Expand the list of universal sector exemptions to include some or all those approved by the NFMS during the first two years of sector management under Amendment 16 (see attached)

Most of the exemptions approved during the last two fishing years are artifacts of the days at sea management system. Making these exemptions permanent will ease a significant paperwork burden for the industry and for the NMFS.

Sincerely,

*M. Raymond*

Maggie Raymond

cc: TN, AH, Council (2/29)

Sector Exemptions Approved in FY 2010 and 2011

- 1) 120 block out of the fishery required for day gillnet vessels
- 2) 20 day spawning block out of the fishery required for all vessels
- 3) Limits on the number of gillnets imposed on day gillnet vessels
- 4) Prohibition on a vessel hauling another vessel's gillnet gear
- 5) Limits on the number of gillnets that may be hauled on GB when fishing under a groundfish/monkfish DAS
- 6) Limits on the number of hooks that may be fished
- 7) DAS leasing program length and horsepower restrictions
- 8) The GOM Sink Gillnet mesh Exemption through April
- 9) Extension of the GOM Sink Gillnet Mesh Exemption through May
- 10) Prohibition on discarding
- 11) Daily catch reporting by sector managers for sector vessels participating in the CAI Hook Gear Haddock Special Access Program
- 12) Gear requirements in the US/CA management area
- 13) powering vessel monitoring systems while at the dock
- 14) DSM for vessels fishing west of 72° 30'
- 15) DSM for Handgear A permitted sector vessels
- 16) DSM for monkfish trips in the Southern Fishery Management Area



Paul J. Diodati  
Director

# Commonwealth of Massachusetts

## Division of Marine Fisheries

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Deval Patrick  
Governor  
Richard K. Sullivan, Jr.  
Secretary  
Mary B. Griffin  
Commissioner

February 29, 2012

Mr. Samuel D. Rauch III  
Acting Assistant Administrator for Fisheries  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, Maryland 20910

Dear Mr. <sup>Sam</sup> Rauch:

You have asked for suggestions as to how NMFS should tailor FY 2012 rules to deal with the unexpected and unforeseen discovery that GOM cod is overfished and overfishing is occurring. We offer the following considerations and recommendations with a reminder that FY 2012 decisions should be influenced by MRIP revised numbers for GOM cod that are much lower than those used in the assessment and the incorrect assumption that the recreational fishery has a 100% discard mortality, a complete reversal of the GARM III conclusion of 100% survival.

We also believe our recent collaborative effort with NOAA Fisheries on the financial performance of the groundfish fleet (Break-Even Analysis) should weigh heavily on decisions this fishing year and especially the next. Pessimistic results expected for GB cod, GOM haddock, plaice, witch flounder and CC/GOM yellowtail will add to the witch's brew of further cutbacks in ACLs, e.g., possible cut in the Georges Bank cod allowable catch from 5,000 mt to as low as 2,000 mt and GOM haddock from 1,200 mt to 300 mt.

We focus on sector management providing fishermen with requested flexibility freeing the vast majority of fishermen from many regulatory constraints with assumed adequate at-sea monitoring and dockside enforcement. We challenge those assumptions and encourage NMFS to revisit these critical issues. Without requisite monitoring and enforcement in FY 2012, FY 2013 could become the "Armageddon" for many fishermen expressly feared by owners of smaller, inshore vessels, as well as larger, offshore vessels at your February 10 meeting in Portsmouth. Our Break-Even Analysis for 2009 and 2010 for all sizes of vessels regardless of gear types confirm their fears.

### Sector proposed rules

Your request for ideas pertaining to GOM cod nicely dovetails with the Northeast Region's request for comments by March 1 on proposed 2012 groundfish sector operation plans and contracts. We suggest NMFS reconsider some exemptions it

cc: Council, TN, AH (3/13)

proposes to grant and promote/adopt a sector-developed approach we feel is important for reducing fishing mortality and enhancing reproductive success of GOM cod. It appears we can assume the 2009, 2010, and perhaps even the 2011 year classes are below average with 2010 likely being poor. Consequently, immediate steps to promote good recruitment by protecting pre-spawning and spawning cod are paramount.

These steps would be entirely consistent with the NMFS insistence that spawning cod be protected. In the proposed rule NMFS cites the SARC 53 assessment and uses it as a basis for denying some requested exemptions such as the April, May and June GOM Rolling Closure Areas (RCAs), i.e., those exemptions “may jeopardize rebuilding of the GOM cod stock.” We suggest there is a need for (1) increased protection of pre-spawning and spawning cod outside the areas and at times not included in existing RCAs and (2) more attention to impacts of gillnetting on cod aggregations. Our suggestions are quite relevant to the SARC 53 conclusion that the GOM cod stock is still restricted to the southwestern portion of the GOM near and within the Stellwagen Bank Sanctuary and to the north on and near Jeffrey’s Ledge.

