

Correspondence

of household goods, Reporting and recordkeeping requirements.

VII. The Final Rule

For the reasons stated in the preamble, FMCSA amends 49 CFR part 375 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 49 U.S.C. 13102, 13301, 13501, 13704, 13707, 13902, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.73.

■ 2. Revise § 375.213, paragraph (e)(3), to read as follows:

§ 375.213 What information must I provide to a prospective individual shipper?

* * * * *

(e) * * *

(3) You must maintain the signed receipt required by paragraph (e)(2) of this section for one year from the date the individual shipper signs the receipt. You are not required to maintain the signed receipt when you do not actually transport household goods or perform related services for the individual shipper who signed the receipt.

Issued on: July 6, 2012.

Anne S. Ferro,
Administrator.

[FR Doc. 2012–17268 Filed 7–13–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034–2171–01]

RIN 0648–XC077

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Adjustment of Georges Bank Yellowtail Flounder Annual Catch Limits

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

ACTION: Temporary rule; inseason adjustment of annual catch limits.

SUMMARY: NMFS announces adjustments to the 2012 fishing year

(FY) Georges Bank (GB) yellowtail flounder annual catch limits (ACLs) for the Atlantic scallop and Northeast (NE) multispecies fisheries. This action is based on new projections of the expected catch of GB yellowtail flounder by the scallop fishery and is consistent with a request for the ACL adjustments from the New England Fishery Management Council (Council). The intent is to provide additional harvest opportunity to the NE multispecies fishery while ensuring sufficient amounts of GB yellowtail flounder are available for the scallop fishery.

DATES: Effective July 13, 2012, through April 30, 2013.

FOR FURTHER INFORMATION CONTACT: Brett Alger, Fisheries Management Specialist, (978) 675–2153, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

The GB yellowtail catch limit for U.S. fisheries, commonly called quotas, are set through an agreement process with Canada as part of the U.S./Canada Resource Sharing Understanding (Understanding). Scientists from both countries conduct a joint assessment of the transboundary stock and provide advice on catch level recommendations to a joint U.S. and Canadian committee called the Transboundary Management Guidance Committee (TMGC). The TMGC establishes an overall quota, called the Total Shared Total Allowable Catch (TAC), which is then subdivided to the two countries using an agreed-upon allocation formula. For FY 2012, the U.S. portion of this quota is 564 mt.

The Council makes recommendations to NMFS on further partitioning the U.S. GB yellowtail quota between the NE multispecies, scallop, and other fisheries. The allocation to the scallop fishery, known as the sub-ACL, is specified in regulations to be set at an amount equal to 90 percent of the projected need by that fishery, to maximize scallop catch. The groundfish sub-ACL is determined after deducting the sub-ACL allocated to the scallop fishery and the sub-ACLs allocated to the state-waters fisheries and non-groundfish fisheries. Framework Adjustment (FW) 44 to the NE Multispecies Fishery Management Plan (FMP), implemented May 1, 2010 (75 FR 18356), established the current sub-ACL allocation to the scallop fishery at 307.5 mt. FW 47 to the FMP, implemented May 2, 2012 (77 FR 26104), established the 2012 FY GB yellowtail flounder sub-ACL for the groundfish fishery at 217.7 mt.

Scallop fishing vessels, which catch GB yellowtail flounder while fishing for scallops, are required to retain all legal-sized yellowtail flounder they catch. All yellowtail flounder caught by scallop vessels, including those discarded at sea, are counted against the scallop fishery's sub-ACL. The majority of groundfish vessels catch GB yellowtail flounder in trawl nets, either as incidental catch while targeting other groundfish stocks, or while targeting GB yellowtail flounder.

Almost all of the GB yellowtail flounder caught by NE multispecies fishing vessels are caught by vessels participating in the sector program. Sectors receive an Annual Catch Entitlement (ACE) for each regulated groundfish species allocated, including GB yellowtail flounder in the GB broad stock area. The amount of ACE varies by sector. When a sector has caught its entire available ACE for a given stock, vessels in that sector can no longer fish within the applicable stock area for that fish stock. The amount of the sub-ACL allocated to groundfish vessels, therefore, can be constraining on sector vessels that are fishing for other groundfish species, or that are targeting GB yellowtail flounder.

During the April 25, 2012, Council meeting in Mystic, CT, members of the NE multispecies fishing industry expressed concern to the Council that the 2012 NE multispecies GB yellowtail flounder sub-ACL of 217.7 mt is too low. Given this concern and indications that the scallop fishery sub-ACL for GB yellowtail flounder may be higher than needed by the scallop fishery in light of more current catch information, the Council requested that NMFS create a GB yellowtail flounder working group to explore the possibilities of increasing the amount of GB yellowtail sub-ACL allocated to the groundfish fishery. The request suggested that the working group include members from the TMGC, Council Groundfish and Scallop Committees, and NMFS and Council staff. The Council requested that the working group review the possibility of revising the sub-ACLs for the scallop and groundfish fisheries based on new information suggesting that the projections of GB yellowtail flounder catch in the scallop fishery were much higher than needed, and to consider modification of the U.S. and Canadian shares of GB yellowtail flounder established through the Understanding.

In response to this request, NMFS formed a working group, which also included fishing industry and nongovernmental organization representatives. The working group held teleconferences on May 11, 2012, and

May 18, 2012, a 1-day workshop in New Bedford, MA, on May 23, 2012, and teleconferences on May 31, 2012, and June 15, 2012. During these five meetings, the working group discussed a range of short-term and long-term measures for GB yellowtail flounder management, in addition to the Council requests made at its April 2012 meeting. The working group recognized that the most effective short-term tool to address the Council's request was to utilize existing regulatory authority to revise sub-ACLs allocated to the scallop and groundfish fisheries for GB yellowtail flounder. To determine the feasibility and magnitude of potential revisions of the scallop and groundfish sub-ACLs, the working group asked for updated projections NMFS's Northeast Fisheries Science Center (NEFSC) of expected catch of GB yellowtail flounder in FY 2012 by the scallop fishery. As a complementary action to such revisions, the working group also discussed the possibility of eliminating or adjusting accountability measures (AMs) for the scallop fishery, should the sub-ACL for the scallop fishery be reduced substantially.

In addition to the working group meetings, a joint Groundfish Committee and Scallop Committee (Joint Committee) was convened on June 18, 2012 in Portland, ME, to discuss the Council's original requests and review the discussions from the working group. On that same date, the NEFSC provided revised projections of possible GB yellowtail flounder catch by the scallop fishery ranging from 47.6 mt to 174.3 mt, with a median projection of 105.2 mt. Using these new projections, the

Joint Committee recommended to the Council that they request that NMFS use its current regulatory authority to reduce the scallop GB yellowtail flounder sub-ACL to 90 percent of 174.3 mt (156.9 mt), and increase the groundfish GB yellowtail flounder sub-ACL by the amount of this reduction (150.6 mt) to 368.3 mt. In addition, the Joint Committee requested emergency action to temporarily relieve the scallop fishery from any AM triggered by catch less than 307.5 mt that would otherwise be required, based on the reduced sub-ACL. In making this recommendation, the Joint Committee emphasized that, if the overall ACL for GB yellowtail flounder were exceeded, there would still be an AM in place, calling for a pound-for-pound reduction in the amount of the overage in the FY 2013 U.S./Canada TAC. At its June 21, 2012, meeting, the Council adopted the Joint Committee recommendations, requesting that NMFS revise the scallop and groundfish sub-ACLs for GB yellowtail flounder and requested an emergency action to temporarily relieve the scallop fishery from any AM that would have been triggered by catch of GB yellowtail flounder less than 307.5 mt.