### **Northeast Seafood Coalition challenge**

The Northeast Seafood Coalition has the difficult task of balancing competing interests of small/large, inshore/offshore vessels. When it speaks on behalf of the many (274) active fishermen in 12 NEFS sectors fishing different gear, we assume it can and does speak for the majority.

NMFS responded in the following way to Coalition comments on the fishing year 2010 proposed rule.

“The six Northeast Fishery Sectors requesting exemption from statistical blocks 124, 125, 132, and 133 in April contend that their members have a vast amount of experience and knowledge identifying spawning aggregations of fish (emphasis added) and that eliminating access to these additional rolling closure areas requested in this exemption would prematurely end commercial access to the haddock stocks, which are fully rebuilt, in those areas. The Northeast Fishery Sectors further commented that they have designed a strategy to minimize the impacts to spawning fish while promoting benefits to sector members (emphasis added). Under this strategy, Northeast Fishery Sector vessels would fish on rotating schedules to limit daily effort, would utilize a sentinel vessel to survey the area for the presence of spawning fish, and would utilize a bycatch/spawning fish notification system through an onboard computer system to reduce the potential for sector vessels to overharvest spawning stocks of fish. Northeast Fishery Sectors requesting this exemption would restrict the harvesting of GOM cod in these areas by capping the percentage of the sector’s available ACE that could be taken during the requested exemption period. Trawling vessels would minimize their gear impacts by reducing the time that they tow their nets along the bottom.

In addition to abiding by all Federal fishing regulations, sector vessels would adhere to all applicable Massachusetts Department of Marine Fisheries cod conservation measures. Finally, the Northeast Fishery Sectors contend that vessels fishing in the requested exemption areas would provide additional data, which could improve scientific knowledge for the purpose of protecting spawning cod (emphasis added). NMFS is seeking public comment about these additional exemption requests from the GOM Rolling Closure Areas due to the ancillary benefits the GOM RCAs provide to spawning fish in the GOM, as well as the protection these areas afford harbor porpoise and other marine mammals.”

The Coalition's comments provide you (and the NEFMC) with an option and approach we suggest could be applied next fishing year allowing fishermen access to the rolling closures in April, May, and June instead of complete loss of access and opportunity in large, important fishing areas for prolonged periods of time. Considering the close working relationship NMFS has with sectors and their managers, we see no reason why their approach should not be accepted perhaps with some adjustments NMFS might require. Consider that when the April RCA is lifted and the May RCA occurs, sector vessels simply shift all their effort to Massachusetts Bay and Stellwagen Bank – areas closed to them in April. Please note that DMF's spring (April 16 – July 21) Cod Conservation Zone is adjacent to these re-opened federal waters.

This sector-sponsored approach also must be considered for the fall/winter of 2012/2013 and perhaps for this late spring and summer. This approach is needed because currently there is minimal to no spawning protection for GOM cod even though fall/winter spawning occurs and likely is critical for genetically defined "winter-spawning inshore" GOM cod seasonally frequenting the inshore Georges Bank and Southern New England/Mid-Atlantic broad stock areas (See Pierce earlier communication with you and described in the January 9 white paper "Gulf of Maine Cod: SARC 53 Assessment and Its Implications").

There also is no protection for spawning cod in May in the many spawning areas of Massachusetts Bay south of 42° 30' (Marblehead) where sector vessels are exempt from the May RCA, including most of the Stellwagen Bank Sanctuary. Moreover, consider that at one time the Council adopted an October-November RCA to reduce fishing mortality and afford some spawning protection. Pre-spawning and spawning cod are found in the southwestern GOM in November, as well as December, as evidenced by the NMFS-touted DMF Industry-Based Survey for Gulf of Maine Cod (refer to DMF Final Report to NMFS NE Cooperative Research Partners Program Contract #EA133F-03-CN-0109 and NOAA's DVD "In Good Company: NOAA's Northeast Cooperative Research Partners Program").

### **Sector operation plans' revision**

To its credit, the Coalition proactively offered its approach consistent with concerns of NMFS and DMF about spawning cod protection. Perhaps because NMFS did not grant the requested April exemption, the Coalition did not pursue this approach. Considering the status of GOM cod and the pessimistic outlook for May 1, 2013, we conclude it is now time. Admittedly, more details need to be provided. Perhaps the interim rule could require sectors to revise their operations plans accordingly with reinstatement of the May with fall RCAs being the triggered accountability measures if sectors fail to adopt their proffered approach. We suspect sectors would work with their memberships to revise their plans to avoid impacts of rolling closures on small businesses already hard-pressed by Amendment 16 with its allocation approach and hard-quota management.

Considering all state and federal assistance in many forms and accommodations provided to sectors, we believe sectors' collective memberships must continue to step up and demonstrate stewardship and accountability for this critical resource on which they heavily depend. This should be the sectors' response even though, once again, you

intend to deny sector-requested exceptions to the April, May, and June RCAs. As NMFS says in its February 15 proposed rule, “...*Sector members are granted increased operational flexibility through exemptions from regulations in exchange for taking on additional responsibility (emphasis added)*...” Taking responsibility is the key.

A willingness to accept that responsibility also was demonstrated by the Sustainable Harvest Sector that in its operations plan for FY 2010 had “hot-spot reporting.” Members agreed “*to report to the Sector Manager any and all areas of high bycatch of any sort, including undersized regulated species and/or any stock for which the Sector is approaching their threshold. Upon receiving a hit-spot report, the Sector Manager will send an alert to all member vessels to stay away from those particular areas.*” We assume the same attitude and approach could be used to avoid aggregations of spawning cod, although the incentive to avoid high-valued cod – regardless of spawning condition – may be low.

### **DMF CCZs & White Paper**

We remind you of the Commonwealth’s Winter (November 15 - January 31) and Spring (April 16 – July 21) Cod Conservation Zones (CCZs). Please note the winter and spring time periods. The effectiveness of our zones for protection of cod spawning aggregations can be undercut, if not overwhelmed, by fishing in adjacent federal waters by sector vessels (large and small) not restrained by any trip limits.

We refer you to our White Paper pages 12-14 where we describe the importance of protecting spawning aggregations and where we cite many scientific publications documenting cod spawning behavior, multi-year homing and fidelity to spawning grounds, and hyperstability creating the “illusion of plenty” and a recipe for masking collapse of fisheries.

We also refer you to a 1999 paper that is key to our conclusions and very relevant to SARC 53 conclusions about masking collapse:” Hyperaggregation of fish and fisheries: how catch-per-unit-effort increased as the northern cod (*Gadus morhua*) declined” by Rose and Kulka (Can J. Fish Aquat. Sci).

### **Sector exemptions & related DMF research**

There is an element to the approach of protecting spawning aggregations quite relevant to sector exemptions, and it’s gillnetting. NMFS proposes to continue to exempt all sector vessels from the limit on number of gillnets imposed on all day-gillnet vessels. We recommend this exemption be denied or at least revised. NMFS also should consider reducing the limit. Our rationale is as follows.

NMFS indicates in the proposed rule that the limit on number of gillnets is not needed because the limit was “*designed to control fishing effort and, therefore, is no longer necessary for sectors because their ACEs limit overall fishing mortality.*” Although this logic seems sensible at first, it actually is faulty because: (1) cod spawning aggregations are not protected; (2) there are no trip catch limits for sector vessels; (3) inshore vessels report that larger offshore vessels are fishing inshore in the GOM more so than before (e.g. taking advantage of no restrictions on leasing of ACE between vessels, especially from inshore to offshore vessels); and (4) ACEs are not necessarily constraining sectors due to monitoring and enforcement inadequacies. Continuing to free

sectors from gillnet restrictions now seems ill-advised. In fact, we suggest restrictions should be tightened.

We call your attention to DMF research detailed in the soon-to-be-published (2012) scientific paper in the North American Journal of Fisheries Management: “Disruption of an Atlantic cod spawning aggregation resulting from the opening of a directed gillnet fishery” (Dean, Hoffman, and Armstrong). These authors concluded: “*This study [using acoustic receivers to record transmissions from acoustically tagged cod] clearly demonstrates the adverse effect of gillnetting within an Atlantic cod aggregation” (emphasis added).*

Commenting on the Amendment 16 catch-share system, they indicated: “...*fishing efforts controls such as daily possession limits and rolling closures have been lifted for most fishermen. While this new system may provide a more direct method of controlling fishing mortality for the cod stock as a whole, it also greatly increases the potential for overexploitation of individual spawning groups (emphasis added). The Cod Conservation Zones enacted by Massachusetts have extended the spawning protection once offered by rolling closures in the immediate vicinity of the aggregations. Yet, other cod spawning aggregations exist in the Gulf of Maine that will likely face the brunt of relatively unrestricted fishing pressure, unless similar conservation zones are established... Fishery managers attempting to achieve spawning protections need to consider that fishing on spawning aggregations may have adverse effects that go beyond simple removal of biomass” (emphasis added).*

These research findings and conclusions are compelling and convince us that NMFS should not exempt sectors from gillnetting restrictions and should be even more restrictive. How much more restrictive is the question. Currently, sectors can fish any number of nets: either the exempted amount of 100 gillnets (of which no more than 50 can be “roundfish” gillnets) or greater. A gillnet is 300 feet with 100 nets being 30,000 feet or 5.7 miles. With many sector fishermen being gillnetters, e.g., Sectors 3, 7, 10, 11, 12, Fixed Gear, Port Clyde, and Tri-State (refer to February 15 Proposed Rules’ Table 1), 5.7 miles – or far more, since the amount is unrestricted – can be fished by many fishermen with gillnets set overnight (some for many days).