Adjustment of Georges Bank Yellowtail Flounder Sub-Annual Catch Limits

The regulatory authority for revising the scallop and groundfish sub-ACLs for GB yellowtail is in 50 CFR part 648, subpart F. Because of uncertainty in the initial estimates of yellowtail flounder catch in the scallop fishery, FW 47 to the FMP implemented a mechanism (at § 648.90(a)(4)(iii)(C)) requiring NMFS to

re-estimate the expected GB yellowtail flounder catch by the scallop fishery by January 15 of each fishing year. If the re-estimate of projected GB yellowtail flounder indicates that the scallop fishery will catch less than 90 percent of its sub-ACL, NMFS may reduce the scallop fishery sub-ACL to the amount expected to be caught, and increase the NE multispecies fishery sub-ACL for GB yellowtail flounder up to the difference between the original estimate and the revised estimate.

Based on the new projections of GB yellowtail flounder catch by the scallop fishery, and this authority, effective July 13, 2012, through April 30, 2013 (unless further revised through an additional inseason action), NMFS is reducing the scallop fishery sub-ACL of GB yellowtail flounder by 150.6 mt (307.5 mt—156.9 mt) and increasing the NE multispecies sub-ACL of GB yellowtail flounder by 150.6 mt to 368.3 mt (See Table 1). Revising the sub-ACL for the scallop fishery at the high end of the projected GB yellowtail flounder catch is intended to avoid an underestimation of such catch at a relatively early point in the scallop FY, while allowing a meaningful increase in the groundfish sub-ACL for this stock as soon as possible. This revised allocation of 368.3 mt GB yellowtail flounder to the NE multispecies fishery is allocated between the sector sub-ACL and the common pool sub-ACL in the same proportion as the original sub-ACL (See Tables 2 and 3). NMFS will continue to monitor both fisheries and, if necessary, make additional adjustments prior to January 15, 2013.

TABLE 1—GEORGES BANK YELLOWTAIL FLOUNDER SUB-ACLs
[In metric tons]

	Groundfish	Scallop	Other; Not fishery specific	Total
Current Sub-ACL	217.7	307.5	22.6	547.8
Adjustment Amount	+150.6	- 150.6	None	N/A
Revised Sub-ACL	368.3	156.9	22.6	547.8

TABLE 2—SECTOR AND COMMON POOL SUB-ACLs
[In metric tons]

	Sector	Common pool	Total
Current Sub-ACL	215.2	2.5	217.7
Adjustment Amount	+148.9	+1.7	N/A
Revised Sub-ACL	364.1	4.2	368.3

TABLE 3—ALLOCATIONS FOR SECTORS AND THE COMMON POOL
[In metric tons]

Sector name	Original	Revised
Fixed Gear Sector	0.0	0.0
Maine Permit Bank	0.0	0.1
New Hampshire Permit Bank	0.0	0.0
Northeast Coast Communities Sector	1.8	3.1
Northeast Fishery Sector II	4.2	7.0
Northeast Fishery Sector III	0.0	0.0
Northeast Fishery Sector IV	4.7	8.0
Northeast Fishery Sector V	13.5	22.8
Northeast Fishery Sector VI	5.9	9.9
Northeast Fishery Sector VII	20.3	34.4
Northeast Fishery Sector VIII	23.8	40.3
Northeast Fishery Sector IX	60.8	102.8
Northeast Fishery Sector X	0.0	0.1
Northeast Fishery Sector XI	0.0	0.0
Northeast Fishery Sector XII	0.0	0.0
Northeast Fishery Sector XIII	36.2	61.3
Port Clyde Community Groundfish Sector	0.0	0.0
Sustainable Harvest Sector 1	27.2	46.0
Sustainable Harvest Sector 3	1.0	1.6
Tri-State Sector	15.8	26.7
All Sectors Combined	215.2	364.1
Common Pool	2.5	4.2

Note: All ACE values for sectors outlined in Table 3 assume that each sector permit is valid for FY 2012.

Council Request To Exempt Scallop Fishery From Accountability Measures

In addition to the request to adjust the GB yellowtail flounder sub-ACLs for the scallop and NE multispecies fisheries, the Council requested that NMFS use emergency authority granted to the Secretary of Commerce by section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act to partially exempt the scallop fishery from AMs based on the reduced scallop fishery sub-ACL. This request would exempt the scallop fishery from required AMs for any catch above the revised sub-ACL, but below the initially allocated sub-ACL of 307.5 mt. Under the Council's request, the scallop fishery would be subject to AMs for any catch above 307.5 mt, while the existing pound-for-pound payback at the overall fishery-level ACL, as specified in the Understanding, would remain in place. NMFS is announcing, through this notice, its intent to propose a separate rulemaking to exempt the scallop fishery from AMs for GB yellowtail flounder for catch below 307.5 mt, consistent with the Council's request. A separate rulemaking for the emergency measure is necessary because of the need to revise, as soon as possible, the sub-ACLs to increase the GB yellowtail flounder available to the groundfish fishery. Because the revisions being implemented through this action can be taken as an inseason adjustment, and are contemplated and required under

current regulations, it can be done more quickly than the emergency action request. As soon as possible, NMFS will publish a proposed rule to revise the scallop fishery AM, as requested by the Council; the proposed rule will include an opportunity for public comment.

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Deputy Administrator for Regulatory Programs, performing the functions of the Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive prior notice and the opportunity for public comment for this in season sub-ACL adjustment because notice and comment would be impracticable and contrary to the public interest. The regulations at § 648.90(a)(4)(iii)(C) grant the NMFS Northeast Regional Administrator authority to reduce the scallop fishery sub-ACL to the amount projected to be caught, and increase the groundfish fishery sub-ACL up to the amount reduced from the scallop fishery in order to maximize the GB yellowtail flounder yield. The updated projections of GB yellowtail flounder catch in the scallop fishery only recently became available on June 18, 2012. Given this fact, the time necessary to provide for prior notice and comment would prevent NMFS from implementing the necessary sub-ACL adjustments in a timely manner. A resulting delay in the

sub-ACL adjustments could prevent in the short-term NE multispecies vessels from harvesting GB yellowtail flounder catch at higher rates and potentially prevent the full harvest of the sub-ACLs of other groundfish stocks that are caught coincidentally with GB yellowtail flounder. Given the significant decreases in catch limits for many groundfish stocks in FY 2012, even short-term reductions in such limits when no longer needed could have devastating and unnecessary negative economic consequences on fishermen. Giving effect to this rule as soon as possible will prevent these unnecessary impacts.

The Deputy Administrator for Regulatory Programs, performing the functions of the Assistant Administrator for Fisheries, NOAA, also finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action for these same reasons. Further, there is no need to allow the industry additional time to adjust to this rule because it does not require immediate action on the part of individual scallop or groundfish fishermen.

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

Dated: July 11, 2012.

Lindsay Fullenkamp,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012-17245 Filed 7-13-12; 8:45 am]

BILLING CODE 3510-22-P



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

JUL 18 2012



Capt. Paul J. Howard
Executive Director
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

Dear Paul:

Thank you for your letter dated June 22, 2012, regarding the Council's motion calling on NMFS to work with U.S Transboundary Management Guidance Committee (TMGC) members to develop pros and cons as to whether the U.S./Canada Resource Sharing Understanding (Understanding) should be readdressed.

We have reviewed the Council's motion and intend to work with TMGC members to address the Council's request. I have arranged with your staff and the TMGC chairman, Rip Cunningham, to confer with the TMGC members following the Executive Committee meeting slated for Monday, July 30, 2012, in Wakefield, MA. As a starting point for our discussions, my staff have identified the following issues and concerns for consideration. I look forward to adding TMGC member perspectives to this staff consideration of the Understanding.

- 1. **U.S. industry played an important role in the development of the Understanding.** The Understanding was negotiated over approximately a two year period by TMGC representatives that included several members of the U.S. and Canadian fishing industry (including Council members and staff), the Department of Fisheries and Oceans Canada, and NMFS. It has provided for stable and predictable management outcomes and successful coordination with Canada for eight years.

The Understanding is the centerpiece of our work with Canada. In addition to fisheries management, we share information on a number of other issues including endangered and protected species.

- 2. **The stock distribution basis for the allocation scheme serves the U.S. better than the historical basis for cod and haddock.** The TMGC agreed that the allocation of shared stocks should be based on historic utilization of the stock and it should adapt to shifts in resource distribution. Similar approaches for the allocation of shared stocks are used in other countries.

Although the U.S. has a greater percentage of the historical catches for yellowtail flounder (98% U.S., 2% Canada), the U.S. has lower historical catches for cod (40% U.S., 60% Canada) and haddock (45% U.S., 55% Canada).



cc: Council, TN, FH, CBK (7/20)

If the U.S. were to advocate renegotiating the Understanding with a goal of weighting the allocation of shared stocks more heavily toward historic utilization of the fishery, it is possible that the yellowtail quota could increase while allocations of cod and haddock would go down due to the lower historical catch rates of those stocks.

3. **Without the Understanding, Canadian fishing would be less constrained and the burden of reducing catch to avoid overfishing may fall more heavily on the U.S. industry.** If discussions with Canada led to a termination of the Understanding, it is likely that the U.S. would receive lower allocations of shared stocks because the Understanding holds Canada to more rigorous rebuilding requirements than the Canadian Fisheries Act. Without the Understanding, Canada would not be required to adhere to conservation measures as strict as those currently in place and they could increase their catch rates. Because the Magnuson-Stevens Act holds the U.S. to more stringent rebuilding programs, we must deduct Canadian catches from the allowable biological catches (ABC) set for shared stocks prior to determining our own allocations. In other words, if Canada increases its catch rate of shared stocks, that catch would be deducted from the ABCs of our shared stocks before being allocated to U.S. fishermen.
4. **The International Fisheries Clarification Act provides flexibility for the rebuilding timelines of stocks managed under the Understanding.** If discussions led to a termination of the Understanding, the justification for the longer rebuilding timeframe provided by the International Fisheries Clarification Act may be compromised, leading to the possibility of establishing a shorter rebuilding time period for Georges Bank yellowtail flounder and a lower quota for U.S. fishermen.

We look forward to working with members of the TMGC in the coming weeks to further address the Council's motion. Should you have further questions regarding this letter, please contact Jennifer Anderson at 978-281-9226.

Sincerely,



Daniel S. Morris
Acting Regional Administrator

Enclosure: U.S./Canada Resource Sharing Understanding

Cc: G. Darcy
S. Murphy
S. Heil
M. Ruccio
L. O'Brien



3

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*

June 22, 2012

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

Dear Dan:

At the June Council meeting the Council took several actions in response to the low quota for Georges Bank (GB) yellowtail flounder in FY 2012. Three of the Council motions request action from the National Marine Fisheries Service.

The first motion requests changes in the distribution of GB yellowtail flounder to the groundfish and scallop fisheries. The motion is as follows:

to recommend that the Council request NMFS utilize existing authority provided in Groundfish Framework Adjustment 47 to immediately transfer all but 156.9mt (90% of the 174.3mt) of Georges Bank Yellowtail Flounder from the scallop sub-ACL to the groundfish sub-ACL, based on the revised high projection of 2012 Georges Bank Yellowtail Flounder bycatch by the scallop fleet. Any additional unused Georges Bank Yellowtail Flounder should be transferred to the groundfish fleet by January 15th, as outlined in the existing regulations and based on actual scallop fleet Georges Bank Yellowtail Flounder catch data from FY2012. To request an Emergency Action to temporarily relieve the scallop fishery from any AM triggered by catch of yellowtail flounder less than 307mt that under the current scallop regulations would be required if the sub-ACL is exceeded in 2012. Instead the pound for pound repayment provisions of the US/CA agreement could be utilized should the TAC be exceeded for FY 2012.

The main motion carried on a roll call vote (11/4/0/1 recusal).

This motion would decrease the scallop fishery sub-ACL for this stock, and increase the groundfish fishery sub-ACL for this stock. The rationale for this change is that the current scallop fishery sub-ACL (307 mt) exceeds the current estimate of what the fisher is expected to catch (174.3 mt). This new estimate is based on data from previous fishing years; data from this year are not yet available. This revision appears authorized by provisions adopted by Framework Adjustment 47 to the Northeast Multispecies Fishery Management Plan. In addition, this motion requests an Emergency Action that would modify the way the scallop fishery Accountability Measures would be implemented for GB yellowtail flounder. The AMs would only be implemented if the scallop fishery catch exceeds its original allocation of 307 mt, as opposed to

the revised sub-ACL of 156.9 mt. While not stated in the motion, the provisions of FW 47 would be expected to apply – the AM would only be implemented if the scallop fishery catch exceeds 307 mt and the overall ACL is exceeded, or if the scallop fishery exceeds the 307 mt amount by 50 percent or more.

The second motion is intended to provide additional fishing opportunities for the groundfish fishery to target healthy stocks.

that the Council ask NMFS that the SAPS in Closed Area II for haddock be open May 1 to trawl vessels using restrictive gear.

The motion carried on a show of hands (14/0/1).

There are two SAPs in Closed Area II (CAII). The Eastern U.S./Canada Haddock SAP allows access at the northern end of CAII beginning August 1. This starting date was adopted to reduce cod bycatch; the area originally opened May 1. With the advent of sectors, however, the concern over cod bycatch is not relevant, because all catches are charged to each sector's ACE. The second SAP was adopted in Amendment 16 and modified the CAII GB Yellowtail flounder SAP to facilitate targeting haddock. The starting date defined in Amendment 16 was August 1. Allowing sectors to extend the opening to an earlier date may provide additional access to GB haddock. The intent of this motion is that NMFC could authorize extended dates through approval of sector exemption requests.

The third motion passed by the Council asks NMFS to work with the U.S. Transboundary Management Guidance Committee (TMGC) members to discuss whether the U.S./Canada resource Sharing Understanding should be readdressed. The Council expects that this review will examine all aspects of the Understanding and may develop recommendations for possible changes. The motion is as follows:

that the Council task the U.S. TMGC members to work with NERO to develop pros and cons of readdressing the US/CA Resource Sharing Understanding.

The motion **carried** on a show of hands (14/0/1).

Thank you for your attention to these issues. Please contact me if you have any questions.

Sincerely,



Paul J. Howard
Executive Director



Paul J. Diodati
Director

Commonwealth of Massachusetts

Division of Marine Fisheries

251 Causeway Street, Suite 400

Boston, Massachusetts 02148

(617)626-1520

fax (617)626-1509



Deval Patrick
Governor

Richard K. Sullivan, Jr.
Secretary

Mary B. Griffin
Commissioner



July 12, 2012

C.M. "Rip" Cunningham, Jr., Chairman
New England Fishery Management Council
50 Water St.
Newburyport, MA 01950

Dear Rip:

The Council has "formally requested" states to cooperate "on coordinating management of fisheries that are managed by the Council that also operate in state waters." On the Council's behalf you have highlighted concerns about how catches of groundfish stocks in state-water fisheries impact the federal fishery and that it's "especially important that the Council, states, and ASMFC work collaboratively in order to foster the success of participants in all our historic fisheries." You reiterate sector vessels' concerns about low catch limits and the "economic strain on participants in the federal groundfish fishery." Being a Council member I truly appreciate your request, and, in turn, I ask the Council to reciprocate by cooperating with states, e.g., to understand and give greater weight to states' objectives for management of fisheries (groundfish and non-groundfish) in waters under our jurisdiction.