This highlights the potential for spawning aggregations being targeted with very adverse effects. *Can NMFS seriously believe that unrestricted gillnetting by so many sector vessels can be allowed to continue with GOM cod concerns, as well as other considerations resulting from NEFSC updates on stock status, e.g., possible decrease in GOM haddock allowable catch from 1,200 mt to 300 mt?*

The belief that sector ACEs limit cod catch thereby controlling fishing mortality ignores dramatic impacts of gillnetting on cod aggregations documented through DMF research. By ignoring those impacts, we risk a worst-case scenario for May 1, 2013. Consider (1) the GOM cod stock has contracted; (2) NMFS beginning this May probably will allow a liberal GOM cod catch of 6,700 mt (7,100 mt if you allow the carryover); (3) the amount of gillnets to be set by sector fishermen will be unrestricted; (4) monitoring of the amount of catch is sporadic (i.e., just 25% observer coverage, if that); and (5) many fishermen likely have a different fishing behavior when an observer is on board.

Also consider that sector operations plans are very liberal in how they treat gillnets. For example, the Sustainable Harvest Sector only requires their gillnetters to

haul their nets once every seven days after they are set. It doesn't appear Coalition sectors restrict gillnetters in the same way.

As an alternative to reducing the number of gillnets, we suggest gillnetting should be prohibited near-shore (e.g., less than 30 fathoms, perhaps deeper) in May and June and October through December. This suggestion definitely will spark anger and some serious discussion. NMFS likely will prefer for the NEFMC with industry input to determine what must be done beginning May 1, 2013.

Consistent with the aforementioned logic and concerns we suggest NMFS pay attention to the other exemptions it intends to approve such as the 20-day spawning block and limits on the number of hooks that may be fished. Regarding the latter, since there appears to be a shift of hook effort to the GOM to target cod, allowing a sector vessel to target spawning cod aggregations with hooks far in excess of the required 2,000 hooks, the exemption seems unwise.

We understand NMFS believes these measures are *"no longer necessary for sectors because their ACEs limit overall fishing mortality"* and that these exemptions *"provide greater operational flexibility and allow vessel owners to plan their operations according to fishing and market conditions."* These are good reasons for exemptions. However, with last weeks' assessments providing dismal findings, the SARC 53 GOM cod outcome, and likely continued stock problems we believe are largely attributed to "missing" catch, action must be taken now rather than later.

### **Freedom and flexibility**

We cannot fault NMFS for its willingness to lessen economic impacts on sector and common pool vessels. DMF continues to have the same objective. Witness our joint effort with NOAA Fisheries to perform a Break-Even Analyses and DMF's Sector 10 analysis – both unfortunately having little if any influence on our collective decision-making.

However, we believe NMFS risks going too far in providing the industry with freedom and flexibility. Under different circumstances, i.e., comprehensive, effective catch monitoring and enforcement, your logic for that freedom and flexibility, described in your proposed rule (page 8798) would be sound, for example, *"By removing the limitations on vessel effort (amount of gear used, number of days declared out of fishery, trip limits and area closures) sectors help create a more simplified regulatory environment, etc."*

Please keep in mind your minimal at-sea monitoring (17% sector ASM plus 8% NEFOP), and each sector's coverage is not representative of each sector's activity by gear type. Simplification of the regulatory environment is a worthwhile goal, but it should not occur by abdicating our management authority and responsibility to sectors. We suggest that abdication is ongoing by virtue of NMFS abandoning dockside monitoring (and enforcement), albeit with the Council's support.

NMFS continues to incorrectly assume that *"this level of observer coverage has been considered sufficient to monitor sector fishing activity for purposes of calculating when ACLs have been achieved."* For example, consider last week's results for Cape Cod/GOM yellowtail flounder. For the first time, we now have a very large retrospective error indicating substantial unaccounted-for catch. Sector management is catch-share management, and we all know based on experiences elsewhere that high levels of



observer coverage are required for successful catch-share management, i.e., keeping fishermen from exceeding their gifted catch shares. We refer you to the 2011 *Fisheries* article, "Evolution of catch share management : lessons from catch share management in the North Pacific" by Mark Fina who notes high levels of observer coverage, i.e., 100% with a few exceptions.

We also refer you to EDF-sponsored MRAG Americas' April 2011 publication: "Guiding principles for development of effective monitoring programs." One particular monitoring program is especially noteworthy – the British Columbia groundfish fishery with management goals being: (1) individual accountability; (2) gathering verifiable data on all catch and discards; (3) documenting discarded catch as legal or sub-legal in size; (4) tracking individual vessel and fleet quotas; and (5) verifying that catch stays within the TAC. This should sound familiar to New England fisheries managers. Offshore trawl vessels have 100% observer coverage. Hook-and-line vessels have 100% coverage although electronic monitoring is used.

Precise and accurate quota-monitoring requires a high level of observer coverage, and when coverage is less, steps must be taken to stratify the fleet, deal with biases in observer coverage, etc. This is not the case in New England primarily due to cost. Consequently, we suggest you reconsider sector exemptions granting freedom and flexibility without accountability provided by higher although costly levels of catch monitoring.

Evidence that coverage is currently biased recently was provided by Council member David Goethel who described the repeated sea sampling of his trips. Another example was provided by Captain Jim Ford of the *Lisa Ann* in his recent correspondence with Council Executive Director Paul Howard. Captain Ford noted the non-randomness of coverage. His catch was sampled seven trips in a row.

We greatly appreciate NMFS efforts to prioritize sampling using the Standardized Bycatch Reporting Methodology (SBRM). Excellent work has been done by the Center and the Regional Office. Nevertheless, coverage is influenced primarily by a requirement to have a 30% coefficient of variation. This pertains to precision and not accuracy of sampling results expanded to characterize total catch by all vessels and gear types. Moreover, the difficulty of stratifying available sea days among the groundfish fleet with an emphasis on sectors is well described by NMFS (refer to January 25, 2011 Standardized Bycatch Reporting Methodology: Sea Day Analysis and Prioritization, NEFSC/NERO).

We conclude that the "...*high level of observer coverage for fleets that catch New England groundfish...*" is only relative to coverage in other fisheries, and 17% (or so) coverage is quite low, indeed, unacceptably low for a strict, penalty-laden, quota-managed multispecies complex. Therefore, we urge NMFS to be wary of freedom-giving exemptions. They should be granted only after very careful consideration of the consequences of our laissez-faire sector monitoring management approach with heavy reliance on sectors to report accurately.

### **Night closure**

Not relevant to operations plans but certainly for interim action is the idea of a night closure suggested by the Conservation Law Foundation. CLF suggests a night-time ban to dragging inside the 100-fathom line. The intent is good because it is a strong

disincentive for large vessels to fish inshore, such as on Stellwagen Bank. A night closure seems consistent with the Council previous record of dissuading fishermen from shifting their effort from offshore to inshore waters, e.g., the 2:1 DAS counting area.

However, CLF's suggested approach is flawed for a few reasons. Large vessels can fish during the day inshore and move offshore during the night. This sort of closure does prevent 24-hour fishing inshore, but having 12-15 hours of spring through fall daylight provides many hours to catch and benefit from high-valued cod.

Moreover, night closures to mobile gear cause a proliferation of fixed gear fishermen who no longer fear night-time gear loss caused by mobile gear. With sector exemptions being very favorable to gillnetting (and hooking) it doesn't take much imagination to see the outcome.

A GOM cod zone might be a better alternative, but not with the boundaries suggested by CLF that are too liberal. We suspect this concept will be too challenging for you to implement on an interim basis, but it should receive serious consideration. Nevertheless, there is an area(s) that could be called a GOM cod zone, at least for interim FY 2012 action, and we offer boundaries in the text that follows.

#### **Time for serious reflection & new attitude**

As noted above, we are not confident monitoring and enforcement are effective or adequate. We request NMFS immediately delve into these critical issues. One reason for our concern is that onboard inspections by dockside monitors are no longer required, and NMFS logic for removing that requirement may no longer be sound. Specifically, NMFS determined (refer to July 19, 2011 announcement): *"The vessel trip-end (pre-landing) hail requirement provides an efficient and effective means for observation and enforcement of vessel landing requirements through unannounced observation of vessel offloads at the discretion of law enforcement which can include inspection of the hold. The hail requirement and spot inspections allow for deployment of limited monitoring and enforcement resources to the greatest effect. The possibility of such inspection is believed to be a sufficient deterrent (emphasis added) at this time..."*

After almost two fishing years with groundfish ACLs and sector ACEs in place with there being no landing requirements for sector vessels, do state and federal law enforcement officers believe the hail requirement is a sufficient deterrent for false reporting of actual landings? Are vessels' VMS data being extensively reviewed to track vessel locations versus reports of catch areas? Are trip-end hails being checked with vessel offloads, how often does that verification occur, and what have been the results of that monitoring? What is the penalty for a vessel offloading more than its hail and how much of a difference in hail and offload must there be before there is a violation?

Consider this hypothetical scenario for Captain Scofflaw. *"I'm a captain of a groundfish vessel, and I belong to a sector out of New Bedford. I have a decent allocation of Georges Bank cod. Other sector members with much lower allocations press me to keep my landings low. I know I should sacrifice for the greater good of my fellow sector "colleagues," but I won't. After all, it's my individual allocation, not their allocation. So, I land 50,000 pounds. Law Enforcement knows I'm a sector vessel so they won't inspect me. They know I'm not limited by a trip limitation, so inspections would be a waste of their time. I report a landing of 5,000 pounds on my VTR that I submitted 4 days after I landed (only need to be submitted weekly, thank God!). My*

*dealer understands my plight and reports a transaction of 5,000 pounds. Who will ever discover my "little" reporting "error?" Oh, and by the way, I actually caught that cod in the GOM, but who will know? It's to my advantage to report my catch as Georges Bank cod because GOM cod is of higher value, and I want to lease some of my GOM cod allocation to another vessel at a greater profit. After all, fishing is a business, and I'm in it for the long haul."*

The above scenario is a very jaundiced view of what might be happening (or could happen), and not just in New Bedford. It represents a perspective shared with Council members at the scoping hearings on Amendment 18. If this scenario is plausible, groundfish catch-share management is in jeopardy and data for use in stock assessments will continue to be seriously flawed and misleading. Therefore, through interim action we recommend you adopt a strategy to counter this tactic that, by the way, is an anathema to the Stellwagen Bank National Marine Sanctuary.