I agree that cooperation and collaboration are very important and that states and the Council must work together with a clearly defined and improved relationship in anticipation of May 1, 2013 with all that date portends. This will be important as we prepare for a groundfish fishery failure that will occur at the beginning of the next fishing year, if not sooner, especially for many permit holders who already have succumbed to low ACLs and low allocations forcing them to leave the fishery by leasing away all or a portion of their allocations and/or moving into other fisheries, or selling their permits. We all face a remarkable and testing management/regulatory challenge that many fear will not be met.

I begin by reminding the Council – of which DMF certainly is a part (not apart) – that DMF never objected to the recent reduction in the State Waters ACL sub-component for Gulf of Maine (GOM) cod. Without notice or consultation NMFS shifted tonnage from the State Waters category to increase the commercial fishery ACL for federal permit holders to 6,700 mt for this fishing year. The State Waters sub-component thereby decreased from an expected 598 mt for FY 2012 to 253 mt (58% decrease).

Without this shift of quota, overfishing by federal permit holders would have continued, and NMFS would not have been able to justify the 6,700 mt that included sectors' "critical" 10% 2011 ACE carryovers.

I expect many other groundfish stocks' State Waters ACL sub-components will be reduced without regard for the impacts of those reductions on state waters' fisheries management and on non-federal permit holders fishing in waters under the jurisdiction of the Commonwealth already subject to many DMF regulations supportive of Council past decisions. Those impacts should be assessed beforehand; otherwise, requesting DMF to further restrict non-federal permit holders to stay within the multi-state sub-ACLs that for the most part are artificial and guesswork, avoids the question of how catches of groundfish stocks in federal-water fisheries impact states' fisheries. And, just as important, how do federal fisheries for groundfish – also including fishing by federal permit holders in state waters – affect stocks' abundance, state management policies/approaches, and availability of those stocks to non-federal permit holders?

As an example of the degree to which DMF is concerned about unrestrained fishing (e.g., no trip or possession limits) by federal permit holders in state waters (and nearby federal waters), I call your attention to DMF's current rolling closures. The Council with NMFS' concurrence removed many rolling closures for groundfish sector fishermen (e.g., May and November closures in areas 124 and 125 and the June closure in areas 132 and 133). The Commonwealth retained those closures in waters under our jurisdiction affecting sector and common pool fishermen as well as non-federal permit holders who unsuccessfully argued that DMF should give them sector-like access. Assuming ACEs would hold fishermen in check and keep mortality to yearly targets, the Council opened areas, but with no regard to effects of poorly monitored fishing in those areas on seasonal aggregations of groundfish, especially pre-spawning and spawning cod.

I continue to appreciate sector fishermen's wish for flexibility and freedom, but that wish should not be a carte blanche opportunity to do as sectors please – subject to ACE restrictions, albeit not so restrictive for many fishermen when quota leasing occurs. DMF's concern about NMFS and Council laissez-faire sector management was expressed in our June 4 letter to then Acting Administrator Daniel Morris. We noted NMFS good use of DMF-published research as a basis for denying sector-requested exemptions to some seasonal rolling closure areas to address disruption of spawning aggregations "causing impacts to the stock beyond the mortality of the individual fish caught." However, NMFS decided not to take a more comprehensive and timely consideration of GOM cod rebuilding through interim action despite the foreboding May 1, 2013 cod quota likely to be so low as to force a by-catch only "fishery."

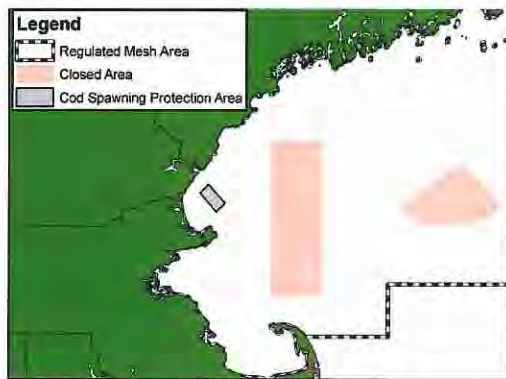
Moreover, the Council and NMFS continue to give little attention to the observed and likely shift of offshore effort to inshore areas and, more insidiously, to possible false reporting of offshore catch as inshore (and vice versa). These real and/or potential practices place a heavy and unfair burden on states seeking to complement and cooperate, but having little to no NMFS and Council meaningful response to pressures brought to bear on inshore groundfish stocks or on other inshore and state waters' fisheries for non-groundfish stocks managed through ASMFC or by individual states alone.

DMF identified most of these concerns, and others, in our February 29 letter to Sam Rausch when he served as the Acting Assistant Administrator for Fisheries and to Susan Murphy in our April 12 letter requesting NMFS to "increase NMFS and Council

understanding of sectors' structure, operation, and evolution relative to: (1) the distributive effects of sector ACE leasing and fishing behavior; (2) shifts of effort to non-groundfish fisheries; (3) shifts of offshore vessel effort to inshore fishing grounds such as Stellwagen Bank; and (4) improving the quality and accuracy of stock assessments.” Consider that we received a NMFS response basically suggesting DMF use NMFS data to improve that understanding on our own.

I would have welcomed a formal Council request for our cooperation accompanied by a Council commitment to provide in a very timely way the above understanding. Otherwise, as it stands, the Council with all its state partners will continue to see through a glass darkly.

It is difficult to continue to cooperate with the same level of commitment DMF has demonstrated for many years when we're still uncertain as to what the Council is trying to accomplish and by when. For example, putting Amendment 18 on the back-burner clearly indicates that issues critical to the Commonwealth (e.g., excessive shares and consolidation) will go unaddressed by the Council and NMFS for many years to come.



We will continue to encourage the Council to light the burner and turn up the flame.

The other critical issue – not to be addressed by the Council but to be left up to sector fishermen – is protection of cod pre-spawning/spawning aggregations. A much more aggressive and responsive Council stance on this issue would send a signal to DMF that our self-imposed restrictions on non-federal permit holders and federally permitted

fishermen fishing in our waters (especially for cod) will not be undercut and subverted by Council inaction in nearby federal waters. Currently, the only step taken by the Council (initiated by DMF) was the April-June Whaleback closure.

I anticipate that the report of the June 12-14 GMRI Workshop on Cod Stock Structure in the Gulf of Maine will spur the Council to quickly address its findings and recommendations such as: (1) there are three genetic stocks delineated as an inshore southern/winter-spawning complex, an inshore northern/spring-spawning complex, and an offshore/eastern Georges Bank (some connectivity with Scotian Shelf); (2) cod in the eastern Gulf of Maine appear to be distinct from other groups; and (3) depletion of historical spawning groups is most apparent in the eastern Gulf of Maine, the Mid-Atlantic, the “Plymouth Grounds,” and recently Nantucket Shoals. Failing to use this information as a justification for more protection of these genetically distinct stocks with multi-year fidelity to local spawning sites will seriously set back the Council's efforts to rebuild GOM cod for the betterment of cod commercial and recreational fisheries in state and federal waters.

I end by reminding you that DMF “shares” the State Waters ACL subcomponents with other states. At this time, only winter flounder is jointly managed through an ASMFC plan; therefore, states have been able to work together to support the Council and to provide for sustainable fisheries in our waters responsive to federal ACLs, and prior to ACLs, target TACs. For example, DMF recently requested the Winter Flounder

Management Board to address the increased State Waters ACL subcomponent for GOM winter flounder by reconsidering the ASMFC commercial and recreational requirements established in 2009.

This DMF request indicates we respect the State Waters ACL subcomponents and react accordingly. However, unlike the Council with its large supporting indirect and direct staff [including DMF staff devoting incalculable hours to assist the Council] enabling it to deal with numerous complicated and intertwined management issues, DMF and every other state, is hard-pressed to respond in a timely and scrupulous way especially to marked and unexpected decreases in ACLs. Nevertheless, we'll continue to give it our best effort, and we ask the Council to do the same when addressing our concerns about Council progress and decisions.

DMF values our role and participation on the Council. Be assured our cooperation will continue, perhaps begrudgingly at times, but that all depends on how the Council reciprocates.

Sincerely,



David E. Pierce, Ph.D.

cc

Paul Diodati
Daniel McKiernan
Melanie Griffin
Nichola Meserve
Steve Correia
Mass. Marine Fisheries Advisory Commission
Robert Beal
Paul Howard
Terry Stockwell
Douglas Grout
Mark Gibson
Mark Alexander
Daniel Morris

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

NEW YORK, NY
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

FACSIMILE

(202) 342-8451

www.kelleydrye.com

DIRECT LINE: (202) 342-8474

EMAIL: aminklewicz@kelleydrye.com

July 13, 2012

**VIA ELECTRONIC MAIL &
ORIGINAL BY U.S. MAIL**

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



Re: GB YF Assessment

Dear Bill:

We recently attended the Transboundary Resource Assessment Committee (TRAC) meeting that discussed the Georges Bank yellowtail flounder (GB YTF) assessment on behalf of the Fisheries Survival Fund (FSF). First, we want to emphasize that we have profound respect for all of the hard work that NMFS scientists put into stock assessments and acknowledge the difficulty of the work. Despite all of the hard work of the GB yellowtail stock assessment team, those of us at the meeting were presented with a seriously flawed assessment. We are writing to implore NMFS to state that the assessment is not viable for use as a basis for catch advice, to propose that NMFS and the NEFMC use alternative catch strategies to set the allocation for GB YTF and to request that NMFS embark upon an expanded biological research program for GB YTF. Let us be clear, FSF is not advocating for a new benchmark assessment or against a justified reduction in catch. FSF is advocating for an open and objective process in setting catch, and we are convinced that the process before us now is arbitrary.

During the discussion of the GB YTF assessment, the TRAC discussed whether the assessment should be used for providing catch advice. It was clear that, with no clear set of guidelines to make the judgment and no clear alternative path for giving catch advice, members of the TRAC were reluctant to reject the assessment, despite overwhelming evidence of its unsuitability.

cc: Council, TN, FH, DB, CBK (7/16), PMF

Bill Karp
July 13, 2012
Page Two

As you are aware, the GB YTF assessment has been problematic for some time. The last benchmark assessment for GB YTF occurred in 2005. The Base Case model, or single series model, was developed during the 2005 assessment and quickly began to show a retrospective pattern. In an attempt to account for the retrospective pattern, in 2009, the assessment team presented the split series model, where the trawl series was given a different catchability rate starting in 1995. By splitting the time series, the assessment team was able to mask the retrospective pattern as the change in catchability successfully accounted for the unknown aliases that were causing the retrospective pattern. This split series model fix proved to be ineffective as a strong retrospective pattern quickly emerged again, to the point that the split series was not used to provide catch advice in 2011.

Now, in 2012, the retrospective patterns in both the single series and split series model have both increased significantly and the TRAC promptly agreed that neither model is useful for catch advice. (Single series rho values ranged from .72 to 2.48 and split series rho values ranged from .5 to 1.62). To the assessment team's credit, they explored ways to correct the model. The exploration led to the team conducting three separate model runs that mechanistically changed the catch rate, the natural mortality rate and both the catch rate and the natural mortality rate, to ascertain if they could eliminate the retrospective pattern. What they found is that they had to change the catch rate by as much as five times and the natural mortality rate by as much as four times to remove the retrospective pattern.

These three adjustments were each chosen to minimize retrospective patterns. It was, however, agreed that their magnitudes were all too great to be regarded as plausible explanations for the patterns in the data. Thus, there remain as yet no mechanisms hypothesized that lead to a (VPA) model with results consistent with these patterns. In these circumstances, where there is the absence of plausible VPA models that fit the data satisfactorily, the available models should not be used as the basis for catch advice; the catch advice should instead be formulated using other approaches such as ones based on trends in indices.

NMFS scientists argued instead that the adjustments made constitute adequate surrogates for the currently unknown underlying mechanisms leading to these patterns, and therefore constitute a sufficient basis to provide catch advice. This view is extremely problematic, as it is contrary to the conclusions of the 2008 Retrospective Pattern Working Group that only recommended this approach in the case of a moderate pattern. No one is arguing that the present retrospective pattern is moderate. Therefore, the agency is asking the industry to accept a 50% reduction in quota, on top of a 50% reduction in quota from the previous year, on the basis of a model run that scientists need to adjust with the use of implausible catch and M rates to fit the model to the data, and with techniques that are contrary to NMFS' own stated position.

Also, the diagnostic tests of the split series VPA continue to decline, as denoted in figure 24 of the TRAC working paper. FSF understands that we do not know what is causing the

Bill Karp
July 13, 2012
Page Three

retrospective pattern and that the VPA is not equipped to handle other, unknown parameters that are causing the retrospective pattern. However, FSF cannot agree with the use of implausible assumptions to mask the unknown aliases that are causing the problem as a basis for catch advice. As a general rule, when an assessment displays a retrospective pattern, it is considered inaccurate and should not be used for fisheries management purposes. Chris Legault, Chair of the NOAA Retrospective Working Group, in their January 2008 Report wrote: "A strong retrospective pattern is grounds to reject an assessment model as an indication of stock status or the basis for management advice." Does NMFS intend to follow its own advice?

If the model is not capable of accounting for the unknown aliases, the answer is not to put one's head down and go forth into that statistical night; rather, it is to accept the limitations of the model and acknowledge the obvious: we are currently in a place that is beyond the capability of the current model, making the model no longer useful for catch advice. As stated before, this letter is not intended to plead for more fish, the intent is to plead for a proper process that is defensible and not arbitrary. If there are to be cuts in the fishery, so be it, but it must be done in an open and justified manner. Is this assessment actually capable of clearing any objective diagnostic analysis of its ability to provide accurate catch advice?

In this situation, where we no longer have an assessment that can provide accurate catch advice, the use of alternative catch setting strategies is required. Let us be clear, FSF is not asking for, nor would FSF support, a new benchmark assessment of GB YTF until there is new data or understanding of the stock to make it a worthwhile enterprise. For GB YTF, there are four separate surveys and plentiful catch data that can allow for an informed decision on catch advice. While providing catch advice based upon a projection from the assessment is always the preferred route, in the instance of an unreliable assessment, using survey and catch indices is the proper scientific course of action as an interim measure until a reliable assessment is made available.