We recommend NMFS require a fishing vessel to have an observer on any trip where fishing will occur in more than one broad stock area. No exemptions should be allowed. This doesn't prevent larger, offshore vessels from fishing inshore in the GOM on a trip then returning to port. However, it is a disincentive. Perhaps for management purposes (monitoring and enforcement), the stock boundary could be redrawn to move the so-called Western Georges Bank Stock Area away from the GOM by lowering the boundary to the south from 42° 20' back to where it used to be at 42° 00'. Otherwise, the boundary is too convenient for back-and-forth travel and incorrect reporting of catch.

Some will argue, this approach will guarantee inshore fishing if the alternative is to have an observer on board. You might recall my making the following motion at the last Council meeting: *"For more effective monitoring of groundfish catch by broad stock area (Gulf of Maine, inshore and offshore Georges Bank, and Southern New England/Mid-Atlantic), a vessel prior to leaving port on each trip declared into the groundfish fishery will be required to declare via VMS or the IVR call-in system his/her intent to fish in one of the four stock areas. Fishing will be allowed only in one stock area each trip."*

This motion was soundly defeated because the vast majority believed it would take away fishermen's flexibility and would cause fishermen to choose inshore instead of offshore fishing. The Council still is concerned about too much fishing pressure inshore and its effects on smaller vessels and communities. But, the Council has no solution at this time, and certainly not for FY 2012.

Perhaps the only real disincentive would be to implement a trip limit for GOM cod. Many smaller, inshore vessels favor this approach because larger vessels fishing day and night and catching thousands of pounds per trip on inshore grounds dramatically reduce availability of cod (and other species) for smaller vessels. I realize that any suggestion for a re-consideration of trip limits will be inflammatory. I can feel the intense heat already.

Nevertheless, for FY 2012 only, a trip limit (e.g., 5,000 lbs. of cod and 5,000 lbs. of haddock) could be considered (1) at least for a portion of the inshore GOM such as all waters in 30-minute squares 123-125, 131-133, 138-140, and 146-147 or (2) in all waters west of the line of longitude marking the eastern boundary of the Western GOM Closed Area.

There could be either a requirement that (1) a vessel prior to leaving port on each trip declared into the groundfish fishery must declare via VMS or the IVR call-in system his/her intent to fish in areas 123-125, 131-133, 138-140, and 146-147. Fishing would be allowed only in those areas each trip, or (2) a vessel intending to fish in the inshore area (west of line of longitude marking the eastern boundary of the Western GOM Closed Area) would be restricted to fishing in that inshore area for all of FY 2012.

There will be resistance to this approach from multi-day trip vessels. The outcry will be “trip limits promote discards” and “flexibility will be lost.” Still, we suggest your interim action when offered for public comment should include options to prevent focused day and night directed fishing on inshore GOM cod (and other stocks) by multi-day trip vessels especially those that have leased GOM cod from smaller vessels including those fishing to the north and east of the inshore GOM (as we define it). Moreover, a trip limit, regardless of how distasteful it will be to fishermen wanting to maintain maximum flexibility and minimum government “interference,” should be among the options. Otherwise, GOM cod could share the same fate as other Northwest Atlantic cod stocks. This is a real and present danger.

Another means to reduce directed effort on GOM cod (and other GOM stocks) would be to reinstate a baseline leasing restriction. We recommend that quota leasing (i.e., ACE leasing) not occur more than 20% by size (more or less) of the vessel leasing quota. In this way, for example, GOM cod could not be leased from a 45-foot vessel to a 90-foot vessel, and vice versa. Leasing should occur between vessels of the same approximate size. We have abandoned the logic of DAS leasing restrictions in the interest of “freedom and flexibility.” The status of many GOM stocks should prompt NMFS to adopt this restriction as an interim action. After all, overfishing must be reduced significantly, and freedom to lease quota to anyone – especially to those wishing to shift to the GOM when cod are aggregated – must be limited.

Moreover, NMFS through interim action should clarify the rockhopper and roller gear restriction for use in the GOM/GB Inshore Restricted Roller Gear Area: “*The diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers must not exceed 12 inches.*” We have been advised by inshore fishermen that larger vessels have been using a modified footrope with “blocks” between the rollers enabling tows on hard bottom, especially in the Stellwagen Bank Sanctuary. Although we cannot confirm this accusation, it warrants attention since these modified nets can be fished in areas where cod would tend to congregate, i.e., hard bottom.