A reliable assessment is the real key to this issue, and a change of course by NMFS is needed to get us there. It appears that all too often NMFS takes the approach of trying to solve an assessment problem by reworking the existing data and using numerous statistical tools. NMFS has exhausted the statistical tool box in the case of GB YTF. We will not improve our understanding of GB YTF until we ask and answer some fundamental questions about GB YTF biology. For instance, the data show a disturbing trend of the disappearance of age 5 and 6 year fish. Until we can reasonably explain what is happening to those fish, there is little hope of having an accurate assessment model. NMFS needs to redirect its limited resources away from the computer models and towards field research. FSF is ready and willing to partner with the agency and use RSA scallop funds to improve our understanding of GB YTF. Our hope is that we can collectively design and execute a research program for YTF.

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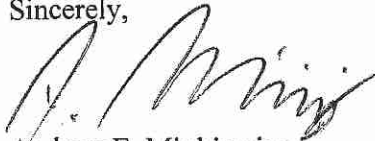
Bill Karp
July 13, 2012
Page Four

In conclusion, we are not looking for the agency to just "give us more fish," nor are we asking for a new and rushed benchmark assessment. What we are asking for, and believe the fishing industry and nation deserve, is a defensible process for setting catch quotas and a partner in moving forward to improve our understanding of this critical stock. To wit we ask that:

- NMFS acknowledge that the current GB YTF assessment is not suitable for providing catch advice;
- NMFS provide the public with an objective set of criteria to judge the viability of an assessment;
- As an interim measure, NMFS and the Council provide catch advice using alternative catch advice strategies that rely on survey and catch indices; and
- NMFS work with FSF and other interested parties in developing and executing a research program for GB YTF with the goal of creating a credible stock assessment.

FSF does not wish to enter into a contentious fight with NMFS over the status of GB YTF, but we cannot and will not sit back passively and accept catch advice that is based upon an indefensible and ultimately arbitrary assessment. FSF is offering a constructive path forward and we are hopeful that NMFS will join us in our mutual endeavor to better manage our nation's fisheries.

Sincerely,



Andrew E. Minkiewicz
David E. Frulla

cc: Samuel Rauch
Daniel Morse
Rip Cunningham
Senator Begich
Senator Snowe
Congressman Fleming
Congressman Sablan

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

NEW YORK, NY
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES
MUMBAI, INDIA

FACSIMILE
(202) 342-8451
www.kelleydrye.com

DIRECT LINE: (202) 342-8848

EMAIL: dfrulla@kelleydrye.com

July 12, 2012

**VIA ELECTRONIC MAIL &
ORIGINAL BY U.S. MAIL**

Mr. Sam Rauch
Deputy Assistant Administrator for Fisheries
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20190



**Re: Yellowtail Flounder Transfers, Windowpane
Flounder, and Accountability Measures**

Dear Mr. Rauch:

On behalf of the Fisheries Survival Fund ("FSF"), we appreciate your efforts regarding Georges Bank yellowtail flounder ("GB YT") annual catch limit ("ACL") issues. We write, however, to express our ongoing concerns regarding sub-ACLs and their accompanying accountability measures ("AM"), more generally. These issues are time-sensitive. It appears the GB YT ACL is slated for even more dramatic reductions next year, and the New England Council is considering a windowpane flounder sub-ACL for the scallop fishery.

We would like to make two main points. First, as you are aware, the Council voted to recommend NMFS reallocate GB YT from the scallop sector to groundfish fishermen, while, via an emergency measure, "indemnifying" scallopers should they exceed their reduced sub-ACL in the 2012 fishing year. FSF would like to make it absolutely clear that, absent the indemnification provision, the scallop industry does not support the reallocation. As FSF has explained, this in-season transfer of fully half the scallop fishery's GB YT sub-ACL would be done right in the middle of the scallop fishing year, and is based on absolutely no in-season information regarding the location or extent of scallop fishing and associated incidental scallop catches of GB YT.

Second, better tools for tracking incidental catches are needed before any more sub-ACLs and associated AMs, such as for windowpane flounder, are put in place. Scallop fishermen pay for observers themselves, but it takes NMFS five to six months for the observer data to be

cc: Council, TN, FH, DB, CBK (7/12), PMF

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Mr. Sam Rauch
July 12, 2012
Page Two

integrated into catch and incidental catch estimates. As a result, the scallop fishery is subject to post hoc accounting and lengthy periods of uncertainty regarding the potential imposition of AMs. We recognize the value in, and fully support, careful and deliberate consideration of final incidental catch projections. However, it is unfair and counter-productive to impose a "reactive" closure-based AM system without letting the fleet have some reasonable, real-time way of determining where their catches are in relation to the sub-ACL. We are writing directly to you on this subject because NMFS, not the New England Council, primarily controls these data and the timing and quality of related analyses.

Turning back to the GB YT management issues immediately at hand, Groundfish Framework 47 establishes the process for in-season yellowtail flounder transfers from the scallop to groundfish sectors, and is predicated on a relatively late season re-estimation of actual use based on data from the fishing season (such as catch rates and remaining access area trips and open area days-at-sea). *See, e.g.,* 77 Fed. Reg. 26104, 26114 (May 2, 2012) (Multispecies Framework 47 final rule). Framework 47's preamble is very specific that NMFS should not put the scallop fishery at risk of triggering AMs by virtue of such a re-allocation. Accordingly, and as you recognized at the Council meeting, the indemnification provision represents an essential part of any early-to-mid season GB YT reallocation.

In part due to the difficulties with administration of the yellowtail flounder sub-ACLs, FSF is likewise concerned with the Council's stated intention to create a windowpane flounder sub-ACL for the scallop fishery in its next groundfish framework. Imposition of sub-ACLs with no effective in-season monitoring and accounting system causes business and operational uncertainty and, frankly, subverts the deterrent purpose of having AMs. Currently, scallop fishermen have absolutely no idea how close they are to reaching the YT sub-ACLs during the course of the season. Accordingly, they are denied the opportunity to adjust their behavior or take other measures to avoid exceeding the sub-ACLs and triggering AMs at a time when such action could make a difference. The lack of such monitoring renders even the current system arbitrary and capricious were AMs ever to be imposed.

As the court in the groundfish Amendment 16 case stated in an analogous situation, "[I]n order to ensure accountability with annual catch limits, NMFS must accurately monitor catch during the fishing season." *Oceana, Inc. v. Locke*, 2011 WL 6357795 *12 (D.D.C. Dec. 20, 2011). We recognize that a monitoring and tracking system would not be perfect, but NMFS provided real-time accounting of yellowtail bycatch for purposes of administering scallop access area quotas, and it tracks groundfish sector catches on a real-time basis. Without such a system, the scallop fishery has no reliable means of avoiding reactive AMs, save for its ongoing and highly successful efforts to reduce incidental catch of flounder in general.

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Mr. Sam Rauch
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FSF would also request that other alternatives for AMs be considered. For example, the National Standard 1 guidelines suggest the use of a three-year running average for “fisheries [that] have highly variable annual catches and lack reliable in season or annual data on which to base AMs.” 50 C.F.R. § 600.310(g)(4). Under such a system, it might be possible to avoid an AM if the sub-ACL were exceeded in only one year, so long as on average, the industry was below the ACL in the other two. This approach might provide more consistency and stronger incentives to increase efforts to avoid a stock if there had been an overage in one of the prior three years, but would not change the allocation scheme for determining the sub-ACL in any given year.

We also look forward to working with NMFS and the New England Council via the Scallop Research Set-Aside Program to develop operational and potentially gear-related methods to continue to reduce bycatch, as well as continuing to work with SMAST to expand its bycatch avoidance system that has been so successful in the Georges Bank access areas. This important work should be able to replace the ultimately counter-productive, closure-based “reactive” AM system that is currently being used for the scallop fishery’s Georges Bank sub-ACL.

We appreciate your attention to these concerns and look forward to discussing these issues with you in more detail in the near future.

Sincerely,



David E. Frulla
Andrew E. Minkiewicz
Shaun M. Gehan

Counsel for the Fisheries Survival Fund

cc: Mr. Rip Cunningham, Chair
New England Fishery Management Council



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*

July 2, 2012

Mr. Eric Schwaab
Assistant Administrator for NOAA Fisheries
National Marine Fisheries Service
1401 Constitution Ave, NW
Room 6809
Washington, DC 20230

Dear Eric:

I am writing to bring your attention to a very serious fiscal issue for the New England groundfish fleet in 2013. As you know, Amendment 16 to the Multispecies Fishery Management Plan (FMP) includes a requirement for groundfish sectors to assume the cost of at-sea monitoring. Our primary concern here is for the industry's ability to shoulder these costs particularly in light of the reductions in the annual catch limits pending for several groundfish stocks in 2013.

In order to meet the rebuilding requirements of the FMP, the annual catch limits for Gulf of Maine cod, Gulf of Maine haddock, Georges Bank cod, Georges Bank yellowtail, American plaice and witch flounder must be significantly reduced. We have no doubt that these reductions will seriously challenge the industry's ability to remain afloat.

It is imperative that we raise this issue now while the Agency continues work on the 2013 budget. We hope you will make every effort to provide full financial support for at-sea monitoring program in 2013.

Thank you for your consideration of this timely and important issue facing the New England groundfish fishery.

Sincerely,

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

cc: Sam Rauch, Deputy Asst Administrator, NOAA



3

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*

June 27, 2012

Mr. Bob Beal
Acting Executive Director
Atlantic States Marine Fisheries Commission
1050 N. Highland Street, Ste 200A-N
Arlington, VA 22201

Mr. Rick Robins
Chairman
Mid-Atlantic Fishery Management Council
800 N. State Street, Suite 201
Dover, DE 19901

Dear Bob and Rick:

As you know, recent changes to the Magnuson-Stevens Act require Fishery Management Councils to specify Annual Catch Limits (ACLs) and develop accountability measures (AMs) for stocks that are managed in our fishery management plans (FMPs). Amendment 16 to the Northeast Multispecies FMP adopted measures to comply with these requirements. In Amendment 16 the Council identified ACLs for all groundfish stocks. In addition, Amendment 16 distributed those ACLs to other fisheries that catch groundfish species. For example, the amendment established sub-ACLs of yellowtail flounder for the scallop fishery, created specific allocations for the recreational fishery for two stocks, and created an "other sub-components" category that was intended to account for small groundfish catches in other fisheries. I want to alert you to additional sub-ACLs that may be considered that may affect fisheries under your jurisdiction.

Southern New England/Mid-Atlantic Bight (SNE/MAB) windowpane flounder is one of the stocks managed by the FMP. The Northeast Regional Office provided the Council a preliminary estimate of catches of this stock during the period May 1, 2011 through April 30, 2012 (enclosure (1)). Please note these are preliminary estimates and may be subject to change. Total catches during the period appear to have exceeded the ACL and the same catches would exceed the FY 2012 ACL. As you can see from this estimate, most of the catch of this stock occurs outside the groundfish fishery and combined catches from other fisheries exceeded the total ACL. This makes it difficult to have effective AMs for this stock without addressing the other fisheries. This is the second year that catches in other fisheries exceeded the catch of this stock in the groundfish fishery (enclosure (2)).

In order to have effective AMs for this stock, the Council is considering establishing sub-ACLs for other fisheries. We have begun the process of doing so for the scallop fishery and anticipate that at the next Groundfish Committee meeting, the Committee will consider sub-ACLs for the scup and summer flounder fisheries. We invite you to join us in this important discussion.

If the Council chooses to establish SNE/MAB windowpane flounder sub-ACLs for these fisheries, reactive AMs will also need to be specified. We prefer that the AMs be defined in the relevant fishery's FMP so they can be tailored to reduce impacts on the fishery. This will require coordination between our organizations.

The Council also may consider applying the Mixed Stock Exception to SNE/MAB windowpane flounder. This would allow higher catches of this stock, which would reduce the probability that AMs would be triggered. We would need assistance from your staff to complete the analytic requirements to use this provision since the analysis must demonstrate that similar benefits cannot be obtained by using other management measures for the fisheries that catch the stock.

It is imperative that we work closely to address these issues and I look forward to holding a constructive dialog with you. It is possible that in the future we may have similar issues with other stocks, such as SNE winter flounder, so we need to approach this carefully. As I mentioned, I expect this issue will be discussed at our next Groundfish Committee meeting, which has not yet been scheduled. Tom Nies of my staff will coordinate that meeting and can address any technical questions you may have. Please contact me if you have any questions.

Sincerely,



Paul J. Howard
Executive Director

enclosures

Enclosure (1)

FY 2011

Preliminary Catch Estimates

Southern New England/Mid-Atlantic Bight Windowpane Flounder

	Total	Ground-fish Fishery	Sector	Common Pool	State Water	Other	Overall FY 2011 ACL	FY 2012 ACL
Southern Windowpane	468.6	115.4	85.2	30.1	2.0	351.2	225	381

Total	351.2
SCALLOP*	87.6
FLUKE	86.4
HAGFISH	-
HERRING	1.4
'LOBSTER/CRAB'	0.4
MENHADEN	0.1
MONKFISH	0.6
REDCRAB	0.0
RESEARCH	0.0
SCUP	55.0
SHRIMP	0.0
SQUID	16.7
'SQUID/WHITING'	16.3
SURFCLAM	0.0
TILEFISH	0.0
'WHELK/CONCH'	0.0
WHITING	0.1
UNKNOWN	86.6

Enclosure (2)

FY 2011

SNE/MAB Windowpane Flounder Catches

Stock	Total Groundfish Catch	NE Multispecies Catch by Fishery Component								
		Groundfish Fishery	Sector	Common Pool	Recreational ¹	Herring Fishery	Scallop Fishery	State Water Commercial ¹	State Water Recreational	Other
Southern Windowpane	A to G 534.9	A+B+C 73.6	A 52.7	B 20.9	C	D	E 178.3	F 31.0		G 252.0



3

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*

June 25, 2012

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

Dear Bill:

At the June 2012 Council meeting, the Council passed the following motion:

that the Council send a letter NEFSC asking for a detailed discussion of the issues surrounding the discard mortality of Atlantic wolffish and Atlantic halibut.

The motion **carried** on a show of hands (14/0/1).

The Council is developing Accountability Measures (AMs) for both Atlantic halibut and Atlantic wolffish. As required by the Magnuson-Stevens Act, these AMs will be implemented if the Annual Catch Limits (ACLs) are exceeded for these stocks. Since both assessments assume all discarded fish are dead, the Northeast Regional Office uses the same assumption when determining catch and comparing it to the ACL.

The Council requests that you provide an explanation for the discard mortality assumption used in these two assessments. The assumption seems to be inconsistent with other information that is available. For example, Amendment 16 banned possession of Atlantic wolffish and requires fishing vessels to return any catch to the sea with a minimum of injury. This measure was adopted in part because Canadian research indicated that trawl-caught wolffish had a high survival rate if returned to the sea within one to two hours (Grant et al. 2005). While this study does not address survival of longline or sink gillnet caught fish, it does suggest that the discard mortality assumption used in the assessment is not appropriate for trawl-caught fish and is inconsistent with the rationale used to manage this species.