## **Conclusion**

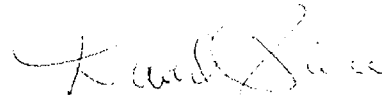
A greater understanding of the life history and spawning behavior of cod justifies a re-thinking of the latitude given sectors to manage their own affairs with minimal government control. Some will say sectors will promote conservation and voluntary adoption of measures, shared by all sectors, for the “greater good” and to prevent overfishing; therefore, the government, including the NEFMC, should yield to the wisdom of the fishermen themselves. This desire for devolution and deregulation is understandable, but full of risk.

Of course, many fishermen have a strong conservation ethic that when superimposed on their intimate knowledge of fish distribution and fishing gear, create a strong incentive for “letting them do it their way” by maximizing freedom and flexibility.

But for now, considering the pessimistic results of last weeks' assessment review meeting in Woods Hole, and for all reasons expressed above, we find persuasive the conclusions of a study commissioned by DMF in 2009: *"...in order to assess the prospects for sector management, it is important to separate the hard realities of effective conservation from dreams of stewardship. If sectors are to succeed in biological terms, it will be only because of a collective [federal and NEFMC] commitment to monitoring and enforcement, not because of faith in the power of privatization to promote stewardship"* (In "A New England Dilemma: Thinking Sectors Through" by Macinko and Whitmore).

We all need that commitment to monitoring and enforcement. However, to coin a biblical phrase, "the spirit is willing, but the flesh is weak," i.e., although we're all aware of the importance of effective monitoring and enforcement, we're not getting it done to the detriment of rebuilding and sound, reliable stock assessments.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "David E. Pierce".

David E. Pierce, Ph.D.  
Deputy Director

cc

Daniel Morris  
Mark Grant  
Paul Diodati  
Mary Griffin  
Rip Cunningham  
Paul Howard





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* | Paul J. Howard, *Executive Director*

March 1, 2012

Mr. Mark Grant  
National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, MA 01930

Dear ~~Mr. Grant:~~ *Mark,*

This letter is intended to serve as the New England Fishery Management Council's comments on the Proposed Rule for the 2012 sector operations plans. The full Council did not have the opportunity to discuss the Proposed Rule because they have not convened during the open period for public comment. This letter, therefore, will only comment as to the components of the Proposed Rule on which the Council has previously made recommendations.

During the groundfish discussion at the Council's meeting on February 1<sup>st</sup> 2012, the Council approved the following motion:

*"To ask that NMFS expedite approval of a sector exemption request that would facilitate targeting of redfish in the Gulf of Maine. Approving this request will help mitigate the impacts of low Gulf of Maine cod catch levels that are expected in FY 2012."*

This sector exemption request is listed in the Proposed Rule as #22, "6.5-Inch (16.5-cm) Minimum Mesh Size Requirement for Trawl Nets". As stated in the description of this exemption, it would allow sector vessels to use 6-inch mesh codends on trawl nets to target redfish. The Council supports allowing this practice in order to more fully utilize the available ACLs of healthy stocks and to enable the achievement of optimum yield.

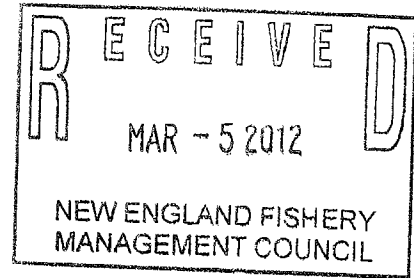
Thank you for your consideration of comment. As always, please call me if you have any questions.

Sincerely,

Paul J. Howard  
Executive Director







**VIA ELECTRONIC MAIL**

**From:** [BarryGibson6@aol.com](mailto:BarryGibson6@aol.com) [mailto:BarryGibson6@aol.com]  
**Sent:** Monday, March 05, 2012 11:00 AM  
**To:** Terry Stockwell  
**Cc:** Rip Cunningham; Paul Howard; Tom Nies; Maggie Raymond  
**Subject:** Groundfish ACLs/AMs

March 5, 2012

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

Dear Terry:

We write to request that the Groundfish Committee recommend the following change to the way the Gulf of Maine cod and Gulf of Maine haddock annual catch limits (ACLs) and accountability measures (AMs) are administered and evaluated in the context of total catches in the fishery.

The general principle is that if either the recreational portion or the commercial portion of the fishery exceeds its ACL for Gulf of Maine cod or Gulf of Maine haddock, but the overall ACL for the stock is not exceeded, then the sector (recreational or commercial) that exceeds its annual catch limit would not be subject to the accountability measures. When evaluating whether the total ACL has been exceeded or not, NMFS should account for the maximum amount of carry-over available to the commercial groundfish sectors and add that to the estimate of total catch. The purpose of the ACL and AM system is to prevent overfishing. Overfishing is likely to occur only if the total ACL is exceeded. It makes little sense to impose additional restrictions on one portion of the fishery, if the total ACL for a stock is not exceeded.

We request that the Groundfish Committee include, in the next regulatory action for the multispecies fishery management plan, an option that addresses the principle described above.

Sincerely,

Barry Gibson, New England Director  
 Recreational Fishing Alliance

Maggie Raymond  
 Associated Fisheries of Maine

*cc: Council, TN, AH (3/13)*





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

MAR 2 2012



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

Dear Rip:

Thank you for your February 7, 2012, letter requesting that the agency consider revisiting the recreational accountability measures established for Gulf of Maine haddock in January 2012. As you are aware, based on the catch estimates for Gulf of Maine haddock using Marine Recreational Information Permit (MRIP) data that became available shortly after implementation of the Gulf of Maine recreational haddock accountability measures (i.e., 19" minimum fish size and a 9-fish bag limit), we are no longer over the recreational annual catch limit for this stock. Given this, we are working to expedite an action as quickly as possible.

Your letter also asked us to expedite approval of a sector exemption request that would enable sectors to better target redfish in the Gulf of Maine. While initial study results from the REDNET project suggest that 4.5" mesh could be used to successfully target redfish with minimal unintended bycatch, the sector exemption request for 4.5" mesh was submitted December 1, 2011, well after the September 1 deadline for fishing year 2012 sector operations plans. Late submission of this request prevents us from including any analysis within the environmental assessment that is required to accompany the rulemaking for sector operations plans for the beginning of fishing year 2012. However, two sector exemption requests to utilize mesh smaller than the current regulated mesh size (i.e., 5.5" and 6" mesh) for fishing year 2012 were submitted prior to September 1 and are included in the current proposed rule for sector operations plans (77 FR 8780; pg. 8794). I assure you we will carefully review and consider comments received on the proposed rule for the fishing year 2012 sector operations plans when determining approval for each exemption request.

Sincerely,

*Aster Colosi*

*for*

Daniel S. Morris  
Acting Regional Administrator



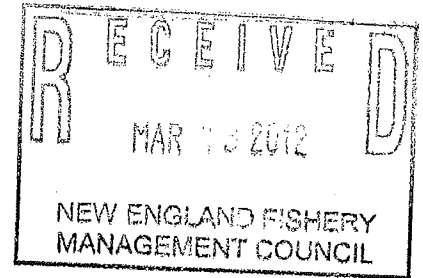
u: Council, TN, AH (3/13)





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

MAR - 9 2012



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

Dear Rip:

I am pleased to inform you that on March 8, 2012, NOAA's National Marine Fisheries Service (NMFS) approved Amendment 17 to the Northeast Multispecies Fishery Management Plan (FMP). As you know, Amendment 17 explicitly defines and facilitates the effective operation of state-operated permit banks in the Northeast Region. Through this action, the states will be able to effectively operate permit banks without first forming or joining a groundfish sector. Amendment 17 authorizes state-operated permits banks to be allocated annual catch entitlement (ACE) and to transfer that ACE to qualified groundfish sectors.

NMFS published a proposed rule to implement Amendment 17 on December 22, 2011, under RIN 0648-BB34, and we expect to have a final rule effective by May 1, 2012.

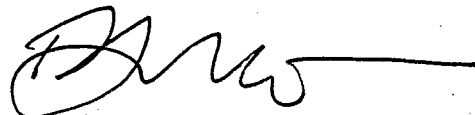
The regulations within the *proposed* rule at 50 CFR 648.87(e)(6) stated that "if additional funds from any source become available to a state-operated permit bank, the state-operated permit bank may not acquire a permit that will be used in a state operated permit bank, or allocate or transfer any ACE that may be associated with new permit, with such additional funds, until the state-operated permit bank provides the Council the opportunity to review the implications of the expanded state-operated permit bank to the goals and objectives of the NE Multispecies FMP." However, there is nothing in the current regulations that prohibits any interested party, including a state, from acquiring a permit. Further, the *proposed* rule, as written, is inconsistent with Amendment 17 language. It is not appropriate for NMFS to prohibit a state from acquiring a permit that may or may not be used in the state-operated permit bank. Therefore, the Council cannot prohibit a state from acquiring a permit with additional funding it receives or impose any conditions on such an acquisition. As a result, the *final* rule will be revised to clarify that no ACE associated with a permit acquired with new funds may be allocated or traded before the Council has an opportunity to review the implications of additional permits acquired by a state.

cc: m, ah



We appreciate the work of the Council to develop Amendment 17 in order to improve the effective operation of state-operated permit banks.

Sincerely,

A handwritten signature in black ink, appearing to read 'DSM', followed by a long horizontal line extending to the right.

Daniel S. Morris  
Acting Regional Administrator