While we are not aware of similar studies for Atlantic halibut, we note that in the Pacific halibut fishery the assumption is that some halibut survive. The International Pacific Halibut Commission estimates discard mortality for trawl, pot, and longline gear, and even applies different rates for CDQ and non-CDQ fisheries (Williams 2009). This species is similar to Atlantic halibut and suggests again that the discard mortality assumption used in the assessment is inaccurate.

The use of supportable discard mortality assumptions is critical as we use ACLs and AMs. It has important implications for both sector and common pool vessels as they attempt to manage their allocations. We look forward to receiving your discussion of the issues for these stocks. Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul", written in a cursive style.

Paul J. Howard
Executive Director

Literature Cited:

Grant, S.M., W. Hiscock, and P. Brett. 2005. Mitigation of capture and survival of wolffish captured incidentally in the Grand Bank yellowtail flounder otter trawl fishery. Centre for Sustainable Aquatic Resources, Marine Institute of Memorial University of Newfoundland, Canada. P-136, xii + 68 p.

Williams, Gregg H. 2009. Pacific halibut discard mortality rates in the 2008 CDQ and non-CDQ groundfish fisheries, and recommendations for 2010-2012. Available at <http://www.iphc.int/library/raras/17-rara-2009.html>.



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*

June 22, 2012

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

Dear Dan:

On June 21, 2012, the Council passed the following motion:

to request NMFS immediately analyze and determine whether it is possible to authorize up to 50% carryover of the fishing year 2012 Gulf of Maine cod sector ACL to fishing year 2013. This is intended to be a onetime stock specific transfer in an effort to provide maximum flexibility to the industry while rebuilding the stock.

The motion carried on a show of hands (14/0/1). Accordingly, I request that you examine this issue and provide guidance to the Council.

As you know, the results of the SARC 54 assessment for Gulf of Maine cod were not expected and led to strenuous efforts by NMFS, the Council, industry, and other interested parties to find a way forward. These efforts have been partly successful, resulting in a catch level (6,700 mt) for FY 2012 that will reduce fishing mortality but that will also help the industry adapt to the current situation. The expectation, however, is that the available catch in FY 2013 will be far lower as the Council acts to end overfishing. While the exact value will not be known until a new assessment is completed this winter, the expectation is that it will be less than 2,000 mt.

Such a low catch level will be disastrous for the industry and we should exhaust all efforts to mitigate the impacts. One of the guiding principles agreed to by the Gulf of Maine Cod working group was that this was an unusual situation and unusual measures may be needed to address it. One idea that surfaced would be to allow sectors to defer part of their FY 2012 Annual Catch Entitlement (ACE) into FY 2013. At the June Council meeting, several sector representatives spoke in favor of the idea and indicated their sectors would take advantage of it if offered. From a practical standpoint there are numerous benefits to such an approach. Preliminary analysis by the Northeast Fisheries Science Center suggests that such an approach provides clear economic benefits to the industry. Plan development team members have also explored the biological impacts of such an approach. In the short term, it would reduce GOM cod fishing mortality in FY 2012 and reduce the probability that the stock would decline below the lowest levels observed in the assessment time series.

There are a number of policy, legal and implementation questions that would need to be resolved in order to implement this concept. We believe the agency is in the best position to answer those questions. Clearly, time is of the essence. If sectors are to take advantage of this concept, they need to know as soon as possible that it will be allowed.

Thank you for your prompt attention to this issue. My staff is willing to assist if necessary. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Paul".

Paul J. Howard
Executive Director

3



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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*

June 22, 2012

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

Dear Bill:

At its most recent listening session, the New England Council received several questions and a comment from a member of the public about the Northeast Fisheries Observer Program. Our Council was not able to answer the questions or respond to the comment (see below) so I am requesting your help in doing so. Here are the questions and comment:

1. Is the process for selecting vessels and fishing trips on which to place observers a blind/random selection process as we were told?
2. Are the observers or observer company paid if the observers miss the boat? Is their pay docked if they are late which causes the boat to leave the dock late?
3. What protocols are in place to ensure observers have all applicable paperwork for the captains and to ensure they arrive on time?
4. Observers should be required to provide the captain, before sailing, all paperwork including comment cards, the release-of-information form and information on what type of observing is to be performed, i.e. NEFOPs or at-sea observer. Also, there should be consequences for the observers if they do not follow any protocols.

Please provide me with appropriate responses and I will forward them to the commenter. Don't hesitate to contact me if you have any questions.

Sincerely,

Paul J. Howard
Executive Director

cc: Daniel Morris, NERO



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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*

June 22, 2012

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

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

Dear Dan and Bill:

On June 21, 2012, the Council passed the following motion:

that the Council send a letter to NEFSC that clarifies that electronic monitoring is intended to be considered as a potential component of a Sector's catch monitoring program, rather than a complete replacement for all tasks currently performed by an observer or at-sea monitor.

The motion carried on a show of hands (13/0/1).

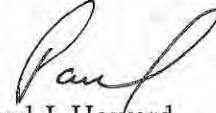
This motion was prompted by a number of discussions in various venues about the development of an electronic (EM) monitoring program that could be used to supplement or replace at-sea observers. EM might help reduce monitoring costs, which are currently scheduled to be the responsibility of the industry in FY 2013. On several occasions, NMFS personnel have indicated that their interpretation of Amendment 16 language is that EM cannot be adopted until it can be demonstrated that such tools can replicate the catch monitoring capabilities of an at-sea observer. This has led to stringent requirements for EM that may not be possible to meet and are delaying incorporating EM into the monitoring program. For example, the stated goal of the Electronic Monitoring System Pilot (EMS) Study is to "evaluate the utility of EMS to monitor catch on a real-time basis in the Northeast groundfish sector fleet." The August 19, 2011 report on the study includes this statement: "Before EM can be approved as a substitute for traditional at-sea monitoring, it must be proven to provide the types and quality of data that are needed to monitor catch accurately."

The Council does not agree with this interpretation of the Amendment 16 language and passed the motion to communicate that point to the agency. Amendment 16 states: "Electronic monitoring may be used in place of actual observers or at-sea monitors if the technology is deemed sufficient for a specific trip based on gear type and area fished." Please note that this sentence does not say that the EM must provide all of the same information that an observer or at-sea monitor provides. Further, the Council gave NMFS and sectors extensive flexibility to incorporate EM into a sector's monitoring program with this sentence: "Any electronic monitoring equipment or systems used to provide at-sea monitoring will be subject to the approval of NMFS through review and approval of the sector operations plan."

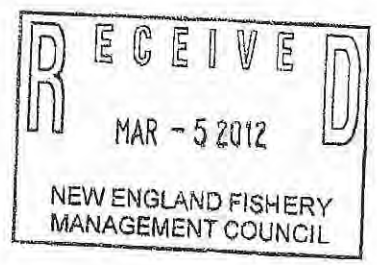
The use of EM should be considered a possible component of a sector's monitoring system. For example, such a system may use EM to document that groundfish discards did or did not occur, but rely on dealer data for kept catch on those trips. Even if it is determined, EM must document the species and weight of discards that is a more manageable problem than documenting all kept catch. The current interpretation of your staff is creating a nearly impossible goal for the program that was not envisioned by the Council. We urge you to take a more expansive view of the role that EM can play in catch monitoring so that this valuable tool can be incorporated into the sector program.

Thank you for your attention to this issue. Please contact me if you have any questions.

Sincerely,



Paul J. Howard
Executive Director



VIA ELECTRONIC MAIL

From: 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)

